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Relate

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Contents

Social welfare and pensions legislation

The *Social Welfare and Pensions Act 2013* and the *Social Welfare and Pensions (No. 2) Act 2013* implement the social welfare changes which were announced in Budget 2014 and make a number of other changes. Here we describe the main changes which are not already outlined in the November 2013 issue of *Relate*.

Social welfare decisions, revision of decisions and appeals

The law on revising decisions of Appeals Officers was the subject of a number of court cases in recent times. The High Court ruled on the issue in November 2013 (CP v Chief Appeals Officer, Social Welfare Appeals Office and the Minister for Social Protection).

Put simply, the social welfare legislation has always provided for the revision of decisions at any time when new information became available, a mistake had been made or where circumstances changed. So, if you apply for a social welfare payment and are refused or get less than you expected, you may submit additional information which may result in the initial decision being revised. You may formally appeal the initial decision but, if the additional information clearly establishes that you have an entitlement to a payment or an increased payment, a Deciding Officer had the power to revise the initial decision and there would be no need for a formal appeal. The legislation also provided that, if your appeal was rejected, that rejection could be revised by an Appeals Officer at any time if new information became available or circumstances had changed.

The Department of Social Protection's practice was that, if the revision and appeals processes were finalised and you did not get a payment, your claim was regarded as closed. If new information then became available or your circumstances changed,

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a new application would have to be made. (If a payment was being made, then new information or changed circumstances could result in the revision of the decision and the payment could be reduced, increased or ended.) The High Court held that this was not a correct interpretation of the legislation in the case of *closed* claims. If a Deciding Officer or an Appeals Officer had the power to revise, that power should be exercised. This meant that the Department could not require you to submit a new claim but would have to revise your existing claim even if there was a lengthy time gap. The law has now been amended. Requests for revision of claims made before 25 December 2013 and which have not been decided come under the old legislation.

The new legislation continues to allow for the revision of decisions at any time where new information is made available or where a mistake has been made. It also continues to allow for a revision of decisions where a payment is being made and circumstances change. In the case of *closed* claims, that is where there is no payment being made and the appeals process has been concluded, you will be required to make a new claim if there are any changes in your circumstances.

The Department of Social Protection is conducting a review of all the legislation on social welfare decisions.

Pensions

Effect of the Abolition of State Pension (Transition)

Many occupational pensions take account of the pensioner's entitlement to a State Pension when deciding how much occupational pension is due. These are usually called *integrated pensions*. This means that if your occupational pension provides for the payment of, say, half of your salary in retirement, that amount is reduced by the amount of the State Pension to which you are entitled so that, between the two pensions, you get half of your salary.

The State Pension (Transition) has been abolished from 1 January 2014. This means that people who were aged under 65 on 1 January 2014 do not qualify for a State Pension until they are 66. If your occupational pension becomes payable at 65 (or earlier), the calculation of the amount due can still take account of the amount of State Pension to which you will become entitled. The legislation on occupational pensions has been changed to give trustees of pension schemes the power to change the terms of the scheme to allow this to happen.

Wind up of defined benefit pension schemes

The rules about the distribution of assets in defined benefit pension schemes which are being wound up have been changed. The new rules apply to the winding up of schemes after 25 December 2013. These rules are complex and the following is a summary of the main elements. Further information is available at **www.pensionsboard.ie**.

At the end of October 2013, there were 803 defined benefit schemes. About half of them already meet or are in the process of meeting the funding standard and the rest have a funding proposal in place to do so. About 20% are very poorly funded.

The median private sector defined benefit pension is currently €11,000 and the average pension is €18,000; 55% of private sector pensions are below €12,000.

When a defined benefit pension scheme is being wound up, its assets are distributed in a specific order of priority. If the scheme is fully funded then all liabilities are met. Many fully funded defined benefit pension schemes have been wound up in recent years and employers have moved their employees to defined contribution schemes.

If the pension scheme is underfunded or insolvent, then people with a lower order of priority do not get what they expected from the scheme. The order of priority for schemes wound up before 25 December 2013 was:

1. Additional voluntary contributions and defined contribution benefits
2. Pensions payable to current pensioners
3. Pensions payable to future pensioners (current employed or deferred members of the scheme)
4. Future increases to both current and future pensioners

The new rules which apply to the winding up of schemes after 25 December 2013 reduce the rights of current pensioners and improve the priority given to future pensioners. These new rules differ depending on whether or not the employer is solvent.

Single insolvency order – If the employer is solvent

This order applies to cases where the pension scheme is insolvent but the employer is solvent.

The first priority remains additional voluntary contributions and defined contribution benefits.

The second priority remains the pensions payable to current pensioners but there are now limits on the amounts to which priority is attached as follows:

- The first €12,000 annually of pension
- 90% of pensions between €12,000 and €60,000 with a minimum of €12,000
- 80% of pensions over €60,000 with a minimum of €54,000

The next priority is 50% of the pensions of future pensioners. After that, the priority is:

- The remaining pension of current pensioners
- Remaining pensions of future pensioners
- Any other remaining benefits

This means that existing pensioners could have their current pensions reduced. Pensions under €12,000 may not be reduced. The maximum reduction is then 10% of pensions under €60,000 (but they cannot be reduced to less than €12,000) and 20% of pensions over €60,000.

Double insolvency order – Employer insolvent

The situation where a pension scheme is underfunded and the employer goes out of business is governed by the EU Directive on the protection of employees in the event of the employer's insolvency (currently Directive 2008/94/EC). The effect of this directive on pensions is that employees must be guaranteed at least 49% of their pension entitlement if the employer is insolvent (see *EU Supplement*, July 2013). Before December 2013, Irish law did not provide for the protection of employees' pension benefits.

The law now provides that the priority in the winding up of a defined benefit pension scheme in cases where the employer is insolvent is as follows:

1. Additional Voluntary Contributions (AVCs) and defined contribution benefits
2. 50% of current pensioner and future pensioner benefits
3. Pensioner benefits up to €12,000 a year
4. Remaining benefits for current pensioners
5. Remaining benefits for future pensioners

Where the scheme does not have enough funds to pay 50% of pensioner and future pensioner benefits and pensioner benefits up to €12,000 a year, the Minister for Finance must provide the necessary funding.

The issue of double insolvency – that is, both the pension scheme and the employer are insolvent – arose in the Waterford Crystal case (see *EU Supplement*, July 2013). The new legislation does not apply to this case but will apply to similar cases in the future. The precise entitlements of the Waterford Crystal workers will be decided by the Courts.

Pension levy

It is intended that some of the proceeds of the pension levy will be used to meet any funding shortfall in cases where the employer is insolvent. A pension levy of 0.6% was introduced in 2011 to pay for the Jobs Initiative. This levy will cease to be applied from the end of 2014. A new pension levy of 0.15% was introduced in 2014 and it will continue to apply. The total pension levy in 2014 is 0.75%; the levy from 2015 onwards will be 0.15%.

Personal injury awards

The legislation provides for the recovery by the Department of Social Protection of illness-related social welfare payments in cases where compensation for personal injury is being paid. This has not yet been brought into effect.

The payments in question are Illness Benefit, Partial Capacity Benefit, Injury Benefit, increases in Disablement Pension where you are likely to remain permanently incapable of working, Invalidity Pension and Disability Allowance. If you are unable to work because of personal injury, accident or occupational disease, you are likely to qualify for one of these payments. If you receive compensation, it is likely that the amount of the compensation would include the loss of earnings which you incurred. In some cases, at present, the amount of the social welfare benefit you receive is offset against your loss of earnings. This may happen in the case of road traffic accidents and work-related accidents. When this provision is implemented, the offsetting arrangements will cease.

When this provision comes into effect, the payer of compensation (which is usually an insurance company but could be an individual or company) will be obliged to establish the amount of such payments you received before making a compensation payment. **InjuriesBoard.ie** (formerly known as the Personal Injuries Assessment Board) must also establish the amount before making an order to pay. The payer of compensation must pay the amount to the Department of Social Protection.

The recovery of payments will apply to awards made by the Courts and to agreements reached outside the Courts process. It will not apply to certain compensation payments. These are mainly payments made by the State, for example, payments in respect of Hepatitis C and HIV acquired as a result of blood transfusions, redress payments to former residents of children's homes, payments from the Criminal Injuries Compensation Tribunal, thalidomide-related payments and certain compensation payments to Gardaí.

The payments which may be recovered are those paid from the start of the social welfare claim up to a maximum of five years or up to the payment of the final compensation, whichever is earliest.

Finance (No. 2) Act 2013

The *Finance (No. 2) Act 2013* provides for the implementation of the tax measures announced in Budget 2014 and for a number of other changes. Here we describe the income tax changes which are not already covered in the November 2013 issue of *Relate* or about which more information is available.

Single Person Child Carer Tax Credit

It was announced in the Budget that the One-Parent Family Tax Credit (OPFTC) was being replaced by a Single Person Child Carer Tax Credit and that this would be available only to the primary carer of the child. The OPFTC could be claimed by two carers (usually each parent) if the child spent some time with each parent. This change was expected to affect about 15,400 people. The basic change is provided for in the *Finance (No. 2) Act 2013* and came into effect on 1 January 2014 but there are also provisions which allow for the primary carer to relinquish the credit to a non-primary carer. The value of the credit remains unchanged at €1,650. Entitlement to the credit carries with it an entitlement to an additional €4,000 in the standard rate tax band, bringing that band to €36,800 a year.

The primary carer, that is, the person with whom the child lives for the greater part of the year, is entitled to the credit. That person may choose to relinquish it and it may then be claimed by the non-primary carer. In order for the non-primary carer to then get the credit, the child must live with him/her for a total of at least 100 days a year.

There are a number of other conditions attached to getting the credit, for example, you may not qualify if you are married (unless separated), in a civil partnership (unless separated), cohabiting, widowed or a surviving civil partner in the year in which you claim the credit.

Further information is available at: **http://www.revenue.ie/en/tax/it/credits/single-person-child-carer-credit.html**.

Maximum pension funds

It was announced in Budget 2014 that the maximum allowable pension fund on retirement for tax purposes was being reduced from €2.3 million to €2 million. This maximum amount is called the Standard Fund Threshold (SFT) or the *pension pot*. This is implemented by the Act.

How the pension pot is valued

The Act also provides for a different method of valuing the pension pot. Up to the end of December 2013, the pension pot in a defined benefit scheme was valued at 20 times the annual amount of pension payable – the standard valuation factor is 20. The value of a defined contribution scheme is the value of the accumulated fund.

From 1 January 2014, the value of a defined benefit pension will differ depending on the age at which the pension is drawn down. The age-related factors range from 37 for defined benefit pension rights drawn down at age 50 or under to a factor of 22 where they are drawn down at age 70 or over. The higher valuation factors will apply only to pension rights acquired after 1 January 2014. So, your pension pot is valued on 1 January 2014 using the standard valuation factor of 20 and after that, any further pension rights are valued in accordance with the new formula.

Personal fund threshold

If, on 1 January 2014, you already have a pension pot of over €2 million, you can protect the amount up to €2.3 million by making a claim to the Revenue Commissioners for a Personal Fund Threshold (PFT). Similar arrangements have been made each time the pension pot threshold has been reduced. These arrangements were first put in place in 2005 when the pension pot threshold was set at €5 million. At that time and each time subsequently when the limit was reduced, it was open to people with higher pension pots to declare a PFT. People who did this retain their rights to the PFT then declared.

Tax on the excess in the pension pot

The aim of putting limits on the amount of pension pots for tax purposes is to limit the ability of high earners to accumulate large pensions through tax subsidisation. If you accumulate more than the prescribed pension pot, you pay tax on the excess amount when you draw down the pension. This excess is taxed immediately at 41%. When the remainder (that is, the remaining 59% of the excess) is drawn down as a pension, it is subject to tax at your marginal rate. In effect, the total tax on the excess is about 65%. You may also have a liability for Pay Related Social Insurance (PRSI) and Universal Social Charge (USC) depending on your individual circumstances.

There are special arrangements in place for the payment of this tax by public servants who are affected. Unlike private sector workers, they are unable to minimise their pension pot or keep it below the threshold.

Taxation of qualified adult allowances

It has been the practice of the Revenue Commissioners to regard qualified adult allowances as the income of the person receiving the personal amount of the social welfare payment even where the qualified adult is getting the payment directly from the Department of Social Protection. The Act gives statutory backing to this practice. This means that the qualified adult does not have an entitlement to a Pay As You Earn (PAYE) tax credit in his/her own right (unless, of course, he or she has other relevant income).

Payments to Garda reservists

The Act provides that the annual allowances paid to volunteer members of the Garda Reserve are exempt from tax.

Irish Water

The *Water Services Act 2013* (see *Relate*, March 2013 for a description of the Bill) provided for the establishment of Irish Water. It also gave Irish Water the responsibility for installing domestic water meters.

The *Water Services (No. 2) Act 2013* makes further arrangements for the role of Irish Water. In particular, it provides that responsibility for most water services is transferred from the local authorities to Irish Water and it makes provision for water charges. Most of the Act came into effect on 1 January 2014 (SI 575/2013 and SI 576/2013).

Responsibility for water services

From 1 January 2014, Irish Water took over statutory responsibility for most water services from the 34 local authorities. It now has responsibility for all mains water supply and discharge. It has taken over responsibility for the various permits and licences which used to be issued by the local authorities, for example, water pollution licences, foreshore licences and wastewater discharge authorisations.

The process of taking over full responsibility will take some time. Irish Water and the local authorities have entered into service level agreements which outline how the changeover is to take place. The initial agreements are for 12 years and may be extended. Examples of the agreements are available at **www.environ.ie**.

Responsibility for domestic waste-water treatment systems and rural water services remains with the local authorities. This means that the local authorities are still responsible for water supply to people who do not use the public mains for their water supply because, for example, they use a group water scheme or have a private well and do not use a public sewer, for example, because they have a septic tank or on-site wastewater treatment system. Registration and inspection of septic tanks remains a local authority function.

Irish Water is obliged to draw up codes of practice for consumer service standards, billing, methods of payment, the provision of information to customers and complaints systems. These codes must be approved by the regulator – see page 6.

Installation of water meters

The installation of water meters started in August 2013 and about 94,000 meters have been installed to date. It is estimated that a total of 1.05 million meters will be installed; about 400,000 by the end of 2014; over 800,000 by the end of 2015 and the rest in 2016. In general, meters are being installed at the stop valve on the footpath or verge outside houses. Issues that arise for residents during the installation of water meters, for example, access or medical issues, may be dealt with by contacting Irish Water at 1890 278 278.

The meter is the property of Irish Water but you will be able to access it to verify the readings.

Water charges

The Act provides that Irish Water will levy charges for water usage. It will have to prepare a water charges plan setting out the way in which the water charges will be applied. This plan must be submitted to the Commission for Energy Regulation (CER) and the CER may accept or reject it.

The water charges plan may specify different methods of calculating charges and different charges for different groups of customers. When preparing a water charges plan, Irish Water must take account of:

- The need to ensure that it performs its functions in a commercially viable manner
- The public utility nature of its functions and
- The need to maintain a balance between these two

Water charges will apply to water supplied to a premises and to wastewater discharged from a premises. In most cases the amount of water supplied and discharged is the same, but this is not the case if the water is supplied by Irish Water but discharged to, for example, a septic tank.

No decision has yet been made on the level of water charges or the amount, if any, which may be provided free of charge. The Programme for Government included a commitment to a free allowance above which charges will be levied but does not specify the amount of the allowance.

It is expected that charges will be put in place before all meters are installed. No decision has been made on how such charges will be applied to non-metered dwellings. The Commission for Energy Regulation is expected to conduct a public consultation on this issue.

Until such time as the water charges plan is being implemented, Irish Water can charge non-domestic consumers in the same way as the local authorities have been doing.

Paying the water charges

Irish Water will be required to have a range of options in place to help people who have difficulties in paying their bills. An inter-Departmental working group has been established to advise the Government on the appropriate method for addressing water poverty and water affordability issues which may arise with the introduction of domestic water charges. This group includes representatives of the Departments of Environment, Community and Local Government; the Taoiseach; Social Protection; Public Expenditure and Reform; and Finance.

Consequences of failure to pay water charges

If you fail to pay the water charges, Irish Water may bring you to court in the normal way for breach of contract. If successful, it will then be able to deal with the debt in the usual manner. There are no provisions for deduction of the charges from income or social welfare payments.

Irish Water will not have the power to cut off supply to a dwelling because of the non-payment of charges but it will have the power to reduce the supply to domestic customers. It will have the power to cut off supply to non-domestic users.

Regulation

The Commission for Energy Regulation (CER) is the regulator for water services, both domestic and non-domestic. It already regulates the electricity and gas industries.

The CER is required to carry out its regulatory functions in a manner that best serves the interests of the customers of Irish Water. It must have regard to the need to ensure:

- That the customers of Irish Water are provided with the quality of service provided for in a code of practice
- That water services are provided by Irish Water in an economical and efficient manner
- That Irish Water operates in a commercially viable manner
- The conservation of water resources
- The continuity, safety, security, and sustainability of water services
- That Irish Water can meet all reasonable demands for water both current and foreseeable
- The recovery of costs of water services in accordance with Article 9 of the EU Water Framework Directive
- That Irish Water performs its functions in a manner that will enable the achievement by the State of the environmental objectives of that Directive
- That Irish Water performs its functions in an open and transparent manner

Irish Water is also answerable to the Environmental Protection Agency in respect of environmental standards.

Irish Water will be subject to the Freedom of Information legislation from the end of February 2014. The application of FOI will be backdated to 17 July 2013, the date on which Irish Water was legally established.

Further information is available at the Irish Water website: **www.water.ie**.

Housing grants

Changes have been made to the Housing Adaptation Grants for Older People and People with a Disability and to the Mobility Aids Grant. These changes apply to applications received after 1 January 2014. Applications received before then will be processed in accordance with the rules then in force. All of the schemes are operated by the local authorities. Funding for these grant schemes has been increased by 12% in 2014 to over €38 million.

The changes were made arising from the report of a review group established to examine the terms and conditions governing the schemes. This report is published at **www.housing.ie**.

There are two changes which apply to all three schemes:

- **Assessment of household income**
  The income of all household members must be included in the means test. The spouse's income has always been taken into account but now the income of any other adult, that is anyone aged over 18 or over 23 if in full-time education, living in the house must also be taken into account. The carer's allowance and child-related social welfare payments are disregarded in the means test.

- **Compliance with Local Property Tax**
  All applicants for the grants must show that they are compliant with the Local Property Tax – in other words, that they have paid it or have got a deferral or are not liable.

Housing Adaptation Grant for People with a Disability

This scheme aims to help with the costs of adapting a dwelling to the needs of a person with a disability. The maximum grant is €30,000 or up to 95% of the cost of the works, whichever is the lesser. The maximum grant may be awarded where household income is less than €30,000. Grants may be awarded on a tapered scale where household income is between €30,000 and €60,000 (€65,000 for applications before 1 January 2014). In practice, the average grant under this scheme is less than €10,000.

Housing Aid for Older People

This scheme provides grant aid for improvements to the homes of older people. The age limit has been increased from 60 to 66 but the local authority has discretion to award grants to people under 66 in cases of hardship or where there is an identified medical need.

The maximum grant has been reduced from €10,500 to €8,000. The average grant paid under this scheme in the past three years was about €4,000. The maximum grant may be awarded where household income is less than €30,000. Grants may be awarded on a tapered scale where household income is between €30,000 and €60,000 (€65,000 for applications before 1 January 2014).

Mobility Aids Grant

The Mobility Aids Grant Scheme provides grants for works designed to address mobility problems in the home, such as the purchase and installation of grab-rails, a level access shower, access ramps or a stair-lift. It is primarily for older people, but people with disabilities can also access the scheme.

The maximum grant of €6,000 is unchanged. It may cover 100% of the costs. It may be awarded where household income is less than €30,000. In practice, the average grant is about €2,400.

Legislation update

Jurisdiction of the Courts

The changes in the monetary limits for the jurisdiction of the different courts came into effect on 3 February 2014. This is provided for in the Courts and Civil Law (Miscellaneous Provisions) Act 2013 which was described in the October 2013 issue of *Relate*. SI 566/2013 brings the new limits into effect.

The new limits are:

- District Court: €15,000 (up from €6,350)
- Circuit Court: €75,000 in non-personal injuries cases and €60,000 in personal injury cases (up from €38,092)

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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Child and Family Agency

The Child and Family Agency has been established from 1 January 2014. Its functions are described in the October 2013 issue of *Relate*. It will be known as TÚSLA and its website is **www.tusla.ie**.

Health (Amendment) Act 2013

This Act was described in the August 2013 issue of *Relate*. It set out new rules for, among other things, the charging of private patients in public hospitals. This new charging regime came into effect on 1 January 2014.

Personal Insolvency and bankruptcy

The parts of the personal insolvency legislation dealing with bankruptcy came into effect on 3 December 2013. The main effect is the reduction of the length of bankruptcy from 12 to three years.

The Office of the Official Assignee in Bankruptcy has transferred from the Courts Service to the Insolvency Service of Ireland (ISI).

In order to be eligible for bankruptcy, you must show that you have made reasonable efforts to avail of a Debt Settlement Arrangement or a Personal Insolvency Arrangement. (See *Relate*, June 2013 for details.)

The *Companies (Miscellaneous Provisions) Act 2013* which was passed in December 2013 provides for a change to the bankruptcy procedure which should result in it being less costly. It removes the requirement for a person seeking bankruptcy to publish an advertisement to that effect in a national newspaper. Instead, information about the bankruptcy can be published on the ISI website at no cost. It is still necessary to publish notification of the bankruptcy in Iris Oifigiúil.

This Act also makes some other minor changes to the personal insolvency legislation.

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