

Relate

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

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Social Welfare and Pensions Act 2012

The Social Welfare and Pensions Act 2012 has been passed by the Oireachtas. It provides for some of the changes that were announced in Budget 2012 and a number of other changes. Here we describe the main changes in the Act.

One Parent Family Payment (OFP)

The Act provides for the changes to the OFP that were described in the April 2012 issue of *Relate*. Eligibility for OFP depends on the age of your youngest child. The main change in the Act is the reduction of this age limit to seven years. The Act provides that the latest changes will apply to claims made on or after 3 May 2012. So, if you claim the OFP on or after 3 May 2012, you may continue to receive the payment:

- In 2012, until your youngest child reaches 12
- In 2013, until your youngest child reaches 10
- From 2014, until your youngest child reaches 7

There are transitional arrangements for existing recipients – these are outlined in the April 2012 issue of *Relate* but the age limit of seven for the youngest child will apply to all claimants from 2015. The Minister for Social Protection has said in the Dáil that she will implement this reduction in the age limit only if the Government has committed, by the time of the next Budget, to introducing “a system of safe, affordable and accessible child care in place similar to what is found in the Scandinavian countries”.

The provision of childcare is being addressed by the Department of Social Protection, the Department of Children and Youth Affairs and the Department of Education and Skills.

Among the childcare schemes currently available are:

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The **Early Childhood Care and Education Scheme (ECCE)** is available to all children from three years and two months of age to four years and seven months in September each year. To avail of the scheme from September 2012, children must have been born between 2nd February 2008 and 30th June 2009.

Under this scheme, childcare providers are paid a weekly capitation fee for each child. For providers of daycare services, this weekly payment is €48.50 over 50 weeks.

For providers of sessional services, it is €64.50 per child over 38 weeks, or €75 for each child where the pre-school leaders hold degree-level qualifications in early education. (These amounts will be reduced to €62.50 and €73 in September 2012.) There are about 61,000 children on this programme – 17,000 community places and 44,000 private places.

The **Community Childcare Subvention (CCS)** programme helps about 1,000 community-based non-profit childcare facilities to provide childcare at a reduced rate to disadvantaged and low-income families. There is a subsidy of €100 for five days of full-time care available to parents who are receiving social welfare payments (including Family Income Supplement). Most of the parents concerned use half-rate or seasonal places for which the subsidy is reduced. Parents who are not receiving social welfare payments but who have a medical card or a GP visit card are subsidised at half the rate applicable to social welfare recipients.

The **Childcare Education and Training Support Scheme** is available to parents who are attending a FÁS training course or a VEC Further Education programme. Childcare services are paid a weekly fee of €170 for each full-day childcare place, with reduced rates for half-day and after-school care. (This rate will be reduced to €145 a week from September 2012 and the providers will be allowed charge an additional fee of up to €25.) There are 2,800 places under this scheme.

Lone parents who cease to be entitled to the OFP may be eligible for Jobseeker's Allowance. Lone parents are eligible for the JobBridge scheme since the end of May 2012 – see page 4.

About €1.06 billion is being spent on the OFP in 2012. On average, recipients of OFP receive the payment for six years.

Occupational pensions

The Social Welfare and Pensions Act 2012 provides for a number of changes to the Pensions Acts which regulate occupational pensions. These changes are mainly concerned with defined benefit schemes and the details are very technical.

The number of defined benefit schemes has been gradually reducing over recent years and a number of them are closed to new members. At the end of 2010 there were over 1,000 such schemes with 222,000 active members. In 1991, there were 2,500 schemes.

Defined benefit schemes are already subject to a funding standard. This standard is set in order to try to ensure that a pension scheme has enough assets to enable it to discharge all its liabilities if the scheme was wound up. If a scheme does not meet the standard, the trustees must submit a funding proposal to the Pensions Board to restore full funding within three years. The Pensions Board can allow a scheme up to ten years to meet the standard in certain circumstances.

The funding standard was suspended in 2008 because of the problems being experienced in the financial markets. It is now intended to reintroduce the funding standard and the Act also requires that schemes must hold a risk reserve. It is recognised that many defined benefit schemes are in deficit and need time to recover their funding so the reintroduction of the funding standard and the requirement of a risk reserve will be implemented gradually. The funding standard will be reintroduced first and the schemes will be required to hold a risk reserve from 1 January 2016. Schemes will have up to 11 years from the reintroduction of the funding standard to satisfy the risk reserve requirement.

The objective of the risk reserve is to help schemes to absorb financial shocks in the future.

The current rules which govern what happens if a scheme does not meet the funding standard will be applied in a broadly similar way to schemes that do not meet the risk reserve requirements.

Review of pension policy

The Organisation for Economic Co-operation and Development is conducting a review of long-term pension policy at the request of the Minister for Social Protection. This review covers social welfare pensions, occupational pensions and private pensions and is expected to be completed by the end of 2012. It will take account, among other things, of the sustainability, adequacy and equity of pension schemes and look at the issue of early access to pension schemes.

Voluntary contributions

At present, it is possible to become a voluntary contributor to social welfare if you have at least 260 paid contributions – see *Relate*, September 2010. This is being increased to 520 to bring it into line with the minimum number of paid contributions required for the State Pension (Contributory). This change will be brought into effect gradually:

- If you become a voluntary contributor before 6 April 2013, you must have at least 260 paid contributions
- If you become a voluntary contributor on or after 6 April 2013 and before 6 April 2014, you must have at least 364 paid contributions
- If you become a voluntary contributor on or after 6 April 2014, you must have at least 468 paid contributions

- If you become a voluntary contributor on or after 6 April 2015, you must have 520 paid contributions

There are approximately 3,000 voluntary contributors at present; about 62% of these are male and about 75% are former self-employed contributors. There were 1,720 new applicants during 2011. The people most likely to become voluntary contributors are self-employed people who have ceased self-employment or whose income is below the €5,000 a year threshold for paying PRSI; they pay a flat-rate contribution of €253 a year. Other voluntary contributors are retired employees who are not getting credits and people working abroad who are not subject to Irish social insurance contributions.

Mortgage Interest Supplement

The Social Welfare and Pensions Act 2012 provides that Mortgage Interest Supplement (MIS) will not be payable for the first year during which a mortgage borrower is engaged in the Mortgage Arrears Resolution Process (MARP) under the Central Bank's Code of Conduct on Mortgage Arrears (see *Relate*, December 2011). Implementation of the MARP means that the lender exercises forbearance for a year.

The Act provides that MIS will not be payable unless the Department of Social Protection (DSP) is satisfied that the applicant has engaged with the mortgage provider about the mortgage and has entered into and is complying with an alternative payment arrangement. The applicant must then have completed repayments for a total of not less than a year.

This change was recommended in several recent reports on mortgage arrears. There are currently about 18,000 people receiving MIS; this is an increase of 340% since 2007. The cost of the payment is expected to be €50 million in 2012.

No date has yet been set for the implementation of this measure.

Jobseeker's Benefit

At present, the social welfare week is a 6-day week for all relevant benefits with Sunday not considered. The Act effectively provides that it will be a 5-day week for the purposes of Jobseeker's Benefit (JB). (The precise wording in the Act retains the concept of a 6-day week.)

This change does not affect anyone who is fully unemployed but will affect people in part-time or casual employment.

If you are employed for three days a week and you claim JB for the other three days, the amount of JB you receive is one-sixth of the relevant amount for each day. When this change is implemented you will get one-fifth for each day.

There is no change in the arrangements for Jobseeker's Allowance (JA) and if you are getting JB but would be better off on JA, you may transfer to it, if you qualify.

There has been a significant increase in recent years in the number of people getting a jobseeker's payment and also working part-time – the numbers increased by almost 200% since 2008. At the end of March 2012, there were over 84,000 people in this situation and about 41,000 of them were getting JB.

The precise date of implementation has not yet been set but it is expected to be in July 2012.

PRSI

The Finance Act 2012 provides for income tax relief for people who qualify under the Special Assignee Relief Programme – see *Relate*, April 2012. This Act provides that the income that attracts tax relief will continue to be subject to PRSI (both employee and employer) in the normal way.

The Act also clarifies the application of PRSI to share-based remuneration where no employer PRSI is chargeable. The arrangements are complex but they mainly involve direct payments of the PRSI to the Revenue Commissioners rather than to the Department of Social Protection. There is no date yet for the implementation of this provision.

Household Budget Scheme

The Household Budget Scheme allows social welfare recipients to have certain household bills – mainly utility and telephone bills – paid directly out of their social welfare payment. This facility is now being extended to certain regulated energy suppliers and the list of approved housing bodies for the deduction of rent is also being extended. No date has been set for the implementation of this change.

A rule had been proposed whereby local authority tenants who had signed up to have their differential rent deducted under this scheme would not be able to withdraw from the arrangement without the agreement of the local authority. There were legal difficulties in drafting the necessary legislation but it is intended that such a provision will be included in future social welfare legislation.

Powers of social welfare inspectors

The SW and Pensions Act provides for greater powers for social welfare inspectors to make enquiries in various circumstances at ports and airports and to make enquiries with landlords in connection with Rent Supplement claims.

At present, social welfare inspectors have various powers to investigate Rent Supplement claims but they do not have a specific power to question landlords. The Act provides that they may ask landlords for specific information about the tenancy in order to prove that the person receiving the supplement is the tenant and that the tenant is entitled to the supplement. It will be an offence for a landlord to fail to provide this information.

In 2011, about 95,000 people received Rent Supplement at a cost of €503 million. There is no date set for the implementation of this provision.

Proof of identity

The Department of Social Protection (DSP) is gradually introducing the Public Services Card. This card has a photograph and signature. At present, there is no legal obligation on anyone to allow a photograph to be taken or to give a signature for the purposes of being allocated a Personal Public Service Number (PPSN) or for the purposes of claiming a social welfare payment. The Act provides that any new applicant for a social welfare payment will be required to provide proof of identity and must allow a photograph to be taken and provide a signature.

There is no date set for the implementation of this provision.

Data exchange

Social welfare legislation already provides for data sharing among a number of agencies, particularly between the

Department of Social Protection and the Revenue Commissioners. This Act provides for data sharing for the purposes of third-level student grants in the context of the implementation of the Student Support Act 2011.

The Act also extends the list of bodies that are authorised to use the Personal Public Service Number (PPSN).

Concurrent payments

The Social Welfare Act 2011 provided for restrictions on concurrent payments – see *Relate*, January 2012. Since 16 January 2012, new participants in Community Employment Schemes may not claim another social welfare payment at the same time. However, they may qualify for Rent Supplement.

This Act provides that they may also qualify for the other supplements under the Supplementary Welfare Allowance scheme, that is Mortgage Interest Supplement and Diet Supplement.

JobBridge

JobBridge, the national internship scheme now has 1,000 extra places – 6,000 in total – and is open to recipients of One-Parent Family Payment and Disability Allowance since 28 May 2012. Initially, it was available only to recipients of Jobseeker's Benefit or Allowance and people on the Live Register who had been signing on for credits for three of the last six months.

The scheme is currently being evaluated.

Temporary agency workers

The Protection of Employees (Temporary Agency Work) Act 2012 was signed on 16 May 2012. The Act gives effect to the EU Directive on temporary agency work (Directive 2008/104/EC).

In summary, the Act provides that an agency worker is entitled to the same basic working and employment conditions as those to which he or she would be entitled if employed directly by the hirer to undertake the same or similar type work. Agency workers will be able to enforce their rights in the same way as other workers.

The official statistics on employment do not record the number of temporary agency workers in Ireland but surveys suggest that there are about 35,000 such workers.

The EU Directive came into effect on 5 December 2011. The parts of the Act dealing with equal pay apply retrospectively

to 5 December 2011. In the Act, pay is defined as basic pay, shift premium, piece rates, overtime premium, unsocial hours premium and Sunday premium. It does not include sick pay, pensions, maternity pay or benefit-in-kind.

The Bill as originally introduced provided that the parts dealing with other conditions of employment would also apply retrospectively but it was decided not to proceed with those provisions. The Minister for Enterprise, Jobs and Innovation said that retrospective enforcement of provisions relating to, for example, working time, rest breaks and access to collective facilities and to job vacancies, would be almost impossible in practice.

In general, criminal legislation cannot be made retrospective, so the Act's provisions in relation to offences only came into effect from May 2012.

In general, agency workers are employed by the agency and the agency is then responsible for ensuring that their rights are respected. (The Directive does not cover employees who have a permanent contract with a temporary-work agency.) However, if an agency worker is dismissed by the employer who is using his/her services, any claim for unfair dismissal is against that employer and not the agency. This is not changed by the new Act.

In Ireland agency workers already had the same rights as permanent employees to annual and public holidays and rest periods. They are also covered by the national minimum wage legislation.

The aim of the EU directive is to ensure that temporary agency workers have equal treatment with permanent workers, that is, they must have the same basic employment rights as they would have if they had been directly recruited into the same job. This means that they must have the same conditions in respect of pay, duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays. The principle of equal treatment also applies to rules about the protection of agency workers who are pregnant or nursing mothers, in relation to their basic working and employment conditions and the usual rules about non-discrimination on the grounds of sex, disability, race, age, sexual orientation or religion also apply.

Temporary agency workers must also have access to vacant positions in the place where they are working in the same way as directly hired workers there. They must also have access to the collective facilities or services which are available to permanent workers, for example, crèche and canteen facilities, unless there is an objective justification for treating them differently. Member states must take measures to improve the access of temporary agency workers to training. In implementing the directive, member states must ensure that there are appropriate penalties for breaches of the directive.

While the EU Directive requires member states to ensure that agency workers have the same rights as directly hired employees, it does allow member states to make *derogations* – that is, make specific arrangements in certain cases.

Delay before acquiring equal rights

The Directive allows the social partners (unions and employers) at national level to make an agreement (called a Framework

Agreement) which could derogate from the principle of equal treatment while providing an “adequate level of protection” for temporary agency workers. One area in which it would be possible to agree a derogation is in relation to a qualifying period before equal treatment would apply. For example, the social partners could agree that equal treatment would not apply until the agency worker had been working for the same employer for at least a number of months. The Irish Government asked the employers and unions to agree such a derogation but that has not happened, so equal treatment applies to agency workers from the start of their work.

Agency workers paid between assignments

The Directive allows for a derogation from the equal pay aspects in respect of agency workers who are engaged on a permanent basis and paid between assignments. This derogation is being applied in Ireland but there are very few such arrangements here. The Act provides that, between assignments, they must be paid at least 50% of their previous pay or the national minimum wage whichever is the greater.

Training

It is open to individual member states to decide, after consulting the social partners, that the Directive does not apply to employment contracts or relationships concluded under a specific public or publicly supported vocational training, integration or retraining programme. This provision is to allow governments to improve the employability of certain categories of people who face difficulties in entering or re-entering the labour market.

This derogation is included in the Act.

Collective agreements

The Directive allows for a derogation where social partners conclude collective agreements that deviate from the basic working and employment conditions, for example, in Registered Employment Agreements. This derogation is included in the Act. Any such agreements would be overseen by the Labour Court.

Further information is available at: employmentrights.ie.

Legislation update

Criminal Law (Defence and the Dwelling) Act 2011

This law came into effect in January 2012. It provides that people are entitled to use reasonable force in defence of people and property if they believe that an intruder has entered their dwelling to commit a criminal act.

Property Services Regulatory Authority

The Property Services Regulatory Authority (PSRA) has been established under the Property Services (Regulation) Act 2011. The PSRA's main function is to set and enforce standards in the provision of property services by auctioneers, letting agents and property management agents and to provide redress mechanisms for consumers of those services. It will also have responsibility for the publication of residential property sales prices and the establishment and maintenance of a commercial leases database.

A number of detailed regulations must be made before the authority can start all its functions. It is expected that these will be made by July 2012. When fully in operation, the Authority will be responsible for licensing property service providers – auctioneers, estate agents, letting agents and property management agents. At present, management agents are not regulated and the other providers are licensed by the courts and the Revenue Commissioners.

As part of the licensing system, the authority will specify and implement the following standards:

- The required education, training and experience levels of applicants for licences
- The levels of professional indemnity insurance required
- The quality of financial accounting systems, and
- The ethical standards to be observed in the provision of property services

The Authority will investigate complaints against property service providers. A compensation fund is also being established to provide compensation for losses arising from the dishonesty of licensees.

The legislation also sets out the obligations that property service providers will have towards their clients. These include:

- All providers must conclude an agreement (*letter of engagement*) with clients within 7 days of agreeing to provide a property service.
- Auctioneers must publish a realistic "advised market value" of property for sale.
- Auctioneers who want to provide a financial service to a buyer must get the agreement of the seller. If promoting a loan package to a buyer, auctioneers must give a range of information in order to ensure that the buyer is aware of any potential conflict of interest.

The Authority will have the power to make regulations on a number of issues, including the content of property advertising. Further information is available at: npsra.ie.

Fines Act 2010

Some parts of the Fines Act 2010 are in effect. For example, courts are obliged to take a person's financial circumstances into

account when imposing a fine. The parts dealing with the payment of fines by instalment are still not in effect. The Courts Service is currently installing the necessary computer systems.

The Act will require a judge to appoint an approved person to act as a receiver to recover the fine if there is a default. This section is not yet in effect. It is expected that Revenue Sheriffs will be the approved persons for this purpose.

Education (Amendment) Act 2012

The Education (Amendment) Act 2012 provides for a number of changes to the Education Act 1998 and to the Teaching Council Act 2001.

A previous version of the Bill – the Education (Amendment) Bill 2010 provided for some of the changes in this Act. The 2010 Bill, among other things, provided for the involvement of Vocational Education Committees (VECs) in primary education. This proposal is not included in the 2012 Act. Statutory arrangements for patronage of primary schools will be proposed when the report of the Forum on Patronage and Pluralism is considered. It has already been decided to rename the VECs as Local Education and Training Boards.

The Education Act 1998 includes speech therapy services as one of the support services to be provided to school students with special educational needs. This Act clarifies that the provision of these services is not the responsibility of the Department of Education and Skills. These services are provided by the Health Service Executive.

There are a number of amendments to the Education Act dealing with the appointment, redeployment, suspension and dismissal of teachers and other school staff.

There are also a number of amendments to the Teaching Council Act. That Act provides that a person employed as a teacher cannot be paid from public funds unless that person is registered with the Teaching Council. However, this section of the Teaching Council Act has not been brought into effect.

This Act amends this section of the Teaching Council Act to allow the Minister to make regulations on the circumstances in which an unregistered teacher may be paid from public funds. This will be limited to meeting urgent and short-term needs.

Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Bill 2012

This Bill proposes to make it an offence to withhold information relating to the commission of serious offences (including most sexual offences) against children and, in some cases, against vulnerable adults. This Bill is currently before the Oireachtas.

Children First Bill

The heads of the Children First Bill have been published. This Bill aims to put the *Children First: National Guidelines for the Protection and Welfare of Children* on a statutory basis. The heads of the Bill will be discussed by the Oireachtas Committee on Health and Children. Further information is available at: dcya.gov.ie.

Criminal Justice (Spent Convictions) Bill 2012

This Bill proposes that certain adult convictions can be *spent* after a number of years. This means that the convicted person does not have to disclose the fact of the conviction. The time involved varies from three to seven years depending on the original sentence. In general, the Bill covers non-custodial sentences and custodial sentences of a year or less.

It does not cover sexual offences and offences that are tried in the Central Criminal Court. Anyone who wants to work with children or vulnerable adults will continue to be required to declare their convictions. Convictions must still be disclosed when applying for certain licences such as taxi and private security licences.

The Children Act 2001 already provides for spent convictions in the case of children. If an offence is committed by a child (under the age of 18), there is no requirement to disclose that conviction after three years provided there has been no other conviction in that period.

This does not apply to convictions for offences that are tried in the Central Criminal Court (for example, murder and rape).

Jurisdiction of Courts and Enforcement of Judgments (Amendment) Bill 2011

This Bill aims to implement the 2007 Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial matters, generally known as the Lugano Convention. The 2007 convention supersedes an earlier convention of the same name. It involves the EU countries and Iceland, Norway and Switzerland. The main aim of the Bill is to provide that the same arrangements for recognition and enforcement of judgments will apply between the EU countries and these countries as currently apply between EU countries.

Mediation Bill

The general scheme of the proposed Mediation Bill has been published. It aims to encourage the use of mediation in civil, commercial and family disputes. It is based on the Law Reform Commission's *Report on Alternative Dispute Resolution – Mediation and Conciliation*.

The draft scheme proposes, among other things, that there would be a statutory requirement on solicitors and barristers to tell their clients about the possibility of using mediation as an alternative means of resolving disputes before starting court proceedings. Further information is available at: justice.ie.

Disability update

The March 2012 issue of *Relate* included an update on disability policy and services. Since then, there have been a number of other developments.

Disability Forum

The Minister for Disability, Equality, Mental Health and Older People has established a Disability Forum which will be convened by the National Disability Authority (NDA). This forum will be similar to the Social Inclusion Forum. It aims to get the views and experiences of people with disabilities as service users. Its reports will help inform the implementation of National Disability Strategy.

Further information is available at: nda.ie.

Disability impact assessment

Guidelines for Government Departments: How to conduct a Disability Impact Assessment has been published. These guidelines were drawn up by the Equality Authority and the

NDA. They were drawn up because Government procedures require that all significant proposals submitted to the Government for decision must take account of the impact on people with disabilities. Further information is available at: justice.ie.

Publications

The HSE published three Disability Care Group Reports on 1 March 2012.

New Directions – Personal Support Services for Adults with Disabilities

This is a review of the HSE-funded day services for people with intellectual disability, mental health and physical and sensory disability. There are about 25,000 users of these services and they have widely differing needs. Some have severe and profound disabilities and are likely to need long-term, specialist services while others have lower support needs and greater potential for community participation and inclusion.

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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The report examines how the services can meet different individual needs and proposes a range of tailored services. Among other things, it sets out the HSE's role as the provider of health and social services and suggests that it should not be involved in employment-related services.

National Review of Autism Services

This review looks at the background to autism services, the current services that are available and gaps in those services. The report emphasises the need for services to be developed in a mainstream manner with a focus on individual need.

Respite/Residential Care with Host Families in Community Settings

This report looks at models of respite and residential care with host families in community settings in order to assess the viability of these models for people with intellectual disability.

These reports are available at: hse.ie.

Visa Waiver Programme

The short-stay visa waiver programme, which was introduced in July 2011, was initially to apply until October 2012 – see *Relate*, June 2011. It has now been decided to extend it for a further four years and some other changes are being introduced. The programme allows people from the listed countries to come to Ireland without a specific Irish visa if they have a visa to enter the UK.

The following countries are now covered by the scheme: Bahrain, Belarus, Bosnia and Herzegovina, India, Kazakhstan, Kuwait, Montenegro, Oman, People's Republic of China, Qatar, Russian Federation, Saudi Arabia, Serbia, Turkey, United Arab Emirates, Ukraine, Uzbekistan.

Nationals of the above states who are long-term residents of the UK or the Schengen area will not have to pay any visa fees. The Schengen area countries states are the EU member states (other than the UK and Ireland) and Iceland, Norway and Switzerland. Citizens of Schengen area countries do not need a visa to enter Ireland but residents who are citizens of countries outside the EU/EEA may need one.

International Covenant on Economic, Social and Cultural Rights

Ireland is to sign the optional protocol to the International Covenant on Economic, Social and Cultural Rights. This covenant covers a range of rights including family rights, the right to work, health rights and social security rights – see *Relate*, April 2011.

The optional protocol to the covenant provides for a complaints procedure for individuals or groups who consider that their economic, social and cultural rights have been violated. As is usual in international conventions, all domestic remedies must be tried first. The optional protocol is not yet in force as it requires 10 countries to ratify it. To date, 39 countries have signed it but only seven have ratified it.

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