



Relate

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

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Improvements to Carer's Allowance

In general it is not possible to receive two social welfare weekly payments at the same time. There are some exceptions to this but the usual situation is that, if you are eligible for two or more weekly payments, you are paid the most advantageous payment.

This general rule has meant that some people who are full-time carers have been unable to get any payment for their caring role. The people most affected are people who are receiving State Pensions or Widow's/Widower's Pensions. Other carers who have qualified for Carer's Allowance may also be eligible for a qualified adult payment on their spouse or partner's social welfare payment but have been unable to get that because they are receiving Carer's Allowance. From 27 September 2007, people in these circumstances may be able to qualify for a half-rate Carer's Allowance together with the other social welfare payment for which they are eligible.

Who is affected?

You may be able to claim the half-rate Carer's Allowance payment if you are receiving State Pension (Contributory), State Pension (Non-Contributory), Widow's/Widower's Pension (Contributory), Widow's/Widower's Pension (Non-Contributory), Invalidity Pension, Illness Benefit, Health and Safety Benefit, Injury Benefit, Death Benefit (under the Occupational Injuries Benefit (OIB) scheme), Maternity Benefit, Adoptive Benefit, One Parent Family Payment, Blind Pension, Pre-Retirement Allowance, Disability Allowance, Farm Assist or if you are a qualified adult on any of these payments. The half-rate payment cannot be paid to a person who is receiving Jobseeker's Benefit or Jobseeker's Allowance but can be paid to a spouse/partner of such a person who is a qualified adult. It is not payable with Supplementary Welfare Allowance, Family Income Supplement, Back to Work Allowance, Back to Education Allowance or Carer's Benefit.

For example, if you are getting Carer's Allowance and are entitled to a Widow's Contributory Pension, then you will be granted the Widow's Pension and your Carer's Allowance will be reduced to half. If you are eligible for a qualified adult payment on your spouse or partner's payment, then it is granted to you and your Carer's Allowance is reduced to half. In these circumstances, any increases for children or living alone are paid with the main payment and not with the Carer's Allowance.

Who qualifies for Carer's Allowance?

In order to qualify for the half-rate Carer's Allowance, you must meet all the usual conditions. So, if you have failed to qualify for a Carer's Allowance for reasons other than the fact that you are already getting a social welfare payment, you do not qualify for the half-rate Allowance.

The Carer's Allowance is a means-tested payment for people on low incomes who are providing full-time care and attention for a person who is incapacitated. Both the carer and the person being cared for must meet certain conditions.

The carer

In order to be entitled to a Carer's Allowance, you must:

- Be aged 18 or over and be fit to care
- Be a carer – that means you must be living with or in a position to provide full-time care and attention to a person in need of care who is not living in an institution
- Not be engaged in employment or self-employment outside the home for more than 15 hours a week
- Pass the means test
- Pass the habitual residence test

The person being cared for

The person you care for must be:

- Over the age of 16 and so incapacitated as to require full-time care and attention or
- Aged under 16 and be a person for whom a Domiciliary Care Allowance from the Health Service Executive (HSE) is being paid.

The person receiving care is regarded as requiring full-time care and attention where:

- He or she is so disabled or invalided as to require continuous supervision in order to avoid danger to him or herself, or continual supervision and frequent assistance throughout the day in connection with normal bodily functions, and

- He or she is so disabled or invalided as to be likely to require full-time care and attention for a period of at least twelve months.

Living with the person being cared for

The general rule is that you must be living with the person being cared for. This rule is relaxed in certain cases.

In all cases you must be providing full-time care and attention. If you are not actually living with the person being cared for, your circumstances must allow you to provide full-time care and attention and there must be a direct communication system between the two houses, for example, a direct telephone or alarm system.

The person you are caring for must not have any other carer – only one Carer's Allowance is payable in respect of any one person needing care.

Temporary absence

Both you and the person you are caring for may be away from home temporarily, for example, in hospital, without affecting the allowance – temporarily means for a maximum of thirteen weeks. You may be out of the country for three weeks without affecting your entitlement.

You may be regarded as providing full-time care and attention where the person being cared for is attending a non-residential course of rehabilitation training, or a non-residential day care centre approved by the Minister for Health and Children.

You may attend an educational or training course or participate in voluntary or community based activity for 15 hours a week, provided you make adequate provision for the care of the person in your absence.

Working

You may be employed or self-employed for a maximum of 15 hours a week and qualify for the Carer's Allowance. Your income is assessable as means (but it is unlikely that you would earn more than the disregard which applies). The person you are caring for must be adequately looked after while you are gone.

Being fit to care

If you are receiving an illness or disability payment (for example, Illness Benefit, Disability Allowance, Invalidity Pension), you may be asked for medical evidence confirming that you are capable of providing full-time care and attention.

Caring for more than one person

If you are caring for more than one person you may get an extra payment – up to a half of the maximum of the Carer's Allowance.

Habitual residence condition

The habitual residence condition generally means that you must have been habitually living in Ireland or within the Common Travel Area for two years. However, each case is decided on its merits – see Relate, June 2006 for details.

Means test

The means test for the Carer's Allowance is generally similar to that for other social welfare means-tested payments – see Relate, July 2006.

Some income is disregarded. In the case of the Carer's Allowance the most important disregard is the first €320 of income for a single person or the first €640 of income for a couple. The rules in relation to the disregard are different in

the case of social security pensions from another country. If you are getting a social security pension from another country, there is no disregard. If your spouse is getting a pension from another country, then the disregard is the maximum amount of the Irish State Pension (Contributory).

Further information

The Department of Social and Family Affairs intends to write to people of whom they are aware who are likely to be affected including existing recipients of Carer's Allowance and carers who recently received a Respite Care Grant. If you think you may benefit, you should apply to the Department at:

Social Welfare Services Office
Ballinalee Road
Longford
Lo-Call: 1890 66 22 44

Application forms are available from post offices, social welfare offices, on www.welfare.ie and from the Lo-Call Leaflet Request Line at 1890 20 23 25.

Charities Bill 2007

The Charities Bill 2007 provides for the establishment of a new regulatory system for charitable organisations in Ireland. The current system and the background to this new Bill are outlined in the February 2006 issue of Relate. The Bill has not yet been discussed in the Oireachtas so changes may be made before it is enacted. The text of the Bill is available at www.oireachtas.ie. The following is a summary of the main provisions of the Bill.

The main proposals in the Bill involve:

- A statutory definition of "charitable purposes"
- A Regulatory Authority for charities and a Charity Appeals Tribunal
- A register of charities
- Obligations on charities to make annual reports to the Regulator
- Changes to the law on fundraising

Taxation

The Bill does not propose to affect the current law on the taxation of charities. In practice, however, it seems likely that when it is enacted, the Revenue Commissioners will make compliance with the registration requirements a condition for getting tax exemption.

Definition of charity

The Bill proposes a statutory definition of "charitable organisation" and "charitable purpose".

Charitable organisation

A "charitable organisation" is defined as the trustees of a charitable trust, or a corporate body or an unincorporated body:

- That promotes a charitable purpose only
- That applies all of its property for that charitable purpose only except for money spent in carrying out its activities (for example, staff pay) and, in the case of a religious organisation or community, on accommodation and care of members of the organisation or community and
- None of the property of which is paid or payable to the members of the body or would be payable to members of the body if it was dissolved or ceased to promote those purposes

Excluded bodies

Certain bodies are excluded from the definition of "charitable organisation". They are:

- Political parties, chambers of commerce, trades unions or employers' representative organisations
- Sporting bodies which are exempt from certain taxes under Section 235 of the Taxes Consolidation Act 1997
- Bodies which promote purposes that are unlawful, contrary to public morality, support terrorism or terrorist activities or are for the benefit of an organisation, membership of which is unlawful

Charity trustees

You are a charity trustee if

- You are a director or other officer of a charitable organisation that is a company
- You are an officer or performing the functions of an officer of a charitable organisation that is not a company
- You are a trustee of a charitable trust

Constitution

The constitution of a charitable organisation is the set of rules that govern its administration and control and regulate its activities. These rules do not have to be in writing. In the Bill the constitution includes the deed of trust in the case of a charitable trust and the memorandum and articles of association of the company in the case of a charitable organisation that is a company.

Charitable purpose

The proposed statutory definition of "charitable purpose" does not change the current common law definition. The following are charitable purposes if they provide a public benefit:

- The prevention or relief of poverty or economic hardship
- The advancement of education
- The advancement of religion
- Any other purpose that is of benefit to the community

The first three of these are fairly straightforward. Most of the difficult issues in charity law have arisen under the last heading.

Benefit to the community

The Bill proposes that a "purpose that is of benefit to the community" includes:

- The advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability

- The advancement of community development, including rural or urban regeneration
- The promotion of civic responsibility or voluntary work in the community
- The promotion of health, including the prevention or relief of sickness, disease or human suffering
- The advancement of conflict resolution or reconciliation
- The promotion of religious or racial harmony and harmonious community relations
- The protection of the natural environment
- The prevention or relief of suffering of animals
- The advancement of the arts, culture, heritage or sciences
- The integration of those who are disadvantaged, and the promotion of their full participation in society

It should be noted that this list is not exhaustive and it is possible that, in the future, other purposes may be deemed to be of benefit to the community.

Public benefit and gifts

Charities must provide a public benefit. A charitable "gift" means a gift for charitable purposes. A purpose cannot be a charitable purpose unless it is of public benefit. A gift that benefits only one person cannot be a charitable gift. Gifts which are limited to a class of people may be of public benefit depending on a number of factors including the reason for the limitation and the nature and purpose of the gift. Gifts which are confined to a class of people who are connected to the donor either by family or business are not charitable.

Gifts for the advancement of religion are always considered to be of public benefit. Such gifts have effect in accordance with the laws, canons, ordinances and tenets of the religion concerned.

Charities Regulatory Authority

The Bill provides for the establishment of an independent Charities Regulatory Authority (an tÚdarás Rialála Carthanas). The Authority may describe itself as the Charities Regulator (An Rialálaí Carthanas).

The Authority will be appointed by the Minister and will have nine members, of whom three will be judges or former judges or senior lawyers. The Minister is obliged to ensure that some members of the Authority have knowledge of and expertise in relation to charities – specifically in relation to charity law, fundraising, accounting and management.

The main general functions of the Authority will be to:

- Increase public trust and confidence in the management and administration of charitable trusts and charitable organisations
- Promote compliance by charity trustees with their duties
- Promote the effective use of the property of charitable trusts or charitable organisations
- Ensure the accountability of charitable organisations to donors and beneficiaries of charitable gifts, and the public
- Promote understanding of the requirement that charitable purposes confer a public benefit
- Establish and maintain a register of charitable organisations
- Ensure and monitor compliance by charitable organisations with the regulatory framework
- Carry out investigations
- Encourage and facilitate the better administration and management of charitable trusts and the property of charitable organisations by the provision of information or advice, including in particular by issuing or approving guidelines, codes of conduct, and model constitutional documents
- Carry on such activities or publish such information (including statistical information) concerning charitable organisations and charitable trusts as it considers appropriate
- Provide information (including statistical information) or advice, or make proposals, to the Minister for Community Rural and Gaeltacht Affairs on matters relating to its functions

The Minister will have the power to give a direction in writing to the Authority requiring it to comply with specified policies of the Government.

If the Authority gets any information that causes it to suspect that an offence has been committed by a charity trustee or a charitable organisation, it will be obliged to provide that information to the Gardaí, the Revenue Commissioners, the Director of Corporate Enforcement, the Competition Authority, or any other person charged with the detection, investigation or prosecution of offences unless it is satisfied that the information has already been reported to the relevant body.

The Authority may also provide such information to the authorities in another country if the relevant authority gives a written undertaking that the information will be used only for the purpose of the detection, investigation or prosecution of the offence concerned.

The Authority will be obliged to prepare strategy statements and annual reports. It will be obliged to get administrative co-operation between it and relevant regulators in order to avoid duplication and ensure consistency in decisions.

The Authority may take steps to consult with people who may be affected by it and may establish consultative panels for this purpose. The Minister may require the Authority to establish a panel.

Role of the Attorney General

At present, the Attorney General has a general role as protector of charities. This can involve bringing legal proceedings in defence of charities or taking part in proceedings brought by others. All the Attorney General's functions in relation to charities will be taken over by the Authority.

Commissioners of Charitable Donations and Bequests for Ireland

The Commissioners of Charitable Donations and Bequests has a range of functions to facilitate charities but it is not a regulatory body. Its functions include appointing trustees if necessary, making other arrangements for trustees and dealing with cy-près applications. (Cy-près applications arise when a charitable trust cannot be implemented in accordance with its original intention. The funds may be allocated to a charity which is as near as possible to that intention. For example, if a trust was established to fund a school and that school has now closed, the funds may be allocated to a similar school.) It has established a Common Investment Fund for small charitable trusts. This enables them to pool their funds and get the advantages of a larger investment.

When this Bill is enacted the Commissioners will be dissolved and their functions taken over by the Authority.

Charity Appeals Tribunal

A Charity Appeals Tribunal will be established to hear appeals from certain decisions of the Authority. The tribunal will be appointed by the Minister and have five members; two must be judges or senior lawyers and two must be people with experience of charities. In general, it will hold its hearings in public. Decisions of the Tribunal may be appealed to the High Court on a point of law.

Regulation of charitable organisations

The Authority will be obliged to establish and maintain a register of charitable organisations. It may charge each charitable organisation a fee for registration. The amount of the fee will be decided by the Minister.

Any charitable organisation that intends to carry on activities in Ireland must apply for registration. The trustees of the charity will be obliged to apply on behalf of the organisation. Charitable organisations already operating must, in general, apply within six months. The application must include information about the organisation including:

- Detailed information about its activities
- Information about its financial affairs including its gross income in the previous year, its bank accounts, how it raises money, how much money it has raised in the previous three years and its future plans for funding
- Details of all professional fund-raising agents or consultants engaged or planned to be engaged
- The risk assessment procedures, safety checks and safeguards employed where its activities include working with vulnerable people (including older people, children and young people, people who are sick or have disabilities)

The application must be accompanied by copies of all financial accounts for the previous three years and by the organisation's constitution (or similar document if there is no constitution).

The Authority will allocate a registration number. The register will have a record of this number as well as information about the name, address, activities and the names of the trustees.

At present there is no register of charitable organisations. However, many organisations do describe themselves as "registered charities". When this legislation is in force, it will be an offence to describe an organisation as a "charity", a "charitable body", a "registered charity" or a "charity registered in Ireland" unless it is actually registered. It will be an offence for any person to represent an organisation that is not registered as being registered.

Refusal to register

The Authority will refuse to register an organisation if it considers that the organisation does not meet the requirements set out in the legislation.

The Authority will not register an organisation if its name is misleading. For example:

- If it is the same or similar to the name of another charitable organisation or
- If the name is likely to mislead the public as to the purposes or activities of the organisation or
- If the name would cause the public to believe that it is connected to the Government, a local authority, or any person or body of people with whom it has no connection or
- If the name is offensive

The name of a registered charity may not be changed without the Authority's consent.

If the Authority refuses to register an organisation, that organisation may appeal to the Tribunal, generally within 21 days.

Removing an organisation from the register

An organisation may be removed from the register if the Authority, after consulting the Gardai, considers that it has become an excluded body because it is promoting purposes that are unlawful, contrary to public morality, in support of terrorism or terrorist activities, or for the benefit of an organisation, membership of which is unlawful. The organisation may appeal to the Tribunal against such a removal.

If an organisation changes its name without the approval of the Authority, it may be removed from the register.

An organisation which has been removed from the register may appeal to the Tribunal.

If the Authority considers that an organisation has ceased to be a charitable organisation it must apply to the High Court for a declaration to that effect. If the High Court grants such a declaration then the organisation is removed from the register.

If a registered charity which is also a company is convicted of an indictable offence, the Authority may apply to the High Court to have the organisation removed from the register.

If a trustee of the organisation ceases to be qualified (see below), the Authority may apply to the High Court for an order authorising it to remove the organisation from the register.

If an organisation is removed from the register, a statement to that effect and the reasons why are entered in the register.

Requirement to keep proper accounts

The trustees of registered charities will be responsible for keeping proper accounts of the organisation and to preserve the books of the organisation for a period after its dissolution or the ending of its activities.

Charities which are companies are subject to the accounting and reporting requirements of company law.

The Bill provides that regulations may be made about how accounts are to be kept and audited and are to be made available to relevant authorities. There will be less onerous accounting rules for smaller charities – those with income of less than €100,000 a year. The Authority will have various powers to require an audit to be carried out.

All registered charities will be required to give annual financial reports to the Authority. There are detailed requirements about the information which is to be included in these reports. The Authority must make these documents available for inspection at reasonable times. This, however, does not apply to private charitable trusts – that is, trusts which are not funded by donations from the public.

Disqualification of trustees

You will be disqualified from holding the position of a charitable trustee if:

- You are declared bankrupt
- You make a composition or arrangement with creditors
- You are a company that is in the course of being wound up
- You are convicted on indictment of an offence
- You are sentenced to a term of imprisonment
- You are the subject of an order under section 160 of the Companies Act 1990
- You are prohibited, removed or suspended from being a trustee of a scheme under the Pensions Acts
- You have been removed from the position of charity trustee of a charitable organisation by an order of the High Court

If you are disqualified for any of these reasons, you may apply to the High Court for an order that you may hold the position of charity trustee of a particular charitable organisation or of a charitable organisation of a particular class. The High Court may make such an order if it considers that it would be in the public interest and in the best interests of the charitable organisation(s) concerned.

The Authority must establish and maintain a publicly available register of every person who ceases to be a charity trustee for any of these reasons.

It will be an offence to act or purport to act as a charity trustee if you are not qualified to do so. If you are convicted of an offence in this respect you could be made personally liable for any debts of a charity incurred as a result of the offending behaviour. Various professional and financial bodies, including auditors, trustees, investment business firms, are obliged to report possible offences under the Criminal Justice (Theft and Fraud Offences) Act 2001 to the Authority. There are provisions protecting whistleblowers, including employees of charities, from liability where they report alleged breaches of the legislation in good faith.

Investigations

The Bill gives the Charities Regulatory Authority power to carry out investigations into the affairs of charitable organisations.

The Authority will have the power to require a charitable organisation or a charity trustee to provide documents to it where it thinks an investigation may be warranted, or it suspects that an offence may be committed. It will also be able to get a court order to enter and search premises. The Authority may appoint an inspector to carry out an investigation. The inspector will have power to require a charitable organisation or a charity trustee to provide documents and evidence during an investigation.

The Authority will have the power to impose sanctions on a charitable organisation, rather than immediately bringing proceedings for an offence in respect of certain breaches of the requirements relating to the keeping of accounts and making of annual returns. For example, the Authority may remove the charity from the register or publish the contravention on the Authority's website.

The Authority will have the power to apply to the High Court for an order protecting the assets of a charity.

The Authority will be able to recover any costs or expenses incurred by it in the management or administration of any charitable property from that charity.

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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Ballsbridge e info@ciboard.ie
Dublin w www.citizensinformationboard.ie

Fundraising

The Street and House to House Collections Act 1962 is the main legislation dealing with fundraising. It provides that charities must apply to the Garda Chief Superintendent for a permit to collect money from houses and in public places.

The Bill proposes to amend that Act to take account of new methods of fundraising. At present, the Act applies to the collection of money. The Bill proposes to extend it to the sale of items such as badges or emblems and to extend the meaning of money beyond cash to include direct debits, standing orders and other similar means of donating money – called non-cash collections in the Bill (note that this term does not refer to the collection of items such as clothes). There will be a separate permit system for such collections. Collectors will be required to get a permit for a 12-month period from the Garda Chief Superintendent and will then be required to notify the Chief Superintendent in writing of the proposal to hold a non-cash collection not earlier than six months and not later than 14 days before the date of the proposed collection. The non-cash collection may not take place on the same date and in the same place as a cash collection.

Collection boxes at present must display prominently and legibly the name of the beneficiary of the collection. The Bill proposes that collection boxes must also have the charity's registered number and must be sealed so as to prevent access to its contents without breaking the seal. Collectors will be obliged to deliver the box with its seal intact to the permit holder or other authorised person. The Gardai will have the power to seize the collection boxes and the money if these rules are not kept. They will also have the power to seize documents in the case of non-cash collections if the rules are not being kept.

Fundraising regulations

The Minister will have the power to make regulations about fundraising. Codes of practice on fundraising are

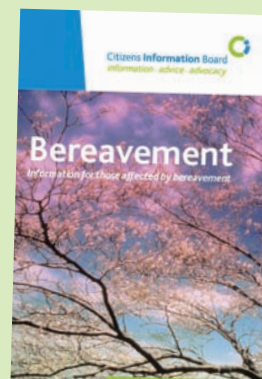
being developed at present. If these are not implemented or prove ineffective, the Minister may introduce regulations.

The Bill proposes that the Minister will have the power to make regulations for the purpose of ensuring that fundraising is not carried on in a manner that:

- Unreasonably intrudes on the privacy of those from whom funds are being solicited
- Involves the making of unreasonably persistent approaches to people
- Results in undue pressure being placed on people
- Involves the making of any false or misleading representations in relation to the extent or urgency of any need for funds, the application of any funds donated or the charitable organisation or its purposes, activities or financial position.

Collectors will be allowed to receive reasonable remuneration and expenses. They are already allowed to receive reasonable commission.

The Citizens Information Board's Bereavement guide is now available. The guide gives practical information on what to do immediately after a death. It outlines possible social welfare entitlements as well as taxation, financial and legal issues.



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