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Relate

The journal of developments in social services, policy and legislation in Ireland

Housing Policy

Delivering Homes, Sustaining Communities is the title of the housing policy document recently issued by the Department of the Environment, Heritage and Local Government.

It includes some details of changes to the grant schemes for older people and people with disabilities. These will be implemented during 2007 but it is not clear exactly when. It also includes a commitment that a National Housing Strategy for people with disabilities will be developed by 2009.

The new grant schemes will replace the existing schemes: Disabled Person's Grant, Essential Repairs Grant and Special Housing Aid for the Elderly. They will be administered by the local authorities. The maximum rates will be increased annually in line with inflation. It is intended to put arrangements in place to ensure maximum co-operation between local authorities and the HSE in dealing with cases which require medical and/or occupational therapy assessments.

Mobility Aids Grant Scheme

It is proposed to introduce a new scheme which will provide grants for works designed to address mobility problems mainly, but not exclusively, associated with ageing. It is proposed that these grants would be limited to people whose maximum annual household income is less than €30,000 and quick decisions would be made about applications. The maximum grant available will be €6,000 and may cover 100% of the cost of works.

Housing adaptation grant for people with a disability

This scheme will be for people who are not covered by the Mobility Aids Grant Scheme and it will provide means-tested grants for the provision or adaptation of accommodation to meet the needs of people with a disability. The current grants are not means-tested. The maximum grant will be increased from the current €20,320 to €30,000. The scheme will give priority to those on lower incomes. People with household incomes of less than €30,000 may qualify for 95% of the cost of the works (subject to the maximum of €30,000). The proportion of the costs to be grant-aided will be tapered from 95% to 30% which will apply when household income is between €54,001 and €65,000.

There will also be a clawback provision if the house is sold within 5 years of receiving a grant – 85% of the grants will be repayable if the house is sold within a year and a lesser proportion if it is sold in subsequent years – 20% will be repayable if it is sold in year five.

New houses for people with disabilities

The Housing Adaptation Grant for new houses for people with disabilities, that is, houses which are adapted within one year of their completion, will be increased from the current maximum of €12,700 to €14,500.

Housing aid for older people

This scheme will amalgamate the existing Essential Repairs and Special Housing Aid for the Elderly Schemes. The aim of the scheme is to make the homes of older people habitable. The maximum grant available will be €10,500 and may cover 100% of the cost of works for people with an annual household income of less than €30,000, tapering to 30% for those with annual household incomes of €54,001 to €65,000. The current schemes are not means-tested.

The policy document is published on the Department's website www.environ.ie

Nursing home subventions

A number of changes have been made to the nursing home subvention scheme recently. From January 2007, the three maximum rates of subvention, which were related to dependency level, were replaced by a single maximum rate of €300 a week. It is intended to change the way nursing home charges are assessed from January 2008 – see *Relate*, January 2007 for details of the proposed new scheme. The proposed 2008 scheme will apply to both public and private nursing homes. The HSE has issued national guidelines for the implementation of the Nursing Home Subvention Scheme which, of course, applies only to private nursing homes. These guidelines are aimed at ensuring that the means test is implemented in the same way all over the country. The guidelines take into account the proposed 2008 changes and state that the operation of the scheme in 2007 must be consistent with the proposed 2008 scheme.

The full guidelines are available at www.hse.ie

The legislation governing the subvention scheme remains the Nursing Homes (Subvention) Regulations 1993 as amended. The Health (Nursing Homes) Amendment Act 2007 has been passed. The Act puts the existing nursing home subvention scheme into primary legislation. The Bill was described in the May 2006 issue of *Relate*. Some changes were made to it as it was discussed by the Oireachtas. One major change was the capping at 15% of the percentage of house value that will be taken into account when assessing means. The Act is not yet in force but the guidelines are in accordance with it. The guidelines elaborate on the operation of the means test and they

effectively modify the scheme in order to bring it into line with the proposed 2008 scheme and the new Act.

So, while the Regulations remain the legal basis for the scheme, the guidelines describe how it is to work in practice during 2007.

Applying for a subvention

Under the subvention regulations as applied before the guidelines came into effect, it was necessary to apply for a subvention before going into the nursing

home unless there was an emergency. If you went into a nursing home before applying, you were not allowed to apply for 2 years, unless the HSE decided otherwise. This provision is not included in the Act. The guidelines state that an application should not be refused because it was made after admission and you are not precluded from applying within the two-year period.

The guidelines set out the timeframes within which the HSE should complete each stage of the assessment of an application and notify the applicant of its decision.

There is not yet a standard method of assessing dependency but the HSE is in the process of drawing up a national assessment tool. The separate categories of medium, high and maximum dependency are no longer relevant for the amount of the subvention but the guidelines state that dependency levels continue to be assessed and recorded for statistical and planning purposes.

The means test

Income from all sources is taken into account.

Income is assessed net of PRSI, income tax and the health levy. If you are married or cohabiting, your income is taken to be half the total income of the two of you. However, the guidelines state that the HSE must ensure that a spouse or partner living at home has an income of at least the current level of the State Pension (Non-Contributory). If there are dependent children, then they must be each allowed an amount equal to the increase payable for a Qualified Adult on that pension.

Your total income for the purposes of the means test is your net income less one-fifth of the weekly rate of the State Pension (Non-Contributory) payable at the time. You must be allowed retain this amount, which is sometimes referred to as pocket money.

If your means as assessed by the HSE are equal to or lower than the weekly rate of the State pension (Non-Contributory) payable at the time, the maximum subvention is paid. If your means are higher than this, the subvention may be reduced by the amount of the excess.

Farms

The guidelines state that the income from a farm is calculated on the basis of the accounts for the previous financial year if they are available. If the farm is being used and there are no accounts available, a notional assessment

of income may be made. If the farm is not being used, then it is assessed as an asset.

Assets

The following assets may be taken into account:

- House property (excluding household furniture and goods)
- Stocks, shares or securities
- Money on hand, in trust, lodged, deposited or invested
- Interests in a company or business of any kind (including a farm)
- Interest in land
- Life assurance or endowment policies
- Valuables held as investments
- Current value of equipment of a business or machinery, excluding a car, not covered under a previous heading.

If you disposed of any assets in the previous 5 years, the value of those assets may also be taken into account. That value can include the value of benefit and privilege arising from the transfer if a monetary value can be put on it, for example, a right of residence in a house may not have any realisable monetary value. The first €11,000 of any assets is disregarded.

Refusal of subvention

The HSE may refuse to pay any subvention if:

- Your assets, excluding your house, are greater than €36,000 or
- Your principal residence is valued at more than €500,000 in the Dublin area or €365,000 in the rest of the country and your annual income is greater than €10,400.

If you have assets of more than €36,000, the guidelines provide that you should still be assessed – you should not be automatically excluded purely on the basis that your assets exceed the limit.

Your house

Your principal private residence is not taken into account if it is occupied immediately before the application and continues to be occupied by any of the following:

- Your spouse
- Your child aged under 21 or in full-time education
- A relative in receipt of Disability Allowance, Blind Pension, Illness Benefit, Invalidity Pension or State Pension (Non-Contributory).

If none of these people is occupying your house then, under the Regulations, the value of your house may be taken into account – the HSE does not have to take it into account. The Act provides that your house must be taken into account unless it is occupied by one of the people mentioned or if

taking it into account would result in the destitution or homelessness of a person who was closely connected with you in the previous year.

The guidelines state that the house is to be taken into account unless:

- It is occupied by one of the people mentioned
- It has no realisable capital or rental value (this must be established by a professional valuer)
- You require nursing home accommodation for short-term respite, convalescent or post-operative care and you then transfer to other accommodation or go back home. Short-term in this context means less than 6 months.
- You go back home regularly, for example, every weekend.

If you are incapable of dealing with your affairs, the value of the house may still be assessed. If necessary, the HSE may apply to make you a Ward of Court. (See Relate, August 2005 for more information about Wards of Court.)

If the value of your house is being taken into account, the regulations provide that it is assessed at 5% of the estimated market value, net of mortgage, loan rental or purchase repayments. This is the imputed value of your house. The HSE has no power to require you to sell or lease your house but it can assess this imputed value and decide on the level of subvention (if any) you will get as a result. The Act and the guidelines provide for this imputed value to be assessed for 3 years – in effect, there is a cap of 15% of the total value of the house. If the house is jointly owned by a couple and one of them is being assessed for a nursing home subvention, then the maximum assessable is 2½% of the value up to a maximum of 7½%. So, the rules for the assessment of the house which are now in effect are the same as those proposed for the 2008 scheme. The Act, when implemented,

will require you to pay the imputed income but it allows for payment to be deferred until after your death. (See Relate, January 2007.) However, there is no mechanism yet for deferring payments.

If your house is rented, then the rental income is assessed as means. There is no cap on this.

The guidelines state that your application should not be refused solely on the basis of the value of your house. Instead, the means test should be carried out and you may then be refused a subvention on the basis of your total means. After 3 years, the value of the house is no longer assessed and you may then qualify for a subvention, depending on the level of your other means.

There is no cap on the valuation of other assets, including other house property. These are valued at 5% of the market value each year.

Enhanced subventions

The guidelines also deal with the award of enhanced subventions. In summary, they provide that an enhanced subvention may be payable for people whose income, including subvention, is not enough to meet the cost of care and who have no other means or assets on which to depend. The amount of the enhanced subvention may not be more than the cost of care, minus your income (including income from property and basic subvention payments). The guidelines state that you do not need to be getting a basic subvention in order to qualify for an enhanced subvention.

Draft nursing home standards

The Department of Health and Children has published the Draft

National Standards for Residential Care Settings for Older People. When finalised, these will apply to both public and private nursing homes. The draft standards are available at www.dohc.ie

Home care providers

The Health (Nursing Homes) Amendment Act 2007 also includes a provision requiring home care providers to register with the HSE. At present, home care providers do not have to register and there are no standards set for them. The Act, when implemented, will require home care providers to tell the HSE, in writing:

- The name and address of the provider
- The name and address of each person to whom the provider provides home care services
- The nature of the services provided

The HSE may publicly disclose information about home care providers who are “legal persons” – that is, who are operating as companies – but not about providers who are operating as individuals. There is no provision in the Act for the setting of standards for home care providers.

A home care service is defined in the Act as a service provided in a private dwelling for a person who, by reason of illness, frailty or disability, is unable to provide the service for himself or herself without assistance. It would appear to cover a wide range of services including cleaning and cooking as well as personal care services.

It is not clear when this section will come into effect.

The Finance Act 2007 provided that home care providers who are registered under this provision will not have to charge VAT on their services.

Health Act 2007

The Health Act 2007, which has recently been passed, provides for the establishment on a statutory basis of the Health Information and Quality Authority (HIQA) and the Office of the Chief Inspector of Social Services and for the registration and inspection of residential institutions for older people, people with disabilities and children in need of care. The Bill was described in the January 2007 issue of Relate. There were no major changes to the main parts of the Bill as it went through the Oireachtas but there were a number of additions, in particular new provisions for the protection of whistleblowers.

Whistleblowers

The Act provides for protection for whistleblowers in the health services. The legal term is "protected disclosure".

The Protections for Persons Reporting Child Abuse Act 1998 provides protection from victimisation and civil liability for people reporting the abuse of children. This is not affected by these new provisions.

These new provisions provide protection for health service employees and for the general public if certain conditions are met. In general, employees are protected from victimisation by an employer and from civil liability if they make a protected disclosure in accordance with the procedures to be set up. Everyone is protected from civil liability if they make protected disclosures to regulatory and monitoring bodies.

The employees who are protected include employees and trainees of virtually every body which provides health services including the HSE, service providers who are funded by the HSE and private bodies who provide health services.

A disclosure to an authorised person is protected if that disclosure is made by an employee of the HSE, other public health agencies, service providers or bodies funded by the HSE, if it is made in good faith and the employee has reasonable grounds for believing that it will show:

- That the health or welfare of a person who is receiving a health or personal social service has been, is or is likely to be at risk
- That the actions of any person employed by or acting on behalf of the relevant body has posed, is posing or is likely to pose a risk to the health or welfare of the public
- That the relevant body or a person employed by or acting on behalf of the relevant body failed, is failing or is likely to fail to comply with any legal obligation
- That the conduct of the relevant body or of a person employed by or acting on behalf of the relevant body has led, is leading or is likely to lead to a misuse or substantial waste of public funds or

- That evidence relevant to any of these matters has been, is being or is likely to be deliberately concealed or destroyed.

There is also similar protection for:

- Employees of private nursing homes reporting to the Chief Inspector of Social Services
- Employees of private psychiatric hospitals disclosing information to the Inspector of Mental Health Services.

The following are also protected disclosures no matter who makes them:

- The reporting of concerns to a professional regulatory body that the actions of a doctor, dentist, nurse or other health and social care professional pose a risk to the health or welfare of a member of the public
- The making of disclosures to the Health Information and Quality Authority or the Chief Inspector of Social Services or the Inspector of Mental Health Services where they have reasonable grounds for believing that the disclosure will show a risk to the health or welfare of the public.

The professional regulatory bodies are An Bord Altranais (the Nursing Board), the Dental Council, the Health and Social Care Professionals Council, the Medical Council, and the Pharmaceutical Society of Ireland.

The protection applies where the disclosure is made in good faith and does not apply where the person making the disclosures does so knowing that the disclosure is false or misleading or where he/she made the disclosure recklessly without regard to whether it was false or misleading, frivolous or vexatious.

The HSE will be obliged to establish procedures so that employees can report matters of concern where patients may be put at risk, there is waste of public funds or legal obligations are not being met. These procedures will be applicable to the HSE itself, to people providing services on its behalf and to other bodies which receive help from the HSE but a service provider may establish its own procedures provided this is approved by the HSE. The procedures must

provide for the appointment of an authorised person to whom employees can make reports. This independent person must investigate the disclosure and may report the matter to one of the regulatory bodies or, if there is a criminal issue involved, to the Gardaí. The Data Protection Commission must be consulted before the procedures are established to ensure that they are in accordance with data protection law.

Emergency disclosures

In general, the disclosure is protected only if the procedures are used. However, there is also provision for urgent cases.

Redress for employee

An employee who is victimised as a result of a protected disclosure may complain to a Rights Commissioner, who

may order the employer to take specified steps and/or pay compensation. The complaint must be made within 12 months unless there are exceptional circumstances, in which case the Rights Commissioner may extend the time by 6 months. Either side may appeal to the Labour Court within 6 weeks of the Rights Commissioner's decision.

Freedom of information

The Act provides that the HIQA will be subject to the freedom of information (Fol) legislation and access to its records will be available under that legislation. The Act also provides that a number of confidentiality clauses which apply in health service bodies will be brought within the remit of the Fol legislation.

Regulation of medical and related professionals

Health and social care professionals

The Health and Social Care Professionals Council has been established as provided for by the Health and Social Care Professionals Act 2005. The Council will have 12 separate registration bodies to regulate the following professionals who are not currently regulated: clinical biochemists, dietitians, medical scientists, occupational therapists, orthoptists, physiotherapists, podiatrists, psychologists, radiographers, social care workers, social workers and speech and language therapists. The legislation provides for other professions to be included in the future. There are 25 people on the Council, the majority of whom are non-professionals. The objective of the Council is to protect the public by promoting high standards of professional conduct and professional education, training and competence among registered practitioners.

A Registration Board will be established for each of these professions which will establish and maintain a register of members of that profession. The Council will establish a committee structure to deal with complaints made against registered practitioners.

Doctors

Doctors are regulated by the Medical Council. The Medical Practitioners Act 2007 provides for changes to the regulatory regime. The main changes are as follows:

The Act provides that the Medical Council's objective is to protect the public by promoting and better ensuring high standards of professional conduct and professional education, training and competence among registered medical practitioners.

It makes it a requirement for all doctors to register with the Council before practising medicine. The Minister for Health and Children will have the power to designate titles for the sole use of those registered medical practitioners or particular classes of registered medical practitioners on the basis of specific criteria.

The Act provides that complaints and concerns may be addressed in a number of different ways. There will be a mediation process for less serious complaints if both parties agree to this. The complaint may be referred to the HSE's statutory complaints process – see Relate, February 2007 for details. There will also be a fitness to practise procedure which may be held in public. The fitness to practise committee must undertake their functions in the public interest and must have a majority of lay people.

A majority of the members of the Council will not be doctors.

Pharmacists

The Pharmacy Bill 2007 provides for changes to the regulatory regime of pharmacists.

Behaviour in schools

The Task Force on Student Behaviour in Second-Level Schools was established:

- To examine the issue of disruptive behaviour in second-level schools
- To consider effective strategies already employed
- To advise on best practice in fostering positive behaviour and
- To make recommendations on how best to promote an improved climate for teaching and learning in schools.

The report of the task force, *School Matters*, made a number of recommendations. It recommended, among other things, that a National Behaviour Support Service (NBSS) be established. This service has been established and it is intended that the service will start work with about 50 selected schools in the near future.

The task force also recommended that changes be made to the appeal provisions in the Education Act 1998. This has been done by the Education (Miscellaneous Provisions) Act 2007. The Act has been passed but is not yet in effect.

The appeals procedures are contained in Section 29 of the Education Act 1998. This provides that a student aged over 18 or a parent may appeal to the Secretary General of the Department of Education and Science against any of the following decisions by a school's board of management:

- A decision to permanently exclude (expel) a student
- A decision to suspend a student for more than 20 days in total in any school year or
- A decision to refuse to enrol a child.

The Education (Miscellaneous Provisions) Act provides that, when a Section 29 appeal committee is dealing with an appeal relating to expulsion or long-term suspension, it must take account of a number of factors including the educational interests of other students in the school, as well as the interests of the student who is the subject of the appeal. The Act sets out a range of factors that an appeals committee will have to consider in such cases, including:

- The nature, scale and persistence of the student's behaviour that gave rise to the suspension or expulsion
- The reasonableness of efforts made by the school to enable the student to participate in and benefit from education

- The educational interests of the student concerned and the desirability and practicality of enabling the student to continue to participate in and benefit from education with his or her peers
- The educational interests of, and the effective provision of education for, the other students in the school and the maintenance of a classroom and school environment that is supportive of learning and ensures continuity of instruction
- The safety, health and welfare of teachers, students and staff of the school
- The school's code of behaviour and any other relevant policies.

Codes of behaviour are provided for in the Education (Welfare) Act 2000. The National Educational Welfare Board is currently drawing up guidelines for schools on developing and implementing effective codes of behaviour.

Appeals must be held in accordance with procedures that are drawn up by the Minister after consultation with patrons, national associations of parents, school management organisations, and teachers' representatives. These procedures will be revised and expanded in order to take account of the provisions of the Act and the recommendation of the Task Force that a protocol should be provided to help school boards in the preparation for an appeal.

In general, a decision must be made within 30 days of making the appeal. The Act gives the Minister the power to regulate for the suspension of the time limit during times when schools are closed.

The National Educational Welfare Board and the National Council for Special Education (NCSE) are each entitled to make submissions to an appeals committee.

The Act also allows an appeals committee to refuse to hear an appeal, or to continue with an appeal, which may be frivolous, vexatious or an abuse of process and to draw inferences from the failure of a party to an appeal to comply with requirements made of it such as requests for information or clarification of a point.

The Act also allows for a specific appeal against a decision to refuse to enrol a child in an all-Irish section of a school which has both an Irish-language and an English-language stream.

The Citizens Information Board is the statutory body which supports the provision of information, advice and advocacy on the broad range of social and civil services to the public. It provides the Citizens Information website and supports the voluntary network of Citizens Information Services and the Citizens Information Phone Service.

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Collective redundancies

The Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 fulfils some of the commitments in *Towards 2016*. It provides for the establishment of a redundancy panel to which certain proposed collective redundancies may be referred. It also removes the upper age limit for qualifying for a statutory redundancy lump sum.

The proposal for the establishment of a redundancy panel arose from concerns about the collective compulsory replacement of workers by lower-paid workers.

The redundancy panel is being set up for 3 years and it may then be extended by Ministerial order. Cases may be referred to the panel by representatives of employees or the employer concerned. Having considered the matter, the panel may then ask the Minister for Enterprise, Trade and Employment to get an opinion from the Labour Court as to whether or not it is proposed to create "exceptional collective redundancies". The Minister may also ask the Labour Court for an opinion if the matter has not been referred to the panel. If the Labour Court considers that the proposed redundancies are exceptional collective redundancies, the Minister may refuse to give the employer concerned a rebate on the lump sum payments made to the employees. If this happens, the lump sums paid to the former employees will be taxable. The employees concerned may then be able to take actions for unfair dismissal.

Exceptional collective redundancies occur where the employees are compulsorily dismissed and

- Are replaced in the same location or elsewhere within the country by other people who are directly employed by the employer or other people whose services are provided to that employer as a result of other arrangements and
- Those other people perform essentially the same functions as the dismissed employees and

- Their terms and conditions of employment are materially inferior to those of the dismissed employees.

Upper age limit

At present the upper age limit for a redundancy lump sum payment is 66. This is being abolished.

Child dental services

Under Section 66 of the Health Act 1970, children attending national primary schools are entitled to free health examinations including dental and ophthalmic examinations. Children who have attended national school retain eligibility to dental treatment up to their 16th birthday. The Health (Amendment) Act 1994 and the Health (Dental Services for Children) Regulations, 2000 (SI 248/2000) provide for dental treatment for school-going children.

The Irish Medicines Board (Miscellaneous Provisions) Act 2006 amends this legislation to provide for a health examination and treatment service for pupils attending any primary school – not just national schools – and for the provision of dental health services to children attending any primary school. These services will also be available to children who are taught at home. The new legislation is not yet in effect.

At present, children in specific classes in national school, usually second, fourth and sixth class, are screened and referred for treatment as necessary.

Citizens Information 

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www.citizensinformation.ie

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