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*Number 18 of 2019*

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**National Surplus (Reserve Fund for Exceptional Contingencies) Act 2019**

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**NATIONAL SURPLUS (RESERVE FUND FOR EXCEPTIONAL CONTINGENCIES)  
ACT 2019**

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[No. 18.]

*National Surplus (Reserve Fund  
for Exceptional Contingencies) Act 2019.*

[2019.]

ACTS REFERRED TO

Fiscal Responsibility Act 2012 (No. 39)

National Treasury Management Agency (Amendment) Act 2014 (No. 23)



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Number 18 of 2019

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**NATIONAL SURPLUS (RESERVE FUND FOR EXCEPTIONAL CONTINGENCIES)  
ACT 2019**

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An Act to establish a fund to be known as the National Surplus (Exceptional Contingencies) Reserve Fund for the purpose of the assets and sums hereafter mentioned of the fund being available to be drawn upon only in defined circumstances, being circumstances that involve certain contingencies of an exceptional nature; to provide for the transfer of certain assets and sums to the fund; to provide for the management and control of the fund; to amend the National Treasury Management Agency (Amendment) Act 2014; and to provide for related matters. [26th June, 2019]

**Be it enacted by the Oireachtas as follows:**

**Definitions**

1. In this Act—

“Act of 2012” means the Fiscal Responsibility Act 2012;

“Act of 2014” means the National Treasury Management Agency (Amendment) Act 2014;

“exceptional circumstances” has the same meaning as it has in the Act of 2012;

“Fund” means the National Surplus (Exceptional Contingencies) Reserve Fund established by *section 2*;

“Ireland Strategic Investment Fund” has the same meaning as it has in the Act of 2014;

“Minister” means the Minister for Finance;

“prescribed amount” shall be construed in accordance with *section 5(3)*.

**Establishment of National Surplus (Exceptional Contingencies) Reserve Fund**

2. (1) On the commencement of this section, there shall stand established a fund to be known as the “National Surplus (Exceptional Contingencies) Reserve Fund” and which is in this Act referred to as the “Fund”.
- (2) The purpose for which the Fund is established by this section is so that there may be held in the Fund the relevant assets unless and until, in accordance with this Act, some or all of those assets are permitted to be transferred from the Fund for the purposes specified in *section 9(2)*.

- (3) In *subsection (2)* “relevant assets” means the assets (including sums) referred to in *section 5* that may be transferred to, or otherwise paid into, the Fund under that section.

#### **Maximum amount that may stand to credit of Fund**

3. (1) The amount of the assets (including sums), excluding any sums representing income received in respect of moneys placed or invested under *section 8*, that may stand to the credit of the Fund under this Act shall not exceed, in value, €8,000 million at any given time.
- (2) Dáil Éireann may, on a proposal by the Minister brought before that House, pass a resolution authorising the amount of assets referred to in *subsection (1)* to be altered.

#### **Management and control of Fund and keeping of accounts**

4. (1) The Fund shall be managed and controlled by the Minister.
- (2) The Minister shall cause to be kept, in such form and manner as the Minister considers appropriate, such accounts in respect of the Fund as he or she determines to be appropriate; not later than 6 months after the end of the financial year to which those accounts relate the Minister shall submit the accounts to the Comptroller and Auditor General for audit.
- (3) A copy of the accounts of the Fund so audited, together with a copy of the report thereon of the Comptroller and Auditor General, shall be laid by the Minister before each House of the Oireachtas.

#### **Transfer of assets and certain sums to Fund**

5. (1) The Minister shall, not later than 30 days after the commencement of this section, cause to be transferred to the Fund, from the assets of the Ireland Strategic Investment Fund, assets of a value not exceeding €2,000 million.
- (2) Subject to *subsections (5) to (7)* and *section 6*, the Minister shall, from the Central Fund or the growing produce thereof, pay €500,000,000 into the Fund in each of the years, 2019, 2020, 2021, 2022 and 2023.
- (3) The foregoing sum of €500,000,000 is referred to in *subsections (5) to (7)* and *section 6* as the “prescribed amount”.
- (4) If, by a resolution passed by that House, Dáil Éireann approves the making of a payment of a specified sum from the Central Fund or the growing produce thereof into the Fund, the Minister shall, in addition to any assets referred to in *subsection (1)* and, as the case may be, sums referred to in *subsection (2)*, pay into the Fund that specified sum from the Central Fund or the growing produce thereof.
- (5) Where expenditure is incurred by the State in a year referred to in *subsection (2)* to defray unforeseeable costs arising as a result of a natural or other disaster, then, as

specified in *subsection (6)*, an amount that is lower than the prescribed amount may be paid into the Fund, under *subsection (2)*, in that year.

- (6) The amount by which the lower amount referred to in *subsection (5)* may be less than the prescribed amount shall not exceed the total amount of the expenditure referred to in that subsection.
- (7) Where, in accordance with *subsections (5) and (6)*, a lower amount referred to in those subsections is paid into the Fund, the Minister shall, as soon as possible after the making of that reduced payment, make a report to Dáil Éireann, in such manner as the Minister considers appropriate, as to the fact that such lower amount has been so paid, the amount by which it was less than the prescribed amount and the reason for the making of that reduced payment.

#### **Supplemental provision in relation to *section 5***

6. (1) Dáil Éireann may, on a proposal by the Minister brought before that House no earlier than the first day of November of a particular year referred in *section 5(2)*, pass a resolution authorising the Minister not to pay the prescribed amount into the Fund in that year.
- (2) Where such a resolution is passed by Dáil Éireann, then the Minister shall not pay the prescribed amount into the Fund in the year concerned.
- (3) The Minister shall not make the proposal referred to in *subsection (1)* unless the Minister is satisfied on reasonable grounds that, by reason of the existence of exceptional circumstances, the making of the payment of the prescribed amount into the Fund would place an undue burden on the public finances.

#### **Amendment of Act of 2014**

7. The Act of 2014 is amended by the insertion of the following section after section 47:

#### **“Transfer of assets (including money) from Fund to meet exceptional contingencies**

**47A.** (1) This Part shall not operate to prevent the Minister from causing, by the means provided in subsection (2), the transfer of assets, including money, from the Fund, in accordance with an Act of the Oireachtas, to another fund referred to in that subsection.

- (2) The Minister may give a direction to the Agency to transfer assets, including money, of a specified value or amount from the Fund to a fund which may be drawn down to the Exchequer in order to:
  - (a) remedy or mitigate the occurrence in the State of exceptional circumstances within the meaning of section 1 of the Fiscal Responsibility Act 2012;
  - (b) prevent potential serious damage to the financial system in the State and ensure the continued stability of that system; or

- (c) support major structural reforms which have direct long-term positive budgetary effects within the meaning of Article 5 of Council Regulation (EC) No. 1466 of 1997<sup>1</sup> as amended by Regulation (EU) No. 1175 of 2011<sup>2</sup>.
- (3) The Agency shall comply with a direction under subsection (2).”

### Investment of Fund

8. (1) Without prejudice to *subsection (3)*, moneys in the Fund shall be placed in deposit accounts in a financial institution of any kind or invested in fixed income financial instruments or products, which may include Irish sovereign debt, and any income received in respect of moneys placed or invested under this subsection shall be paid into the Fund or placed or invested under this subsection.
- (2) In placing moneys in the Fund on deposit or investing such moneys in fixed income financial instruments or products, the Minister shall have regard to—
- (a) the need to conserve, to the extent possible, the full nominal value (as of the date of such placing or investing) of the Fund, and
  - (b) the rating of the proposed financial institution or, as the case may be, the rating of the issuer of the fixed income financial instruments or products,
- but this is subject to *subsection (3)*.
- (3) If it is not possible to conserve the full nominal value of the Fund (as of the aforementioned date) when placing the foregoing moneys on deposit or investing them in fixed income financial instruments or products, the Minister—
- (a) shall, in determining with which financial institutions to deposit, or in which fixed income financial instruments or products to invest, the moneys, have particular regard to the extent to which the Exchequer would benefit by the moneys being placed on deposit in the Central Bank of Ireland or their being invested in Irish sovereign debt, and
  - (b) if, having had regard, as mentioned in *paragraph (a)*, to the matter referred to in that paragraph, he or she considers it appropriate to do so, may place the moneys on deposit in the Central Bank of Ireland or invest them in Irish sovereign debt.
- (4) In this section “Irish sovereign debt” means debt instruments issued by the State.

### Criteria for drawdown of Fund

9. (1) Except as provided for in *subsection (4)*, moneys shall not be paid out of the Fund other than pursuant to a resolution passed by Dáil Éireann, following a proposal made to that House by the Minister in that behalf.
- (2) The Minister shall not make a proposal referred to in *subsection (1)* unless the Minister is satisfied on reasonable grounds that the proposal is necessary in order to:

1 OJ No.L 209, 2.8.1997, p.1

2 OJ No.L 306, 23.11.2011, p.12

- (a) remedy or mitigate the occurrence in the State of exceptional circumstances;
  - (b) prevent potential serious damage to the financial system in the State and ensure the continued stability of that system; or
  - (c) support major structural reforms which have direct long-term positive budgetary effects within the meaning of Article 5 of Council Regulation (EC) No. 1466 of 1997<sup>3</sup> as amended by Regulation (EU) No. 1175 of 2011<sup>4</sup>.
- (3) Where, having become satisfied, as mentioned in that subsection, of one or more of the matters referred to in *subsection (2)*, the Minister shall, before making a proposal referred to in *subsection (1)*, consult with the Minister for Public Expenditure and Reform, and shall have regard to the views of that Minister of the Government before deciding whether to make the proposal.
- (4) Where, for the time being, Dáil Éireann is not sitting and in the opinion of the Minister, based on reasonable grounds—
- (a) a payment of moneys out of the Fund is urgently required to achieve that which is referred to in *paragraph (a) or (b) of subsection (2)*, and
  - (b) the extent of the exigency described in the preceding paragraph is such as to warrant there not being postponed the making of that payment to a time following on that on which Dáil Éireann could next sit, and be in a position, to consider the matter,
- then the Minister may, with the prior approval of the Government, pay moneys out of the Fund to the Exchequer as provided for in *section 10*.
- (5) Where the Minister pays moneys out of the Fund in the circumstances set out in *subsection (4)* the Minister shall make a report to Dáil Éireann, in such manner as the Minister considers appropriate, as to the fact of the making of that payment and the reason for it, and that report to that House shall be made at the next sitting of that House that takes place after that payment is made.
- (6) Nothing in *subsection (1)* shall be construed as preventing the making from the Fund of a payment of moneys in respect of expenses referred to in *section 11(1)*.

### **Drawdown of Fund**

- 10.** Where Dáil Éireann passes a resolution referred to in *section 9(1)* or the Government give their approval to a payment by the Minister from the Fund in the circumstances set out in *section 9(4)* the Minister shall, as soon as possible thereafter, transfer from the Fund moneys in the amount specified in the resolution or the decision of the Government giving such approval, as the case may be, to the Exchequer.

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3 OJ No.L 209, 2.8.1997, p.1

4 OJ No.L 306, 23.11.2011, p.12

**Expenses**

- 11.** (1) The expenses incurred by the Minister in the performance of his or her functions under this Act shall be charged on and paid out of the Fund.
- (2) Save as provided for in *subsection (1)*, the expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

**Short title and commencement**

- 12.** (1) This Act may be cited as the National Surplus (Reserve Fund for Exceptional Contingencies) Act 2019.
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders generally or with reference to any particular purpose of provision, and different days may be so appointed for different purposes or different provisions.