



Number 9 of 2011

SOCIAL WELFARE AND PENSIONS ACT 2011

REVISED

Updated to 22 December 2020

This Revised Act is an administrative consolidation of the *Social Welfare and Pensions Act 2011*. 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 the *Social Welfare Act 2020* (30/2020), enacted 22 December 2020, and all statutory instruments up to and including the *Appointment of Special Advisers (Leader, Minister for the Environment, Climate and Communications and Minister for Transport) Order 2020* (S.I. No. 754 of 2020), made 22 December 2020, were considered in the preparation of this Revised Act.

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REVISED

Updated to 22 December 2020

AN ACT TO AMEND AND EXTEND THE SOCIAL WELFARE ACTS AND THE PENSIONS ACTS 1990 TO 2010, TO AMEND AND MODIFY OTHER ENACTMENTS AND TO PROVIDE FOR RELATED MATTERS.

[29th June, 2011]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

Short title,
collective
citations,
construction and
commencement.

- 1.**— (1) This Act may be cited as the Social Welfare and Pensions Act 2011.
- (2) (a) The Social Welfare Acts and *Part 2* shall be read together as one.
- (b) The Citizens Information Acts 2000 to 2008 and *section 21* may be cited together as the Citizens Information Acts 2000 to 2011.
- (c) The Pensions Acts 1990 to 2010 and *Part 4* shall be read together as one and may be cited together as the Pensions Acts 1990 to 2011.
- (3) *Sections 10* and *16(6)* shall come into operation on such day or days as the Minister for Social Protection may appoint by order or orders either generally or with reference to any particular purpose or provisions, and different days may be so appointed for different purposes or different provisions.

PART 2

AMENDMENTS TO SOCIAL WELFARE ACTS

Definition.

- 2.**— In this Part “Principal Act” means the Social Welfare Consolidation Act 2005.

Amendment of
section 13 of
Principal Act.

- 3.**— (1) Section 13(2) of the Principal Act is amended—
- (a) in paragraph (b) (amended by section 12 of the Social Welfare Act 2010) by deleting “paragraph (ba) and to”,

(b) by deleting paragraph (ba) (inserted by section 12 of the Social Welfare Act 2010), and

(c) by substituting the following paragraph for paragraph (d) (amended by section 13 of the Social Welfare Act 2010):

“(d) Subject to paragraph (da), subsection (8) and to regulations under section 14, where in any contribution week a payment is made to or for the benefit of an employed contributor in respect of reckonable earnings of that employed contributor, a contribution shall be payable by the employed contributor’s employer—

(i) at the percentage rate specified in the Table to this paragraph of the amount of the reckonable earnings in that week to which that payment relates where those reckonable earnings do not exceed €356 (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis), and

(ii) at the rate of 10.05 per cent of the amount of the reckonable earnings in that week to which that payment relates where those reckonable earnings exceed €356 (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis).

TABLE

Contribution payable by employed contributor’s employer where the weekly reckonable earnings do not exceed €356	Period for which contribution payable
3.9 per cent	2 July 2011 to 31 December 2011
3.9 per cent	1 January 2012 to 31 December 2012
3.9 per cent	1 January 2013 to 31 December 2013
7.8 per cent	1 January 2014 to 31 December 2014 and each subsequent contribution year

”.

(2) This section comes into operation on 2 July 2011.

Description of benefits.

4.— Section 39(1) (amended by section 17 of the Social Welfare and Pensions Act 2010) of the Principal Act is amended by substituting the following paragraph for paragraph (k):

“(k) widow’s (contributory) pension, widower’s (contributory) pension and surviving civil partner’s (contributory) pension,”.

Discontinuance of death benefit — parents.

5.— (1) Section 80 of the Principal Act is amended by substituting “sections 81, 83 and 84” for “sections 81 to 84”.

(2) Section 82 of the Principal Act is repealed.

(3) Section 241(2) of the Principal Act is amended—

(a) in paragraph (c) by substituting “sections 81 and 83” for “sections 81, 82 and 83”, and

(b) in paragraph (f) by substituting “section 81 or 83” for “section 81, 82 or 83”.

(4) Notwithstanding the repeal of section 82 of the Principal Act effected by subsection (2) —

(a) where a person is in receipt of death benefit under section 82 of the Principal Act immediately before the commencement of this section, or

(b) where a person makes a claim for death benefit under section 82 of the Principal Act and the claim has not been fully determined before the commencement of this section and the person would have become entitled to death benefit but for subsection (2),

death benefit under section 82 of the Principal Act shall be payable for so long as the person continues to be entitled to the benefit under the Principal Act and regulations made thereunder as if subsection (2) had not been commenced.

Discontinuance of State pension (transition). 6.— Section 114 of the Principal Act is amended by inserting the following subsection after subsection (8):

“(9) Notwithstanding the provisions of this Chapter, State pension (transition) shall not be payable to a person who attains the age of 65 years on or after 1 January 2014.”.

Increase in pensionable age. 7.—F1[...]

Amendment of section 144 of Principal Act. 8.— The Principal Act is amended in section 144—

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

“(3A) In this section—

(a) a reference to a civil partner is a reference to each civil partner of a couple in relation to the other, and

(b) a reference to a cohabitant is a reference to each cohabitant in relation to the other.”, and

(b) by substituting the following subsection for subsection (4) (amended by section 19 of the Social Welfare and Pensions Act 2010):

“(4) For the purposes of this section, a reference to ‘jobseeker’s allowance’ shall be read as including a reference to pre-retirement allowance.”.

One-parent family payment — amendments. 9.— (1) Section 2(3)(b) of the Principal Act is amended in sub-paragraph (i) by substituting “174(1), 178(4), 178(6), 178A(3),” for “174(1),”.

(2) Section 172(1) of the Principal Act is amended—

(a) in the definition of “qualified parent” (amended by section 20 of the Social Welfare and Pensions Act 2010), by substituting “relevant child” for “qualified child”, and

(b) by inserting the following definitions:

“ ‘relevant child’ means a person who—

- (a) is ordinarily resident in the State,
- (b) is not detained in a children detention school, and
- (c) has—
 - (i) not attained the age of 14 years, or
 - (ii) attained the age of 14 years but has not attained the age of 16 years and is a child in respect of whom a payment under Chapter 8A of Part 3 is in payment;

‘relevant date’ means the date of death of—

- (a) the spouse of the surviving spouse,
- (b) the cohabitant of the surviving cohabitant, or
- (c) the civil partner of the surviving civil partner;”.

(3) Section 172A (inserted by section 25 of the Social Welfare (Miscellaneous Provisions) Act 2010) of the Principal Act is repealed.

(4) Section 173 of the Principal Act is amended—

- (a) by substituting the following subsection for subsection (1) (amended by section 22 of the Social Welfare Law Reform and Pensions Act 2006):

“(1) Subject to this Act and to regulations made under this Act, a payment (in this Act referred to as ‘one-parent family payment’) shall be payable to any of the following persons who has not attained pensionable age:

- (a) a qualified parent;
- (b) a person to whom section 173A or 173B applies;
- (c) a person to whom section 178A(6), 178A(7) or 178A(8) applies.”.

(b) in subsection (2) (amended by section 20 of the Social Welfare and Pensions Act 2010), by substituting “person” for “qualified parent” in each place in which it occurs,

(c) in subsection (3) (amended by section 25 of the Social Welfare (Miscellaneous Provisions) Act 2010), by substituting “person” for “qualified parent”,

(d) in subsection (5) (amended by section 25 of the Social Welfare (Miscellaneous Provisions) Act 2010), by substituting “person” for “qualified parent” in each place in which it occurs, and

(e) in subsection (6) by substituting “person” for “qualified parent” in each place in which it occurs.

(5) The Principal Act is amended by substituting the following sections for sections 173A and 173B (amended by section 20 of the Social Welfare and Pensions Act 2010):

“Entitlement to one-parent family payment when relevant child attains age of 14 years.

173A.— (1) This section applies to—

- (a) a surviving spouse where both spouses of a married couple are, on the relevant date, living together and one of them dies,
- (b) a surviving cohabitant where both cohabitants are, on the relevant date, cohabiting and one of them dies, and

- (c) a surviving civil partner where both civil partners of a civil partnership are, on the relevant date, living together and one of them dies,

and where the surviving spouse, surviving cohabitant or surviving civil partner is the parent, step-parent, adoptive parent or legal guardian of at least one child who normally resides with that surviving spouse, surviving cohabitant or surviving civil partner and the youngest child has, on the relevant date, attained the age of 14 years.

(2) For the purposes of this section, the reference to 14 years in subsection (1) shall be read as a reference to 16 years where the youngest child is a child in respect of whom a payment under Chapter 8A of Part 3 is in payment.

(3) Subject to subsections (6) to (8) of section 178A, one-parent family payment shall be payable to a surviving spouse, surviving cohabitant or surviving civil partner to whom this section applies for the shorter of—

- (a) the period commencing on the relevant date and ending on the day that is 2 years after that date, or
- (b) the period commencing on the relevant date and ending on the date that the youngest child attains the age of 18 years.

Entitlement to one-parent family payment in certain circumstances.

173B.— (1) This section applies to—

- (a) a surviving spouse where both spouses of a married couple are, on the relevant date, living together and one of them dies,
- (b) a surviving cohabitant where both cohabitants are, on the relevant date, cohabiting and one of them dies, and
- (c) a surviving civil partner where both civil partners are, on the relevant date, living together and one of them dies,

and where the surviving spouse, surviving cohabitant or surviving civil partner is the parent, step-parent, adoptive parent or legal guardian of at least one child who normally resides with that surviving spouse, surviving cohabitant or surviving civil partner and the youngest child has, on the relevant date, attained the age of 12 years but has not attained the age of 14 years.

(2) For the purposes of this section the reference to 12 years and to 14 years in subsection (1) shall be read as references to 14 years and to 16 years, respectively, where the youngest child is a child in respect of whom a payment under Chapter 8A of Part 3 is in payment.

(3) Subject to subsections (6) to (8) of section 178A, where one-parent family payment is payable to a qualified parent who is a surviving spouse, surviving cohabitant or surviving civil partner referred to in subsection (1), that payment shall, notwithstanding section 172(1), continue to be payable for a period of 2 years commencing on the relevant date.”.

(6) The Principal Act is amended by substituting the following sections for sections 175 to 177:

“ Disqualification.

175.— A person referred to in section 173(1) shall not, if and so long as that person is a cohabitant, be entitled to and shall be disqualified for receiving payment of one-parent family payment.

Continuation of payment.

176.— In the case of—

- (a) a person whose spouse or civil partner has been committed in custody to a prison or place of detention for not less than 6 months, or
- (b) a person to whom section 178A(6), 178A(7) or 178A(8) applies who is a person whose spouse or civil partner has been committed in custody to a prison or place of detention for not less than 6 months,

one-parent family payment shall continue to be paid for 4 weeks after the release of that person's spouse or civil partner from a prison or place of detention.

Regulations.

177.— The Minister shall make regulations in relation to one-parent family payment and the regulations may, in particular and without prejudice to the generality of the foregoing, specify the circumstances in which, for the purposes of this Chapter—

- (a) a person is to be regarded as being a separated spouse,
- (b) a civil partner is to be regarded as a civil partner who is not living with the other civil partner of the civil partnership,
- (c) a person is to be regarded as being an unmarried person,
- (d) a person is to be regarded as being a prisoner's spouse or civil partner.”.

(7) Section 178A (amended by section 25 of the Social Welfare (Miscellaneous Provisions) Act 2010) of the Principal Act is amended—

(a) by substituting the following subsections for subsections (6) to (8):

“(6) Where a person is in receipt of a one-parent family payment immediately before 27 April 2011 and would, but for the fact that the youngest child has attained the age of 14 years on or before 27 April 2011 continue to receive that payment immediately after 27 April 2011, that person shall continue to be eligible for payment as follows:

- (a) in 2011, until the youngest child attains the age of 18 years;
- (b) in 2012, until the youngest child attains the age of 18 years;
- (c) in 2013, until the youngest child attains the age of 17 years;
- (d) in 2014, until the youngest child attains the age of 16 years;
- (e) in 2015, until the youngest child attains the age of 15 years;
- (f) in 2016, until the youngest child attains the age of 14 years.

(6A) For the purposes of subsection (6) where the youngest child has attained the age of 16 years on or before 27 April 2011 and is a child in respect of whom a payment under Chapter 8A of Part 3 is in payment—

- (a) subsection (6)(e) shall be read as if ‘16 years’ was substituted for ‘15 years’, and
- (b) subsection (6)(f) shall be read as if ‘16 years’ was substituted for ‘14 years’.

(7) Where a person is in receipt of a one-parent family payment immediately before 27 April 2011 and would, but for the fact that the youngest child has—

- (a) attained the age of 14 years on or before 27 April 2011, or

(b) attained the age of 14 years but has not attained the age of 16 years on or before 27 April 2011 and is a child in respect of whom a payment under Chapter 8A of Part 3 is in payment,

continue to receive that payment immediately after 27 April 2011, one-parent family payment shall continue to be payable to that person up to the end of an academic year which commences in 2012, where the youngest child who, having attained the age of 18 years, is under the age of 22 years, and is receiving full-time education, in such circumstances as may be prescribed.

(8) Where a person has—

(a) been in receipt of one-parent family payment for a period of 52 consecutive weeks and is disqualified for receipt of that payment on or after 27 April 2011 by virtue of—

(i) having gross weekly earnings in excess of the amount specified in section 173(3), or

(ii) participation in a scheme commonly known as the Back to Education Allowance,

and

(b) but for that disqualification the person would be entitled to that one-parent family payment,

the person shall again become entitled to that payment, subject to, and in accordance with, subsection (6), at the expiration of the disqualification.”,

(b) in subsection (9), by substituting “27 April 2011” for “the commencement of section 172A”, and

(c) by substituting the following subsection for subsection (10):

“(10) Subsections (6), (6A) and (8) shall cease to have effect on 31 December 2016.”.

Supplementary welfare allowance — amendments. **10.**— (1) The Principal Act is amended by substituting the following section for section 206:

“Arrangements for burials.

206.— (1) A designated person may make arrangements for and provide assistance towards the burial of a person, where that person has—

(a) died in the State and suitable arrangements have not otherwise been made for the burial of that person, or

(b) (i) drowned and whose body has been cast ashore, or

(ii) otherwise perished and been found dead,

in the State and whose body has not been claimed for burial.

(2) A designated person may, in any case in which he or she considers it appropriate, bring into and make arrangements for the burial in the State of the body of a person eligible for supplementary welfare allowance who has died outside the State.

(3) A designated person may defray all expenses necessarily incurred in the burial of the body of a deceased person under this section.

(4) A designated person may seek repayment of expenses incurred under this section in the burial of the body of a deceased person—

(a) from the estate of the deceased person, or

(b) from any person who was liable to maintain the deceased person immediately before his or her death.”.

(2) Section 244A(1) (inserted by *section 12*) of the Principal Act is amended in paragraph (a) by substituting “a designated person” for “the Executive”.

(3) The Principal Act is amended by substituting the following section for section 342 (inserted by *section 17*):

“Repayment of amounts due to be deferred, suspended, reduced or cancelled.

342.— Notwithstanding anything to the contrary and subject to section 342A, where a person is required to repay an amount of any—

(a) benefit described in section 39(1),

(b) assistance described in section 139(1),

(c) child benefit,

(d) respite care grant,

(e) family income supplement,

(f) continued payment for qualified children, or

(g) payment pursuant to section 239,

in accordance with this Act, an officer of the Minister authorised by him or her for this purpose may, subject to the conditions and in the circumstances that shall be prescribed, defer, suspend, reduce or cancel repayment of any such amount.”.

(4) Section 11(1) of the Social Welfare and Pensions Act 2010, insofar as it relates to the amendment of section 241(1A) of the Principal Act specified at reference 9 of Schedule 2 to the Social Welfare and Pensions Act 2010, is repealed.

(5) Sections 11(2)(c) and 11(3) of the Social Welfare and Pensions Act 2010, insofar as they relate to the amendment of section 300(2)(b) of the Principal Act, are repealed.

(6) Section 18(2) of the Social Welfare and Pensions Act 2008, insofar as it relates to the amendment of section 342 of the Principal Act specified in column (2) of Schedule 1 to the Social Welfare and Pensions Act 2008 opposite the mention of section 342 in column (1) of that Schedule, is repealed.

(7) Section 359 of the Principal Act is repealed.

Amendments to
Principal Act
relating to
assessment of
means.

11.— (1) Section 227 of the Principal Act is amended in the definition of “weekly family income” —

(a) by deleting paragraph (d), and

(b) by substituting the following paragraph for paragraph (g) (amended by section 22 of the Social Welfare (Miscellaneous Provisions) Act 2008):

“(g) any contribution payable under Part 18D of the Act of 1997 and known as universal social charge.”.

(2) Part 4 of Schedule 3 to the Principal Act is amended in Rule 1(2)(b)(v)(i) (amended by section 24 of the Social Welfare and Pensions Act 2008) by substituting the following sub-clauses for sub-clauses (A) to (C):

- “(A) any allowable contribution referred to in Regulations 41 and 42 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001), and
- (B) any amount deducted from reckonable earnings under section 13 and regulations made under section 14, and”.

Information to be supplied by claimants and beneficiaries.

12.— (1) Section 241 of the Principal Act is amended by deleting subsections (1A) and (1B) (inserted by section 9 of the Social Welfare and Pensions Act 2009).

(2) The Principal Act is amended by inserting the following section after section 244:

“Information to be supplied by claimants and beneficiaries for profiling and activation purposes.

244A.— (1) The Minister may prescribe information and the nature and form of such information to be furnished by a claimant or beneficiary where the Minister forms the opinion that the furnishing of that information would assist—

- (a) a deciding officer, bureau officer, the Executive or any other person who makes a decision in relation to a claim for, or the payment of, benefit in deciding whether—
 - (i) a claimant is entitled to make a claim for benefit or to receive any benefit, or
 - (ii) a beneficiary is entitled to continue to receive any benefit, or
- (b) in assessing the training, education or development needs appropriate to the circumstances of the claimant or beneficiary.

(2) For the purposes of the information to be furnished by a claimant or beneficiary under subsection (1), different types and forms of information may be prescribed in relation to—

- (a) different classes of claimants or beneficiaries, or
- (b) different benefits.”.

Amendment of section 250 of Principal Act.

13.— Section 250 of the Principal Act is amended—

(a) in subsection (3), by substituting the following paragraph for paragraph (e):

“(e) for the purposes of answering or clarifying any questions that the social welfare inspector may have consequent on the inspection of the premises or place, to summon—

- (i) the occupier of the premises or place,
- (ii) any person who is or has been employing persons there,
- (iii) such person as may be designated by the occupier or employer as competent to answer or clarify any such questions,

(iv) any employee of a person referred to in subparagraph (i) or (ii), or

(v) any person found in the premises or place who the social welfare inspector has reasonable cause to believe to be or to have been an insured person,

to attend at that premises or place or at an office of the Minister, at any reasonable time specified, by written notice, and sent or given to him or her by—

(I) delivering it to the person,

(II) leaving it at the said premises or place,

(III) leaving it at the address at which the person ordinarily resides,

(IV) sending it by post in a prepaid registered letter to the said premises or place, or

(V) sending it by post in a prepaid registered letter to the address at which the person ordinarily resides.”,

(b) by substituting the following subsections for subsections (11) and (12):

“(11) Where a person is required by subsection (4) to produce records required under regulations made under section 17(5), he or she shall, on the request of a social welfare inspector, produce those records at—

(a) the person’s principal place of business,

(b) the address at which the person ordinarily resides, or

(c) an office of the Minister.

(12) If a person fails to comply with a request to produce records under subsection (11), a social welfare inspector may issue a written request for those records, addressed to the person concerned, by sending it by post in a prepaid registered letter to—

(a) the person’s principal place of business, or

(b) the address at which the person ordinarily resides.

(12A) A person who fails to comply with a written request to produce records under subsection (12) within 21 days following the date of issue of that request is guilty of an offence.

(12B) For the purposes of this section, a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.”,

and

(c) by substituting the following subsection for subsection (16):

“(16) For the purposes of ensuring compliance with this Act, a social welfare inspector may, if accompanied by a member of the Garda Síochána in uniform, or an officer of the Customs and Excise in uniform—

(a) stop any vehicle, and

(b) on production of his or her certificate of appointment where so requested—

- (i) question and make enquiries of any person in the vehicle or in the vicinity of the vehicle, and
- (ii) require such person, where the social welfare inspector reasonably suspects that the vehicle is being used in the course of employment or self-employment, to give to the social welfare inspector any record relating to the employment or self-employment of such person which such person has possession of in the vehicle.”.

Allocation of personal public service number in certain circumstances.

14.— Section 262 of the Principal Act is amended—

(a) in subsection (3) (amended by section 8 of the Social Welfare and Pensions Act 2010), by substituting the following paragraphs for paragraph (b):

“(b) Where a person who has a transaction with a specified body is under the age of 18 years, the following information shall be given to the Minister in relation to that person by that person’s parent or guardian—

- (i) the information specified in paragraph (a), and
- (ii) the public service identity of—
 - (I) his or her mother and father, or
 - (II) his or her guardian or guardians.

(c) Where a person who has a transaction with a specified body is certified by a registered medical practitioner to be a person who is or is likely soon to become unable for the time being to manage his or her own financial affairs, the following information shall be given to the Minister by any person appointed to act on behalf of that person in accordance with regulations made under section 244(1)(b)—

- (i) the information specified in paragraph (a) in relation to the person so certified, and
- (ii) the public service identity of the person so appointed to act on behalf of that person.”,

and

(b) by substituting the following subsection for subsection (9):

“(9) A person, other than—

- (a) the person to whom the personal public service number concerned refers,
- (b) the parent or guardian of the person under the age of 18 years to whom the personal public service number concerned refers,
- (c) a person who has been appointed to act on behalf of a person in accordance with regulations made under section 244(1)(b) to whom the personal public service number concerned refers,
- (d) a specified body,
- (e) a person who has a transaction with a specified body where the personal public service number is relevant to the transaction between the person and the specified body, or

(f) a person who is required to comply with section 260, 261 or 261A or regulations made under section 260,

who uses a personal public service number or seeks to have a personal public service number disclosed to him or her is guilty of an offence.”.

Cancellation and
surrender of
public services
card.

15.— The Principal Act is amended by inserting the following section after section 263:

“Cancellation and surrender of public services card.

263A.— (1) The Minister may cancel a public services card issued to a person under section 263 if—

- (a) the Minister becomes aware of a fact or a circumstance, whether occurring before or after the issue of the public services card, that would have required or permitted him or her to refuse to issue the public services card under section 263 to the person had the Minister been aware of the fact or the circumstance before the public services card was issued,
- (b) the Minister is notified that the public services card is, without lawful authority or reasonable excuse, in the possession or control of another person, or
- (c) the Minister is notified by the person, or by another person who has been appointed to act on behalf of that person in accordance with regulations made under section 244(1)(b), that the public services card has been lost or stolen.

(2) Where a public services card issued to a person is cancelled under subsection (1), the Minister shall inform the person by notice in writing of the cancellation and the grounds for it.

(3) Where a public services card issued to a person is cancelled under subsection (1), the person shall, if he or she is in possession or control of the public services card, surrender it as soon as practicable to the Minister.

(4) Where a public services card is cancelled under subsection (1), the Minister may, if appropriate, require by notice in writing the person who is in possession or control of the public services card to surrender it as soon as practicable to the Minister.

(5) A person who, without lawful authority or reasonable excuse, has a public services card other than a public services card that was issued to him or her in his or her possession or control shall, as soon as practicable, surrender it to the Minister.

(6) A person who is required by subsection (3), (4) or (5) to surrender a public services card to the Minister, but without reasonable excuse, does not do so in accordance with the requirement, is guilty of an offence.”.

National
internship
scheme —
amendments to
Principal Act.

16.— (1) Section 2(2)(a) (amended by section 15 of the Social Welfare and Pensions Act 2010) of the Principal Act is amended in subparagraph (v) by inserting “or the scheme administered by An Foras Áiseanna Saothair and known as the national internship scheme” after “the Industrial Training Act 1967”.

(2) Section 247A (inserted by section 27 of the Social Welfare and Pensions Act 2010) of the Principal Act is amended—

(a) by inserting “during any week or part of a week” before “while he or she is engaged”, and

(b) by substituting “the scheme referred to in section 298A(1)(b) (inserted by *section 16* of the *Social Welfare and Pensions Act 2011*)” for “the programme referred to in paragraph (b) of subsection (1) of section 298A (inserted by section 27(b) of the *Social Welfare and Pensions Act 2010*)”.

(3) Section 298A (inserted by section 27 of the *Social Welfare and Pensions Act 2010*) of the Principal Act is amended by substituting the following subsection for subsection (1):

“(1) A person who is engaged by another person to carry out work or perform any duty or service pursuant to a placement under—

(a) the work placement programme within the meaning of subsection (3) of section 142B,

(b) the scheme administered by An Foras Áiseanna Saothair and known as the national internship scheme, or

(c) any variation, extension or replacement of the programme referred to in paragraph (a) or scheme referred to in paragraph (b),

shall, for the purposes of any enactment or rule of law (other than the Tax Acts and the Safety, Health and Welfare at Work Act 2005), be deemed not to be an employee of the other person or to carry out such work or perform such duties pursuant to a contract of service.”.

(4) Rule 2 of Part 4 of Schedule 3 to the Principal Act is amended—

(a) by substituting the following paragraph for paragraph (a):

“(a) income arising from such employment or training or participation or placement in such scheme or programme as is prescribed,”

and

(b) by deleting paragraph (aa) (inserted by section 27 of the *Social Welfare and Pensions Act 2010*).

(5) Schedule 3 to the Principal Act is amended in paragraph 13 of Table 2 by inserting “or the scheme administered by An Foras Áiseanna Saothair and known as the national internship scheme” after “the Industrial Training Act 1967”.

(6) The Principal Act is amended in the manner specified in the Table to this section.

TABLE

Amendments to Principal Act

Provision affected (1)	Amendment (2)
Section 2(2)(a)(v)	Delete “or the scheme administered by An Foras Áiseanna Saothair and known as the national internship scheme”
Section 2(2)(a)(vii)	(a) Substitute the following clause for clause (IV): “(IV) Part-Time Job Incentive, or”, and (b) Insert the following clause after clause (IV): “(V) the national internship scheme,”
Section 298A(1)(b)	Substitute “administered by the Minister” for “administered by An Foras Áiseanna Saothair”

Schedule 3, Table 2, reference 12	(a) Substitute the following paragraph for paragraph (d): “(d) Part-Time Job Incentive, or”, and (b) Insert the following paragraph after paragraph (d): “(e) the national internship scheme;”
Schedule 3, Table 2, reference 13	Delete “or the scheme administered by An Foras Áiseanna Saothair and known as the national internship scheme”

Repayment of amounts due to be deferred, suspended or cancelled.

17.— The Principal Act is amended by substituting the following section for section 342:

“Repayment of amounts due to be deferred, suspended, reduced or cancelled.

342.— Notwithstanding anything to the contrary and subject to section 342A, where a person is required to repay an amount of any—

- (a) benefit described in section 39(1),
- (b) assistance described in section 139(1),
- (c) child benefit,
- (d) respite care grant,
- (e) family income supplement,
- (f) continued payment for qualified children, or
- (g) payment pursuant to section 239,

in accordance with this Act—

- (i) an officer of the Minister authorised by him or her for this purpose,
or
- (ii) the Executive, in the case of supplementary welfare allowance,

may, subject to the conditions and in the circumstances that shall be prescribed, defer, suspend, reduce or cancel repayment of any such amount.”.

Repayment of amounts due arising from false or misleading statements or wilful concealment of facts.

18.— The Principal Act is amended by inserting the following section after section 342 (amended by *section 17*):

“Repayment of amounts due arising from false or misleading statements or wilful concealment of facts.

342A.— Where a person is required to repay an amount of any payment referred to in paragraphs (a) to (g) of section 342(1) by virtue of—

- (a) a revised decision given by a deciding officer under section 302(a),
- (b) a revised decision given by an appeals officer under section 319(a),
or
- (c) a revised determination given under section 325(a),

the amount to be repaid in such circumstances shall not be reduced by the amount of any other payment referred to in paragraphs (a) to (g) of section 342 to which the person would otherwise have been entitled in the period to which the

overpayment relates had he or she not been in receipt of the payment which gave rise to the overpayment.”.

Supplementary welfare allowance — calculation of means. **19.**— Part 4 of Schedule 3 to the Principal Act is amended in Rule 1(2)(b) by substituting the following clause for clause (iva) (inserted by section 36 of the Social Welfare and Pensions Act 2007):

“(iva) any moneys received by way of guardian’s payment (contributory), guardian’s payment (non-contributory), domiciliary care allowance or respite care grant, and”.

Specified bodies. **20.**— Schedule 5 to the Principal Act is amended in paragraph 1(4) (amended by section 20 of the Social Welfare and Pensions (No. 2) Act 2009) by inserting—

(a) “the Probate Office,” after “the Private Security Authority,” and

(b) “Sustainable Energy Ireland — The Sustainable Energy Authority of Ireland,” after “the Road Safety Authority,”.

PART 3

AMENDMENTS AND MODIFICATION TO OTHER ENACTMENTS

Exclusion resulting from membership of either House of the Oireachtas, European Parliament or local authorities. **21.**— The Comhairle Act 2000 is amended by inserting the following section after section 18:

“Exclusion resulting from membership of either House of the Oireachtas, European Parliament or local authorities.

18A.— (1) Where a member of the Board—

(a) is nominated as a candidate for election to either House of the Oireachtas or the European Parliament,

(b) is elected as a member of either House of the Oireachtas or the European Parliament,

(c) is nominated as a member of Seanad Éireann,

(d) is regarded under Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament to fill a vacancy, or

(e) becomes a member of a local authority,

he or she thereupon ceases to hold office.

(2) Where a person who is a member of the staff of the Board—

(a) is nominated as a candidate for election to either House of the Oireachtas or the European Parliament,

(b) is elected as a member of either House of the Oireachtas or the European Parliament,

(c) is nominated as a member of Seanad Éireann,

(d) is regarded under Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament to fill a vacancy, or

(e) becomes a member of a local authority,

he or she thereupon stands seconded from employment by the Board and shall not be paid by, or be entitled to receive from, the Board any remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected, or when he or she becomes a member of a local authority, as the case may be, and ending when such person ceases to be a member of either such House or such Parliament, or such local authority, as the case may be.

(3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament or a local authority shall, while so entitled or such a member, be disqualified from becoming a member of the Board, the chief executive or an employee of the Board.

(4) Without prejudice to the generality of subsection (2), that subsection shall be read as prohibiting, *inter alia*, the reckoning of a period mentioned in that subsection as service with the Board for the purposes of any superannuation benefits.

(5) This section applies to a person who—

(a) is nominated as a candidate for election to either House of the Oireachtas or the European Parliament,

(b) is elected as a member of either House of the Oireachtas or the European Parliament,

(c) is nominated as a member of Seanad Éireann,

(d) is regarded under Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament to fill a vacancy, or

(e) becomes a member of a local authority,

on or after 1 July 2011.”.

Amendment of
National
Minimum Wage
Act 2000.

22.— The National Minimum Wage Act 2000 is amended in section 11 (amended by section 13 of the Financial Emergency Measures in the Public Interest Act 2010) by substituting the following subsection for subsection (1):

“(1) The Minister shall, by order, declare a national minimum hourly rate of pay for the purposes of this Act of €8.65.”.

Reduction in
national training
fund levy in
certain
circumstances.

23.— (1) The National Training Fund Act 2000 is amended—

(a) in section 1(1) by inserting the following definition:

“ ‘contribution week’ has the same meaning as it has in the Social Welfare Consolidation Act 2005;”,

(b) by substituting the following section for section 3:

“Levy.

3.— Subject to and in accordance with the provisions of this Act, there is, by virtue of this section, imposed upon, and there shall be payable by, every employer in respect of every employed contributor who is employed by the employer a levy (which shall be known as the ‘National Training Fund Levy’ and in this Act is referred to as the ‘levy’).”,

and

(c) in section 4—

(i) by substituting the following subsection for subsection (1):

“(1) Where in any contribution week a payment is made to or for the benefit of an employed contributor in respect of reckonable earnings of that employed contributor, levy shall be payable by the employed contributor’s employer—

(a) at the percentage rate specified in the Table to this subsection of the amount of the reckonable earnings in that week to which that payment relates where those reckonable earnings do not exceed €356 (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis), and

(b) at the rate of 0.7 per cent of the amount of the reckonable earnings in that week to which that payment relates where those reckonable earnings exceed €356 (or the equivalent thereof in the case of an employed contributor remunerated otherwise than on a weekly basis).

TABLE

Levy payable by employed contributor’s employer where the weekly reckonable earnings do not exceed €356	Period for which contribution payable
0.35 per cent	2 July 2011 to 31 December 2011
0.35 per cent	1 January 2012 to 31 December 2012
0.35 per cent	1 January 2013 to 31 December 2013
0.7 per cent	1 January 2014 to 31 December 2014 and each subsequent contribution year

”

(ii) by substituting the following subsection for subsection (4):

“(4) Where, but for this subsection, levy would be payable in respect of an employed contributor under this Act, then if no employment contribution is payable during any period of exemption by virtue of a scheme provided for under regulations made pursuant to section 13(9) of the Social Welfare Consolidation Act 2005 and known as the Employers’ Pay-Related Social Insurance Exemption Scheme, in respect of that contributor, levy shall not be payable during that period.”,

and

(iii) by deleting subsections (5), (6) and (7).

(2) This section comes into operation on 2 July 2011.

Disapplication of section 7 of Official Languages Act 2003.

24.— Section 7 of the Official Languages Act 2003 does not apply in relation to this Act. The text of this Act shall be made available electronically in each of the official languages as soon as practicable after its enactment.

PART 4

AMENDMENTS TO PENSIONS ACT 1990

CHAPTER 1

Definition

Definition.

25.— In this Part “Principal Act” means the Pensions Act 1990.

CHAPTER 2

Regulatory own funds

Amendment of section 2 of Principal Act.

26.— Section 2 of the Principal Act is amended in subsection (1) by—

(a) substituting—

(i) the following definition for the definition of “actuary”:

“ ‘actuary’, in relation to a scheme or regulatory own funds trust RAC, means a person appointed in pursuance of this Act as actuary, for the purposes of this Act, of the scheme or regulatory own funds trust RAC;”,

and

(ii) the following definition for the definition of “Directive”:

“ ‘Directive’ means Directive 2003/41/EC ¹ of the European Parliament and of the Council as amended by Directive 2009/138/EC ² of the European Parliament and of the Council and Directive 2010/78/EU ³ of the European Parliament and of the Council;”,

and

(b) inserting the following definitions:

“ ‘actuarial funding certificate’ has the meaning assigned to it by section 42;

‘credit institution’ means a credit institution within the meaning of Article 4.1 of Directive 2006/48/EC ⁴ of the European Parliament and the Council relating to the taking up and pursuit of the business of credit institutions which is authorised in accordance with and for the purposes of that Directive;

‘funding standard’ shall be construed in accordance with section 44;

¹ OJ L 235, 23.09.2003, p. 10

² OJ L 335, 17.12.2009, p. 1

³ OJ L 331, 15.12.2010, p. 120

⁴ OJ L 177, 30.06.2006, p. 1

'regulatory own funds certificate' has the meaning assigned to it by section 53J;

'regulatory own funds scheme' has the meaning assigned to it by section 53E;

'regulatory own funds trust RAC' has the meaning assigned to it by section 53E;

'relevant scheme' means a scheme to which Part IV applies by virtue of section 41;".

Amendment of section 40 of Principal Act.

27.— Section 40 of the Principal Act is amended by deleting the definitions of "actuarial funding certificate", "funding standard" and "relevant scheme".

Amendment of section 41 of Principal Act.

28.— Section 41 of the Principal Act is amended by substituting the following paragraph for paragraph (a) of subsection (2):

"(a) this Part shall apply to—

- (i) a defined contribution scheme which is a regulatory own funds scheme,
- (ii) a defined contribution scheme which is paying benefits to or in respect of members where those benefits are not secured under a policy or policies of assurance with one or more undertakings, and
- (iii) a small scheme of the type referred to in paragraph (b) of subsection (1) which is a regulatory own funds scheme,".

Amendment of section 43 of Principal Act.

29.— Section 43 of the Principal Act is amended—

(a) in subsection (1) by substituting "and, subject to subsections (1A) and (1B)" for "and, subject to subsection (1A)",

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

"(1B) Notwithstanding subsections (1) and (1A) and subject to section 53M, in the case of a relevant scheme which is a regulatory own funds scheme an actuarial funding certificate shall be submitted to the Board having an effective date of:

- (a) in the case of a relevant scheme which on 23 September 2010 was a regulatory own funds scheme, not later than 6 months after the date on which *Chapter 2* of *Part 4* of the *Social Welfare and Pensions Act 2011* comes into operation;
- (b) in the case of a relevant scheme which commences after 23 September 2010 and which from the relevant scheme's commencement is a regulatory own funds scheme—
 - (i) not later than 4 weeks after the date of commencement of the relevant scheme, or
 - (ii) not later than 4 weeks after the date on which *Chapter 2* of *Part 4* of the *Social Welfare and Pensions Act 2011* comes into operation,

whichever is the later;

(c) in the case of a relevant scheme which at its commencement was not a regulatory own funds scheme but becomes a regulatory own funds scheme after 23 September 2010—

(i) not later than 4 weeks after the date on which the scheme becomes a regulatory own funds scheme, or

(ii) not later than 4 weeks after the date on which *Chapter 2* of *Part 4* of the *Social Welfare and Pensions Act 2011* comes into operation,

whichever is the later.

(1C) While a relevant scheme to which this Part applies remains a regulatory own funds scheme each actuarial funding certificate submitted after the appropriate effective date referred to in subsection (1B) shall have an effective date not later than one year after the effective date of the immediately preceding certificate.

(1D) Where, in accordance with subsection (1B) or (1C) an actuarial funding certificate has been prepared and the relevant scheme subsequently ceases to be a regulatory own funds scheme, 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 subsection (2) by substituting “subsections (3), (3A), (3B) and (4)” for “subsections (3) and (4)”,

(d) in subsection (3), by substituting “then, subject to subsection (3A), in each case,” for “then, in each case,”,

(e) by inserting the following subsections after subsection (3):

“(3A) Subsection (3) shall not apply in relation to an annual report prepared under subsection (1) of section 55 where, on the last day of the period to which the report relates, the relevant scheme was a regulatory own funds scheme.

(3B) Subject to section 53M an actuarial funding certificate required under subsection (1B) or (1C) shall be submitted to the Board by the trustees of the regulatory own funds scheme within 3 months of the effective date of the certificate.”

and

(f) by substituting the following subsection (4) for subsection (4):

“(4) The Board, on application to it in that behalf by the trustees of a scheme, may extend the time limit within which an actuarial funding certificate shall be submitted to the Board under subsection (2), (3) or (3B), as the case may be, for a period not exceeding 6 months where the Board considers the extension is appropriate having regard to the circumstances of the application concerned.”.

Amendment of
section 49 of
Principal Act.

30.— Section 49 of the Principal Act is amended—

(a) in subsection (1) by inserting “(other than a regulatory own funds scheme)” after “the trustees of a scheme”,

(b) in subsection (3) by inserting “(other than a regulatory own funds scheme)” after “the trustees of a scheme”, and

(c) in subsection (3A) by inserting “(other than a regulatory own funds scheme)” after “the trustees of a scheme”.

- Amendment of section 50 of Principal Act. **31.**— Section 50 of the Principal Act is amended—
- (a) in subsection (1) by inserting “(other than a regulatory own funds scheme)” after “trustees of a relevant scheme”, and
 - (b) in subsection (1A) by inserting “(other than a regulatory own funds scheme)” after “The Board may, by notice in writing, direct the trustees of a scheme”.
- Amendment of section 50A of Principal Act. **32.**— Section 50A(1) of the Principal Act is amended by inserting “(other than a regulatory own funds scheme)” after “Subject to this section and section 50, the trustees of a scheme”.
- Amendment of section 51 of Principal Act. **33.**— Section 51 of the Principal Act is amended—
- (a) in subsection (1) by inserting “or regulatory own funds trust RAC” after “to a scheme”, and
 - (b) in subsection (2) by inserting “or regulatory own funds trust RAC” after “scheme” in each place where it occurs.
- Amendment of section 51A of Principal Act. **34.**— Section 51A of the Principal Act is amended—
- (a) in subsection (1) by inserting “or trust RAC” after “appointed to a scheme”,
 - (b) in subsection (4) by inserting “or trust RAC” after “to the scheme” in both places where it occurs, and
 - (c) in subsection (5) by substituting the following paragraphs for paragraphs (c) and (d):
 - “(c) funding proposals certified by an actuary in accordance with section 49;
 - (d) annual statements made by an actuary in accordance with section 55;
 - (e) regulatory own funds trust RAC technical provisions certificates prepared by an actuary for the purposes of section 53G;
 - (f) regulatory own funds certificates prepared by an actuary in accordance with section 53J.”.
- Regulatory Own Funds Schemes. **35.**— The Principal Act is amended by inserting the following new Part after Part IVA (inserted by section 42 of the Social Welfare and Pensions Act 2010):

“PART IVB

REGULATORY OWN FUNDS SCHEMES

- Interpretation. **53E.**— In this Part, except where the context otherwise requires—
- ‘biometric risks’ means risks linked to death, disability and longevity;
 - ‘funding standard liabilities’ in relation to a regulatory own funds scheme which is a relevant scheme, means on any date the aggregate of the liabilities and

estimated expenses referred to in section 44, calculated as if the actuary had prepared an actuarial funding certificate having that date as the effective date and as if the percentage referred to in section 44(a)(v) was 100 per cent;

'regulatory own funds certification date' shall be construed in accordance with subsection (2) of section 53J;

'regulatory own funds notification date' shall be construed in accordance with subsection (2) of section 53K;

'regulatory own funds proposal' has the meaning assigned to it by section 53L;

'regulatory own funds requirement' means the requirement to hold additional resources under section 53H, and references in this Part to 'satisfying' the regulatory own funds requirement mean that the regulatory own funds scheme or the regulatory own funds trust RAC holds sufficient additional resources to at least satisfy that requirement;

'regulatory own funds scheme' means a relevant scheme where the relevant scheme and not any sponsoring undertaking to whom the relevant scheme relates—

- (a) underwrites any liability to cover against biometric risks,
- (b) guarantees a given investment performance, or
- (c) guarantees a given level of benefits;

'regulatory own funds trust RAC' means a trust RAC which—

- (a) underwrites any liability to cover against biometric risks,
- (b) guarantees a given investment performance, or
- (c) guarantees a given level of benefits;

'regulatory own funds trust RAC technical provisions certificate' means a certificate prepared by an actuary certifying if, in the opinion of the actuary, the resources of the regulatory own funds trust RAC at the effective date of the certificate would have been sufficient to satisfy the technical provisions requirement, if the regulatory own funds trust RAC had been wound up on that date;

'technical provisions' means—

- (a) in relation to a regulatory own funds scheme on any date the regulatory own funds scheme's funding standard liabilities,
- (b) in relation to a regulatory own funds trust RAC on any date, were the regulatory own funds trust RAC to be wound up on that date, the sum of the value of the liabilities of the regulatory own funds trust RAC to provide benefits in accordance with the rules of the trust RAC and the estimated expenses of administering the winding up of the trust RAC calculated in accordance with any applicable guidance specified in regulations;

'technical provisions certification date' means the effective date as construed in accordance with section 53G;

'technical provisions requirement' means in relation to a regulatory own funds trust RAC, the requirement to hold resources to provide for the technical provisions, and references in this Part to 'satisfying' the technical provisions requirement mean that the regulatory own funds trust RAC holds sufficient resources to at least satisfy that requirement;

'undertaking' has the meaning assigned to it by the Insurance Act 1989.

Application.

53F.— This Part applies to a regulatory own funds scheme and a regulatory own funds trust RAC other than—

- (a) a scheme which the Minister has by regulations made under section 52 excluded from the application of Part IV,
- (b) a scheme which is a statutory scheme to which section 776 of the Taxes Consolidation Act 1997 applies and where benefits are paid in whole or in part out of moneys provided from the Central Fund or moneys provided by the Oireachtas and the rules of which provide that an appeal may be made to a Minister of the Government,
- (c) a scheme or trust RAC the winding up of which has commenced,
- (d) a one-member arrangement,
- (e) a scheme or trust RAC the only benefits under which are payable in respect of the death of a member where those benefits are fully secured under a policy or policies of assurance with one or more than one undertaking.

Regulatory
own funds
trust RAC
technical
provisions
certificate.

53G.— (1) Subject to section 53M, the trustees of a regulatory own funds trust RAC shall cause the technical provisions and the technical provisions requirement for a regulatory own funds trust RAC to be calculated by an actuary and a regulatory own funds trust RAC technical provisions certificate to be prepared and submitted to the Board and the first such certificate shall have an effective date of:

- (a) in the case of a trust RAC which on 23 September 2010 was a regulatory own funds trust RAC, not later than 6 months after the date on which *Chapter 2* of *Part 4* of the *Social Welfare and Pensions Act 2011* comes into operation;
- (b) in the case of a trust RAC which commences after 23 September 2010 and which from the trust RAC's commencement is a regulatory own funds trust RAC—
 - (i) not later than 4 weeks after the date of commencement of the trust RAC, or
 - (ii) not later than 4 weeks after the date on which *Chapter 2* of *Part 4* of the *Social Welfare and Pensions Act 2011* comes into operation,

whichever is the later,

- (c) in the case of a trust RAC which at its commencement was not a regulatory own funds trust RAC but becomes a regulatory own funds trust RAC after 23 September 2010—
 - (i) not later than 4 weeks after the date on which the trust RAC becomes a regulatory own funds trust RAC, or
 - (ii) not later than 4 weeks after the date on which *Chapter 2* of *Part 4* of the *Social Welfare and Pensions Act 2011* comes into operation,

whichever is the later.

(2) While a trust RAC remains a regulatory own funds trust RAC each subsequent regulatory own funds trust RAC technical provisions certificate submitted after the appropriate effective date referred to in subsection (1) shall have an effective

date of not later than one year after the effective date of the immediately preceding certificate.

(3) Subject to section 53M, a regulatory own funds trust RAC technical provisions certificate required under subsection (1) or (2) shall be submitted to the Board by the trustees of the regulatory own funds trust RAC within 3 months of the effective date of the certificate.

(4) The regulatory own funds trust RAC technical provisions certificate shall be in such form and contain such information and particulars as the Minister may from time to time prescribe.

(5) The Minister may by regulations require an actuary when calculating the technical provisions of a regulatory own funds trust RAC to comply with the applicable professional guidance issued by the Society of Actuaries in Ireland and specified in the regulations or with any other guidance prescribed by the Minister.

Requirement to hold additional resources.

53H.— (1) A regulatory own funds scheme and a regulatory own funds trust RAC shall hold on a permanent basis—

- (a) sufficient resources to satisfy the technical provisions of the regulatory own funds scheme or the technical provisions requirement of the regulatory own funds trust RAC, as appropriate, and
- (b) additional resources over and above the resources referred to in paragraph (a) to serve as a safety capital to absorb any discrepancies between the anticipated and actual expenses and profits of the regulatory own funds scheme or the regulatory own funds trust RAC.

(2) The additional resources required under paragraph (b) of subsection (1) shall be the amount of the regulatory own funds requirement referred to in section 53I, free of all foreseeable liabilities.

(3) The trustees of a regulatory own funds scheme or regulatory own funds trust RAC shall take all reasonable steps to ensure that the regulatory own funds scheme or regulatory own funds trust RAC complies with the requirements of this section.

Amount of regulatory own funds requirement.

53I.— (1) The amount of the regulatory own funds requirement is the aggregate of—

- (a) subject to subsection (3), a percentage which shall be prescribed and which shall be not less than 4 per cent of the technical provisions of the regulatory own funds scheme or the regulatory own funds trust RAC; and
- (b) a percentage which shall be prescribed and which shall be not less than 0.3 per cent of the capital at risk for the members of, or other persons entitled to benefits under, the regulatory own funds scheme or regulatory own funds trust RAC in respect of which the capital at risk is not a negative figure and where the capital at risk is as calculated in accordance with subsection (2).

(2) For the purposes of paragraph (b) of subsection (1) ‘capital at risk’ means—

- (a) to the extent that the benefit payable on death or disability of a member or other person entitled to benefits under the regulatory own funds scheme or regulatory own funds trust RAC comprises a lump sum benefit, the amount of that lump sum benefit on death or disability, and
- (b) to the extent that the benefit payable on death or disability of a member or other person entitled to benefits under the regulatory

own funds scheme or regulatory own funds trust RAC comprises the purchase of an annuity, the payment of a sum by instalments or any other kind of periodical payments, the current value of that benefit calculated in a manner which is consistent with the determination of the regulatory own funds scheme's or regulatory own funds trust RAC's technical provisions,

less the regulatory own funds scheme's or regulatory own funds trust RAC's technical provisions in relation to those persons.

(3) The Minister may prescribe that the percentage for the purposes of paragraph (a) of subsection (1) shall be increased to such greater percentage not exceeding 50 per cent, as he or she may decide of the technical provisions of the regulatory own funds scheme or the regulatory own funds trust RAC if and to the extent that the resources of the regulatory own funds scheme or the regulatory own funds trust RAC are invested in assets other than—

- (a) securities issued under section 54(1) of the Finance Act 1970 and known as bonds,
- (b) securities issued under the laws of a Member State (other than the State) that correspond to securities referred to in paragraph (a), or
- (c) cash deposits with one or more credit institutions, and

the proportion of the technical provisions of the regulatory own funds scheme or the regulatory own funds trust RAC to which such increased percentage shall be applied shall be calculated in accordance with the formula—

$$A \times B/C$$

where—

A is the amount of the technical provisions of the regulatory own funds scheme or the regulatory own funds trust RAC,

B is the amount of the resources of the regulatory own funds scheme or the regulatory own funds trust RAC invested in assets other than those referred to in paragraph (a), (b) or (c), and

C is the amount of the resources of the regulatory own funds scheme or the regulatory own funds trust RAC.

(4) In respect of any calculation to be made for the purposes of this Part, the resources of a regulatory own funds scheme or a regulatory own funds trust RAC shall exclude investments in excess of such a percentage as may be prescribed by the Minister, within such a class or description of investments as may be prescribed by the Minister.

Certification
of regulatory
own funds
requirement.

53J.— (1) Subject to section 53M, the trustees of a regulatory own funds scheme or regulatory own funds trust RAC shall, from time to time in accordance with this section, cause a certificate, in this Part referred to as a 'regulatory own funds certificate', to be prepared by an actuary who shall certify therein that as at the regulatory own funds certification date—

- (a) the regulatory own funds scheme or regulatory own funds trust RAC satisfies the regulatory own funds requirement, or
- (b) the regulatory own funds scheme or regulatory own funds trust RAC does not satisfy the regulatory own funds requirement.

(2) Subject to section 53M, the regulatory own funds certification date for—

- (a) a relevant scheme which is a regulatory own funds scheme shall be the same as the effective date of the actuarial funding certificate prepared for the regulatory own funds scheme under subsection (1B) or (1C) of section 43, or
- (b) a regulatory own funds trust RAC shall be the same as the effective date of the regulatory own funds trust RAC technical provisions certificate prepared for the regulatory own funds trust RAC under section 53G.

(3) The trustees of a regulatory own funds scheme and a regulatory own funds trust RAC shall submit the regulatory own funds certificate to the Board within 3 months of the regulatory own funds certification date.

(4) The Minister may by regulations prescribe the form and content of a regulatory own funds certificate.

(5) The Minister may by regulations require an actuary when completing a regulatory own funds certificate, to comply with the applicable professional guidance issued by the Society of Actuaries in Ireland and specified in the regulations or with any other guidance prescribed by the Minister.

Notification
of regulatory
own funds
status.

53K.— (1) Subject to section 53N, the trustees of a scheme or trust RAC which becomes a regulatory own funds scheme or a regulatory own funds trust RAC shall so notify the Board on or before the regulatory own funds notification date.

(2) Subject to section 53N, the regulatory own funds notification date shall be:

- (a) in the case of a relevant scheme or trust RAC which on 23 September 2010 was a regulatory own funds scheme or a regulatory own funds trust RAC, not later than 6 months after the date on which *Chapter 2* of *Part 4* of the *Social Welfare and Pensions Act 2011* comes into operation;
- (b) in the case of a relevant scheme or trust RAC which commences after 23 September 2010 and which from the relevant scheme's or trust RAC's commencement is a regulatory own funds scheme or regulatory own funds trust RAC—
 - (i) not later than 4 weeks after the date of commencement of the relevant scheme or trust RAC, or
 - (ii) not later than 4 weeks after the date on which *Chapter 2* of *Part 4* of the *Social Welfare and Pensions Act 2011* comes into operation,

whichever is the later;

- (c) in the case of a relevant scheme or trust RAC which at its commencement was not a regulatory own funds scheme or regulatory own funds trust RAC but becomes a regulatory own funds scheme or regulatory own funds trust RAC after 23 September 2010—
 - (i) not later than 4 weeks after the date on which the scheme or trust RAC becomes a regulatory own funds scheme or a regulatory own funds trust RAC, or
 - (ii) not later than 4 weeks after the date on which *Chapter 2* of *Part 4* of the *Social Welfare and Pensions Act 2011* comes into operation,

whichever is the later.

Failure to satisfy funding standard, technical provisions requirement or regulatory own funds requirement.

53L.— (1) Where—

- (a) (i) in accordance with section 43, the trustees of a regulatory own funds scheme submit an actuarial funding certificate which certifies that at the effective date of the certificate the regulatory own funds scheme does not satisfy the funding standard, or
- (ii) in accordance with section 53G, the trustees of a regulatory own funds trust RAC submit a regulatory own funds trust RAC technical provisions certificate which certifies that at the effective date of the certificate the regulatory own funds trust RAC does not satisfy the technical provisions requirement,

or

- (b) in accordance with section 53J or 53M, the trustees of a regulatory own funds scheme or regulatory own funds trust RAC submit a regulatory own funds certificate which certifies that at the regulatory own funds certification date the regulatory own funds scheme or regulatory own funds trust RAC does not satisfy the regulatory own funds requirement,

they shall submit to the Board a proposal (in this Part referred to as a 'regulatory own funds proposal') in accordance with this section.

(2) A regulatory own funds proposal shall contain a proposal designed to ensure the regulatory own funds scheme or regulatory own funds trust RAC satisfies—

- (a) (i) where paragraph (a)(i) of subsection (1) applies, the funding standard within 2 years of the effective date of the actuarial funding certificate referred to in that paragraph, or
- (ii) where paragraph (a)(ii) of subsection (1) applies, the technical provisions requirement within 2 years of the effective date of the regulatory own funds trust RAC technical provisions certificate referred to in that paragraph,

and

- (b) where paragraph (b) of subsection (1) applies, the regulatory own funds requirement within 2 years of the regulatory own funds certification date applicable to the certificate referred to in that paragraph.

(3) A regulatory own funds proposal shall be submitted to the Board by the trustees within 4 months of the regulatory own funds certification date applicable to the certificate referred to in paragraph (b) of subsection (1).

(4) If the Board is satisfied that a regulatory own funds proposal submitted in accordance with subsection (3) is likely to enable the regulatory own funds scheme or regulatory own funds trust RAC to satisfy:

- (a) (i) where paragraph (a)(i) of subsection (1) applies, the funding standard, or
- (ii) where paragraph (a)(ii) of subsection (1) applies, the technical provisions requirement,

and

- (b) where paragraph (b) of subsection (1) applies, the regulatory own funds requirement,

within 2 years of the regulatory own funds certification date applicable to the certificate referred to in paragraph (b) of subsection (1), it shall approve the regulatory own funds proposal or, if it is not so satisfied, it shall reject the regulatory own funds proposal.

(5) Where the trustees of a regulatory own funds scheme or a regulatory own funds trust RAC—

- (a) do not submit a regulatory own funds certificate within 3 months of the regulatory own funds certification date,
- (b) do not submit a regulatory own funds proposal under subsection (1),
- (c) do not submit a regulatory own funds proposal within the period referred to in subsection (3),
- (d) submit a regulatory own funds proposal which is rejected by the Board under subsection (4), or
- (e) submit a regulatory own funds proposal which is approved by the Board but the regulatory own funds scheme or the regulatory own funds trust RAC does not, within 2 years of the regulatory own funds certification date applicable to the certificate referred to in subsection (1), satisfy the funding standard or the technical provisions requirement (as applicable) and the regulatory own funds requirement,

the Board may by notice in writing direct the trustees in accordance with subsection (6).

(6) Where subsection (5) applies, and notwithstanding anything contained in the rules of the regulatory own funds scheme or the regulatory own funds trust RAC the Board may direct the trustees—

- (a) to wind-up the regulatory own funds scheme or the regulatory own funds trust RAC with effect from such date and subject to such conditions as the Board may consider appropriate, and
- (b) to take, by such date as the Board may specify, such one or more of the measures specified in subsection (7) as the Board considers appropriate in the circumstances, either indefinitely or for a specified period.

(7) The following measures are specified for the purposes of paragraph (b) of subsection (6):

- (a) to cease or modify future accrual of benefits,
- (b) to cease to accept further contributions from or in respect of members,
- (c) to refrain from making investments of a specified class,
- (d) to—
 - (i) maintain funds, or
 - (ii) effect insurance of a value,

equal to the whole or a specified portion of the regulatory own funds scheme's liabilities.

(8) Where the trustees fail to take the measure or measures specified by the Board under subsection (6)(b) by such date as the Board has specified, the Board

may direct the trustees to wind-up the regulatory own funds scheme or the regulatory own funds trust RAC with effect from such date and subject to such conditions as the Board may consider appropriate.

(9) An appeal to the High Court on a point of law from a direction of the Board under subsection (6) or (8) may be brought by the trustees of the regulatory own funds scheme or the regulatory own funds trust RAC within 21 days of the date of the direction of the Board.

Supervisory
regulatory
own funds
certificate.

53M.— The Board, whenever it considers appropriate, may by notice in writing to the trustees of a regulatory own funds scheme or a regulatory own funds trust RAC, require the trustees to submit to the Board within the period specified in the notice an actuarial funding certificate or a regulatory own funds trust RAC technical provisions certificate, and a regulatory own funds certificate having—

(a) in the case of an actuarial funding certificate or a regulatory own funds trust RAC technical provisions certificate such an effective date as is specified in the notice, and

(b) in the case of a regulatory own funds certificate, such a regulatory own funds certification date as is specified in the notice.

De facto regulatory own funds scheme or regulatory own funds trust RAC.

53N.— (1) If at any time it appears to the Board that a scheme or trust RAC is a scheme or trust RAC to which this Part applies but that the trustees of the scheme or the trust RAC have not made the notification required to be made under and in accordance with section 53K, the Board may by notice in writing to the trustees of the scheme or the trust RAC determine that the scheme or trust RAC is a regulatory own funds scheme or a regulatory own funds trust RAC with effect from the date specified in the notice.

(2) Where the Board determines that a scheme or a trust RAC is a regulatory own funds scheme or a regulatory own funds trust RAC and gives written notice of such determination to the trustees of the regulatory own funds scheme or the regulatory own funds trust RAC pursuant to subsection (1), the regulatory own funds notification date for that scheme or trust RAC shall be the date falling 4 weeks after the date specified in the notice referred to in subsection (1).

(3) An appeal to the High Court on a point of law from a determination of the Board under subsection (1) may be brought by the trustees of the regulatory own funds scheme or the regulatory own funds trust RAC within 21 days after the date of determination of the Board.”.

Amendment of
section 54 of
Principal Act.

36.— Section 54 of the Principal Act is amended—

(a) in subsection (1)(ca), by inserting “or regulatory own funds trust RAC” after “in relation to the scheme”,

(b) in subsection (2) by inserting “which is not a regulatory own funds trust RAC” after “other than a small trust RAC”,

(c) in subsection (4)(ab) by inserting “or regulatory own funds trust RAC” after “actuary of a scheme”,

(d) in subsection (4)(b) by substituting “The actuary to a scheme or to a regulatory own funds trust RAC or the auditor of a scheme or trust RAC may request” for “The actuary to or the auditor of a scheme or the auditor of a trust RAC may request”, and

(e) by substituting the following subsection for subsection (7):

“(7) Subsections (1) to (6) do not apply to a small trust RAC, other than a small trust RAC which is a regulatory own funds trust RAC, but the trustees of a small trust RAC other than a small trust RAC which is a regulatory own funds trust RAC shall furnish to the Board such statistical information as is prescribed for the purposes of this subsection.”.

Amendment of section 55 of Principal Act.

37.— Section 55 of the Principal Act is amended—

- (a) in subsection (1A) by inserting “which is not a regulatory own funds trust RAC” after “a small trust RAC”,
- (b) in subsection (2)(b) by inserting “other than a small scheme which is a regulatory own funds scheme” after “a small scheme” where it first occurs,
- (c) in subsection 2(d) by inserting “other than a small trust RAC which is a regulatory own funds trust RAC” after “a small trust RAC”, and
- (d) by inserting the following subsection after subsection (6):

“(7) Subsections (3), (4), (5) and (6) shall not apply to a regulatory own funds scheme.”.

Amendment of section 56 of Principal Act.

38.— Section 56 of the Principal Act is amended—

- (a) in subsection (2)(c) by inserting “or regulatory own funds trust RAC” after “liabilities of the scheme”,
- (b) in subsection (6)(a)(iii) by inserting “other than a small scheme which is a regulatory own funds scheme” after “a small scheme”,
- (c) in subsection (6)(b)(i) by substituting “section 41(2)(a) of this Act applies, or” for “section 31(a) of the Social Welfare and Pensions Act 2005 applies, or”,
- (d) in subsection (6)(b)(iv) by inserting “other than a small scheme which is a regulatory own funds scheme” after “a small scheme”, and
- (e) by substituting the following subsection for subsection (7):

“(7) (a) Subject to paragraph (b) this section shall not apply to a small trust RAC.

(b) This section shall apply to a small trust RAC which is a regulatory own funds trust RAC.”.

Amendment of section 64D of Principal Act.

39.— Section 64D(1) of the Principal Act is amended by inserting “which is not a regulatory own funds trust RAC” after “other than a small trust RAC”.

CHAPTER 3

Certification of certain policies or contracts of assurance

Amendment of section 48 of Principal Act.

40.— The Principal Act (amended by section 41 of the Social Welfare and Pensions Act 2010) is amended in section 48(3)—

- (a) in paragraph (b) by substituting “which policies or contracts are— ” for “which policies or contracts are approved— ”,
- (b) in subparagraph (i) of paragraph (b) by substituting “approved by the Revenue Commissioners” for “by the Revenue Commissioners”, and
- (c) in subparagraph (ii) of paragraph (b) by substituting “certified by the Board” for “by the Board”.

Certification of certain policies or contracts of assurance.

41.— The title to Part IVA of the Principal Act is amended by substituting “CERTIFICATION OF CERTAIN POLICIES OR CONTRACTS OF ASSURANCE” for “APPROVAL OF CERTAIN POLICIES OR CONTRACTS OF ASSURANCE”.

Amendment of Part IVA of Principal Act.

42.— Part IVA (inserted by section 42 of the Social Welfare and Pensions Act 2010) of the Principal Act is amended—

(a) by substituting the following section for section 53B:

“Certification of certain policies or contracts of assurance.

53B.— (1) The Board may certify a form of policy or contract of assurance, submitted to the Board by an undertaking in that behalf, in respect of schemes that are approved by the Revenue Commissioners under Chapter 1 of Part 30 of the Taxes Consolidation Act 1997, where the Board is satisfied that the form of policy or contract of assurance is designed—

(a) to provide the sums payable to the scheme in respect of some or all of the benefits in relation to a person who, under the scheme—

(i) is receiving benefits, or

(ii) has reached normal pensionable age,

or

(b) to discharge the liability of the scheme for some or all of the benefits payable to or in respect of a person who under a scheme—

(i) is receiving benefits, or

(ii) has reached normal pensionable age.

(2) For the purpose of obtaining certification under subsection (1) an undertaking shall furnish to the Board such information in such form as may be prescribed for the purposes of this section.

(3) A policy or contract of assurance referred to in subsection (1) may include a policy or contract of assurance which is referenced by—

(a) securities issued under section 54(1) of the Finance Act 1970 and known as bonds, or

(b) securities issued under the laws of a Member State (other than the State) that correspond to securities referred to in paragraph (a).

(4) Certification by the Board under subsection (1) shall be subject to such terms and conditions as the Board may consider appropriate.”,

(b) by substituting the following section for section 53C:

“Register of policies or contracts of assurance certified under section 53B.

53C.— The Board shall—

(a) keep a register in which there shall be entered such particulars as may be prescribed, for the purposes of this Part, in relation to policies or contracts of assurance that have been certified under section 53B and such register shall be open for inspection by any member of the public at all reasonable times on payment of such fee as the Board may determine, and

(b) maintain, in accordance with regulations, an up to date database of information relating to particulars referred to in paragraph (a).”

and

(c) by repealing section 53D.

Amendment of
section 59 of
Principal Act.

43.— Section 59(3) of the Principal Act is amended by substituting “certified” for “approved” in both places where it occurs.



Number 00 of 0000

SOCIAL WELFARE AND PENSIONS ACT 2011

REVISED

Updated to 22 December 2020

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

Social Welfare Acts: references in any other enactment to the "Social Welfare Acts" means the *Social Welfare Consolidation Act 2005* (26/2005) and every other enactment which is to be read together with it as one (*Social Welfare Consolidation Act 2005* (26/2005), s. 3(8)). The Acts in this group are:

- *Social Welfare Consolidation Act 2005* (26/2005), other than s. 13
- *Social Welfare Law Reform and Pensions Act 2006* (5/2006), ss. 1 to 37
- *Social Welfare Act 2006* (36/2006), other than s. 13
- *Social Welfare and Pensions Act 2007* (8/2007), ss. 1 to 36
- *Social Welfare Act 2007* (40/2007), other than s. 8
- *Social Welfare and Pensions Act 2008* (2/2008), ss. 2 to 25
- *Social Welfare (Miscellaneous Provisions) Act 2008* (22/2008), Parts 1 and 2
- *Social Welfare and Pensions Act 2009* (10/2009), ss. 2 to 11
- *Social Welfare and Pensions (No. 2) Act 2009* (43/2009), other than Part 3
- *Social Welfare (Miscellaneous Provisions) Act 2010* (28/2010), Parts 1 and 2
- *Social Welfare Act 2010* (34/2010), other than s. 15(1)-(3)
- *Social Welfare and Pensions Act 2010* (37/2010), Parts 1, 2 and 4, s. 29 and Schedules 1, 2 and 3
- *Social Welfare and Pensions Act 2011* (9/2011), Part 2
- *Social Welfare Act 2011* (37/2011), Parts 1 and 2
- *Social Welfare and Pensions Act 2012* (12/2012), Parts 1 and 2
- *Social Welfare Act 2012* (43/2012), other than Part 3
- *Social Welfare and Pensions (Miscellaneous Provisions) Act 2013* (20/2013), Parts 1 and 2
- *Social Welfare and Pensions Act 2013* (38/2013), Parts 1 and 2
- *Social Welfare and Pensions (No. 2) Act 2013* (49/2013), Parts 1 and 2
- *Social Welfare and Pensions Act 2014* (16/2014), Part 2
- *Social Welfare and Pensions (No. 2) Act 2014* (41/2014), other than s. 4
- *Social Welfare (Miscellaneous Provisions) Act 2015* (12/2015), Part 2
- *Social Welfare and Pensions Act 2015* (47/2015), Part 2
- *Social Welfare Act 2016* (15/2016)
- *Social Welfare Act 2017* (38/2017), Part 2
- *Social Welfare, Pensions and Civil Registration Act 2018* (37/2018), Part 2
- *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019* (8/2019), Part 11 (*Repealed*)

- *Social Welfare Act 2019* (34/2019), other than Part 3
- *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020* (1/2020), Part 2
- *Emergency Measures in the Public Interest (Covid-19) Act 2020* (2/2020), s. 28(5)(g), (h)
- *Social Welfare (Covid-19) (Amendment) Act 2020* (12/2020)
- *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020* (23/2020), Part 14
- *Social Welfare Act 2020* (30/2020)

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 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.