

Summary of Regulatory Impact Analysis (RIA)

Department/Office:

Social Protection

Title of Legislation:

Amendment of the Social Welfare Consolidation Act 2005 to remove the exclusion from social insurance as a self-employed contributor of spouses/civil partners who are not employees or business partners but who participate in the activities of their self-employed spouse/civil partner performing the same or ancillary tasks, as required by the provisions of EU Directive 2010/41/EU.

Stage: General Scheme of Bill

Date: 13/5/2014

Related Publications:

DIRECTIVE 2010/41/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

Available to view or download at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:180:0001:0006:EN:PDF>

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What are the policy objectives being pursued?

To implement certain provisions of EU Directive 2010/41/EU (on the principle of equal treatment between men and women engaged in an activity in a self-employed capacity), which directly relate to the Social Welfare code.

What policy options have been considered?

1. Do nothing
2. Comply with the provisions of EU Directive 2010/41/EU which impact on the Social Welfare code, by amending the Social Welfare Consolidation Act 2005 (SWCA 2005) prior to the deadline of 5 August 2014. This requires removing the exclusion from social insurance as a self-employed contributor of spouses/civil partners who are not employees or business partners but who participate in the activities of their self-employed spouse/civil partner performing the same or ancillary tasks.

Preferred Option:

The “Do Nothing” option is not an option as it entails exposure to infringement proceedings and potential penalties for not complying with the EU Directive.

The preferred option is therefore to amend Social Welfare legislation (SWCA 2005) to comply with the EU Directive.

OPTIONS			
	COSTS	BENEFITS	IMPACTS
1	<p><u>Cost for Exchequer:</u> financial risk arising from proceedings for non-compliance with EU law and compensation claims from certain categories of citizens.</p>		<p><u>Impact on certain citizens:</u> if the State does not amend the Social Welfare code, certain spouses/civil partners will continue to be excluded from social insurance in contravention of EU law.</p>
2	<p><u>Cost for Exchequer:</u> some additional costs but these will not be significant.</p>	<p><u>Benefit to Exchequer:</u> Complies with EU obligations thereby eliminating the risk of non-compliance proceedings and of litigation by certain citizens.</p> <p>There will be a very slight increase in income to the Social Insurance Fund, when spouses/civil partners affected by the measure start to pay PRSI.</p> <p><u>Benefit to citizens:</u> certain self-employed spouses/civil partners may gain access to social insurance as a self-employed contributor and, in time, establish entitlement to maternity benefit, widow's, widower's or surviving civil partner's contributory pension and State pension contributory in their own right.</p>	<p><u>Impact on certain citizens:</u> implements equal treatment for access to self-employed social insurance as required under EU law.</p>

2. Description of Policy context and objectives

Introduction

The policy objectives of EU Directive 2010/41/EU (on the principle of equal treatment between men and women engaged in an activity in a self-employed capacity) are to improve the way in which the principle of equal treatment applies to self-employed

workers and assisting spouses with a view to increasing the number of women in self-employment. To achieve these objectives the Directive includes provisions relating to the legal and administrative framework to implement and enforce equal treatment for self-employed workers and spouses/civil partners who assist in carrying out the same or ancillary tasks as the self-employed spouse or partner. The Directive includes a requirement to provide social protection benefits including maternity benefit, to spouses/civil partners who are not employees or business partners but who participate in the activities of their self-employed spouse/civil partner performing the same tasks or ancillary tasks.

The Directive is designed to ensure equal treatment for spouses and civil partners who work on an informal basis in small family businesses, such as a farm or a local doctor's practice. Around 11% of self-employed workers in Europe rely on the help of spouses and civil partners who work on an informal basis in these small family businesses. The numbers of hours worked can be significant, with one third of assisting spouses working more than 25 hours per week.

The deadline for transposition of the above Directive was 5 August 2012. The EU Commission has been informed by Ireland that all elements of the Directive have been transposed by this deadline other than the provisions relating to the Social Welfare code. A 2 year extension until August 2014 was secured for the transposition of provisions of the Directive which require amendment to the Social Welfare code. The transposition of these provisions will be legislated for in the forthcoming 2014 Social Welfare Bill.

Effect of EU Directive 2010/41/EU

Currently the Social Welfare code specifically excludes from self-employed social insurance certain "prescribed relatives", including a spouse/civil partner of a self-employed contributor, not being an employee or partner, where he or she participates in the business of the self-employed contributor and performs the same or ancillary tasks.

The Directive requires that social protection and maternity benefits be made available to these categories of spouses/civil partners. Accordingly the exclusion from social insurance applying to this category of spouses/civil partners must now be removed.

The extension of social insurance to these spouses/civil partners, where he or she participates in the business of the self-employed contributor and performs the same or ancillary tasks, will mean that they will be liable to pay PRSI contributions on their annual self-employed income provided it exceeds an annual insurability threshold of €5,000. The payment of these contributions will entitle these spouses/civil partners to access social insurance benefits currently available to other self-employed workers. The principal social insurance benefits to which self-employed workers can establish entitlement are maternity benefit, widow's, widower's or surviving civil partner's contributory pension and State pension contributory (upon reaching pensionable age).

Implementation

Census data from 2011 indicates that there are 5,872 “assisting relatives” of which 3,315 are female and **2,557** are male. Some of these “assisting relatives” could be family members other than spouses/civil partners. This data suggests that the current exclusion from social insurance affects less than 6,000 assisting spouses/civil partners who assist in family businesses.

Administrative measures will be required to verify the bona fides of the contribution of the spouse/civil partner as a self-employed worker.

3. Identification and Description of Options

Option 1: Do nothing.

As the EU Directive necessitates amendment of the Social Welfare code the ‘do nothing’ option is included solely for benchmarking purposes.

Option 2: Comply with EU Directive 2010/41/EU, by amending social welfare legislation prior to the deadline of 5 August 2014.

The transposition of EU Directive 2010/41/EU will require changes in primary legislation.

The Social Welfare Consolidation Act 2005, Schedule 1, Part 3 which relates to “excepted” (or excluded) self-employed contributors will be amended to ensure that “prescribed relatives” referred to in paragraph 1 does not include spouses/civil partners performing the same or ancillary tasks as their self-employed spouse/civil partner. Other “prescribed relatives” will continue to be regarded as “excepted self-employed contributors”.¹

This amendment will allow spouses/civil partners performing the same or ancillary tasks as their self-employed spouse/civil partner to access self-employed social insurance and pay PRSI Class S contributions, provided they meet the other qualifying conditions for access to social insurance as a self-employed worker.

¹ The Department of Social Protection intends to review the categories of people who continue to be excluded from social insurance cover i.e. prescribed relatives other than spouses/civil partners and spouses/civil partners who are employed by a self-employed spouse/civil partner. However this is outside the scope of the current proposal.

4. Analysis of Costs, Benefits and Impacts of Options

Option 1: Do nothing.

Costs

This option presents a significant financial risk to the State. Failure to comply with our EU obligations could result in infringement proceedings by the European Commission, while also leaving the State open to actions for compensation taken by citizens who believe their rights to equal treatment to be infringed by non-action by the State.

This option is not recommended.

Option 2: Comply with EU Directive 2010/41/EU, by amending Social Welfare legislation prior to the deadline of 5 August 2014.

Costs

While there will in time be some additional costs arising from payment of maternity benefit and State pension contributory, these costs will not be significant. However, several factors are likely to reduce the additional costs:

- The numbers involved are small – less than 6,000 assisting spouses/civil partners.
- Many spouses/civil partners affected by the current exclusion from social insurance and who may now gain access to State pension contributory in their own right, may already be entitled to the means tested increase for a qualified adult. Therefore the incremental costs of entitlement to State pension contributory in their own right is unlikely to be significant.
- Entitlement to State pension contributory will be subject to the spouse/civil partner paying PRSI contributions for at least 10 years.
- Entitlement to flat rate maternity benefit will be subject to the spouse/civil partner paying PRSI contributions for at least 1 year. The maternity benefit payment is subject to tax and the Universal Social Charge.
- The assisting spouse/civil partner will be required to demonstrate that the return from their self-employed activities exceeds €5,000 per annum in order to access social insurance in that year.
- PRSI contributions will be payable on that income.

- The Actuarial Review of the Social Insurance Fund at 31 December 2010 stated, in relation to the entitlement to the State pension contributory, that ‘the self-employed achieve very good value for money compared with the employed – when the comparison includes both employer and employee contributions in respect of the employed person’.

Initially there will be a slight increase in PRSI yields as spouses/civil partners with annual income in excess of €5,000 start to pay PRSI. Costs may arise where these individuals gain entitlement to maternity benefit (after 1 year’s contributions) or to State pension (after 10 years’ contributions). No additional costs will arise from widow’s, widower’s or surviving civil partner’s contributory pension as entitlement is based on the social insurance record of either the claimant or late spouse/civil partner. As such, a person may already qualify on the record of their spouse/civil partner.

Entitlement to maternity benefit amounts to €5,980 (€230.00 pw). In relation to State pension many of these spouses/civil partners may already be entitled to the means tested State pension increase as a qualified adult. Therefore the annual incremental costs of entitlement to State pension contributory in their own right is the difference between the maximum annual individual entitlement of €11,976 (€230.30 pw) and the maximum qualified adult payment of €10,728 (€206.30 pw). The net annual difference at current rates is €1,248 per individual who qualifies for a pension in their own right.

Benefits

There will be a very slight increase in income to the Social Insurance Fund, when spouses/civil partners affected by the measure start to pay PRSI.

The State will (i) comply with EU obligations, eliminating the risk of infringement proceedings and possible financial penalties and (ii) eliminate the risk of litigation for compensation from citizens who will now be allowed access to social insurance.

Spouses/civil partners who are not employees or business partners but who participate in the activities of their self-employed spouse/civil partner may gain access to social insurance as a self-employed worker and, in time, establish entitlement to maternity benefit, widow’s, widower’s or surviving civil partner’s contributory pension and State pension contributory in their own right.

Impacts

- National competitiveness: No impact identified.
- The socially excluded and vulnerable groups: Certain spouses/civil partners currently excluded from social insurance may have access to social insurance as a self-employed worker and may establish entitlement to social insurance benefits. This is likely to have a greater impact on women.

- The environment: No impact.
- Whether there is a significant policy change in an economic market, including consumer and competition impacts: No significant impact. These provisions are part of a package of equal treatment measures designed to increase the number of women in self-employment.
- The rights of citizens: This option enforces the right to equal treatment for a cohort of workers coming within the scope of the Directive.
- Compliance Burdens: No significant impact identified to the State, other than communication of the amending legislation to the EU Commission.
- North-South and East-West Relations: No impact.

5. Consultation

The views of the following parties were sought on the proposal set out in this Regulatory Impact Analysis

- (a) all government departments
- (b) the Irish Farmer's Association, the Irish Creamery Milk Supplier's Association, the Irish Countrywoman's Association and
- (c) the National Women's Council of Ireland.

Views expressed through this consultation have been noted.

6. Enforcement, Compliance and Review

No additional enforcement, compliance or review mechanisms are required, as the objective will be achieved on enactment.

The State is obliged, under the provisions of article 17 of Directive 2004/113, to communicate all transposing measures (including subsequent amending regulations) to the EU Commission, as soon as practicable after its enactment.

7. Publication

It is intended that the RIA will be published on the website of the Department of Social Protection, on publication of the draft legislation.