



Number 4 of 2005

SOCIAL WELFARE AND PENSIONS ACT 2005

REVISED

Updated to 9 January 2023

This Revised Act is an administrative consolidation of *Social Welfare and Pensions Act 2005*. It is prepared by the Law Reform Commission in accordance with its function under *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 the *Local Government (Maternity Protection and Other Measures for Members of Local Authorities) Act 2022 (52/2022)*, enacted 21 December 2022, and all statutory instruments up to and including the *Planning And Development And Foreshore (Amendment) Act 2022 (Commencement) Order 2023 (S.I. No. 1 of 2023)*, made 9 January 2023, were considered in the preparation of this Revised Act.

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Number 4 of 2005

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ARRANGEMENT OF SECTIONS

PART 1

SHORT TITLE, CONSTRUCTION, COLLECTIVE CITATION AND
COMMENCEMENT

Section

1. Short title, construction, collective citation and commencement.

PART 2

AMENDMENTS TO THE SOCIAL WELFARE ACTS

2. Definitions (*Part 2*). (*Repealed*)
3. Child benefit — new rates. (*Repealed*)
4. Disability benefit. (*Repealed*)
5. Injury benefit — removal of limit. (*Repealed*)
6. Carer's benefit — improvement to entitlement conditions. (*Repealed*)
7. Respite care grant — improvements to entitlement conditions. (*Repealed*)
8. Disability allowance — extension of payment. (*Repealed*)
9. Assessment of capital means for certain assistance payments. (*Repealed*)
10. Certain EU payments — entitlement to island allowance. (*Repealed*)
11. Amendments consequential on the alignment of the income tax year with the calendar year. (*Repealed*)
12. Unemployment benefit and unemployment assistance — amendment to entitlement. (*Repealed*)
13. Unemployment benefit, unemployment assistance and farm assist — amendment to disqualifications. (*Repealed*)
14. Carer's benefit and carer's allowance — amendment. (*Repealed*)

(Repealed)

SCHEDULE 3

AMENDMENTS CONSEQUENTIAL ON SUBSTITUTION OF THIRD SCHEDULE
OF PRINCIPAL ACT

(Repealed)

SCHEDULE 4

PRE-CONSOLIDATION AMENDMENTS

(Repealed)

SCHEDULE 5

NINTH SCHEDULE — SPECIFIED BODIES

(Repealed)

ACTS REFERRED TO

Army Pensions Acts 1923 to 1980	
Bankruptcy Act 1988	1988, No. 27
Blind Persons Act 1920	1920, c.49
Child Care Act 1991	1991, No. 17
Civil Liability (Amendment) Act 1964	1964, No. 17
Companies Act 1990	1990, No. 33
Connaught Rangers (Pensions) Acts 1936 to 1964	
Criminal Justice (Theft and Fraud Offences) Act 2001	2001, No. 50
Education Act 1998	1998, No. 51
Finance Act 1921	11 & 12 Geo. 5, c.32
Finance Act 1958	1958, No. 25
Fisheries (Consolidation) Act 1959	1959, No. 14
Health (Nursing Homes) Act 1990	1990, No. 23
Health Act 1970	1970, No. 1
Health Act 2004	2004, No. 42
Health Contributions Act 1979	1979, No. 4
Housing (Miscellaneous Provisions) Act 1997	1997, No. 21
Income Tax Act 1967	1967, No. 6
Industrial Training Act 1967	1967, No. 5
Larceny Act 1916	6 & 7 Geo. 5, c.50
Local Authorities (Higher Education Grants) Acts 1968 to 1992	
Local Government Act 2001	2001, No. 37
Mental Health Act 2001	2001, No. 25
Mental Health Acts 1945 to 2001	

Mental Treatment Act 1945	1945, No. 19
Mental Treatment Acts 1945 to 1966	
Military Service (Pensions) Acts 1924 to 1964	
National Council for Education Awards Act 1979	1979, No. 30
Pensions (Amendment) Act 1996	1996, No. 18
Pensions (Amendment) Act 2002	2002, No. 18
Pensions Act 1990	1990, No. 25
Pensions Acts 1990 to 2004	
Qualifications (Education and Training) Act 1999	1999, No. 26
Regional Technical Colleges Acts 1992 to 2001	
Social Welfare (Consolidation) Act 1993	1993, No. 27
Social Welfare (Miscellaneous Provisions) Act 2002	2002, No. 8
Social Welfare (Miscellaneous Provisions) Act 2003	2003, No. 4
Social Welfare (Miscellaneous Provisions) Act 2004	2004, No. 9
Social Welfare (No. 2) Act 1993	1993, No. 32
Social Welfare Act 1992	1992, No. 5
Social Welfare Act 1993	1993, No. 5
Social Welfare Act 1996	1996, No. 7
Social Welfare Act 1997	1997, No. 10
Social Welfare Act 1998	1998, No. 6
Social Welfare Act 1999	1999, No. 3
Social Welfare Act 2000	2000, No. 4
Social Welfare Act 2001	2001, No. 5
Social Welfare Acts	
Taxes Consolidation Act 1997	1997, No. 39
Universities Acts 1997 and 1999	
Vocational Education Act 1930	1930, No. 29



Number 4 of 2005

SOCIAL WELFARE AND PENSIONS ACT 2005

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Updated to 9 January 2023

AN ACT TO AMEND AND EXTEND THE SOCIAL WELFARE ACTS AND, FOR THE PURPOSE OF GIVING EFFECT TO DIRECTIVE 2003/41/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL¹ AND FOR OTHER PURPOSES, TO AMEND AND EXTEND THE PENSIONS ACT 1990. [14th March, 2005]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

SHORT TITLE, CONSTRUCTION, COLLECTIVE CITATION AND COMMENCEMENT

Short title,
construction,
collective citation
and
commencement.

1.—(1) This Act may be cited as **the Social Welfare and Pensions Act 2005**.

(2) F1[...]

(3) *Sections 27 to 39* of this Act and the Pensions Acts 1990 to 2004 may be cited together as the Pensions Acts 1990 to 2005.

(4) *Sections 7(1), 16 and 24 to 39* of this Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions.

(5) F1[...]

(6) Without prejudice to the generality of the foregoing, different days may be so appointed for the coming into operation of **section 37** of this Act as respects different provisions of the Part inserted in **the Pensions Act 1990** by that section.

Annotations

Amendments:

F1 Deleted (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

¹ OJ No. L235 29.9.2003, p. 10

Editorial Notes:

- E1** Power pursuant to section exercised (23.09.2005) by *Social Welfare and Pensions Act 2005 (Part 3) (Commencement) Order 2005* (S.I. No. 591 of 2005).

Commencement.

2. The 23rd day of September 2005 is appointed as the day on which *Part 3*, other than *sections 38 and 39*, of the *Social Welfare and Pensions Act 2005* (No. 4 of 2005) comes into operation.

- E2** Power pursuant to section exercised (3.05.2005) by *Social Welfare and Pensions Act 2005 (Section 7(1)) (Commencement) Order 2005* (S.I. No. 230 of 2005).

Commencement.

2. The 3rd day of May 2005 is appointed as the day on which *section 7 (1)* of the *Social Welfare and Pensions Act 2005* (No. 4 of 2005), comes into operation.

- E3** Power pursuant to section exercised (11.04.2005) by *Social Welfare and Pensions Act 2005 (Sections 38 and 39) (Commencement) Order 2005* (S.I. No. 187 of 2005).

Commencement.

2. The 11th day of April 2005 is appointed as the day on which *sections 38 and 39* of the *Social Welfare and Pensions Act 2005* (No. 4 of 2005) come into operation.

- E4** Power pursuant to section exercised (7.04.2005, 11.04.2005, 1.06.2005, 2.06.2005 and 6.06.2005) by *Social Welfare and Pensions Act 2005 (Sections 16, 24, 25 and 26) (Commencement) Order 2005* (S.I. No. 182 of 2005).

Commencement.

2. (a) The 1st day of June 2005 is appointed as the day on which *section 16* of the *Social Welfare and Pensions Act 2005* (No. 4 of 2005), comes into operation,

(b) The 7th day of April 2005 is appointed as the day on which *sections 24 and 25* of the *Social Welfare and Pensions Act 2005* (No. 4 of 2005), in so far as they relate to carer's allowance, come into operation,

(c) The 1st day of June 2005 is appointed as the day on which *sections 24 and 25* of the *Social Welfare and Pensions Act 2005* (No. 4 of 2005), in so far as they relate to unemployment assistance, disability allowance pre-retirement allowance and farm assist, come into operation,

(d) The 2nd day of June 2005 is appointed as the day on which *sections 24 and 25* of the *Social Welfare and Pensions Act 2005* (No. 4 of 2005), in so far as they relate to old age (non-contributory) pension, blind pension, widow's or widower's (non-contributory) pension, one-parent family payment, orphan's (non-contributory) pension and a relevant payment by virtue of section 18(1) (b) or (c) of the *Social Welfare Act 1996* (No. 7 of 1996), come into operation,

(e) The 6th day of June 2005 is appointed as the day on which *sections 24 and 25* of the *Social Welfare and Pensions Act 2005* (No. 4 of 2005), in so far as they relate to supplementary welfare allowance, come into operation, and

(f) The 11th day of April 2005 is appointed as the day on which *section 26* of the *Social Welfare and Pensions Act 2005* (No. 4 of 2005) comes into operation.

PART 2

AMENDMENTS TO THE SOCIAL WELFARE ACTS

Definitions (*Part*
2). **2.—** F2[...]

Annotations**Amendments:**

- F2** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Child benefit —
new rates. **3.—** F3[...]

Annotations**Amendments:**

- F3** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Disability benefit. **4.—** F4[...]

Annotations**Amendments:**

- F4** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Injury benefit —
removal of limit. **5.—** F5[...]

Annotations**Amendments:**

- F5** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Carer's benefit —
improvement to
entitlement
conditions. **6.—** F6[...]

Annotations**Amendments:**

- F6** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Respite care grant — improvements to entitlement conditions.

7.— F7[...]

Annotations

Amendments:

- F7** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Disability allowance — extension of payment.

8.— F8[...]

Annotations

Amendments:

- F8** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Assessment of capital means for certain assistance payments.

9.— F9[...]

Annotations

Amendments:

- F9** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Certain EU payments — entitlement to island allowance.

10.— F10[...]

Annotations

Amendments:

- F10** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Amendments consequential on the alignment of the income tax year with the calendar year.

11.— F11[...]

Annotations**Amendments:**

- F11** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005 (26/2005)*, s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Unemployment benefit and unemployment assistance — amendment to entitlement.

12.— F12[...]**Annotations****Amendments:**

- F12** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005 (26/2005)*, s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Unemployment benefit, unemployment assistance and farm assist — amendment to disqualifications.

13.— F13[...]**Annotations****Amendments:**

- F13** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005 (26/2005)*, s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Carer's benefit and carer's allowance — amendment.

14.— F14[...]**Annotations****Amendments:**

- F14** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005 (26/2005)*, s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Personal public service number — extension of provisions.

15.— F15[...]

Annotations**Amendments:**

- F15** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Award of bereavement grant and payments after death in certain cases.

16.— F16[...]**Annotations****Amendments:**

- F16** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Provisions relating to prosecutions.

17.— F17[...]**Annotations****Amendments:**

- F17** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Amendment of section 2 of Principal Act (interpretation).

18.— F18[...]**Annotations****Amendments:**

- F18** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Orphan's (contributory) allowance and orphan's (non-contributory) pension — amendments.

19.— F19[...]

Annotations**Amendments:**

- F19** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005 (26/2005)*, s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Assessment of means — amendments.

20.— F20[...]**Annotations****Amendments:**

- F20** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005 (26/2005)*, s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Recovery of overpayments.

21.— F21[...]**Annotations****Amendments:**

- F21** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005 (26/2005)*, s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Old age (contributory) pension — amendment to definition of “homemaker”.

22.— F22[...]**Annotations****Amendments:**

- F22** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005 (26/2005)*, s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Amendments to Principal Act consequential on Health Act 2004.

23.— F23[...]**Annotations****Amendments:**

- F23** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005 (26/2005)*, s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Third Schedule to Principal Act (Rules as to calculation of means). **24.— F24[...]**

Annotations**Amendments:**

- F24** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Amendments consequential on *section 24*. **25.— F25[...]**

Annotations**Amendments:**

- F25** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Pre-consolidation amendments to Principal Act. **26.— F26[...]**

Annotations**Amendments:**

- F26** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

PART 3

AMENDMENTS TO THE PENSIONS ACT 1990

Definitions (*Part 3*). **27.—**In this Part—

“Act of 1996” means *the Pensions (Amendment) Act 1996*;

“Act of 2002” means *the Pensions (Amendment) Act 2002*;

“Principal Act” means *the Pensions Act 1990*.

Amendment of section 2 of Principal Act. **28.—**Section 2 of the Principal Act is amended—

(a) by inserting the following after the definition of “defined contribution scheme”:

“ ‘Directive’ means Directive 2003/41/EC of the European Parliament and of the Council²;”

²OJ No. L235 29.9.2003, p.10

- (b) in the definition of “employer” (inserted by section 6 of the Act of 2002), by inserting “and subject to section 154” after “Part VII”,
- (c) in the definition of “member” (as amended by [section 53 of the Social Welfare Act 1992](#)), by substituting “sections 62 and 154” for “section 62”,
- (d) by substituting the following for the definition of “occupational pension scheme” (as amended by [section 42 of the Social Welfare Act 1993](#)):

“ ‘occupational pension scheme’, means any scheme or arrangement other than an overseas pension scheme within the meaning of section 770(1) of [the Taxes Consolidation Act 1997](#)—

- (a) which is comprised in one or more instruments or agreements, and
- (b) subject to section 154, which provides or is capable of providing in relation to employees in any description of employment within the State, benefits, and
- (c) (i) which has been approved of by the Revenue Commissioners for the purpose of Chapter 1 of Part 30 of [the Taxes Consolidation Act 1997](#), or
- (ii) the application for approval of which under Chapter 1 of Part 30 of [the Taxes Consolidation Act 1997](#) is being considered, or
- (iii) which is a statutory scheme to which [section 776 of the Taxes Consolidation Act 1997](#) applies, or
- (iv) which is a scheme to which section 790B of [the Taxes Consolidation Act 1997](#) applies, or
- (v) which is a scheme, other than a scheme specified in subparagraph (i), (ii) or (iii), the benefits of which are paid in whole or in part out of moneys provided from the Central Fund or moneys provided by the Oireachtas, or
- (vi) which has been approved by the Revenue Commissioners for the purpose of one or more of the following—
- (I) section 32 of the Finance Act 1921, or
- (II) [section 34 of the Finance Act 1958](#), or
- (III) section 222 or 229 of the Income Tax Act 1967;”,

(e) by inserting the following after the definition of “sectionalised scheme” (inserted by section 6 of the Act of 2002):

“ ‘small scheme’ means a scheme with less than 100 members who are entitled to but are not receiving an immediate retirement benefit under the scheme;”,

and

(f) by inserting the following after subsection (3):

“(4) A word or expression that is used in this Act and is also used in the Directive has, unless the contrary intention appears, the same meaning in this Act as it has in the Directive.”.

Amendment of
section 7A of
Principal Act.

29.—The Principal Act is amended by substituting the following for section 7A (inserted by section 12 of the Act of 2002):

“Professional guidance of the Society of Actuaries in Ireland. 7A.—So long as any professional guidance issued by the Society of Actuaries in Ireland for any purpose of this Act is for the time being specified by regulations made under this section, any such professional guidance so specified shall not be altered by the Society without the prior consent of the Minister.”.

Amendment of section 18 of Principal Act.

30.—Section 18 of the Principal Act (as amended by section 14 of the Act of 2002) is amended—

(a) in subsection (5)—

(i) in paragraph (b)—

(I) by inserting “or fails” after “refuses”, and

(II) by inserting “or to the Board” after “to such person”,

and

(ii) in paragraph (c)—

(I) by inserting “or fails” after “refuses”, and

(II) by inserting “or by the Board” after “authorised person”,

and

(b) in subsection (6), by inserting “administrators,” after “actuaries,”.

Funding standard. **31.**—The Principal Act is amended—

(a) in section 41 (as amended by section 27 of the Act of 2002), by substituting the following for subsection (2):

“(2) Notwithstanding subsection (1)—

(a) this Part shall apply to a defined contribution scheme which is paying benefits to members where those benefits are not secured under a policy or policies of assurance,

(b) subsections (1) and (2) of section 48 shall apply to any scheme other than a defined contribution scheme, and

(c) subsections (3) and (4) of section 48 shall apply to every scheme.”.

(b) in section 43—

(i) in subsection (1) (as amended by section 29 of the Act of 2002):

(I) by substituting “and, subject to subsection (1A), a subsequent” for “and a subsequent”,

(II) in paragraph (b), by inserting “and” after “the scheme,”, and

(III) by inserting the following after paragraph (b):

“(c) in the case of a scheme to which this Part applies by virtue of the amendment effected by *section 32(a)* of the *Social Welfare and Pensions Act 2005*, not later than 1 January 2007.”.

and

(ii) by inserting the following after subsection (1):

“(1A) Where, in accordance with subsection (1), an actuarial funding certificate, having an effective date after 22 September 2005, has been prepared, any subsequent actuarial funding certificate shall have an effective date not later than 3 years after the effective date of the immediately preceding certificate.”,

(c) in section 49—

(i) by inserting the following after subsection (2):

“(2A) Regulations under this section may require the actuary, in certifying a funding proposal under subsection (2) or the failure of the scheme to satisfy the funding standard in accordance with subsection (3), to comply with any applicable professional guidance issued by the Society of Actuaries in Ireland and specified in the regulations or with any other applicable guidance issued by any other person (including the Minister) and specified in the regulations.”,

and

(ii) by substituting the following for subsection (3) (as amended by [section 24 of the Social Welfare \(Miscellaneous Provisions\) Act 2003](#)):

“(3) Subject to Regulations under this section, the Board, on application to it in that behalf by the trustees of a scheme, may, in relation to the scheme, in the circumstances and on the terms that it considers appropriate, for the purposes of subsection (2)(a), specify a date later than the effective date of the next actuarial funding certificate where the actuary concerned certifies that the failure of the scheme to satisfy the funding standard relates wholly or mainly to either or both of the following—

(a) the assets of the scheme being less than expected where—

- (i) this is due to the performance of relevant markets in relation to investments made with the resources of the scheme and that the performance of those markets in relation to those investments is not inconsistent with the performance generally of relevant markets for investment in the same period, and
- (ii) having regard to the performance generally of relevant markets for investment, the Board considers that specifying a later date is necessary or appropriate and not contrary to the interests of the members of the scheme,

or

(b) the liabilities of the scheme being greater than expected where—

- (i) this is due to such factors and circumstances as shall be prescribed, and
- (ii) the Board considers that specifying a later date is necessary or appropriate and not contrary to the interests of members of the scheme.

(3A) The Board, on application to it in that behalf by the trustees of a scheme, may, in relation to the scheme, in the circumstances and on the terms that it considers appropriate, modify the requirements of paragraphs (b), (c) or (d) of subsection (2) where—

(a) administrative difficulties have arisen from circumstances outside the control of the trustees of the scheme or schemes,

(b) the modification does not materially alter those paragraphs, and

(c) the Board considers the modification necessary or appropriate and that it is not contrary to the interests of the members of the scheme.”,

(d) in section 56, by inserting the following after subsection (2):

“(2A) The trustees of a defined contribution scheme shall cause the liabilities of the scheme to be valued in such manner and at such times as may be prescribed.”,

and

(e) by inserting the following after section 59F (inserted by section 43 of the Act of 2002):

“Trustee consent for early retirement. 59G.—In the case of a defined benefit scheme the rules of which include an early retirement rule, notwithstanding the terms of that rule, if the actuary advises the trustees that he is reasonably satisfied that, if the actuary were to prepare an actuarial funding certificate under section 42 having an effective date of the day on which any member's immediate retirement benefit by virtue of that early retirement rule is expected to commence, the actuary would not certify that the scheme satisfies the funding standard provided for in section 44, the member's right to the immediate retirement benefit by virtue of that early retirement rule is subject to the consent of the trustees of the scheme.”.

Small scheme exemptions.

32.—The Principal Act is amended—

(a) in section 41 (as amended by section 27 of the Act of 2002), in subsection (1)(b) and (c), by substituting “a small scheme” for “a scheme” in each place where it occurs,

(b) in section 55 (as amended by section 37 of the Act of 2002), in subsection (2)(b) and (c), by substituting “small scheme” for “scheme” in each place where it occurs,

(c) in section 56 (as amended by section 38 of the Act of 2002), in subsection (6)(a)(iii) and (iv), by substituting “a small scheme” for “a scheme” in each place where it occurs, and

(d) in section 57 (as amended by section 40 of the Act of 2002) by substituting “being modifications the making of which are compatible with the Directive and that, in the opinion of the Minister, are reasonable” for “being modifications that, in the opinion of the Minister are reasonable”.

Amendment of section 59 of Principal Act.

33.—Section 59 of the Principal Act (amended by section 42 of the Act of 2002) is amended—

(a) by substituting the following for paragraph (b) of subsection (1):

“(b) to provide for the proper investment of the resources of the scheme in accordance with regulations and, subject to those regulations and subsection (2), in accordance with the rules of the scheme;”,

and

(b) by inserting the following after subsection (1):

“(1A) The regulations referred to in subsection (1)(b) shall prescribe rules which shall be adhered to by the trustees of a scheme in providing for the proper investment of the resources of the scheme, in particular, in accordance with paragraph (1) of Article 18 of the Directive.

(1B) Trustees of a scheme, other than a small scheme, shall, subject to subsection (1C)—

(a) prepare and maintain a written statement of the investment policy principles applied to the resources of the scheme,

(b) review the statement at least every 3 years, and

(c) revise the statement at any time following any change in investment policy which is inconsistent with the statement.

(1C) The statement referred in subsection (1B) shall include the prescribed matters and shall be prepared and maintained in the form and manner that may be prescribed.”.

Qualifications of trustees.

34.—The Principal Act is amended—

(a) in section 26, in subsections (1) and (6), by inserting “,59A” after “58” in each place where it occurs,

(b) by re-numbering section 59A (inserted by section 23 of the Act of 1996) as section 59AA,

(c) by inserting the following after section 59:

“Qualifications of trustees. 59A.—(1) A person shall not act as a trustee of a scheme where the person—

(a) is an undischarged bankrupt, or

(b) has made a composition or arrangement with his creditors and has not discharged his obligations under that composition or arrangement, or

(c) has been convicted of an offence involving fraud or dishonesty, or

(d) is a company and any director of the company is prohibited under this section from being a trustee of the scheme, or

(e) is a person in respect of whom a declaration under [section 150 of the Companies Act 1990](#) has been made.

(2) Regulations shall—

(a) provide that trustees of a scheme shall possess, or employ or enter into arrangements with advisers who possess, the qualifications and experience specified in those regulations, and

(b) specify the circumstances in which trustees will be regarded as possessing the specified qualifications and experience referred to in paragraph (a).

(3) Any question as to whether a trustee or a person proposing to act as trustee satisfies the requirements of this section shall be determined by the Board—

(a) on its own initiative for the purpose of carrying out its supervisory functions under this Act, or

(b) at the request in writing of the trustee or person to whom the question relates.

(4) For the purpose of making a determination under subsection (3), the Board may by giving notice in writing in that behalf require any trustee of a scheme or any other person to submit to it the information that may be prescribed in the form and manner and within the time that may be prescribed.

(5) The Board shall notify in writing the trustee or person to whom the question relates of its determination and of its reasons for the determination.

(6) No claim shall lie against the Board arising directly or indirectly from any determination of the Board under this section.

(7) Subject to subsection (9), a person to whom a determination under subsection (3) relates may appeal to the High Court from the determination on a point of law within 21 days after the date of the notification of the determination to the person under subsection (5).

(8) In the case of a person who is a trustee of a scheme, a determination by the Board under subsection (3) that the person does not satisfy the requirements of this section shall have the effect of removing that person as trustee but without prejudice to the validity of any acts done by the trustee before removal under this section.

(9) (a) A trustee in respect of whom a determination is made under subsection (3) that the trustee does not satisfy the requirements of this section may, within 21 days after the date of the notification under subsection (5) (or such longer period as the High Court may fix, being a period that, having regard to the circumstances of any particular case, the court considers to be reasonable), appeal to the High Court against the making of the determination to which the notification relates.

(b) On an appeal under this subsection the High Court may make such order confirming, annulling or varying the determination concerned and such order as to costs as it thinks fit.

(c) The Board, the trustees, the employer and the members of the scheme concerned shall be entitled to be represented and heard on any appeal under this subsection.

(d) A determination under this section shall not come into operation—

(i) during the period of 21 days after the date of the notification under subsection (5), or

(ii) if an appeal against the determination is brought during the period referred to in subparagraph (i), before the final determination of the appeal or any appeal from such determination or the withdrawal of either such appeal.

(10) In the case of a person who is a trustee of a scheme, a determination by the Board under subsection (3) shall not operate as a discharge of any liabilities of that person.”

(d) in section 62(1) (inserted by section 15 of the Social Welfare (No. 2) Act 1993), by inserting “, subject to section 59A,” after “The Minister shall”, and

(e) in section 63B (inserted by section 27 of the Act of 1996) by inserting “prohibited from being a trustee of a scheme under section 59A or” after “while”.

Amendment of section 90 of Principal Act.

35.—Section 90 (inserted by section 39 of the Act of 1996) of the Principal Act is amended by inserting the following after subsection (3):

“(4) (a) If, on application to it by the Board, the Court is satisfied—

(i) that the Board has received a request from the competent authority of another Member State (within the meaning of section 148) for assistance in prohibiting the free disposal of assets of an institution for occupational retirement provision registered or authorised in that Member State and which are held by a custodian or depositary in the State, and

(ii) that the request referred to in subparagraph (i) is appropriate and necessary to prevent or remedy any irregularities prejudicial to the interests of members and beneficiaries,

the Court may grant an injunction restraining any person from disposing of or otherwise dealing with the assets to which the application refers.

(b) If the Court grants an injunction under paragraph (a), it may by order make provision for such ancillary and consequential matters as it considers necessary or expedient to enable the competent authority that made the request to perform any of its functions in relation to the assets to which the injunction applies.”.

Amendment to Part VI of Principal Act.

36.—Part VI of the Principal Act is amended by the insertion after section 61A (inserted by section 25 of the Act of 1996) of the following section:

“Restriction on borrowing. 61B.—(1) Notwithstanding anything in the rules of the scheme and subject to regulations under subsection (2), trustees of a scheme may neither borrow money nor act as a guarantor on behalf of a third party.

(2) Subject to the Directive, regulations may provide that in the circumstances and subject to the conditions and restrictions that may be prescribed, trustees of a scheme may borrow money.”.

Cross-border schemes.

37.—The Principal Act is amended by inserting the following after Part XI (inserted by section 5 of the Act of 2002)—

“PART XII

CROSS-BORDER SCHEMES

Interpretation (Part XII). 148.—(1) In this Part—

‘Court’ means the High Court;

‘EEA Agreement’ means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993;

‘undertaking’, in relation to a scheme, means a sponsoring undertaking located in another Member State which makes or proposes to make contributions to the scheme;

‘relevant statutory requirements’ means the statutory provisions relevant to the field of schemes, that may be prescribed;

‘social and labour law’, in relation to a Member State, means the social and labour law (within the meaning of Article 20 of the Directive) of that State relevant to occupational pension schemes (within the meaning of that article).

(2) In this Part Member State shall be read as including reference to those States which are Contracting Parties to the EEA Agreement.

Authorisation
to operate
cross-border
schemes.

149.—(1) The trustees of a scheme shall not accept any contributions to a scheme from an undertaking unless—

(a) the trustees are authorised by the Board under this section, and

(b) approval has been granted or deemed to have been granted under section 151 in relation to the undertaking concerned.

(2) An application for authorisation under this section shall—

(a) be in writing and be in the form that may be prescribed, and

(b) contain the information that may be prescribed and different information may be prescribed for different schemes or categories of schemes.

(3) The trustees of a small scheme who wish to apply for authorisation under this section shall, notwithstanding that it is a small scheme and in addition to the other requirements of subsection (2), comply with the provisions of this Act that are prescribed from time to time for the purposes of this section.

(4) The conditions of authorisation are that—

(a) the trustees and the scheme comply with the provisions of this Act applicable to the trustees and the scheme and, in the case of a small scheme, comply with subsection (3),

(b) in the case of a scheme to which section 44 applies, the scheme satisfies the funding standard provided for in section 44, and

(c) the trustees and the scheme comply with any other conditions that may be prescribed.

(5) The Board shall, where it is satisfied that the scheme satisfies all the conditions for authorisation under subsection (4), grant the authorisation.

(6) An authorisation under this section shall be in writing.

Revocation of
authorisation.

150.—(1) The Board may revoke an authorisation under section 149—

(a) on being satisfied that the conditions of authorisation have not been complied with, or

(b) where the trustees of the scheme make a written request to the Board for revocation of the authorisation including the reasons for that request.

(2) Before revoking an authorisation under this section the Board shall—

(a) notify the trustees of the scheme in writing of its intention to revoke the authorisation and of the reasons for the revocation,

(b) notify the trustees in writing that the trustees or a person acting on their behalf may make representations to the Board in relation to the intended revocation within 14 days after the date of issue of the notification, and

(c) consider any representations made under paragraph (b) before deciding whether or not to proceed with the revocation.

(3) Where the Board revokes an authorisation under this section, it shall notify in writing the trustees of the scheme and the competent authorities of any relevant host Member State of the revocation.

(4) Where the trustees of the scheme receive notification of revocation under subsection (3), they shall immediately notify in writing any undertaking from whom they accept contributions to the scheme and shall cease to accept any further contributions from those undertakings from the date of receipt of the notification.

(5) The Board shall publish or cause to have published notice of revocation of an authorisation in *Iris Oifigiúil* and in at least one daily newspaper circulating in the State within 21 days after the date of the notification of the revocation under subsection (3).

(6) Where the Board revokes an authorisation under this section, the trustees may, within 21 days after the date of the notification of the revocation under subsection (3), appeal to the Court against the decision of the Board to revoke.

(7) On the hearing of an appeal, the Court may make one of the following orders—

(a) an order confirming the decision appealed against, or

(b) an order quashing that decision.

(8) The Court may also make such ancillary orders as it considers appropriate.

(9) Nothing in this section in regard to the revocation of an authorisation shall affect the validity of anything done in accordance with the authorisation before the revocation of the authorisation.

(10) Unless the Court otherwise orders, revocation under this section of an authorisation takes effect on and from the date of receipt of the notification under subsection (3), irrespective of whether or not the trustees appeal against the revocation under this section.

Approval to accept contributions. 151.—(1) Where the trustees of a scheme who are authorised under section 149 propose to accept contributions to the scheme from a particular undertaking the trustees shall notify the Board in writing.

(2) A notification under subsection (1) shall be in the form that may be prescribed and shall contain the following particulars:

- (a) the name and location of the undertaking from whom the trustees propose to accept contributions;
- (b) the name of any host Member State;
- (c) any other information that may be prescribed.

(3) On receipt of a notification under subsection (1), the Board may request the trustees to provide further information in relation to the notification.

(4) Unless the Board has reason to doubt that the proposed arrangement between the undertaking and the individuals in respect of whom the undertaking makes or proposes to make contributions is compatible with the scheme, the Board, within 3 months after the date of receipt of the notification in accordance with subsection (1), or within 3 months after the date of receipt of any further information requested under subsection (3), whichever is the later, shall notify in writing—

- (a) the competent authority of the host Member State of any relevant information contained in the notification, and
- (b) the trustees of the scheme that approval has been granted by it in relation to the undertaking specified in the notification.

(5) If no notification is received from the Board under subsection (4) within the period specified in that subsection approval is deemed to have been granted in relation to the undertaking specified in the notification under subsection (1) at the end of that period.

(6) Where the Board has notified a competent authority under subsection (4), and, pursuant to paragraphs 5 or 8 of Article 20 of the Directive, the competent authority informs the Board as to the requirements of the social and labour law of the host Member State and any rules that are to be applied in accordance with Article 18(7) and Article 20(7) of the Directive, the Board shall, as soon as reasonably practicable following receipt of the information provide that information to the trustees of the scheme concerned.

(7) Where approval is granted or deemed to have been granted under this section, the trustees shall not accept contributions from the undertaking specified in the notification under subsection (1) until the earlier of—

- (a) 2 months after the date on which the Board notifies the trustees of the scheme under subsection (4), or 2 months after the date on which the approval is deemed to have been granted under subsection (5) has expired, or
- (b) the date the trustees of the scheme have received information from the Board in accordance with subsection (6).

Miscellaneous provisions relating to monitoring and enforcement.

152.—(1) The trustees of a scheme to whom approval has been granted or deemed to have been granted under section 151 shall ensure that the scheme is operated in a manner which is consistent with the social and labour law, investment and information requirements of any relevant host Member State.

(2) Where—

- (a) the competent authorities of the host Member State, in pursuance of Article 20(9) of the Directive, inform the Board that the trustees of the scheme are operating the scheme in a manner which is not consistent with the social and labour law or the information requirements of that host Member State, or
- (b) it otherwise comes to the attention of the Board that the arrangement between the undertaking and the individuals in respect of whom the undertaking makes or proposes to make contributions is no longer compatible with the scheme,

the Board may give a direction in writing to the trustees—

- (i) to take or refrain from taking the steps specified in the direction, or
- (ii) to cease taking further contributions from the undertaking.

(3) Where the Board gives a direction to the trustees of a scheme under subsection (2), the Board may, if it is satisfied that the direction has not been complied with, apply to the Court and the Court may confirm, vary or set aside the direction on the terms and for the period the Court considers appropriate.

(4) Where the Board gives a direction under subsection (2), the trustees of the scheme may appeal to the Court from the direction within 21 days after the date of the direction and the Court may confirm, vary or set aside the direction on the terms and for the period that the Court considers appropriate.

(5) Where the trustees of a scheme receive contributions from an undertaking the Board may, in the form and manner that may be prescribed, require trustees of the scheme to take, or refrain from taking, any steps that may be prescribed for the purpose of ring-fencing some or all of the assets or liabilities (or both) of the scheme.

Functions of the Board in relation to institutions in another Member State.

153.—(1) Where an employer makes or proposes to make contributions to an institution for occupational retirement provision that has its main administration in another Member State, any function which Article 20 of the Directive requires or authorises to be exercised by the competent authorities of the State is exercisable by the Board.

(2) Where the Board receives a notification pursuant to Article 20(4) of the Directive from the competent authority in another Member State, the Board shall inform the competent authority of the relevant statutory requirements within 2 months after the date of that notification.

(3) Where there is a significant change in any relevant statutory requirements, the Board shall as soon as reasonably practicable inform any competent authority to which it has provided information under subsection (2) of that change.

(4) Where an employer makes contributions to an institution referred to in subsection (1) the Board shall—

- (a) monitor compliance by the institution with the relevant statutory requirements, and
- (b) if the Board becomes aware of any contravention by the institution of any relevant statutory requirement, inform

the competent authority of the Member State concerned of the contravention.

(5) If the Board is satisfied that, despite the notification referred to in subsection (4)(b), the contravention persists, the Board may, after informing the competent authority of the Member State concerned, give a direction in writing to the employer—

(a) to take or refrain from taking the steps specified in the direction, or

(b) to cease making further contributions to the institution concerned.

(6) Where the Board gives a direction to an employer under subsection (5), the Board may, if it is satisfied that the direction has not been complied with, apply to the Court and the Court may confirm, vary or set aside the direction on the terms and for the period the Court considers appropriate.

(7) Where the Board gives a direction under subsection (5), the employer may appeal to the Court from the direction within 21 days after the date of the direction and the Court may confirm, vary or set aside the direction on the terms or for the period the Court considers appropriate.

Application of this Act to members in another Member State.

154.—(1) Regulations may provide that any provisions of this Act which are for the time being prescribed as relevant statutory requirements, shall not apply to schemes or trustees of schemes with regard to individuals in respect of whom an undertaking makes or proposes to make contributions to the scheme concerned.

(2) Save where otherwise provided for by this Act, references in this Act and regulations made under this Act—

(a) to members, shall be read as including references to individuals in respect of whom an undertaking makes or proposes to make contributions to a scheme,

(b) to a scheme or schemes, shall be read as including references to a scheme which provides or is capable of providing benefits to the individuals referred to in paragraph (a) in another Member State, and

(c) to an employer, shall be read as including references to an undertaking with regard to any individuals in respect of whom an undertaking makes or proposes to make contributions to a scheme.”.

Amendment of section 111 of Principal Act.

38.—Section 111 (inserted by section 3 of the Act of 2002) of the Principal Act is amended in subsection (3) by substituting “30 days” for “15 days”.

Amendment of section 113 of Principal Act.

39.—Section 113 (inserted by section 3 of the Act of 2002) of the Principal Act is amended in subsection (3) by substituting “€10,000” for “€4,000”.

Section 23.

SCHEDULE 1

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON *THE HEALTH ACT 2004*

F27[...]

Annotations**Amendments:**

- F27** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005 (26/2005)*, s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Section 24.

SCHEDULE 2

F28[...]

Annotations**Amendments:**

- F28** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005 (26/2005)*, s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Section 25.

SCHEDULE 3

AMENDMENTS CONSEQUENTIAL ON SUBSTITUTION OF THIRD SCHEDULE OF PRINCIPAL ACT

F29[...]

Annotations**Amendments:**

- F29** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005 (26/2005)*, s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Section 26.

SCHEDULE 4

PRE-CONSOLIDATION AMENDMENTS

F30[...]

Annotations**Amendments:**

- F30** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.

Section 26.

SCHEDULE 5

NINTH SCHEDULE-SPECIFIED BODIES

F31[...]

Annotations**Amendments:**

- F31** Repealed (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), s. 360(1) and sch. 7, S.I. No. 923 of 2005, subject to transitional provisions in subs. (2) and ss. 361 and 362.



Number 4 of 2005

SOCIAL WELFARE AND PENSIONS ACT 2005

REVISED

Updated to 9 January 2023

About this Revised Act

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

Related legislation

Pensions Acts 1990 to 2018: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Social Welfare, Pensions and Civil Registration Act 2018* (37/2018), s. 1(3)). The Acts in this group are:

- *Pensions Act 1990* (25/1990)
- *Pensions (Amendment) Act 1996* (18/1996)
- *Pensions (Amendment) Act 2002* (18/2002)
- *Social Welfare (Miscellaneous Provisions) Act 2003* (4/2003), s. 24
- *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), ss. 22 and 23
- *Equality Act 2004* (24/2004), Part 4
- *Social Welfare and Pensions Act 2005* (4/2005), ss. 27-39
- *Social Welfare Law Reform and Pensions Act 2006* (5/2006), ss. 38-44
- *Social Welfare and Pensions Act 2007* (8/2007), s. 37
- *Social Welfare and Pensions Act 2008* (2/2008), ss. 26-29
- *Social Welfare (Miscellaneous Provisions) Act 2008* (22/2008), s. 24
- *Social Welfare And Pensions Act 2009* (10/2009), Part 5
- *Social Welfare And Pensions (No. 2) Act 2009* (43/2009), Part 3
- *Social Welfare and Pensions Act 2010* (37/2010), Part 5
- *Social Welfare and Pensions Act 2011* (9/2011), Part 4
- *Social Welfare and Pensions Act 2012* (12/2012), Part 3
- *Social Welfare and Pensions (Miscellaneous Provisions) Act 2013* (20/2013), Part 4
- *Social Welfare and Pensions Act 2013* (38/2013), Part 4
- *Social Welfare and Pensions (No. 2) Act 2013* (49/2013), Part 3
- *Social Welfare and Pensions Act 2014* (16/2014), Part 3
- *Social Welfare and Pensions (No. 2) Act 2014* (41/2014), s. 4
- *Equality (Miscellaneous Provisions) Act 2015* (43/2015), s. 2
- *Social Welfare and Pensions Act 2015* (47/2015), Part 3
- *Social Welfare, Pensions and Civil Registration Act 2018* (37/2018), Part 3 (s. 27)

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

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.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Social Welfare Consolidation Act 2005 (26/2005)*

All Acts up to and including *Local Government (Maternity Protection and Other Measures for Members of Local Authorities) Act 2022 (52/2022)*, enacted 21 December 2022, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Social Welfare and Pensions Act 2005 (Part 3) (Commencement) Order 2005 (S.I. No. 591 of 2005)*
- *Social Welfare and Pensions Act 2005 (Section 7 (1)) (Commencement) Order 2005 (S.I. No. 230 of 2005)*
- *Social Welfare and Pensions Act 2005 (Sections 38 & 39) (Commencement) Order 2005 (S.I. No. 187 of 2005)*
- *Social Welfare and Pensions Act 2005 (Sections 16, 24, 25 and 26) (Commencement) Order 2005 (S.I. No. 182 of 2005)*

All statutory instruments up to and including *Planning And Development And Foreshore (Amendment) Act 2022 (Commencement) Order 2023 (S.I. No. 1 of 2023)*, made 9 January 2023, were considered in the preparation of this revision.