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**AN BILLE UM PINSIN (SCÉIM AONAIR) AGUS LUACH  
SAOTHAIR NA SEIRBHÍSE POIBLÍ, 2011  
PUBLIC SERVICE PENSIONS (SINGLE SCHEME) AND  
REMUNERATION BILL 2011**

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**EXPLANATORY MEMORANDUM**

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*Introduction*

The Bill's principal purpose is to provide for a new single pension scheme for all new entrants to the public service. The new scheme is a commitment under the *EU-IMF Programme of Financial Support for Ireland*.

The Bill also includes, in *Part 3*, the necessary legislative amendments required to facilitate a reduction in pay rates for certain public servants and officeholders, including members of the Government and new members of the judiciary, whose pay rates are determined in legislation.

The Bill is in 4 Parts:

Part 1 — Preliminary and General.

Part 2 — Public Service Pensions (with 5 chapters)

- (i) Preliminary and General (Part 2)
- (ii) Single Scheme
- (iii) Pre-existing Public Service Pension Schemes
- (iv) Provisions Applicable to all Public Service Pension Schemes
- (v) Consequential Amendments (Part 2)

Part 3 — Remuneration of Judges and other Office Holders

Part 4 — Amendments to Financial Emergency Measures in the Public Interest Acts

**Part 1 — Preliminary and General**

**Sections 1, 2, 3 and 4** are standard provisions in legislation, providing for the short title of the bill, definitions, commencement provisions, repeals of legislation and for expenses. *Section 3* and *Parts 2* and *3* of the Bill must be commenced by the Minister for Public Expenditure and Reform, who is defined as the Minister in *section 2*.

## **Part 2 — Public Service Pensions**

### **Chapter 1 — Preliminary and General — Part 2**

**Section 5 (Interpretation (Part 2))** defines the terms to be used in the Bill and the Scheme. These include pension, pensionable remuneration, pensionable public servant, pensionable position and pre-existing public service pension scheme. The latter is an occupational scheme already in place. This definition also does not include such a scheme or arrangement in respect of a body specified or referred to in the Schedule, that is bodies considered “commercial” in nature, such as the ESB and RTÉ.

Public servant and public service body is defined in this section. Public service body is defined as meaning the Civil Service, the Garda Síochána, the Permanent Defence Force, local authorities, Health Service Executive, the Central Bank of Ireland (subject to the agreement of the Governor of that Bank), educational institutions and the non-commercial state bodies where a public service pension scheme exists or applies or may be made. The CPI is defined as being the Consumer Prices (All Items) Index.

A qualifying office holder includes a Minister, Minister of State or the Attorney General. A relevant authority means the Minister, another Minister of the Government or a public service body or such body corporate as the Minister may prescribe in relation to any part or parts of the public service.

**Section 6 (Application (Part 2))** provides for the scheme to apply to new appointees to the Central Bank of Ireland only with, and subject to, the consent of the Governor. This recognises the Central Bank’s legal position as part of the Eurosystem.

**Section 7 (Application of certain enactments, etc., restricted)** provides that, other than in accordance with *section 15* (which allows the Minister to apply by way of regulation an existing statutory provision that is not inconsistent with the new scheme) no provision of a pre-existing public service pension scheme shall apply or be applied in respect of the service of a public servant to which the Scheme relates. (For reference, a Table at the end of this Explanatory Memorandum sets out existing provisions under which pre-existing public service pension schemes may or have been made.) The section also specifies that a statutory function (including the power to make or amend a superannuation scheme) in respect of a pre-existing public service pension scheme may continue to be exercised.

**Section 8 (Regulations (Part 2))** provides that the Minister may make regulations for any purpose in relation to which regulations are provided for in this Part and sets out a range of matters which may be covered by such regulations prescribing relevant authorities; prescribing positions in public service bodies as being designated offices; appeals. Regulations may make different provision for different circumstances or cases, classes or types, and may contain such incidental, consequential or supplemental provisions as the Minister considers necessary or expedient for the purposes of this Part. Every regulation made under this Part shall be laid before each House of the Oireachtas as soon as may be after it is made and is subject to it not being annulled within 21 sitting days after that. If it was annulled this would be without prejudice to the validity of anything previously done under the regulations.

## Chapter 2 — Single Scheme

### *Establishment and Membership of Scheme, etc.*

**Section 9 (Scheme and membership)** provides for the establishment of the single scheme and describes to whom it applies, i.e. all public servants other than those under 16 or over 70 or those who do not qualify as scheme members under *section 10*.

**Section 10 (Scheme member, etc.)** provides for the scheme to apply to persons who become public servants on or after the operative date with the exception of those who are seconded or absent without leave from a public service body. If the person was a serving public servant on the operative date and subsequently leaves that employment and takes up a position under the same contract or within six months then they will not be a single scheme member but would retain their membership of a pre-existing public service pension scheme as appropriate.

**Section 11 (Pensionability of allowances, emoluments and related payments)** provides that only such allowances as the Minister may determine can be pensionable and that, in future, for any allowances to be pensionable they must be permanent in nature, subject to contributions and advised to the scheme member as being pensionable.

**Section 12 (Pension benefits to be paid to Scheme members or former Scheme members)**, this section is for the avoidance of doubt and provides that no other pension benefits will be paid to a scheme member other than under the single Scheme.

**Section 13 (Normal retirement age):** this section provides for a public servant to retire at the age of 66 or the age at which the person would from time to time become eligible for the state pension (i.e. age 66, moving to 67 in 2021 and 68 in 2028), whichever last occurs and that the public servant must retire at age 70 unless the scheme member is the President, a member of the Oireachtas, a qualified office holder or a scheme member who must retire earlier than normal retirement age (such as Gardaí, Permanent Defence Forces and Fire Officers).

**Section 14 (Normal pension age):** this section establishes a normal pension age equivalent to the earliest normal retirement age applicable to the scheme member for the retirement benefits produced by the relevant service.

**Section 15 (Application of certain provisions of Act to pre-existing public service pension schemes):** this section is for the avoidance of doubt and provides that this Bill will not affect pre-existing scheme members except with regard to pension adjustments (increases) this being subject to the Minister making an order and to the general abatement provisions.

### Contributions by members of Scheme, etc.

**Section 16 (Contributions to Scheme, etc.)** provides for the scheme member to make contributions. For most scheme members these will be integrated with the social insurance system, i.e. 3 per cent of pensionable remuneration and 3.5 per cent of net pensionable remuneration. For certain public servants, (the President, qualifying and designated office holders, the Judiciary, Oireachtas members and those who must retire early such as Gardaí, PDF personnel, Prison Officers and firefighters), different contribution rates apply as set out in the Table below. The remuneration on which these,

possibly split, rates may be calculated may be different depending on the social insurance class of the scheme member.

<b>Position/Body</b>	<b>Contribution Rates</b>
President	13%
Qualifying Office Holders	13%
Judiciary	13%
Oireachtas Members	13%
Designated office holders	10%
Gardaí/PDF/Prison Officers/Fire-fighters	7.5%

The section also provides that a public service body, financed other than from the Exchequer, may be required to make an employer's contribution to the Scheme.

**Section 17 (Return of contributions in certain cases)** allows for those scheme members who leave before completing the vesting period to be refunded their contributions adjusted for relevant income tax or other statutory deductions.

*Calculation of benefits and circumstances for payments under the Scheme*

**Section 18 (Referable amounts)** defines the term “referable amounts” used in this Part as including money transferred from EU Institutions or accepted by the Minister on foot of its provision in secondary legislation. This allows for the inclusion of such transferred amounts in the calculation of a pension and could allow for purchase in the new scheme.

**Section 19 (Calculation of retirement benefits)** is the default section applying to the vast majority of new entrant public servants, it allows for the integration formula whereby earnings up to €45,000 (a figure recommended by the Labour Relations Commission) receive an accrual rate of 0.58% (which provides for some occupational accrual in addition to that being provided by the state pension) until their pay exceeds this figure.

The section provides that a Scheme member or former Scheme member, (other than those who enjoy fast accrual such as the President, qualifying and designated office holders, the judiciary, members of either House of the Oireachtas and Scheme members who may be required to retire early for operational reasons (Gardaí, Defence Forces, Prison Officers and Firefighters) or those who retire on medical or cost-neutral grounds), who has completed the vesting period and has reached the normal pension age, shall, subject to abatement in certain defined circumstances, i.e. remaining in or taking up public service employment after retirement, be eligible on retirement to receive a pension and lump sum payment.

The referable amounts for such a public servant means in the case of a pension, an accrual of 0.58 per cent of the Scheme member's pensionable remuneration that is less than or equal to 3.74 times the value of the State Pension (Contributory) at that time, and 1.25 per cent (one eightieth) of the Scheme member's pensionable remuneration that is greater than 3.74 times the value of the State Pension (Contributory) at that time.

In the case of a lump sum payment, 3.75 per cent of the Scheme member's pensionable remuneration makes up the referable amounts. Both pension and lump sum referable amounts are indexed to the Consumer Price Index (CPI) and therefore adjusted to account of cost of living changes each year, until payment of each arises.

**Section 20 (Calculation of retirement benefits — President)** provides that every person who, having held the office of President of Ireland, ceases to hold that office for any reason other than death shall be eligible to receive a pension and, as is the case currently, that no vesting period applies to Presidential pensions.

The President's pension shall, at any time, be the equivalent of an annualised amount that is equal to the lesser of one-half of the annualised rate at that time of the pensionable remuneration that stands provided for the person holding the office of the President, or the sum of the referable amounts in respect of each calendar year or part of a calendar year which the Scheme member or former Scheme member has accrued. This puts a "cap" of half pay on the President's pension as otherwise the fast accrual rate could mean, for a two-term President, potentially a greater pension than that.

The referable amounts in respect of each calendar year or part of a calendar year mean in the case of the pension, an amount calculated at a rate of 7.14 per cent of the Scheme member's pensionable remuneration for that year or part of a year of service. The President's pension is not integrated and no lump sum is payable. The pension referable amounts are adjusted for CPI changes.

**Section 21 (Calculation of retirement benefits — qualifying office holders)** provides that a qualifying office holder (including a Minister, Minister of State, the Attorney General, the Ceann Comhairle, the Leas-Ceann Comhairle) shall receive a pension, subject to a cap of half salary, in respect of their service in that office. The referable amounts mean in the case of the pension, an amount calculated at a rate of 5 per cent of the Scheme member's pensionable remuneration. The pension is not integrated with the social welfare system and no lump sum is payable.

Pension benefits under this section shall not be payable to a person while that person is a Member of either House of the Oireachtas or of the European Parliament or Attorney General or holds the office of President or is a designated Office holder. The pension referable amounts are adjusted for CPI changes.

**Section 22 (Calculation of retirement benefits — holders of judicial offices)** provides that a member of the judiciary shall be eligible to receive a pension and a lump sum if he or she either has attained the normal pension age and had ceased to be a member of the judiciary before reaching the retirement age for such a member prescribed by law pursuant to Article 36 of the Constitution, or has attained the retirement age for such a member as so prescribed.

A former Judge shall be eligible to receive upon his or her retirement an annual pension, subject to a cap of one-half of pensionable remuneration, and a lump sum payment subject to a cap of one and a half times pensionable remuneration.

The referable amounts mean, in the case of the pension, an accrual of 2.5 per cent of the Scheme member's pensionable remuneration and, in the case of a lump sum payment, an amount calculated at a

rate of 7.5 per cent of pensionable remuneration. The referable amounts are adjusted for CPI changes. The pension is not integrated with the social welfare system.

**Section 23 (Calculation of retirement benefits — members of either House of the Oireachtas)** provides that a person having been a member of either House of the Oireachtas shall be eligible to receive a pension and a lump sum if he or she has completed the vesting period and has attained normal pension age and is no longer a member of either such House, a member of the European Parliament or Attorney General. They would also be eligible if, after attaining normal pension age, such a person ceases, other than by death, to be a member of either such House, or a member of the European Parliament and is not serving as Attorney General, or holding a pensionable public service position on the appointment or nomination of the Government or of a member of the Government.

Such a former Oireachtas member shall be eligible to receive upon his or her retirement an annual pension, subject to a cap of one-half of pensionable remuneration, and a lump sum payment subject to a cap of one and a half times pensionable remuneration.

The referable amounts mean, in the case of the pension, an accrual of 2.5 per cent of the Scheme member's pensionable remuneration and, in the case of a lump sum payment, an amount calculated at a rate of 7.5 per cent of pensionable remuneration. The referable amounts are adjusted for CPI changes. The pension is not integrated with the social welfare system.

**Section 24 (Calculation of retirement benefits — designated office holders)** stipulates that a designated office holder means each of the following:

- the Director of Public Prosecutions;
- the Ombudsman;
- the Master of the High Court;
- a county registrar, being a person appointed as such under section 35 of the Court Officers Act 1926;
- a member of the Labour Court;
- a member of An Bord Pleanála;
- a member of the Competition Authority;
- a member of the Environmental Protection Agency;
- a Revenue Appeals Commissioner;
- a person holding any other designated office or other position in a public service body as may be prescribed by the Minister.

For this group, the designated office holder shall be eligible to receive upon his or her retirement an annual pension, subject to a cap of one-half of pensionable remuneration, and a lump sum payment subject, for certain designated office holders, to a cap of three-quarter times pensionable remuneration.

The referable amounts mean, in the case of the pension, an accrual of 1.67 per cent of the Scheme member's pensionable remuneration and, in the case of a lump sum payment, an amount calculated at a rate of 5 per cent of pensionable remuneration. The referable amounts are adjusted for CPI changes and the pension may, depending on the designated office holder's social insurance class, be integrated with the State Pension (Contributory).

**Section 25 (Calculation of retirement benefits — Scheme members who may be required to retire early)** covers the following cases:

- (a) a member of the Garda Síochána in a position that requires retirement, or gives an entitlement to retire, upon attaining 55 years of age;
- (b) a member of the Permanent Defence Force in a position that requires retirement, or gives an entitlement to retire, upon attaining 50 years of age;
- (c) a prison officer in a position that requires retirement, or gives an entitlement to retire, upon attaining 55 years of age;
- (d) a specified fire brigade employee or a retained fire-fighter.

Such a Scheme member or former Scheme member who has completed the vesting period, and attains the relevant age (i.e. the one to which the paragraph concerning their membership of the scheme relates), shall, subject to general abatement provisions, be eligible to receive upon commencement of retirement, except in the case of a retained fire-fighter, an annual pension equivalent to the sum of the referable amounts in respect of each calendar year or part of a calendar year as a Scheme member to whom *subsection (1)* applies, and a single lump sum payment equivalent to the sum of the referable amounts in respect of each calendar year or part of a calendar year as a Scheme member to whom *subsection (1)* applies.

In the case of a Scheme member who is a retained fire-fighter, the annual pension and single lump sum shall be calculated in accordance with *section 19* and not this section. This is because while a retained fire-fighter may retire early he or she does not have fast accrual terms.

The referable amounts for such a public servant mean in the case of a pension, an accrual of 0.58 per cent of the Scheme member's pensionable remuneration that is less than or equal to 3.74 times the value of the State Pension (Contributory) at that time, and 1.43 per cent (one seventieth) of the Scheme member's pensionable remuneration for that year or part of a year that is greater than 3.74 times the value of the State Pension (Contributory) at that time.

In the case of a lump sum payment, 4.29 per cent of the Scheme member's pensionable remuneration makes up the referable amounts. Both pension and lump sum referable amounts are indexed to the Consumer Price Index (CPI) and therefore adjusted to take account of inflation changes each year, until payment of each arises.

**Section 26 (Cost neutral early retirement)** provides that a Scheme member, who has reached the age of 55 years, may retire on cost neutral grounds, subject to giving reasonable notice and to the agreement of the relevant authority.

The benefits to be paid shall be calculated by reference to the Scheme member's referable amounts accrued at the date of resignation and shall be payable as and from that date, but the amount of each benefit shall be reduced by reference to the Scheme member's age at date of resignation in accordance with actuarial tables approved and issued from time to time by the Minister. The Minister may, having regard to the requirements and financial affairs of the public service, by order specify a higher age than 55 to be attained.

**Section 27 (Preservation of benefits)** provides for the preservation of benefits where a person, other than the President, after completing the vesting period, ceases to be a public servant other than under cost neutral early retirement or on medical grounds. He or she is entitled to a pension and lump sum payment at the age at which they would be eligible to receive a contributory State Pension. The person must make an application in a manner provided for by the Minister.

The amount of a preserved pension and preserved lump sum shall be the amount which would have been awarded to the Scheme member concerned under the calculation of benefits sections if he or she had attained the preserved pension age on the date of last ceasing to be a public servant, as altered by reference to any CPI adjustment.

If a preserved pensioner dies before reaching the preserved pension age, then a preserved death gratuity equal to accrued referable lump sum amounts as altered by reference to any CPI adjustments shall be payable to his or her legal personal representative on application by the legal personal representative.

If a preserved pensioner incurs permanent ill-health and satisfies the relevant authority that if he/she were still serving, he/she would be eligible to retire on medical grounds, a preserved pension and preserved lump sum may be paid with effect from the date (not earlier than the date of the former members application) on which the relevant authority is so satisfied.

**Section 28 (Retirement on Medical Grounds)** states that a Scheme member who has completed less than the vesting period (two years) who retires or is retired or discharged on medical grounds shall be eligible to receive a gratuity of 8.5 per cent of actual pensionable remuneration during the period of service.

A Scheme member who has completed the vesting period and retires or is retired or discharged on medical grounds in accordance with the conditions laid down shall be eligible to receive retirement benefits calculated without actuarial reduction.

Retirement on medical grounds is only permitted where certain conditions are met. These conditions include: medical evidence must be supplied which satisfies the relevant authority that the Scheme member has a current ongoing medically recognised physical or mental health condition that is likely to be permanent and enduring and that the condition permanently renders the member medically incapable of regular and effective service in their current occupation or grade, and reasonable medical treatment options and practicable changes to working arrangements (including, in exceptional cases, outside the Scheme member's current occupation or grade) which would enable or facilitate continued service by the member have been examined and are not considered practical, and finally, that due to that ongoing medically recognised physical or mental health condition, the retirement is necessary and that the Scheme member did not make a false declaration about his or her health or did not suppress any material fact about his or her health when taking up the public service position.

The medical evidence required must be based on a medical assessment carried out by a registered medical practitioner who is qualified to assess the fitness for work of the Scheme member concerned, and where the Scheme member is not otherwise a patient of that registered medical practitioner. The registered medical practitioner must satisfy the relevant authority that he or she has



practised medicine for a period of 6 years since being registered in the general register of medical practitioners, or, where the medical assessment to which the certificate relates has been carried out in a place outside the State, being entitled to practise medicine under the law of such place.

The Minister may make regulations for the purposes of enhancing the rate of pension and lump sum having regard to a Scheme member's age at the time of his or her retirement or discharge on medical grounds, a Scheme member's potential or expected future service as a public servant or otherwise at the time of his or her retirement or discharge on medical grounds, the quantum of pension and lump sum that would be payable to a Scheme member but for regulations made under this subsection, and such other matters as the Minister considers relevant in relation to a member's terms and conditions of employment, and regulations under this subsection may be made in respect of all or a class or classes of Scheme members.

The gross amount of an enhancement to any pension and lump sum that may be made shall not exceed 7 times the value of the most recent full year referable amount calculated for the relevant Scheme member.

If someone retires on medical grounds and is subsequently re-appointed as a pensionable public servant and Scheme member, then the pension shall cease and upon repaying to the relevant authority concerned the lump sum so awarded together with compound interest, such person shall be regarded as not having ceased to be a Scheme member and shall have restored to him or her the sum of the referable amounts that he or she had accumulated at the date he or she had ceased to be a Scheme member limited to the actual value of the referable amounts at time of retirement on medical grounds. The relevant authority concerned may at its discretion agree to accept payment of the amount concerned in more than one payment and compound interest shall be calculated at such rate per annum as may be specified by the relevant authority with the approval of the Minister.

This section does not apply in its entirety to a member of the Permanent Defence Force who is, in accordance with the regulations made under the Defence Acts or otherwise, compulsorily discharged or retired on medical grounds from the Permanent Defence Force having been found unfit for further service in the Force.

**Section 29 (Death in service)** provides that, in the case of a Scheme member, (other than the President or a qualifying office holder but including an Attorney General who is not a member of either House of the Oireachtas), who dies while serving as a pensionable public servant, his or her legal personal representative shall receive a death gratuity, equal to but not greater than, twice the Scheme member's actual pensionable remuneration (without expression on a full-time basis) in the year of his or her death less any lump sum or other death gratuity payable.

**Section 30 (Obligation to pay benefits under this Chapter)** sets out that the calculation and payment of any retirement benefit which falls due to be paid under this Chapter, shall in the first instance be a function of the relevant authority for the public service body in which the person concerned was last serving in before retirement as a public servant and in respect of which he or she was a Scheme member. The Minister may direct in writing another relevant authority to carry out such function, either generally or in respect of any class or classes of former Scheme members. The relevant

authority may make arrangements for the payment as its agent of any retirement benefit through another relevant authority or a third party.

**Section 31 (Payment of pension, etc.)** provides that the pension and lump sum benefits (including any such benefit that is a preserved benefit) accrued under the Scheme shall only be paid in accordance with this Part.

Pensions payable under this Part shall be paid in arrears by a relevant authority and shall continue throughout the life of the former Scheme member concerned, and, where appropriate, after the former Scheme member's death, during the period of entitlement in respect of any other person concerned.

Where a registered medical practitioner, as defined, certifies that the relevant person is unable by reason of mental or physical disability to give a receipt for the benefit amount, the relevant authority may pay either or both the pension and lump sum benefit wholly or partly to any institution or person having care of the relevant person. This does not affect any enduring power of attorney and any payments made under this section shall discharge such relevant authority as makes them as fully as if they were made directly to the relevant person.

**Section 32 (Survivor's pension)** provides that consequent on the death of a Scheme member or former Scheme member to whom or in respect of whom a pension or death gratuity or preserved pension or lump sum payment has been or may be awarded, the Minister may, where the deceased member is survived by a spouse or civil partner, grant to that spouse or civil partner a pension in respect of the deceased member's service as a public servant.

The survivor's pension shall be payable at one-half of the rate of the pension or preserved pension of the deceased member concerned except where a Scheme member dies while serving as a public servant then it shall be one-half of the pension that would have been payable to the member had he or she retired on medical grounds on the date of his or her death.

**Section 33 (Grant and payment of survivor's pension)**

The spouse or civil partner of a deceased member who survives that member shall not be granted or paid a survivor's pension if that spouse or civil partner is cohabiting, married or in a civil partnership with another at or after the death of the member. This is in line with social welfare rules, with which this scheme is integrated.

The section also sets out conditions for payment and allows the Minister, having considered an application, to consider compassionate grounds for the payment of a survivor's pension. The Minister may delegate in writing functions to any relevant authority which delegation may include instructions to the relevant authority concerned regarding the determination of the circumstances in which compassionate grounds may or may not exist.

The section provides that a person can receive not more than one survivor's pension, including one paid under a pre-existing public service pension scheme. Where the deceased member was in receipt of more than one pension, the survivor can receive only the survivors pensions as relate to the service of the same deceased member.

**Section 34 (Children’s pension — grant)** provides that the Minister may where a deceased member is survived by one or more dependant children grant for such children a pension.

**Section 35 (Children’s pension — beneficiaries)** provides that children of a deceased member who are (i) not wholly or mainly financially dependent on the Scheme member immediately before the Scheme member’s death, or (ii) married, in a civil partnership or cohabiting with another person, or (iii) in receipt of grants for education, instruction or training which made the person, immediately before the deceased member’s death, not financially dependent on the deceased member, are not eligible for a children’s pension.

The Minister may, if he or she finds there are compassionate grounds for so doing and considers it just and equitable in all the circumstances, direct that a person who is married, in a civil partnership or cohabiting, shall be regarded as being a qualifying child.

The Minister may delegate in writing functions in this regard to any relevant authority which delegation may include instructions to the relevant authority concerned regarding the determination of the circumstances in which compassionate grounds may or may not exist. If a break occurs in the potential beneficiary’s full-time education, instruction or training, then unless the relevant authority otherwise directs, he or she shall, for the duration of such break, be regarded as a qualifying child.

A child shall not be eligible for a children’s pension in respect of more than 2 deceased members. Where a child would, but for this subsection, be eligible for a children’s pension in respect of more than 2 deceased members, then he or she shall only be eligible for the 2 children’s pensions that are most favourable to him or her.

**Section 36 (Children’s pension — to whom paid)** provides that, in general, a children’s pension shall be paid to the parent, step-parent or guardian of the child if that child is in his or her care.

Where a child in respect of whom a children’s pension is payable is not in the care of his or her parent, step-parent or guardian, the pension shall be paid either to the child or to such other person as the relevant authority may determine. Where a child in respect of whom a children’s pension is payable is in the care of more than one person, the children’s pension concerned may be paid to each of those persons in such proportions as the relevant authority may determine. The Minister may, from time to time issue instructions in writing to all relevant authorities or to a class or classes of relevant authorities regarding the determination of the class or classes of persons to whom a children’s pension may be paid.

**Section 37 (Children’s pension — conditions for payment, etc.)** provides that a children’s pension is granted and payments made on the condition that payments shall be applied for the benefit of the child or children for whom the pension was granted. It also provides that a pension cannot be paid if the eligibility has lapsed on time grounds but sets out other conditions which may be applied by the Minister or other relevant authority where such circumstances arise.

The section provides that the Minister may issue instructions in writing to all relevant authorities or to a class or classes of relevant authorities regarding the determination of the class or classes of persons to whom a children’s pension may be paid.

**Section 38 (Children’s pension — calculation of rate and payment)** sets out that a children’s pension may be paid only in relation to the period or periods subsequent to the date of death of the member or former member concerned, as the case may be.

The rate of children’s pension, where the deceased member or former member leaves neither a spouse nor a civil partner or, if he or she is survived by a spouse or civil partner who dies after his or her death is,

- (i) where there is only one child, one-third of the deceased member’s pension, or
- (ii) where there are 2 or more children, at a rate for each child equal to one-half of the deceased member’s pension divided by the number of children

The rate of children’s pension, where the deceased member leaves a spouse or a civil partner, is

- (i) where there are 3 or fewer children, one-sixth of the deceased member’s pension for each child, or
- (ii) where there are 4 or more children, at a rate for each child equal to one-half of the deceased member’s pension divided by the number of children.

#### *Pension and other adjustments*

**Section 39 (Adjustment of pension and referable amounts)** provides that the referable amounts shall be up-rated automatically in line with increases in the Consumer Price Index (CPI). It also provides that, in respect of pensions payable under the Scheme, that, subject to *subsection (4)*, pensions payable under the Scheme shall be increased to reflect any such increase in the CPI.

*Subsection (4)* allows the Minister to decide when any increase in pensions under this section is to be paid having regard to movements in the Consumer Price Index, including the timing and the means by which any increase is paid. This gives the Minister discretion over the timing of paying pension increases due under the Scheme.

#### *Review of Scheme, etc.*

**Section 40 (Review of Scheme)** states that the Minister may, from time to time, cause to be carried out a review, an actuarial review or an actuarial review and revaluation of the Scheme or any part of it. The actuarial review shall be carried out by a qualified actuary and such a person shall be independent in the exercise of their review function.

The Minister can ask the reviewer to have regard for the following:

- the overall cost of the Scheme and the contributions paid by the Scheme members and the contribution made by the State in respect of the Scheme members,
- the cost of the membership of certain persons or class of persons, the contributions paid by that class or those persons and the contribution made by the State in respect of that class or those persons,
- the cost of the membership of persons or any class of persons in respect of whom death-in-service benefits, survivors or childrens pensions may be payable,

- any statutory deductions, and
- any other matter that the Minister considers to be of relevance in the circumstances.

**Section 41 (Alteration of contribution rates)** provides that, after considering a review, the Minister may by order revise the rate of contribution from the Scheme members concerned, subject to conditions including that the rate shall not be higher or lower than that proposed in the review. Where a rate determined on the basis of the review would be lower than the standing rate then the order may have retrospective effect. The order may be made only if a draft has been laid before each House of the Oireachtas, and been approved by resolution passed by each of those Houses.

#### *Other Provisions*

**Section 42 (Duty of relevant authority to keep records, calculate contributions, etc.)** provides that the calculation and payment of any retirement benefit which falls due to be paid under this Act, shall be a function of the relevant authority for the public service body in which the person concerned was last serving in before retirement as a public servant and in respect of which he or she was a Scheme member, or such other relevant authority that the Minister has directed in writing to carry out such function, either generally or in respect of any class or classes of former Scheme members, which ever last occurs. Nothing in this section prevents the relevant authority making arrangements for the payment as its agent of any retirement benefit through another relevant authority or a third party.

**Section 43 (Payments out of Central Fund, etc.)** provides that all payments under this Act in respect of the service of Scheme members and deceased members and accrued under the Scheme shall in respect of the President, qualifying office holders, holders of judicial offices and the Comptroller and Auditor General be paid out of the Central Fund or the growing produce of that fund by or on behalf of the Minister, and in any other case, be paid from funds provided by the Oireachtas for that purpose. This mirrors the existing position for these payments.

**Section 44 (Repayment of retirement benefits, etc., overpaid)** provides if, at any time, a person receives retirement benefits to which the person is not entitled under this Act, or an amount in respect of retirement benefits which is greater than that which the person is entitled to under this Act, then the person or, where he or she has died, his or her legal personal representative, shall repay to the relevant authority concerned such payments or excess payments, as may be appropriate.

Repayments may be in a form, including a reduction in any benefits payable under the Scheme at that time, or be in accordance with a payment schedule, as may be agreed between the parties concerned with the consent of the Minister. In default of any repayment in accordance with this section, the full amount of the excess payment outstanding may be recovered by the relevant authority concerned as a simple contract debt in any court of competent jurisdiction.

**Section 45 (Pensionable remuneration and simultaneous employment in more than one position, etc.)** provides that a public servant cannot build up pension benefits in the Scheme in respect of simultaneous multiple public service employments, i.e. only one full-time employment or the aggregated equivalent will be taken into account to compute the retirement benefits under the scheme.

### **Chapter 3 — Pre-existing Public Service Pension Schemes**

**Section 46 (Extension of section 39 to pre-existing public service pension schemes)** provides that the Consumer Price Index may be applied to pre-existing public service pension schemes.

**Section 47 (Application of scheme to certain persons)** provides for the Minister, by order, to set dates beyond which certain sections of the Bill would not apply.

### **Chapter 4 — Provisions applicable to all Public Service Pension Schemes**

**Section 48 (Duty to give information, etc.)** provides that a person in receipt of a pension under the Scheme or a pension under a pre-existing public service pension scheme, or both, shall give to a relevant authority such information as is necessary for the proper operation of the Scheme or of a pre-existing public service pension scheme, or both, as the case may be.

The spouse or civil partner of a deceased member or a person having care of a child of a deceased member or the legal personal representative of a deceased member shall give to a relevant authority such information as is necessary for the proper operation of the Scheme or of a pre-existing public service pension scheme in relation to any application for a survivor's pension or a pension for the children of that deceased member.

Any other person not including those set out above who applies for a pension under the Scheme or a pre-existing public service pension scheme shall give to a relevant authority such information as is necessary for its proper operation by the relevant authority.

Any person who is in receipt of a pension (whether in respect of himself or herself or otherwise) under the Scheme or a pre-existing public service pension scheme shall give to a relevant authority such information as is necessary for the proper operation of the Scheme or the pre-existing public service pension scheme in respect of the pension concerned.

A relevant authority that is responsible for or authorises the payment of pensionable remuneration to a Scheme member or to a member of a pre-existing public service pension scheme shall give the Minister or another relevant authority such information as that relevant authority considers necessary for the proper operation of the Scheme or of the pre-existing public service pension scheme concerned, as may be requested by the Minister, or as may be requested by any other relevant authority for the proper operation of the Scheme or of the pre-existing public service pension scheme concerned.

**Section 49 (Use of Personal Public Service Number (PPSN))** provides that the identifying series, known as the Personal Public Service Number (PPSN), of a Scheme member and of any other person in receipt of a survivor's pension or a children's pension shall be supplied by the member or that other person to the relevant authority concerned, and shall be used by that relevant authority as a unique identifier to record details in respect of the pension contributions, referable amounts and retirement benefits under the Scheme, and to transfer such information to another relevant authority as required under this Act.

**Section 50 (Duty to make declarations, etc.)** provides that any person who takes up employment in a public service body, and has an entitlement to retirement benefits or preserved retirement benefits, or has received or is in receipt of retirement benefits under the Scheme or a pre-existing public service pension scheme shall provide a declaration to that effect to the relevant authority.

The section provides that any person who applies for a benefit from the Scheme or a pre-existing public service pension scheme shall make a declaration of any other benefits or preserved benefits from any other public service pension scheme that he or she is in receipt of or is entitled to.

Any person to whom *section 51* applies shall, upon application for a public service pension from any public service body, make a declaration as to whether or not they are in receipt of any remuneration from any public service body and provide any relevant information required by the relevant authority for the purposes of that section.

**Section 51 (Abatement and reckoning of pensionable service)** provides that where a pension is payable by a public service body to a public service pensioner and the pensioner receives any remuneration from any public service body, then during this time no more of the pension shall be paid than so much as, with that remuneration, equals the pensionable remuneration which the pensioner would have received if he or she was once again working in the position in which he or she served in the public service. The Minister may remove any doubt or question arising under this section.

The Minister may waive the abatement provision if persons with particular training and experience are required for particular work in the public service body concerned and it is not practicable to meet that requirement otherwise than by the employment of the pensioner.

The section also provides that no more than the equivalent of 40 years' service in total or, if greater, the number of years accrued under the relevant scheme rules at the commencement date, may be taken into account in calculating any pensions or lump sums payable under that scheme or those schemes. This provides a cap on the qualifying pensionable service, subject to a person with more than 40 years service in different schemes keeping what they had at the time this Act was passed.

**Section 52 (Cesser or reduction of benefit)** provides that where a Scheme member is dismissed or resigns or otherwise ceases to hold employment as a consequence of misconduct involving a financial loss to the public service body or the State, then the relevant authority may, in order to make good the loss with compound interest, reduce or not return the amount of contributions to which the member would otherwise be entitled. The relevant authority may in any other case (including a cost-neutral retirement or one on medical grounds), refuse or reduce any benefit or preserved benefit with effect on and from the date the person ceases to hold employment (including, in either case, any lump sum) which might otherwise be payable.

Where a pension is being paid to a person under this Chapter in respect of his or her service and that person is convicted by any court of an offence in the commission of which a financial loss to a public service body or the State has occurred, then the Minister or the other

relevant authority concerned may reduce or cease paying a pension in order to make good such loss together with compound interest, which shall be charged in respect of the period between the date on which the loss was incurred and the date of the final payment.

### **Chapter 5 — Consequential Amendments (Part 2)**

**Section 53 (Amendment of section 3 of Public Service Superannuation (Miscellaneous Provisions) Act 2004)**

**Section 54 (Amendment of section 14 of Teaching Council Act 2001)**

**Section 55 (Amendment of section 41 of Education (Welfare) Act 2000)**

**Section 56 (Amendment of sections 105 and 106 of Planning and Development Act 2000)**

**Section 57 (Amendment of sections 21 and 24 of Environmental Protection Agency Act 1992)**

**Section 58 (Amendment of section 13 of Dublin Institute of Technology Act 1992)**

**Section 59 (Amendment of section 2 of Ombudsman Act 1980)**

These are consequential amendments made to ensure these existing superannuation provisions do not apply to members of the Single Scheme.

### **Part 3 — Remuneration of Judicial and other Office Holders**

Part 3 of the Bill deals with changes to the pay for new members of the judiciary and certain other officeholders.

**Section 60** amends section 46 of the Courts (Supplemental Provisions) Act 1961 to provide for revised salary rates for members of the judiciary appointed after the Bill is enacted. The revised rates reflect the pay reductions and pension related deduction applied to other public servants, as well as the 10% reduction applied at the beginning of 2011 to new public servants appointed to the public service entry grades. The section protects the salary rate of serving members of the judiciary by providing that they will retain their existing salary if appointed to another role. The new section also repeats the power for the Government to increase the pay of those judges by order, if necessary with retrospective effect.

Article 35.5 of the Constitution provides that “The remuneration of a judge shall not be reduced during his continuance in office.” The Government has published the text of a proposed referendum to amend this provision. If that referendum is passed, implementing legislation will be enacted to apply revised pay rates to members of the judiciary, to ensure comparable treatment between members of the judiciary and other public servants.

**Section 61** is a consequential amendment to section 60.

**Section 62** amends section 1(1) of the Presidential Establishment Act 1938 to provide that the new person elected to the office of President will have an annual salary of €249,014.

**Section 63** amends section 3 of the Ombudsman Act 1980 to provide that the salary and allowances for expenses of the next person appointed as Ombudsman will be determined by the Minister for Public Expenditure and Reform, rather than being linked to that



of a High Court judge as is currently the case. Under sub-section (2) the salary of the current Ombudsman is not affected by this change.

**Section 64** amends section 105 of the Planning and Development Act 2000, to provide that the terms and conditions (including salary and allowances for expenses) of the Chairperson of An Bord Pleanála will be determined by the Minister for the Environment, Communities and Local Government, with the consent of the Minister for Public Expenditure and Reform. The salary is currently linked to that of a High Court judge.

#### **Part 4 — Amendment of Acts relating to Financial Emergency Measures in the Public Interest**

Part 4 of the Bill contains amendments to the Financial Emergency Measures in the Public Interest Acts passed in 2009 (No. 2 Act) and 2010.

The Financial Emergency Measures in the Public Interest (No. 2) Act 2009 reduced the rate of pay for public servants, including members of the Government and other officeholders.

**Section 65 (Amendment of section 2 of the Financial Emergency Measures in the Public Interest (No. 2) Act 2009)** amends section 2 of the Financial Emergency Measures in the Public Interest (No. 2) Act 2009, to reduce the pay for the Taoiseach, the Tanaiste and Ministers further, and to apply commensurate reductions to other officeholders.

**Section 66 (Amendment of section 3 of the Financial Emergency Measures in the Public Interest (No. 2) Act 2009)** makes an amendment to the FEMPI Act 2010, which had amended the FEMPI (No. 2) Act 2009 with the intention of making pensions subject to the reduction if they were in payment or would come into payment, including on a preserved basis, before the end of the “grace period” and subject to calculation on the basis of the reduced pay rates if they came into payment after that date (with the survivors of people who were pensioners before the end of the grace period being covered in the former group).

It was also intended that those people who left or leave the public service with a preserved pension age falling after the end of the grace period would receive a pension calculated subject to the pay reduction from 1<sup>st</sup> January 2010. This amendment is to remove any doubt that the section has that effect.

**Section 67 (Amendment of section 1 of the Financial Emergency Measures in the Public Interest Act 2010)** provides that the public service pension reduction will apply to Central Bank pensioners; in order to do this there were legal issues concerning, *inter alia*, the need to consult with the European Central Bank before providing for this and it is considered that this legislative change to FEMPI 2010 is needed for the avoidance of doubt to properly apply the reduction to Central Bank pensioners.

#### **Schedule — Bodies to which the definition of Public Service Body” does not apply**

This sets out a list of Bodies that are not included in the definition of public service bodies and are therefore not covered by the superannuation measures introduced in the Bill.

Hereunder is a non-definitive list which provides, for convenience of reference, an identification of extant statutory provisions governing public service superannuation arrangements under which schemes may or have been made heretofore.

*An Roinn Caiteachais Phoiblí agus Athchóirithe  
Meán Fómhair, 2011*

<b>Title of Act</b>	<b>Provision affected</b>
Adoption Act 2010	section 103(4) (in so far as it relates to superannuation) and section 123
Adventure Activities Standards Authority Act 2001	section 23
Agriculture (Research, Training and Advice) Act 1988	section 9 and section 7(3) (in so far as it relates to superannuation)
An Bord Bia Act 1994	section 35
Arts Act 2003	section 31
Aviation Regulation Act 2001	sections 20 and 21
Broadcasting Act 2009	sections 16 and 91
Charities Act 2009	section 19(6) (in so far as it relates to superannuation) and section 26
Children Act 2001	sections 184 and 239
Civil Legal Aid Act 1995	section 4(3)(c) (in so far as it relates to superannuation) and section 23
Comhairle Act 2000	section 15
Communications Regulation Act, 2002	sections 26 and 27
Companies (Auditing and Accounting) Act 2003	section 20
Company Law Enforcement Act 2001	section 8(1) (in so far as it relates to superannuation) and section 9
Competition Act 1991	paragraph 5 of Schedule
Competition Act 2002	section 44
Comptroller and Auditor General (Amendment) Act 1993	section 15
Consumer Protection Act 2007	section 14(4)(a) (in so far as it relates to superannuation) and section 36
Courts Service Act 1998	section 17(3) (in so far as a pre-existing public service pension scheme has been made under that provision), subsections (2) and (3) of section 40 (in so far as each relates to superannuation)
Courts (Supplemental Provisions) Act 1961	section 57
Criminal Assets Bureau Act 1998	section 9(5)(a) (in so far as it relates to superannuation)
Defence Act 1954	section 184L (in so far as it relates to superannuation)
Digital Hub Development Agency Act 2003	section 21
Dublin Docklands Development Authority Act 1997	section 35

<b>Title of Act</b>	<b>Provision affected</b>
Dublin Institute of Technology Act 1992	section 12(4)
Dublin Transport Authority Act 2008	section 15(3)(b) (in so far as it relates to superannuation) and section 21
Education Act 1998	section 24(6) (in so far as it relates to superannuation) and section 55(1)(b) (in so far as it relates to superannuation)
Electricity Regulation Act 1999	paragraphs 30 to 38 of Schedule 1
Environmental Protection Agency Act 1992	sections 33 and 34
Family Support Agency Act 2001	section 17
Fisheries (Amendment) Act 1997	section 35B
Food Safety Authority of Ireland Act 1998	section 39
Garda Síochána Act 2005	sections 66(3) and 116(3) (in so far as each relates to superannuation)
Grangegorman Development Agency Act 2005	section 25
Health Act 2004	section 17(5) (in so far as it relates to superannuation) and section 23
Health Act 2007	section 21(3) (in so far as it relates to superannuation) and section 27
Health and Social Care Professionals Act 2005	section 13
Health Insurance Act 1994	sections 26(7) and 27(2)(a) (in so far as each relates to superannuation) and section 28
Health (Miscellaneous Provisions) Act 2009	section 60
Heritage Act 1995	section 18(1) (in so far as it relates to superannuation) and section 20
Higher Education Authority Act 1971	section 15
Human Rights Commission Act 2000	subsection (2) and (3) of section 12 (in so far as it relates to superannuation) and section 20
Industrial Development Act 1986	section 41
Industrial Development Act 1993	paragraph 3 of Second Schedule
Industrial Development Act 1993	section 10(4)(g) (in so far as a pre-existing public service pension scheme has been made under that provision)
Industrial Development (Enterprise Ireland) Act 1998	sections 20 and 38
Industrial Development (Science Foundation Ireland) Act 2003	section 21
Industrial Relation Act 1969	subsections (1) to (5) of section 5

<b>Title of Act</b>	<b>Provision affected</b>
Industrial Relation Act 1990	section 29
Industrial Research and Standards Act 1961	section 35
Inland Fisheries Act 2011	section 32
Institute for Advanced Studies Act 1940	section 19
Institute for Advanced Studies (Amendment) Act 1967	section 2
Institutes of Technology Act 2006	sections 11 and 12
Irish Film Board Act 1980	section 28
Irish Horseracing Industry Act 1994	section 23
Irish Medicines Board Act 1995	subsections (4) and (1) of section 10 (in so far as each relates to superannuation) and section 12
Irish Sports Council Act 1999	section 23
Labour Services Act 1987	section 6(3) (in so far as it relates to superannuation) and section 8
Law Reform Commission Act 1975	sections 11 and 12
Local Government Act 2001	subsection (2)(b), subsection (4)(d) (in so far as it relates to superannuation), and subsections (4)(i) and (7) of section 142
Local Government Services (Corporate Bodies) Act 1971	subsections (2)(c) and (4) of section 4
Marine Institute Act 1991	section 9
Medical Practitioners Act 2007	sections 24(2) and 25(2) (in so far as each relates to superannuation)
Mental Health Act 2001	subsections (4) and (6) of section 38 (in so far as each relates to superannuation) and section 40
Milk (Regulation of Supply) Act 1994	paragraph 14 of Schedule
National Archives Act 1986	section 6(3) (in so far as it relates to superannuation)
National College of Art and Design Act 1971	section 20
National Cultural Institutions Act 1997	section 33
National Economic and Social Development Office Act 2006	section 27
National Disability Authority Act 1999	section 28
National Oil Reserves Agency Act 2007	section 22
National Sports Campus Development Authority Act 2006	section 13(4)(a) (in so far as it relates to superannuation) and section 15
National Standards Authority of Ireland Act 1996	paragraph 3 of Second Schedule

<b>Title of Act</b>	<b>Provision affected</b>
National Tourism Development Authority Act 2003	section 36
Official Languages Act 2003	Paragraph 6 of Second Schedule
Ombudsman (Defence Forces) Act 2004	subsections (2) to (8) of section 3
Ombudsman for Children Act 2002	section 5
Ordnance Survey Ireland Act 2001	section 14(8) (in so far as it relates to superannuation) and section 17
Pensions Act 1990	sections 17 and 130
Personal Injuries Assessment Board Act 2003	section 63(7) (in so far as it relates to superannuation) and section 68
Pharmacy Act 2007	paragraph 15 of Schedule 1
Planning and Development Act 2000	sections 119 and 121
Plant Varieties (Proprietary Rights) Act 1980	section 3(9)
Private Security Services Act 2004	section 12
Prosecution of Offences Act 1974	section 2(8)(b)
Public Health (Tobacco) Act 2002	section 32
Qualifications (Education and Training) Act 1999	section 52(5) and Third Schedule
Radio and Television Act 1988	paragraph 11 of Schedule
Radiological Protection Act 1991	section 11(3) (in so far as it relates to superannuation) and section 13
Railway Safety Act 2005	sections 22 and 23
Refugee Act 1996	paragraph 5(a) (in so far as it relates to superannuation) of Second Schedule
Regional Technical Colleges Act 1992	Section 11(4)
Regional Technical Colleges (Amendment) Act 1999	subsections (5) to (7) of section 9
Residential Tenancies Act 2004	section 163
Road Safety Authority Act 2006	section 20
Roads Act 1993	section 36
Safety, Health and Welfare at Work Act 2005	section 56
Sea Fisheries (Amendment) Act 1955	section 2
Sea-Fisheries and Maritime Jurisdiction Act 2006	sections 59 and 60
Sustainable Energy Act 2002	section 17

<b>Title of Act</b>	<b>Provision affected</b>
Transport (Railway Infrastructure) Act, 2001	section 25
Universities Act 1997	section 25(7) and Fifth Schedule
Údarás na Gaeltachta Act 1979	section 14
Urban Renewal Act 1986	section 20(4)
Western Development Commission Act 1998	section 29
Wildlife Act 1976	paragraph 24 of Second Schedule