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Relate

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Contents

Social Welfare (Miscellaneous Provisions) Bill 2010

The Social Welfare (Miscellaneous Provisions) Bill 2010 has been published and is being discussed in the Oireachtas. It provides for a number of changes to the social welfare system. The main proposed changes relate to the One-Parent Family Payment and the Jobseeker's Allowance. The Bill provides for a number of other changes. Some of these are minor, technical changes and are not covered here. The following are the main changes proposed in the Bill.

One-Parent Family Payment

At present, you may qualify for the One-Parent Family Payment (OFP) if:

- You are widowed, separated, divorced, unmarried or the spouse of a prisoner and
- You are not cohabiting and
- You are caring for a child or children on your own without the support of a spouse or a partner and
- You pass a means test and
- You are habitually resident in Ireland

The child or children must be living with you for the greater part of the time. Parents who have joint custody are not eligible for the payment if the child or children spend equal time with each parent.

If you qualify for a payment, you get a personal rate and an increase for a qualified child or children (IQC). At present, the IQC is payable up to age 18 or, if the child is in full-time education, up to the end of the academic year (June) of the year in which the qualified child reaches 22. When you no longer have a qualified child, you no longer qualify for OFP.

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Means test

You do not qualify if you have earnings from employment of more than €425 a week. Your earnings are assessed after PRSI, health levy and pension contributions.

- If you earn less than €146.50 a week, your earnings are not taken into account.
- If you earn between €146.50 and €425 a week, half of the amount over €146.50 is taken into account and you get a reduced rate of OFP.
- If you earn over €425 a week, you do not qualify. However, if you have been getting the payment for a year and your earnings then go above €425 a week, you get a half-rate payment for 26 weeks; the payment then ceases.

Maintenance payments

If the other parent is alive, you are required to make efforts to get maintenance payments from him or her.

If you do receive maintenance payments, they are assessed as part of your means. However, you are allowed to offset €95.23 a week for housing costs incurred and half of the rest is regarded as means.

Liability to maintain family

The other parent may be assessed to establish whether he or she is liable to pay maintenance. This assessment involves a means test and takes into account any other family liabilities which the other parent may have. The assessment is based on the net weekly income (income from all sources less income tax and PRSI) with deductions for a personal allowance in respect of personal needs, a qualified child increase for each child living with the other parent, and an allowance for accommodation costs. Any maintenance currently being paid to the One-Parent Family Payment recipient is also taken into account. The Department of Social Protection has found that people earning less than €18,000 a year are not usually liable to make a contribution under these rules. This limit has been adopted as a guideline for operational purposes.

Other benefits

If you qualify for the OFP, you may also qualify for a number of other benefits provided you meet the various conditions. These include:

- Secondary benefits – Fuel Allowance, Rent Supplement, medical card, and Back to School Clothing and Footwear Allowance
- Back to Work Enterprise Allowance (if you become self-employed – see *Relate*, May 2010)
- Community Employment
- Back to Education Allowance
- Family Income Supplement if you are employed
- Half-rate Carer's Allowance

Proposed changes to OFP

Changes to the OFP have been proposed for some time. The Government issued a discussion paper, *Proposals for Supporting Lone Parents*, in 2006. This dealt with the obstacles which lone parents faced when looking for employment. It outlined various options including the extension of the National Employment Action Plan to focus on lone parents and the provision of childcare. The discussion paper proposed that the category of lone parenthood would be abolished. Instead, a parental allowance would be made to all parents (living alone or with a partner) with young children on a low income. This would have ended the cohabitation rule. The Minister for Social Protection has said that it has not been possible to progress the proposals as outlined in the Government discussion paper, including the removal of the cohabitation rule, due, in part, to current economic conditions.

Government policy is that social welfare supports for lone parents should be designed to:

- Prevent long-term dependence on welfare and facilitate financial independence
- Recognise parental choice with regard to care of young children but with the expectation that parents will not remain outside of the labour force indefinitely
- Include an expectation of participation in education, training and employment, with supports provided in this regard

The main change proposed in the Bill is to reduce the age up to which the OFP is payable. This change is being phased in.

New claimants from April 2011

It is proposed that, from April 2011, the OFP will be payable to new recipients only until their qualified child reaches 13. If you are getting Domiciliary Care Allowance for that child, then the OFP will continue until the child reaches 16 and can apply for Disability Allowance.

If you become a lone parent because of the death of your spouse or partner and you have a child who is aged over 13, you may get the OFP for two years or until your child reaches 18, whichever is the shorter. If you have a child who is aged between 11 and 13 at the time of the death, you may qualify for the payment for two years.

Existing claimants

If you are getting OFP before this change comes into effect in April 2011, there will be a six-year phasing-in period:

- For 2011 and 2012, the age limit will remain 18
- For 2013, the limit will be age 17
- For 2014, age 16
- For 2015, age 15
- For 2016, age 13

If your child is aged between 18 and 22 and in full-time education in April 2011, payment may continue until the end of the 2012–2013 academic year or until the child reaches age 22, whichever is the earlier.

Costs

At the end of 2009 there were about 90,500 lone parents getting OFP. The estimated annual cost of the payment is €1.1 billion.

The Minister for Social Protection has said that the estimated savings that will arise from the implementation of the new age limits will be mainly long-term and will amount to €1.1 million in 2011 rising to €26.2 million in 2015.

Jobseeker's Allowance

At present, you may be refused Jobseeker's Allowance (JA) if, among other reasons, you are not available for or actively seeking work. This Bill provides for a reduced rate of JA and weekly Supplementary Welfare Allowance if you refuse to take part in a suitable training course or to participate in a programme under the National Employment Action Plan. The proposed reduction is age-related:

- €46 a week for those over 24
- €35 a week for those aged 22 to 24
- €25 a week for those aged 18 to 21

The Bill also provides for a specific disqualification from getting JA if you refuse an offer of suitable employment. At present, you may be disqualified for a maximum of nine weeks if you refuse such an offer.

Other proposed changes

Normal residence of a child

At present, many of the detailed rules for determining the normal residence of a child for the purposes of paying Child Benefit or Increases for a Qualified Child are set out in regulations. The Bill proposes to put some of these rules into primary legislation.

Limit on return of contributions

The Social Welfare and Pensions (No. 2) Act 2009 provides that claims for refunds of PRSI contributions must be made within four years. This Bill proposes to extend this provision to the health levy as well.

Appeals

The Bill provides for the right of appeal by the Minister for Social Protection to the High Court against a decision of the Chief Appeals Officer. It also provides that the Minister may appoint people as appeals officers who are not staff of the Department. However, the Chief Appeals Officer and the Deputy Chief Appeals Officer must be members of the staff of the Department.

Publication

The Bill provides for the publication of the names, addresses, fines and other penalties in relation to people who have been convicted of offences under social welfare legislation. This is along the lines of the provisions which apply in the case of tax defaulters except that the information about tax defaulters is published only if the money involved is above certain limits.

Supports for lone parents returning to work or education

In general, lone parents are eligible for the Back to Education and Back to Work programmes which are available to unemployed people, as well as the following supports.

Employment Support Services

Lone parents who are looking for work may avail of the Department of Social Protection's facilitators, available at all social welfare local offices. There are currently 61 facilitators in place and it is planned to appoint a further 11. In 2009, 22,000 people were referred to facilitators.

The National Employment Action Plan (NEAP) is operated jointly by the Department of Social Protection (DSP) and FÁS. The plan involves the Department in identifying recipients of Jobseeker's Benefit or Jobseeker's Allowance for referral to FÁS. In general, unemployed people are referred to FÁS when they have been on the Live Register for three months.

Almost 90,000 people were referred to FÁS under the NEAP in 2009.

Social Inclusion Model

The Social Inclusion Model is currently being tested by FÁS with lone parents. It is an inter-agency approach involving FÁS, the Department of Education and Skills, the Irish Vocational Education Association and lone parent organisations.

It includes outreach information and recruitment and a part-time *Paving Your Way to Work* programme providing information supports on budgeting, personal coaching and options for training, education and work. It also includes basic IT training. The programme is aimed at individuals who are parenting alone who want to get a job or improve their job prospects and who need to access a wide range of information, learn new skills through training, or return to education in order to achieve this.

Community Childcare Subvention Scheme (CCSS)

The Community Childcare Subvention Scheme (CCSS) is not limited to lone parents but is clearly important for lone parents who want to return to work or education. It funds a nationwide network of almost 1,000 community childcare facilities to enable them to charge reduced childcare fees to disadvantaged and low-income families.

The current Community Childcare Subvention Scheme will be succeeded by a follow-on scheme with effect from September 2010.

Parents who are getting social welfare payments will continue to be eligible for a weekly subvention of €100 for full-time daycare. Parents who get Jobseeker's Benefit or Jobseeker's Allowance will continue to qualify and get the full subvention but they will be provided with part-time day care – that is, up to five hours a day.

The weekly subvention rates for low-income parents in employment will be increased from €70 to €100 for full-time daycare, in the case of parents who get Family Income Supplement (FIS). For families whose income is just above the FIS level and who, for example, qualify for a medical card or a GP Visit Card, the subvention will be increased from €45 to €50 for full-time daycare.

The Office of the Minister for Children, the Department of Education and Skills, and the Department of Enterprise, Trade and Innovation are looking at the possibility of replacing the current childcare supports for participants in VEC and FÁS courses with a Community Childcare Scheme arrangement.

The transitional arrangements which applied to some services participating in the CCSS will end when that scheme ends on 31 August 2010.

Legislation update

All of the legislation mentioned here is available at **oireachtas.ie.**

The **Arbitration Act 2010** was passed into law on 8 March 2010. It came into effect three months later – on 8 June 2010. The Bill was described very briefly in the April 2009 issue of *Relate*. For further information on arbitration see **arbitration.ie.**

The **Communications Regulation (Premium Rate Services) Act 2010** which provides for the transfer of the function of regulating premium-rate telephone services from RegTel to ComReg was passed in March 2010. The transfer of responsibility takes place on 12 July 2010. ComReg website: **comreg.ie.**

The **Fines Bill 2009** which was described in the September 2009 issue of *Relate* has been enacted as the Fines Act 2010. It requires Commencement Orders to bring it into effect.

The **Adoption Bill 2009** has been passed by the Seanad and is at the final stage in the Dáil.

The **Criminal Procedure Bill 2009** which was described in the July 2009 issue of *Relate* has been passed by the Seanad and is now before the Dáil.

The **Criminal Justice (Retention of Data) Bill 2009** which was described in the March 2010 issue of *Relate* has been passed by the Dáil and is now before the Seanad.

The **Civil Partnership Bill 2009** which was described in the February 2010 issue of *Relate* is still before the Dáil. Amendments are being made to it.

The **Employment Law Compliance Bill 2008** which was described in the April 2009 issue of *Relate* has not been on the Oireachtas agenda since March 2009.

Multi-Unit Developments Bill 2009

The Multi-Unit Developments Bill 2009 has been passed by the Seanad and is now before the Dáil.

The Bill aims to provide for the management of bodies – owners' management companies – which manage common areas of multi-unit developments, generally blocks of apartments.

This Bill is complex because it deals with a number of aspects of property law. From the point of view of apartment owners, the following are its main provisions.

The Bill provides for transparency standards on service charges and sinking fund contributions; the holding of annual meetings to manage the affairs of the company; the adoption of house rules to improve the quality of life for residents; and new mechanisms for the resolution of disputes between parties.

In the case of new developments, the Bill provides that the ownership of the common areas must be transferred to the owners' management company before any apartments are sold. It provides that an apartment in a new multi-unit development cannot be sold unless an owners' management company has been established by the developer, ownership of relevant parts of the common areas have been transferred to it, and a contract has been concluded between the developer and the owners' management company setting out the rights and obligations of both parties. This, of course, does not apply to existing developments.

In cases where developments are already partially completed and some units have been sold, as well as those which have been substantially completed but the common areas have not, for whatever reason, been transferred to the owners' management company, the Bill provides that the developer must transfer ownership of the relevant parts of the common areas to the owners' management company within six months. In the case of completed developments, the developer must transfer ownership of the common areas to the relevant owners' management company within six months of the legislation coming into operation.

The transfer of the common areas does not remove the obligation on the developer to complete the development.

The Bill provides for detailed rules on the governance of owners' management companies.

Among other things, owners' management companies must establish a scheme for annual service charges to fund expenditure on the maintenance, insurance and repair of common areas within its control and for the provision of common services such as security, legal or accountancy work. There are provisions for the owners to vote on such charges. The Bill provides that an owners' management company must establish a sinking fund to meet the costs of any major repairs or renovations such as repairing or replacing roofs or lifts. Unit owners will be obliged to make contributions to it. A minimum contribution of €200 per unit per annum is specified but another amount may be agreed by the members themselves.

The **Property Services (Regulation) Bill 2009**, which was described in the July 2009 issue of *Relate*, makes provision for a licensing system for property management agents who carry out various management functions for owners' management companies. The Property Services (Regulation) Bill 2009 has been passed by the Seanad and has yet to be discussed in the Dáil.

Health (Miscellaneous Provisions) Bill 2010

The Health (Miscellaneous Provisions) Bill 2010 provides for the dissolution of Saint Luke's Hospital Board and a number of other changes including the abolition of the Infectious Diseases Maintenance Allowance (IDMA) and some technical changes to the nursing homes legislation.

The dissolution of the Saint Luke's Hospital Board is part of the reorganisation of cancer services under the National Cancer Control Strategy 2006. The Board is currently governed by the Saint Luke's Hospital Board (Establishment) Order 1999 (SI 253/1999). The Bill proposes to repeal that order and transfer staff, facilities and all legal obligations associated with the hospital to the HSE.

Infectious Diseases Maintenance Allowance

IDMA is provided for by the Health Acts of 1947 and 1953. The Bill proposes to abolish the allowance and repeal the relevant sections. In 2009, there were fewer than 20 recipients of the allowance. The HSE looked at all the recipients to see if they would qualify for a social welfare payment such as Disability Allowance or weekly Supplementary Welfare Allowance. The three allowances are all payable at the same rate. The HSE established that a number of recipients of the IDMA were no longer eligible for it. Others were eligible for a social welfare payment and have transferred to those payments. There is nobody receiving IDMA at present.

Nursing homes

The Bill proposes some technical changes to the nursing homes legislation. For example, it proposes a change to the definition of nursing home in the Health (Nursing Homes) Act 1990 to reflect the Health Act 2007. The Health Act 2007 provides for the registration and monitoring of designated centres.

The Bill also proposes a small change to the nursing homes support scheme legislation in order to ensure that the assessment of each resident's contribution to the cost of care takes account of situations where both members of a couple are in long-term care.

Nurses and Midwives Bill 2010

The Nurses and Midwives Bill 2010 proposes to update the legislation on the regulation of the nursing and midwife professions. This is part of the general move to improve regulation of the professions, to move away from self-regulation, to ensure the maintenance of professional competence and to provide for mechanisms for complaints and investigations. The Medical Practitioners Act 2007 provides for a similar system for doctors – see *Relate*, May 2007.

The regulation of these professions is currently governed by the Nurses Act 1985. This, among other things, provided for the establishment of An Bord Altranais. It is proposed to repeal this Act.

The Bill provides for An Bord Altranais to be called Bord Altranais agus Cnáimhseachais na hÉireann, or the Nursing and Midwifery Board of Ireland. This will incorporate the National Council for the Professional Development of Nursing and Midwifery. The object of the Board will be the protection of the public in its dealings with nurses and midwives and the integrity of the practice of nursing and midwifery through the promotion of high standards of professional education, training and practice and professional conduct among nurses and midwives.

The new body will be required to perform its functions in the public interest. The board and its fitness to practise committee must have a majority of non-nurses/midwives. Fitness to practise inquiries will generally be held in public.

The Bill provides for the recognition of midwifery as a separate and distinct profession with specific requirements. There are detailed requirements in respect of recognition and registration of the two professions and a prohibition on unregistered nurses and midwives engaging in the practice of nursing or midwifery.

Employment Agency Regulation Bill 2009

The Employment Agency Regulation Bill 2009 was published last year and is currently being discussed by the Oireachtas.

Employment agencies are currently governed by the Employment Agency Act 1971. This legislation was mainly aimed at protecting vulnerable Irish emigrants from exploitation by employment agencies abroad.

This Bill is concerned with licensing and regulation of employment agencies which supply agency workers to employers operating in Ireland. This includes employment agencies delivering a service from outside Ireland.

The Bill provides that employment agencies established in Ireland may operate only under a licence granted by the Minister for Enterprise, Trade and Innovation. It also provides that employment agencies established in another EEA state must apply for an employment agency licence unless the Minister is satisfied that agencies in that state are permitted to operate in accordance with a licence or are otherwise appropriately regulated, authorised or supervised in that state. Employment agencies from outside the EEA seeking to supply agency workers to Ireland will be subject to the employment permit system.

The Bill provides that it will be an offence for an employment agency to carry on its business in Ireland if it does not meet the licensing requirements. It will also be an offence for an employer in Ireland to use the services of an agency which does not meet the requirements.

The Bill provides for a code of practice for employment agencies.

Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010

The Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010 provides for the establishment of a DNA database system and for changes to the law on the taking of samples from suspects for use in evidence.

The Bill consolidates all the rules governing the taking of samples for use in evidence and provides for time limits on the retention of those samples.

The rules in relation to the DNA database are different from those which apply to the taking of samples for use in evidence.

The database may be used for two purposes only:

- The investigation of criminal offences
- The finding or identification of missing people and the identification of unknown people

Samples for the DNA database may be taken from people who are detained for questioning about serious offences – broadly they are the offences which attract at least five years' imprisonment – and from people who are in prison for these offences. They may not be taken from children under the age of 14 nor from vulnerable adults. The consent of the person is not required.

Forensic Science Ireland – which is the new name for the Forensic Science Laboratory – will be responsible for establishing and operating the DNA database.

Criminal Justice (Public Order) Bill 2010

The Criminal Justice (Public Order) Bill 2010 is currently being discussed by the Oireachtas. It proposes changes to the law on begging. In simple terms, it provides that begging will be an offence only if it is accompanied by disruptive behaviour such as harassment, intimidation, assault, threats to any person or the obstruction of passage by people or vehicles.

The law on begging was set out in the Vagrancy (Ireland) Act 1847. The relevant section was declared unconstitutional in 2007 because the specification of the offence was too vague and arbitrary and the constitutional right to free expression and communication was being curtailed unreasonably.

Central Bank Reform Bill 2010

The Central Bank Reform Bill 2010 aims to change the structure of financial regulation. It is a long and complex Bill involving detailed amendments to existing legislation. There will be a further Bill later this year to complement this Bill and then a Consolidation Bill will also be enacted.

This Bill provides for a new structure to replace the existing Central Bank of Ireland and Financial Services Authority of Ireland. There will be one body – the Central Bank of Ireland – and it will incorporate the present Central Bank and the Irish Financial Services Regulatory Authority (generally known as the Financial Regulator). There will be one board – the Central Bank Commission – which will be chaired by the Governor of the Central Bank.

The new body will be responsible for the stability of the financial system overall, prudential regulation of financial institutions, and the protection of consumer interests.

The head of financial regulation and the head of central banking will be given a statutory basis.

It is not proposed to change the statutory positions of Registrar of Credit Unions and Financial Services Ombudsman.

The Governor of the Central Bank is now and will remain responsible for functions related to the European System of Central Banks. The bank's current role of promoting the development of the financial services industry in Ireland will be removed.

The Bill provides for new powers for the Central Bank to ensure the fitness and suitability of the board members and senior staff of the financial service providers.

Consumer protection

At present, the Financial Regulator has a statutory Consumer Director with specific functions in relation to consumer protection. The Bill proposes to transfer responsibility for consumer information and education to the National Consumer Agency. The post of Consumer Director and the statutory consultative consumer panel will be abolished. The Central Bank will continue to be responsible for the protection of consumers in their dealings with financial institutions. The Central Bank Commission will have the power to establish advisory groups and will be required to have such a group for its consumer functions. Separately from this Bill, it is also proposed to merge the National Consumer Agency and the Competition Authority.

The Bill provides that the National Consumer Agency will have the power to impose levies on financial service providers for the purpose of funding the functions assigned to it.

Credit unions

The Bill also proposes to make some changes to the law governing credit unions. It proposes to increase the lending limit for credit unions and to formalise the arrangements which credit unions may make for rescheduling loan repayments. It also proposes to strengthen the powers of the Central Bank to regulate the lending practices of credit unions.

Consumer credit information

Directive 2008/48/EC on consumer credit agreements came into effect on 11 June 2010. The Directive replaces the existing Directive 87/102/EEC. The new Directive is implemented in Ireland by European Communities (Consumer Credit Agreements) Regulations 2010 (SI 281/2010).

It provides for standard comparable information to be provided to consumers across the EU – this is known as the *Standard European Consumer Credit Information*. You must be given standard information about, among other things, interest rates, the amount, number and frequency of payments, the obligation (if any) to take out insurance, and charges for defaulting. You must be provided with this information before you enter the contract. In general, you are entitled to withdraw from a consumer credit agreement within 14 days and you are entitled to repay the loan earlier than scheduled.

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 Directive applies to personal consumer credit agreements for amounts between €200 and €75,000. It does not apply to mortgages. There are a number of other exceptions. For example, it applies only in a limited way to overdraft facilities where the credit has to be repaid on demand or within three months. It does not apply at all to overdraft facilities which have to be repaid within a month.

The Directive allows member states to delay the application of some of the Directive's provisions until 11 December 2011. The Irish Government has decided to do this in the case of credit unions because of the need for credit unions to update their systems and train staff. Web: **finance.gov.ie**.

Transfer of responsibilities between departments

The reorganisation of government departments was described in the May 2010 issue of *Relate*. Most of this has now taken place.

Social inclusion, family policy and equality

The Department of Community, Equality and Gaeltacht Affairs took over responsibility for social inclusion policy and family policy from the Department of Social Protection on 1 May 2010. It took over responsibility for equality, disability, integration and human rights from the Department of Justice, Equality and Law Reform on 1 June 2010. That department has now changed its title to the Department of Justice and Law Reform.

FÁS

Responsibility for FÁS has been moved from the Department of Enterprise, Trade and Innovation. The Department of Education and Skills took over responsibility for the governance of FÁS and for training on 1 May 2010.

Responsibility for the national employment service (including the Local Employment Service) and employment programmes will move to the Department for Social Protection – this transfer has not yet taken place as it requires primary legislation.

Redundancy and insolvency payments

The transfer of responsibility for the Redundancy and Insolvency Payments Schemes to the Department of Social Protection will take place on 1 January 2011.

Changes to Rent Supplement

The Department of Social Protection has announced that the rent limits for the purposes of Rent Supplement are being reduced. There are about 95,000 households currently receiving the allowance.

The rent limits vary from one area to another and the reductions are much greater in country areas than in cities. In general, rent limits for single people are not being reduced and the limits in Dublin are slightly reduced.

The new limits apply to new claims for Rent Supplement and will apply to existing claims as they are reviewed.