

**Thursday 1 June 2017**

**Check Against Delivery**

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Chairperson, Committee Members,

I am pleased to have this opportunity to present the General Scheme of the Social Welfare and Pensions Bill 2017 to the Committee. I would like, at the outset, to thank the Chair and the Committee for facilitating this early opportunity to discuss the content of the General Scheme of this Bill with you.

I am joined today by Mr Tim Duggan, Assistant Secretary General and Ms. Helen McDonald, Principal with responsibility for Pensions, Ms Kathleen Stack Assistant Secretary General with responsibility for Fraud and Control and Mr Brian Duff, Principal with responsibility for Legislative and Legal affairs. I, and my colleagues, will be pleased to address any questions that the Committee members may have with respect to the General Scheme of the Bill.

This statement has circulated to the Committee members prior to this meeting and members will have seen that it includes an attachment that summarises and explains the background to each of the Heads contained in the General Scheme.

In the interests of time I do not propose to read the detail of this attachment into the record however my colleagues and I will, with the permission of the Chair, refer as appropriate to the attachment, along with the General Scheme, in answering any questions that committee members may have.

In opening, however, I believe that it would be useful to sketch out the broad parameters of the General Scheme.

The General Scheme contains changes to three Acts – the *Social Welfare Consolidation Act 2005*, the *Pensions Act 1990*, and the *Civil Registration Act 2004*.

The changes to the **Social Welfare Consolidation Act** contain provisions that can be categorised as being either broadly administrative or broadly policy focussed in nature. The changes that are largely administrative in nature relate to

- Clarification of the principle that payments to a guardian should not be conflated with payments to the orphan in guardianship,

- Enabling citizens to voluntarily present their Public Services Card as a means of establishing identity with service providers such as credit unions, banks and utility providers and, if they wish, to include their date of birth on the Public Services Card,
- Clarification of Ministerial authority for the setting of reduced fees for the issue of life event certificates,
- Enabling the Department to automate the award of benefits/payments,
- Inclusion of Supplementary Welfare payments in the list of payments that can be recovered in personal injury insurance cases.

The main policy focussed changes to the Social Welfare Consolidation Act, as provided for in the General Scheme, relate to

- Measures to deter and reduce fraud in the social welfare system including the publication of names of people convicted in a court of social welfare fraud, and the reduction, for a limited period, in the personal rate of payment to people so convicted, and
- The extension of the earnings disregard for people with disabilities to include earnings from all types of employment.

Turning to the **Pensions Act**, all of the proposed changes are largely policy focused and are designed to protect the interests of members and beneficiaries of occupational pension schemes; they provide for

- Restrictions on the ability of employers to trigger the closure of a pension scheme without due notice and proper engagement,
- New powers for the Pensions Authority to set a schedule of employer contributions in certain circumstances,
- A deadline for the submission of funding proposals by trustees, and
- Equal treatment of same sex spouses and civil partners with regard to access to a spouse's pension in certain circumstances.

All of the proposed changes to the **Civil Registration Act** are broadly administrative in nature; they provide for

- Removal of the prescribed term of office for the Registrar General and Deputy Registrar General in recognition of the fact that both positions are general civil service positions with the post holders having the same tenure as other civil servants,
- Bringing the arrangements for the registration of a death in cases where a coroner is involved broadly into line with those which apply when a medical practitioner certifies a death,

- Sharing of the records of births, deaths and marriages with a body under the aegis of the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs, and
- Recording both the country of birth and the country of citizenship of a deceased person in the Register of Deaths

In addition to these changes there are two other issues raised by members of the Oireachtas as potential legislative matters in recent times that I would like to mention.

First, Deputy Eamonn O'Cuiv raised the issue of introducing a disregard of foster-care payments received from the UK in the means assessment of claimants who are living in Ireland. The Minister supports and wishes to give effect to this proposal. However the Minister has to have regard not just to people receiving foster payments originating in the UK but also to people receiving similar payments originating in other EU Member States. The Department is currently examining the issues involved but would hope to be in a position, if legislative change is in fact required, to introduce this proposal as a committee stage amendment.

Second, it will be recalled that when the Social Welfare Bill 2016 was being debated towards the end of last year, a committee stage amendment was introduced by Deputies Brady and Mitchell which would have provided that, in cases where an employer was found, under the Unfair Dismissals Act, to have unfairly dismissed an employee, then that employer would, in addition to whatever penalty was imposed by the Workplace Relations Commission (WRC), also have to refund any social welfare payments paid between the date of the dismissal and the date of the decision by the WRC. At that time, the Minister indicated that he saw some merit in the proposal and would examine it closely with a view to potentially making the necessary amendments in this Bill. I understand that the Chair has circulated a letter from the Minister which outlines the outcomes of a consultation process with the relevant stakeholders. As it is apparent there is no support among stakeholders for the proposed change, accordingly the Minister has decided not to proceed further with the proposal at this time.

I hope that this short summary has helped to clarify the content and objectives of the General Scheme.

My colleagues and I will be very happy to address any questions that members of the committee might have, and to take any input or suggestions for consideration by the Minister in finalising the Bill.

Thank you

## **Attachment:**

### **Summary of the General Scheme of the Social Welfare and Pensions Bill 2017**

#### **Part 1**

Heads 1 and 2 are the standard opening provisions of a Bill – setting out the short title, construction, collective citation and any necessary commencements, and providing for the definition of common terms used throughout the Bill.

#### **Part 2: Amendments to the Social Welfare Consolidation Act 2005.**

##### **Head 3 - Guardian's Payment**

Head 3 is an administrative amendment which is designed to clarify the legislation as it relates to the contemporaneous receipt of Guardian's Payment and other payments by giving explicit effect to the principle and practice that payments to a guardian in respect of an orphan do not affect the rights of the guardian to claim welfare payments in their own right.

The need for this amendment arose from cases where it was not sufficiently clear that a guardian could claim a social welfare payment in their own right – for instance, a widow's pension with a half-rate carer's allowance. This was because Deciding Officers were viewing the Guardian's Payment as an income support payment for the guardian rather than for the child concerned. Cases of this type were ultimately decided in favour of the guardian, and that is now the accepted practice within the Department. The Department's legal adviser recommended, however, that the legislation be amended in order to ensure absolute clarity on the issue.

The amendment in Head 3 of the Bill will simply provide certainty and brings the legislation fully into line with policy and practice in the Department.

##### **Head 4 - Publication of names, addresses, fines and other penalties**

As the Committee will be aware, the names of persons convicted of social welfare fraud and the nature of the offences committed are already a matter of public record, being published in individual courts around the country. Such cases are routinely covered in the local and national press. However, in order to increase public awareness of the consequences of social welfare fraud and to reduce the extent of such activity, Head 4 provides that from the start of next year, the Department will compile and publish a quarterly list of the names, addresses and penalties incurred of those persons who have been convicted of a social welfare related offence under the Social Welfare Consolidation Act 2005 or the Criminal Justice (Theft and Fraud) Act 2001. In practical terms, the first such list would be published during the second quarter of 2018 on the Department's website. Only offences that occur after the provision becomes law can be compiled and published and cases which are under

appeal in the courts will not be published. Each list will be removed at the end of the relevant quarter and will be no longer accessible to the public.

#### **Head 5 - Reduced rate of payment following conviction for fraud**

Head 5 provides for the application of reduced rates of payment to the personal rate of payment for a limited period where a claimant has been convicted of fraudulently claiming a social welfare payment. The amount of the reduction will be determined by a circumstances of the case and of the individual concerned and will amount to a maximum of twenty five per cent of the weekly personal rate of payment. All reductions will be for a period of 9 weeks.

#### **Head 6 - Public Services Card**

Head 6 sets out a number of changes to the arrangements governing the issue and use of the Public Services Card. First, it allows for the inscription, at the request of the cardholder, of a cardholder's date of birth on the Public Services Card. This will enable the card to be used to verify a person's age and will permit the PSC to substitute for the Garda Age Card once legislative changes are also made to the Intoxicating Liquor Act 1988.

Second, it removes the barrier to a person choosing to use the card, on a voluntary basis, to confirm their identity in certain circumstances. As currently drafted an entity (e.g. a credit union, bank or utility provider) or person, who is not explicitly specified in the Act, is prohibited from accepting the PSC as proof of identity even if the cardholder voluntarily tenders their PSC for this purpose. This amendment will allow a customer to use the PSC at his/her own discretion in these circumstances without causing the person or entity accepting the PSC to be guilty of an offence.

Finally, it clarifies that the ownership of a PSC is at all times vested in the Minister for Social Protection, in line with the practice for other documents such as passports and driving licences. The legislation already provides that the Minister may cancel a PSC and that, in such a case, the cardholder is required to surrender the PSC. The purpose of this amendment is simply to clarify that, at all times, the PSC is the property of the Minister in order to avoid any dispute as to the Minister's right to seek recovery of the PSC.

#### **Head 7 – Birth, marriage and death certificates**

Head 7 provides for the repeal of Section 282 of the Social Welfare Consolidation Act 2005 in order to clarify Ministerial authority for the setting of reduced fees for life event certificates issued by the General Register Office.

Citizens and residents in the State can receive a life event certificate from a registrar or the General Register Office for a reduced cost where the certificate is required for social welfare scheme purposes. The fee charged for social welfare purposes is €1 and for Supplementary Welfare Allowance purposes it is set at nil. Section 282 of the Social Welfare Consolidation Act 2005 provides for the Minister for Health (who previously had stewardship of the

General Register Office) to set the level of this reduced fee in consultation with the Minister for Public Expenditure and Reform and to alter the fee by regulations.

In addition to Section 282 there is an equivalent provision in the Civil Registration Act 2004 which allows for the Minister for Social Protection, who now has stewardship of the GRO, to prescribe reduced rate fees for the provision of life event certificates. The provisions in this Act have not yet been commenced. It is intended that they will be commenced in parallel with the repeal of Section 282.

### **Head 8 – Decisions by automated information technology systems**

Head 8 provides the legislative underpinning designed to ensure that service delivery to clients is improved through the effective use of information systems. It provides that decisions to award a social welfare benefit or payment – i.e. decisions which are to the benefit of a claimant - can be made by an automated information system. It provides also that decisions which deny entitlement to a benefit or payment must in all cases be made by a deciding officer.

As the Committee will be aware, the Department has invested heavily in the development of digital service capability including, for instance, enabling claimants to submit claims on-line through MyWelfare.ie. This development work means that the Department is now in a position to automatically assess and determine some types of claim and, potentially, to automatically confirm entitlement to benefit and put the benefit into payment in ‘real-time’. This has the potential to significantly improve service delivery to clients and to reduce the costs of claim processing.

This capability was not, understandably, anticipated at the time of the drafting of the current legislation (which dates back to the 1950s) and it is appropriate now to update the legislation to reflect technological developments.

Some legislative changes have, in fact, already been introduced - for example, if a family is in receipt of Child Benefit and a second or subsequent child is born, the rate of Child Benefit is automatically adjusted to reflect the larger family, without a formal deciding officer decision. Given the potential for many more areas where automated decisions will be possible, Head 8 of the Bill allows the concept of automated decisions as an option for the Department, but restricts the use of automation to ‘positive’ decisions that grant access to a benefit or entitlement. Any decision that denies access to a benefit or entitlement will continue to be made by a deciding officer in the normal manner and all decisions, including automated decisions, will be subject to review and appeal at the request of a claimant.

### **Head 9 – Recovery of certain benefits and assistance.**

Head 9 introduces changes to the arrangements, introduced in 2014, governing the recovery of certain benefits and assistance by the Minister in cases where a compensator is

also paying compensation in respect of the same injury, accident or disease that gave rise to the claim for a social welfare payment.

Firstly, it provides for the inclusion of Supplementary Welfare Allowance, insofar as it relates to payments made to an injured person as a result of that injury, on the list of benefits which may be recovered. The list of recoverable benefits is currently confined to schemes, such as Illness Benefit and Occupational Injury Benefit, which are directly linked with illness and disability. In some circumstances, however, a person may not be entitled to such a payment and may instead have recourse to Supplementary Welfare Allowance and Head 9 will allow these payments to be recovered from the compensators also. As is the case with all recoverable benefits, the position of the person who was injured is not affected in any way.

Head 9 also adjusts the period within which the Minister must respond to a request to provide a statement of recoverable benefits to the compensator from 4 weeks to 25 working days. This change is required to relieve the administrative and cost burden on the Department associated with the provision of these statements. There were more than 61,000 such applications in 2016. The Department continues to operate an “emergency service” to ensure that compensators can, where circumstances merit, request and receive a statement of recoverable benefits within a shorter timeframe.

#### **Head 10 - Earnings disregard for Disability Allowance, Blind Pension and SWA**

Head 10 responds to the recently published report on ‘Making Work Pay’ under the Comprehensive Employment Strategy for People with Disabilities by removing the requirement that, in order for recipients of Disability Allowance, Blind Pension and certain supplements under the Supplementary Welfare Allowance scheme to benefit from the disregard of earnings from employment, the employment concerned must be certified as being of a rehabilitative nature.

At present, recipients of Disability Allowance and Blind Pension may have the first €120 per week of their earnings disregarded for the purposes of the means test governing eligibility for those schemes provided that the employment concerned is certified as being “of a rehabilitative nature”. In addition, income from rehabilitative employment of between €120 and €350 per week is assessed at 50%.

The practice has been to require claimants to have their General Practitioner certify that the employment being taken up will be of a rehabilitative nature. This step will now no longer be necessary. The changes provided for in this Head recognise, in line with the ‘Making Work Pay’ report, that in practice most forms of work have a rehabilitative benefit. In practical terms, this change will reduce the administrative workload for claimants, GPs and the Department.

## **Part 3: Amendments to the Pensions Act 1990**

### **Head 11 – Time limit for submission of funding proposal**

The Pensions Act (in Section 49) requires trustees of a defined benefit pension scheme which is in deficit to submit a funding proposal to the Pensions Authority that explains how they propose to deal with the deficit. However there is no time limit specified in the legislation and Head 11 will now legally oblige trustees to produce this funding proposal within a specified time period.

### **Head 12 – Minimum notice for ceasing contributions**

Head 12 seeks to address the problem whereby some employers ceased making contributions to defined benefit schemes, with little or any prior notice being given to members. Notice periods for the termination of employer contributions are normally set out in trust deeds and rules and vary from scheme to scheme, with some trust deeds making no provision for a notice period.

This Head requires employers who sponsor defined benefit schemes, whether those schemes are in deficit or not, to give 12 months' notice of their intention to cease contributions. It provides that a shorter period may be agreed between the trustees and the employer, following consultation with the members and in circumstances where it is not contrary to members' interests.

The purpose of the imposition of a period of 12 months' notice under this Head of the Bill is to ensure that employees and trustees are properly notified that this event, which will have a fundamental impact on their pension scheme and benefits, is to occur, and that they have time to plan accordingly.

Where a scheme is in deficit employers will be obliged to enter into discussions with the trustees of that scheme to agree a funding proposal, if one is not already in place.

Employers will be obliged to continue contributions in line with the current contribution rate during the notice period. If there is a funding proposal in place, the employer will be obliged to continue to pay contributions in accordance with the terms of that proposal for the duration of the 12 month period.

### **Head 13 – Determination of schedule of contributions**

At present section 49 of the Pensions Act provides for the submission of a funding proposal by the trustees to the Pensions Authority where a scheme is in deficit. In some circumstances, however, employers may not engage with this process and a funding proposal cannot be agreed, thus triggering the wind-up of the scheme.

Head 13 provides powers to the Pensions Authority to determine a schedule of employer contributions that will restore defined benefit pension schemes, which do not satisfy the funding standard, to an adequate funding position, in a specified set of circumstances, most notably where the trustees have not submitted a funding proposal or where the employer has not engaged with the trustees to develop and agree a funding proposal. The schedule of contributions specified by the Pensions Authority will be an enforceable debt on the employer.

The changes in these heads will prompt employers to engage with the funding proposal process and negotiate and agree a plan with trustees. The timelines imposed on the process will prevent negotiations from dragging on indefinitely. These changes will also strengthen the position of trustees.

#### **Head 14 Occupational Pensions – Equal Treatment**

Head 14 provides for a measure which will seek to ensure that same sex spouses and civil partners of members of occupational pension schemes with marriage age clauses will be able to obtain, in certain circumstances, a spouse's pension.

### **Part 4: Amendments to the Civil Registration Act 2004.**

#### **Head 15 – Terms of office of an tArd-Chlaraitheoir and an tArd-Chláráitheoir Cúnta**

Head 15 provides for the deletion of the provisions in the Civil Registration Act 2004 concerning the terms of office of an tArd-Chláráitheoir (Registrar General) and an tArd-Chláráitheoir Cúnta (Deputy Registrar General), as these are considered to be unduly restrictive and unnecessary in practice.

#### **Head 16 -Furnishing of particulars of death to registrar**

Head 16 addresses a gap in the current legislation by providing for the inclusion of the next of kin as a “qualified informant” in the registration of a death where a coroner is involved. It will bring the arrangements for the registration of a death in cases where a coroner is involved broadly into line with those which apply when a medical practitioner certifies a death.

#### **Head 17- Functions that may be performed by Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs**

Head 17 provides that records of births, deaths and marriages may be shared by the General Register Office with a body under the aegis of the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs. Existing legislation allows for the records to be shared with the Minister. This amendment recognises that in practice the records are provided to bodies under the aegis of the Minister

### **Head 18 – Technical amendment to Civil Registration Act 2014**

Head 18 is a technical amendment which sought to rectify an anomaly in relation to the sequencing of paragraphs in section 66 (1) of the Civil Registration Act 2004. Since the General Scheme was published the Office of the Parliamentary Counsel has recommended that the anomaly be dealt on the next occasion that a Bill to consolidate the Act is prepared. Accordingly this Head will not be included in the Bill when it is published.

### **Head 19 – Register of Deaths**

Head 19 provides that the country of birth and the country of citizenship of a deceased person are to be added to the particulars of a death to be entered in the Register of Deaths. This provision is required to meet the State's obligations under EU regulations.

**ENDS.**