



Number 5 of 2009

FINANCIAL EMERGENCY MEASURES IN THE PUBLIC INTEREST ACT 2009

REVISED

Updated to 1 January 2018

This Revised Act is an administrative consolidation of the *Financial Emergency Measures in the Public Interest Act 2009*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Intoxicating Liquor (Amendment) Act 2018 (1/2018)*, enacted 31 January 2018, and all statutory instruments up to and including *Financial Emergency Measures in the Public Interest (Payments to State Solicitors) (Adjustment) Regulations 2018 (S.I. No. 33 of 2018)*, made 5 February 2018, were considered in the preparation of this revision.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was first passed.

Related legislation

This Act is not collectively cited with any other Act.

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1989, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.



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ARRANGEMENT OF SECTIONS

Section

1. Interpretation. *(Repealed)*
2. Deduction to be made from remuneration of public servants.
3. Regulations in relation to collection arrangements, etc.
4. Obligation to make payments into Exchequer, etc.
5. Certain public servants' right to give notice.
6. Deductions made from remuneration of certain persons who cease to be public servants.
7. No additional benefit, etc.
8. Exemption, etc., from deductions in certain circumstances.
9. Reduction of payments to health professionals.
10. Reduction of other payments.
11. Non-applicability to public servants. *(Repealed)*
12. Farm Waste Management Scheme. *(Repealed)*
13. Annual review and report to the Houses of the Oireachtas. *(Repealed)*
14. Regulations. *((Repealed)*
15. Removal of doubts. *(Repealed)*
16. Amendment of Income Tax Acts. *(Repealed)*
17. Amendment of Local Government Act 1998 — payments into Local Government Fund by Minister for the Environment, Heritage and Local Government. *(Repealed)*
18. Amendment of Social Welfare Consolidation Act 2005 — early childcare supplement. *(Repealed)*
19. Short title. *(Repealed)*

SCHEDULE

Bodies to which the definition of “Public Service Body” does not apply

ACTS REFERRED TO

Companies Acts	
Competition Act 2002	2002, No. 14
Defence Act 1954	1954, No. 18
Defence (Amendment) Act 2007	2007, No. 24
European Assembly (Irish Representatives) Act 1979	1979, No. 19
Harbours Act 1946	1946, No. 9
Harbours Act 1996	1996, No. 11
Local Government Act 1998	1998, No. 16
Local Government Act 2001	2001, No. 37
Ministerial and Parliamentary Offices Act 1938	1938, No. 38
Ministerial, Parliamentary and Judicial Offices and Oireachtas Members (Miscellaneous Provisions) Act 2001	2001, No. 33
Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act 1973	1973, No. 22
Oireachtas (Allowances to Members) and Ministerial, Parliamentary and Judicial Offices (Amendment) Act 1977	1977, No. 29
Oireachtas (Allowances to Members) and Ministerial, Parliamentary and Judicial Offices (Amendment) Act 1983	1983, No. 32
Pensions Act 1990	1990, No. 25
Social Welfare Consolidation Act 2005	2005, No. 26
Social Welfare Law Reform and Pensions Act 2006	2006, No. 5
Social Welfare (Miscellaneous Provisions) Act 2008	2008, No. 22
Superannuation Acts 1834 to 1963	
Taxes Consolidation Act 1997	1997, No. 39
Vocational Education Act 1930	1930, No. 29



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AN ACT, IN THE PUBLIC INTEREST, TO PROVIDE FOR THE PAYMENT OF A CONTRIBUTION BY CERTAIN PERSONS IN THE PUBLIC SERVICE (INCLUDING MEMBERS OF THE HOUSES OF THE OIREACTHAS AND CERTAIN OFFICE HOLDERS) WHO ARE MEMBERS OF AN OCCUPATIONAL PENSION SCHEME OR PENSION ARRANGEMENT (BY WHATEVER NAME CALLED) WHICH IS PROVIDED FOR UNDER THE SUPERANNUATION ACTS 1834 TO 1963 OR ANY OTHER ENACTMENT OR ADMINISTRATIVE MEASURE TO LIKE EFFECT OR IS REQUIRED TO BE MADE, APPROVED OF OR CONSENTED TO (HOWEVER EXPRESSED) BY ONE OR MORE THAN ONE MINISTER OF THE GOVERNMENT, TO PROVIDE FOR THE REDUCTION OF THE AMOUNT PAYABLE, OR RATE OF PAYMENT, OUT OF MONEY PROVIDED BY THE OIREACTHAS OR THE CENTRAL FUND OR THE GROWING PRODUCE OF THAT FUND TO CERTAIN PERSONS FOR CERTAIN SERVICES TO OR ON BEHALF OF THE STATE, TO PROVIDE FOR THE AMENDMENT OF SECTION 4 OF THE LOCAL GOVERNMENT ACT 1998, THE INCOME TAX ACTS AND PART 4A OF THE SOCIAL WELFARE CONSOLIDATION ACT 2005, TO PROVIDE FOR THE DEFERRAL OF LIABILITIES, ACCRUALS OR PAYMENTS DUE UNDER A SCHEME KNOWN AS THE FARM WASTE MANAGEMENT SCHEME AND TO PROVIDE FOR RELATED MATTERS.

[27th February, 2009]

WHEREAS a serious disturbance in the economy and a decline in the economic circumstances of the State have occurred, which threaten the well-being of the community;

AND WHEREAS as a consequence a serious deterioration in the revenues of the State has occurred and there are significant and increasing Exchequer commitments in respect of public service pensions;

AND WHEREAS it is necessary to cut current Exchequer spending substantially to demonstrate to the international financial markets that public expenditure is being significantly controlled so as to ensure continued access to international funding, and to protect the State's credit rating and reverse the erosion of the State's international competitiveness;

AND WHEREAS the burden of job losses and salary reductions in the private sector has been very substantial and it is equitable that the public sector should share that burden;

AND WHEREAS it is necessary to take the measures in this Act as part of a range of measures to address the economic crisis;

AND WHEREAS the value of public service pensions is significantly and markedly more favourable than those generally available in other employment—

BE IT THEREFORE ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation. 1.—[...]

Deduction to be made from remuneration of public servants. 2.— (1) This section applies to a person—

(a) who—

(i) is a public servant on 1 March 2009, or

(ii) is not a public servant on that date but after that date is appointed or otherwise becomes a public servant, and

(b) who, on 1 March 2009 or at any time afterwards—

(i) is a member of a public service pension scheme,

(ii) is entitled to a benefit under such a scheme, or

(iii) receives a payment in lieu of membership in such a scheme.

(2) In this section, a person to whom this section applies [, other than a public servant referred to in paragraph (e) or (f) of the definition of that term in section 1,] is referred to as a “relevant person”.

[(3) The person who is responsible for, or authorises, the payment of remuneration to a relevant person shall, subject to subsection (3A), deduct or cause to be deducted an amount—

(a) in the case of the year 2016, at the applicable rate or rates specified in Table A to this subsection in respect of that year, and

(b) in the case of the year 2017 and each subsequent year, at the applicable rate or rates specified in Table B to this subsection in respect of that year,

from the remuneration from time to time payable to the relevant person for any such year.

TABLE A

Amount of Remuneration	Rate of deduction
Up to €26,083	Exempt
Any excess over €26,083 but not over €60,000	10 per cent
Any amount over €60,000	10.5 per cent

TABLE B

Amount of Remuneration	Rate of deduction
Up to €28,750	Exempt
Any excess over €28,750 but not over €60,000	10 per cent
Any amount over €60,000	10.5 per cent]

[(3A) If in any case where—

(a) a public servant was a relevant person at any time between 1 March 2009 and 30 April 2009 and either—

- (i) was on 30 April 2009 a relevant person and continued to be a relevant person on 1 May 2009 but subsequently ceased to be a relevant person on or before 31 December 2009, or
 - (ii) having ceased to be a public servant before 1 May 2009, becomes a relevant person again on or before 31 December 2009,
- and
- (b) the application of Table B and Table C to subsection (3) to so much of the period 1 March 2009 to 31 December 2009 as the public servant was a relevant person would result or has resulted in a higher amount being deducted than would have been deducted had Table A to subsection (3) applied to the entire of that period,

then, unless the amount of remuneration concerned exceeds €160,000 during the period 1 March 2009 to 31 December 2009, Table A to that subsection shall be applied in respect of the period 1 March 2009 to 31 December 2009.]

[(3B) The person who is responsible for, or authorises, the payment of remuneration to a public servant referred to in paragraph (e) or (f) of the definition of that term in section 1 shall deduct or cause to be deducted an amount—

- (a) in the case of the year 2016, at the applicable rate or rates specified in Table A to this subsection in respect of that year, and
- (b) in the case of the year 2017 and each subsequent year, at the applicable rate or rates specified in Table B to this subsection in respect of that year,

from the remuneration from time to time payable to the relevant person for any such year.

TABLE A

Amount of Remuneration	Rate of deduction
Up to €26,083	Exempt
Any excess over €26,083 but not over €60,000	10 per cent
Any amount over €60,000	10.5 per cent

TABLE B

Amount of Remuneration	Rate of deduction
Up to €28,750	Exempt
Any excess over €28,750 but not over €60,000	10 per cent
Any amount over €60,000	10.5 per cent]

(4) The deduction which this section requires shall be made in accordance with any regulations made by the Minister under section 3.

(5) This section has effect notwithstanding—

- (a) any other enactment,
- (b) any pension scheme or arrangement,
- (c) any other agreement or contractual arrangement, or
- (d) any understanding, expectation, circular or instrument or other document.

Regulations in relation to collection arrangements, etc.

3.— (1) The Minister may make regulations for the purposes of the calculation, making, collection, disposal and recovery of deductions made under *section 2*.

(2) Without prejudice to the generality of *subsection (1)*, the Minister may make provision in regulations under this section for any of the following:

- (a) the calculation, deduction and collection of deductions to be made on the basis of the best estimate that can reasonably be made of remuneration likely to be chargeable to tax under Schedule E to the Taxes Consolidation Act 1997 during the period concerned and the averaging of deductions from each public servant over that period;
- (b) the deduction, from any grant or vote of, or other payment to, a public service body out of money provided directly or indirectly by the Oireachtas or from the Central Fund or the growing produce of that Fund, of such sum as nearly as can be estimated represents all or some of the deductions under *section 2* that will fall due during the period to which the grant, vote or other payment relates and for the issuing of directions by the Minister to the persons concerned;
- (c) dealing with any overpayment or underpayment of deductions;
- (d) subject to *sections 2(3)* and *4*, the manner in which, and the periods within which, deductions are to be made and deductions, or any class of deductions, are to be paid into or disposed of for the benefit of the Exchequer;
- (e) designating the persons or classes of persons liable to account for deductions;
- (f) providing details on a periodic basis to persons concerned of the amounts deducted under this Act;
- (g) where a person fails to deduct or remit deductions in accordance with this Act and regulations made under this section, the deduction from any grant or vote of, or other payment to, a public service body out of money provided directly or indirectly by the Oireachtas or from the Central Fund or the growing produce of that Fund.

Obligation to make payments into Exchequer, etc.

4.— (1) Without prejudice to *subsection (2)*, and subject to—

- (a) any requirement under any regulations made under *section 3* to repay any overpayment, or
- (b) any requirement arising under *section 5* or *6* to repay any deduction,

deductions made under *section 2* shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister or otherwise paid or disposed of as the Minister may direct.

(2) Where any amount deducted under *section 2* (other than an amount referred to in *paragraph (a)* or *(b)* of *subsection (1)*) has not been duly remitted in accordance with any regulations under *section 3*, then the Minister may, in addition to any means of recovery provided for by regulations under that section, recover the amount from the person obliged to remit it as a simple contract debt in any court of competent jurisdiction.

Certain public servants' right to give notice.

5.— (1) A public servant (other than a serving member of the Permanent Defence Force) who on 1 March 2009 had less than two years in service and was accruing benefits in a public service pension scheme but did not have any preserved rights to a pension under that scheme may give, at any time before 1 April 2009, one month's written notice to terminate his or her employment, office or position as a public servant.

(2) A written notice in accordance with *subsection (1)* has effect without that person being required to comply with any contractual or statutory requirement to give any longer period of notice before ceasing to be a public servant.

(3) Where a person to whom *subsection (1)* relates terminates his or her employment, office or position as a public servant after 1 March 2009 in accordance with that subsection, and at the time of termination has less than two years in service, then, notwithstanding any other provision of this Act, any deduction made pursuant to *section 2* from the remuneration of that person as a public servant shall be repaid to him or her.

Deductions made from remuneration of certain persons who cease to be public servants.

6.— (1) Any deduction made pursuant to *section 2* (other than in respect of a person to whom *subsection (1)(b)(iii)* of that section relates) from the remuneration as a public servant of a person who ceases to be a public servant, to whom no superannuation benefit (including preserved benefit, within the meaning given by section 28 of the Pensions Act 1990) has accrued and whose service is not transferred to another public service body in accordance with arrangements approved by the Minister for the Environment, Heritage and Local Government or the Minister for Finance, shall not be treated as a deduction for the purposes of this Act.

(2) The person liable to account for any deduction referred to in *subsection (1)* shall repay it, as soon as practicable, to the person from whose remuneration it was deducted.

(3) If a person receives a repayment under *subsection (2)* on ceasing to be a public servant and subsequently wishes to have the service in respect of which that repayment was made reckoned for superannuation purposes, then—

(a) the person shall refund the repayment plus compound interest (in accordance with arrangements determined by the Minister) to the person who made the repayment to him or her, and

(b) that refund plus the amount of interest payable under *paragraph (a)* is to be treated as a deduction under *section 2*.

No additional benefit, etc.

7.— (1) Nothing in this Act is to be read as conferring any additional benefit payable, or that may become payable, under a public service pension scheme.

(2) A deduction under *section 2* is not a pension contribution for the purposes of the Pensions Act 1990.

Exemption, etc., from deductions in certain circumstances.

8.— Where the Minister is satisfied that there is a particular class or group of public servants who, by reason of exceptional circumstances (because of some particular aspect or condition of their employment, office or position) which, in the Minister's opinion, are materially distinguished from other classes or groups of public servants to which *section 2* applies, then the Minister, if he or she considers it to be just and equitable in all the circumstances to do so, may by direction—

(a) exempt that class or group from deductions under *section 2*, either entirely or to such extent as the Minister considers appropriate, or

(b) modify the obligation under *section 2* to make deductions from their remuneration in such manner as the Minister thinks fit, having regard to the nature and degree of the financial burden that would otherwise be borne by that class or group,

and the provisions of this Act relating to deductions, and of any regulations made under any of those provisions, shall be read subject to any such direction.

Reduction of payments to health professionals.

9.—(1) Notwithstanding any other enactment, contract, arrangement, understanding, expectation, circular or instrument or other document, the Minister for Health and Children may, with the consent of the Minister for Finance, by regulation, [vary], whether by formula or otherwise, the amount or the rate of payment to be made to health professionals, or classes of health professionals, in respect of any services that they render to or on behalf of a health body from the date of the regulation.

(2) *Subsection (1)* shall apply to the services rendered from the date of the regulation, notwithstanding that the health professionals concerned may have commenced the provision of the service prior to the date of the regulation.

(3) A regulation made under *subsection (1)* may fix different amounts or rates for different services, and as and from the date of the regulation, there shall be no entitlement to payment in excess of the amounts and rates so specified, although nothing in this section shall prevent any health professional from providing a service for a lesser amount or at a lower rate.

(4) Prior to making a regulation under *subsection (1)*, the Minister for Health and Children, or, at that Minister's direction, the health body concerned, shall engage in such consultations as that Minister considers appropriate.

(5) A regulation made under *subsection (1)* shall fix amounts or rates that the Minister for Health and Children considers to be fair and reasonable in the light of the purposes of this Act, having regard to the matters which that Minister considers appropriate, including any or all of the following:

(a) the terms of any existing contractual arrangements or understandings with the health professionals concerned or any expectation on their part;

(b) the terms of any circular, instrument, or document which apply to the health professionals concerned;

(c) any submissions made and views expressed during the consultations under *subsection (4)*;

(d) the nature of the services rendered by different classes of health professionals and the general nature of expenses and commitments of the health professionals providing those services;

[(e) the impact, if any, on the State's ability to continue to provide health services at existing levels;]

[(f) the fairness and efficiency of any method of effecting any amendment to payments having regard to the requirements of good and effective administration; and]

[(g) the need to retain firm control of current Exchequer expenditure so as to ensure ongoing access to international funding and improve competitiveness, while taking into account the continuing risks to the public finances which remain, and the need to meet the State's commitments to have a prudent fiscal policy under the Stability and Growth Pact and the Fiscal Compact.]

(6) The powers conferred on or exercised by the Minister for Health and Children under this section shall not affect any existing right to negotiate or amend rates or contracts generally which that Minister or the health body concerned enjoys apart from this section, and those rights may be exercised in conjunction with, in addition to or instead of the powers conferred by this Act.

(7) Consultations under *subsection (4)* shall be completed no later than 30 days after the Minister for Health and Children gives notice of the commencement of the consultations.

(8) A health professional who does not wish to continue to render services to or on behalf of the health body concerned on the basis of a payment regime fixed in a

regulation made under *subsection (1)* may give 30 days' notice to that effect to the health body and, on the expiration of those 30 days, shall be relieved of any obligation to render those services notwithstanding any contractual or other term with regard to notice.

(9) If a health body receives notice from a health professional under *subsection (8)*, it may, notwithstanding any other enactment, contract, implementing circular, instrument or other document, engage the services of other health professionals to ensure that the services continue to be available.

(10) The Minister for Health and Children may define the manner in which consultations under *subsection (4)* are to be conducted and conduct them in such manner, and with such representatives of health professionals or otherwise, as he or she considers appropriate, and nothing in the Competition Act 2002 shall prevent participation by that Minister or any such representative in such consultations, or the communication and discussion of the outcome of such consultations by the representatives with the health professionals they represent.

(11) The Minister for Health and Children may make regulations to do anything that appears necessary or expedient for bringing this section into operation, or facilitating its operation, with a view to fulfilling the purposes for which this Act was enacted.

(12) Regulations made under *subsection (11)* may contain such incidental, supplementary and consequential provisions as appear to the Minister for Health and Children to be necessary or expedient for the purposes of the regulations.

(13) Without prejudice to *section 13*, the Minister for Health and Children may from time to time and shall, before 30 June in 2010 and every year after 2010, carry out a review of the operation, effectiveness and impact of the amounts and rates fixed by regulation under this section and consider the appropriateness of those amounts and rates, having regard to any change of circumstances and in particular any alteration of any of the matters mentioned in *subsection (5)*.

(14) If, after completing a review under *subsection (13)*, the Minister for Health and Children considers it appropriate to do so, that Minister may, with the consent of the Minister for Finance, by regulation adjust (whether by formula or otherwise) the amount or the rate of payment to be made to health professionals, or classes of health professionals, in respect of any services that they render to or on behalf of a health body from the date of the regulation.

(15) *Subsections (2) to (12)* apply, with the necessary modifications, to the making of regulations under *subsection (14)*.

(16) Regulations made under this section shall be laid before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling the regulations is passed by either such House within the next 21 days on which that House has sat after the regulations are laid before it, the regulations shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulations.

(17) In this section—

“health body” means the Health Service Executive and any other body under the aegis of the Minister for Health and Children wholly or partly funded by the Exchequer to which, or on behalf of which, health professionals render services; and

“health professional” includes—

- (a) a registered medical practitioner,
- (b) a registered dentist,
- (c) a registered pharmacist,

- (d) an optometrist,
- (e) an ophthalmologist,
- (f) a podiatrist, and
- (g) a chiropodist.

(18) Where the provider of a service of a kind normally provided by a health professional is a company or other body corporate, or the legal personal representative of a deceased health professional, a reference in this section to a health professional includes the company or other body corporate or legal personal representative.

(19) In this section, payment in respect of a service rendered by a health professional includes payment in respect of goods provided by that health professional as part of the service.

Reduction of other payments.

10.— (1) Notwithstanding any other enactment, contract, arrangement, understanding, expectation, circular or instrument or other document, any Minister of the Government may, with the consent of the Minister for Finance, by regulation, [vary], whether by formula or otherwise, the amount or the rate of payment to be made to persons, or classes of persons, in respect of any service that they render to or on behalf of that Minister of the Government or under the aegis of that Minister.

(2) For the purposes of this Act, any service rendered to the State that is not rendered to or on behalf of a Minister of the Government or under the aegis of such a Minister is to be taken to be rendered to the Minister for Finance. The Minister for Finance may exercise the powers conferred by *subsection (1)* in relation to the persons rendering such services.

(3) Where the Minister by whom regulations are to be made under *subsection (1)* or (2) is the Minister for Finance, the reference in *subsection (1)* to obtaining the consent of that Minister is to be disregarded.

(4) A Minister of the Government making regulations under *subsection (1)* shall have all the powers enjoyed by the Minister for Health and Children under *section 9* and shall likewise be subject to all the obligations imposed on the Minister for Health and Children under that section.

(5) *Subsections (2) to (16) and (19) of section 9* apply, with the necessary modifications, to a Minister of the Government making regulations, and to regulations made, under *subsection (1)*.

Non-applicability to public servants.

11.—[...]

Farm Waste Management Scheme.

12.—[...]

Annual review and report to the Houses of the Oireachtas.

13.—[...]

Regulations.

14.—[...]

Removal of doubts.

15.—[...]

Amendment of
Income Tax Acts. 16.—[...]

Amendment of
Local Government
Act 1998 —
payments into
Local Government
Fund by Minister
for the Environ-
ment, Heritage
and Local
Government. 17.—[...]

Amendment of
Social Welfare
Consolidation Act
2005 — early
childcare supple-
ment. 18.— (1)[...]

Short title. 19.—[...]

Section 1.

SCHEDULE

BODIES TO WHICH THE DEFINITION OF "PUBLIC SERVICE BODY" DOES NOT APPLY

1. Any body corporate established by Act of Parliament before 6 December 1922 that, upon its establishment, was of a commercial character.
2. Dublin Airport Authority, public limited company.
3. Cork Airport Authority, public limited company.
4. Shannon Airport Authority, public limited company.
5. Bord Gáis Éireann.
6. Bord na gCon.
7. Bord na Móna.
8. Córas Iompair Éireann.
9. Coillte Teoranta.
10. Electricity Supply Board.
11. Eirgrid.
12. A harbour authority within the meaning of the Harbours Act 1946 or company to which section 7 of the Harbours Act 1996 relates.
13. Horse Racing Ireland.
14. Irish National Stud Company Limited.
15. Irish Aviation Authority.
16. An Post.
17. An Post National Lottery Company.
18. Radio Teilifís Éireann.
19. Teilifís na Gaeilge.
20. Railway Procurement Agency.
21. Voluntary Health Insurance Board.
22. A subsidiary of a body to which this Schedule relates, including a subsidiary of any such subsidiary.