

[First additional list of amendments - containing a substitute amendment.]

DÁIL ÉIREANN

**AN BILLE UM BAINISTÍOCHT NA SEIRBHÍSE POIBLÍ (EARCAÍOCHT
AGUS CEAPACHÁIN) (LEASÚ), 2013
—AN TUARASCÁIL**

**PUBLIC SERVICE MANAGEMENT (RECRUITMENT AND
APPOINTMENTS) (AMENDMENT) BILL 2013
—REPORT**

*Leasú Ionadacha
Substitute Amendment*

16. In page 11, between lines 37 and 38, to insert the following:

“Insertion of Part
7A in Principal Act.

7.—The Principal Act is amended by inserting the following Part after Part 7:

“PART 7A

SICK LEAVE REMUNERATION

Interpretation of Part. 58A.—(1) In this Part—

‘condition’ includes, if the Minister so determines and makes (whether in respect of the whole of a period claimed to be sick leave or portion of such a period) provision in that behalf in the regulations concerned, a condition that a medical practitioner of a class specified in the regulations certify in writing that the public servant concerned is unable to attend to his or her duties due to illness or injury;

‘public service body’ means—

- (a) the Civil Service,
- (b) that category of persons referred to in section 30(g) of the Defence Act 1954, namely civilians employed thereunder by the Minister for Defence,
- (c) the Garda Síochána,
- (d) a local authority within the meaning of the Local Government Act 2001,
- (e) the Health Service Executive,
- (f) an education and training board,
- (g) to the extent not otherwise provided by this definition, any other body (other than a body referred to in Schedule 3 (inserted by the *Public Service Management (Recruitment and Appointments) (Amendment) Act 2013*)) 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 money 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 pre-existing public service pension scheme exists or applies or may be made, or in respect of which the Single Public Service Pension Scheme is applicable,

- (h) any other body (other than a body referred to in Schedule 3) that is wholly or partly funded directly or indirectly out of monies provided by the Oireachtas or from the Central Fund or the growing produce of that Fund and in respect of which a pre-existing public service pension scheme exists or applies or may be made, or in respect of which the Single Public Service Pension Scheme is applicable,
- (i) 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) or (g) relates and in respect of which a pre-existing public service pension scheme exists or applies or may be made;

‘public servant’ means—

- (a) an employee or officer of, or the holder of a position in, a public service body,
- (b) to the extent not otherwise provided by this definition, a person holding a position the appointment to which is made by the Government,
- (c) an officer of the Houses of the Oireachtas,
- (d) the Ombudsman, or
- (e) the Comptroller and Auditor General;

‘relevant person’ means a public servant falling within a class of public servants specified in the regulations concerned;

‘sick leave’ means a case in which a public servant is unable to attend to his or her duties due to illness or injury.

Regulations concerning payment of remuneration during sick leave

58B.—(1) Without prejudice to subsection (5) and subject to subsections (2) and (7), the Minister may make regulations providing for the payment of remuneration, in circumstances specified in the regulations and subject to such conditions as are specified therein, to a relevant person during a period of sick leave on his or her part, and that remuneration shall be (as the Minister determines and specifies in the regulations)—

- (a) the whole amount of the remuneration that would otherwise accrue to the person,
- (b) a percentage specified in the regulations of the whole amount referred to in paragraph (a), or
- (c) in respect of an initial number of hours, days or weeks of sick leave on the part of that person occurring, in a given period, the whole amount referred to in paragraph (a) and then, in respect of a number of hours, days or weeks of sick leave on that person's part (whether they are a continuation of the initial occurrence of sick leave in that period or are a separate occurrence of such leave in that period) a percentage specified in the regulations of that whole amount.

(2) Regulations under subsection (1) shall contain a provision that no remuneration shall be paid in respect of any part of a number of hours, days or weeks of sick leave (on the relevant person's part) that exceeds a number, specified in the regulations, of hours, days or weeks of sick leave (on that person's part) that may occur in a given period.

(3) Each of the references in subsection (1)(c) to a number of hours, days or weeks, and each reference in subsections (1) and (2) to a given period, is a reference to a number of hours, days or weeks or, as the case may be, a period that the Minister determines and specifies in the regulations for the purpose of the particular provision concerned.

(4) In making regulations under subsection (1), the Minister shall have regard to—

- (a) the need to limit the circumstances in which the public service bodies can undertake the commitment of financial resources in making payments in cases in which they are unable to receive the benefit of the services of their public servants,
- (b) the resources available, for the time being, to the Exchequer to pay the remuneration of public servants,
- (c) without prejudice to paragraph (b), the obligations of the State under the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union done at Brussels on 2 March 2012,

(d) with respect to the specification of conditions for an entitlement to be paid remuneration during a period of sick leave, the desirability of having in place a satisfactory means of verifying that the public servant concerned is unable to attend to his or her duties due to illness or injury, and

(e) the need to protect the health of public servants,

whilst taking account of the desirability of there being a measure of provision, as appears to the Minister to be appropriate and just, for making payments to public servants who are unable to attend to their duties due to illness or injury.

(5) Regulations under subsection (1) may provide in exceptional cases (that is to say cases defined in the regulations by reference to the serious nature of an illness or injury that has occasioned a relevant person's being on sick leave (which may extend, if the Minister considers appropriate, to the circumstances involving a period of the person's rehabilitation following an illness or injury of that nature)) and notwithstanding the provision otherwise made by the regulations, for all or any of the following:

(a) that there may be paid to the person remuneration, in respect of the time of his or her sick leave, for a period longer than would otherwise be the case under the regulations;

(b) that there may be paid to the person remuneration, in respect of a particular period of the time of his or her sick leave, of an amount that is greater than the percentage (of the whole amount referred to in subsection (1)(a)) specified in the regulations under subsection (1)(b) or (c);

(c) that the provisions of the regulations shall operate subject to such other modifications as the Minister determines and specifies in the regulations, which may include provision—

(i) limiting the total period in respect of which, in a foregoing case, remuneration may be paid to a relevant person, or

(ii) conferring a power on a person specified in the regulations to determine, in a foregoing case, that after the lapse of a particular period of the time of a relevant person's sick leave, no further remuneration shall be paid in respect thereof.

(6) Regulations under this section—

- (a) may contain such incidental, supplementary or consequential provisions as the Minister considers appropriate, including provisions delegating to the public service body concerned the determination of any matter in respect of which the regulations provide that a determination shall be made, in particular a determination—
 - (i) as to whether an illness or injury is of a serious nature,
 - (ii) as to what is an appropriate period of rehabilitation in the circumstances concerned, and
 - (iii) as to what is satisfactory certification, in writing, by a medical practitioner of any relevant matter; and
- (b) may—
 - (i) if the regulations apply in respect of more than one class of public servant, make different provision for the different classes of public servant to which the regulations apply, and
 - (ii) otherwise make different provision for different classes of case.

(7) Where, before the commencement of *section 7** of the *Public Service Management (Recruitment and Appointments) (Amendment) Act 2013*, a period of sick leave, on a relevant person's part, has begun and continues after the commencement of that section, the arrangements that were in existence before the commencement of that section in respect of the payment of remuneration to that person during his or her sick leave shall continue to apply in respect of so much of that period of sick leave as falls after that commencement and regulations under this section shall not apply to that person until such time as he or she is able again to attend to his or her duties.

(8) For the avoidance of doubt, nothing in this section prejudices the operation of the Social Welfare Acts or instruments made thereunder.

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

Application of
Part.

58C.—This Part has effect notwithstanding—

- (a) any provision made by or under—
 - (i) any other Act,

(ii) any statute or other document to like effect of a university or other third level institution,

(iii) any circular or instrument or other document,

(iv) any written agreement or contractual arrangement,

or

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

—An tAire Caiteachais Phoiblí agus Athchóirithe.

*[*This is the appropriate reference if this amendment is accepted.]*

[This amendment is in substitution for amendment No. 16 on the principal list of amendments dated 9 Dec, 2013.]

Amendments to Amendment No. 16

1. To delete all words from and including “PART 7A” in the first line, down to and including “expectation.”.”. in the last line.

—Mary Lou MacDonald.

2. In the proposed inserted section 58B(1), in line 2, after “regulations” to insert “which shall be published and laid before each House of the Oireachtas in draft form as soon as may be after each draft regulation is made”.

—Seán Fleming.

3. In the proposed inserted section 58B, to delete subsection (9) and substitute the following:

“(9) Every regulation under this Part shall be laid in draft form before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the draft regulation is laid before it, the regulation shall be annulled accordingly.”.

—Seán Fleming.