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*Number 16 of 2014*

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**SOCIAL WELFARE AND PENSIONS ACT 2014**

**REVISED**

**Updated to 1 January 2018**

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This Revised Act is an administrative consolidation of the *Social Welfare and Pensions Act 2014*. 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 *Finance Act 2017* (41/2017), enacted 25 December 2017, and all statutory instruments up to and including *Legal Metrology (Measuring Instruments) Act 2017 (Commencement) Order 2018* (S.I. No. 1 of 2018), made 4 January 2018, were considered in the preparation of this Revised Act.

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ACTS REFERRED TO

Central Bank Act 1971 (No. 24)  
Employment Equality Act 1998 (No. 21)  
Finance (Local Property Tax) Act 2012 (No. 52)  
Immigration Act 1999 (No. 22)  
Merchant Shipping Act 1894 (c.60)  
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Redundancy Payments Act 1967 (No. 21)  
Social Welfare (Miscellaneous Provisions) Act 2010 (No. 28)  
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Social Welfare and Pensions (No. 2) Act 2009 (No. 43)  
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Social Welfare and Pensions Act 2008 (No. 2)  
Social Welfare and Pensions Act 2010 (No. 37)  
Social Welfare and Pensions Act 2012 (No. 12)  
Social Welfare Consolidation Act 2005 (No. 26)  
Social Welfare Law Reform and Pensions Act 2006 (No. 5)  
Statistics Act 1993 (No. 21)



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Number 16 of 2014

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## SOCIAL WELFARE AND PENSIONS ACT 2014

REVISED

Updated to 1 January 2018

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An Act to give further effect to Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010<sup>1</sup> on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and for those and other purposes to amend the Social Welfare Acts; to amend the **Pensions Act 1990** and to provide for related matters. [17<sup>th</sup> July, 2014]

**Be it enacted by the Oireachtas as follows:**

### PART 1

#### PRELIMINARY AND GENERAL

##### **Short title, construction, collective citations and commencement**

1. (1) This Act may be cited as the Social Welfare and Pensions Act 2014.
- (2) The Social Welfare Acts and *Part 2* shall be read together as one.
- (3) The Pensions Acts 1990 to 2013 and *Part 3* shall be read together as one and may be cited together as the Pensions Acts 1990 to 2014.
- (4) **Sections 6, 9** and **10** 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 provision and different days may be so appointed for different purposes or different provisions.

#### **Annotations**

#### **Editorial Notes:**

- E1** Power pursuant to subs. (4) exercised (1.01.2015) by *Social Welfare and Pensions Act 2014 (Section 6) (Commencement) Order 2014* (S.I. No. 530 of 2014).
2. The 1st day of January 2015 is appointed as the day on which section 6 of the Social Welfare and Pensions Act 2014 (No. 16 of 2014) shall come into operation.

### PART 2

#### AMENDMENTS TO SOCIAL WELFARE ACTS

<sup>1</sup>O.J. No. L.180, 15.7.2010, p.1.

### Definitions

2. In this Part—

Act of 2007” means the *Social Welfare and Pensions Act 2007*;

Act of 2008” means the *Social Welfare and Pensions Act 2008*;

Act of 2013” means the *Social Welfare and Pensions (Miscellaneous Provisions) Act 2013*;

Principal Act” means the *Social Welfare Consolidation Act 2005*.

### Payments programmes

3. The Principal Act is amended—

(a) in section 2(1), by inserting the following definition:

‘payment service provider’ has the meaning given to it by section 289A;”

(b) in section 5, by substituting the following subsection for subsection (4):

(4) Fees incurred on foot of an arrangement under section 289A with a payment service provider, subject to the arrangement concerned and the agreement of the Minister for Public Expenditure and Reform as to the manner of payment, shall be paid by the Minister out of the Social Insurance Fund to the payment service provider.”

(c) in section 242—

(i) in subsection (1), by substituting the following paragraph for paragraph (c):

“(c) the payment of specified benefits through a payment service provider.”

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

“(4) (a) Any person presenting for payment of benefit, on his or her own behalf or on behalf of another person, shall satisfy the Minister, an officer of the Minister or a payment service provider as to his or her identity by furnishing—

(i) a public services card,

(ii) a card issued by the Minister under section 264, or

(iii) such information or document as the Minister, an officer of the Minister or a payment service provider may reasonably require for the purposes of authenticating the identity of that person.

(b) Where a person fails to comply with paragraph (a), payment of benefit may be withheld until such time as the identity of the person is authenticated.

(5) The information or documentation furnished for the purposes of authenticating identity under subsection (4) (a) may be recorded or retained by the Minister, an officer of the Minister or a payment service provider.”

(d) in section 261, by inserting the following subsection after subsection (2A):

(2B) Information held by the Minister for the purposes of this Act or the control of schemes administered by or on behalf of the Minister or the

Department of Social Protection may be transferred by the Minister to a payment service provider, and information held by a payment service provider which is required for those purposes or the control of any such scheme administered by a payment service provider may be transferred by the payment service provider to the Minister.”,

(e) in section 263A, by inserting the following subsection after subsection (6):

(7) Where a public services card issued to a person is presented to a payment service provider for the purposes of obtaining payment of benefit, the payment service provider may withhold payment, confiscate the card and surrender it as soon as practicable to the Minister if—

(a) the payment service provider becomes aware of a fact or circumstance, whether occurring before or after the issue of the public services card, that would have required or permitted the Minister 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, or

(b) the payment service provider is notified or becomes aware that the public services card is, without lawful authority or reasonable excuse, in the possession or control of a person other than the person to whom it is allocated and issued under section 263.”,

(f) in section 274(1), by substituting the following definition for the definition of “specified agency”:

‘specified agency’ means a payment service provider or a person authorised to carry on banking business under [section 9](#) of the [Central Bank Act 1971](#).”,

(g) by inserting the following section after section 289:

**“Arrangements with payment service providers**

289A. The Minister, with the consent of the Minister for Public Expenditure and Reform, may enter into an arrangement with a person, in this section referred to as a ‘payment service provider’ for the provision of services by that payment service provider to the Minister in relation to the functions conferred on the Minister by or under this Act concerning the payment of benefit or assistance.”,

and

(h) in paragraph 1(4) of Schedule 5, by inserting “payment service provider,” after “a payment service provider (within the meaning of [section 122\(1\)](#) of the [Finance \(Local Property Tax\) Act 2012](#)) in relation to the purpose specified in that section of that Act.”,

**Amendment of definition of share-based remuneration**

4. Section 2(1) of the Principal Act is amended in paragraph (a) of the definition of “share-based remuneration” (amended by [section 10](#) of the [Social Welfare and Pensions Act 2012](#)) by deleting “, assignment or release”.

**Further amendment of section 2(1) of Principal Act**

5. The Principal Act is amended in section 2(1) by inserting the following definitions:

‘EEA Agreement’ means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement;

'European Economic Area' means the European Economic Area created by the EEA Agreement;

'member state of the European Economic Area' means a state which is a contracting party to the EEA Agreement;".

**Return of employment contributions in respect of certain seafarers**

6. The Principal Act is amended by substituting the following section for section 36:

**"Return of employment contributions in respect of certain seafarers**

36. (1) The Minister may, on application made to him or her in that behalf, return to an employer any employment contribution paid in accordance with section 13(2) (d) in respect of the employment of a qualifying seafarer in respect of such period as may be prescribed.

(2) An application under subsection (1) shall be made—

- (a) in the manner,
- (b) to such persons,
- (c) by a specified day or within a specified period, and
- (d) in such form,

as may be prescribed.

(3) In this section—

'qualifying seafarer' means a master or seaman, within the meaning of [section 742](#) of the [Merchant Shipping Act 1894](#), who is employed by a ship owner to work on board a qualifying ship during a period in which that ship is at sea, where that person—

- (a) in the case where he or she is working on board a vessel (including a sea-going passenger vessel with facilities to enable road or rail vehicles to roll on or off the vessel and carrying more than 12 passengers) providing scheduled passenger services between ports of the European Economic Area, is a citizen of a member state of the European Economic Area, or
- (b) in any other case, is liable to taxation or social security contributions, or both of them, in a member state of the European Economic Area;

'qualifying ship' means a sea-going vessel which is—

- (a) registered in the shipping register of a member state of the European Economic Area,
- (b) not less than 100 tons gross tonnage, and
- (c) self-propelled,

but does not include—

- (i) a fishing vessel, tug or vessel used primarily as a floating platform for working machinery or as a diving platform, as may be prescribed, or
- (ii) such other vessel of a type that is not normally used for the purposes of the activities specified in paragraph (a), (b), (c), (e) or (f) of the

definition of 'qualifying shipping activities' contained in section 407(1) of the Act of 1997."

#### Recovery of redundancy payments

7. The Principal Act is amended by inserting the following section after section 38A:

##### "Recovery of redundancy payments

**38B.** (1) A return of the employer's contribution under section 34, 34A or 36 shall be subject to a deduction in respect of any amount paid by the Minister in accordance with section 32(2) of the Redundancy Payments Act 1967.

(2) The amount to be deducted shall be calculated in accordance with subsections (4), (5) and (6) of section 322 of the Redundancy Payments Act 1967. "

#### Absence from State or imprisonment

8. (1) Section 187 of the Principal Act is amended by substituting the following definition for the definition of "qualified adult" (amended by section 21 of the Social Welfare and Pensions Act 2010):

" 'qualified adult' means—

(a) in relation to a beneficiary—

- (i) the spouse of the beneficiary who is being wholly or mainly maintained by the beneficiary,
- (ii) the civil partner of the beneficiary who is being wholly or mainly maintained by the beneficiary, or
- (iii) the cohabitant of the beneficiary who is being wholly or mainly maintained by the beneficiary,

where the spouse, civil partner or cohabitant concerned is resident in the State, or

(b) a person who has attained the age of 16 years, is resident in the State, is being wholly or mainly maintained by a beneficiary and has the care of one or more than one qualified child who normally resides with the beneficiary, where the beneficiary is—

- (i) a single person,
- (ii) a widow,
- (iii) a widower,
- (iv) a married person who is not living with and is neither wholly nor mainly maintaining, nor being wholly or mainly maintained by, his or her spouse,
- (v) a surviving civil partner, or
- (vi) a civil partner who is not living with and is neither wholly nor mainly maintaining, nor being wholly or mainly maintained by, his or her civil partner;".

(2) Section 249 of the Principal Act is amended—



(a) in subsection (6) (amended by section 18 of the Act of 2008), by inserting “(including any increase in such allowance or assistance)” after “farm assist”, and

(b) by inserting the following subsection after subsection (6):

(6A) Where a person is entitled to jobseeker’s allowance, pre-retirement allowance, supplementary welfare allowance, disability allowance or farm assist and such allowance or assistance includes an increase in respect of a qualified adult, that increase shall not be payable for any period during which the qualified adult is—

(a) resident, whether temporarily or permanently, outside the State, or

(b) undergoing imprisonment or detention in legal custody.”.

#### **Family income supplement - meaning of family**

9. (1) Section 227 (amended by section 22 of the *Social Welfare and Pensions Act 2010*) of the Principal Act is amended—

(a) by designating the section as subsection (1),

(b) in subsection (1) —

(i) by substituting the following definition for the definition of “child”:

“ ‘child’ means a qualified child as defined in section 2(3) (b) for the purposes of section 228;”,

and

(ii) by deleting the definition of “family”,

and

(c) by inserting the following subsections after subsection (1):

(2) For the purposes of this Part, ‘family’ means, subject to subsections (3) and (4), a household which contains—

(a) a person who is engaged in remunerative full-time employment as an employee, and

(b) at least one child who is normally a member of the same household as that person.

(3) Notwithstanding subsection (2), where a person referred to in paragraph (a) of that subsection is living with—

(a) his or her spouse, civil partner or cohabitant, and

(b) there is at least one child who is normally a member of the household,

a reference to a ‘family’ in this Part shall be read as including the spouse, civil partner or cohabitant, as the case may be, of that person.

(4) Notwithstanding that—

(a) a person referred to in paragraph (a) of subsection (2) is not living with his or her spouse or civil partner, and

(b) no child is normally a member of the same household as the person referred to in paragraph (a) of subsection (2),

where that person is—

(i) wholly or mainly maintaining such spouse or civil partner, as the case may be, and

(ii) contributing substantially towards the maintenance of a child who is normally a member of the same household as that spouse or civil partner,

and such spouse or civil partner is not claiming or in receipt of any benefit or assistance, a reference to a 'family' in this Part shall be read as meaning a household which contains—

(I) a person referred to in paragraph (a) of subsection (2),

(II) such spouse or civil partner who is being so wholly or mainly maintained by that person, and

(III) such child in respect of whom a substantial contribution towards his or her maintenance is being made by that person.

(5) For the purposes of subsection (4) —

(a) the reference to any benefit means any benefit specified in section 39(1), other than—

(i) disablement benefit payable in accordance with section 75 (but shall include an increase, payable under section 77, in disablement pension on account of incapacity),

(ii) death benefit by way of a grant in respect of funeral expenses,

(iii) bereavement grant, and

(iv) a widowed or surviving civil partner grant,

and

(b) the reference to any assistance means any assistance specified in section 139(1), other than—

(i) a weekly or monthly payment payable in accordance with section 198,

(ii) supplementary welfare allowance in so far as it relates to the payment of that allowance in accordance with section 200, 201, 202 or 206, and

(iii) a widowed or surviving civil partner grant.”.

(2) Section 232(2) of the Principal Act is amended by inserting the following paragraph after paragraph (c):

“(ca) determine the circumstances in which a child shall be regarded as normally being a member of a household;”.

(3) Where, on the commencement of this section, family income supplement is payable in respect of a family, the amendments effected by this section shall not, subject to subsections (2) and (3) of section 230 (inserted by *section 10(b)*) and subsections (6) and (7) of section 247 of the Principal Act—

(a) disentitle that family to receipt of family income supplement, or

(b) reduce the weekly rate of family income supplement payable in respect of that family, during the unexpired portion of the period of payment specified in section 230(1) (as so inserted) of the Principal Act.

**Entitlement to family income supplement**

10. The Principal Act is amended—

(a) in section 229, by inserting the following subsection after subsection (2):

(3) Subject to sections 230(2), 247(6) and 247(7), the weekly rate of family income supplement payable under this section shall not be affected by any change of circumstances (other than such change, as may be prescribed, in the entitlement of members of the family concerned to any benefit or assistance under this Act or in the composition of the family concerned) during the period specified in section 230(1).”,

and

(b) by substituting the following sections for section 230:

**“Period of payment**

**230.** (1) Where family income supplement is payable in respect of a family under section 228, payment of that supplement shall, subject to subsections (2) and (3) and to sections 247(6) and 247(7), be made for a period of 52 weeks beginning on the date on which it is receivable in accordance with regulations made under this Act.

(2) Family income supplement shall cease to be payable before the end of the period specified in subsection (1) where the person who has been engaged in remunerative full-time employment as an employee (in this section referred to as the ‘full-time employee’) is no longer so engaged.

(3) Where—

(a) family income supplement is payable in respect of a family under section 228 and payment of that supplement ceases to be payable before the end of the period specified in subsection (1) by virtue of subsection (2), section 247(6) or section 247(7), and

(b) on a date before the end of the period specified in subsection (1)

(i) the full-time employee or the spouse, civil partner or cohabitant of the full-time employee is determined to be engaged in remunerative full-time employment as an employee, or

(ii) section 247(6) or 247(7) no longer apply,

family income supplement shall, subject to subsection (2), section 247(6) and section 247(7), be payable in respect of that family—

(i) for the period commencing on the date to which paragraph (b) refers and ending on the date of cessation of the period specified in subsection (1), and

(ii) subject to section 229(3), at the weekly rate that was payable at the beginning of the period specified in subsection (1).

**Person to be regarded as member of one family only**

**230A.** Where family income supplement is payable in respect of a particular family for any period, no person who was included in that family at the beginning of that period shall be regarded, for the purposes of family income supplement, as a member of any other family during that period.”.

**Amendments to Principal Act regarding habitual residence****11. (1) Section 246 of the Principal Act is amended—**

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

(1) A requirement, in any of the provisions specified in subsection (3), for a person to be habitually resident in the State means that—

(a) the person must be habitually resident in the State at the date of the making of the application, and the person must remain habitually resident in the State after the making of that application in order for any entitlement to subsist,

(b) the person is a worker or a self-employed person, residing in the State pursuant to article 7 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004<sup>2</sup>, from—

(i) a Member State, or

(ii) a member state of the European Economic Area,

(c) the person is a family member of a person referred to in paragraph (b),

(d) where a person referred to in paragraph (b) ceases to be such a worker or such a self-employed person, the person must be habitually resident in the State immediately after the date of such cessation, and must remain habitually resident in the State in order for any entitlement to subsist, or

(e) where a person referred to in paragraph (b) ceases to be such a worker or such a self-employed person, a family member of such a person must be habitually resident in the State immediately after the date of such cessation, and the family member must remain habitually resident in the State in order for any entitlement to subsist.”,

(b) by deleting subsection (2),

(c) in subsection (3) —

(i) by inserting “161A(d),” after “153(c),”, and

(ii) by substituting “180(2) ” for “180”,

(d) in subsection (4) —

(i) by substituting “A” for “Notwithstanding the presumption in subsection (1), a”, and

(ii) by substituting “resident in the State for the purposes of this Act” for “resident in the State”,

(e) in subsection (6) —

(i) by substituting the following paragraph for paragraph (f):

“(f) a person to whom a permission granted to reside in the State under Regulation 23, 25 or 26 of the Regulations of 2013 is in force;”,

and

(ii) by deleting paragraph (g),

<sup>2</sup>O.J. No. L 158, 30.4.2004, p. 77.

(f) in subsection (7) —

(i) by substituting the following paragraph for paragraph (b):

“(b) an applicant within the meaning of the Regulations of 2013, or any other person awaiting a grant of permission to reside in the State under Regulation 23, 25 or 26 of the Regulations of 2013;”,

and

(ii) by substituting the following paragraph for paragraph (e):

“(e) a person—

(i) whose application for subsidiary protection under Regulation 4 or 16 of the Regulations of 2006 has been refused, or whose permission under Regulation 4 or 16 of the Regulations of 2006 has been revoked,

(ii) whose application under Regulation 3 of the Regulations of 2013 for a subsidiary protection declaration has been refused, or whose subsidiary protection declaration has been revoked, under the Regulations of 2013, or

(iii) whose application under Regulation 25 or 26 of the Regulations of 2013 has been refused, or whose permission under Regulation 25 or 26 of the Regulations of 2013 has been revoked;”,

(g) in subsection (8) —

(i) by substituting the following paragraph for paragraph (d):

“(d) is granted permission to reside in the State under Regulation 23, 25 or 26 of the Regulations of 2013, or”,

and

(ii) in paragraph (e), by deleting “the *Immigration Act 1999* or”,

and

(h) in subsection (10) —

(i) by substituting “2006;” for “2006.”, and

(ii) by inserting the following definition after the definition of “Regulations of 2006”:

‘Regulations of 2013’ means the European Union (Subsidiary Protection) Regulations 2013 (*S.I. No. 426 of 2013*).’.

(2) Section 2 of the Principal Act is amended, in subsection (1), by inserting the following definition:

‘habitually resident’ shall be construed in accordance with section 246;”.

(3) Section 141 of the Principal Act is amended, in subsection (9), by deleting “at the date of the making of the application for jobseeker’s allowance”.

(4) Section 153 of the Principal Act is amended, in paragraph (c), by deleting “at the date of the making of the application for State pension (non-contributory)”.

(5) Section 161A (inserted by [section 20](#) of the [Social Welfare Law Reform and Pensions Act 2006](#)) of the Principal Act is amended, in paragraph (d), by deleting “at the date of the making of the application for that pension”.

(6) Section 163 of the Principal Act is amended, in subsection (3), by deleting “at the date of the making of the application for that pension”.

(7) Section 168 of the Principal Act is amended, in subsection (5), by deleting “at the date of the making of the application for that payment”.

(8) Section 173 of the Principal Act is amended, in subsection (6), by deleting “at the date of the making of the application for that payment”.

(9) Section 180 of the Principal Act is amended, in subsection (2), by deleting “at the date of the making of the application for the allowance”.

(10) Section 186A (inserted by section 24 of the Act of 2007) of the Principal Act is amended, in subsection (2), by deleting “at the date of the making of the application for the payment”.

(11) Section 186D (inserted by section 15 of the Act of 2008) of the Principal Act is amended, in subsection (1), by substituting the following paragraph for paragraph (c):

“(c) the person—

(i) is habitually resident in the State, or

(ii) at the date of the making of the application for domiciliary care allowance, is a person to whom paragraph (a), (b) or (c) of section 219(2) applies.”.

(12) Section 192 of the Principal Act is amended by deleting “at the date of the making of the application for the allowance”.

(13) Section 210 of the Principal Act is amended, in subsection (9), by deleting “at the date of the making of the application for that allowance”.

(14) Section 220 of the Principal Act is amended, in subsection (3), by deleting “at the date of the making of the application for child benefit”.

#### **Amendments to Act of 2008 regarding habitual residence**

**12.** (1) The Act of 2008 is amended—

(a) in paragraph (a) of section 12, by deleting “at the date of the making of the application for blind welfare allowance”, and

(b) in paragraph (e) of section 13, by substituting “161G(d)” for “161G(1) (d) ”.

(2) The amendments effected by *subsection (1)* to sections 12(a) and 13(e) of the Act of 2008 are deemed to have been included in each of those provisions with effect from the passing of the Act of 2008 and each of those provisions (amended by *subsection (1)* ) shall come into operation in accordance with section 1(6) of that Act.

#### **Decision of appeals officer to be final and conclusive**

**13.** Section 320 (substituted by [section 15](#) of the [Social Welfare \(Miscellaneous Provisions\) Act 2010](#)) of the Principal Act is amended by substituting “324(1) (b) ” for “324(1) (c),”.

#### **Amendment of section 333A of Principal Act**

**14.** Section 333A (inserted by section 14 of the Act of 2007) of the Principal Act is amended by substituting the following for subsection (1):

(1) In this section 'relevant sections' means sections 334(1) (a), 335, 336, 337, 338, 339, 341(9), 341(10) and 342."

### **Making and termination of appointments**

15. The Principal Act is amended—

(a) in section 250—

(i) in subsection (1), by inserting the following after "those appointments":

"and the Minister may at any time terminate an appointment under this subsection whether or not the appointment was for a fixed period",

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

"(1A) An appointment as a social welfare inspector shall cease—

(a) if the Minister terminates the appointment,

(b) if it is made for a fixed period, on the expiry of that period, or

(c) if the person ceases to be an officer of the Minister.

(1B) A member of the Garda Síochána seconded by the Minister for a purpose referred to in subsection (1) has conferred on him or her all the powers and duties conferred on a social welfare inspector by this section and may exercise those powers and duties under and in accordance with this Act.

(1C) A member of the Garda Síochána exercising a power or duty of a social welfare inspector shall continue to be under the general direction and control of the Commissioner of the Garda Síochána.

(1D) A member of the Garda Síochána exercising a power or duty of a social welfare inspector shall continue to have conferred on him or her and may exercise the powers and duties of a member of the Garda Síochána for purposes other than the purposes of this Act, as well as for the purposes of this Act."

(iii) by inserting the following subsection after subsection (7):

"(7A) A member of the Garda Síochána seconded by the Minister for a purpose referred to in subsection (1) shall be given a certificate of his or her secondment, and on entering any premises or place for the purposes of Parts 2, 3, 4, 5, 6, 7, 8 and 12 and this Part shall, if so requested, produce that certificate."

and

(iv) in subsection (16), by deleting "in uniform" in each place where it occurs,

and

(b) in section 299—

(i) in subsection (2), by inserting the following after "such allowance":

"and the Minister may at any time terminate an appointment under this subsection whether or not the appointment was for a fixed period",

and

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

“(3) An appointment as a designated person under subsection (2) shall cease—

- (a) if the Minister terminates the appointment,
- (b) if it is made for a fixed period, on the expiry of that period, or
- (c) where the person is an officer of the Minister, if that person ceases to be an officer of the Minister.”.

#### **Recovery of sums due by deduction from certain payments**

16. Section 341 of the Principal Act is amended—

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

“(9) Any benefit, assistance, supplement or payment repayable by a person in accordance with section 335, 336, 337 or 338 may, without prejudice to any other method of recovery, be recovered by deduction, subject to the conditions and in the circumstances that shall be prescribed, from—

- (a) any payment under section 34A or 36,
- (b) any payment made in accordance with regulations made under section 34, 34A, 35 or 37,
- (c) any payment under [section 32 of the Redundancy Payments Act 1967](#), and
- (d) any payment under [section 6 of the Protection of Employees \(Employers’ Insolvency\) Act 1984](#),

being or to be made to the person concerned.”,

and

(b) by inserting the following subsection after subsection (9):

“(10) The powers conferred on the Minister by this section to deduct any sums repayable in accordance with section 335, 336, 337 or 338 may be exercised, notwithstanding that proceedings have been instituted in a court for the recovery of the sums which the person is liable to repay to the Minister as aforesaid or that an order has been made by a court requiring the payment by the person of the sums which he or she is liable to pay to the Minister under this section, and any costs required by that order to be paid to the Minister are deemed, for the purposes of this section, to be sums repayable by the person to the Minister in accordance with those sections.”.

#### **Extension of notice of attachment to other State payments**

17. The Principal Act is amended—

(a) in section 343A, by inserting the following definition:

“ ‘public body’ means—

- (a) a Department of State,
- (b) a local authority, or
- (c) a body established by any enactment.”,



(b) in section 343B(2) (a), by substituting the following subparagraph for subparagraph (i):

“(i) repay the relevant amount, or”,

(c) by inserting the following section after section 343F:

**“Attachment of money from State**

**343FA.** (1) For the purposes of a notice of attachment, where a relevant person is a Minister of the Government (including the Minister) or a public body, any amount of money, including interest on that money, which at the time the notice of attachment is received by the relevant person is—

(a) to be paid to the overpaid person for the overpaid person’s sole benefit, or

(b) to be paid to the overpaid person and any other person or persons for their joint benefit,

under any enactment that may be prescribed, shall be regarded as a debt due by the relevant person to the overpaid person at that time.

(2) Subject to subsection (3), where subsection (1) applies, the amount due to the overpaid person and any other person or persons (in this subsection referred to as the ‘other party or parties’) for their joint benefit shall be deemed to be due to the overpaid person and the other party or parties in equal shares, and accordingly only the portion of the amount due so deemed shall be regarded as a debt due by the relevant person to the overpaid person.

(3) Where evidence of the amount referred to in subsection (2) that is due to the overpaid person is produced to the satisfaction of the relevant person within 10 days of the giving of the notice under section 343H(5A), only so much of the amount as is shown to be due to the overpaid person shall be regarded as a debt due by the relevant person to the overpaid person at that time.

(4) Where a notice of attachment is given to a relevant person who is a Minister of the Government (including the Minister) or a public body, the Minister, in addition to considering the matters under section 343C, shall not specify an amount in the notice that exceeds an amount that will cause the overpaid person to become entitled to claim for supplementary welfare allowance under section 196.

(5) Where, under section 343H any amount is paid to the Minister by a relevant person who is a Minister of the Government (including the Minister) or a public body in accordance with a notice of attachment, that relevant person, within 10 days and in such manner and form as directed in the notice of attachment, shall give the overpaid person concerned a notice in writing informing him or her of the payment and its amount.”,

and

(d) in section 343H, by inserting the following subsection after subsection (5):

(5A) Where a relevant person who is a Minister of the Government (including the Minister) or a public body is given a notice of attachment and the debt due by the relevant person to the overpaid person is part of an amount due to the overpaid person and any other person or persons (in this subsection referred to as the ‘other party or parties’) for their joint benefit, the relevant person shall on receipt of the notice of attachment give to

the overpaid person and the other party or parties a notice in writing in which is entered—

- (a) the overpaid person's name and address,
- (b) the name and address of the other party or parties to whom a notice under this subsection is given,
- (c) the name and address of the relevant person, and
- (d) the specified relevant amount,

and which states that—

- (i) a notice of attachment under this section has been received in respect of the overpaid person,
- (ii) under section 343FA(2) an amount is deemed, subject to section 343FA(3), to be due to the overpaid person and the other party or parties equally, and
- (iii) unless such evidence, referred to in section 343FA(3) is produced within 10 days of the giving of the notice under this subsection—
  - (I) an amount equal to the amount deemed due to the overpaid person (and accordingly regarded as a debt due to the overpaid person by the relevant person) shall be paid to the Minister, where that amount is equal to or less than the relevant amount, and
  - (II) where the amount so deemed to be due to the overpaid person (and accordingly regarded as a debt due to the overpaid person by the relevant person) is greater than the relevant amount an amount equal to the relevant amount shall be paid to the Minister.”.

**Discrimination on grounds of age in relation to employment schemes and other schemes and programmes**

18. (1) Section 359A (inserted by [section 29](#) of the [Social Welfare and Pensions Act 2010](#)) of the Principal Act is amended by inserting the following subsection after subsection (1):

“(1A) For the purposes of subsection (1), a reference to employment includes a reference to self-employment.”.

(2) The Principal Act is amended by inserting the following section after section 359A:

**“Discrimination on grounds of age in relation to employment schemes and other schemes and programmes**

**359B.** (1) The Minister, in respect of a class of persons prescribed by the Minister under subsection (2), may discriminate on the grounds of age in—

- (a) providing, or arranging for and co-ordinating the provision of, a scheme, programme or assistance under section 359A(1) (a),
- (b) assisting, whether financially or otherwise, in the provision of a scheme, programme or assistance referred to in section 359A(1) (a), or
- (c) providing for any scheme or programme under section 359A(2).

- (2) The Minister may prescribe a class or classes of persons for the purposes of subsection (1) where, on the basis of the information relating to the unemployment rate, the participation rate, or the average duration of unemployment compiled by the Central Statistics Office under [section 10](#) of the [Statistics Act 1993](#) and contained in the most recently published survey for the time being known as the Quarterly National Household Survey—
- (a) the unemployment rate for the class of persons is higher than the national unemployment rate,
  - (b) the participation rate for the class of persons is lower than the national participation rate, or
  - (c) the average duration of unemployment of unemployed persons in the class of persons is higher than the average national duration of unemployment.
- (3) Before 1 August 2016 and every 2 years after 2016, the Minister shall—
- (a) carry out a review of the operation, effectiveness and impact of this section,
  - (b) consider whether the prescribing of a class or classes of persons under subsection (2) continues to be necessary, having regard to the matters referred to in paragraph (a), (b) or (c) of that subsection,
  - (c) make such findings as he or she thinks appropriate consequent on the review and consideration, and
  - (d) cause a written report of his or her findings resulting from the review and consideration to be prepared and laid before each House of the Oireachtas.
- (4) [Section 11](#) of the [Employment Equality Act 1998](#) shall not apply in relation to the performance by the Minister of his or her functions under this section.”.

#### Excepted self-employed contributors

19. (1) Part 3 of Schedule 1 to the Principal Act is amended by substituting the following paragraph for paragraph 1:

“(1) A prescribed relative of a self-employed contributor who—

- (a) participates in the business of the self-employed contributor, and
- (b) performs the same tasks or ancillary tasks to those performed by the self-employed contributor,

other than a person—

- (i) who is a partner in the business of the self-employed contributor, or
- (ii) to whom subparagraphs (a) and (b) apply and who is the husband, wife or civil partner of the self-employed contributor.”.

(2) *Subsection (1)*, in so far as it relates to liability for a contribution under Chapter 3 of Part 2 of the Principal Act by virtue of subparagraph (ii) of paragraph 1 (amended by *subsection (1)*) of Part 3 of Schedule 1 to the Principal Act, applies—

- (a) in respect of any reckonable emoluments received by a person to whom subparagraph (ii) of paragraph 1 of Part 3 of Schedule 1 to the Principal Act applies, on or after 1 August 2014, and

(b) in respect of any reckonable income received by a person to whom subparagraph (ii) of paragraph 1 of Part 3 of Schedule 1 to the Principal Act applies—

(i) in respect of the contribution year commencing on 1 January 2014, and

(ii) in respect of each subsequent contribution year.

#### **Specified bodies**

20. F1[...]

#### **Annotations**

#### **Amendments:**

**F1** Repealed (1.01.2018) by *Water Services Act 2014* (44/2014), s. 11(2), S.I. No. 611 of 2017.

#### **Repeals**

21. The following provisions are repealed:

(a) paragraphs 1 and 2 of Schedule 6 to the Principal Act; and

(b) section 5 of the Act of 2008.

#### **Miscellaneous amendments to Principal Act**

22. The Principal Act is amended—

(a) in subsection (9) of section 198, by deleting “an employee of”,

(b) in subsection (1) (c) (iv) of section 244, by substituting “in the circumstances, and” for “in the circumstances,”, and

(c) in subsection (2) (b) of section 334, by substituting “be revised under this Act” for “be revised under this section”.

## **PART 3**

### **AMENDMENTS TO PENSIONS ACT 1990**

#### **Definition**

23. In this Part, “Act of 1990” means the [Pensions Act 1990](#).

#### **Amendment of section 50 of Act of 1990**

24. Section 50 of the Act of 1990 is amended—

(a) by inserting the following subsection after subsection (2A):

(2B) Where the Pensions Authority gives a direction under subsection (1), (1A) or (1B), other than on application by the trustees, the trustees of the scheme shall—

(a) within one month of the date of the notice, notify in writing such persons as may be prescribed of the following—

(i) the direction,

(ii) the measures specified by the Pensions Authority in the notice or, if no measures are specified, such measures as the trustees consider may be necessary to reduce the benefits under the scheme, and

(iii) the right of such persons as may be prescribed to bring an appeal to the High Court under subsection (6),

and

(b) submit a copy of the notification made under paragraph (a) to the Pensions Authority not later than 10 days after the date of the notification.”

(b) in subsection (5) —

(i) by substituting the following paragraph for paragraph (b):

“(b) the trustees of the scheme and the employer to whom the scheme relates shall make such notifications and provide such information to such persons as may be prescribed, when and in such manner as the Pensions Authority may specify,”

and

(ii) in paragraph (c), by inserting “within such period as may be prescribed,” after “direction,”

(c) in subsection (6), by substituting “after the date of the notification under subsection (2B).” for “after the date of the direction.”, and

(d) in subsection (7), by substituting the following paragraph for paragraph (a):

“(a) during the period of 21 days after the date of the notification made under subsection (2B).”

#### **Amendment of section 50B of Act of 1990**

**25.** Section 50B of the Act of 1990 is amended, in subsection (6) —

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

“(b) the trustees of the scheme and the employer to whom the scheme relates shall make such notifications and provide such information to such persons as may be prescribed, when and in such manner as the Pensions Authority may specify,”

and

(b) in paragraph (c), by inserting “within such period as may be prescribed,” after “direction.”

#### **Amendment of section 50C of Act of 1990**

**26.** Section 50C of the Act of 1990 is amended, in subsection (1), by substituting “subsection (2B) or (3)” for “subsection (3)”.



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Number 16 of 2014

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## **SOCIAL WELFARE AND PENSIONS ACT 2014**

**REVISED**

**Updated to 1 January 2018**

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### **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 2015***: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Social Welfare and Pensions Act 2015* (47/2015), 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

### **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](http://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 1989, may be found linked from the page of the Act or statutory instrument at [www.irishstatutebook.ie](http://www.irishstatutebook.ie).

### **Acts which affect or previously affected this revision**

- *Water Services Act 2014* (44/2014)

All Acts up to and including *Finance Act 2017* (41/2017), enacted 25 December 2017, were considered in the preparation of this revision.

### **Statutory instruments which affect or previously affected this revision**

- *Social Welfare and Pensions Act 2014 (Section 6) (Commencement) Order 2014* (S.I. No. 530 of 2014)

All statutory instruments up to and including *Legal Metrology (Measuring Instruments) Act 2017 (Commencement) Order 2018* (S.I. No. 1 of 2018), made 4 January 2018, were considered in the preparation of this revision.