



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 (Miscellaneous Provisions) Act 2013

The Social Welfare and Pensions (Miscellaneous Provisions) Act 2013 provides for a number of changes to social welfare and to the regulatory system for pensions. The social welfare changes include new arrangements for lone parents who lose their payment because of the reduction in the age limit for the youngest child.

One-parent families

The Act provides for transitional arrangements for people who have been getting the One-Parent Family Payment (OFP) and who no longer qualify for it because their youngest child reaches the upper age limit. To get an OFP, you must have at least one child below the relevant age limit. If you have more than one child, you may qualify for an Increase for a Qualified Child for your older children until they reach 18 or 22 if in full-time education. The entire payment ceases once your youngest child reaches the relevant upper age limit.

The upper age limit for the payment of OFP is being gradually reduced to seven. From 4 July 2013, the age limit is as follows:

- Claims made before 27 April 2011 – the age limit is 17
- Claims made between 27 April 2011 and 2 May 2012 – the age limit is 12
- Claims made on or after 3 May 2012 – the age limit is 10

Further reductions in the age limits will come into effect in July 2014 and, from July 2015, the age limit will be seven regardless of the date of the claim.

There are some exceptions to the general rules on the upper age limit. People getting Domiciliary Care Allowance for a child can continue to receive OFP until the child in question reaches 16. New claimants who are parenting alone because of the death of a spouse, partner or civil partner may get the OFP for two years after the death or until the youngest child reaches 18.

About 9,000 lone parents lost their entitlement to the OFP in July 2013 because of the change in the age limits. There were almost 88,000 recipients of OFP in April 2013. The scheme cost just over €1 billion in 2012.

This Act provides for special arrangements for those lone parents who lose their OFP because of this change and who still have a child under the age of 14. These special arrangements involve Jobseeker's Allowance and Family Income Supplement.

Jobseeker's Allowance Transition

If you are no longer eligible for the One-Parent Family Payment (OFP), you may qualify for Jobseeker's Allowance (JA) provided you pass the means test and meet a number of other conditions. The lone parents who lose their OFP as a result of the age limit change will not have to meet all the usual requirements for JA. The arrangement is known as Jobseeker's Allowance Transition. It is intended to be a temporary arrangement. The detailed rules are set out in SI 244/2013.

The scheme applies to those lone parents who lost their entitlement to OFP because of the change in the age limit in the three years before their claim for JA. It does not apply if you lost your entitlement for any other reason.

The transitional arrangement may last until your youngest child reaches 14 provided you meet the conditions for the OFP. For example, if you marry or co-habit, you will no longer be eligible for the JA Transition.

Available for and genuinely seeking work

One of the main conditions for getting JA is that you must be available for and genuinely seeking full-time work. The new arrangement for this particular group of lone parents means that you will not be required to be available for and genuinely seeking full-time work until your youngest child reaches the age of 14. This means that you may seek part-time work rather than full-time work if this suits your family circumstances.

You will be required to engage with the Department of Social Protection activation process (see *Relate*, July 2013) and participate in any recommended education or training course or employment programme.

Unemployed for four out of seven days

Another condition for getting JA is that you must be unemployed for four out of the seven days in a week. Lone parents who lose their OFP because of the changes to the age limits will not be required to meet this condition. This means that you could, for example, work five half days a week and still get some JA. The means test for Jobseeker's Allowance Transition is the same as the means test for Jobseeker's Allowance. The income disregard for income from work is €20 for each day worked up to a maximum of €60 a week.

Means test

The lone parents who lose their entitlement to OFP because of the change to the age limits will still have to meet the means test requirements in order to qualify for JA. This means that some will not actually qualify for any JA. The means test for JA is more difficult than that for OFP so lone parents who are working may not qualify. About 40% of lone parents who are getting OFP are also working.

At present, lone parents may earn up to €110 a week and still qualify for the full rate of OFP (this will be reduced to €60 over the next three years). Fifty per cent of earnings above €110 a week are assessed as means. No OFP is payable if earnings are above €425 a week.

The full rate of JA is payable with earnings of up to €60 a week. Sixty per cent of earnings above this are assessed as means.

Family Income Supplement

In general, if you qualify for Family Income Supplement (FIS), the payment is awarded for a year. The amount is not changed during that year provided you continue to meet the hours worked requirement, that is, at least 19 hours a week. It is not changed if your income reduces or increases during the year.

The Act provides for a change in this rule for those lone parents who are getting both One-Parent Family Payment and FIS and who lose their OFP because of the change in the age limit. If you were getting the OFP and FIS and you no longer qualify for OFP because your youngest child reaches the upper age limit, the amount of FIS you get can be reassessed when your OFP stops.

Child care places

The lone parents affected by the change in the age rule will be eligible for the subsidised after-school child care places that are being made available. There will be 6,000 such places available from September 2013. Parents must be getting Jobseeker's Allowance Transition to be eligible for these places for their children. Pilot schemes have been in operation in seven areas since April 2013.

Other social welfare changes

Failure to engage in activation

If you are getting a jobseeker's payment and you fail to engage in activation or refuse training opportunities, you may have your personal rate of payment reduced by up to €44 a week. The Act provides that similar sanctions may apply if you refuse to engage in certain employment schemes and education courses. It also provides that, if you continue to fail to engage in activation after your payment has been reduced for three weeks, you may be disqualified from payment for up to nine weeks. You may not get weekly Supplementary Welfare Allowance to compensate for the loss of income. Payments such as Increases for Qualified Adults and Children and Rent Supplement will not be affected by the nine-week disqualification.

PRSI

It was announced in Budget 2013 that people who are paying modified PRSI in their employment and who also have self-employed income from a trade or profession will be liable for 4% PRSI on their self-employed income. The Act provides for this. The people affected are public servants who were employed before 1995 and who pay PRSI at Class B, C or D.

Until 2013, they were not liable for any PRSI on income from self-employment. This has now been changed and they are liable for 4% PRSI on that income for the year 2013 and subsequent years. They are not eligible for any extra benefits as a result of this payment. People who pay Class A PRSI in their employment and who also have self-employed income have always been liable for PRSI on their self-employed income.

Firefighters

Outside the main cities, the firefighting service is provided on a part-time basis by retained firefighters. They receive a retainer from the local authority and are required to be on call on certain days for firefighting duties. There are about 2,000 retained firefighters. About 800 of these are also getting a jobseeker's payment.

Since 1972, it has been administrative practice to allow part-time firefighters who are unemployed and getting a jobseeker's payment to get that payment for the days when they are engaged in firefighting, on call or doing training. They were still required to be available for and actively seeking work. This practice has now been put on a statutory basis. The Act provides that they will be deemed to be available for and actively seeking work on those days. They will continue to have to establish their availability on the other days.

The Act also provides that retained firefighters do not have to meet the "substantial loss of employment" rule to qualify for Jobseeker's Benefit. The detailed rules are in SI 254/2013.

Public Services Cards

The Public Services Card is being gradually introduced and over 270,000 cards have been issued. The social welfare legislation already required new applicants for social welfare payments to allow their photograph and signature to be electronically captured. The Act provides that existing claimants will also be required to do this.

Partial Capacity Benefit

Partial Capacity Benefit was introduced in February 2012 (see *Relate*, March 2012) to facilitate people with disabilities who have restricted employment capacity to avail of employment opportunities while continuing to receive an income support payment. The restriction on your capacity to work may be assessed as moderate, severe or profound and the payment you receive varies accordingly. If assessed as mild, then you are not eligible for the payment. There are about 2,000 recipients at present.

The Act revised the wording of the Social Welfare Act 2010 to allow decisions on work capacity to be appealed to the Social Welfare Appeals Office. You may appeal:

- A decision that you do not have a restriction on your work capacity or
- A decision about the level of that restriction

Directors' PRSI

The Act provides that working directors who have a shareholding of 50% or more in a company are not regarded as being employees of the company and are, therefore, not liable for employee PRSI. They are liable for self-employed PRSI. This does not involve any change in practice but it gives a legislative basis for the practice.

Personal Public Service Number

The Act adds to the list of bodies that are authorised to use the Personal Public Service Number (PPS Number) for the purposes of carrying out transactions with members of the public and for sharing personal information and exchanging relevant data for the purposes of carrying out those transactions. The new bodies include the Insolvency Service of Ireland (ISI), Quality and Qualifications Ireland (QQI) and payment service providers who have been authorised by the Revenue Commissioners to collect the local property tax (see *Relate*, April 2013).

Recovery of overpayments

The Department of Social Protection is currently owed about €350 million because of overpayments to social welfare recipients. The Social Welfare Act 2012 (see *Relate*, January 2013) provided for the recovery of such overpayments by means of deductions of up to 15% of your personal social welfare payment. This came into effect at the end of January 2013. In 2011, there were more than 63,000 overpayments involving over €92 million. It is suspected that about €35 million of this involved fraud – this involved over 20,500 people (38% of total overpayments). Other causes of overpayments were errors by applicants or recipients (44%), issues arising after death (12%) and departmental errors (6%).

The Act provides that the Department of Social Protection can get an attachment order on earnings and bank accounts to recover overpayments. The attachment order could require that up to 15% of earnings would be paid over to the Department. Attachment orders are already used in family law maintenance cases.

At the end of 2012 there were 675 prosecutions for social welfare fraud going through the court system.

Pensions

The Act provides for several changes to the Pensions Acts.

Pensions Board

The November 2011 Public Service Reform Plan proposed the integration of the regulatory functions of the Pensions Board with those of the Central Bank and the merger of the Office of the Pensions Ombudsman with that of the Financial Services Ombudsman. These proposals have been reviewed. The review did not recommend the integration of the regulatory functions of the Pensions Board with the Central Bank but it did make recommendations on the governance of the Pensions Board. These recommendations are being implemented by this Act.

At present the Pensions Board is composed of representatives of the Government and the social partners. There are 16 members on the Board. It is financed by fees paid by pension schemes.

The current functions of the Pensions Board are regulatory and advisory. The review recommended that these functions be separated. The advisory functions will be allocated to a new body, the Pensions Council.

The Pensions Council will be established to advise the Minister for Social Protection on matters relating to pensions. It will consist of a chairman, a representative of the Minister, the Pensions Regulator, a representative of the Central Bank, a representative of the Department of Public Expenditure and Reform and up to eight other people with the relevant knowledge and skills.

The Pensions Board is to be renamed the Pensions Authority and its Chief Executive will be called the Pensions Regulator. The authority will consist of three people – a chairman, a representative of the Minister for Social Protection and a representative of the Minister for Finance.

These changes to the Pensions Board are expected to come into effect later in 2013.

Pensions Ombudsman

The review recommended that the proposed amalgamation of the Office of the Pensions Ombudsman and the Office of the Financial Services Ombudsman should go ahead. It is expected that this will occur in the near future.

Winding up of pension schemes

The Act provides that the Pensions Board has the power to wind up pension schemes in certain circumstances. Most defined benefit pension schemes have serious funding problems. Many are finding it very difficult to meet the funding standard set by the Board. About 80% of defined benefit schemes are underfunded at present. Trustees of these schemes were expected to submit funding proposals to the Pensions Board by the end of June 2013.

If a scheme is underfunded and the scheme trustees decide not to comply with the funding standard requirements, the Board will have the power to direct them to restructure the scheme or to wind it up. The Act provides that the Pensions Board has the right of appeal to the High Court to ensure compliance with such a direction. It also provides for an appeal to the High Court on a point of law against such a direction.

The Act does not deal with the question of how the assets are distributed when a pension scheme is wound up. It is expected that there will be further legislation on this later in 2013.

Review of pension arrangements in Ireland

The preliminary version of the OECD Review of the Irish Pension System was published in April 2013. Website: welfare.ie.

Health (Amendment) Act 2013

The Health (Amendment) Act 2013 makes changes to:

- The Nursing Homes Support Scheme
- The legislation governing charges in public hospitals
- The legislation governing charges for long-term residential care
- The legislation governing long-stay charges

Most of these proposed changes were announced in Budget 2013.

Nursing Homes Support Scheme

The main proposed changes to the Nursing Homes Support Scheme are:

- An increase in the contribution from assets
- Abolition of the requirement to backdate State support

The Nursing Homes Support Scheme (NHSS) was described in *Relate*, July 2012. At the end of May 2013, there were almost 22,000 people receiving support towards the cost of long-term residential care. This includes people being supported under the NHSS and people being supported by the nursing home subventions and other arrangements that existed before the NHSS became available. A further 700 had been approved for funding and nearly 800 were on the waiting list. The waiting time was about six weeks. The scheme is expected to cost €974 million in 2013. The average weekly long-term residential care charges paid by people in the scheme are €280.

The NHSS is currently being reviewed and that review is expected to be completed by early 2014. Among other things, the review is looking at extending this type of scheme to the disability and mental health services but no decision has been made on this. The review is expected to be completed in late 2013 or early 2014.

Contribution from assets

At present, 5% of the value of your assets is taken into account in the means test. It is proposed to increase this to 7.5%. This will apply to new applicants for the Nursing Homes Support Scheme from 24 July 2013. Existing residents of nursing homes will continue under the old arrangements.

There are no other proposed changes to how assets are assessed. The first €36,000 for a single person and €72,000 for a couple is not taken into account. The principal private residence will continue to be taken into account for three years. The change in the percentage means that 7.5% of the value will be assessed for each of those years – so a total of 22.5% will be assessed for a single person rather than 15% at present and 11.25% for one of a married couple rather than 7.5% at present.

If one of a couple is already in the scheme and the other applies for support after the new rules come into effect, the existing resident will be liable for 7.5% of the value and the other for 11.25% (total 18.75%).

Backdating State support

At present, State support may be backdated to the time the scheme started (27 October 2009) for people who were in nursing home care at that time. This was designed to ensure that existing residents would not be at a disadvantage if there were delays in processing claims. These residents have now had nearly four years to apply under this scheme so it is likely that anyone who would have gained under the scheme has already applied. This provision is being abolished.

Other changes

The Act provides that the Health Service Executive (HSE) may outsource the operation and administration of the scheme. The Minister for Health has said that there are currently no specific proposals to outsource any aspect of the scheme.

Charges for in-patient services in public hospitals

Private and public beds

Beds in public acute hospitals are designated as either public or private. If you are being treated privately by your consultant and you have a planned admission to hospital, you are usually allocated a private bed. However, if you are admitted to hospital in an emergency and there is no private bed available, you are allocated a public bed. The Comptroller and Auditor General has reported that 45% of in-patients who were being treated privately by their consultants were not in beds that were designated as private.

At present if you are in a public bed you may be liable for a charge of €75 a day up to a maximum of €750 in a year. This applies whether you are a public or private patient. The Act provides for an increase in this charge and for charging private patients in public beds similar amounts to that paid by private patients in private or semi-private beds in public hospitals. It also provides for a definition of acute care.

Acute care charges

You may have to pay acute care charges if you are receiving acute in-patient services provided by or on behalf of the Health Service Executive (HSE). The charges may be collected directly by the HSE or by the service providers on behalf of the HSE.

Acute in-patient services are defined in the Act as in-patient services provided:

- In a hospital for the care and treatment of patients with acute ailments (including psychiatric ailments) and
- To people who need acute medical care and treatment including care and treatment in respect of motherhood

You are considered to be getting acute in-patient services if you were receiving such services at midnight on the day concerned. You are not considered to have been receiving services if you were admitted and discharged on the same day.

The daily in-patient charge for acute care in public hospitals is being increased from €75 to €80. No date has been set for the change.

The Act provides that the Minister for Health may make regulations varying the amount of the charges and the maximum number of days in a year to which those charges can apply. The Act provides that the amount that may be charged may not be more than 25% of the average daily cost of providing acute in-patient services.

Existing primary legislation does not put a limit on the number of days but the regulations provide for a maximum of ten. The Act provides that the maximum can be between seven and 15 but it is expected that the maximum will remain at ten for the present.

You are not liable for the acute in-patient charge if you are:

- A medical card holder
- A person entitled to free health services because of EU regulations
- A woman receiving services in respect of motherhood
- A child who is not more than six weeks old
- A child who is receiving services in respect of problems discovered during the child developmental examinations provided for children under the age of six or the primary school health monitoring service
- Receiving services for the diagnosis or treatment of infectious diseases
- A person for whom charges would cause undue hardship
- Entitled to specific health services because you have contracted Hepatitis C directly or indirectly from the use of Anti-D

Private patients in public hospitals

Private patients who are in public beds are currently charged the acute daily charge in the same way as public patients. At present, if you are in a private bed in a public hospital, you pay between €586 and €1,046 a day depending on the type of hospital and the type of accommodation.

From 1 January 2014, private patients in public beds will be charged similar amounts to the charges for private beds.

Everyone resident in the country is entitled to free public acute treatment. That will continue to be the case but, if you waive your right to it by choosing to be treated privately, you will be charged as a private patient for your maintenance as well as your treatment.

The Act provides that the amount that private patients in public hospitals will be charged for maintenance from 1 January 2014 is as follows:

Category 1 hospitals: Large and specialist hospitals

Single occupancy room.....	€1000
Multiple occupancy room	€813
Day stay	€407

Category 2 hospitals: Smaller and local hospitals

Single occupancy room.....	€800
Multiple occupancy room	€659
Day stay	€329

The Act lists the hospitals that fall into each category.

Maternity services

At present, expectant mothers are entitled to free medical, surgical and midwifery services. The Act includes an amendment to provide that these services cover non in-patient services. Expectant mothers are entitled to acute in-patient hospital services without paying the acute in-patient charges. If they choose to be private patients, then they will be liable for the charges that will apply to private patients in public hospitals.

Long-term residential care charges

The Act provides for the application of long-term residential care charges to some people in public nursing homes.

Long-term residential care services are defined as residential care services within the meaning of the Nursing Homes Support Scheme Act 2009. That Act defines long-term residential care services as maintenance, health or personal care services, or any combination of these, provided to you while you are maintained in an approved nursing home or a facility that is publicly designated by the HSE as a facility predominantly for the care of older people and in which nursing care is provided:

- On a 24 hour basis
- For a period of not less than 30 consecutive days, or
- Periods totalling not less than 30 days within a period of 12 consecutive months

However, if the HSE considers that you are going into the care facility permanently, then the 30 day requirement does not apply – that means that you can be charged from the start of your stay.

Long-term residential care services do not include:

- Medically acute care and treatment in an acute hospital
- Respite care
- Rehabilitative care for less than 12 months or a total of 12 months in a period of 24 months
- Out-patient services

Long-term residential care charges mainly apply in private and public nursing homes.

If you are in an acute hospital but do not need acute care, you may be charged long-term residential care charges – that is, in the same way as if you were availing of the Nursing Homes Support Scheme. Acute care is not defined in the legislation at present but is defined in this Act – see page 6.

If you are in hospital for more than 30 days and a doctor certifies that you do not need medically acute care and treatment you may be charged as if you were receiving long-term residential care services. This means that the cost of your care is considered to be the average costs of care in a public nursing home. You are then liable to pay the cost of your care or 80% of your assessed means whichever is lower; this operates in the same way as nursing home charges and you are eligible for state support in the same way.

A similar charging arrangement will apply to people who are in public nursing homes but who are not receiving long-term residential care, for example, if they are receiving respite care or rehabilitation but who are considered to be in need of long-term residential care.

Long-stay charges/residential support contributions

At present, long-stay charges are payable by people who are resident in various institutions – mainly residential institutions for people with disabilities. There are two separate categories of residents:

- **Class 1:** those living in premises where nursing care is provided on a 24 hour basis (current maximum charge €175)
- **Class 2:** those living in premises where nursing care is not provided on a 24 hour basis (current maximum charge €130)

The Act provides for changes to these arrangements. No date has yet been set for implementation.

The charges will be renamed as *residential support services maintenance and accommodation contributions*. These contributions will apply to people who are being provided with residential care by or on behalf of the HSE and who are not getting acute hospital care or who are not paying long-term residential care charges.

Residential support services

Residential support services are defined in the Act as any health or personal social service other than acute in-patient services, long-term residential care services (where the person started to receive the service on or after 27 October 2009) and out-patient services provided by or on behalf of the HSE to a person who is living in a:

- Hospital
- Convalescent home
- Nursing home
- Home or other category of housing accommodation for people with a physical, sensory, mental health or intellectual disability or ancillary accommodation and whose accommodation there is provided by or on behalf of the HSE

Contributions

If you are provided with residential support services you must pay a contribution towards the cost of your maintenance and accommodation. The Minister for Health may make regulations specifying the amount of the contributions. The amount will be a daily amount that cannot be more than 80% of the State Pension (Non-Contributory). The maximum personal rate of this pension is €219 a week at present. So, the maximum contribution will continue to be €175.

The contribution will be payable when you have been receiving the residential support service for 30 days in the previous year. You do not have to pay it if you are:

- Aged under 18
- Receiving services in respect of motherhood
- Involuntarily detained under the Mental Health Acts
- Entitled to specific health services because you have contracted Hepatitis C directly or indirectly from the use of Anti-D
- Receiving treatment for an infectious disease
- Being charged long-term residential care charges

The HSE may waive the residential support service charges partly or completely if:

- It would cause undue hardship to you or your dependants
- It is necessary for, or it would be of significant benefit in, advancing your medical, therapeutic, rehabilitative or health-related needs. Such needs could include needs relating to objectives specified in a care plan.

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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- It is reasonable having regard to the extent to which you provide for your own maintenance

Guidelines will be issued on how this is to be implemented. It seems likely that this will lead to more individualised assessments of the contributions to be made.

These contributions may be collected directly by the HSE or by service providers on behalf of the HSE.

Other recent legislation

Child Care (Amendment) Act 2013

This is a very short Act that allows for interim care orders granted without parental consent to be extended by 29 days instead of eight. The District Court may grant an interim care order where there is an immediate and serious risk to the child's health and welfare. The initial interim order may now be granted for eight days and may then be extended by 29 days.

Health (Pricing and Supply of Medical Goods) Act 2013

This Act has been passed and came into effect on 24 June 2013. The Bill was described in *Relate*, October 2012.

The Act provides for the introduction of a system of generic substitution and reference pricing for prescribed drugs and medicines. It also sets out statutory rules governing the supply, reimbursement and pricing of medicines and other items to patients under the various State schemes.

The generic substitution and reference pricing system is being gradually introduced. It is expected that the Irish Medicines Board will issue the first list of interchangeable medicines in August 2013 and that reference pricing will be implemented by November. Website: imb.ie.

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