



Number 41 of 2009

**FINANCIAL EMERGENCY MEASURES IN THE PUBLIC
INTEREST (NO. 2) ACT 2009**

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ACTS REFERRED TO

Companies Acts	
Defence Act 1954	1954, No. 18
Defence (Amendment) Act 2007	2007, No. 24
European Parliament (Irish Constituency Members) Act 2009	2009, No. 17
Financial Emergency Measures in the Public Interest Act 2009	2009, No. 5
Harbours Act 1946	1946, No. 9
Harbours Act 1996	1996, No. 11
Local Government Act 2001	2001, No. 33
Ministerial and Parliamentary Offices Act 1938	1938, No. 38
Ministerial, Parliamentary and Judicial Offices and Oireachtas Members (Miscellaneous Provisions) Act 2001	2001, No. 33
Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act 1973	1973, No. 22
Oireachtas (Allowances to Members) and Ministerial, Parliamentary and Judicial Offices (Amendment) Act 1977	1977, No. 29
Oireachtas (Allowances to Members) and Ministerial, Parliamentary and Judicial Offices (Amendment) Act 1983	1983, No. 32
Taxes Consolidation Act 1997	1997, No. 39
Vocational Education Act 1930	1930, No. 29



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**FINANCIAL EMERGENCY MEASURES IN THE PUBLIC
INTEREST (NO. 2) ACT 2009**

AN ACT, IN THE PUBLIC INTEREST, TO PROVIDE FOR THE
REDUCTION OF THE REMUNERATION OF CERTAIN
PERSONS IN THE PUBLIC SERVICE (INCLUDING
MEMBERS OF THE HOUSES OF THE OIREACHTAS
AND CERTAIN OFFICE HOLDERS), AND TO PROVIDE
FOR RELATED MATTERS.

[20th December, 2009]

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

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

AND WHEREAS it is necessary to take urgent measures to
reduce the significant shortfall between expenditure and revenue and
to reduce the unsustainable levels of public borrowings consequent
on the deterioration in those revenues;

AND WHEREAS it is necessary to reduce State expenditure to
maintain international confidence and to protect the State's credit
ratings;

AND WHEREAS it is necessary to take urgent steps to help
restore the State's competitiveness;

AND WHEREAS it is necessary for the State to achieve signifi-
cant savings in its expenditure, both directly and indirectly, on
remuneration—

BE IT THEREFORE ENACTED BY THE OIREACHTAS AS
FOLLOWS:

1.—In this Act—

Interpretation.

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

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“Minister” means the Minister for Finance;

“public servant” means—

- (a) a person who is employed by, or who holds any office or other position in, a public service body,
- (b) a member of either House of the Oireachtas or of a local authority (within the meaning of the Local Government Act 2001),
- (c) a member of the European Parliament for a constituency in the State, being a member who is in receipt of the salary specified in section 2(2) of the European Parliament (Irish Constituency Members) Act 2009, or
- (d) the holder of a qualifying office,

but does not include the President, a member of the judiciary or a military judge appointed under Chapter IVC of Part V of the Defence Act 1954 (as amended by the Defence (Amendment) Act 2007);

“public service body” means—

- (a) the Civil Service,
- (b) the Garda Síochána,
- (c) the Permanent Defence Force,
- (d) a local authority for the purposes of the Local Government Act 2001,
- (e) the Health Service Executive,
- (f) a vocational education committee established under section 7 of the Vocational Education Act 1930,
- (g) a body (other than a body specified or referred to in the Schedule) established—
 - (i) by or under an enactment (other than the Companies Acts), or
 - (ii) under the Companies Acts in pursuance of powers conferred by or under another enactment, and financed wholly or partly by means of 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 public service pension scheme exists or applies or may be made,

- (h) a body (other than a body specified or referred to in the Schedule) that is wholly or partly funded directly or indirectly out of money provided by the Oireachtas or from the Central Fund or the growing produce of that Fund and in respect of which a public service pension scheme exists or applies or may be made,

- (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), (f), (g) or (h)* relates and in respect of which a public service pension scheme exists or applies or may be made;

“public service pension scheme” has the same meaning as in the Financial Emergency Measures in the Public Interest Act 2009;

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

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

“relevant provision” means—

- (a) a provision of any Act other than this Act,
- (b) a provision made under any Act, including any instrument, circular or other document,
- (c) a provision of or made under any statute or other document to like effect of a university or other third level institution,
- (d) a provision of any circular, instrument or other document, not made pursuant to an enactment, and
- (e) a provision of any agreement or contractual arrangement, whether written or not;

“remuneration” means emoluments to which Chapter 4 of Part 42 of the Taxes Consolidation Act 1997 applies or is applied and payable by or on behalf of a public service body to a public servant for his or her services as a public servant;

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

2.—(1) A relevant provision that fixes the remuneration, or any part of the remuneration, of a public servant shall be taken to have been amended, with effect on and from 1 January 2010, in accordance with this section.

Reduction in public servants' remuneration.

(2) Where the remuneration of a public servant is fixed by a relevant provision, then, subject to *subsections (3) and (4)*, the relevant provision shall be taken to have been amended so that the remuneration is—

- (a) in the case of persons to whom Table 1 to this section relates, reduced in accordance with that Table, and

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(b) in any other case, subject to *subsection (7)*, reduced in accordance with Table 2 or Table 3 (as the case requires) to this section.

(3) Where the remuneration of a public servant, other than a person to whom Table 1 to this section relates, is fixed by a relevant provision and that remuneration includes a fixed periodic allowance which is not a reimbursement of any expense actually incurred, then the relevant provision that fixes each such allowance shall be taken to have been amended so that the allowance is, subject to *subsection (7)*, reduced in accordance with Table 4 to this section.

(4) Subject to *subsection (7)*, where a public servant is entitled as part of his or her remuneration to the payment of an allowance and the allowance—

(a) is not reimbursement of any expense actually incurred, and

(b) is expressed as a specified percentage or specified proportion of another part of the remuneration (referred to in this section, including the Tables, as “basic salary”) of a public servant to whom the relevant provision applies,

then the public servant’s basic salary, for the purposes of calculating the amount payable as the allowance, is his or her basic salary reduced in accordance with *subsection (2)* and Table 2 or Table 3 (as the case requires) to this section.

(5) Nothing in this section affects any allowance or payment which is a reimbursement of an expense actually incurred.

(6) This section has effect notwithstanding—

(a) any provision 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.

(7) Where the application to a public servant of *subsections (1) to (6)* and Table 2 to this section would, because of the varying percentage rates provided for by that Table, result in his or her annual remuneration being lower than would be the case if he or she had been on a lower level of remuneration, then his or her annual remuneration shall after the reduction not be less than the highest it would have been had his or her annual remuneration, before such reduction, been on the lower level of remuneration. For the purposes of this subsection, the Minister may by direction modify the application of the reduction in the remuneration of a public servant concerned in such manner as the Minister thinks fit to avoid a substantial inequity arising from the application of *subsection (2)* and that Table.

Table 1

Holders of certain offices and other public servants

Office	Reduction
Taoiseach	20 per cent of remuneration
Tánaiste	15 per cent of remuneration
Minister	15 per cent of remuneration
Minister of State	10 per cent of remuneration
Ceann Comhairle	15 per cent of remuneration
Leas-Ceann Comhairle	10 per cent of remuneration
Cathaoirleach	7.9 per cent of remuneration
Leas-Chathaoirleach	7.4 per cent of remuneration
Leader of the Seanad	7.2 per cent of remuneration
Attorney General	15 per cent of remuneration
Comptroller and Auditor General	15 per cent of remuneration
Secretary General of the Department of the Taoiseach and Secretary General to the Government	20 per cent of remuneration
Secretary General, the Department of Finance	20 per cent of remuneration

Table 2

Public servants with rates of basic salary over €125,000

Annualised amount of basic salary	Reduction
Over €125,000 but less than €165,000	8 per cent of basic salary
€165,000 or more but less than €200,000	12 per cent of basic salary
€200,000 or more	15 per cent of basic salary

Table 3

Public servants with rates of basic salary not over €125,000

Annualised amount of basic salary	Reduction in basic salary
Up to €30,000	5 per cent
Any amount over €30,000 but not over €70,000	7.5 per cent
Any amount over €70,000 but not over €125,000	10 per cent

Table 4**Allowances to which section 2(3) relates**

Allowances and basic pay	Reduction in allowances
Allowances to which <i>section 2(3)</i> relates that are paid as part of annual remuneration to public servants in receipt of annualised basic salary not exceeding €125,000	5 per cent
Allowances to which <i>section 2(3)</i> relates that are paid as part of annual remuneration to public servants in receipt of annualised basic salary exceeding €125,000	8 per cent

Certain pension rights not affected.

3.—(1) This section applies to—

- (a) a person who was at some time before 31 December 2009 a public servant but is on 1 January 2010 in receipt of a pension or has a preserved benefit in a public service pension scheme, and
- (b) a person who was a public servant on 1 January 2010, but ceases to be a public servant on or before—
 - (i) 31 December 2010, or
 - (ii) a later date specified by the Minister by order in accordance with *subsection (3)*.

(2) The amendments taken to have been made by *section 2* shall be disregarded for the purpose of calculating any pension entitlement (including an entitlement to a lump sum and an entitlement to periodic payments of pension) of a person to whom this section applies.

(3) For the purpose of making an order pursuant to *subsection (1)(b)(ii)*, the Minister shall take into account such legal, superannuation and personnel management issues affecting public service bodies as he or she considers appropriate, and shall consult with any person or body that he or she considers appropriate.

Further amendment, etc., of relevant provisions.

4.—(1) Subject to *subsection (2)* and *section 6*, a purported amendment (other than an amendment by Act of the Oireachtas) of a relevant provision amended by *section 2* that would have the effect of increasing the remuneration payable to a public servant is of no effect.

(2) An amendment of a relevant provision may be made—

- (a) for the purposes of complying with any order of a court in respect of which there is no stay in being,
- (b) for the purposes of complying with any enforceable determination of the Labour Court in respect of which there is no stay in being, or

- (c) where the Minister is satisfied that a legal entitlement exists in respect of any position held by a public servant or by a group or class of public servants to a higher rate of remuneration, and the Minister has certified accordingly in writing to the public service body concerned.

(3) Every order or determination to which *subsection (2)* relates shall be deemed to be stayed—

- (a) until the expiration of the period for appeal, including any period of extension duly ordered,
- (b) in the case where an appeal is instituted, until that appeal is withdrawn, determined or otherwise disposed of,

unless for stated reasons the High Court considers it just and equitable to direct otherwise having regard to the exceptional circumstances of the case and having taken into account the public interest.

5.—(1) Where a relevant provision is taken to have been amended by *section 2*—

No power to pay remuneration above rate determined in accordance with *section 2*, etc.

- (a) a public servant whose remuneration falls to be determined in accordance with the relevant provision is not entitled to receive remuneration of an amount greater than the amount so determined, and
- (b) no person or body responsible for paying the remuneration of such a public servant is entitled to pay remuneration to the public servant of an amount greater than the amount so determined.

(2) If a public service body pays remuneration to a public servant at a rate higher than that provided for by the appropriate relevant provision, as taken to have been amended in accordance with *section 2*, then—

- (a) the public servant shall hold the overpayment in trust for the public service body, and
- (b) the public service body shall recover the amount of the overpayment from the public servant, either directly or by a deduction taken from remuneration subsequently payable to that public servant or otherwise.

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

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

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Exemption, etc.,
from operation of
section 2 or *6* in
certain
circumstances.

6.—Where in respect of a particular public servant or class or group of public servants the Minister is satisfied that—

- (a) exceptional circumstances exist (because of some particular aspect or condition of their employment, office or position) in respect of such public servant, class or group and a substantial inequity would thereby arise, or
- (b) any award under an arbitration agreement would, but for this Act, result in the amendment of a relevant provision,

and there is in the circumstances a necessity for a distinction from other public servants or from other classes or groups of public servants, as the case may be, then the Minister, if he or she considers it to be just and equitable in all the circumstances to do so, may by direction—

- (i) exempt that public servant, class or group from the operation of *section 2*, either entirely or to such extent as the Minister considers appropriate, or
- (ii) modify the operation of *section 2* to make deductions from their remuneration in such manner as the Minister thinks fit,

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

Review of Act.

7.—Before 30 June in 2011 and every year after 2011, the Minister shall—

- (a) carry out a review of the operation, effectiveness and impact of this Act, having regard to the overall economic conditions in the State and national competitiveness,
- (b) consider whether or not any of the provisions of this Act continue to be necessary having regard to the purposes of this Act, the revenues of the State and Exchequer commitments in respect of public service pay and pensions,
- (c) make such findings as he or she thinks appropriate consequent on the review and consideration, and
- (d) cause a written report of his or her findings resulting from the review and consideration to be prepared and laid before each House of the Oireachtas.

Regulations.

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

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

(3) Regulations under this section shall be laid before each House of the Oireachtas as soon as may be after they are made and if a resolution annulling the regulations is passed by either such House

within the next 21 days on which that House has sat after the regulations are laid before it, the regulations shall be annulled accordingly but without prejudice to the validity of anything previously done under the regulations.

9.—Where a doubt, question or dispute arises in the operation of this Act in respect of whether a person is or is not a person whose remuneration is subject to *section 2*, then such doubt, question or dispute shall— Removal of doubts.

- (a) be submitted to the Minister by the person who authorises or would authorise the payment of the remuneration concerned, and
- (b) be determined by the Minister after consulting such persons (if any) as the Minister considers appropriate in the circumstances,

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

10.—(1) This Act may be cited as the Financial Emergency Measures in the Public Interest (No. 2) Act 2009. Short title and commencement.

(2) This Act shall come into operation on such day or days as the Minister appoints by order or orders either generally or with reference to any particular purpose or provision. Different days may be so appointed for different purposes or provisions.

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Section 1.

SCHEDULE

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

1. Any body corporate established by Act of Parliament before 6 December 1922 that, upon its establishment, was of a commercial character.
2. Dublin Airport Authority, public limited company.
3. Cork Airport Authority, public limited company.
4. Shannon Airport Authority, public limited company.
5. Bord Gáis Éireann.
6. Bord na gCon.
7. Bord na Móna.
8. Córas Iompair Éireann.
9. Coillte Teoranta.
10. Electricity Supply Board.
11. Eirgrid.
12. A harbour authority within the meaning of the Harbours Act 1946 or company to which section 7 of the Harbours Act 1996 relates.
13. Horse Racing Ireland.
14. Irish National Stud Company Limited.
15. Irish Aviation Authority.
16. An Post.
17. An Post National Lottery Company.
18. Raidió Teilifís Éireann.
19. Teilifís na Gaeilge.
20. Voluntary Health Insurance Board.
21. Railway Procurement Agency.
22. National Treasury Management Agency.
23. A subsidiary of a body to which this Schedule relates, including a subsidiary of any such subsidiary.