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*information for all*

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## Contents

*Page No.*

- 1. Health Service Complaints System**  
The statutory complaints system for the health service is in place from 1 January 2007.
- 3. Maternity Leave**  
Maternity and adoptive leave are extended from 1 March 2007.
- 5. Housing Supports**  
There have been some changes in housing supports including mortgage interest relief and the provision of "Greener Homes" grants.
- 6. Review of SWA Scheme**  
The Department of Social and Family Affairs has published its review of the Supplementary Welfare Allowance Scheme.
- 7. Minimum Wage**  
The minimum wage has been increased from 1 January 2007.
- 8. European Year of Equal Opportunities for All**  
2007 has been designated as the European Year of Equal Opportunities for All.

## Health Service Complaints System

The statutory health service complaints system came into operation on 1 January 2007. The complaints procedures apply to actions or failures to act by the HSE and by service providers who have contracts with the HSE to provide health and personal social services.

The legislation governing the complaints system is contained in Part 9 of the Health Act 2004. This is the Act which provided for the setting up of the Health Service Executive (HSE) – it is described in the February 2005 issue of *Relate*. Part 9 of the Act has now been implemented (by Commencement Order – SI 651/2006). The detailed regulations are contained in the Health Act 2004 (Complaints) Regulations – SI 652/2006.

You may make a complaint about any action of the HSE or a service provider that:

- In your view, does not accord with fair or sound administrative practice and
- Adversely affects you or the person on whose behalf the complaint is made.

An action does not accord with fair and sound administrative practice if it is:

- Taken without proper authority
- Taken on irrelevant grounds
- The result of negligence or carelessness
- Based on erroneous or incomplete information
- Improperly discriminatory
- Based on undesirable administrative practice, or
- In any other respect contrary to fair or sound administration.

If you are unable to make a complaint because of age, illness or disability, the complaint may be made on your behalf by:

- A close relative or carer
- Any person who has been appointed by law or by a court to take care of your affairs – this would seem to include a Committee of a Ward of Court or a person appointed under an Enduring Power of Attorney but this is not entirely clear as the law which applies to Committees and Attorneys gives them specific and not general powers



INSIDE: Complaints under the Disability Act 2005 p3; Parental Leave p4  
Rent relief: Private rented accommodation p5; Disabled Person's Grant p5

- A legal representative
- Any other person with your consent, or
- Any other person who is appointed as prescribed in the regulations.

If the person to whom the complaint relates is dead, the complaint may be made by a close relative or carer. A close relative means a parent, guardian, son, daughter, spouse or cohabiting partner.

A complaint must be made within 12 months of the date of the action giving rise to the complaint or of the person becoming aware of the action. A complaints officer may extend the time limit if there are special circumstances involved.

You are not entitled to complain about:

- A matter that is or has been the subject of legal proceedings before a court or tribunal
- A matter relating solely to the exercise of clinical judgment by a person acting on behalf of the HSE or a service provider
- An action taken by the HSE or a service provider solely on the advice of a person exercising clinical judgment
- A matter relating to the recruitment, appointment or terms and conditions of an employee or advisor of the HSE or a service provider
- A matter relating to the Social Welfare Acts – this means that matters relating to the Supplementary Welfare Allowance scheme are not included but there is already a complaints system available for this scheme and people may then appeal to the Social Welfare Appeals Office
- A matter that could be the subject of an appeal under section 60 of the Civil Registration Act 2004 (this relates to the registration of births, marriages and deaths)
- A matter that could prejudice an investigation being undertaken by the Gardaí
- A matter that has been brought before any other statutory complaints procedure (this does not prevent a complaints officer dealing with a complaint that was made to the Ombudsman or the Ombudsman for Children).

The HSE has now set up procedures for dealing with complaints. Complaints officers may be appointed by the HSE or by a service provider. The HSE has appointed and trained complaints officers. They deal with the complaint and make a recommendation. You may then ask for a review of that recommendation and there will be an internal review.

Written complaints will be acknowledged within five

working days and the complaint will be investigated within 30 working days. You will get a written response to your complaint. You will be told of your right to have an internal review and of your right to go to the Ombudsman.

The HSE has also appointed a Head of Consumer Affairs.

Service providers may put their own procedures in place by agreement with the HSE. It is a condition of the agreement between the HSE and service providers that the service provider will adhere to the HSE complaints procedure or establish its own complaints procedures. It is also a condition that the service provider will co-operate with the HSE in any review of a complaints officer's recommendation following the investigation of a complaint against the service provider.

Complaints officers may cease to investigate a complaint for various reasons, including that it is trivial or vexatious or that it does not come within the scheme.

A complaints officer may not make a recommendation which would require the HSE to make a material change to its approved service plan or which would require a change to be made to the contractual arrangements which the HSE has with a service provider. If the CEO of the HSE or the service provider considers that a recommendation breaches this rule, they may amend the recommendation as required or they may reject the recommendation and take other measures to deal with the complaint.

When you have exhausted the health service complaints machinery, you may complain to the Ombudsman or the Ombudsman for Children. Their roles are not changed by this new complaints procedure. Actions taken by service providers under agreements with the HSE will be considered to have been taken by the HSE for the purposes of the legislation governing each Ombudsman – this, in effect, extends the Ombudsman's remit to these service providers.

The legislation does not provide for a mechanism for implementing the recommendations of a complaints officer or for what is to happen if the recommendation is not implemented.

### Annual reports

The HSE must publish information about the complaints procedure as part of its annual report. Service providers must provide the HSE with details about the number and the nature of complaints dealt with through their own complaints procedures.

### Complaints under the Disability Act

The Disability Act 2005 provides for a complaints system for people with disabilities who are dissatisfied with decisions about assessment of need, the contents of service statements and the delivery of services outlined in service statements. This system is not yet in place. It is not clear if the same complaints officers will deal with complaints under the disability legislation and complaints relating to the general health and personal social services. The rules which the complaints officers under the disability legislation are to operate differ from those under the general system and the disability system has an appeals officer – this is not available under the general system. The disability system has a further mechanism for appealing to the courts in relation to the implementation of recommendations.

### Further Information

The HSE has leaflets entitled “Your Service, Your Say” in all health service locations throughout the country. You can make comments and observations on these or you can email such comments to: [yoursay@hse.ie](mailto:yoursay@hse.ie) or use the website [www.hse.ie](http://www.hse.ie) to register a complaint or comment.

The HSE’s national information line is CallSave 1850 24 1850.

The Department of Health and Children published a *Report on the Consultation on the Health Act, 2004 (Part 9) – Complaints* in 2005. This report is available on the Department’s website: [www.dohc.ie](http://www.dohc.ie)

## Maternity Leave

Further changes in maternity and adoptive leave will come into effect on 1 March 2007.

The legislation governing maternity leave is the Maternity Protection Acts 1994 and 2004. Adoptive leave is governed by the Adoptive Leave Acts 1995 and 2005.

At present, women may be entitled to 22 weeks’ standard maternity leave, during which they may qualify for payment either from their employer or from the Department of Social and Family Affairs, and 12 weeks’ additional (unpaid) leave. If they start the additional leave on or after 1 March 2007, they will be entitled to 16 weeks’ additional leave. Women who start maternity leave on or after 1 March 2007 will be entitled to 26 weeks’ maternity leave with pay and 16 weeks’ additional leave.

There are similar changes to adoptive leave. Mothers who adopt or men who are adopting on their own are currently entitled to 20 weeks’ standard adoptive leave, during which they may be paid by their employer or the Department of Social and Family Affairs, and 12 weeks’ additional (unpaid) leave. If the additional leave starts on or after 1 March 2007, they are entitled to 16 weeks’ additional leave. Adopters who start adoptive leave on or after 1 March 2007 are entitled to 24 weeks’ standard adoptive leave and 16 weeks’ additional leave.

Fathers who become entitled to maternity or adoptive leave because of the death of the mother have similar entitlements.

### General rules about maternity leave

The following are the general rules about maternity leave. The rules about adoptive leave are similar.

**Entitlement:** All female employees are entitled to maternity leave. You are entitled to a standard period of leave and you may opt to take additional leave. If you have a stillbirth or miscarriage any time after the 24<sup>th</sup> week of pregnancy, you are entitled to full maternity leave.

**Payment:** Your employer is obliged to grant you maternity leave and to allow you to return to work when the leave ends but is not obliged to pay you while you are on maternity leave. Your contract of employment may include a provision that you will be paid during some or all of your leave. If you are entitled to maternity leave and you have enough PRSI contributions you may qualify for Maternity Benefit from the Department of Social and Family Affairs for the period of the standard leave (26 weeks from 1 March 2007). You are not entitled to Maternity Benefit for the additional leave.

**Fathers:** Fathers are entitled to maternity leave only if the mother dies within 24 weeks of the birth. The period of leave depends on the actual date of the mother’s death. Men who are adopting alone are entitled to adoptive leave.

**Postponing maternity leave:** Maternity leave (either the standard leave or the additional leave) may be postponed for a maximum of six months if your baby is in hospital. This requires the consent of your employer. There are detailed conditions attached to this.

**Returning to work:** You are entitled to return to work – either to your old job or to a suitable alternative – after maternity leave.

**Procedures:** You must give your employer notice of your intention to take standard maternity leave, to take the additional leave and to return to work; you must give at least four weeks' notice in writing in all cases. If you do not do this, you may lose your rights.

**Time off for medical visits:** You are also entitled to take reasonable time off for medical visits connected with the pregnancy both before and after the birth and you are entitled to be paid for this time. You are entitled to paid time off to attend one set of ante-natal classes, except for the last three classes. You must give your employer two weeks' notice in writing of the times of your appointments.

## Maternity Benefit and Adoptive Benefit

You may qualify for Maternity Benefit or Adoptive Benefit for the duration of your standard maternity/adoptive leave. The rules are the same for each benefit.

You may qualify for Maternity Benefit if you are entitled to maternity leave and if you have enough PRSI contributions. You may also qualify if you are self-employed. You should apply at least six weeks before you intend to start leave or 12 weeks before if you are self-employed.

The amount of money paid to you each week will depend on your earnings. If you are already on certain social welfare payments, such as the One-Parent Family Payment or the Widow's Pension, then you will receive half-rate Maternity Benefit.

### PRSI conditions

If you are an employee, you must have:

- At least 39 weeks PRSI paid in the 12 months before the first day of your maternity leave or
- At least 39 weeks PRSI paid since first starting work and at least 39 weeks PRSI paid or credited in the relevant tax year or in the following year or
- At least 26 weeks PRSI paid in the relevant tax year and at least 26 weeks PRSI paid in the year before that.

If you are going on maternity leave in 2007, the relevant tax year is 2005.

If you are self-employed you must have 52 weeks self-employed PRSI contributions (Class S) in the relevant tax year, the year before it or the year after it. So, if you are applying for Maternity Benefit in 2007, you must have 52 contributions in either 2005, 2004 or 2006.

## Rates

The minimum rate of Maternity Benefit is currently €207.80 per week and the maximum rate is €280. You get 80% of your average weekly income in the relevant tax year, subject to the maximum and minimum rates. (The relevant tax year is always used to calculate the rate of benefit even if your qualifying contributions were paid in another year.)

Apply to:

Maternity Benefit Section  
Department of Social and Family Affairs  
Social Welfare Services Office  
St Oliver Plunkett Road  
Letterkenny  
County Donegal  
Tel: (01) 704 3000  
Lo-call: 1890 690 690  
[www.welfare.ie](http://www.welfare.ie)

## Paternity Leave

In general, fathers are not entitled to paternity leave. As already stated, they may be entitled to maternity leave if the mother dies. Adoptive fathers who are adopting on their own may be entitled to adoptive leave and Adoptive Benefit. Your contract of employment may give you some entitlement to paternity leave, with or without pay.

An expectant father who is an employee is entitled to paid time off from work to attend the last two ante-natal classes.

## Parental Leave

Parental leave is provided for by the Parental Leave Acts 1998 and 2006. Leave may be taken in respect of a child up to eight years of age. If a child was adopted between the ages of six and eight, leave in respect of that child may be taken up to two years after the date of the adoption order. In the case of a child with a disability leave may be taken up to the child's 16<sup>th</sup> birthday.

Parents may take up to a total of 14 weeks each in respect of each child. If you have more than one child, parental leave is limited to 14 weeks in a 12-month period. This can be longer if the employer agrees. (This restriction does not apply in the case of a multiple birth, such as twins or triplets.) The leave may be taken in one continuous period or in separate blocks of a minimum of six weeks. If your employer agrees you can separate your leave into periods of days or even hours.

Each parent has a separate entitlement to parental leave, that is, 14 weeks each, and these are not transferable between them.

The situation in respect of parents who both work for the same employer is now rather complex. The intention of the 2006 legislation was that if you both worked for the same employer, you and your employer could agree that you would transfer your parental leave entitlement to each other. The way in which this was done was technically flawed and so it has not actually been put in place. The Minister for Justice, Equality and Law Reform has said that he intends to introduce the necessary amendments as soon as possible.

## Housing Supports

There have been some changes recently in various housing supports.

### Mortgage interest relief

Mortgage interest tax relief was increased for first-time buyers in the recent Budget and applies from the tax year 2007. This relief is granted at source – this means that your mortgage provider takes it into account when telling you how much your mortgage repayments are. You do, however, have to claim the relief in the first instance from the Revenue Commissioners who then tell the mortgage provider to take it into account.

Tax relief on mortgage interest is at the standard rate of tax, which is 20%. This means you get a tax credit of 20% of the mortgage interest paid up to the maximum stated.

The following are the upper limits for mortgage interest tax relief for first-time buyers. This relief lasts for seven years.

Single Person €8,000 Maximum tax credit is €1,600	Married/Widowed €16,000 Maximum tax credit is €3,200
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The upper limits for mortgage interest relief for other people are:

Single Person €3,000 Maximum tax credit is €600	Married/Widowed €6,000 Maximum tax credit is €1,200
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#### Further information

Revenue Commissioners Lo-call: 1890 463 626  
www.revenue.ie

### Rent Relief for Private Rented Accommodation

Tax relief is granted at the standard rate of 20% for rent paid in the private rented sector. The maximum tax credits are as follows for 2007:

	Single	Married/Widowed
Under 55 Maximum	€360	€720
Over 55 Maximum	€720	€1,440

There is no entitlement to pay for parental leave. Your contract of employment may give you some entitlement but there is no general legal entitlement and there is no social welfare payment similar to Maternity Benefit. You may, however, get social insurance credits while you are on parental leave. Your employee rights are preserved while you are on leave.

Further information on parental leave is available at Lo-call 1890 245 245 and [www.equality.ie](http://www.equality.ie)

### Disabled Person's Grant

There is no statutory maximum level of disabled person's or essential repairs grant payable by local authorities. However, the Department of the Environment (under the Housing (Disabled Persons and Essential Repairs Grant) Regulations 2001) repays the local authorities two-thirds of their expenditure on these grants subject to a maximum of €13,547 for each disabled person's grant and €6,353 in the case of each essential repairs grant. The local authority generally pays the remaining one-third from its own resources, which means that the effective maximum grant levels are €20,320 for disabled person's grants and €9,530 for essential repairs grants.

The Departmental review of the Disabled Persons and Essential Repairs Grant schemes has been finalised but not yet published.

### Energy Costs

You may get help with the costs of buying renewable energy heating systems under the "Greener Homes" grant scheme and the free electricity and gas allowances have been increased.

### Greener Homes Grants

Grants for "Greener Homes" are available as follows:

Technology	Grant Amount €
Wood chip or wood pellet boilers	4,200
Wood chip or wood pellet stoves	1,100
Wood chip or wood pellet stoves with back boiler	1,800
Heat pump – horizontal ground collector	4,300
Heat pump – vertical collector	6,500
Heat pump – water (well) to water	4,300
Heat pump – air source	4,000
Solar (per m <sup>2</sup> to a maximum of 12m <sup>2</sup> )	300

You may apply for these grants to Sustainable Energy Ireland.  
[www.sei.ie/greenerhomes](http://www.sei.ie/greenerhomes)  
 Lo-call: 1850 734 734

## Free Electricity Allowance

The annual entitlement under the free electricity allowance scheme is increased from 1,800 units to 2,400 units from January 2007. A pro-rata increase applied to the free gas allowance from October 2006. The total cost of the free electricity and free gas schemes was approximately €119 million in 2006.

# Supplementary Welfare Allowance Scheme

The Department of Social and Family Affairs has published the *Report of the Working Group on the Review of the Supplementary Welfare Allowance Scheme – Phase II*.

The review started in 2000 and the Phase I report was published in December 2004. The Phase II report examines the issues which were identified in Phase I, examines the efficiency and effectiveness of the scheme and makes recommendations about its future. The report includes comprehensive information about the underlying rules, the numbers of people who receive benefits and the costs involved. The following is a very brief summary of the main conclusions and recommendations of the report. The full report is available on the DSFA website: [www.welfare.ie](http://www.welfare.ie).

## The SWA Scheme

The Supplementary Welfare Allowance (SWA) scheme is the “safety net” within the overall social welfare system. In effect, it is the scheme of last resort in that, subject to qualifying conditions, it provides help to any person who does not have sufficient means. One of the major issues about the scheme was that it was becoming or had become part of the mainstream income maintenance arrangements instead of fulfilling its original aim.

SWA has the following main features:

- Basic weekly payment for people who have virtually no means. There are two categories of basic SWA payment recipients – those who do not qualify for any other social welfare payment and those who get interim payments while waiting for a decision about entitlement to a social welfare payment. There are currently about 54,000 recipients.
- Weekly supplements to meet specific costs, most notably the rent and mortgage interest supplement, diet supplement and heating supplement
- Exceptional needs payments – these are payments made to meet essential, once-off, exceptional expenditure which a person could not be reasonably expected to meet out of their weekly income.

- Urgent needs payments – these may be made in cases of urgency (for example in the aftermath of a fire or flood) to people who would not normally qualify under the SWA scheme.

The SWA scheme cost €726m in 2005.

## Objectives

The main objectives of the SWA scheme are:

- To provide a standard minimum income, in an immediate and flexible manner, to those whose means are not sufficient to meet their basic needs
- To provide income support in the form of a weekly/monthly supplement to those with additional specific needs, identified either in association with other personal and social services or on an individual basis, that cannot be met from their standard minimum income
- To financially support, by way of a single payment, any individuals who have once-off exceptional/urgent needs, identified either in association with other personal and social services or on an individual basis, that cannot be met from their own standard minimum income.

## Implementation

The legislation and guidelines governing the scheme are the responsibility of the Department of Social and Family Affairs (DSFA). The scheme is currently administered by over 700 Community Welfare Officers who are employed by the Health Service Executive (HSE). In June 1998 the Comptroller and Auditor General published a Value for Money Report on the administration of SWA which recommended the transfer of the administration of some or all of the entitlement-based payments from the former health boards to the DSFA. The Government has already announced its decision to transfer the administration of the scheme to the DSFA. This decision was announced after the Working Group had completed its deliberations.

## Issues and recommendations

### Basic Payments

The report concludes that the basic payment has gone beyond its role as a safety net and has become a mainline support provider. It recommends that the DSFA should meet the immediate and longer-term income support needs of those groups for which it has primary responsibility; that other Departments which have primary responsibility for other groups should make the necessary arrangements to meet the full needs of these individuals; and that the residual SWA basic payment "safety net" income support payments should be met from within the welfare system itself.

The report recommends that ultimately, social assistance DSFA schemes – which are already payable at the same weekly rates – should be integrated into a unified system of income support. This approach should be adopted only when the necessary administrative re-organisation has been achieved. It is estimated that this will take three to five years.

For a unified system to operate successfully across the range of individual situations which need support, active and frequent case management of individual applications is vital. In some cases, support for returning to work or education may be appropriate while some people may need personal care services.

There are, at present, separate means tests for social welfare payments and for SWA payments, even though the rules governing them are similar. The report includes an analysis of the different means tests, their similarities and differences. The Working Group considers that duplication of means testing should be addressed as a matter of priority and that one means test only should be conducted. The unified means-tested assistance payment would further eliminate duplications in the system.

### Rent and mortgage interest supplements

The Working Group concludes that the rent supplement scheme has not only provided effective support to its target group, but that it has also provided support to those with a long-term housing need.

The Rental Accommodation Scheme (RAS) is designed to address long-term housing need through the sourcing by

housing authorities of accommodation from the private rented market or through other social housing measures. The scheme is currently targeted at people who have been receiving rent supplement for more than 18 months. The report argues that further consideration needs to be given to those in receipt of short-term rent supplement to ensure that it is properly focused and that the RAS captures all of those with a long-term housing need at the earliest possible time. The 18-month period for tenants transferring to RAS should be reduced following the implementation of the RAS. The report also recommends that the rent supplement scheme should not be extended to low-paid full-time employees, on the grounds that rent supplement is not the appropriate vehicle to provide such support and that their needs should be met through the RAS.

Rent and mortgage interest supplement schemes should be administered and managed by the DSFA. The Department should vigorously support and pursue the implementation of the RAS. Arrangements should be made for the early referral to local authorities of tenants with apparent long-term housing need for a full housing needs assessment. As the RAS progresses to full implementation, rent supplement should only be paid for a limited period. When the RAS is fully implemented and the rent supplement is for short-term support only, it should become the responsibility of the DSFA and be integrated into a unified income support payment.

Payment to long-term recipients of mortgage interest supplement should be reviewed with a view to putting procedures in place to addressing their long-term need. This may take the form of a financial interest in the customer's property.

### Exceptional needs/urgent needs payments

The report concludes that, in order to achieve long-term effective solutions, there needs to be a more focused approach for particular vulnerable groups. There need to be solutions tailored to meet the individual needs of the person and, where required, this solution would be a multi-agency response. The report considers that the Community Welfare Service is best placed to deliver this service. The vital factor was that the scheme was administered by caseworkers who would interact with the various agencies that deal with the individual's basic needs.

## Minimum Wage

The minimum wage was increased to €8.30 an hour from 1 January 2007 and will be further increased to €8.65 on 1 July 2007. The governing legislation is the National Minimum Wage Act 2000.

The minimum wage applies to experienced adult workers. The following are the minimum rates for young people and trainees:

Employee under 18: €5.81 an hour (this is 70% of the minimum wage)

Employee in the first year of employment since the age of 18: €6.64 an hour (80% of the minimum wage)

Employee in the second year of employment since the date of first employment over the age of 18: €7.47 an hour (90% of the minimum wage)

Certain employees are not covered by the minimum wage rules. The legislation does not apply to a person employed by a close relative (for example, a spouse or parent) nor does it apply to those in statutory apprenticeships.

If you receive board and lodgings, board only or lodgings only from your employer, then the following amounts are taken into account as contributing towards the minimum payment:

€54.13 a week for full board and lodgings, or €7.73 a day

€32.14 a week for full board only, or €4.60 a day

€21.85 a week for lodgings only, or €3.14 a day

If you have a problem implementing your rights under the minimum wage legislation, you may contact the:

Rights Commissioner Service  
Tom Johnson House  
Haddington Road, Dublin 4  
Tel: (01) 613 6700  
Lo-call: 1890 220 227  
[www.lrc.ie](http://www.lrc.ie)

Further information is available from:  
Employment Rights Information Unit  
Department of Enterprise, Trade and Employment  
Davitt House  
Adelaide Road, Dublin 2  
Tel: (01) 631 3131  
Lo-call: 1890 201 615  
[www.entemp.ie](http://www.entemp.ie)

## European Year of Equal Opportunities for All

2007 has been designated as the European Year of Equal Opportunities for All. The main aims of the year are:

- To make European Union citizens aware of their right to enjoy equal treatment and a life free of discrimination
- To promote equal opportunities for all – access to employment, education, in the workplace or in the healthcare sector
- To promote the benefits of diversity for the EU.

The EU legislation prohibits discrimination on the grounds of race or ethnic origin, religion or beliefs, age, gender, sexual orientation and disability.

The activities during the Year will be based on four themes:

- **Rights** – raising awareness on the right to equality and non-discrimination and on the problem of multiple discrimination (for example, where people suffer discrimination because they are old and have a disability)
- **Representation** – stimulating debate on ways to increase the participation of groups in society that are victims of discrimination and to ensure balanced participation among men and women

- **Recognition** – facilitating and celebrating diversity and equality: equal treatment does not require that people be identical
- **Respect** – promoting a more cohesive society.

There will be a range of activities organised at all levels but most will be at local level. There is a national implementation body in each member state. In Ireland, the Equality Authority is the implementation body.

The Equality Authority  
2 Clonmel Street, Dublin 2  
Tel: (01) 417 3333, Lo-call: 1890 245 545  
[www.equality.ie](http://www.equality.ie)

Further information on the European Year may be had from the Equality Authority or from the website:  
[http://ec.europa.eu/employment\\_social/equality2007/index\\_en.htm](http://ec.europa.eu/employment_social/equality2007/index_en.htm)

Information on EU policies on non-discrimination is available at:  
[http://ec.europa.eu/employment\\_social/fundamental\\_rights/index\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/index_en.htm)

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