



Number 38 of 2010

**FINANCIAL EMERGENCY MEASURES IN THE PUBLIC
INTEREST ACT 2010**

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SCHEDULE

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

[No. 38.] *Financial Emergency Measures in the* [2010.]
Public Interest Act 2010.

ACTS REFERRED TO

| | |
|-------------------------------------------------------------------------------------------------------------|--------------|
| Companies Acts | |
| Defence Act 1954 | 1954, No. 18 |
| Defence (Amendment) Act 2007 | 2007, No. 24 |
| European Parliament (Irish Constituency Members) Act 2009 | 2009, No. 17 |
| Financial Emergency Measures in the Public Interest (No. 2) Act 2009 | 2009, No. 41 |
| Harbours Act 1946 | 1946, No. 9 |
| Harbours Act 1996 | 1996, No. 11 |
| Local Government Act 2001 | 2001, No. 37 |
| Ministerial and Parliamentary Offices Act 1938 | 1938, No. 38 |
| Ministerial, Parliamentary and Judicial Offices and Oireachtas Members (Miscellaneous Provisions) Act 2001 | 2001, No. 33 |
| National Minimum Wage Act 2000 | 2000, No. 5 |
| Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act 1973 | 1973, No. 22 |
| Oireachtas (Allowances to Members) and Ministerial, Parliamentary and Judicial Offices (Amendment) Act 1977 | 1977, No. 29 |
| Oireachtas (Allowances to Members) and Ministerial, Parliamentary and Judicial Offices (Amendment) Act 1983 | 1983, No. 32 |
| Pensions Act 1990 | 1990, No. 25 |
| Public Service Superannuation (Miscellaneous Provisions) Act 2004 | 2004, No. 7 |
| Superannuation Acts 1834 to 1963 | |
| Taxes Consolidation Act 1997 | 1997, No. 39 |
| Vocational Education Act 1930 | 1930, No. 29 |



Number 38 of 2010

**FINANCIAL EMERGENCY MEASURES IN THE PUBLIC
INTEREST ACT 2010**

AN ACT, IN THE PUBLIC INTEREST, TO PROVIDE FOR THE REDUCTION OF THE AMOUNT OF THE PAYMENT OF PENSION OR OTHER BENEFITS (OTHER THAN LUMP SUMS) PAYABLE TO OR IN RESPECT OF CERTAIN PERSONS WHO ARE OR WERE IN THE PUBLIC SERVICE (INCLUDING FORMER HOLDERS OF CERTAIN OFFICES, MEMBERS AND FORMER MEMBERS OF THE HOUSES OF THE OIREACHTAS AND FORMER MEMBERS OF THE JUDICIARY) UNDER AN OCCUPATIONAL PENSION SCHEME OR PENSION ARRANGEMENT (BY WHATEVER NAME CALLED) WHICH IS PROVIDED FOR UNDER THE SUPERANNUATION ACTS 1834 TO 1963 OR ANY OTHER ENACTMENT OR ADMINISTRATIVE MEASURE TO LIKE EFFECT, OR IS REQUIRED TO BE MADE, APPROVED OF OR CONSENTED TO (HOWEVER EXPRESSED) BY ONE OR MORE THAN ONE MINISTER OF THE GOVERNMENT; TO AMEND THE FINANCIAL EMERGENCY MEASURES IN THE PUBLIC INTEREST (NO. 2) ACT 2009 AND THE NATIONAL MINIMUM WAGE ACT 2000; AND TO PROVIDE FOR RELATED MATTERS.

[22nd December, 2010]

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

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

AND WHEREAS it is necessary to cut current Exchequer spending substantially to demonstrate that public expenditure is being significantly controlled so as to ensure access to international funding and to improve the State's international competitiveness;

AND WHEREAS the State is availing of financial assistance programmes provided by the European Financial Stabilisation Mechanism and the European Financial Stability Facility and the International Monetary Fund and it is necessary to take the measures in this Act as part of a range of measures provided for in those programmes to address the economic crisis in the State and to restore domestic and international confidence and to prevent a sovereign debt crisis affecting the State;

[No. 38.] *Financial Emergency Measures in the Public Interest Act 2010.* [2010.]

AND WHEREAS the expenditure on public service pensions is unsustainable and it is necessary to make reductions in payment to ensure that the State has sufficient resources to discharge its commitments and to enable it to provide public services;

AND WHEREAS the burden of a pension-related deduction and a reduction of remuneration has been borne by public servants and it is equitable that public service pensioners should share that burden;

AND WHEREAS the benefit of public service pensions is and will remain, after the enactment of the following Act, significantly and markedly more favourable than those generally available in other employment—

BE IT THEREFORE ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—In this Act—

“Act of 2009” means the Financial Emergency Measures in the Public Interest (No. 2) Act 2009;

“Civil Service” means the Civil Service of the Government and the Civil Service of the State;

“lump sum” means a lump sum payment or gratuity payable on retirement, at a preserved pension age or on death, under a public service pension scheme;

“Minister” means the Minister for Finance;

“office holder” means—

- (a) the President,
- (b) the holder of a qualifying office,
- (c) a member of either House of the Oireachtas,
- (d) a member of the judiciary,
- (e) a military judge appointed under Chapter IVC of Part V of the Defence Act 1954 (as amended by the Defence (Amendment) Act 2007),
- (f) a member of a local authority within the meaning of the Local Government Act 2001, or
- (g) a member of the European Parliament for a constituency in the State, being a member who is in receipt of the salary specified in section 2(2) of the European Parliament (Irish Constituency Members) Act 2009;

“paying authority”, in relation to a public service pension, means the person or body responsible for making payments of the public service pension under the public service pension scheme concerned, or causing such payments to be made, to or in respect of a public servant or former public servant;

“pensioner” means a person who—

- (a) is entitled to payment of a public service pension under a public service pension scheme,
- (b) has a preserved benefit in a public service pension scheme in respect of which the preserved pension age of the person falls on or before the relevant date, or
- (c) is a spouse or child of a public servant or former public servant and who becomes entitled to payment of a public service pension as a spouse or child of that public servant or former public servant, as the case may be, under a public service pension scheme at any time after the relevant date but only if that public servant or former public servant, as the case may be, was entitled before that date to payment of a public service pension under a public service pension scheme in respect of service as a public servant from which the entitlement of the spouse or child derives;

“preserved benefit” has the meaning it has in the Public Service Superannuation (Miscellaneous Provisions) Act 2004;

“preserved pension age”, in relation to a preserved benefit in a public service pension scheme, means the age of the public servant or former public servant concerned at which the preserved benefit becomes payable to him or her under the scheme;

“public servant” means a person who is employed by, or who holds any office or other position in, a public service body and includes an office holder;

“public service body” means—

- (a) the Civil Service,
- (b) the Garda Síochána,
- (c) the Permanent Defence Force,
- (d) a local authority for the purposes of the Local Government Act 2001,
- (e) the National Treasury Management Agency,
- (f) the Health Service Executive,
- (g) the Central Bank of Ireland,
- (h) a vocational education committee established under section 7 of the Vocational Education Act 1930,
- (i) the Economic and Social Research Institute,
- (j) the Institute of Public Administration,
- (k) a body (other than a body specified or referred to in the Schedule) established—
 - (i) by or under an enactment (other than the Companies Acts), or

- (ii) under the Companies Acts in pursuance of powers conferred by or under another enactment, and financed wholly or partly by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government,

in respect of which a public service pension scheme exists or applies or may be made,

- (l) a body (other than a body specified or referred to in the Schedule) that is wholly or partly funded directly or indirectly out of moneys provided by the Oireachtas or from the Central Fund or the growing produce of that Fund and in respect of which a public service pension scheme exists or applies or may be made,
- (m) any subsidiary of, or company controlled (within the meaning given by section 10 of the Taxes Consolidation Act 1997) by, a body to which *paragraph (d), (e), (f), (g), (h), (i), (j), (k) or (l)* relates and in respect of which a public service pension scheme exists or applies or may be made;

“public service pension” means a periodic payment of a pension or other benefit by whatever name called, which is not a lump sum, payable to or in respect of a public servant or former public servant under a public service pension scheme;

“public service pension scheme” means an occupational pension scheme or pension arrangement, by whatever name called, for any part of the public service which—

- (a) is provided for under—
 - (i) the Superannuation Acts 1834 to 1963, or
 - (ii) any other enactment or administrative measure for the like purpose and to the like effect as those Acts, or
- (b) is made by a relevant Minister or has been approved or requires the approval or consent, however expressed, of a relevant Minister or the Minister or both of those Ministers of the Government,

but does not include—

- (i) such a scheme or arrangement—
 - (I) in respect of a body specified or referred to in the Schedule, or
 - (II) in respect of a body other than a body specified or referred to in the Schedule that is a relevant scheme within the meaning of section 40 of the Pensions Act 1990 and to which Part IV of, and the Third Schedule to, that Act apply, or
- (ii) the scheme entitled the eircom Superannuation Scheme;

“qualifying office” has the same meaning as it has in section 13 (inserted by the Oireachtas (Allowances to Members) and Ministerial, Parliamentary and Judicial Offices (Amendment) Act 1977) of the Ministerial and Parliamentary Offices Act 1938, that is to say—

- (a) a ministerial office within the meaning of that section as amended by the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act 1973), or
- (b) a secretarial office within the meaning of that section as amended by the Oireachtas (Allowances to Members) and Ministerial, Parliamentary and Judicial Offices (Amendment) Act 1983 and the Ministerial, Parliamentary and Judicial Offices and Oireachtas Members (Miscellaneous Provisions) Act 2001);

“relevant date” means the date specified by the Minister in an order made pursuant to section 3(1)(b)(ii) of the Act of 2009;

“relevant Minister”, in relation to a public service pension scheme, means the Minister or Ministers of the Government responsible for the making or approval of, or the giving of consent to, the scheme;

“subsidiary” means a subsidiary within the meaning of the Companies Acts.

2.—(1) With effect on and from 1 January 2011, the annualised amount of a public service pension payable in accordance with his or her entitlement to a person who—

Reduction in public service pension.

- (a) is a pensioner, or
- (b) becomes a pensioner on or at any time before the relevant date or, in the case of a pensioner falling under *paragraph (c)* of the definition of “pensioner” in *section 1*, at any time after that date,

shall be reduced in accordance with the Table in this subsection.

TABLE

| Annualised amount of public service pension | Reduction |
|----------------------------------------------|-------------|
| Up to €12,000 | Exempt |
| Any amount over €12,000 but not over €24,000 | 6 per cent |
| Any amount over €24,000 but not over €60,000 | 9 per cent |
| Any amount over €60,000 | 12 per cent |

(2) This section has effect notwithstanding—

- (a) any provision by or under—
 - (i) any other enactment,
 - (ii) any statute or other document to like effect of a university or other third level institution,
 - (iii) any pension scheme or arrangement,
 - (iv) any circular or instrument or other document,

(v) any written agreement or contractual arrangement, or

(b) any verbal agreement, arrangement or understanding or any expectation.

Calculation of public service pension not affected.

3.—Nothing in *section 2* shall affect the calculation of any public service pension entitlement (including an entitlement to a lump sum and an entitlement to periodic payments of pension or other benefits) of a person who is a pensioner or becomes a pensioner on or at any time before the relevant date or, in the case of a pensioner falling under *paragraph (c)* of the definition of “pensioner” in *section 1*, at any time after that date.

Obligation on paying authorities to make payments.

4.—(1) Without prejudice to *subsection (2)*, reductions of public service pensions under *section 2* shall be paid or disposed of as the Minister may direct.

(2) Where the amount of any reduction in a public service pension under *section 2* has not been duly paid or disposed of in accordance with a direction of the Minister under *subsection (1)*, the Minister may recover the amount from the paying authority concerned as a simple contract debt in any court of competent jurisdiction.

(3) If a paying authority, having failed or refused to pay or dispose of reductions of public service pensions under *section 2* in accordance with a direction of the Minister under *subsection (1)*, does not do so within 28 days after the service by post by the Minister of a notice on the authority requiring it to do so, the High Court may, on an application made to the Court by the Minister, make an order directing the authority to remit the reductions to the Minister within such time as may be specified in the order.

(4) An order of the High Court under *subsection (3)* may contain such terms and conditions (if any) as to the payment of costs as the Court considers appropriate.

No power to pay public service pension other than in accordance with *section 2*.

5.—(1) Where the amount of a public service pension is reduced by *section 2*—

(a) a pensioner is not entitled to receive an amount of public service pension greater than the amount so reduced, and

(b) no paying authority is entitled to pay an amount of public service pension to the pensioner greater than the amount so reduced.

(2) If a paying authority pays to a pensioner an amount of public service pension greater than the amount reduced under *section 2*, then—

(a) the pensioner shall have no legal entitlement to the overpayment, and

(b) the paying authority shall recover the amount of the overpayment from the pensioner, either directly or by a deduction taken from the public service pension subsequently payable to that pensioner or otherwise.

(3) *Subsection (2)* shall not be taken as limiting the liability under statute of any person to account for such overpayment.

(4) Where an overpayment of an amount to which *subsection (2)* relates has not been recovered by the paying authority concerned, the Minister may direct in writing that authority to recover, by a specified date, the amount in accordance with *subsection (2)(b)* and, where that authority fails or refuses to so recover the amount, the Minister may deduct the amount from any grant or vote, or other payment, to that authority out of moneys provided directly or indirectly by the Oireachtas or from the Central Fund or the growing produce of that Fund.

6.—Where the Minister is satisfied that exceptional circumstances exist (because of some particular aspect or condition relating to the public service pension or the public service pension scheme concerned, including the funding of that pension or scheme) in respect of a particular class or group of pensioners and those circumstances materially distinguish that class or group from other classes or groups of pensioners to which *section 2* applies, then, the Minister, if he or she considers it to be just and equitable in all the circumstances to do so, may by direction—

Exemption, etc., from operation of *section 2* in certain circumstances.

- (a) exempt that class or group from the operation of *section 2*, either entirely or to such extent as the Minister considers appropriate, or
- (b) modify the operation of *section 2* to reduce their public service pensions in such manner as the Minister thinks fit, having regard to the nature and degree of the financial burden that would otherwise be borne by that class or group,

and this Act, and any regulations made under this Act, shall be read subject to any such direction.

7.—(1) Section 2 of the Act of 2009 is amended by the insertion of the following subsection after subsection (2):

Amendment of section 2 of Act of 2009.

“(2A) The provisions of subsections (1) and (2) and Table 1 to this section shall, for the purpose of the application of those provisions to the remuneration of the holders of certain offices specified in this subsection, have effect on and from 1 January 2011 as if the reductions provided for in subsection (2) and that Table were as follows and a relevant provision that fixes the remuneration, or any part of the remuneration, of the holders of any of those offices shall be taken to have been so amended with effect on and from that date:

- (a) in the case of the Taoiseach, a 25 per cent reduction of remuneration in lieu of a reduction of 20 per cent of remuneration;
- (b) in the case of the Tánaiste, a 19.5 per cent reduction of remuneration in lieu of a reduction of 15 per cent of remuneration; and
- (c) in the case of a Minister of the Government, a 19.5 per cent reduction of remuneration in lieu of a reduction of 15 per cent of remuneration.”.

(2) The reference in Table 1 to section 2 of the Act of 2009 to “Minister” shall be construed as being, and always to have been, a reference to a Minister of the Government.

Amendment of
section 3 of Act of
2009.

8.—Section 3 of the Act of 2009 is amended—

(a) in subsection (1)(a), by the substitution of “in receipt of a pension under a public service pension scheme” for “in receipt of a pension or has a preserved benefit in a public service pension scheme, and”,

(b) in subsection (1)(b), by the substitution of the following for subparagraph (ii):

“(ii) a later date specified by the Minister by order in accordance with subsection (3),

or a person who was at some time before the date specified under subparagraph (ii) a public servant and has a preserved benefit in a public service pension scheme in respect of which the preserved pension age of the person falls on or before that date, and”,

(c) in subsection (1), by the addition of the following paragraph:

“(c) a person who is a spouse or child of a public servant or former public servant and who becomes entitled to payment of a public service pension as a spouse or child of that public servant or former public servant, as the case may be, under a public service pension scheme at any time after the date specified under paragraph (b)(ii) but only if that public servant or former public servant, as the case may be, was entitled before that date to payment of a public service pension under a public service pension scheme in respect of service as a public servant from which the entitlement of the spouse or child derives.”, and

(d) by the addition of the following subsection:

“(4) In this section—

‘preserved benefit’ has the meaning it has in the Public Service Superannuation (Miscellaneous Provisions) Act 2004;

‘preserved pension age’, in relation to a preserved benefit in a public service pension scheme, means the age of the public servant or former public servant concerned at which the preserved benefit becomes payable to him or her under the scheme.”.

Amendment of Act
of 2009.

9.—The Act of 2009 is amended by the insertion of the following section after section 9:

“Restriction on application of direction given by Minister.

9A.—The direction given by the Minister under section 6 in respect of a particular class or group of public servants to whom Table 2 to section 2 applies shall apply only in relation to the remuneration payable to that class or group and shall not apply for the purposes of calculating the pension entitlements (including an entitlement to a lump sum and an entitlement to periodic payments of pension or other benefits) of members of that class or group at any time after the date specified in an order made under section 3(1)(b)(ii).”.

10.—Before 30 June in 2012 and every year after 2012, the Minister shall—

Annual review and report to Houses of the Oireachtas.

- (a) carry out a review of the operation, effectiveness and impact of this Act (other than *section 13*), having regard to the overall economic conditions in the State and national competitiveness,
- (b) consider whether or not any of the provisions of this Act (other than *section 13*) continue to be necessary having regard to the purposes of this Act, the revenues of the State and State commitments in respect of public service pensions,
- (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.

11.—(1) The Minister may make regulations for the purposes of this Act or in consequence of any of its provisions or for the purpose of enabling any provision to have full effect.

Regulations.

(2) Without prejudice to the generality of *subsection (1)*, the Minister may make regulations for the purposes of the calculation, making, collection, disposal and recovery of the reductions of public service pensions under *section 2*.

(3) Regulations made by the Minister under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

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

12.—Where a doubt, question or dispute arises in the operation of this Act in respect of whether a person is or is not a person whose

Removal of doubts.

public service pension is subject to *section 2*, then such doubt, question or dispute shall—

- (a) be submitted to the Minister by the paying authority in relation to the public service pension concerned, and
- (b) be determined by the Minister after consulting such persons (if any) as the Minister considers appropriate in the circumstances,

and the determination of the doubt, question or dispute by the Minister shall be final.

Amendment of
National Minimum
Wage Act 2000.

13.—The National Minimum Wage Act 2000 is amended—

- (a) by the substitution of the following section for section 11:

“11.—(1) The Minister shall, by order, declare a national minimum hourly rate of pay for the purposes of this Act of €7.65.

(2) The Minister may, by order, amend or revoke an order under this section (including an order under this subsection).

(3) The Minister may make an order under subsection (2) whether or not a recommendation under section 12 or 13 has been made.

(4) The Minister shall, for the purpose of deciding whether or not to make an order under subsection (2), take account of the following matters:

- (a) changes in earnings during the period since the most recent making of an order under this section;
- (b) changes in currency exchange rates during that period;
- (c) whether during that period—
 - (i) unemployment has been increasing or decreasing, and
 - (ii) employment has been increasing or decreasing;
- (d) the likely effect that the proposed order will have on—
 - (i) levels of employment and unemployment,
 - (ii) the cost of living, and
 - (iii) national competitiveness; and
- (e) where a recommendation has been made under section 12 or 13, that recommendation.

(5) The national minimum hourly rate of pay declared by order under this section may include an allowance in respect of board and lodgings, board only or lodgings only at such rates as are specified in the order.”,

(b) by the substitution, in subsection (2) of section 12, of “(4)” for “(1)”,

(c) in section 13, by—

(i) the substitution, in subsection (5), of the words “matters specified in paragraphs (a), (b), (c) and (d) of subsection (4) of section 11.” for “following matters:”,

(ii) the deletion, in that subsection, of paragraphs (a), (b) and (c),

(iii) the insertion of the following subsection:

“(5A) A recommendation under subsection (4) or (5) shall not be made after the expiration of 13 weeks from the making of the request under subsection (3).”, and

(iv) the substitution, in subsection (7), of “section 11(4)” for “section 11(1)”.

14.—This Act may be cited as the Financial Emergency Measures in the Public Interest Act 2010. Short title.

SCHEDULE

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

1. Any body corporate established by Act of Parliament before 6 December 1922 that, upon its establishment, was of a commercial character.
2. Dublin Airport Authority, public limited company.
3. Cork Airport Authority, public limited company.
4. Shannon Airport Authority, public limited company.
5. Bord Gáis Éireann.
6. Bord na gCon.
7. Bord na Móna.
8. Córas Iompair Éireann.
9. Coillte Teoranta.
10. Electricity Supply Board.
11. Eirgrid.

12. A harbour authority within the meaning of the Harbours Act 1946 or company to which *section 7* of the Harbours Act 1996 relates.
13. Horse Racing Ireland.
14. Irish National Stud Company Limited.
15. Irish Aviation Authority.
16. An Post.
17. An Post National Lottery Company.
18. Radio Teilifís Éireann.
19. Railway Procurement Agency.
20. Teilifís na Gaeilge.
21. Voluntary Health Insurance Board.
22. A subsidiary of a body to which this Schedule relates, including a subsidiary of any such subsidiary.