



Number 9 of 2004

**SOCIAL WELFARE (MISCELLANEOUS PROVISIONS) ACT
2004**

ARRANGEMENT OF SECTIONS

PART 1

SHORT TITLE, CONSTRUCTION, COLLECTIVE CITATION AND
COMMENCEMENT

Section

1. Short title, construction, collective citation and commencement.

PART 2

AMENDMENTS TO THE SOCIAL WELFARE ACTS

2. Definitions.
3. Child benefit (new rates).
4. Respite care grant — increase.
5. Payments after death — improvements.
6. Death benefit — improvements.
7. Rates of assistance and effect of means on rates — improvements.
8. Maternity benefit — amendments.
9. Adoptive benefit — amendments.
10. Amendments consequential on alignment of income tax year with calendar year.
11. Personal public service number — extension of provisions.
12. Appointment and duties of social welfare inspectors — amendments.
13. Amendments of section 2 of Principal Act.
14. Employment contributions — amendment.
15. Rates of self-employment contributions and related matters — amendment.
16. Employment contributions — amendment of payment of contributions and keeping of records.

Section

17. Provisions for habitual residence.
18. Amendment of section 3(12) of Principal Act — definition of spouse.
19. Provision in relation to certain administrative schemes.

PART 3

MISCELLANEOUS AMENDMENTS

20. Amendment to Health Contributions Act 1979.
21. Amendment to National Training Fund Act 2000.
22. Equal pension treatment — amendments to Pensions Act 1990.
23. Miscellaneous amendments to Pensions Act 1990.

SCHEDULE 1

SCHEDULE 2

AMENDMENTS TO PENSIONS ACT 1990

ACTS REFERRED TO

Adoptive Leave Act 1995	1995, No. 2
Air Navigation and Transport Act 1946	1946, No. 23
Civil Service Regulation Act 1956	1956, No. 46
Courts Act 1981	1981, No. 11
Employment Agency Act 1971	1971, No. 27
Employment Equality Act 1998	1998, No. 21
Equal Status Act 2000	2000, No. 8
Health Acts 1947 to 2001	
Health Contributions Act 1979	1979, No. 14
Industrial Relations Act 1946	1946, No. 26
Interpretation Acts 1937 to 1997	
Irish Aviation Authority Act 1993	1993, No. 29
Local Government Act 2001	2001, No. 37
Maternity Protection Act 1994	1994, No. 34
Merchant Shipping (Certification of Seamen) Act 1979	1979, No. 37
Merchant Shipping Act 1947	1947, No. 46
National Minimum Wage Act 2000	2000, No. 5
National Training Fund Act 2000	2000, No. 41
Pensions Act 1990	1990, No. 25
Pensions Acts 1990 to 2003	
Pensions (Amendment) Act 2002	2002, No. 18
Personal Injuries Assessment Board Act 2003	2003, No. 46
Protection of Employees (Fixed-Term Work) Act 2003	2003, No. 29
Protection of Young Persons (Employment) Act 1996	1996, No. 16
Redundancy Payments Act 1967	1967, No. 21
Redundancy Payments Act 1971	1971, No. 20
Redundancy Payments Act 1979	1979, No. 7
Social Welfare (Consolidation) Act 1993	1993, No. 27
Social Welfare (Miscellaneous Provisions) Act 2002	2002, No. 8
Social Welfare (Miscellaneous Provisions) Act 2003	2003, No. 4
Social Welfare Act 1994	1994, No. 4
Social Welfare Act 1996	1996, No. 7
Social Welfare Act 1997	1997, No. 10
Social Welfare Act 1999	1999, No. 3
Social Welfare Act 2000	2000, No. 4
Social Welfare Act 2001	2001, No. 5
Social Welfare Act 2003	2003, No. 41
Taxes Consolidation Act 1997	1997, No. 39
Transport (Miscellaneous Provisions) Act 1971	1971, No. 14



Number 9 of 2004

**SOCIAL WELFARE (MISCELLANEOUS PROVISIONS) ACT
2004**

AN ACT TO AMEND AND EXTEND THE SOCIAL WELFARE ACTS, TO AMEND AND EXTEND THE PENSIONS ACT 1990 FOR, AMONGST OTHER PURPOSES, THE PURPOSE OF GIVING EFFECT (IN SO FAR AS THEY RELATE TO OCCUPATIONAL PENSIONS) TO COUNCIL DIRECTIVE 2000/43/EC OF 29 JUNE 2000 IMPLEMENTING THE PRINCIPLE OF EQUAL TREATMENT BETWEEN PERSONS IRRESPECTIVE OF RACIAL OR ETHNIC ORIGIN AND COUNCIL DIRECTIVE 2000/78/EC OF 27 NOVEMBER 2000 ESTABLISHING A GENERAL FRAMEWORK FOR EQUAL TREATMENT IN EMPLOYMENT AND OCCUPATION AND TO AMEND THE HEALTH CONTRIBUTIONS ACT 1979 AND THE NATIONAL TRAINING FUND ACT 2000. [25th March 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

SHORT TITLE, CONSTRUCTION, COLLECTIVE CITATION AND
COMMENCEMENT

1.—(1) This Act may be cited as the Social Welfare (Miscellaneous Provisions) Act 2004.

Short title,
construction,
collective citation
and
commencement.

(2) The Social Welfare Acts and *sections 1 to 19* of this Act shall be read together as one.

(3) *Sections 22 and 23* of this Act and the Pensions Acts 1990 to 2003 may be cited together as the Pensions Acts 1990 to 2004.

(4) *Sections 17, 22 and 23* of this Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions and for the amendments effected by the said *sections 22 and 23* to the Pensions Act 1990.

PART 2

AMENDMENTS TO THE SOCIAL WELFARE ACTS

Definitions.

2.—In this Act—

“Act of 1994” means the Social Welfare Act 1994;

“Act of 1997” means the Social Welfare Act 1997;

“Act of 1999” means the Social Welfare Act 1999;

“Act of 2001” means the Social Welfare Act 2001;

“Act of 2003” means the Social Welfare Act 2003;

“Principal Act” means the Social Welfare (Consolidation) Act 1993.

Child benefit (new rates).

3.—(1) The Fourth Schedule to the Principal Act is amended by substituting the following for Part III (inserted by section 3 of the Social Welfare (Miscellaneous Provisions) Act 2003):

“PART III

AMOUNTS OF CHILD BENEFIT

Amount for each of first 2 children (1)	Amount for each child in excess of 2 (2)
€131.60	€165.30

”.

(2) This section comes into operation on 1 April 2004.

Respite care grant — increase.

4.—(1) The Principal Act is amended in sections 82F(1) and 168A(2) (both as amended by section 4 of the Social Welfare (Miscellaneous Provisions) Act 2003) by substituting “€1,670” for “€1,470” and “€835” for “€735”.

(2) This section comes into operation on 1 June 2004.

Payments after death — improvements.

5.—(1) The Principal Act is amended by substituting for section 210 (as amended by section 7 of the Social Welfare (Miscellaneous Provisions) Act 2003) the following:

“Payments after death. 210.—(1) In this section—

‘benefit’ means—

(a) disability benefit,

(b) unemployment benefit (including any amount payable by way of pay-related benefit where appropriate),

(c) injury benefit,

(d) carer’s benefit,

- (e) old age (contributory) pension,
- (f) retirement pension,
- (g) invalidity pension,
- (h) unemployment assistance,
- (i) old age (non-contributory) pension and blind pension,
- (j) unemployability supplement,
- (k) supplementary welfare allowance,
- (l) pre-retirement allowance,
- (m) disability allowance,
- (n) farm assist,
- (o) widow's (contributory) pension or widower's (contributory) pension,
- (p) one-parent family payment,
- (q) death benefit under section 60,
- (r) carer's allowance;

'relevant person' has the meaning assigned to it by section 82A(1) or, as appropriate, 163(1).

(2) Notwithstanding any provisions to the contrary in this Act—

- (a) where a person who is in receipt of a benefit which includes an increase in respect of a qualified adult, or where the spouse is in receipt of any benefit in his or her own right, dies, payment of the benefit shall continue to be made for a period of 6 weeks after the date of death and shall, during that period, be made to such person and subject to such conditions as may be prescribed,
- (b) where a qualified child, in respect of whom an increase of a benefit is being paid, dies, the amount of such increase shall continue to be made for a period of 6 weeks after the date of death,
- (c) where a person is in receipt of one-parent family payment by virtue of having not more than one qualified child and that qualified child dies, payment of the one-parent family payment including the increase in respect of such child shall continue to be made

[No. 9.] *Social Welfare (Miscellaneous Provisions) Act 2004.* [2004.]

Pt.2 S.5

for a period of 6 weeks after the date of death of the qualified child,

- (d) where a qualified adult in respect of whom an increase of benefit is being paid, dies, payment of such increase shall continue to be made for a period of 6 weeks after the date of death,
- (e) where a person is in receipt of carer's benefit or carer's allowance and the relevant person in respect of whom that carer is providing full-time care and attention dies, payment of the carer's benefit or carer's allowance shall continue to be made for a period of 6 weeks after the death of the relevant person,
- (f) in any case where payment is made by virtue of paragraph (a) or (d), entitlement to widow's (contributory) pension, widower's (contributory) pension, widow's (non-contributory) pension, widower's (non-contributory) pension, orphan's (contributory) allowance, orphan's (non-contributory) pension, death benefit under section 60 or 62 or entitlement to one-parent family payment by virtue of being a widow or widower, shall not commence until after the expiration of the period of 6 weeks mentioned in paragraph (a) or (d) except and to the extent that regulations otherwise provide.”.

(2) This section comes into operation on 1 June 2004.

Death benefit — improvements.

6.—(1) The Principal Act is amended—

- (a) in section 60, by inserting the following after subsection (5) (as amended by section 14 of the Act of 1997):

“(5A) The weekly rate of pension under subsection (2) shall be increased by the amount set out in column (7) of Part I of the Second Schedule where the beneficiary has attained the age of 80 years.”,

and

- (b) by inserting “2.00” in column (7) at reference 2(a) of Part I (amended by section 3 of the Act of 2003) of the Second Schedule.

(2) This section comes into operation on 7 May 2004.

Rates of assistance and effect of means on rates — improvements.

7.—(1) Section 121(3) (as amended by section 37 of the Act of 2001) of the Principal Act is amended by substituting “€40.00” for “€31.80”.

(2) This section comes into operation on 7 April 2004.

[2004.] *Social Welfare (Miscellaneous Provisions) Act 2004.* [No. 9.]

8.—(1) The Principal Act is amended in section 37 (as amended by section 12 of the Act of 2001)—

Pt.2
Maternity benefit
— amendments.

(a) in subsection (5)(b)(i) by substituting “2 weeks” for “4 weeks”,

(b) in subsection (5)(c)(ii)(A) by substituting “sixteenth week” for “fourteenth week” in each place where it occurs,

(c) in subsection (5)(c)(ii)(B) by substituting “sixteenth week” for “fourteenth week” and “twenty-fourth week” for “twenty-second week” in each place where it occurs, and

(d) by inserting the following after subsection (5):

“(5A) Regulations may provide for the postponement of the payment of maternity benefit in the event of the hospitalisation of the child in respect of whose birth the person is entitled to that benefit, subject to such conditions and in such circumstances as may be prescribed.”.

(2) This section shall have effect in respect of persons whose entitlement to maternity benefit commences on or after the commencement of this section.

(3) This section comes into operation on such day as the Minister may appoint by order.

(4) An order under *subsection (3)* of this section may, if the order so provides, have retrospective effect.

9.—(1) The Principal Act is amended in section 41G(4) (as amended by section 12 of the Social Welfare Act 2001) by substituting “16” for “14” in each place where it occurs.

Adoptive benefit —
amendments.

(2) This section shall have effect in respect of persons whose entitlement to adoptive benefit commences on or after the commencement of this section.

(3) This section comes into operation on such day as the Minister may appoint by order.

(4) An order under *subsection (3)* of this section may, if the order so provides, have retrospective effect.

10.—Section 10 of the Social Welfare (Miscellaneous Provisions) Act 2002 (as amended by section 12 of the Social Welfare (Miscellaneous Provisions) Act 2003) is amended by substituting “5 January 2004 and ending on 2 January 2005 and the benefit year commencing on 3 January 2005 and ending on 1 January 2006,” for “6 January 2003 and ending on 4 January 2004 and the benefit year commencing on 5 January 2004 and ending on 2 January 2005,” in each place where those words occur.

Amendments
consequential on
alignment of
income tax year
with calendar year.

11.—(1) The definition of “specified body” in section 223(1) (as amended by section 84 of the Personal Injuries Assessment Board Act 2003) of the Principal Act is amended—

Personal public
service number —
extension of
provisions.

(a) in paragraph (u), by deleting “or”, and

[No. 9.] *Social Welfare (Miscellaneous Provisions) Act 2004.* [2004.]

Pt.2 S.11

(b) by substituting the following for paragraph (v):

- “(v) the Companies Registration Office,
- (w) Enterprise Ireland,
- (x) the Private Residential Tenancies Board,
- (y) Coillte Teoranta, or
- (z) such other persons as may be prescribed;”.

Appointment and duties of social welfare inspectors — amendments.

12.—The Principal Act is amended by—

(a) in section 212(3) (as amended by section 26 of the Act of 1999)—

(i) by inserting “or section 121(1)(a) of the Pensions Act 1990” after “social welfare inspector shall, for the purposes of this Act”, and

(ii) in paragraph (b) by inserting “and while making any examination or enquiry to ascertain whether the provisions of Chapter 2 of Part II are being complied with shall also have power to examine or enquire as to whether section 121(1)(a) of the Pensions Act 1990 is being complied with and to report, if necessary, to the Pensions Board” after “are being complied with”,

and

(b) in section 212(4) (as amended by section 28 of the Act of 1994) by inserting “or whether section 121(1)(a) of the Pensions Act 1990 is being complied with” after “was payable to or in respect of any person”.

Amendments of section 2 of Principal Act.

13.—(1) Section 2(1) of the Principal Act (as amended by section 16 of the Social Welfare (Miscellaneous Provisions) Act 2003) is amended—

(a) by deleting the definition of “emoluments”, and

(b) by substituting the following for the definition of “reckonable earnings”:

“‘reckonable earnings’ means, subject to regulations and to section 78, earnings derived from insurable employment or insurable (occupational injuries) employment;”.

(2) This section comes into operation on such day as the Minister may appoint by order.

(3) An order under *subsection (2)* of this section may, if the order so provides, have retrospective effect.

Employment contributions — amendment.

14.—The Principal Act is amended in section 10 (as amended by section 17 of the Social Welfare (Miscellaneous Provisions) Act 2003) by inserting the following after subsection (10):

“(11) Where, for a year of assessment (within the meaning of the Tax Acts), the Revenue Commissioners and an employer enter into an agreement under a specified provision of the Taxes Consolidation Act 1997 whereby the employer will account to the Revenue Commissioners, in accordance with that provision, in respect of the income tax due on qualifying emoluments (within the meaning of that provision) and where that agreement is not null and void, then in respect of those qualifying emoluments—

(a) the employer—

(i) as part of that agreement and in so far as the qualifying emoluments are comprised of reckonable earnings of an employed contributor to which the agreement applies, shall pay a contribution at a rate of 14.05 per cent in respect of the aggregate of the amount of those reckonable earnings and the amount of income tax payable under the agreement in respect of them, and

(ii) notwithstanding the provisions of section 10(4) or Article 7 of the Social Welfare (Consolidated Contributions and Insurability) Regulations 1996, shall not be entitled to recover from an employed contributor any part of a contribution paid in accordance with subparagraph (i),

and

(b) a contribution paid in accordance with paragraph (a)(i) shall not be regarded as an employment contribution for the purposes of any benefit specified in section 30(1).

(12) In subsection (11) ‘specified provision’ means such provision as may be prescribed for the purposes of that subsection.”.

15.—The Principal Act is amended in section 18 by inserting after subsection (2) (as amended by section 37 of the Act of 2001) the following:

Rates of self-employment contributions and related matters — amendment.

“(3) Where, for a year of assessment (within the meaning of the Tax Acts), the Revenue Commissioners and an employer enter into an agreement under a specified provision of the Taxes Consolidation Act 1997 whereby the employer will account to the Revenue Commissioners, in accordance with the provisions of that provision, in respect of the income tax due on qualifying emoluments (within the meaning of that provision) and where that agreement is not null and void, then in respect of those qualifying emoluments—

(a) the employer—

(i) as part of that agreement and in so far as the qualifying emoluments are comprised of reckonable emoluments of a self-employed contributor to which the agreement applies, shall pay a contribution at a rate of 3 per cent

[No. 9.] *Social Welfare (Miscellaneous Provisions) Act 2004.* [2004.]

Pt.2 S.15

in respect of the aggregate of the amount of those reckonable emoluments and the amount of income tax payable under the agreement in respect of them, and

- (ii) notwithstanding the provisions of Article 7 of the Social Welfare (Consolidated Contributions and Insurability) Regulations 1996, shall not be entitled to recover from an employed contributor any part of a contribution paid in accordance with subparagraph (i),

and

- (b) a contribution paid in accordance with paragraph (a)(i) shall not be regarded as a self-employment contribution for the purposes of determining entitlement to any benefit specified in section 30(1).

(4) In subsection (3) ‘specified provision’ means such provision as may be prescribed for the purposes of that subsection.’.

Employment contributions — amendment of payment of contributions and keeping of records.

16.—(1) Section 14(5) of the Principal Act (as amended by section 18 of the Social Welfare (Miscellaneous Provisions) Act 2003) is amended by substituting “earnings” for “emoluments”.

(2) This section comes into operation on such day as the Minister may appoint by order.

(3) An order under *subsection (2)* of this section may, if the order so provides, have retrospective effect.

Provisions for habitual residence.

17.—The Principal Act is amended to the extent specified in *Schedule I* to this Act.

Amendment of section 3(12) of Principal Act — definition of spouse.

18.—Section 3(12) of the Principal Act is amended by substituting “245A, 245B” for “245A”.

Provision in relation to certain administrative schemes.

19.—The Principal Act is amended by inserting the following section after section 245A:

“Qualified adult (administrative schemes).

245B.—(1) A person who, apart from this section, would be a qualified adult for the purposes of a scheme to which this section applies shall not be a qualified adult for the purposes of such a scheme unless the person is a spouse within the meaning of this Act.

(2) Notwithstanding any enactment but without prejudice to subsection (1), the circumstances in which there arises an entitlement to—

- (a) an allowance under a scheme to which this section applies, or
- (b) an increase in the amount of such an allowance,

by reference to the status or description of one or both, or all, of 2 or more persons residing or living together are those circumstances expressly set out in the scheme and not otherwise. Pt.2 S.19

(3) This section applies to the following schemes, namely, the schemes administered by the Minister and known as—

- (a) the Free Travel Scheme,
- (b) the National Fuel Scheme,
- (c) the Part-Time Job Incentive Scheme,
- (d) the Back to Education Allowance,
- (e) the Back to School Clothing and Footwear Allowance,
- (f) the Back to Work Allowance (Employees),
- (g) the Back to Work Enterprise Allowance,
- (h) the Smokeless Fuels Allowance, and
- (i) the Household Benefits Package,

being, in each case, the scheme in the terms as it has effect on 1 April 2004.”.

PART 3

MISCELLANEOUS AMENDMENTS

20.—The Health Contributions Act 1979 is amended by inserting after section 7A (as amended by section 16 of the Social Welfare (Miscellaneous Provisions) Act 2002) the following: Amendment to Health Contributions Act 1979.

“Certain agreements entered into with Revenue Commissioners.

7B.—(1) Where, for a year of assessment (within the meaning of the Tax Acts), the Revenue Commissioners and an employer enter into an agreement under a specified provision of the Taxes Consolidation Act 1997 whereby the employer will account to the Revenue Commissioners, in accordance with that provision, in respect of the income tax due on qualifying emoluments (within the meaning of that provision) and where that agreement is not null and void, then, in respect of those qualifying emoluments, the employer—

- (a) as part of that agreement, shall make a payment in respect of health contributions equal to the appropriate percentage, for the contribution year corresponding to the year of assessment, of the aggregate of the amount of those qualifying emoluments and the amount of income tax payable under the agreement in respect of them, and

[No. 9.] *Social Welfare (Miscellaneous Provisions) Act 2004.* [2004.]

Pt.3 S.20

(b) notwithstanding any other enactment, shall not be entitled to recover from the individual, who is in receipt of the qualifying emoluments, any part of a contribution paid in accordance with paragraph (a).

(2) In this section—

‘appropriate percentage’, in relation to a contribution year, means a percentage equal to the rate at which health contributions are payable for that contribution year;

‘specified provision’ means such provision as may be prescribed by regulations made by the Minister for the purposes of this section.”.

Amendment to National Training Fund Act 2000.

21.—The National Training Fund Act 2000 is amended in section 4 by inserting after subsection (13) (as inserted by section 21 of the Social Welfare (Miscellaneous Provisions) Act 2003) the following:

“(14) Where, for a year of assessment (within the meaning of the Tax Acts), the Revenue Commissioners and an employer enter into an agreement under a specified provision of the Taxes Consolidation Act 1997 whereby the employer will account to the Revenue Commissioners, in accordance with that provision, in respect of the income tax due on qualifying emoluments (within the meaning of that provision) and where that agreement is not null and void, then, in respect of those qualifying emoluments, the employer as part of that agreement, shall make a payment in respect of reckonable earnings equal to 0.7 per cent of the aggregate of the amount of those qualifying reckonable earnings and the amount of income tax payable under the agreement in respect of them.

(15) In subsection (14) ‘specified provision’ means such provision as may be prescribed by regulations made by the Minister for the purposes of that subsection.”.

Equal pension treatment — amendments to Pensions Act 1990.

22.—(1) The Pensions Act 1990 is amended by substituting the following for Part VII:

“PART VII

EQUAL PENSION TREATMENT IN OCCUPATIONAL BENEFIT SCHEMES

Definitions. 65.—(1) In this Part, unless the context otherwise requires—

‘act’ includes a deliberate omission;

‘the Act of 1946’ means the Industrial Relations Act 1946;

‘agency worker’ means an employee whose contract of employment is as mentioned in paragraph (b) of the definition of such a contract in this subsection;

‘complainant’ has the meaning assigned to it by Pt.3 S.22 section 81E(4);

‘contract of employment’ means, subject to subsection (2)—

- (a) a contract of service or apprenticeship, or
- (b) any other contract whereby an individual agrees with a person carrying on the business of an employment agency, within the meaning of the Employment Agency Act 1971, to do or perform personally any work or service for another person (whether or not that other person is a party to the contract), whether the contract is express or implied and, if express, whether it is oral or in writing;

‘the Director’ means the Director of Equality Investigations;

‘disability’ means—

- (a) the total or partial absence of a person’s bodily or mental functions, including the absence of a part of a person’s body,
- (b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
- (c) the malfunction, malformation or disfigurement of a part of a person’s body,
- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- (e) a condition, illness or disease which affects a person’s thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour,

and shall be taken to include a disability which exists at present, or which previously existed but no longer exists, or which may exist in the future or which is imputed to a person;

‘discrimination’ includes the issue of an instruction to discriminate;

‘the discriminatory grounds’ has the meaning assigned to it by section 66(2);

‘dismissal’ includes the termination of a contract of employment by the employee (whether prior

[No. 9.] *Social Welfare (Miscellaneous Provisions) Act 2004.* [2004.]

Pt.3 S.22

notice of termination was or was not given to the employer) in circumstances in which, because of the conduct of the employer, the employee was or would have been entitled to terminate the contract without giving such notice, or it was or would have been reasonable for the employee to do so, and 'dismissed' shall be construed accordingly;

'employee', subject to subsection (2), means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and, where the context admits, includes a member or a former member of a regulatory body;

'employer', subject to subsection (2), means, in relation to an employee, the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment;

'employment agency' means a person who, whether for profit or otherwise, provides services related to the finding of employment for prospective employees or the supplying of employees to employers;

'family status' means responsibility—

(a) as a parent or as a person *in loco parentis* in relation to a person who has not attained the age of 18 years, or

(b) as a parent or the resident primary carer in relation to a person of or over that age with a disability which is of such a nature as to give rise to the need for care or support on a continuing, regular or frequent basis,

and, for the purposes of paragraph (b), a primary carer is a resident primary carer in relation to a person with a disability if the primary carer resides with the person with the disability;

'indirect discrimination' shall be construed in accordance with section 68;

'marital status' means single, married, separated, divorced or widowed;

'member' means any person who, having been admitted to membership under the rules of a scheme, remains entitled to any benefit under

[2004.]

Social Welfare (Miscellaneous Provisions) Act 2004. [No. 9.]

Pt.3 S.22

such scheme in respect of a period of membership whilst employed or self-employed within the State;

‘occupational benefit scheme’ means—

(a) in relation to self-employed persons, any occupational pension scheme or arrangement which is comprised in one or more instruments or agreements and which provides, or is capable of providing, occupational benefits in relation to self-employed persons in any description of self-employment within the State, but does not include—

(i) any individual contract made by or on behalf of a self-employed person, or

(ii) any scheme for a self-employed person which has only one member, or

(iii) any scheme in so far as benefits are financed by contributions paid by the members on a voluntary basis,

or

(b) in relation to employed persons, any occupational pension scheme or arrangement which is comprised in one or more instruments or agreements and which provides, or is capable of providing, occupational benefits in relation to employed persons in any description of employment within the State, but does not include—

(i) any insurance contract made by or on behalf of an employed person to which the employer is not a party, or

(ii) any scheme in so far as benefits are financed by contributions paid by the members on a voluntary basis;

‘occupational benefits’ means benefits (other than remuneration to which sections 19 and 29 of the Employment Equality Act 1998 apply), in the form of pensions, payable in cash or in kind in respect of—

(a) termination of service,

(b) retirement, old age or death,

[No. 9.] *Social Welfare (Miscellaneous Provisions) Act 2004.* [2004.]

Pt.3 S.22

- (c) interruptions of service by reason of sickness or invalidity,
- (d) accidents, injuries or diseases arising out of or in the course of a person's employment,
- (e) unemployment, or
- (f) expenses incurred in connection with children or other dependants,

and, in the case of a member who is an employee, includes any other benefit corresponding to a benefit provided by virtue of the Social Welfare Acts, the Maternity Protection Act 1994 or the Health Acts 1947 to 2001 which is payable to or in respect of the member as a consequence of his employment;

'proceedings' means—

- (a) proceedings before the person, body or court dealing with a request or reference under this Part by or on behalf of a person, and
- (b) any subsequent proceedings, including proceedings on appeal, arising from the request or reference,

but does not include proceedings for an offence under this Part;

'qualifying service', in relation to a member of a scheme, means the aggregate of every period of reckonable service, whether or not continuous in each case, under—

- (a) the scheme,
- (b) every other scheme relating to the same employment,
- (c) every other scheme relating to any other employment in respect of which rights to long service benefit have been granted under the scheme in substitution for accrued rights under such other scheme:

Provided that no such period, or part thereof, shall be counted more than once;

'regulatory body' means a body which—

- (a) is an organisation of workers or employers,

(b) is a professional or trade organisation, Pt.3 S.22
or

(c) controls entry to, or the carrying on of,
a profession, vocation or occupation;

‘religious belief’ includes religious background or
outlook;

‘respondent’ has the meaning assigned to it by
section 81E(4);

‘rule’, in relation to a scheme, means a provision
of a scheme, by whatever name it is called;

‘scheme’ means an occupational benefit scheme;

‘sexual orientation’ means heterosexual, homo-
sexual or bisexual orientation;

‘Traveller community’ means the community of
people commonly so called who are identified
(both by themselves and others) as people with
a shared history, culture and traditions including,
historically, a nomadic way of life on the Island
of Ireland;

‘victimisation’ shall be construed in accordance
with subsection (3).

(2) For the purposes of this Part—

(a) a person holding office under, or in the
service of, the State (including a
member of the Garda Síochána or the
Defence Forces) or otherwise as a
civil servant, within the meaning of
the Civil Service Regulation Act
1956, shall be deemed to be an
employee employed by the State or
Government, as the case may be,
under a contract of service,

(b) an employee, officer or servant of a
local authority for the purposes of the
Local Government Act 2001, a har-
bour authority, a health board or a
vocational education committee shall
be deemed to be an employee
employed by the authority, board or
committee, as the case may be, under
a contract of service, and

(c) in the case of a contract mentioned in
paragraph (b) of the definition of
contract of employment in subsection
(1), no person except another agency
worker may be regarded as being in
a comparable situation for the pur-
poses of section 66.

[No. 9.] *Social Welfare (Miscellaneous Provisions) Act 2004.* [2004.]

Pt.3 S.22

(3) For the purposes of this Part, victimisation occurs where the dismissal or other adverse treatment of an employee by his employer occurs as a reaction to—

- (a) the employee notifying the Director or the Board of an alleged breach of this Part,
- (b) a complaint of a breach of the principle of equal pension treatment made by the employee to the employer,
- (c) any proceedings by a complainant,
- (d) an employee having represented or otherwise supported a complainant,
- (e) the work of an employee having been compared with that of another employee for any of the purposes of this Part,
- (f) an employee having been a witness in any proceedings under this Part,
- (g) an employee having opposed by lawful means an act which is unlawful under this Part, or
- (h) an employee having given notice of an intention to take any of the actions mentioned in the preceding paragraphs.

Discriminatory grounds for the purposes of this Part.

66.—(1) For the purposes of this Part, discrimination shall be taken to occur where—

- (a) a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds mentioned in subsection (2) (in this Part referred to as the ‘discriminatory grounds’) which—
 - (i) exists,
 - (ii) existed but no longer exists,
 - (iii) may exist in the future, or
 - (iv) is imputed to the person concerned,
- (b) a person who is associated with another natural person (‘the other person’)—
 - (i) is treated, by virtue of that association, less favourably than a person who is not so associated is,

has been or would be treated in a comparable situation, and

- (ii) similar treatment of the other person on any of the discriminatory grounds would, by virtue of paragraph (a), constitute discrimination.

(2) As between any 2 persons, the discriminatory grounds (and the descriptions of those grounds for the purposes of this Part) are—

(a) (i) that one is a woman and the other is a man, or

(ii) that one is a woman and the other is a man and they have the same marital status or both have family status,

(in this Part referred to as ‘the gender ground’),

(b) that they are of different marital status (in this Part referred to as ‘the marital status ground’),

(c) that one has family status and the other does not (in this Part referred to as ‘the family status ground’),

(d) that they are of different sexual orientation (in this Part referred to as ‘the sexual orientation ground’),

(e) that one has a different religious belief from the other, or that one has a religious belief and the other has not (in this Part referred to as ‘the religion ground’),

(f) that, subject to subsection (3), they are of different ages (in this Part referred to as ‘the age ground’),

(g) that one is a person with a disability and the other either is not or is a person with a different disability (in this Part referred to as ‘the disability ground’),

(h) that they are of different race, colour, nationality or ethnic or national origins (in this Part referred to as ‘the ground of race’),

(i) that one is a member of the Traveller community and the other is not (in this Part referred to as ‘the Traveller community ground’).

Pt.3 S.22

(3) The age ground applies only in relation to a person who is above the maximum age in respect of which there is a requirement under any enactment that he attend school.

Categories of persons to whom this Part applies.

67.—(1) For the purposes of this Part, ‘X’ and ‘Y’ represent 2 persons who differ as follows:

- (a) in relation to the gender ground, X and Y are of different gender;
- (b) in relation to the marital status ground, X and Y have different marital status;
- (c) in relation to the family status ground, X has family status and Y does not, or *vice versa*;
- (d) in relation to the sexual orientation ground, X and Y are of different sexual orientations;
- (e) in relation to the religion ground, X and Y have different religious beliefs or X has a religious belief and Y does not, or *vice versa*;
- (f) in relation to the age ground, X and Y are of different ages;
- (g) in relation to the disability ground, X is a person with a disability and Y is not, or *vice versa*, or X and Y are persons with different disabilities;
- (h) in relation to the ground of race, X and Y differ as to race, colour, nationality or ethnic or national origins or any combination of those factors;
- (i) in relation to the Traveller community ground, X is a member of the Traveller community and Y is not, or *vice versa*.

(2) Subject to subsection (1), nothing in this Part affects the operation of the Interpretation Acts 1937 to 1997 in so far as they provide that, unless the contrary intention appears—

- (a) words importing the masculine gender shall be construed as also importing the feminine gender, and
- (b) words importing the feminine gender shall be construed as also importing the masculine gender.

(3) In this Part, any reference to X and Y which does not apply to a specific discriminatory ground shall be treated as a reference to X and

Y in the context of each of the discriminatory grounds considered separately. Pt.3 S.22

Indirect discrimination for the purposes of this Part.

68.—(1) For the purposes of this Part, indirect discrimination occurs where an apparently neutral rule of the scheme concerned puts persons (whether each of them is X or Y) who differ in a respect mentioned in section 66(2) at a particular disadvantage in respect of any of the discriminatory grounds compared with other persons, being members or prospective members of that scheme.

(2) Where indirect discrimination occurs, the rule of the scheme concerned shall be treated as being in breach of the principle of equal pension treatment in relation to the persons referred to in subsection (1) on the discriminatory ground in respect of which the disadvantage is claimed unless the rule is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(3) In any proceedings statistics are admissible for the purpose of determining whether indirect discrimination has occurred.

Obligation to comply with the principle of equal pension treatment.

69.—Subject to the provisions of this Part, every scheme shall comply with the principle of equal pension treatment.

Principle of equal pension treatment.

70.—(1) Subject to this Part, the principle of equal pension treatment is that there shall be no discrimination on any of the discriminatory grounds (including, subject to section 68(2), indirect discrimination) in respect of any rule of a scheme.

(2) The principle of equal pension treatment shall apply in relation to members' dependants as it applies in relation to members.

(3) Nothing in this Part shall prohibit a rule of a scheme which provides different occupational benefits to or in respect of different members on grounds which do not breach the principle of equal pension treatment.

Savings in relation to the gender ground.

71.—(1) In determining whether a rule of a scheme complies with the principle of equal pension treatment in relation to the gender ground, account shall not be taken of—

- (a) any difference, on the basis of the sex of the members, in the levels of contributions which the employer makes, to the extent that the difference is for the purposes of—

- (i) removing or limiting differences, as between men and women in the amount or value of benefits provided under a defined contribution scheme, or
 - (ii) ensuring the adequacy of the funds necessary to cover the cost of the benefits defined under a defined benefit scheme,
- (b) any difference, on the basis of the sex of members in the amount or value of—
- (i) benefits provided under a defined contribution scheme to the extent that the difference is justifiable on actuarial grounds, or
 - (ii) certain elements of benefits provided under a defined benefit scheme, to the extent that the difference results from the effects of the use of actuarial factors differing according to sex at the time when the funding of such scheme is implemented, such as—
 - (I) the conversion into a capital sum of part of a periodic pension,
 - (II) transfer of occupational benefits,
 - (III) a reversionary pension payable to a dependant in return for the surrender of part of a pension, or
 - (IV) a reduced pension where the employee opts to take early retirement,
- (c) any special treatment for the benefit of women to whom section 81A(1) relates,
- (d) any difference of treatment for self-employed persons in relation to any optional provisions available,
- (e) any difference of treatment in relation to additional benefits available,
- (f) any right to claim a flexible pensionable age provided the conditions are the same for men and women.

(2) In this section—

‘additional benefits available’ means those provisions of a scheme—

- (a) which apply only in the case of members who elect for them to do so, and
- (b) whose purpose is to secure for those members benefits in addition to those otherwise provided under such scheme;

‘optional provisions available’ means those provisions of a scheme—

- (a) which apply only in the case of members who elect for them to do so, and
- (b) whose purpose is to secure for those members—
 - (i) a choice with respect to the date on which benefits under such a scheme are to commence, or
 - (ii) a choice between any two or more benefits.

Savings in relation to the age, family and marital status grounds.

72.—(1) It shall not constitute a breach of the principle of equal pension treatment on the age ground for a scheme to—

- (a) fix age or qualifying service, or a combination of both, as a condition or criterion for admission to the scheme,
- (b) fix different ages or qualifying service, or a combination of both, as conditions or criteria for admission to the scheme for employees or groups or categories of employees,
- (c) fix age or qualifying service, or a combination of both, as a condition or criterion for entitlement to benefits under the scheme,
- (d) fix different ages or qualifying service, or a combination of both, as conditions or criteria for entitlement to benefits under the scheme for employees or groups or categories of employees,
- (e) (i) fix age or qualifying service, or a combination of both, as a condition or criterion in relation to the accrual of rights under a defined benefit scheme or in relation to the level of contributions to a defined contribution scheme, or

Pt.3 S.22

- (ii) fix different ages or qualifying service, or a combination of both, as conditions or criteria in relation to the accrual of rights under a defined benefit scheme or in relation to the level of contributions to a defined contribution scheme for employees or groups or categories of employees,

where, in the context of the relevant employment, to do so is appropriate and necessary by reference to a legitimate objective of the employer, including legitimate employment policy, labour market and vocational training objectives,

- (f) use criteria as to age in actuarial calculations:

Provided that this does not result in a breach of the principle of equal pension treatment on the gender ground.

(2) It shall not constitute a breach of the principle of equal pension treatment on the marital or family status ground for a scheme to provide more favourable occupational benefits where those more favourable benefits are in respect of any person in respect of whom, under the rules of the scheme, a benefit is payable on the death of the member, provided that this does not result in a breach of the said principle on the gender ground.

(3) It shall not constitute a breach of the principle of equal pension treatment on the marital status or sexual orientation ground to provide more favourable occupational benefits to a deceased member's widow or widower provided that it does not result in a breach of the said principle on the gender ground.

(4) In this section any reference to the fixing of age or ages for entitlement to benefits includes a reference to the fixing of retirement age or ages for entitlement to benefits.

Special provisions relating to the disability ground.

73.—(1) Nothing in this Part shall make it unlawful for a scheme to have rules which provide for differences of treatment in respect of a member with a disability for work of a particular description, if, by reason of that disability, the amount of work done by the member during a particular period is less than the amount of similar work done, or which could reasonably be expected to be done, during that period by a member without the disability, provided that it does not result in discrimination on the gender ground.

[2004.]

Social Welfare (Miscellaneous Provisions) Act 2004. [No. 9.]

Pt.3 S.22

(2) Where, by virtue of subsection (1), X as a person with a disability is provided with different treatment, Y, as a person without a disability, or with a different disability, shall not be entitled under this Part to that treatment.

(3) Nothing in this Part shall make it unlawful for a scheme to have a rule which provides for more favourable occupational benefits to be paid to a member with a disability where that member avails himself of early retirement on the grounds of that disability.

Procuring, etc. discrimination or victimisation is an offence.

74.—A person who procures or attempts to procure another person to do anything which—

(a) constitutes a breach of the principle of equal pension treatment, or

(b) constitutes victimisation for the purposes of this Part,

shall be guilty of an offence.

Compliance with statutory requirements, etc.

75.—(1) Nothing in this Part renders unlawful any act done in compliance with any provision of the Maternity Protection Act 1994 or the Adoptive Leave Act 1995 and, accordingly, any such act does not constitute a breach of the principle of equal pension treatment on the marital status ground.

(2) Nothing in this Part renders unlawful any act done in compliance with any provision made by or under—

(a) section 5 of the Air Navigation and Transport Act 1946,

(b) section 12 of the Merchant Shipping Act 1947,

(c) section 29 of the Transport (Miscellaneous Provisions) Act 1971,

(d) section 3 of the Merchant Shipping (Certification of Seamen) Act 1979, or

(e) section 5 of the Irish Aviation Authority Act 1993,

and, accordingly, any such act does not constitute a breach of the principle of equal pension treatment on the age ground or the disability ground.

(3) Nothing in this Part renders unlawful any act done in compliance with—

[No. 9.] *Social Welfare (Miscellaneous Provisions) Act 2004.* [2004.]

Pt.3 S.22

(a) the Protection of Young Persons (Employment) Act 1996,

(b) the National Minimum Wage Act 2000,
or

(c) section 3 of the Redundancy Payments Act 1971, as amended by section 5 of the Redundancy Payments Act 1979,

and, accordingly, any such act does not constitute a breach of the principle of equal pension treatment on the age ground.

(4) Nothing in this Part renders unlawful any act done in compliance with paragraph 1 of Schedule 3 to the Redundancy Payments Act 1967 and, accordingly, any such act does not constitute a breach of the principle of equal pension treatment on the age ground.

Burden of proof. 76.—(1) Where in any proceedings facts are established by or on behalf of a complainant from which it may be reasonably inferred that there has been a breach of the principle of equal pension treatment in relation to him, it is for the respondent to prove the contrary.

(2) This section is without prejudice to any other enactment or rule of law in relation to the burden of proof in proceedings which may be more favourable to a complainant.

(3) Where, in any proceedings as arising from a reference of a matter by the Board to the Director under section 85(1) of the Employment Equality Act 1998 as it applies to this Part, facts are established by or on behalf of the Board from which it may be reasonably inferred that an action or a failure mentioned in a paragraph of that provision has occurred, it is for the respondent to prove the contrary.

(4) In this section ‘proceedings’ means proceedings under this Part.

Exclusion of discrimination on particular grounds in certain employments.

77.—In relation to the principle of equal pension treatment on the age ground or the disability ground, nothing in this Part applies in relation to employment in the Defence Forces.

Equal pension treatment and access.

78.—An employer shall comply with the principle of equal pension treatment in relation to the manner in which he affords his employees access to a scheme.

Benefits granted under a scheme at discretion of its management body. 79.—Where the granting of an occupational benefit under a scheme is at the discretion of any person, that person shall comply with the principle of equal pension treatment in the exercise of such discretion. Pt.3 S.22

Non-compliance, compulsory levelling-up — gender. 80.—(1) Subject to subsection (5), where a rule of a scheme does not comply with the principle of equal pension treatment on the gender ground, it shall, to the extent that it does not so comply, be rendered null and void by the provisions of this Part with effect from—

(a) in the case of a rule that purports to have effect only on or after a date that falls on or after the commencement of *section 22* of the *Social Welfare (Miscellaneous Provisions) Act 2004*, the date on and from which it purports to have effect,

(b) in the case of a rule that purports to have effect on and from a date that falls before that commencement (but not a date falling before the 8th day of April, 1976)—

(i) if the rule relates to employed persons, the date on and from which it purports to have effect, not being a date earlier than—

(I) subject to clause (II), the 17th day of May, 1990,

(II) the 8th day of April, 1976 in the case of employed persons who—

(A) initiated proceedings or made an equivalent claim before the 17th day of May, 1990, alleging that the scheme did not comply with the principle of equal pension treatment or was discriminatory as aforesaid, or

(B) were denied access to the scheme,

(ii) if the rule relates to self-employed persons, the date on and from which it purports to have effect, not being a date earlier than the 1st day of January, 1993,

and the more favourable treatment accorded by it to X (or Y as the case may be) shall be accorded by it to Y (or X as the case may be) in respect of periods of membership in that scheme, or periods of denial of access to that scheme, up to the date on which the rule is amended to comply with the principle of equal pension treatment.

(2) Where more favourable treatment is accorded to any persons under a scheme by virtue of subsection (1), the trustees of the scheme or (where appropriate) the employer shall, subject to subsection (5), take such measures as are necessary to give effect to that subsection.

(3) Where any rule of a scheme relating to employed persons is rendered null and void by subsection (1), nothing in this Part shall preclude any rights or obligations, relating to a period of membership in that scheme before the 17th day of May, 1990, from remaining subject to the provisions of the scheme in force during that period of membership—

(a) during the period beginning on the 17th day of May, 1990 and ending on the 31st day of December, 1998, or, in the case of retirement ages, the 31st day of December, 2017, or

(b) in respect of members who cease to be in relevant employment to which that scheme applies before or during the period referred to in paragraph (a).

(4) Where any rule of a scheme relating to self-employed persons is rendered null and void by subsection (1), nothing in this Part shall preclude any rights or obligations, relating to a period of membership in that scheme before the 1st day of January, 1993, from remaining subject to the provisions of the scheme in force during that period of membership.

(5) Where a scheme to which a person has been denied access in contravention of this Part requires the payment of member contributions to it as a condition of membership, the admission of that person as a member of that scheme shall be conditional on the payment by the member of appropriate back contributions to the scheme from the beginning of the period in respect of which admission to the scheme is granted in accordance with this section.

(6) In this section ‘appropriate back contributions to the scheme’, in relation to a scheme, means—

- (a) in a case where the rules of the scheme so provide, the amount of member contributions due for the period concerned at the appropriate contribution rate applying during that period calculated by reference to the salary applying at the time the contributions are being paid, or
- (b) in any other case, the amount of contributions due, calculated in accordance with the rules of the scheme, from the beginning of the period in respect of which admission to the scheme is granted in accordance with this section.

Pt.3 S.22

Non-compliance, compulsory levelling-up — grounds other than the gender ground.

81.—(1) Subject to subsection (5), where a rule of a scheme does not comply with the principle of equal pension treatment on any ground other than the gender ground or the ground of race, it shall, to the extent that it does not so comply, be rendered null and void by the provisions of this Part with effect from the date on and from which it purports to have effect, not being a date earlier than the 2nd day of December, 2003 and the more favourable treatment accorded to X (or Y as the case may be) shall be accorded to Y (or X as the case may be) in respect of periods of membership in that scheme, or periods of denial of access to that scheme, up to the date on which the rule is amended to comply with the principle of equal pension treatment in respect of the relevant discriminatory grounds.

(2) Subject to subsection (5), where a rule of a scheme does not comply with the principle of equal pension treatment on the ground of race, it shall, to the extent that it does not so comply, be rendered null and void by the provisions of this Part with effect from the date on and from which it purports to have effect, not being a date earlier than the 19th day of July, 2003 and the more favourable treatment accorded to X (or Y as the case may be) shall be accorded to Y (or X as the case may be) in respect of the period of membership in that scheme, or periods of denial of access to that scheme, up to the date on which the rule is amended to comply with the principle of equal pension treatment in respect of the ground of race.

(3) Where more favourable treatment is accorded to any persons under a scheme by virtue of subsection (1) or (2), the trustees of the scheme or (where appropriate) the employer shall, subject to subsection (5), take such measures as are necessary to give effect to that subsection.

[No. 9.] *Social Welfare (Miscellaneous Provisions) Act 2004.* [2004.]

Pt.3 S.22

(4) Where any rule of a scheme is rendered null and void by subsection (1) or (2), nothing in this Part shall preclude any rights or obligations, relating to a period of membership in that scheme before the period in respect of which the rule is null and void, from remaining subject to the provisions of the scheme in force during that period of membership.

(5) Subsections (5) and (6) of section 80 shall apply in relation to this section as they apply in relation to section 80.

Maternity provisions.

81A.—(1) Subject to the provisions of this section, nothing in this Part shall prevent a scheme from providing special treatment for women in connection with pregnancy or childbirth.

(2) Where a scheme contains a rule—

(a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of qualifying maternity absence in the case of a woman who—

(i) is, or

(ii) immediately before the commencement of such period, was,

an employee and which treats that woman in a manner other than that in which she would be treated under the scheme if she was not absent from work and was in receipt of remuneration from her employer during the period, or

(b) which requires the amount of any benefit payable under the scheme to or in respect of any such woman, to the extent that it falls to be determined by reference to her earnings in respect of a period which includes a period of qualifying maternity absence, to be determined other than it would so be determined if she was not absent from work, and was in receipt of remuneration from her employer during that period,

it shall be regarded to that extent as not complying with the principle of equal pension treatment.

(3) Where a scheme is regarded as not complying with the principle of equal pension treatment by virtue of subsection (2), the trustees of the scheme or (where appropriate) the employer

[2004.]

Social Welfare (Miscellaneous Provisions) Act 2004. [No. 9.]

Pt.3 S.22

concerned shall take such measures as are necessary to ensure that the treatment accorded to the woman concerned under the scheme is no less favourable than that which would be accorded to her thereunder throughout the period of maternity absence concerned if she were not absent from work and was in receipt of remuneration from her employer during that period.

(4) In this section ‘period of qualifying maternity absence’ means any period—

- (a) throughout which a woman is absent from work due to pregnancy or childbirth, and
- (b) in respect of which her employer, or (if she is no longer in his employment), her former employer, pays her any remuneration.

(5) This section is without prejudice to rights conferred by the Maternity Protection Act 1994 and, in particular, section 22 of that Act.

Family leave provisions.

81B.—(1) Where a scheme contains a rule—

- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of qualifying family leave in the case of a member who is an employee and which treats the member in a manner other than that in which he would be treated under the scheme if he was not absent from work, and was in receipt of remuneration from his employer, during that period, or
- (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to his earnings in respect of a period which includes a period of qualifying family leave, to be determined other than it would be so determined if he was not absent from work and was in receipt of remuneration from his employer during that period,

it shall be regarded to that extent as not complying with the principle of equal pension treatment.

(2) Where a scheme is regarded as not complying with the principle of equal pension treatment by virtue of subsection (1), the trustees of a scheme or (where appropriate) the employer concerned shall take such measures as are necessary to ensure that the treatment accorded to the

Pt.3 S.22

member concerned under the scheme is no less favourable than that which would be accorded to him thereunder throughout the period of family leave concerned if he was not absent from work and was in receipt of remuneration from his employer during that period.

(3) In this section ‘period of qualifying family leave’ means any period—

- (a) throughout which a member is absent from work for family reasons, and
- (b) in respect of which the employer pays him any remuneration.

Principle of equal pension treatment and collective agreements, etc.

81C.—(1) Subject to subsection (3)—

- (a) if a rule or term of an agreement or order to which this section applies would not, if it were a rule of a scheme, comply with the principle of equal pension treatment on the gender ground, it shall, to the extent that it would not so comply, be rendered null and void and the provisions of section 80(1), (2), (5) and (6) shall apply to that rule or term as they apply to a rule of a scheme in respect of employees,
- (b) if a rule or a term of an agreement or order to which this section applies would not, if it were the rule of a scheme, comply with the principle of equal pension treatment on any ground other than the gender ground, it shall, to the extent that it would not so comply, be rendered null and void and the provisions of section 81(1), (2), (3) and (5) shall apply to that rule or term as they apply to a rule of a scheme in respect of employees.

(2) This section applies to—

- (a) a collective agreement relating to employees,
- (b) an employment regulation order within the meaning of Part IV of the Act of 1946, and
- (c) a registered employment agreement within the meaning of Part III of that Act.

(3) Where any rule or term of an agreement or order is rendered null and void by subsection (1)(a), nothing in this Part shall affect any rights accrued or obligations incurred under that rule

or term relating to the period before the 17th day of May, 1990— Pr.3 S.22

(a) during the period beginning on the 17th day of May, 1990, and ending on the 31st day of December, 1998, or, in the case of retirement ages, the 31st day of December, 2017, or

(b) in respect of employees who cease to be in employment to which that rule or term applies before or during the period referred to in section 80(1).

(4) Where any rule or term of an agreement or order is rendered null and void by subsection (1)(b), nothing in this Part shall affect any rights accrued or obligations incurred under that rule or term before the period in respect of which the rule is null and void.

Principle of equal pension treatment and contracts of employment.

81D.—(1) Where a contract of employment contains a term (whether expressed or implied) which, if it were a rule of a scheme, would not comply with the principle of equal pension treatment on the gender ground, the term shall, to the extent that it would not so comply, be rendered null and void and the provisions of section 80 shall apply to that term as they apply to a rule of a scheme in respect of employees.

(2) Where a contract of employment contains a term (whether expressed or implied) which, if it were a rule of a scheme, would not comply with the principle of equal pension treatment on any of the discriminatory grounds other than the gender ground, the term shall, to the extent that it would not so comply, be rendered null and void and the provisions of section 81 shall apply to that term as they apply to a rule of a scheme in respect of employees.

(3) Where more favourable treatment is accorded to any person under a term (whether expressed or implied) of a contract of employment by virtue of subsection (1) or (2) and section 80 or 81 as applied by that subsection, the employer shall take such measures as are necessary to give effect to that subsection and that section as so applied.

The forum for seeking redress.

81E.—(1) A person who claims not to be receiving, or not to have received, equal pension treatment in accordance with this Part or to have been penalised in circumstances amounting to victimisation may, subject to subsections (2) to (6) and subsections (1) and (2) of section 81F, seek redress by referring the case to the Director.

(2) If a person claims to have been dismissed—

- (a) in circumstances amounting to a breach of the principle of equal pension treatment by another in contravention of this Part, or
- (b) in circumstances amounting to victimisation,

then, subject to subsection (3), a claim for redress for the dismissal may be brought to the Labour Court and shall not be brought to the Director.

(3) If the grounds for such a claim as is referred to in subsection (1) or (2) arise in relation to a breach of the principle of equal pension treatment on the gender ground, then, subject to subsections (4) to (7), the person making the claim may seek redress by referring the case to the Circuit Court, instead of referring it to the Director under subsection (1) or, as the case may be, the Labour Court under subsection (2).

(4) In this Part, in relation to a case referred under any provision of this section or section 81F—

‘the complainant’ means the person by whom it is referred;

‘the respondent’ means any or all of the following—

- (a) the person who is alleged to have discriminated against the complainant in breach of the principle of equal pension treatment,
- (b) the person who is responsible for admitting members to a scheme,
- (c) the person who is alleged to be responsible for the victimisation and includes the trustees of an occupational benefit scheme.

(5) Subject to subsection (6), a claim for redress in respect of a breach of the principle of equal pension treatment or victimisation may not be referred under this section after the end of the period of 6 months from the date of termination of the relevant employment.

(6) On application by a complainant, the Director, the Labour Court or the Circuit Court as the case may be, may, for reasonable cause, direct that, in relation to the complainant, subsection (5) shall have effect as if for the reference in it to a period of 6 months there were substituted a reference to such period not exceeding 12 months as is specified in the direction, and

[2004.]

Social Welfare (Miscellaneous Provisions) Act 2004.

[No. 9.]

where such a direction is given, this Part shall have effect accordingly. Pt.3 S.22

(7) Where a delay by a complainant in referring a case under this section is due to any misrepresentation by the respondent, subsection (5) shall be construed as if the reference in it to the date of termination of relevant employment were a reference to the date on which the fact of misrepresentation came to the complainant's notice.

The forum for seeking redress — supplemental provisions.

81F.—(1) Where a claim for redress under this Part (other than on the age or disability ground)—

(a) relates to employment in the Defence Forces, and

(b) is made by a member thereof,

then the claim shall, in the first instance, be referred for redress under the procedure contained in section 104 of the Employment Equality Act 1998 as it applies to this Part.

(2) Where subsection (1) applies to a claim for redress, the complainant shall not refer a case under subsection (1), (2) or (3) of section 81E unless—

(a) a period of 12 months has elapsed after the referral under section 104 of the Employment Equality Act 1998 (as it applies to this Part) to which the claim relates and the procedures under subsection (2)(a) of the said section 104 have not been requested or have not been completed, or

(b) the complainant is not satisfied with the recommendation given under subsection (2)(b) of the said section 104 on the claim,

and, in a case to which paragraph (a) or (b) relates, the end of the period of time which is applicable under subsection (5) of section 81E (including, where appropriate, applicable under that subsection by reference to subsection (7) of section 81E) shall be construed as—

(i) the end of that period, or

(ii) the end of the period of 28 days from the expiration of the period referred to in paragraph (a) or the date of the recommendation referred to in paragraph (b),

whichever last occurs.

(3) A party to any proceedings under this Part before the Director or Labour Court may be represented by any individual or body authorised by the party in that behalf.

(4) (a) Not later than 42 days from the date of a decision of the Director on an application by a complainant for an extension of time under section 81E(6), the complainant or respondent may appeal against the decision to the Labour Court on notice to the Director specifying the grounds of the appeal.

(b) On the appeal the Labour Court may affirm, quash or vary the decision.

(c) Effect shall not be given to a decision of the Director on such application until—

(i) the period of 42 days mentioned in paragraph (a) has expired, or

(ii) any appeal against it has been determined,

whichever first occurs.

(5) (a) Not later than 42 days from the date of a decision of the Labour Court on an application by a complainant for an extension of time under section 81E(6), the complainant or respondent may appeal against the decision to the Circuit Court on notice to the Labour Court specifying the grounds of appeal.

(b) On the appeal the Circuit Court may affirm, quash or vary the decision.

(c) Effect shall not be given to a decision of the Labour Court on such application until—

(i) the period of 42 days mentioned in paragraph (a) has expired, or

(ii) any appeal against it has been determined,

whichever first occurs.

(6) Section 81E and this section are subject to section 104 of the Employment Equality Act 1998 as it applies to this Part.

Disputes as to whether a scheme is defined benefit or defined contribution.

81G.—(1) Any dispute as to whether a scheme is a defined contribution scheme for the purposes of this Part shall be determined by the Board on application to it in writing in that behalf by a person who, in relation to the scheme, corresponds to a person mentioned in section 38(3) in relation to the scheme mentioned therein. Pt.3 S.22

(2) An appeal to the High Court on a point of law from a determination of the Board under subsection (1) in relation to a scheme may be brought by the person who made, or a person who was entitled to make, the application concerned under subsection (1) and, on the hearing of that appeal, the High Court may determine the point of law accordingly.

Redress which may be ordered.

81H.—(1) Subject to this section, the types of redress for which a decision of the Director on a reference under section 81E may provide are such one or more of the following as may be appropriate in the circumstances of the particular case:

- (a) an order requiring that section 80 or 81 be complied with;
- (b) an order that a person or persons specified in the order implement the principle of equal pension treatment from the date on which the rule of the scheme is amended to comply with an order under paragraph (a);
- (c) an order that a person or persons specified in the order take a course of action which is specified in the order from a date so specified;
- (d) an order for compensation for the effects of acts of victimisation which occurred not earlier than 6 years before the date of the referral of the case under section 81E.

(2) The types of redress for which a determination of the Labour Court on a reference under section 81E may provide are such one or more of the following as may be appropriate in the circumstances of the particular case:

- (a) the orders referred to in subsection (1);
- (b) an order for re-instatement or re-engagement, with or without an order for compensation.

(3) The types of redress for which the Circuit Court may provide on a reference under section 81E(3) are such one or more of the following as

may be appropriate in the circumstances of the particular case:

- (a) the orders referred to in subsection (1);
- (b) the order referred to in subsection (2)(b),

and no enactment relating to the jurisdiction of the Circuit Court shall be taken to limit the amount of compensation which may be ordered by the Circuit Court by virtue of this subsection.

(4) The maximum amount which may be ordered by the Director or the Labour Court by way of compensation under subsection (1)(d) or by that Court under subsection (2)(b), in any case where the complainant was in receipt of remuneration at the date of the reference of the case, or if it was earlier, the date of dismissal, shall be an amount equal to 104 times either—

- (a) the amount of that remuneration, determined on a weekly basis, or
- (b) where it is greater, the amount, determined on a weekly basis, which the complainant would have received at that date but for the act of victimisation in question,

and in any other case, shall be €12,700.

(5) Where the case for which the redress is to be provided is referred to the Director or the Labour Court and arises in breach of the principle of equal pension treatment on the gender ground, the Director or the Labour Court, as the case may be, may, in addition to making an order for compensation, also order the payment of interest, at the rate which is applicable under section 22(1) of the Courts Act 1981—

- (a) in respect of the whole or any part of the amount of the compensation, and
- (b) in respect of the period beginning on the relevant date and ending on the date of the payment,

and, for the purposes of paragraph (b), ‘the relevant date’ means the first day of the period (if any) to which the compensation is expressed to be referable or, if there is no such period, the date of the reference under section 81E(1).

(6) An order for compensation under this section may not be made in favour of the Board in a case referred by the Board to the Director under section 85(1) of the Employment Equality Act 1998 as it applies to this Part.

[2004.]

Social Welfare (Miscellaneous Provisions) Act 2004. [No. 9.]

Pt.3 S.22

(7) Where an act constitutes victimisation both under this Part and the Employment Equality Act 1998 or the Equal Status Act 2000, redress may be provided under only one of them.

(8) Where a delay in referring a case under this Part to the Director, Labour Court or Circuit Court is attributable to the respondent's having misrepresented to the complainant the facts of the case, references in this section to the date of referral shall be construed as references to the date of the misrepresentation.

(9) 'Remuneration' for the purposes of subsection (4) in relation to an employee includes occupational benefits and any consideration whether in cash or in kind which the employee receives, directly or indirectly, from the employer in respect of the employment.

Reports to the Director.

81I.—(1) If requested to do so by the Director, the Board shall answer, and prepare a report on any question specified by the Director and arising on the reference relating to an occupational pension scheme.

(2) Where a report is prepared for the Director under subsection (1), then—

(a) the Board shall furnish a copy of the report to the complainant and the respondent and to any other person to whom it relates, and

(b) the Director may rely on the report for the purposes of issuing a decision.

Application of Employment Equality Act 1998.

81J.—(1) In this section 'the Act of 1998' means the Employment Equality Act 1998.

(2) Sections 74, 76, 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number."

(2) The Pensions Act 1990 is amended by inserting after the Third Schedule to that Act the following Schedule—

[No. 9.] *Social Welfare (Miscellaneous Provisions) Act 2004.* [2004.]

“Fourth Schedule

Section 81J.
Pr.3 S.22

Application of Employment Equality Act 1998

Ref. No. (1)	Section of Employment Equality Act 1998 (2)	Words appearing in section of Employment Equality Act 1998 (3)	Substituted words for the purposes of Part VII (4)
1.	Section 74	‘“the complainant” has the meaning given by section 77(4);’	‘“the complainant” has the meaning given by section 81E(4) of the Pensions Act 1990; “discrimination” means discrimination in breach of the principle of equal pension treatment;’
2.	Section 74	‘“the respondent” has the meaning given by section 77(4); “victimisation” shall be construed in accordance with subsection (2)’	‘“occupational benefits” has the meaning given by section 65 of the Pensions Act 1990; “the principle of equal pension treatment” has the meaning given by section 70 of the Pensions Act 1990; “respondent” has the meaning given by section 81E(4) of the Pensions Act 1990; “victimisation” shall be construed in accordance with section 65(4) of the Pensions Act 1990.’
3.	Section 76(1)	‘(b) that another person (“Y”) who is responsible for providing remuneration to X is not providing that remuneration as required by an equal remuneration term, or’	‘(b) that another person (“Y”) who is responsible for complying with the principle of equal pension treatment in relation to X is not complying with that principle, or’
4.	Sections 76(1), 78(5), 79(1), 84(1), 85, 93(3), 101(5), 101(6)(a) and 102	‘section 77’	‘section 81E of the Pensions Act 1990’
5.	Section 76(2)(b)	‘remuneration’	‘occupational benefits’
6.	Sections 78(1) and 101(2)	‘section 77(1)’	‘section 81E(1) of the Pensions Act 1990’
7.	Section 78(2)	‘section 77(2)’	‘section 81E(2) of the Pensions Act 1990’

[2004.]

*Social Welfare (Miscellaneous
Provisions) Act 2004.*

[No. 9.]

Pt.3 S.22

Ref. No.	Section of Employment Equality Act 1998	Words appearing in section of Employment Equality Act 1998	Substituted words for the purposes of Part VII
(1)	(2)	(3)	(4)
8.	Section 79(3)	‘(3) If, in a case which is referred on the ground that the complainant is not receiving remuneration in accordance with an equal remuneration term, a question arises whether the different rates of remuneration to which the case relates are lawful by virtue of section 19(5) or 29(5), the Director may direct that that question shall be investigated as a preliminary issue and shall proceed accordingly.’	‘(3) If, in a case which is referred on the ground that the complainant is not receiving occupational benefits in accordance with the principle of equal pension treatment, a question arises as to whether the situation of the complainant is a comparable one for the purposes of this Part, the Director may direct that that question shall be investigated as a preliminary issue and shall proceed accordingly.’
9.	Sections 79(4) and 83(6)	‘consult the Labour Court’	‘consult the Minister for Social and Family Affairs, the Labour Court’
10.	Sections 79(6)(a), 85(3) and 91(2)	‘section 82’	‘section 81H of the Pensions Act 1990’
11.	Sections 80(1), 81, 101(3), 103(3) and 104(2)(a)	‘section 77(3)’	‘section 81E(3) of the Pensions Act 1990’
12.	Sections 85, 86(1), 88(3)(c), 91(4) and 91(7)	‘authority’	‘Pensions Board’
13.	Sections 85(1)(c), 85(1)(f) and 101(1)	‘an equal remuneration term or an equality clause’	‘the principle of equal pension treatment’
14.	Section 85(4)(b)	‘an equal remuneration term or equality clause’	‘the principle of equal pension treatment’
15.	Section 85(1)(e)	‘section 14’	‘section 74 of the Pensions Act 1990’
16.	Section 85(2)(b)	‘the equal remuneration term or equality clause’	‘the principle of equal pension treatment’
17.	Section 85(6)	‘Authority’s’	‘Pensions Board’s’
18.	Sections 86(1) and 87(1)	‘section 9’	‘section 81C of the Pensions Act 1990’
19.	Section 86(2)(a)	‘paragraph (b) or (c) of section 9(3)’	‘section 81C(2)(b) and (c) of the Pensions Act 1990’
20.	Section 86(2)(b)	‘remuneration or whose conditions of employment’	‘occupational benefits’
21.	Section 88(3)(a)	‘section 77(4)’	‘section 81E(4) of the Pensions Act 1990’

[No. 9.] *Social Welfare (Miscellaneous Provisions) Act 2004.* [2004.]

Pt.3 S.22

Ref. No.	Section of Employment Equality Act 1998	Words appearing in section of Employment Equality Act 1998	Substituted words for the purposes of Part VII
(1)	(2)	(3)	(4)
22.	Section 93(3)	'remuneration'	'remuneration and occupational benefits'
23.	Section 97(1)	'the Director,'	'the Director, the Pensions Board,'
24.	Section 97(2)	'or otherwise acquired by, the Labour Court, the Director or'	'or otherwise acquired by, the Labour Court, the Director, the Pensions Board or'
25.	Section 98(1)(b)	'(a) to (d) of section 74(2)'	'(a) to (h) of section 65(3) of the Pensions Act 1990'
26.	Section 98(5)	'section 82,'	'section 81H of the Pensions Act 1990,'
27.	Section 98(5)	'section 82(2)'	'section 81H(2) of the Pensions Act 1990'
28.	Section 98(5)	'provision of section 82'	'provision of section 81H of the Pensions Act 1990'
29.	Section 100(3)	'the Minister or'	'the Minister, the Pensions Board or'
30.	Section 101(1)	'the equal remuneration term or the equality clause'	'the principle of equal pension treatment'
31.	Section 104(1)	'section 77(10)'	'section 81F(2) of the Pensions Act 1990'

”.

Miscellaneous amendments to Pensions Act 1990.

23.—The Pensions Act 1990 is amended to the extent specified in *Schedule 2* to this Act.

Section 17.

SCHEDULE 1

Item	Provision of Principal Act Amended	Nature of Amendment
1.	Section 120 (as amended by section 6 of the Social Welfare (Miscellaneous Provisions) Act 2002).	Insert the following subsection after subsection (7): “(8) A person shall not be entitled to an allowance under this section unless he is habitually resident in the State at the date of the making of the application therefor.”.
2.	Section 134.	(a) In paragraph (a), delete “and”. (b) In paragraph (b), substitute “with section 136; and” for “with section 136.”. (c) Insert the following paragraph after paragraph (b): “(c) the person must be habitually resident in the State at the date of the making of the application therefor.”.

Item	Provision of Principal Act Amended	Nature of Amendment
3.	Section 143 (as amended by section 19 of the Social Welfare Act 1996).	<p>Insert the following subsection after subsection (2):</p> <p>“(3) A person shall not be entitled to a pension under this section unless he is habitually resident in the State at the date of the making of the application therefor.”.</p>
4.	Section 148 (as amended by section 9 of the Social Welfare (Miscellaneous Provisions) Act 2003).	<p>Insert the following subsection after subsection (4):</p> <p>“(5) A person shall not be entitled to a pension under this section unless he is habitually resident in the State at the date of the making of the application therefor.”.</p>
5.	Section 158 (as amended by section 21 of the Act of 2001).	<p>Insert the following subsection after subsection (5):</p> <p>“(6) A one-parent family payment shall not be payable to a qualified parent under this Chapter unless the qualified parent is habitually resident in the State at the date of the making of the application therefor.”.</p>
6.	Section 164.	<p>Substitute the following section for section 164:</p> <p>“Entitlement to Allowance. 164.—(1) Subject to this Act, an allowance (in this Act referred to as carer’s allowance) shall, in such circumstances and subject to such conditions as may be prescribed, be payable to a carer.</p> <p>(2) A carer shall not be entitled to an allowance under this section unless he is habitually resident in the State at the date of the making of the application therefor.”.</p>
7.	Chapter 11 of Part III.	<p>Insert the following section after section 173:</p> <p>“Exclusion of persons not habitually resident in the State. 173A.—A person shall not be entitled to an allowance (other than an allowance under sections 181 and 182) under this Chapter unless he is habitually resident in the State at the date of the making of the application therefor.”.</p>
8.	Section 191B (as amended by section 21 of the Social Welfare Act 2000).	<p>Insert the following subsection after subsection (4):</p> <p>“(5) A person shall not be entitled to disability allowance under this section unless he is habitually resident in the State at the date of the making of the application therefor.”.</p>
9.	Section 193.	<p>(a) In subsection (1), substitute “Subject to subsection (3), a person” for “A person”.</p> <p>(b) Insert the following subsection after subsection (2):</p> <p>“(3) A qualified person, other than a person to whom paragraph (a), (b) or (c) of section 192(2) applies, shall not be qualified for child benefit under this section unless he is habitually resident in the State at the date of the making of the application therefor.”.</p>

[No. 9.] *Social Welfare (Miscellaneous Provisions) Act 2004.* [2004.]

SCH.1

Item	Provision of Principal Act Amended	Nature of Amendment
10.	Part VI.	<p>Insert, in Chapter 2, the following section:</p> <p>“Provision with respect to habitual residence.</p> <p>208A.—(1) For the purpose of each of the provisions of this Act specified in subsection (3), it shall be presumed, until the contrary is shown, that a person is not habitually resident in the State at the date of the making of the application concerned unless he has been present in the State or any other part of the Common Travel Area for a continuous period of 2 years ending on that date.</p> <p>(2) In subsection (1) ‘other part of the Common Travel Area’ means the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man.</p> <p>(3) The provisions of this Act mentioned in subsection (1) are:</p> <p>sections 120(8), 134(c), 143(3), 148(5), 158(6), 164, 173A, 191B(5) and 193(3).”</p>

Section 23.

SCHEDULE 2

AMENDMENTS TO PENSIONS ACT 1990

Item	Provision affected	Amendment
1	Section 2.	<p>(a) Substitute “ ‘contract of employment’, other than in Part VII, means—” for “ ‘contract of employment’ means—”.</p> <p>(b) Substitute “ ‘scheme’, other than in Part VII, means—” for “ ‘scheme’ means—”.</p>
2	Section 3 (as amended by the Pensions (Amendment) Act 2002).	<p>(a) Insert the following after subsection (2):</p> <p>“(2A) Where an employee is dismissed from an employment solely or mainly because, in good faith, the employee—</p> <p>(a) notified the Board of an alleged breach of this Act, other than of Part VII,</p> <p>(b) made to the Board a report under section 83 or a voluntary report of any matter concerning the state and conduct of a scheme or PRSA, other than a matter to which Part VII applies,</p> <p>(c) made a reference under section 38, 53, 58 or 64A,</p> <p>(d) gave evidence in any proceedings under this Act, other than Part VII, or</p> <p>(e) gave notice to his employer of his intention to do anything referred to in paragraph (a), (b), (c) or (d),</p> <p>the employer shall be guilty of an offence.</p>

Item	Provision affected	Amendment
		<p>(2B) (a) On conviction of an employer for an offence under this section, the Court may, if it thinks fit and the dismissed employee is present or represented in court and consents—</p> <ul style="list-style-type: none"> (i) order the re-instatement by the employer of the dismissed person in the position which that person held immediately before the dismissal on the terms and conditions on which that person was employed immediately before that dismissal, together with a term that the re-instatement shall be deemed to have commenced on the day of the dismissal, (ii) order the re-engagement by the employer of the dismissed person either in the position which that person held immediately before the dismissal or in a different position which would be reasonably suitable for that person on such terms and conditions as are reasonable having regard to all the circumstances, or (iii) impose on the employer, in addition to any fine imposed under subsection (3), a fine not exceeding the amount which, in the opinion of the Court, the dismissed person would have received from the employer concerned by way of remuneration if the dismissal had not occurred: <p>Provided that that amount shall not exceed—</p> <ul style="list-style-type: none"> (I) if the conviction was a summary conviction, an amount which together with the fine imposed under subsection (3) does not exceed €3,500, (II) if the conviction was on indictment, an amount equal to 104 weeks' remuneration of the dismissed person. <p>(b) The amount of a fine imposed under paragraph (a) shall be paid to the employee concerned.</p> <p>(c) Without prejudice to any right of appeal by any other person, the employee concerned may appeal against the amount of the fine under paragraph (a), either (as the case may be) to the High Court or to the judge of the Circuit Court in whose circuit the district court district (or any part thereof) of the judge of the District Court by whom the fine was imposed is situated, and the decision on such an appeal shall be final.</p>

[No. 9.] *Social Welfare (Miscellaneous Provisions) Act 2004.* [2004.]

SCH.2

Item	Provision affected	Amendment
		<p>(d) Proof of the payment by an employer of a fine imposed under paragraph (a) shall be a defence to any civil action brought against him or application made under any enactment by the employee concerned in respect of the remuneration referred to in subparagraph (iii) of that paragraph.”.</p> <p>(b) In subsection (3), substitute “under subsection (1), (2) or (2A)” for “under subsection (1) or (2)”.</p>
3	Section 5 (as amended by the Pensions (Amendment) Act 2002).	In subsection (5), substitute “2001, or the Protection of Employees (Fixed-Term Work) Act 2003” for “2001”.
4	Section 34 (as amended by the Social Welfare (Miscellaneous Provisions) Act 2003).	<p>Substitute the following for the proviso to subsection (2) (as amended by the Social Welfare (Miscellaneous Provisions) Act 2003):</p> <p>“Provided that—</p> <p>(i) in the case of a member who is entitled to a preserved benefit under section 28(2)(b), the part of the transfer payment which represents the actuarial value of benefits specified in section 44(a)(v) may be reduced by multiplying it by the specified percentage shown in the most recent actuarial funding certificate having an effective date after 1 June 2002 in respect of that scheme, and</p> <p>(ii) in the case of a defined benefit scheme, if the actuary advises the trustees that he is reasonably satisfied that, if he were to prepare an actuarial funding certificate under section 42 having an effective date of the day upon which the amount of the transfer payment is expected to be made, he would not certify that the scheme satisfies the funding standard provided for in section 44, the amount of the transfer payment applied by the trustees after 2 April 2003 may be reduced by the trustees, on the advice of the actuary, having regard to the provisions of section 48.”.</p>
5	Section 113 (as amended by the Social Welfare (Miscellaneous Provisions) Act 2003).	<p>(a) In subsection (1), substitute “subsections (3) and (6)” for “subsection (3)”.</p> <p>(b) In subsection (3), substitute “Subsection (1)” for “Except in the case of a person who is, for the time being, a member of a scheme accruing benefit under that scheme, subsection (1)”.</p> <p>(c) Insert the following after subsection (5):</p> <p>“(6) This section does not apply to a scheme the winding-up of which has been notified to the Board in accordance with Article 14 of the Occupational Pension Schemes (Disclosure of Information) (No. 2) Regulations 1998 (S.I. No. 349 of 1998).”.</p>

[2004.] *Social Welfare (Miscellaneous Provisions) Act 2004.* [No. 9.]

SCH.2

Item	Provision affected	Amendment
6	Section 121 (as amended by the Social Welfare (Miscellaneous Provisions) Act 2003).	In subsection (6A)(b) substitute “the PRSA provider of the PRSA concerned” for “the trustees of the scheme concerned” in each place where it occurs.
7	Section 131 (inserted by the Pensions (Amendment) Act 2002).	In subsection (3), substitute “determined by the Pensions Ombudsman, after consultation with the Minister and the Minister for Finance.” for “prescribed by regulations made by the Minister, after consultation with the Minister for Finance.”.
8	Section 137 (inserted by the Pensions (Amendment) Act 2002).	Substitute the following for subsection (8): “(8) The Pensions Ombudsman may, if he thinks fit, pay to the person affected by an action in respect of which an investigation is held by the Pensions Ombudsman under this Part and to any other person who attends for the purposes of this investigation sums in respect of travelling and subsistence expenses properly incurred by them of such amount as may be determined by the Minister, after consultation with the Minister for Finance.”.

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(Teil: 01 - 6476834/35/36/37; Fax: 01 - 6476843)
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DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
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€4.57

Wt. 1280. 775. 4/04. Cahill. (X45799). Gr. 30-15.

ISBN 0-7557-5386-0



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