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information for all

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Refund of nursing home charges

The main points of the scheme of repayments to people who were illegally charged in nursing homes have been announced. The scheme will require legislation so the full details are not yet known. It is unlikely that legislation will be passed before the autumn and it is also unlikely that any actual repayments will be made before the end of the year. In making the repayments, priority will be given to people who are still alive.

The main elements of the scheme are:

- ◆ It will apply only to people living in public nursing homes and contracted beds in private nursing homes.
- ◆ People who were living in such homes on 9 December 2004 will get a full refund of all the payments they have made to the institution.
- ◆ All the payments made to the institution by people who died in the six year period from 9 December 1998 to 9 December 2004 will be reimbursed to their estates.
- ◆ There will be no repayments to the estates of people who died before December 1998.
- ◆ The repayments will be increased by the rate of inflation since the payments were made.
- ◆ There will be a “transparent and thorough” appeals process.
- ◆ There will be a national steering committee to oversee and monitor the repayment arrangements and an outside company will actually process the scheme.

The people concerned

The Department of Health and Children takes the view that the only people who are entitled to a refund are those who are or were living in public nursing homes and in contracted beds in public nursing homes. Contracted beds are those for which the health boards (now the Health Service Executive) paid the full cost – they are occupied by people who are considered to be entitled to a public long stay bed but for whom there is no such bed available. There are and were people in non-contracted beds in private nursing homes who may also have been entitled to a public bed.



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Some of these people are pursuing court cases and the issue of whether or not they, or some of them, have any entitlement to a refund will be decided in these cases.

It has been decided that there will be no refund to the estates of people who died before 9 December 1998. It is considered that the Statute of Limitations allows the government to refuse repayments to them. The Statute of Limitations is a law which, put simply, requires that claims for money owed must be made within a specific period of time. In general, you must make a claim within six years or your claim becomes "statute barred" (there are other periods of limitation for particular kinds of claims). The Statute of Limitations does not apply to certain claims. For example, it does not apply if you did not have the legal capacity to make a claim. Personal representatives have six years after the death to make a claim on behalf of a person who did not have legal capacity. This means that the statute period has run out for people who died before 9 December 1998 even if they did not have legal capacity. The other exceptions to the application of the Statute are legally complex but it may be that they apply to claims in this case. Again, there will be court cases on the issue.

People in nursing homes on 9 Dec. 2004

People who were living in the relevant nursing homes on 9 December 2004 will get a full refund of all the payments they made. They do not have to apply. It is the intention to calculate the amounts involved, increase the amounts by the rate of inflation and repay them without an application process. The repayments will not be taxable and will not be taken into account for any means tests. It is not clear if the repayments will be subject to tax if the person has died since 9 December 2004.

People who died between 1998 and 2004

People who were living in the relevant nursing homes and who died in the six year period before 9 December 2004 will have all their payments refunded to their estates. The money will then be distributed in accordance with the terms of the person's will or in accordance with the rules on intestacy if there is no will.

These payments will be subject to Capital Acquisitions Tax – this means that inheritance tax may have to be paid depending on the relationship between the deceased person and the beneficiary.

Protection against Exploitation

It is intended that the legislation will provide for safeguards to prevent exploitation of those who receive repayments and are not in a position to manage their own financial affairs. It is not clear exactly what this will involve. (The legal situation of people who are unable to manage their affairs will be described in next month's issue of Relate.)

If you do not want the repayment

If you are eligible for a repayment and do not want it, you will be able to have the money assigned to fund one-off service improvements for older people, people with disabilities and people with mental health problems. This is a straightforward matter for people who are alive when the refund is paid and who are capable of making this decision. People who are not capable of making the decision will have to have the money paid to their accounts. It would appear that the personal representatives of people who have died are obliged to take the refund and distribute it to the people entitled to inherit. The beneficiaries, of course, may give it back but it will have to be paid over in the first place.

Further Information

If you are a resident in a nursing home and entitled to a refund, there is no need to apply. If you want further information, you may contact the HSE at:

National Repayments Scheme,
HSE Midland Area,
Arden Road,
Tullamore,
Co Offaly.
National Helpline 1800 77 77 37
E-mail: repaymentsscheme@mailq.hse.ie
www.hse.ie

Charges for public nursing homes

The legislation providing for charges for public long stay care was described in the April 2005 issue of Relate. The regulations to bring these new arrangements into effect have been signed. The Health (Charges for In-Patient Services) Regulations 2005 provide for different charging arrangements depending on the level of nursing care being provided. The maximum charge for anyone in public long stay care will be €120 a week and everyone must have at least €35 left. The new charges will come into effect on 14 July 2005.

People in public long stay care are being divided into two groups:

Class 1

People in Class 1 are those who are receiving in-patient services in premises where nursing care is provided on a 24 hour basis. The maximum weekly charge for them will be €120 or their weekly income less €35, whichever is the lesser.

The HSE has discretion to reduce or waive the charges in order to avoid hardship.

Class 2

People in Class 2 are those who are receiving in-patient services in premises where nursing care is not provided on a 24 hour basis. The maximum weekly charge will be the lesser of

- ◆ €90 or
- ◆ the person's weekly income less €55 or
- ◆ 60% of the person's weekly income.

Disability Bill 2004

The Disability Bill 2004 has been passed by the Dáil and is likely to be enacted by the end of June. The Bill as initially drafted was described in the October 2004 issue of Relate. A number of amendments were made as it went through the Dáil. The following are the main changes:

- ◆ some change in the definition of disability
- ◆ a requirement that the operation of the Act be reviewed within five years
- ◆ changes in the complaints arrangements
- ◆ requirements for public bodies to make published documents accessible
- ◆ changes in the sectoral plan of the Department of the Environment, Heritage and Local Government

Definition of Disability

The Bill provides for an assessment of need for people with disabilities. You have a disability if there is a substantial restriction in your capacity to carry on a profession, business or occupation or to participate in social or cultural life because of an enduring physical, sensory, mental health or intellectual impairment. This is unchanged from the initial Bill. However, the definition of "substantial restriction" has been changed. It now means that you have a restriction which is permanent or likely to be permanent, results in a significant difficulty in communication, learning or mobility or in significantly disordered cognitive processes, and, in the case of both adults and children, gives rise to the need for services to be provided continually or, in the case of a child, to the need for services to be provided early in life to reduce the effect of the disability. This change clarifies that people with mental illnesses and children who need early intervention are covered by the assessment of needs provisions.

Review of the Act

There is a new requirement that the Act be reviewed five years after its commencement. As already stated, it is likely that the Bill will be enacted by the end of June 2005, but it is not known when it will be commenced or brought into effect. It is common to commence different parts of Acts at different times and it is not clear if the review requirement applies once any part of the Act is in effect. Certain sections of this Bill have specific dates for implementation – for example, the general rules on access to public buildings and public services come into effect on 31 December 2005. Separately, there is a provision that the genetic testing sections be reviewed no later than 1 January 2014.

Complaints and Appeals

Some changes have been made in the Bill's provisions on complaints and appeals. The Bill provides for a two tier complaints and appeals system. The first step is an independent but internal Health Service Executive (HSE) complaints officer system and the second is an external appeals officer.

You (or certain people on your behalf) may complain to the HSE about any of the following:

- ◆ A decision by the assessment officer that you do not have a disability
- ◆ A failure to start the assessment within three months of applying or to complete it without undue delay
- ◆ The failure to carry out the assessment in

accordance with standards set by the Health Information and Quality Authority

- ◆ The contents of the service statement provided to you
- ◆ The failure by the HSE or an education service provider to provide a service specified in the service statement

Complaints must be made as soon as possible but it is expected that specific time limits will be set out in regulations. The HSE may appoint complaints officers to deal with these complaints. The Bill provides that the complaints officers be independent in performing their functions. A complaint must be referred to a complaints officer within 10 working days.

The complaints officer may dismiss the complaint as frivolous or vexatious but must give reasons in writing for doing this. In other cases, the officer may try to resolve the complaint informally. If this fails or if the issue is not suitable for informal resolution, the complaints officer investigates the complaint. You and the other people involved, for example, the assessment officer or the liaison officer or the various service providers, must be heard and given the opportunity to present evidence. The complaints officer must issue a report which includes findings and recommendations. When considering the complaint, the complaints officer must take into account the factors which the liaison officer is obliged to take into account when drawing up the service statement – this means that the costs involved must be taken into account. Complaint proceedings must be held in private. Having investigated the complaint, the complaints officer may make a recommendation. The Bill originally provided that the HSE could refuse to implement the complaints officer's recommendation for particular reasons. These provisions have been removed. There is no specific provision obliging the HSE to implement the recommendation but you may appeal against a refusal to implement it and the HSE may appeal against the recommendation.

Appeals Officer

An independent appeals officer will be appointed by public competition. He/she will not be an employee of the HSE. You or your representative may appeal to the appeals officer against

- ◆ A finding or a recommendation of the complaints officer
- ◆ The failure of the HSE or education service provider to implement a complaints officer's recommendations

The HSE or an education service provider may appeal against a recommendation of a complaints officer. This is a new provision.

You (or your representative) must lodge an appeal within six weeks. The appeals officer may appoint mediation officers who may try to mediate a settlement. However, this cannot happen if you do not agree to it. If mediation is not being used or is unsuccessful, the appeals officer must hear you and the other parties involved but has the discretion as to whether or not to have an oral hearing. This seems to mean that you and the service providers must be interviewed by the appeals officer but this need not take place in the presence of each other. An oral hearing, if it occurs, must be held in private. The appeals officer may ask the assessment officer or the liaison officer to make further inquiries. He/she will have a range of powers including the power to require the production of documents, to apply to the District Court for a search warrant and to have people appear and give evidence.

The appeals officer's decision will be in writing and will be sent to you and to the service providers involved. The decision is binding on the HSE and the education service providers. The decisions will be publicly available. You may appeal the decision to the High Court on a point of law.

If the HSE or the education service provider fails to implement

- ◆ the appeals officer's decision or
 - ◆ the settlement agreed in the appeals mediation process or
 - ◆ the recommendation of a complaints officer (where that has not been appealed),
- within three months, you or your representative or the appeals officer may apply to the Circuit Court for an order directing its implementation.

Access to Public Services

The Bill obliges public bodies to provide access to public services for people with disabilities. There are specific provisions which require public bodies to communicate in an accessible manner with people who are visually impaired or hearing impaired. There is a new provision which requires that, when providing information which is relevant to people with disabilities, this information must be in clear language that is easily understood.

Sectoral Plans

The Bill requires a number of government departments to prepare sectoral plans which set out the services to be provided for people with disabilities. The requirements of the Department of the Environment, Heritage and Local Government's plan have been broadened. This Department's plan must have information on

- ◆ Measures to ensure compliance with the access to buildings regulations – Part M of the Building Regulations 1997 (S.I. No. 497 of 1997)
- ◆ Measures to be taken to facilitate access to public roads and other public places

- ◆ Arrangements to be made by the Minister for Transport to facilitate access from public roads
- ◆ Housing and accommodation for people with disabilities
- ◆ Proposed arrangements for cooperation by housing authorities with the HSE in relation to the development and co-ordination of the services provided by housing authorities for people with disabilities

The Disability Bill, as passed by the Dáil, is available at: www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2004/3904/b39b04d.pdf

Consumer Strategy Group Report

The Consumer Strategy Group, which was set up to advise and make recommendations for the development of a national consumer policy strategy, has issued its report – *Make Consumers Count: A New Direction for Irish Consumers*. The following is a very brief summary of the main recommendations of the report.

The Group's analysis of prices in Ireland led them to the conclusion that Irish consumers are not getting a fair deal. The report states that there is a need for a policy framework that supports and empowers consumers. This must incorporate the functions of information, enforcement, research, advocacy, education and awareness. These functions have been addressed unevenly and by a wide range of Government Departments, State agencies, regulatory bodies and voluntary organisations.

New National Consumer Agency

The report recommends the establishment of an independent statutory National Consumer Agency (NCA) to raise the profile of consumer issues and provide consumers with a strong and effective voice. The new agency should assume the responsibilities and budget of the Office of the Director of Consumer Affairs (ODCA) and should have additional responsibilities and resources. The NCA would be responsible for consumer research, advocacy, information, enforcement, education and awareness. The agency would also develop a partnership approach with Government, regulators, business, consumer organisations and unions in promoting and safeguarding the interests of consumers. Among other functions, the NCA should be a source of information for consumers, both on markets and on products. It should establish a national referral hotline and a web-based information portal for consumers.

The NCA should have considerable powers of enforcement. It should be able to impose on-the-spot fines for breaches of consumer law and to bring repeat offenders to court.

It should also assess the adequacy and quality of consumer-related education and identify any necessary changes. It should promote and assist awareness initiatives which provide comparative price and quality information to consumers and give special attention to the needs of vulnerable consumers.

The government has accepted this recommendation and has established an interim National Consumer Agency on a non-statutory basis pending the necessary legislation.

Groceries order

The Groceries Order bans "below cost" selling (see Relate, November 2004). The Report recommends that it be revoked. The government has decided to have a public consultation on this proposal.

You may send your views on this, by 31 July 2005, to groceriesorder@entemp.ie or to:

Consumer Policy Section
Department of Enterprise, Trade and Employment
Earlsfort Centre
Lower Hatch Street
Dublin 2.

More information is available at:
www.entemp.ie/commerce/consumer/htm

Specific industries

The report recommends a number of changes to the regulatory regimes of particular industries including:

Alcohol and soft drinks: remove the limit on the number of pub licences and introduce new licences such as café-bar licences and ensure that planning is not a barrier to new entrants to the market.

Fruit and vegetables: increase the number of licences granted to traders and apply a consistent approach to casual trading across all local authorities.

Pharmaceuticals: change the current method of establishing manufacturers' prices, review the drug subsidy schemes, encourage GPs to prescribe generic drugs, allow pharmacists to substitute generic for branded drugs and display prices in pharmacies for branded and generic drugs.

Transport: separate the regulatory and ownership functions of the Department of Transport, broaden the remit of the Commission for Aviation Regulation to include taxis, buses and other forms of passenger transport.

Electricity, gas, telecommunications and other utilities: provide a strong consumer voice to complement the regulators (the Commission for Energy Regulation and ComReg).

Legislation and Policies

The report recommends that the legislative review being undertaken in the Department of Enterprise, Trade and Employment be accelerated. The Minister has said that the Department is reviewing all existing consumer protection legislation. The aim of the review is to modernise and codify the law so as to ensure that it reflects the needs of the modern consumer, that consumers themselves fully understand their rights and that traders comply with the obligations placed upon them.

The report also recommends that consumer considerations be taken into account in regulatory impact assessments and that all relevant government decisions be consumer proofed.

The limit for the Small Claims Court should be increased to €3,000 and this limit should be reviewed every two years.

The social partnership arrangements should include consumer interests on both the government and the voluntary sides.

The full report is available at: www.irishconsumer.ie

Update on legislation and policy

Here we give a short update on legislation which is passed but not yet in effect, legislation which is going through the Oireachtas and policy developments in a number of areas.

Legislation

Comhairle (Amendment) Bill 2004

The Comhairle Bill was described in the October 2004 issue of Relate. It has not yet been discussed in the Oireachtas. Comhairle has received funding in 2005 to support the development of advocacy services for people with disabilities by the community and voluntary sector. This is a prelude to the introduction to the development of personal advocacy services by Comhairle. It is expected that personal advocacy services will be introduced in early 2008.

Health and Social Care Professionals Bill 2004

This Bill provides for the establishment of the Health and Social Care Professionals Council (HSCPC) and for registration and regulation bodies for certain health professionals. It has been passed in the Seanad and has yet to be discussed in the Dáil.

The professions to be regulated are chiropodists, clinical biochemists, dietitians, medical scientists, occupational therapists, orthoptists, physiotherapists, psychologists, radiographers, social care workers, social workers and speech and language therapists. The Bill provides that other professions may be regulated in the future.

The regulation system is similar to, but not exactly the same as, that which exists for doctors and nurses but there is greater non-professional involvement and more scope for the informal resolution of complaints.

The aim of the HSCPC will be to protect the public by promoting high standards of professional conduct and professional education, training and competence among the registered professionals. The Council will be composed of one member from each of the registered professions and 13 other people – a

chairman, one each from the management of the public and private health or social care sector, one from third level educational establishments and nine representatives of the general public. Among other things, the Council will oversee and co-ordinate the activities of the registration boards.

Each profession will have a registration board composed of six elected members of the profession and seven from the outside groups – the same groups as in the HSCPC. Each registration board will maintain a public register of people qualified to practise the particular profession.

The Council will be responsible for complaints about the fitness to practise of individuals who are registered. You may complain about a range of matters including professional misconduct, poor professional performance or that the professional's ability to practise is impaired by his or her health status, including an addiction to alcohol or drugs. There are procedures for dealing with the complaint through mediation and through formal inquiry if this is necessary. There are various sanctions available if the complaint is upheld.

Civil Registration Act 2004

This was described in the February and September 2004 issues of Relate. It is not yet in effect.

Water Services Bill 2003

This was described in the September 2004 issue of Relate. It has passed the Seanad and is at Second Stage in the Dáil.

Garda Siochana Bill 2004

This was described in the September 2004 issue of Relate. It has passed the Seanad and is at final stage in the Dáil.

Safety, Health and Welfare at Work Act 2005

The Bill was described in the September 2004 issue of Relate. It was passed at the end of May.

Driver Testing and Standards Authority Bill 2004

This was described in the September 2004 issue of Relate. It is at Second Stage in the Dáil.

Criminal Justice Bill 2004

This was described in the September 2004 issue of Relate and some aspects of it were covered in the June 2005 issue. It is at Second Stage in the Dáil and it is expected that it will be significantly changed before it is passed.

Criminal Law (Insanity) Bill 2002

This was described in the May 2003 issue of Relate. It has been passed in the Seanad but has not yet been discussed in the Dáil.

Dormant Accounts

The Dormant Accounts (Amendment) Act 2005 has been passed but is not yet in effect. (The Bill was described in the September 2004 issue of Relate.)

The current value of the Dormant Accounts Fund is about €229 million.

Financial Services Ombudsman

The legislation governing the Financial Services Ombudsman was described in the April and September 2004 issues of Relate. The Ombudsman has now taken up office and may be contacted at:

Financial Services Ombudsman
32 Upper Merrion Street
Dublin 2.

Tel: 01 613 0892

Email: enquiries@financialombudsman.ie
www.financialombudsman.ie

Schemes and Policies

Rural Social Scheme

The Rural Social Scheme came into operation in July 2004 (see Relate, August 2004). The scheme aims to improve rural services and provide income support for farmers and fishermen. There are 2,500 places available. There are 36 implementing bodies for the scheme (34 have started projects) and over 1,450 people were employed on the scheme in April 2005. The implementing bodies are mainly rural development and LEADER groups. The participants on the scheme had previously been on CE or Unemployment Benefit (800), Farm Assist (600), Unemployment Assistance (150), Disability Allowance (36) and 150 were spouses of eligible people.

Disabled Persons Grant Scheme

A review of this scheme was announced in March 2003 and is still being conducted in the Department of the Environment, Heritage and Local Government.

Victims of Crime

The Minister for Justice, Equality and Law Reform has established a Commission for the Support of Victims of Crime. This aims to devise an appropriate support framework for victims of crime into the future and disburse funding for victim support measures. Among other things, the Commission will review the Victims' Charter.

Disabled Driver Appeals

The Medical Board of Appeal for the disabled drivers and disabled passengers tax scheme has been reconstituted and extra members appointed in order to tackle the backlog of appeals. There are approximately 600 people waiting to have their appeals heard and the waiting time is about three years.

No decisions have been made on any changes to the scheme as a result of the interdepartmental review which was published in July 2004.

Car Testing Appeals

The National Car Testing Service which carries out the National Car Test (NCT) has introduced an appeals system. This is a non-statutory system and has been in operation on a pilot basis in the Dublin area for a number of months. If you have a complaint, you must first use the internal complaints process of the NCTS. If still dissatisfied, you may appeal to the Automobile Association. The system is being extended to the whole country. You may have to pay a fee for the appeal – the fee is the same as the cost of the test and is refunded if you are successful.

Immigration

The rules in relation to immigration were described in the July 2004 issue of *Relate*. In March 2005, the Irish Naturalisation and Immigration Service (INIS) was established on a non-statutory basis. This will incorporate the asylum, immigration and citizenship functions and structures of the Department of Justice, Equality and Law Reform as well as the visa section of the Department of Foreign Affairs (that department will retain responsibility for the visa service abroad). It is expected that it will take a year for the new structure to be fully in effect.

Means Tests

The rules on the assessment of capital in means tests which were contained in the Social Welfare and Pensions Act 2005 (*Relate*, March 2005) came into effect on 1 June 2005 for most social welfare

payments. The new rules mean that the first €20,000 of capital is disregarded in the means test. This means that a person applying for a Non-Contributory Old Age or Widowed Person's Pension can have capital of up to €28,000 and still qualify for a pension at the maximum rate. A pensioner aged 66 or over can have capital of up to €76,000 (€70,000 in the case of a widow or widower aged under 66) and still qualify for a minimum pension.

Employment Rights Bodies

The report of the review group on the role and functions of the employment rights bodies, (the Labour Court, the Employment Appeals Tribunal and the Labour Relations Commission Rights Commissioner service) has been published. www.entemp.ie/employment/rights/publications.htm

The Minister for Enterprise, Trade and Employment has established an Employment Rights Group to examine how the report can be implemented. The group will examine

- ◆ how to streamline the complaint, appeal and enforcement procedures and documentation across all the employment rights bodies
- ◆ the extent to which common procedures and a simplified approach to the conduct of hearings/investigations can be adopted across all the bodies
- ◆ the practicality of setting up a single point of contact for the bodies – the government has decided that the aim should be to have all located in the same place

The Employment Appeals Tribunal (EAT) will continue as a stand-alone body but it will become an appeal body only. This means that all cases which come to the EAT for a hearing will be referred to the Rights Commissioner service of the Labour Relations Commission. They may then be appealed to the EAT. Work is starting on the simplification and consolidation of the employment rights legislation.

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