

DÁIL ÉIREANN

AN BILLE LEASA SHÓISIALAIGH AGUS PINSEAN (FORÁLACHA
ILGHNÉITHEACHA), 2013
—AN COISTE

SOCIAL WELFARE AND PENSIONS (MISCELLANEOUS PROVISIONS) BILL 2013
—COMMITTEE STAGE

*Leasuithe Breise
Additional Amendments*

SECTION 1

a1. In page 5, line 19, after “8,” to insert “15*,”.

—An tAire Coimirce Sóisialaí.

[*This is a reference to the section proposed to be inserted by amendment 15a.]

SECTION 12

15a. In page 17, between lines 35 and 36, to insert the following:

“Attachment — insertion of Part 11A of Principal Act

15. The Principal Act is amended by inserting the following Part after Part 11:

“Part 11A

ATTACHMENT

Interpretation

343A. In this Part—

‘additional debt’ in relation to a relevant person who has received a notice of attachment in respect of an overpaid person, means any amount which, at any time after the time of the receipt by the relevant person of the notice of attachment but before the end of the relevant period in relation to the notice, would be a debt due by the relevant person to the overpaid person if a notice of attachment were received by the relevant person at that time;

‘debt’ in relation to a notice of attachment given to a relevant person in respect of an overpaid person and in relation to that relevant person and overpaid person, means the amount of any money which, at the time the notice of attachment is received by the relevant person, is due by the relevant person (whether on that person’s own account or as an agent or trustee) to the overpaid person, irrespective of whether the overpaid

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person has applied for the payment (to the overpaid person or any other person) or for the withdrawal of all or part of the money;

‘deposit’ means an amount of money paid to a financial institution on terms under which it will be repaid with or without interest and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the financial institution to which it is made;

‘emoluments’ has the same meaning as section 983 of the Act of 1997;

‘financial institution’ has the same meaning as section 250A and includes a branch of a financial institution which records deposits in its books as liabilities of the branch;

‘notice of attachment’ means a notice under section 343H;

‘notice of revocation’ means a notice under section 343I;

‘overpaid person’ shall be construed in accordance with section 343B;

‘relevant amount’ shall be construed in accordance with section 343B;

‘relevant period’ in relation to a notice of attachment, means, as respects the relevant person to whom the notice of attachment is given, the period commencing at the time at which the notice is received by the relevant person and ending on the earliest of—

- (a) the date on which the relevant person completes the payment to the Minister out of the debt, or the aggregate of the debt and any additional debt, due by the relevant person to the overpaid person named in the notice, of an amount equal to the relevant amount in relation to the overpaid person,
- (b) the date on which the relevant person receives a notice of revocation of the notice of attachment, and
- (c) where the relevant person or the overpaid person named in the notice—
 - (i) is declared bankrupt, the date on which the relevant person or the overpaid person is so declared, or
 - (ii) is a company which commences to be wound up, the relevant date within the meaning of section 285 of the Companies Act 1963, in relation to the winding up;

‘relevant person’ in relation to an overpaid person, means a person in respect of whom the Minister has reason to believe may have, at the time a notice of attachment is received by such person in respect of an overpaid person, a debt due to the overpaid person.

Person to whom notice of attachment may be given

343B.(1) For the purposes of this Part, a person who is liable under section 335,

336, 337 or 338 to pay to the Social Insurance Fund or the Minister, on demand, a sum referred to in one or more than one of those sections shall be referred to as the 'overpaid person' and the sum which the overpaid person is so liable to pay shall be referred to as the 'relevant amount'.

- (2) Notwithstanding that the Minister may recover the relevant amount by other methods, subject to this Part, the Minister may give a notice of attachment to an overpaid person—
- (a) who fails to—
 - (i) repay the relevant amount, and
 - (ii) respond, to the satisfaction of the Minister, to a notice under section 343D(1),and
 - (b) to whom the Minister has given a notice under section 343D(3).

Circumstances of overpaid person

343C. Prior to giving a notice under section 343D(1), the Minister, in determining the circumstances of the overpaid person shall take into account the following matters:

- (a) his or her personal and family circumstances;
- (b) any statutory deductions that may affect his or her earnings or income;
- (c) the amount of the overpayment;
- (d) the period of time for which the overpayment is outstanding;
- (e) the amount of net income or earnings of the overpaid person;
- (f) the employment circumstances of the overpaid person;
- (g) the amount of debt due to the overpaid person.

Proposal to give a notice of attachment

343D.(1) Before giving a notice of attachment to an overpaid person, the Minister shall give notice in writing to the overpaid person—

- (a) requesting him or her to make arrangements to repay the relevant amount,
- (b) requesting him or her to respond furnishing any representations that he or she wishes to make in relation to the matter for consideration by the Minister, and
- (c) stating that if the overpaid person fails to make arrangements to repay or respond to the satisfaction of the Minister within 14 days of the date of the notice under this subsection, the Minister intends to proceed with a notice of attachment relating to the overpaid

person.

- (2) The Minister shall give due consideration to any response received from the overpaid person under subsection (1) before he or she decides to give a notice under subsection (3).
- (3) Having considered any response under subsection (2) the Minister shall give a notice in writing to the overpaid person (whether or not the document containing the notice also contains other information being communicated by the Minister to the overpaid person), not later than 28 days before the receipt by the relevant person or relevant persons concerned of a notice of attachment, stating that if the relevant amount is not paid it may be specified in a notice of attachment or notices of attachment and recovered under this Part from a relevant person or relevant persons in relation to the overpaid person.

Attachment of earnings

343E.(1) A notice of attachment may relate to any amount of money due by the relevant person to the overpaid person as emoluments under a contract of service.

- (2) A notice of attachment referred to in subsection (1) may provide, as the Minister considers appropriate, for the payment by the relevant person of an amount out of the emoluments, over a period specified in the notice, by the periodical deductions of such amounts as are specified in the notice.
- (3) The Minister, in determining the rate of periodical deductions under subsection (2), and in addition to considering the matters under section 343C shall not—
 - (a) without the prior written agreement of the overpaid person, determine a rate that exceeds 15 per cent of the net weekly emoluments to which the person concerned is or becomes entitled, or
 - (b) determine a rate that exceeds an amount that will cause the overpaid person to become entitled to claim for supplementary welfare allowance under section 196.
- (4) Where the Minister gives a notice of attachment referred to in subsection (1) to a relevant person—
 - (a) the relevant person shall not be liable for failure to comply with it before 10 days have elapsed since the giving of the notice,
 - (b) if the overpaid person to whom it refers is not in the employment of the relevant person or ceases to be in the employment of the relevant person after it is given, that relevant person shall (in either case) within 10 days from the date of receipt of the notice, make a return of that fact to the Minister, and

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- (c) on any occasion when a relevant person makes, in compliance with a notice of attachment, a deduction from an overpaid person's earnings, the relevant person shall give, in such manner and form as directed in the notice of attachment, to the overpaid person a written statement of the total amount of the deduction.
- (5) Where the Minister gives a notice of attachment referred to in subsection (1)—
 - (a) the overpaid person shall—
 - (i) notify the Minister in writing of every occasion on which he or she leaves any employment, or becomes employed or reemployed, not later (in each case) than 10 days from the date on which he or she does so, and
 - (ii) include in the notice referred to in subparagraph (i) particulars of his or her earnings and expected earnings from the relevant employment,
 - and
 - (b) any relevant person who is an employer of the overpaid person and knows that the notice of attachment has been given, within 10 days of the occurrence of a matter referred to in paragraph (a) and in such manner and form as directed in the notice of attachment, shall notify the Minister in writing of any change in earnings paid to the overpaid person.

Attachment of money in financial institution

- 343F.(1) For the purposes of a notice of attachment, where a relevant person is a financial institution, 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 deposit held by the relevant person—
- (a) to the credit of the overpaid person for the overpaid person's sole benefit, or
 - (b) to the credit of the overpaid person and any other person or persons for their joint benefit,
- 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, a deposit held by a relevant person which is a financial institution to the credit of 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 held for the benefit of the overpaid person and the other party or parties to the deposit equally, and accordingly only the portion of the deposit so deemed shall be regarded as a debt due by the relevant person to the overpaid person.

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- (3) Where evidence of the amount of the deposit referred to in subsection (2) that is held to the benefit of the overpaid person is produced to the satisfaction of the relevant person within 10 days of the giving of the notice under section 343H(5), only so much of the deposit as is shown to be held to the benefit of 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 which is a financial institution, 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 which is a financial institution 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.

Dispute

343G. Where there is a dispute as to an amount of money which is due by the relevant person to the overpaid person, the amount in dispute shall be disregarded by the relevant person for the purposes of determining the amount of the debt and specifying the debt in the reply delivered to the Minister under section 343H(1)(c)(i).

Notice of attachment

343H.(1) Where an overpaid person fails to repay the relevant amount, the Minister may give to a relevant person, in relation to the overpaid person, a notice in writing (in this section referred to as the ‘notice of attachment’) in which is entered—

- (a) the overpaid person’s name and address,
- (b) the relevant amount, or, in a case where a notice of attachment is given to more than one relevant person in respect of an overpaid person, a portion of the relevant amount as determined appropriate by the Minister, and
- (c) a direction to the relevant person—
 - (i) subject to subsections (2) and (3), to deliver to the Minister, within the period of 10 days from the date on which the notice of attachment is received by the relevant person, a reply in writing specifying whether or not any debt is due by the relevant person to the overpaid person on the date that the notice is received by the relevant person and, if any debt is so due, specifying the amount of the debt, and

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- (ii) if the amount of any debt is so specified, to pay to the Minister within the period referred to in subparagraph (i), an amount equal to the amount of the debt so specified.
- (2) Where the amount of the debt due by the relevant person to the overpaid person is equal to or greater than the relevant amount, the amount of the debt specified in the reply shall be an amount equal to the relevant amount.
- (3) A relevant person to whom a notice of attachment has been given shall comply with the direction in the notice.
- (4) Where the relevant person is a financial institution and the debt due by the relevant person to the overpaid person is part of a deposit held to the credit of the overpaid person and any other person or persons for their joint benefit, a reply shall be made within a period of 10 days from—
 - (a) the expiry of the period specified in the notice to be given under subsection (5), or
 - (b) the production of the evidence referred to in subsection (5)(ii).
- (5) Where a relevant person which is a financial institution is given a notice of attachment and the debt due by the relevant person to the overpaid person is part of a deposit held by the relevant person to the credit of 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 to the deposit 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 paragraph 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 343F(2) a deposit is deemed, subject to section 343F(3), to be held to the benefit of the overpaid person and the other party or parties to the deposit equally, and
 - (iii) unless such evidence, referred to in section 343F(3) is produced within 10 days of the giving of the notice under this subsection—
 - (I) an amount equal to the amount of the deposit so deemed to be

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held to the benefit of 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 of the deposit so deemed to be held to the benefit of 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.
- (6) If, when a relevant person receives a notice of attachment, the amount of the debt due by the relevant person to the overpaid person named in the notice is less than the relevant amount in relation to the overpaid person or no debt is so due and, at any time after the receipt of the notice and before the end of the relevant period in relation to the notice, an additional debt becomes due by the relevant person to the overpaid person, the relevant person shall within 10 days of that time—
- (a) if the aggregate of the amount of any debt so due and the additional debt so due is equal to or less than the relevant amount in relation to the overpaid person—
 - (i) send a further statement to the Minister specifying the additional debt, and
 - (ii) pay to the Minister the amount of the additional debt,and so on for each subsequent occasion during the relevant period in relation to the notice of attachment on which an additional debt becomes due by the relevant person to the overpaid person until—
 - (I) the aggregate amount of the debt and the additional debt or debts so due equals the relevant amount in relation to the overpaid person, or
 - (II) paragraph (b) applies in relation to an additional debt,and
 - (b) if the aggregate amount of any debt and the additional debt or debts so due to the overpaid person is greater than the relevant amount in relation to the overpaid person—
 - (i) send a further statement to the Minister specifying such portion of the latest additional debt as when added to the aggregate of the debt and any earlier additional debts is equal to the relevant amount in relation to the overpaid person, and
 - (ii) pay to the Minister that portion of the additional debt.
- (7) Where a notice of attachment has been given to a relevant person in

respect of an overpaid person, the relevant person shall not, during the relevant period in relation to the notice, make any disbursements out of the debt, or out of any additional debt, due by the relevant person to the overpaid person except to the extent that any such disbursement—

- (a) will not reduce the debt or the aggregate of the debt and any additional debt so due to an amount that is less than the relevant amount specified in the notice of attachment concerned, or
 - (b) is made pursuant to an order of a court.
- (8) For the purposes of this section, a disbursement made by a relevant person contrary to subsection (7) shall be deemed not to reduce the amount of the debt or any additional debts due by the relevant person to the overpaid person.
- (9) Any reply, notice, statement or further statement required to be given by the relevant person to the Minister or the overpaid person under this section shall be in such manner and form as directed in the notice of attachment.
- (10) A reference to the relevant amount in this section shall, as appropriate, be construed as including a reference to the relevant amount or the portion of the relevant amount, as the case may be, specified in a notice of attachment.

Revocation of notice of attachment

343I. A notice of attachment given to a relevant person in respect of an overpaid person may be revoked by the Minister at any time by notice in writing given to the relevant person and shall be revoked within 10 days if the overpaid person has paid the relevant amount to the Minister.

Supplemental matters relating to notices of attachment

- 343J.(1) Where in pursuance of this Part a relevant person pays any amount to the Minister under a notice of attachment out of a debt or an additional debt due by the relevant person to the overpaid person and, at the time of the receipt by the Minister of that amount, the overpaid person has paid to the Minister the amount or aggregate amount of the overpayments, in respect of which the overpaid person is in default at the time of the giving of the notice or notices of attachment, the first-mentioned amount shall be refunded by the Minister within 10 days to the overpaid person.
- (2) On the receipt by the Minister of an amount paid under section 343H in accordance with a notice of attachment, the Minister shall within 10 days notify the overpaid person and the relevant person in writing of such receipt.
 - (3) Where, under section 343H and in accordance with a notice of attachment, a relevant person pays to the Minister the whole or part of the amount of a debt or an additional debt due by the relevant person

to an overpaid person, or any part of such an amount, the overpaid person shall allow such payment and the relevant person shall be acquitted and discharged of the amount of the payment as if it had been paid to the overpaid person.

- (4) Where under section 343H a relevant person is prohibited from making any disbursement out of a debt or an additional debt due to an overpaid person, no action shall lie against the relevant person in any court by reason of a failure to make any such disbursement.
- (5) Any obligation on the Minister to maintain secrecy or any other restriction on the disclosure of information by the Minister shall not apply in relation to information contained in a notice of attachment.
- (6) A notice of attachment in respect of an overpaid person shall not be given to a relevant person at a time when—
 - (a) the relevant person concerned is an undischarged bankrupt or a company being wound up, or
 - (b) the overpaid person concerned is an undischarged bankrupt.
- (7) The Minister may appoint one or more than one of his or her officers to perform any acts and discharge any functions to be performed or discharged by the Minister under this Part.
- (8) Where a relevant person to whom a notice of attachment in respect of an overpaid person has been given—
 - (a) delivers a reply under subparagraph (i) of section 343H(1)(c) but fails to pay to the Minister, within the period referred to in that subparagraph, the amount specified in the reply or any part of that amount, or
 - (b) delivers a further statement under subsection (6) of section 343H but fails to pay to the Minister within the time specified in that subsection the amount specified in the further statement or any part of that amount,

the amount specified in the reply or further statement, or the part of that amount, as the case may be, which the relevant person has failed to pay to the Minister, may, if the notice of attachment has not been revoked by a notice of revocation, be sued for and recovered by action or other appropriate proceedings by the Minister in any court of competent jurisdiction.

Offences

343K. Where a relevant person fails to comply with a direction under subparagraph (i) or (ii) of section 343H(1)(c)—

- (a) within the period specified in subparagraph (i) of section 343H(1)(c), or

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(b) if subsection (3) of section 343H applies, within the period referred to in that subsection,

he or she is guilty of an offence.”.”.

—An tAire Coimirce Sóisialaí.