

General Scheme of the Social Welfare and Pensions Bill 2017

May 2017

General Scheme of Social Welfare and Pensions Bill 2017

Part 1: Preliminary and General

1. Short title, construction, collective citation and any necessary commencements.
2. Definitions

Part 2: Amendments to Social Welfare Acts

3. Guardian's Payment
4. Publication of names, addresses, fines and other penalties
5. False Statements and offences, including offences relating to bodies corporate
6. Public services card
7. Birth, marriage and death certificates
8. Decisions by automated information technology systems
9. Recovery of certain benefits and assistance
10. Earnings disregard for Disability Allowance, Blind Pension and Supplementary Welfare Allowance

Part 3: Amendments to Pensions Act 1990

11. Time Limit for Submission of a Funding Proposal
12. Minimum Notice for Ceasing Contributions
13. Determination of Schedule of Contributions
14. Equal pension treatment

Part 4: Amendments to Civil Registration Act 2004

15. Term of office of An tÁrd-Chláraitheoir and an tArd-Chláraitheoir Cúnta
16. Furnishing of particulars of death to registrar
17. Functions that may be performed by Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs
18. Technical amendment to Civil Registration Act 2004
19. Register of Deaths

Part 1: Preliminary and General

Head 1 provides for-the short title, construction, collective citation and any necessary commencements.

Head 2 provides for the definition of common terms used throughout the Bill.

Part 2: Amendments to Social Welfare Acts

Head 3: Guardian's Payment

3. — Section 247 (amended by section 19 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013) of the Principal Act is amended by the insertion of the following subsection after subsection (3B):

“(3C) Notwithstanding subsections (1) and (2), where guardian’s payment (contributory), guardian’s payment (non-contributory) or death benefit by way of orphan’s pension would be payable to a guardian in respect of an orphan and any benefit described in section 39(1) or assistance described in section 139(1) would be payable to the guardian in respect of the same period, both such payments may be paid to that guardian in respect of that period.”.

NOTE

Purpose of Head

The purpose of this Head is to clarify the provisions of the primary legislation which relate to guardian’s payments and multiple payments by giving explicit effect to the principle that payments to a guardian in respect of an orphan should not affect the rights of the guardian to claim welfare payments in their own right.

Background

Section 24 of the Social Welfare and Pensions Act 2007 provided for the introduction of a new means tested payment, of up to half the carer’s allowance rate, which is payable to carers who may, simultaneously, be in receipt of another social welfare payment. This was done through the insertion of a new section 186A into the Social Welfare Consolidation Act 2005 (SWCA).

Consequential amendments to the SWCA were also introduced at that time including the insertion of section 247(5A) which provides that a person already in receipt of two social welfare payments, under the existing multiple payments provisions, could not also qualify for a half-rate carer’s allowance.

These new provisions gave rise to difficulties insofar as they concerned people who were in receipt of a welfare payment in their own right, as well as a guardian’s payment in respect of an orphan in their care, and who wished to also avail of the half-rate carer’s allowance.

A fundamental principle underpinning guardian’s payments is that any such payment is made to the guardian, for the benefit of the orphan in his/her care, and should not therefore be viewed or treated as an income support payment for the guardian. It has been found, however, that this principle is not reflected clearly enough in the legislation as it currently

stands. As a result, the legislation was interpreted as meaning that a person in receipt of a social welfare payment in their own right, and in receipt also of a guardian's payment, would be ineligible for a half-rate carers allowance payment.

The issue was ultimately addressed in a decision of the Chief Appeals Officer (CAO), in August 2015, who allowed an appeal against a decision by a Deciding Officer and an Appeals Officer that a person was not entitled to half-rate carer's allowance under the provisions of section 247(5A) of the SWCA.

The CAO was satisfied that section 247(5A) did not preclude the person in question from receiving half-rate carer's allowance and widow's non-contributory pension (in that case), by virtue of being in receipt of guardian's payment, since the latter payment was, in effect, a payment to the orphan.

The practice within the Department now is in line with this interpretation, but in order to provide absolute clarity in this regard and to avoid any further issues in the future, this Head is intended to give explicit effect to the principle that payments to a guardian in respect of an orphan should not affect the rights of the guardian to claim welfare payments in their own right.

Provisions of this Head

This Head provides for the insertion of a new subsection (3C) in section 247 to explicitly provide that a guardian can receive a guardian's payment without affecting their entitlement to receive a social welfare payment in their own right.

Commencement

The provisions contained in this Head will come into operation on enactment of the Bill.

Head 4: Publication of names, addresses, fines and other penalties

4. —The Principal Act is amended by the insertion of the following section after section 257:

“Publication of names, addresses, fines and other penalties

257A. (1) In this section—

“the Acts” means—

(a) the Social Welfare Consolidation Act 2005 and

(b) the Criminal Justice (Theft and Fraud) Act 2001, in so far as it relates to the application of the Social Welfare Consolidation Act 2005.

“relevant period” means each successive period of three months commencing on the first day of January in the year following commencement of this section.

(2) The Minister shall, as respects each relevant period, compile a list of the names and addresses of any person convicted in a court of an offence under the Acts during that relevant period, and shall specify in respect of each person, the particulars of the offence.

(3) The Minister shall cause any list referred to in subsection (2) to be published in such manner as he or she considers appropriate and shall in such case cause the list concerned to be published before the expiration of 3 months from the end of each preceding relevant period for which a list has been compiled.

(4) Where the Minister publishes the list referred to in subsection (2) on a public internet website he or she shall ensure that such list is removed within 3 months of its publication.

(5) A list compiled under subsection (2) shall not include the name and address of a person, or the particulars of the offence, where the result of an appeal against a conviction for an offence is pending.

(6) The provisions of this section shall not apply to an offence committed prior to the commencement of this section.

NOTE

Purpose of Head

The purpose of this Head is to provide for the quarterly compilation and publication of the list of persons who have been convicted of an offence under the Social Welfare Consolidation

Act 2005 or the Criminal Justice (Theft and Fraud) Act 2001. The objective of the provision is to contribute to a reduction in fraudulent activity through increasing public awareness of the consequences of fraudulent activity.

Background

The names of persons convicted of social welfare fraud and the nature of the offences committed are already a matter of public record, being published in individual courts around the country. However, there is a concern that there is not sufficient public awareness of the consequences of social welfare fraud and it is believed that the publication of a consolidated list of convictions will increase such awareness and contribute to a reduction in fraudulent activity.

Provisions of Head

The Head inserts a new section 257A into the Social Welfare Consolidation Act 2005.

Subsection (1) defines the relevant Acts under which convictions for offences in a court will be compiled and published. The Acts in question are the Social Welfare Consolidation Act 2005 and the Criminal Justice (Theft and Fraud) Act 2001.

The subsection also defines “relevant period”. The definition provides that the first ‘quarter’, in which a list of convictions may be compiled, will be Quarter 1, 2018. Publication will be in Quarter 2, 2018. In practice any list of convictions compiled in the first quarter of 2018 will need to take account of the provisions of subsection (6). Only those offences which occur after the passing of this Act will feature in any published list; convictions secured in respect of offences committed before that date will not be published.

Subsection (2) provides for the mandatory compilation of a list of the names and addresses of persons convicted in a court of an offence under the Acts together with details of the offence in each case.

Subsection (3) relates to the publication of the list compiled under subsection (2). The Minister is required to publish the list within 3 months of the list being compiled.

Subsection (4) restricts, to three months duration, the period in which the list may appear on the internet.

Subsection (5) ensures that where a conviction is appealed, the list compiled under subsection (2) shall not include the person’s name or address.

Subsection (6) ensures that convictions included in the list compiled under subsection (2) and published under subsection (3) will be prospective in nature, i.e. after the passing of the Bill. Only offences which occur after the Head becomes law can be compiled and published.

Commencement

The provisions contained in this Head will come into operation on the enactment of the Bill.

Head 5: False Statements and offences, including offences relating to bodies corporate

5. — Section 251, amended by section 24 and the Schedule to the Social Welfare (Miscellaneous Provisions) Act 2010 (No. 28 of 2010), of the Principal Act is amended by the insertion of the following subsections after subsection (2):

“(2A) Where a person is convicted of an offence under subsection (1) or (2) or under Part 2 of the Criminal Justice (Theft and Fraud Offences) Act 2001, the weekly rate of benefit or assistance may be reduced for a period of 9 weeks by an amount not greater than twenty five per cent of the weekly rate of benefit or assistance concerned.

(2B) In subsection (2A) ‘weekly rate’ means the appropriate weekly rate of benefit or assistance payable to a person under Part 2 or Part 3, but does not include any increases under Part 2 or Part 3 of such benefit or assistance as the case may be.

(2C) For the purposes of determining the amount, if any, by which the payment shall be reduced under subsection (2A) the Minister may, in regulations made under this section, prescribe that account shall be taken of such factors as:

- (a) the gravity of the offence for which the person has been convicted,
- (b) the amount of benefit or assistance overpaid,
- (c) whether the person concerned has a previous conviction for an offence under subsection (1) or (2), and
- (d) his or her personal and family circumstances.

(2D) A person who is in receipt of benefit or assistance, other than supplementary welfare allowance, which is subject to a reduction in accordance with subsection (2A) shall not be entitled to claim for supplementary welfare allowance under section 196.

(2E) Where the result of an appeal against a conviction is pending, the reduction referred to in subsection (2A) shall be postponed until the outcome of the appeal is known.

(2F) Subsection (2A) shall not apply to an offence committed prior to the commencement of the said subsection (2A).

(2G) A person to whom subsection 2(A) applies may appeal the amount by which a payment is reduced to the office of the Chief Appeals Officer.”.

NOTE

Purpose of Head

The purpose of this provision is to provide an additional deterrent to social welfare fraud, and to enable the Minister to recover at least some of the costs incurred in identifying and pursuing cases of fraud.

Background

The reduction in, and the disqualification from, receipt of social welfare payments after conviction is a feature of the anti-social security fraud strategies in other countries. This Head, together with Head 4, will strengthen the Department's ability to combat fraudulent activity.

Provisions of this Head

The Head provides in subsection (2A) that where any person is convicted of an offence under the Social Welfare Consolidation Act 2005, or where a conviction is secured for fraud, related to a social welfare scheme payment, under the Criminal Justice (Theft and Fraud) Act 2001, the person will be subject to a reduced rate of up to 25% of their weekly social welfare payment.

Subsection (2B) provides that the reduction in payment under subsection 2(A) will apply to the personal rate of payment only. No reductions will apply to adult dependent or child dependent allowances that are payable.

Subsection (2C) provides that Regulations will be made which shall prescribe that for the purposes of subsection (2A) a range of factors shall be considered in determining the amount of any reduction including the gravity of offence and the person's personal and family circumstances.

Subsection (2D) provides that a person is prohibited from claiming Supplementary Welfare Allowance where subsection (2A) applies.

Subsection (2E) provides that, where a person appeals against their court conviction, the imposition of the reduction in their rate of payment shall be postponed until the outcome of the appeal is known.

Subsection (2F) provides that the reduction may only be applied to offences resulting in conviction which occur after the commencement of these provisions.

Section (2G) provides that the amount of any reduction under Section (2A) is appealable to the office of the chief appeals officer.

Note 1: It is envisaged that there will be a small number of rates of reduction from the payment. The circumstances of the case will determine the rate to be applied. All reductions will be for a period of 9 weeks. The maximum reduction will be twenty five per cent of the weekly rate payment. The Department will have the option of not applying any reduction if the circumstances of the case merit such a determination.

Note 2: Where a person is subject to a reduced payment rate in accordance with these provisions, the recoupment of any relevant overpayment for which that person is liable, will

be deferred until the person's reduced rate ends. The application of a reduced payment rate and the recoupment of any overpayment will not be implemented in a concurrent manner.

Commencement

This provision will come into effect by way of Commencement Order.

Head 6: Public services card

6. — Section 263, amended by section 15(2) of the Social Welfare and Pensions Act 2012 (No. 12 of 2012) of the Principal Act is amended —

(a) in subsection (1A) by the insertion of the following paragraph after paragraph (d):

“(da) where the person to whom the card is being issued so requests, the date of birth of that person;”,

(b) by the insertion of the following subsection after subsection (3):

“(3A) A person may, at their own behest, voluntarily produce his or her public services card to a person or body not being a specified body, and in such case the person or body who accepts the public services card shall not, notwithstanding subsection (4), be guilty of an offence.”,

(c) in subsection (4) by the substitution of “Subject to subsection (3A) a person” for “A person”.

and

(d) by the insertion of the following subsections after subsection (4):

“(5) A public services card shall remain the property of the Minister for Social Protection at all times and shall be non-transferable.

“(6) A public services card issued by the Minister before the commencement of subsection (5) shall be deemed to have been issued under that sub-section and shall, subject to the Act, continue to be valid for the unexpired period of its validity.”.

NOTE

Purpose of Head

The purpose of this Head is three-fold:

- A. To provide that, at the cardholder’s option, the cardholder’s date of birth may be inscribed on the Public Services Card (PSC). This measure is intended to permit the PSC to substitute for the Garda Age Card as a means of verifying age.
- B. To provide that, in circumstances where the cardholder has, at their own behest, voluntarily produced their PSC to an entity or person who is not already specified in Schedule 5 of the Social Welfare Consolidation Act 2005, that entity or person will

not be guilty of an offence for accepting the card. By exempting an entity or person from being deemed to have committed an offence in such circumstances, the cardholder is enabled to use the Public Services Card at his/her own discretion.

- C. To provide that ownership of a PSC is at all times vested in the Minister for Social Protection. This measure is intended to clear up any ambiguity regarding ownership of the card; effectively the PSC will be issued 'under license' to the cardholder. This will bring the PSC into line with other documents relating to ID, such as passports and driving licences.

A- Inscription of date of birth on PSC

In relation to the cardholder's date of birth appearing on the Public Services Card (PSC), Government Decision S180/20/10/1789 of September 2013 reconstituted the SAFE Steering Committee, with a remit to develop the use of the Public Services Card for all appropriate Government services. This decision included the substitution of the current Garda Age Card with the PSC.

An age card, as referred to in sections 31(4) and 34A of the Intoxicating Liquor Act 1988, is defined as meaning "a card issued under section 40 of this Act". Section 40 of the Act provides that the Minister for Justice may, by Regulations, provide for the issue, to a person of or over the age of 18 years, of a card "specifying the age" of that person. Legal advice received from the Attorney General's office was to the effect that, in its current format, the PSC would not be deemed to be an age card. The inclusion of the date of birth on the PSC will resolve this issue.

Currently, the date of birth is electronically coded on the contact chip of a PSC. It is not, however, inscribed on the PSC itself and is therefore not evident to someone visually inspecting the card.

Under the new arrangements, a person with an existing PSC will be able to request a new card and provide their consent to having their Date of Birth inscribed. The existing PSC will be revoked and a new one with the Date of Birth inscribed will issue.

Provisions of Head

Paragraph (a) of the Head inserts an additional paragraph (da) into section 263(1A) to provide that, where the cardholder requests it, the cardholder's date of birth will be inscribed on the card.

It is not considered that a consequential amendment is needed to subsection (1B), as the items recorded electronically include the details inscribed on the face of the card. The date of birth, as an item, is already provided for in subsection (1B).

B – Voluntary production of PSC

Schedule 5 of the Social Welfare Consolidation Act 2005 specifies a range of bodies who are permitted to use the PSC in transactions with the PSC holder.

Currently, under the provisions of section 263(4) of the Social Welfare Consolidation Act 2005, a cardholder who voluntarily produces their PSC as a form of identity to a non-specified entity or person (e.g. utility provider, credit union, bank etc.) causes the non-specified entity or person to be guilty of an offence if they accept the PSC as a form of identity. This amendment would allow a customer to use the PSC at his/her own discretion.

Provisions of Head

The provision inserts a new sub-section (3A) to provide a positive statement that acceptance by a non-specified entity or person of a PSC, voluntarily produced by the cardholder concerned, is not an offence. Taking this approach requires a consequential amendment to subsection (4) to make that provision subject to new subsection (3A).

C – Ownership of the PSC

Section 263A of the Social Welfare Consolidation Act 2005 provides that the Minister may cancel a PSC and that, in such a case, the cardholder is required to surrender the PSC. The purpose of this amendment is to clarify that at all times the PSC is the property of the Minister in order to avoid any dispute as to the Minister's right to seek recovery of the PSC.

Provisions of Head

The Head provides for the insertion of subsections (5) and (6) into section 263 of the Social Welfare Consolidation Act 2005. Subsection (5) provides that ownership of the PSC continues at all times to vest in the Minister.

In line with legal advice, subsection (6) provides a saver to ensure that pre-existing Public Service Cards are also covered by subsection (5).

Commencement

The provisions contained in this Head will come into operation on the enactment of the Bill.

Head 7: Birth, marriage and death certificates

7. Section 282 of the Principal Act is repealed.

NOTE

Purpose of Head

The purpose of this Head is to:

- Consolidate, under the Civil Registration Acts, the legislative provisions relating to the issue of life event certificates (birth, marriage, death) with the provisions relating to the issue of these certificates at reduced cost to social welfare beneficiaries and
- Allow the Minister for Social Protection to set the level of reduced cost fees.

Background

This Head repeals section 282 of the Social Welfare (Consolidation) Act 2005 (SWCA 2005) which currently provides for reduced cost life event (birth, marriage or death) certificates subject, in most cases, to a minimum fee of 89c, for social welfare purposes.

This provision will be commenced in parallel with the commencement of sections 27 (a) and 30 (a) of the Civil Registration (Amendment) Act 2014.

Those provisions allow regulations to be made by the Minister for Social Protection for the purpose of setting the fees (if any – there is no minimum set fee specified) for the provision of life event certificates.

The current position is that customers of the Department of Social Protection can receive a life event certificate from a registrar or the General Register Office for a reduced cost where the certificate is required for social welfare scheme purposes.

Under section 282 (1) of the SWCA 2005 the fee for a certificate for social welfare purposes is actually set at 89 cent and for Supplementary Welfare Allowance purposes, is set at nil. Section 282(4) provides for the Minister for Health, in consultation with the Minister for Public Expenditure and Reform, to alter the fee by regulations.

Sections 27 (a) and 30 (a) of the Civil Registration (Amendment) Act 2014 amended sections 61 and 67 respectively of the Civil Registration Act 2004 to provide the Minister for Social Protection with the power to prescribe that reduced cost certificates may be provided for particular purposes.

These provisions have not yet been commenced.

Following the repeal of section 282 of the SWCA and the commencement of sections 27 (a) and 30 (a) of the Civil Registration (Amendment) Act 2014, Regulations will be introduced under the latter Act in relation to the fees (if any) for the provision of life event certificates.

Provisions of Head

Section 282 of the Social Welfare (Consolidation) Act 2005 is to be repealed in its entirety.

Commencement

The provisions contained in this Head will be subject to a Commencement Order.

Head 8: Decisions by automated Information Technology Systems

8. Section 300 of the Principal Act is amended by the insertion of the following subsections after subsection (10):

“(11) Notwithstanding subsection (1) every question arising under subsections (2) to (4) may be decided by such information technology systems as the Minister may put in place, where the effect of such decision is to grant a person any benefit or payment [within the meaning of section 240].

(12) Any decision on a question arising under subsections (2) to (4) of this Act that denies a person a benefit or payment [within the meaning of Section 240] shall be decided by a deciding officer.

(13) Any reference to decisions by a deciding officer in this Act or any Regulations made under this Act shall be deemed to include decisions made by automated information systems system in accordance with subsection (11).”.

NOTE

Purpose of Head

The purpose of this Head is to provide that decisions to grant a claimant access to a benefit or payment may be taken, to the benefit of the claimant, by automated information systems but that decisions which deny access to a benefit or payment must be taken by a human deciding officer.

Background

The Department of Social Protection has invested considerable sums in the development of digital service capability including the capability for claimants to verify their identity for secure access to online services (MyGovId.ie) and to submit claims on-line (MyWelfare.ie). The Department’s investment also encompasses the digital scanning of application forms submitted in traditional paper format. These developments mean that the Department is in a position to automatically assess and determine some types of claim and, potentially, to automatically confirm entitlement to benefit and put the benefit into payment in ‘real-time’. This has the potential to significantly improve service delivery to clients and reduce the costs of claim processing.

This capability was not anticipated at the time of the drafting of the current legislation (which dates back to the 1950s) and accordingly the legislation is written in a manner that requires that most decisions, including decisions to the benefit of a claimant, must be taken by officers appointed by the Minister for this purpose.

The legislation already allows for some exceptions – for example, if a family is getting Child Benefit and a second or subsequent child is born, the rate of Child Benefit is automatically adjusted to reflect the larger family, without a formal deciding officer decision. Given the potential for many more areas where automated decisions will be possible, the proposed amendment allows the concept of automated decisions as an option for the Department in any scheme, but restricts the use of automation to decisions that grant access to a benefit or entitlement. Any decision that denies access to a benefit or entitlement will continue to be made by a deciding officer in the normal manner and all decisions, including automated decisions, will be subject to review and appeal at the request of a claimant.

These provisions restricting the use of automated decisions to ‘positive’ decisions and specifying that even in such cases review and appeal mechanisms are available to claimants adhere to the requirements of the Article 22 of the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016) which is due to come into effect in Ireland in May 2018.

Provisions of Head

The Head inserts two new subsections into section 300 of the Social Welfare Consolidation Act 2005:

Subsection (11) provides that decisions to grant a benefit or payment to a claimant may be made automatically by an information system. This provision will enable the Department of Social Protection to improve the speed and efficiency with which it takes decisions in favour of claimants and to extend on-line and self-service capabilities to the benefit of claimants.

Subsection (12) introduces new text to make it clear that any decision that denies entitlement to a benefit or payment shall be taken by a deciding officer.

Subsection (13) provides that references in the Social Welfare Consolidation Act 2005 and regulations made under the Act to decisions of a deciding officer or a designated person shall be deemed to include decisions taken in accordance with the new subsection (11) by automated information systems. This provision is designed to ensure that decisions made automatically by information systems are subject to the same review processes (section 301 of the Act) and appeals processes (Section 311 of the Act) that apply to decisions of deciding officers and designated persons.

Commencement

The provisions contained in this Head will come into operation on the enactment of the Bill.

Head 9: Recovery of certain benefits and assistance

9. Part 11B (amended by section 12 of the Social Welfare (Miscellaneous Provisions) Act 2015) of the Principal Act is amended –

(a) in section 343O –

(i) in paragraph (f), by the substitution of “Part 3;” for “Part 3.”, and

(ii) by the insertion of the following paragraph after paragraph (f):

“(g) supplementary welfare allowance paid under Chapter 9 of Part 3.”,
and

(b) in section 343P(3), by the substitution of “within 25 working days” for “within 4 weeks”.

Purpose of Head

Paragraph (a) of the Head amends section 343O of the Social Welfare Consolidation Act to provide for the inclusion of supplementary welfare allowance (SWA), insofar as it relates to supplements paid to an injured person as a result of the personal injury, on the list of benefits which may be recovered by the Minister where a compensator is also paying compensation in respect of the same injury, accident or disease that gave rise to the claim for a social welfare payment.

The current specified benefits are: illness benefit, partial capacity benefit, injury benefit, an increase in disablement pension in circumstances where the person is incapable of work, invalidity pension and disability allowance.

Where a person is not entitled to a primary social welfare payment they may be entitled to SWA, including exceptional needs payments and urgent needs payments. Basic SWA is a weekly allowance paid to people who do not have enough means to meet their needs and those of a qualified adult or children. The inclusion of SWA in the list of specified recoverable benefits will enable full recovery from the compensator of basic SWA, together with any exceptional needs payments and urgent needs payments, paid consequent on a personal injury only where such supplements are paid to an injured person as a result of a personal injury. Other supplements, including rent supplement and dietary supplement, paid under the SWA scheme will not be subject to recovery as they will not have arisen as a consequence of the injury, accident or disease that gave rise to a claim for compensation.

Paragraph (b) of the Head provides for a change in the period of the time within which the Minister for Social Protection must provide a statement of recoverable benefits, under section 343P(3), from 4 weeks to 25 working days.

Currently, section 343P(3) of the Social Welfare Consolidation Act obliges the Minister to issue a statement of recoverable benefits within 4 weeks (28 days). This amendment provides for a change to that period from 28 days to 25 working days. This change is required to relieve the administrative and cost burden on the Department associated with the provision of these statements. The volume of applications for statements currently averages 290 per day. There were more than 61,000 applications in 2016. The Department continues to operate an “emergency service” to ensure that compensators can, where circumstances merit, request and receive a statement of recoverable benefits within a shorter timeframe.

Background

Section 13 and 14 of the Social Welfare and Pensions Act 2013 provided, subject to a commencement order, for the introduction of new arrangements governing the recovery of certain social welfare benefits where a compensator is also paying compensation in respect of the same injury, accident or disease that gives rise to the claim for a social welfare payment. The measure commenced on 1 August 2014.

The fundamental principles underpinning the recovery of benefits measure are that—

- an injured person should be fully compensated for their loss by the person to blame for the injury,
- ‘double compensation’ is avoided i.e. to ensure that a person is not compensated twice over in respect of the same accident, injury or disease,
- general damages (pain and suffering) received by the injured person are protected from reduction and the appropriate entity (compensator), generally an insurance company, should bear the burden of the damages, and
- benefits paid by the Department of Social Protection consequent on the accident should be recoverable.

The policy intent that benefits paid by the Department of Social Protection should be recoverable is effected in section 343R(1) which obliges a compensator to pay to the Minister for Social Protection the total amount of recoverable benefits specified in the relevant statement of recoverable benefits before making any compensation payment to or in respect of an injured person.

Provisions of Head

Paragraph (a) of this Head provides for the insertion of new paragraph (g) in section 343O to extend the list of specified benefits to include supplements paid under the supplementary welfare allowance, other than rent and mortgage supplements.

Paragraph (b) of this Head provides for an amendment to section 343P(3) to vary the current period (i.e. 4 weeks), within which the Minister for Social Protection must issue a statement of recoverable benefits, to 25 working days.

Commencement

The provisions contained in this Head will come into operation on the enactment of the Bill.

Head 10: Earnings disregard for Disability Allowance, Blind Pension and Supplementary Welfare Allowance

10. — Schedule 3 of the Principal Act is amended –

- (a) in Rule 1(2)(b)(viii) of Part 2, by the deletion of “of a rehabilitative nature”,
- (b) in Rule 1(2)(b) of Part 4, by the substitution of the following subparagraph for subparagraph (iv):

“(iv) the amount that may be prescribed of any earnings referred to in Rule 1(2)(b)(viii) of Part 2 and Rule 1(2)(b)(x) of Part 5,”,
- (c) in Rule 1(2)(b) of Part 5, by the deletion of subparagraph (ix), and
- (d) in Rule 1(2)(b)(x) of Part 5, by the deletion of “of a rehabilitative nature”.

NOTE

Purpose of Head

The purpose of the Head is to remove the requirement that, in order for recipients of Disability Allowance (DA), Blind Pension (BP) and certain supplements under the Supplementary Welfare Allowance scheme to benefit from the disregard of earnings from employment and, in the case of DA, self-employment, any such employment or self-employment must be of a rehabilitative nature.

Background

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

The recently published (6th April 2017) report of an inter-Departmental Group established under the Comprehensive Employment Strategy for People with Disabilities – the “Make Work Pay” report - found that the requirement to prove that work is of a rehabilitative nature in order to avail of the earnings disregard was unnecessary and recommended dispensing with this requirement.

The administrative practice in this area has been to require claimants to have their General Practitioner certify that the employment being taken up by the claimant will be of a rehabilitative nature. The changes provided for in this Head recognise, in line with the report of the inter-departmental group, that in practice most forms of work have a rehabilitative

benefit and therefore dispenses with the practice of distinguishing between employment of a rehabilitative nature and work more generally. In addition, this change will reduce the administrative workload for claimants, GPs and the Department of Social Protection.

Provisions of this Head

Paragraph (1a) of this Head provides that the earnings disregard which applies in the case of Disability Allowance will apply to employment and self-employment generally and the employment concerned will no longer require to be verified by the claimant's GP as being of a rehabilitative nature.

Paragraph (1b) of this Head clarifies that where an earnings disregard is availed of by a claimant of DA or BP, that disregard will also be taken into account in determining entitlement to supplements, such as Rent Supplement, payable under the Supplementary Welfare Allowance scheme.

Paragraphs (1c) and (1d) of this Head provide that where any claimant of Blind Pension is in employment, his or her earnings will be subject to the earnings disregard and, again, the employment concerned will no longer require to be verified by the claimant's GP as being of a rehabilitative nature.

Commencement

The provisions contained in this Head will come into operation on the enactment of the Bill.

Part 3: Amendments to the Pensions Act 1990

Head 11: Time Limit for Submission of a Funding Proposal

11. Section 49(1) of the Pensions Act 1990 is amended by the replacement of “they shall, subject to the regulations under subsection (2A), submit to the Board a proposal (in this Part referred to as a ‘funding proposal’) in accordance with the provisions of this section.”

with

“they shall, within 6 months of the effective date of the actuarial funding certificate, subject to the regulations under subsection (2A), submit to the Board a proposal (in this Part referred to as a ‘funding proposal’) in accordance with the provisions of this section.”.

NOTE

Purpose of Head

The purpose of this Head is to put in place a timeline for the submission of funding proposals for schemes in deficit.

Background

Under section 49 the trustees must submit a funding proposal to the Pensions Authority that explains how they propose to deal with the deficit.

It is now proposed that where the scheme is in deficit a funding proposal must be completed within 6 months of the date of the actuarial funding certificate.

Provisions of Head

The amendment provides for a 6 month time limit on the submission of a funding proposal.

Commencement

The provisions contained in this Head will come into operation on the enactment of the Bill.

Head 12: Minimum Notice for Ceasing Contributions

12. Part IV of the Pensions Act 1990 is amended by the insertion of the following after section 48B:

“48C. Notice to cease contributions

- (1) Notwithstanding anything contained in the rules of the scheme, before ceasing contributions to a scheme or taking any action to wind-up the scheme, the employer must serve notice in writing to the Pensions Authority and the trustees of the scheme 12 months before the day on which the employer proposes to terminate its liability to contribute to the scheme.
- (2) Where the trustees of a scheme receive notice from the employer that the employer intends to cease contributions to the scheme and at the date of serving such notice or any date thereafter during the notice period, the scheme does not satisfy the funding standard, the employer shall enter into discussions with the trustees to agree a funding proposal pursuant to section 49 before the expiration of that notice period.
- (3) The trustees of the scheme and the employer shall make such notifications, consult with, and provide such information to members, deferred members and beneficiaries and such other persons as may be prescribed, when and in such manner as may be prescribed in Regulations.
- (4) The employer shall not cease its contributions to the scheme until the expiration of the notice period.
- (5) The contributions payable by the employer during the contribution period shall be at least the contributions properly payable by the employer to the scheme immediately prior to the notification specified in sub-section (1). Where applicable, the employer shall continue to pay the contributions agreed under a funding proposal in accordance with section 49 during the contribution period, notwithstanding any term therein to the contrary, or the expiry of the term of the funding proposal during that contribution period.
- (6) This section is without prejudice to the obligations of the employer, and the powers and obligations of the trustees under the rules of the scheme.
- (7) Following consultation, in such manner as may be prescribed, with the members, deferred members and beneficiaries of the scheme, the trustees and the employer may agree to a reduction in the notice period and the contribution period under this section, where the trustees assess that such a reduction is not contrary to the interests of the members, deferred members and beneficiaries of the scheme [taking due account of the consequences for the interests of the members, deferred members and beneficiaries of retaining the full 12 month notice and contribution period.]

(8) For the avoidance of doubt:

- (a) the trustees of the scheme may not resolve to wind-up the scheme until the expiry of the notice period; and
- (b) the service of any notice by the employer required by this section shall not constitute a wind-up event under the rules of the scheme.

(9) In this section,

“contribution period” means the duration of the notice period;

“notice period” means the period of 12 months referred to in sub-section (1) and commencing on the date the notification is delivered by the employer to the trustees, or any period less than 12 months agreed by the trustees and the employer under sub-section (7).”.

NOTE

Purpose of Head

The purpose of this Head is to oblige employers sponsoring DB schemes, whether in deficit or not, to give 12 months’ notice of their intention to cease contributions. A reduced period may be agreed between the trustees and the employer, following consultation with the members and in circumstances where it is not contrary to members’ interests. The serving of such notice is, in the ordinary course, a precursor to winding up the scheme.

Background

In recent years many defined benefit pension schemes have closed down as a result of sponsoring employers withdrawing from paying contributions. Such action usually results in trustees winding-up schemes. This occurred in many cases with immediate effect and with notice to trustees only. The Pensions Authority is not notified until after the wind-up resolution has been passed by the board of trustees. Scheme members are notified by trustees generally following a wind-up resolution.

Notice periods for the termination of employer contribution are normally set out in trust deeds and rules and vary from scheme to scheme, with some trust deeds making no provision for a notice period. The purpose of the imposition of a period of 12 months’ notice is to give employees and trustees notification that this event, which will have a fundamental impact on their pension scheme and benefits, is to occur.

This will:

- give trustees the opportunity to notify members and beneficiaries,
- give the Pensions Authority notice,
- give trustees time to negotiate with employers,
- give employees and/or their representatives time to negotiate with the employer,
- give employees/employee representatives an opportunity to discuss alternative pension provision and
- give trustees time to plan the wind up of the scheme.

The content and details of the notifications and any consultation required will be contained in regulations. Regulations will require the employer to provide reasons for the cessation of contributions.

Employers will be obliged to continue contributions in line with the current contribution rate.

If there is a funding proposal in place, the employer will be obliged to continue to pay contributions in accordance with the terms of the proposal for the duration of the 12 month period.

Provisions of Head

- (1) Requires the employer to notify the Pensions Authority and the trustees of its intention to cease contributing to the pension scheme or otherwise trigger the wind-up the scheme, which could have the same effect.
- (2) Requires the employer and trustees to enter into discussions and negotiations to develop a funding proposal in order to avoid a scheme wind-up.
- (3) Following receipt of this notification, the employers/trustees will be required to inform members, deferred members and beneficiaries. Regulations will prescribe the content of all notifications under section 48C.
- (4) Employers must continue to pay contributions to the scheme for a period of 12 months (or any lesser period which is agreed under sub-section 7). This requirement overrides any shorter notice period in the scheme rules.
- (5) The current contribution rate which exists prior to the notification will continue. If there is a funding proposal in place, the sponsoring employer will be obliged to continue paying the contribution rate as per the terms of the funding proposal during the 12 month period. This provision overrides anything to the contrary in the scheme rules or funding proposal.
- (6) The obligations of the employer, as well as the obligations and powers of the trustees under the deed (excluding the power to resolve to wind-up the scheme), continue

during the notice period. For example, the trustees may exercise any right to make a contribution demand (under the scheme rules whether express or implied) against the employer during the notice period.

- (7) There may be limited circumstances where the statutory notice period should be waived or varied (such as where a scheme is being wound up but a new scheme with identical benefits is created or a transfer to another scheme as a part of a corporate restructuring). However, the employers and trustees can only agree a reduced period where it is in the best interests of members. The parties are also required to consult with the members prior to any agreement to reduce the notice period. The form of this consultation will be prescribed. The consultation requirement ensures the involvement and protection of members, which avoids any perception that the trustees could be unilaterally forced to reduce the notice period by the employer.
- (8) This provision protects the members and ensures that the trustees cannot be forced to exercise any powers under the rules to wind-up the scheme during the notice period. In addition, some scheme rules refer to the giving of notice as a wind-up event and this section ensures that the notification will not result in a wind-up until the expiration of the notice period.
- (9) Contains the definitions which are used in the section.

Commencement

The provisions contained in this Head will come into operation on the enactment of the Bill.

Head 13: Determination of schedule of contributions.

13. The following section is inserted after section 50C:

“Section 50D

(1)Where –

- (a) the actuarial funding certificate certifies that the scheme does not satisfy the funding standard and the trustees of the scheme have not submitted a funding proposal in accordance with section 49,
- (b) the funding standard reserve certificate certifies that the scheme does not satisfy the funding standard reserve and the trustees of the scheme have not submitted a funding proposal in accordance with section 49,
- (c) the employer has failed to enter into negotiations for a funding proposal pursuant to section 48C(2),
or
- (d) the Board has been notified of the trustees of the scheme that the employer has failed to make contributions under the terms of a funding proposal,

the Board shall determine a schedule of contributions which shall satisfy the funding standard and the funding standard reserve, in such manner as may be prescribed, specifying—

- (i) the rates of contributions payable towards the scheme by or on behalf of the employer , and
 - (ii) the dates on or before which such contributions are to be paid.
- (2) The amount determined by the Board in subsection (1) shall be deemed to be a debt, due from the employer concerned to the trustees of the scheme, and may be so recovered by the trustees in any court of competent jurisdiction.
- (3) A determination under this section may be made, and shall be complied with, notwithstanding any enactment or rule of law or any rule of the scheme or any agreement which would otherwise prevent the employer from being liable to fund the liabilities of the scheme.
- (4) The Minister may make regulations for the purposes of this section and, without prejudice to the foregoing, the regulations may provide that -
- (a) the Board may by notice in writing require a specified person to furnish the Board with such information as may be prescribed within the period specified in the notice,

- (b) the trustees of the scheme and the employer to whom the scheme relates shall make such notifications and provide such information, when and in such manner as the Board may specify,
 - (c) the Board may by notice in writing inform the trustees of the scheme and the employer to whom the scheme relates of the determination.
- (5) A determination under this section shall not come into effect -
- (a) during the period of 3 months after the date of the notice of determination under subsection (4),
- or
- (b) if during the period of 3 months a funding proposal is submitted to the Board pursuant to section 49 and the Board approves that funding proposal.
- (6) The Board shall, not later than 21 days after the date on which a determination under this section comes into effect, publish a notice in a daily newspaper circulating in the State, setting out particulars of the determination.
- (7) An appeal to the High Court on a point of law from a determination under this section may be brought not later than 21 days after the date of publication of the notice under subsection (6) by such person as may be prescribed.
- (8) A determination under this section shall not come into effect –
- (a) during the period of 21 days after the date of publication of the notice under subsection (6),
- or
- (b) if an appeal against the determination is brought during the period referred to in paragraph (a), before the date of the final determination of the appeal or any appeal from such determination or the withdrawal of either such appeal.
- (9) In this section, ‘employer’ in relation to a scheme means the current or former employer of any person in respect of whom benefits are or have been payable under the scheme.”.

NOTE

Purpose of Head

The purpose of this head is to enable the Pensions Authority to determine a schedule of contributions that will restore defined benefit pension schemes, which do not satisfy the funding standard or funding standard reserve, to an adequate funding position, in circumstances where the employer has not engaged with the trustees to develop and agree a funding proposal.

Background

The number of defined benefit schemes has continued to diminish steadily in recent years and there are currently less than 700 schemes continuing to operate. Most of these schemes are closed to new members. In many cases sponsoring employers continue to support their schemes. However some employers who are financially secure have abandoned schemes mainly due to the cost of supporting these schemes.

Section 49 of the Pensions Act provides for the submission of a funding proposal by the trustees to the Pensions Authority where the scheme is in deficit. However employers may not engage with this process and a funding proposal cannot be agreed, then triggering the wind-up of the scheme.

Where a scheme is not being adequately supported by an employer, for example, a scheme is in deficit and a funding proposal is not in place or a scheme in deficit which has not got an on-track funding proposal, the Pensions Authority will have the power to determine a schedule of contributions. This will be an enforceable debt.

These changes will prompt employers to engage with the funding proposal process and negotiate/agree a plan with trustees. Should that not be completed within the timelines set out under section 49, a schedule of contributions will be determined by the Pensions Authority. This will be enforceable through the courts.

The timelines imposed on the process will prevent negotiations from dragging on indefinitely. These changes will also strengthen the position of trustees.

Although trustees could push companies into bankruptcy by petitioning for windup to recover debt, this would be counterproductive as a viable employer is the best source of support for a scheme. Also active scheme members, that is working employees, would be unlikely to support any extreme action which would put their employer and by extension, their jobs at risk.

Provisions of Head

- (1) Provides that the Pensions Authority shall determine an amount and schedule of contributions by employers to meet the funding standard and funding standard reserve in certain circumstances.
- (2) Provides that the amount determined by the Pensions Authority will be a debt that can be enforced by the trustees in court.
- (3) Provides that the rules of scheme or provisions of a funding proposal cannot override the amount determined.
- (4) Provides for prescribing in regulations implementation details, such as the calculation of contributions, timeframe for contributions, the gathering of necessary information and notification.
- (5) Allows a 3 month period before the determination comes into effect to allow for the trustee and employer to submit a valid funding proposal in lieu of the amount determined under subsection 1 and which is agreed by the Board.

- (6) Provides for the publication of the determination.
- (7) Provides for an appeal within 21 days and for the determination not to come into effect until this is complete.
- (8) Sets out timeline for the determination to come into effect in the case of an appeal.
- (9) Defines who the employer is – principal employer or associate employer.

Commencement

The provisions contained in this Head will come into operation on the enactment of the Bill.

Head 14: Equal Pension Treatment

Part VII (“Equal Pension Treatment in Occupational Benefit Schemes”) is amended by the insertion of the following section after section 73:

“73A. Special provisions relating to the sexual orientation ground.

(1) (a) It shall constitute a breach of the principle of equal pension treatment on the sexual orientation ground for a scheme to fix, as a condition for entitlement to benefits in favour of the employee’s spouse or civil partner (“the beneficiary”), a requirement that the employee must have married or entered into civil partnership with the beneficiary before the employee attained a certain age.

(a) This paragraph applies in circumstances where—

- (i) on or before the date on which the employee attained the age fixed for the purpose referred to in paragraph (a)—
 - (I) he or she could not have married the beneficiary by reason of both parties being of the same sex, or
 - (II) the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 was not in operation and consequently he or she could not have entered into a civil partnership with the beneficiary, or the legal relationship entered into by him or her with the beneficiary under the law of another jurisdiction would not have been recognised as a civil partnership,
- (ii) he or she was in a stable relationship with the beneficiary which is attested as to the truth of the information by a statutory declaration made by the beneficiary, and,
- (iii) after the employee attained the age so fixed—
 - (I) he or she married or entered into a civil partnership with the beneficiary within 36 months of it being lawfully possible to do so, or
 - (II) the legal relationship entered into by him or her with the beneficiary under the law of another jurisdiction was recognised as a civil partnership.”,

and

(2) By the insertion of the following (3A) in section 81E:

“(3A) A claim for redress in respect of a breach of the principle of equal pension treatment on the sexual orientation ground must be referred to the Circuit Court within 3 years from the date the employee married or entered into a civil partnership with the beneficiary or the legal relationship entered into by him or her with the

beneficiary under the law of another jurisdiction was recognised as a civil partnership.”.

NOTE

Purpose of Head

The purpose of this head is to allow civil partners and same sex spouses who are members of occupational pension schemes, in certain circumstances, to obtain a spouses pension.

Background

The purpose of the head is to deal with an issue highlighted in the case brought by Doctor David Parris to the Labour Court which case was then the subject of a reference to the Court of Justice of the European Union. The case related to the operation of a provision of the TCD pension scheme which stipulated that in order to be entitled to the benefit of a survivor’s pension, the scheme member had to have been married or in a recognised civil partnership prior to reaching 60. Doctor Parris retired before legal recognition was given by the State to his civil partnership. As a result Doctor Parris claimed that he experienced direct and/or indirect discrimination by virtue of his age or his sexual orientation or as a result of a combination of his age and sexual orientation.

Provisions of Head

- (1) The new section provides that, in stated circumstances, it constitutes a breach of the principle of equal pension treatment on the sexual orientation ground for a scheme to fix, as a condition for entitlement to benefits in favour of the employee’s spouse or civil partner, a requirement that employee must have married or entered into the civil partnership before the employee attained a certain age. The stated circumstances are where –

on or before the date which the employee attained the age fixed for pension purposes he or she could not have married the beneficiary by reason of both parties being of the same sex or, because the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 was not in operation, he or she could not have entered into a civil partnership with the beneficiary and a foreign civil partnership would not have been recognised, and after the employee attained the age so fixed, he or she married or entered into a civil partnership with the beneficiary within 36 months of it being lawfully possible to do so, or his or her foreign civil partnership became recognised in Irish law.

- (2) Allows for a claim for redress to the circuit court within 3 years from the date the employee married or entered into a civil partnership with the beneficiary or the legal relationship entered into by him or her with the beneficiary under the law of another jurisdiction was recognised as a civil partnership.

Commencement

The provisions contained in this Head will come into operation on the enactment of the Bill.

Part 4: Amendments to the Civil Registration Act 2004

Head 15: Term of office of An tÁrd-Chláraitheoir and an tArd-Chláraitheoir Cúnta

15. (1) Section 7 of the Principal Act is amended –

- (a) by the deletion of subsection (4),
- (b) in subsection (5) by the deletion of “subject to *subsection (4)*,” and
- (c) in subsection (7) by the substitution of “*subsection (5)* does not apply to that person ” for “*subsections (4) and (5)* do not apply to that person”.

(2) Section 9 of the Principal Act is amended –

- (a) by the deletion of subsection (6),
- (b) in subsection (7) by the deletion of “subject to *subsections (6) and (9)*,” and
- (c) by the deletion of subsection (9).

NOTE

Purpose of Head

This Head deletes the provisions in the Civil Registration Act 2004 concerning the terms of office of an tArd-Chláraitheoir (Registrar General) and an tArd-Chláraitheoir Cúnta (Deputy Registrar General).

Background

An tArd-Chláraitheoir (Registrar General) and an tArd-Chláraitheoir Cúnta (Deputy Registrar General) are civil servants and officers of the Minister for Social Protection. A person appointed to be an tArd-Chláraitheoir shall, notwithstanding that they are already a civil servant of Principal Officer grade, and subject to general civil service terms in respect, for example, of tenure of appointment, hold the office of an tArd-Chláraitheoir for a period of at least 7 years. A similar provision applies for an tArd-Chláraitheoir Cúnta (Deputy Registrar General).

The view of the Department is that the minimum seven year appointment term is unnecessary and restricts management flexibility both to make appointments to these posts and offer the post holders experience in other positions in the Department (e.g. for career development purposes). As a comparison there are no such provisions relating to the duration of term of office for the Chief Appeals Officer (section 305 of the Social Welfare Consolidation Act 2005 refers).

Provisions of Head

Sub-Head (1) deletes the provisions in respect of an tArd-Chláraitheoir (Registrar General) and sub-Head (2) deletes the provisions in respect of an tArd-Chláraitheoir Cúnta (Deputy Registrar General).

Section 7(7) is being retained (with a small amendment as above) as the provisions of the subsection apply to the current incumbent. The person held the office of an tArd-Chláraitheoir before the commencement of section 7.

Section 9(9) is being deleted as the provisions of the subsection do not apply to the current incumbent. The person was appointed to the post of an tArd-Chláraitheoir Cúnta after the commencement of section 9.

Commencement

The provisions contained in this Head will come into operation on the enactment of the Bill.

Head 16: Furnishing of particulars of death to registrar

16. (1) Section 41 of the Principal Act is amended by the substitution of the following section for section 41 –

“41.—(1) Where, in pursuance of the Coroners Act 1962, a coroner—

- (a) holds an inquest,
- (b) adjourns an inquest at which evidence of identification and medical evidence as to the cause of death has been given, or
- (d) decides, as a result of a post-mortem examination, not to hold an inquest,

he or she shall give the appropriate registrar a certificate containing the cause of death and other required particulars as an tArd-Chlárathoir may direct of the death concerned.

(2) Where a coroner enquires into the circumstances of a death without holding an inquest or causing a post-mortem examination to be made, he or she shall give the appropriate registrar a certificate containing the cause of death and other required particulars as an tArd-Chlárathoir may direct of the death concerned.

(3) Further to *subsections* (1) and (2), a qualified informant (within the meaning of *section* 37) shall attend a registrar and provide in the form specified for the time being by an tArd-Chlárathoir the required particulars in relation to the death and that registrar shall register the death in such manner as an tArd-Chlárathoir may direct.

(4) Where there is an error in a certificate furnished by a coroner under *subsection* (1) or (2) the coroner concerned may give a certificate correcting the error to the registrar concerned, and the registrar shall correct the error in the register.

(5) The provisions of *section* 37(2) shall apply where the death has not been registered within 3 months of the receipt of the coroner’s certificate by the appropriate registrar.

(6) In this section “appropriate registrar” means a registrar in the registration area in which the body concerned is lying or was found.” and

(2). Section 69 of the Principal Act is amended by –

(a) the substitution of the following subsection for subsection (8):

“(8) A person who, without reasonable cause, fails or refuses to comply with a direction given to him or her under *section* 13(6) or a requirement in a notice given to

or served on him or her under *section 19(3), 24(5), 37(2), 41(3), 50(2), 64(2) or 65(2)* is guilty of an offence.”, and

(b) the substitution of the following subsection for subsection (11):

“(11) A person who, without reasonable cause, contravenes *section 19(1), 21(1), 24(4), 37(1), 41(3) or 73(4)* is guilty of an offence.”.

NOTE

Purpose of Head

This Head provides for the inclusion of the next of kin as a “qualified informant” in the registration of a death where a coroner is involved.

Background

Deaths occurring due to causes other than an illness, or where there was no medical attendance prior to the death are referred to a coroner who will decide if a post-mortem should be held. Currently, section 41(1) of the Civil Registration Act 2004 (CRA 2004) provides that, in cases where a coroner is involved, “*he or she shall give the appropriate registrar a certificate containing the required particulars of the death concerned and that registrar shall register the death in such manner as an tArd-Chláraitheoir may direct.*”.

The Coroners Society of Ireland has raised concerns that, in some such instances, gathering the “required particulars” as set out in Part 5 of the First Schedule of the CRA 2004 is proving difficult. In parallel, the registrars in the Civil Registration Service have indicated it is a regular occurrence that family members of deceased persons whose deaths are being examined by a coroner request that they be involved in the registration process to provide comfort and closure. Also, representations on the matter have been made by the Council of Irish Genealogical Associations as they are concerned that full particulars are not always available to the coroner when registering the death and therefore important genealogical information is not included on the death registrations. If family members as “qualified informants” were involved this information would be included.

The Department’s Legal Advisor has advised that the current wording of the CRA 2004 does not provide for the qualified informant to have any role in the registration process for such deaths. Therefore, a legislative amendment is required to allow the qualified informant to have a role in the registration process under section 41.

In order to achieve the position whereby the coroner provides some required particulars and the family provide further required particulars, it is necessary to align the procedures to operate in a similar manner to section 42 of the CRA 2004 where a medical practitioner certifies a death. In these cases the medical practitioner (e.g. a hospital doctor who attended the deceased) completes Part 1 of the “Death Notification Form” with the basic, required

particulars, such as name, address, date of birth, date of death and cause of death. The qualified informant provides the remainder of the required particulars such as place of birth, nationality, civil status, parents' names, occupation, etc. on Part 2 of the form and attends the registrar to complete the registration and sign the register.

Section 42 provides that *“On the death following an illness of a person who was attended during that illness by a registered medical practitioner, the practitioner shall sign and give to a qualified informant (within the meaning of section 37) a certificate stating to the best of his or her knowledge and belief the cause of the death, and the informant shall give the certificate to any registrar together with the form specified in section 37(1) containing the required particulars in relation to the death.”*.

Under this proposed change the coroner would complete a form under section 41(1) of the Civil Registration Act 2004 indicating the cause of death and including whatever required particulars (as specified by an tArd-Chláratheoir) are available and will send the form directly to the appropriate registrar (i.e. a registrar in the registration area in which the body concerned is lying or was found). The qualified informant will attend any registrar (whichever is convenient) and provide the remainder of the required particulars to the registrar in relation to the death and sign the register.

Consultation has taken place in relation to this proposed amendment with officials from the Department of Justice and Equality who have responsibility for the Coroners' Service and the Coroner's Act 1962. Consultation with the Coroners Society of Ireland has also taken place. All parties are in agreement with this proposed legislative change.

Provisions of Head

The Head provides as follows:

- (a) that section 41 of the CRA 2004 is amended to provide that both the coroner and the qualified informant have responsibilities in the registration of a death where a coroner has been involved, (whether or not an inquest has been held or whether or not a post-mortem examination has been carried out), and
- (b) that section 69 of the CRA 2004 which provides for offences relating to civil registration matters is amended to encompass non-compliance by the qualified informant in the registration of such deaths.

Commencement

The provisions contained in this Head will be subject to a Commencement Order.

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

17. (1) Section 61 of the Principal Act is amended by -

(a) the substitution of the following subsection for subsection (2A):

“(2A) Subject to subsections (3) and (4), the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs or any body under the aegis of the Minister, on application by a person to that Minister or that body in that behalf in electronic form and on payment to that Minister or that body of any prescribed fee shall consent to a search by that person of the electronic record of—

(a) the register maintained under section 13(1)(a), in so far as it relates to births that occurred more than 100 years before the date of the application to search,

(b) the register maintained under section 13(1)(d), in so far as it relates to deaths that occurred more than 50 years before the date of the application to search, or

(c) the register maintained under section 13(1)(e), in so far as it relates to marriages that occurred more than 75 years before the date of the application to search.”,

(b) the substitution of the following subsection for subsection (2B):

“(2B) For the purposes of subsection (2A), the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs or a body under the aegis of the Minister, may keep an electronic record of the registers referred to at paragraphs (a), (b) and (c) of subsection (2A).”, and

(c) the substitution of the following subsection for subsection (6):

“(6) The Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs or a body under the aegis of the Minister, in addition to an tArd-Chláráitheoir, a Superintendent Registrar, a registrar or an authorised officer, may perform functions referred to in subsection (1) (a) in so far as the functions relate to the search of a record of an index to a register maintained under section 13 and for that purpose, that Minister or that body may keep such a record, including in electronic form, of such an index.”.

(2) Section 67 of the Principal Act is amended by the substitution of the following subsection for subsection (5):

“(5) There shall be payable to the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs or a body under the aegis of the Minister, fees of such amounts (if any) as may be prescribed in respect of any performance by that Minister or that body of functions under subsection (2A) or (6) of section 61.”.

NOTE

Purpose of Head

The purpose of the Head is to amend the Civil Registration Act 2004 (CRA 2004) to provide that records of births, deaths and marriages may be shared with a body under the aegis of the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs.

The current provisions in section 61 of the CRA 2004 provide for the keeping and searching by the Minister for Arts, Heritage and the Gaeltacht of:

- (a) electronic copies of the indexes to the birth, death and marriage registers and
- (b) electronic copies of historical register entries (full records) i.e. of births more than 100 years old, marriages more than 75 years old and deaths more than 50 years old.

The provisions in this Head provide for:

- a) the keeping and searching by the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs or a body under the aegis of the Minister of:
 - (i) copies (whether in physical or electronic form) of the indexes to the birth, death and marriage registers, and
 - (ii) electronic copies of historical register entries (full records) i.e. of births more than 100 years old, marriages more than 75 years old and deaths more than 50 years old. [No change from the current provision in this regard], and
- b) the amendment of section 67(5) which provides for fees payable in respect of the performance of functions by the Minister for Arts, Heritage and the Gaeltacht under subsections (2A) or (6) of section 61 of the CRA to reflect the change in that Minister’s title and the inclusion of a body under the aegis of the Minister. No such fees are currently payable.

Background

The civil records of births, deaths and marriages are the official State records in Ireland. The registers and related indexes are held by the General Register Office in Roscommon. The index books provide a key to the relevant register entries where the full records can be viewed. The Civil Registration Act 2004 (CRA 2004) is the legislation under which the maintaining of registers by an t-Árd Chlaraoitheoir (Registrar General) is governed.

Electronic copies of the indexes to birth, death and marriage registers

Section 61 of the CRA 2004 was amended in 2013 by section 20 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013 to facilitate the transfer of copies of the indexes to birth, death and marriage registers to the Department of Arts, Heritage and the Gaeltacht as part of Phase 1 of the National Genealogy Policy. The amendment provided for the holding and keeping by the Minister for Arts, Heritage and the Gaeltacht of copies of indexes to births, deaths and marriage. While the provision allowed for the transfer of copies of all indexes the reality was that only electronic copies were involved. Section 27(d) of the Civil Registration (Amendment) Act 2014 amended section 61(6) to specifically provide that only electronic versions of indexes were encompassed.

The indexes are available online via www.irishgenealogy.ie.

Electronic copies of historical register entries (full records) i.e. of births more than 100 years old, marriages more than 75 years old and deaths more than 50 years old.

Following on from this initiative, Phase 2 of the project was launched which required a legislative amendment to allow the Minister for Arts, Heritage and the Gaeltacht to hold and keep electronic copies of historical register entries (full records) i.e. of births more than 100 years old, marriages more than 75 years old and deaths more than 50 years old.

Section 27(b) of the Civil Registration (Amendment) Act 2014 amended section 61 of the CRA 2004 by providing for the holding and keeping of such electronic records by the Minister for Arts, Heritage and the Gaeltacht.

These provisions were commenced with effect from 11 July 2016 (SI 359 of 2016 refers). Online access to copies of these records was launched in September 2016. The data is currently held by the National Archives.

Providing for a body under the aegis of Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs to house electronic copies of indexes and historical register entries

The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs has recently advised this Department that they are reviewing how these civil registration records are housed. That Department's legal advisor has advised that a legislative amendment is required in the event that a decision is taken to house the records in any of the bodies under the aegis of that Minister.

Providing for physical copies of indexes

The General Register Office (GRO) research room (which is currently located in Werburgh Street) holds copies of the physical indexes for searching by members of the public for a fee.

The next logical step is aligning and streamlining the availability of genealogy services for the State under the auspices of the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs. This will involve discussions on the move of the GRO research room from its current premises to premises of the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs or of a body under the aegis of that Minister. To allow such a move, an amendment to current legislation is required so that both a physical copy of indexes and an electronic copy of the indexes can be made available to the Minister or a body under her aegis.

Provisions of Head

The provisions in this Head provide for:

- (a) the amendment of subsections (2A), (2B) and (6) of section 61 to provide for the keeping and searching by the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs or a body under the aegis of the Minister of:
 - (i) copies (whether in physical or electronic form) of the indexes to the birth, death and marriage registers, and
 - (ii) electronic copies of historical register entries (full records) i.e. of births more than 100 years old, marriages more than 75 years old and deaths more than 50 years old. [No change from the current provision in this regard], and
- c) the amendment of section 67(5) which provides for fees payable in respect of the performance of functions by the Minister for Arts, Heritage and the Gaeltacht under subsections (2A) or (6) of section 61 of the CRA to reflect the change in that Minister's title and the inclusion of a body under the aegis of the Minister.

Commencement

The provisions contained in this Head will come into operation on the enactment of the Bill.

Head 18: Technical amendment to Civil Registration Act 2004

18. Section 66 of the Principal Act is amended in subsection (1) by the renaming of paragraph (gg) as paragraph (gb).

Purpose of Head

This Head rectifies an anomaly in relation to the sequencing of paragraphs in section 66 (1) of the Civil Registration Act 2004.

Background

Section 66 of the Civil Registration Act 2004 provides powers to an tArd-Chláraitheoir to give information to others, including Government Departments, Revenue, the Health Service Executive, local authorities etc. for specified purposes.

The Health Identifiers Act 2014

The Health Identifiers Act 2014, in section 9(2), amended section 66(1) of the Civil Registration Act 2004 by inserting a new paragraph (ga) after paragraph (g).

Section 9(2) reads as follows:

(2) [Section 66](#) (1) of the [Civil Registration Act 2004](#) is amended by inserting the following after paragraph (g):

“(ga) the Minister for the purpose of enabling him or her to perform his or her functions under the Health Identifiers Act 2014.”

The Health Identifiers Act 2014 was enacted on 8 July 2014 and section 9 was commenced on 13 July 2015 (via S.I. No. 294 of 2015).

The Civil Registration (Amendment) Act 2014

The Civil Registration (Amendment) Act 2014 in section 29(e) amended section 66(1) of the Civil Registration Act 2004 by inserting a new paragraph (gg) after paragraph (g).

Section 29(e) reads as follows:

(e) *the insertion of the following paragraph after paragraph (g):*

“(gg) the Minister for Education and Skills for the purpose of planning and co-ordinating under [section 7](#) of the [Education Act 1998](#) .”

The Civil Registration (Amendment) Act 2014 was enacted on 4 December 2014 and section 29(e) was commenced on 18 August 2015 (via S.I. No. 357 of 2015).

In drafting the provisions in these two Bills different naming conventions were followed causing an anomaly whereby the paragraphs in subsection (1) of section 66 of the Civil Registration Act 2004 are now named out of sequence i.e. paragraph (g) is followed by paragraph (gg) which is followed by paragraph (ga).

This proposed amendment will rectify the anomaly.

Provisions of Head

This Head renames the current paragraph (gg) as paragraph (gb). This paragraph which was inserted by section 29 (e) of the Civil Registration Act 2004 will now, properly, follow paragraph (ga) which was inserted by the Health Identifiers Act 2014 and which was the earlier of the two provisions to be enacted/commenced.

Commencement

The provisions contained in this Head will come into operation on the enactment of the Bill.

Head 19 – Register of Deaths

19. Part 5 of the First Schedule to the Principal Act is amended by the insertion of “Country of birth of the deceased” and “Country of citizenship of the deceased” after “Forename(s), surname, birth surname and address of deceased”.

Purpose of Head

This Head provides that the country of birth and the country of citizenship of a deceased person are to be added to the particulars of a death to be entered in the Register of Deaths.

Background

The Central Statistics Office has advised the Department of Social Protection that, under the Commission Implementing Regulation (EU) No 205/2014 of 4th March 2014, Ireland is obliged to provide Eurostat with the following two variables in respect of the death file:

- the country of birth and
- the country of citizenship of the deceased.

In this regard it is necessary to amend Part 5 of the First Schedule of the Civil Registration Act 2004 which sets out the particulars of deaths to be entered in the Register of Deaths by including the country of birth and country of citizenship of the deceased.

There has been consultation between the General Register Office and the Civil Registration Service and agreement has been reached concerning the proposed procedures. The registrar will request the information from the qualified informant at the time of registration.

Provisions of Head

The Head inserts “country of birth” and “country of citizenship” of the deceased into Part 5 of the First Schedule of the Civil Registration Act 2004 which sets out the particulars of deaths to be entered in the Register of Deaths.

Commencement

The provisions contained in this Head will come into operation on the enactment of the Bill