



Relate

Contents

Page No.

- 1. Water charges**
The new water charges regime applies from 1 January 2015; charges are capped and a Water Conservation Grant will be available.
- 4. Irish Human Rights and Equality Commission**
The new body involves an amalgamation of the Irish Human Rights Commission and the Equality Authority.
- 6. Update on personal insolvency**
There are changes in the charges for personal insolvency and bankruptcy and some technical changes to the legislation are proposed.
- 7. Competition and Consumer Protection Commission**
This new body involves the amalgamation of the Competition Authority and the National Consumer Agency. There are also some changes in competition and consumer law.

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

Water charges

The September 2014 issue of *Relate* outlined the then proposed domestic water charges regime. Significant changes to these proposals were announced on 19 November 2014 and the Water Services Act 2014 was passed on 28 December 2014. The Act provides for a new system of charging and for a number of other changes. A Water Conservation Grant will be payable annually to all who are registered with Irish Water. This replaces the proposed tax relief and Water Support Payment which were announced in Budget 2015 (*Relate*, November 2014).

Charging for domestic water supply and waste water disposal starts from 1 January 2015 (not 1 October 2014 as originally planned). The first bills will be issued in April 2015 in respect of the period January-March 2015. Subsequent bills will be issued in July, October and January 2016 in respect of the previous three months.

These changes do not apply to non-domestic customers and there are no changes in respect of connection charges. The local authorities will continue to bill for non-domestic water services as agents of Irish Water. The Commission for Energy Regulation (CER) is expected to review non-domestic water charges and engage in public consultation on the issue during 2015.

Amount of the charges

The Water Services Act 2014 provides that domestic water charges are capped for the period 1 January 2015 to 31 December 2018. These new charges are contained in the revised Irish Water Charges Plan, published in March 2015.

INSIDE: Water Conservation Grant p2, Public Water Forum p3, Personal Public Service Numbers (PPSNs) p3, Landlords and tenants p3, Functions of the IHREC p4, Codes of practice p5, Amicus curiae p5, Costs of debt settlement p6, Personal Insolvency (Amendment) Bill 2014 p7, Functions of CCPC p8

The maximum charge is €160 a year for a principal private residence which is occupied by not more than one adult and €260 a year for a principal private residence which is occupied by two or more adults. The minimum charge for a second home, a holiday home or an unoccupied dwelling is €125 a year, the maximum €260.

If you are receiving only one service, that is, water supply or waste water removal, these charges are halved.

If you do not register with Irish Water, you will be charged a default rate of €260 a year. If you register during 2015, your occupancy details and any allowances will be backdated to 1 January 2015.

The unit price is €3.70 for 1,000 litres or half of that (€1.85) if you have only one service. If your annual metered usage costs less than the capped charge, you will get a rebate, which will be credited to your subsequent bill. Metered bills will provide for a free allowance of 21,000 litres for each child under the age of 18. The child does not need to be entitled to Child Benefit to qualify for this.

If there is a Boil Notice or Drinking Water Restriction Notice in effect, you will get a 100% discount on the water supply element of your charge until the notice is lifted – in effect, you do not have to pay for the water supply. You remain liable to pay the waste water element of the charge.

If you do not pay the charges

The 2014 Act provides that Irish Water may not disconnect or reduce water supply, either temporarily or permanently, for non-payment of the charges. However, you may have to pay a late payment fee.

If you do not pay within 12 months of the demand for payment or have not entered into a payment plan with Irish Water or not complied with that plan, there will be a late payment fee of €30 a year for a one-adult household and €60 a year for a household with two or more adults. If only one service is being supplied, the late payment fee is halved.

If you continue to refuse to pay, you may be sued for non-payment through the courts in the normal way.

Water Conservation Grant

In order to qualify for the Water Conservation Grant, you must be registered with Irish Water by a certain date, to be specified by the Minister for the Environment, Community and Local Government and you must provide information requested by the Department of Social Protection (DSP).

Irish Water will provide the DSP with details of those who have registered with it. The amount of the grant will be €100 a year and the first grants are expected to be paid in September 2015. The grant will be payable in respect of your principal private residence only and not in respect of second homes. While the aim is to encourage you to conserve water, you may use the money in any way you wish. The grant is expected to cost €130 million in 2015.

If you are not a customer of Irish Water, for example, because you have a private water supply and a septic tank, but are registered with Irish Water, you are eligible for the Water Conservation Grant.

The legislation clarifies that you are eligible for the grant in respect of your own home if you are not living there because of a physical or intellectual disability, for example, if you are in a nursing home, and your home has not been rented to another person.

This grant replaces the plan announced in Budget 2015 to pay a Water Support Payment to Household Benefit Package and Fuel Allowance recipients and to provide tax relief on water charges.

Plebiscite on ownership

The Water Services Act 2013 provides that the shareholders in Irish Water are Ervia (formerly called Bord Gáis Éireann), the Minister for the Environment, Community and Local Government and the Minister for Finance. The Water Services (No. 2) Act 2013 prohibits the shareholders from selling their shareholding in Irish Water. This means that any proposal to change the ownership of Irish Water would require a change in the legislation. The Water Services Act 2014 provides that any proposed change in the legislation would first have to be agreed in a plebiscite.

It provides that, before a Bill can be proposed for the sale of any share in Irish Water to anyone other than a government minister, a number of steps must be taken:

- A resolution must be passed by each House of the Oireachtas (the Dáil and the Seanad) approving such a proposal
- A proposal to allow for such a sale must be submitted to a plebiscite and
- The proposal must be approved in the plebiscite

Anyone who has a right to vote in a referendum would have the right to vote in this plebiscite. You have the right to vote in a referendum if you are an Irish citizen and you are registered

to vote in Ireland. (There is no general law on national plebiscites; this applies only to a plebiscite being held on the ownership of Irish Water.)

A plebiscite is quite similar to a referendum except that, in Ireland, a referendum is held only to decide on a proposed change to the Constitution. There has been only one national plebiscite held in Ireland. This was a plebiscite to ratify the Constitution in 1937. Local plebiscites have been held on issues such as the name of towns. In 2014, it was proposed to have a plebiscite on the issue of a directly elected mayor of Dublin but the conditions for this were not met - see *Relate*, May 2014.

Public Water Forum

The CER is to establish a customer consultative forum, which will be called the Public Water Forum. There will be between 12 and 60 members. The Minister for the Environment, Community and Local Government will appoint the chair of the forum.

The main functions of the forum are:

- To represent the interests of customers of Irish Water
- To provide Irish Water with comments and suggestions in relation to how it performs its functions
- To provide the CER with comments and suggestions in relation to the performance by Irish Water of its functions
- To comment on any policy document produced by Irish Water, when requested to do so by Irish Water
- To comment on any consultation document produced by the CER in respect of public water and waste water services, when requested to do so by the CER

The CER is obliged, within six months of the passing of the Act (by 28 June 2015), to draw up a three-year plan for the administrative arrangements for the forum. This plan will apply for the years 2016–2018.

Dispute resolution

Irish Water was already obliged to have a dispute resolution mechanism in place. This must be in accordance with a Code of Practice approved by the CER.

The 2014 Act provides that the CER must have an independent dispute resolution mechanism for any customer who has an unresolved complaint relating to Irish Water.

You may not use this dispute resolution mechanism where the complaint:

- Is or has been the subject of legal proceedings before a court
- Is made more than six years after the cause of the complaint or
- Does not relate to the functions or objectives of the CER

You are not entitled to make a complaint to the CER unless:

- You were registered as a customer with Irish Water at the time to which the complaint relates
- You have previously complained, in writing, to Irish Water
- You have exhausted the Irish Water complaints procedures and
- A final decision on the complaint has been issued in writing by Irish Water

The CER may decide not to provide a dispute resolution service in relation to a complaint where it considers that the complaint is vexatious or frivolous or not made in good faith.

The CER will issue its decision on the complaint to Irish Water. It has the power to require Irish Water to pay a refund or compensation. The CER may require Irish Water to comply with its decision in respect of other customers if they were affected by the issue.

Personal Public Service Numbers (PPSNs)

The power of Irish Water to require customers to provide their PPSNs is being removed. Irish Water is in the process of deleting information about PPSNs which it had already collected before the legislation was passed.

This means that you are no longer obliged to provide your PPSN to Irish Water. However, you may be required to show evidence that your occupancy declarations are accurate.

Landlords and tenants

The occupier of a dwelling is the person responsible for paying the water charges. The legislation provides that the owner of the property is the occupier unless the contrary is proven. Landlords may give the tenant's name to Irish Water. Irish Water will then contact the tenant and the tenant should register as the customer. The Minister for the Environment, Community and Local Government has said that he intends to bring forward legislation to place certain obligations on landlords where the tenant has not paid the water charges.

Private rented tenancies

This legislation is expected to provide that, in the case of private rented tenancies:

- There would be an implied or deemed clause in the tenancy agreement or lease that the tenant was liable for the water charges and
- If the tenant did not pay the water charges, the landlord would be entitled to withhold the outstanding amount from the deposit paid by the tenant. The landlord would then pay this to Irish Water.

Local authority tenancies

The legislation is expected to provide that, if a local authority tenant is in arrears of more than 12 months and a late

payment fee is applied, Irish Water will give the tenant an opportunity to pay or to enter into a payment plan. If this is not successful, Irish Water will tell the local authority the amount of the arrears. The local authority would then be expected to recover the outstanding amount from the tenant and give it to Irish Water.

First fix

You are responsible for the repair and maintenance of the internal water distribution system from the main stopcock to your house and within your house. However, Irish Water will provide a free “first fix” service. Irish Water has submitted a draft first fix policy to the CER for approval. The CER intends to hold a public consultation in relation to this scheme shortly.

Irish Human Rights and Equality Commission

The Irish Human Rights and Equality Commission (IHREC) was established on 1 November 2014. The governing legislation is the Irish Human Rights and Equality Commission Act 2014. The Irish Human Rights Commission and the Equality Authority were abolished and the functions of the two organisations are now being carried out by the IHREC. (The Equality Tribunal continues to exist but it will be absorbed into the Workplace Relations Commission when the proposed legislation is passed.)

Members of the IHREC are appointed by the President on the advice of the Government and after a public selection process. The IHREC appoints one of its members to be a member of the Management Board of the European Union Agency for Fundamental Rights.

The Act provides for some changes to the functions of the previously existing organisations. It also provides for a positive duty on public bodies in relation to human rights and equality.

Website: ihrec.ie

The following is a summary of the Act.

Human rights and equality

Human rights

Human rights are defined in the Act as:

- The rights, liberties and freedoms conferred on, or guaranteed to, people by the Constitution of Ireland and by any agreement, treaty or convention to which Ireland is a party

- The rights, liberties and freedoms that may reasonably be inferred as being inherent in people as human beings, and necessary to enable each person to live with dignity and participate in the economic, social or cultural life in Ireland

Equality

The Employment Equality Acts 1998–2011 prohibit discrimination on nine grounds in employment, covering vocational training, work experience and access to employment. The Equal Status Acts 2000–2012 prohibit discrimination on nine grounds in the provision of goods, facilities and services, accommodation, and education. The nine grounds are: gender, civil status, family status, sexual orientation, religion, age, disability, race, and membership of the Traveller community.

Functions of the IHREC

The main functions of the IHREC are:

- To protect and promote human rights and equality
- To encourage the development of a culture of respect for human rights, equality, and intercultural understanding in Ireland
- To promote understanding and awareness of the importance of human rights and equality in Ireland
- To encourage good practice in intercultural relations, to promote tolerance and acceptance of diversity in Ireland and respect for the freedom and dignity of each person
- To work towards the elimination of human rights abuses, discrimination and prohibited conduct

The main ways in which the IHREC carries out these functions are by:

- Providing information to the public in relation to human rights and equality generally
- Keeping under review the adequacy and effectiveness of law and practice in Ireland relating to the protection of human rights and equality
- Examining any proposed legislation and reporting its views on any implications for human rights or equality; the IHREC may decide to do this or they may be asked to do so by a Minister
- Making recommendations to the Government in relation to the measures which it considers should be taken to strengthen, protect and uphold human rights and equality in Ireland; again, the IHREC may decide to do this or may be asked by the Government to do it
- Applying to the High Court or the Supreme Court to appear as *amicus curiae* (friend of the court) in proceedings before that court that involve or are concerned with human rights or equality; the decision on whether or not to grant this right is made by the court
- Providing practical assistance, including legal assistance, to people in vindicating their rights in certain circumstances
- Carrying out equality reviews and preparing equality action plans
- Conducting enquiries into possible violation of human rights or equality of treatment obligations in the State

Working with other agencies

The IHREC must appoint advisory committees and support, establish or participate in such networks, public consultation processes or public forums, as it sees appropriate for the purpose of establishing and maintaining effective co-operation with representatives of relevant agencies and civil society.

The term "relevant agencies and civil society" includes:

- Non-governmental organisations concerned with the promotion or protection of human rights or equality, including organisations specialising in the promotion of economic and social development
- Trade unions and other business, professional and social organisations
- Third-level institutions and other experts in education
- Religious bodies, secular bodies or other groups that are representative of religious thought and beliefs or philosophical beliefs
- Public bodies

Codes of practice

The IHREC may, and must if directed by the Minister for Justice and Equality, prepare codes of practice for the protection of human rights, the elimination of discrimination and the promotion of equality.

The Equality Authority has already published one such code. The *Code of Practice on Sexual Harassment and Harassment at Work* has statutory effect (SI 208/2012).

Inquiries

The Commission may conduct inquiries if it considers that there is evidence of:

- A serious violation of human rights or equality of treatment obligations in respect of a person or a class of persons, or
- A systemic failure to comply with human rights or equality of treatment obligations and
- The matter is of grave public concern

As a result of the inquiry, the IHREC may issue an equality and human rights compliance notice requiring that the matter be rectified. It is an offence to fail to abide by this notice. The IHREC is developing a publicly accessible register of these notices.

Providing legal or other assistance

You may ask for help from the IHREC if you are taking a legal action in which you are relying on the law or practice in relation to the protection of human rights or equality. You will not get such help if you are entitled to avail of any other scheme, for example, the civil legal aid scheme.

The IHREC may decide to grant assistance on any of the following grounds:

- The matter raises a question of principle
- It would be unreasonable to expect you to deal with the matter without help because of its complexity or for any other reason
- There are other special circumstances which make it appropriate for the IHREC to grant such help

Amicus curiae

Being an *amicus curiae* means that the IHREC can offer its expertise to the courts in cases involving human rights and equality issues. The Irish Human Rights Commission and the Equality Authority each performed this function in a number of cases involving, for example, imprisonment for debt, Traveller rights and local authority housing. The Irish Human Rights Commission also acted as an *amicus curiae* to the European Court of Human Rights in cases against Ireland.

Obligations on public bodies

The Act establishing the IHREC places a new positive obligation on public bodies to have regard to the need to:

- Eliminate discrimination
- Promote equality of opportunity and treatment of its staff and the people to whom it provides services, and
- Protect the human rights of its members, staff and the people to whom it provides services

Enforceable right to compensation under Human Rights Convention

The European Convention on Human Rights Act 2003 brought the provisions of the European Convention on Human Rights into Irish law. The European Court of Human Rights has held that Ireland was in breach of the Convention because there was no enforceable right to compensation in Irish law in cases where a person was unlawfully deprived of liberty as a result of a judicial error. The Act establishing the IHREC provides for such compensation to be payable to the extent required by the Convention. Actions for compensation may be taken in the Circuit Court.

Update on personal insolvency

The rules on personal insolvency have been described in a number of issues of *Relate* over the past few years, most recently in the September 2013 issue.

The Insolvency Service of Ireland (ISI) has introduced a number of measures to reduce the cost and difficulty of availing of the debt solutions provided under the personal insolvency legislation and to reduce the cost of bankruptcy. The Personal Insolvency (Amendment) Bill 2014 aims to remove an ambiguity in the legislation. It is currently before the Oireachtas.

In summary, the three debt solutions provided under the personal insolvency legislation are:

Debt Relief Notice (DRN): this allows for the writing off of debt of up to €20,000 subject to a three-year supervision period. People with low income or few assets may qualify. You may apply for a DRN through an Approved Intermediary. At the end of 2014 there were 43 MABS companies and the Irish Mortgage Holders Association authorised as Approved Intermediaries. There are 99 *responsible persons* linked to these authorisations.

Debt Settlement Arrangement (DSA): this allows for the agreed settlement of unsecured debt (with no maximum) over a period, normally five years. You may apply for a DSA through a Personal Insolvency Practitioner (PIP).

Personal Insolvency Arrangement (PIA): this allows for the restructuring or settlement of secured debt of up to €3 million over a period, normally six years. If the creditors agree, the amount may be greater than €3 million. It can also cover unsecured debt with no upper limit. You may apply for a PIA through a PIP.

At the end of 2014 there were 138 PIPs on the ISI register.

ISI is now dealing with debt of almost €1.5 billion. In 2014, the ISI concluded 547 insolvency deals and 448 bankruptcy applications. 85% of proposals for DSAs were successful and 71% of proposals for PIAs were successful.

Costs of debt settlement

ISI fees

In October 2014, the ISI decided to waive all application fees for debt solutions until the end of 2015. Previously, these fees were €100 for a DRN, €250 for a DSA and €500 for a PIA.

PIP fees

PIPs charge fees. Some PIPs do not charge a fee for the initial consultation while others do. There are no set fees – they are negotiated in each individual case. These fees are paid out of funds available to creditors after the debtor's reasonable living expenses have been deducted.

The ISI is providing support of €750 on a temporary basis to defray the expenses of a PIP in any case where creditors reject a reasonable DSA or PIA proposal. A reasonable proposal is one that offers a better outcome to creditors than bankruptcy. This arrangement is expected to remain in place until the end of 2015 but it will be reviewed during 2015.

Approved Intermediaries

Approved Intermediaries do not charge fees for their services.

Bankruptcy costs

Bankruptcy costs have also been reduced. Fees payable to the courts for bankruptcy applications have been waived. The total cost of a bankruptcy now is approximately €270; €200 is payable to the Official Assignee in the Bankruptcy Division of the ISI (this used to be €650) and approximately €70 is payable to *Iris Oifigiúil* for publication of the bankruptcy notice. Bankruptcy cost about €1,400 in 2013.

The ISI has published the *Debtor's Guide to Bankruptcy January 2015* which is available at:

isi.gov.ie/en/ISI/Bankruptcy_Guide_Jan_2015.pdf/Files/Bankruptcy_Guide_Jan_2015.pdf

Making the process easier

The ISI has also taken measures to make the process easier. It has established a Debt Solutions Protocol for DSAs and is in the process of establishing a similar one for PIAs. These protocols can be used by PIPs when making straightforward proposals to creditors for either a DSA or PIA.

isi.gov.ie/en/ISI/Pages/Protocol_Team.

The ISI has a new website backontrack.ie which aims to provide user-friendly information about the options available. Its main website isi.gov.ie also provides information.

Personal Insolvency (Amendment) Bill 2014

The main aim of this Bill is to clarify the wording in the Personal Insolvency Act 2012 in relation to the voting requirements at the creditors' meeting. Creditors' meetings may have to be held when decisions are being made in relation to DSAs and PIAs. The Bill also provides for more detailed rules on documents and notice periods when creditors are deciding on a proposal for a DSA or a PIA.

Clarification of voting requirements

It is considered that the current wording in the Act is ambiguous and may make it more difficult for a debtor's DSA or PIA proposal to succeed even where it has the support of the main creditors.

For a proposal for a DSA or a PIA to succeed, the approval of creditors who hold 65% or more of the overall debt is required. A proposal for a PIA also requires the approval of 50% of the creditors holding the secured debt and 50% of the creditors holding the unsecured debt.

The current wording is open to the interpretation that a proposal for a DSA or a PIA must also be agreed by a majority of all creditors. This interpretation has not been argued in a court. It was not the intention of the original legislation to make this a requirement. This Bill will remove the possibility of this interpretation.

Detailed procedural rules

The Bill proposes a number of changes to the procedural aspects of decisions on proposed DSAs or PIAs.

The standard procedure is that a decision to approve or reject a proposal is taken by a vote of creditors at a creditors' meeting. The Act already sets out detailed rules about the conduct of such meetings – rules on notice periods, time limits and documents to be provided.

The Act also provides for two other decision-making procedures:

- The no-vote situation: this arises if a creditors' meeting is called to decide on a debtor's proposal but no creditor votes; in this case, the proposal is deemed to be approved
- The sole creditor situation: if only one creditor is entitled to vote at a creditors' meeting, the decision may be made without the formal need to convene a creditors' meeting

In these two procedures, the existing legislation does not specify the detailed procedural arrangements. This Bill does specify these arrangements. They are closely equivalent to those that apply in the standard procedure.

The Bill also clarifies that, in a no-vote situation, the protective certificate issued by the court continues to have effect until after the court has decided whether to approve the proposed DSA or PIA.

Competition and Consumer Protection Commission

The Competition and Consumer Protection Commission (CCPC) was established on 31 October 2014 under the Competition and Consumer Protection Act 2014. The Competition Authority and the National Consumer Agency have been abolished and replaced by the new body. The functions and powers of these bodies are now with the new body and some new powers have been added by the Act. It is intended to introduce a new Consumer Rights Bill in 2015.

The Act also provides for a number of other changes including:

- It gives the Minister for Jobs, Enterprise and Innovation the power to make regulations in respect of certain aspects of the commercial relationships between grocery goods undertakings. These regulations are expected to address unfair trading practices. The CCPC will have responsibility for implementing the regulations.
- It provides for rules in relation to media mergers. The Minister for Communications, Energy and Natural Resources has overall responsibility for this.

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 provides for the amendment of the Communications (Retention of Data) Act 2011 to give powers to the CCPC to seek data relating to certain competition law offences
- It extends the provisions of the Criminal Justice Act 2011 to serious competition law offences

Functions of CCPC

The main functions of the CCPC are:

- To promote competition
- To promote and protect the interests and welfare of consumers
- To carry out investigations into suspected breaches of various competition and consumer protection rules; the CCPC has extensive powers to collect information, require co-operation and search premises when carrying out these investigations
- To enforce the relevant statutory competition and consumer provisions
- To encourage compliance with the relevant statutory provisions

In order to carry out these functions, the CCPC has the power to, among other things:

- Make recommendations to the Government, any Minister or public body in relation to any matter which is likely to have an impact on consumer protection and welfare or on competition
- Foster and promote contacts, and co-operate and consult with consumer groups and such other persons or bodies as the Commission considers could assist in the promotion or development of consumer protection and welfare and competition matters; it may provide financial or other assistance to voluntary organisations involved in consumer protection and welfare activities
- Promote, where appropriate, the development of alternative dispute resolution procedures as a means of resolving disputes arising out of consumer transactions
- Promote public awareness and conduct public information campaigns in order to provide information to the public in relation to consumer protection and welfare and in relation to competition issues

- Promote educational initiatives and activities relating to consumer and competition information and awareness
- Review and approve codes of practice in relation to consumer protection
- Prepare and publish guidelines to traders in relation to consumer issues
- Promote and encourage the establishment by a trader or traders of quality assurance schemes
- Promote the interests of consumers by providing information in relation to financial services and promoting the development of financial education and capability

Website: ccpc.ie

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