

## APPENDIX

### General Scheme

#### Social Welfare (Child Maintenance and Liable Relatives Provisions) Bill

Note: These draft Heads set out proposed amendments to the Social Welfare (Consolidation) Act 2005 (as amended)<sup>1</sup> The purpose of these Heads is twofold, i.e.,

- (i) Repeal the Liable Relative Provisions (and make any consequential amendments); and
- (ii) Change the treatment Child Maintenance Payments in the Means Test for Social Welfare Payments by providing that child maintenance payments are not assessed as means (and make any consequential amendments)

#### Head 1 - Interpretation

Section 2 of the Principal Act is amended:

- (a) In subsection (2) by the substitution of the following in the definition of “social welfare inspector”:

“8 and 9” for “8, 9, and 12”

And

- (b) In subsection (7) by the deletion of “Subject to Part 12” from the first line.

#### Note

##### **Purpose of this Head**

This Head provides for the deletion of a reference to Part 12 of the Act from the definition of “social welfare inspector” in section 2(1).

The Head also provides for the deletion of a reference to Part 12 of the Act from the interpretation of “liable relative” in section 2(7).

##### **Background**

The Government established a Child Maintenance Review Group in 2020 to examine a number of issues regarding child maintenance in Ireland and to prepare a report for the Minister for Social Protection in relation to three terms of reference -

- (i) The current treatment within the Department of Social Protection of child maintenance payments,
- (ii) The current provisions relating to the liable relatives regarding child maintenance, and
- (iii) The establishment of a State Child Maintenance Agency.

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<sup>1</sup> These amendments will require some consequential amendments to Regulations, specifically S.I. 142 of 2007

The Report of the Group was published in November 2022 and the Government accepted the recommendations in relation to the social welfare system. The recommendations are as follows -

- (i) Child maintenance payments to be excluded from social welfare means tests,
- (ii) The requirement for Lone Parents to make efforts to seek maintenance as an eligibility condition for Social Welfare Payments to be removed
- (iii) The Liable Relatives provisions to be discontinued.

As a result of that Government Decision, Part 12 of the Act which sets out the “Liability to Maintain Family” provisions is to be repealed (Head 4 refers).

Section 2 of the Act is the Interpretation section.

Section 2(2) sets of the definition of “social welfare inspector” and currently provides that the Minister can appoint people to be a social welfare inspector for Parts 2, 3, 4, 5, 6, 7, 7A, 8, 9, and 12.

Section 2(7) provides the definition of “liable relative” and provides that this is “subject to Part 12”. [Note: It is not proposed to delete subparagraph 2(7)(a)(ii): “*any qualified child of his in respect of whom an increase in allowance or a benefit is payable to the other parent of that qualified child*” or subparagraph 2(7)(b)(ii) which is similar as it is considered that these provisions will continued to be require in relation to the provisions for the payments of an increase for a qualified child.]

This Head arises as a consequence of repealing Part 12 and is necessary in order to remove references to Part 12 from section 2.

#### **Head**

This Head is consequential on Head 4 which provides for the repeal of Part 12 of the Principal Act.

The Head means that a person appointed by the Minister under section 250 to be a social welfare inspector will no longer have any role under Part 12 of the Act as that Part of the Act is to be repealed (Head 4 refers). In other words, a Social Welfare Inspector will not be investigating ‘liable relatives’ within the meaning of the Act for the purposes of child maintenance.

It also means that the definition of “liable relative” in section 2(7) will no longer be subject to any provisions of Part 12 of the Act as that Part is to be repealed (Head 4 refers).

**Commencement:** This section should be subject to a commencement order.

## Head 2 - Social welfare inspectors

Section 250 of the Principal Act is amended:

- (a) By the substitution of the following in subsection (1)

“7A and 8” for “7A, 8, and 12”

- (b) In subsection (2), by the deletion of paragraph (d);

- (c) By the substitution of the following in subsection (7):

“7A and 8” for “7A, 8, and 12”

And

- (d) By the substitution of the following in subsection (7A):

“7A and 8” for “7A, 8, and 12”

### Note

#### **Purpose of this Head**

- This is an amendment consequential on the repeal of Part 12 of the Act (see Head 4). It deletes references to Part 12 from section 250.

#### **Background**

The Government established a Child Maintenance Review Group in 2020 to examine a number of issues regarding child maintenance in Ireland and to prepare a report for the Minister for Social Protection in relation to three terms of reference -

- (i) The current treatment within the Department of Social Protection of child maintenance payments,
- (ii) The current provisions relating to the liable relatives regarding child maintenance, and
- (iii) The establishment of a State Child Maintenance Agency.

The Report of the Group was published in November 2022 and the Government accepted the recommendations in relation to the social welfare system. The recommendations are as follows -

- (i) Child maintenance payments to be excluded from social welfare means tests,
- (ii) The requirement for Lone Parents to make efforts to seek maintenance as an eligibility condition for Social Welfare Payments to be removed
- (iii) The Liable Relatives provisions to be discontinued.

As a result of that Government Decision, Part 12 of the Act which sets out the “Liability to Maintain Family” provisions are to be repealed (Head 4 refers) and this is a consequential amendment.

## Head

Section 250 sets out the provisions in relation to social welfare inspectors and it includes a number of references to Part 12 which need to be removed as a consequence of Part 12 being repealed (Head 4 refers). This Head does that by:

- amending subsection 250(1) by deleting a reference to “Part 12”. As a result, social welfare inspectors will have no role in relation to Part 12 which is being repealed (Head 4 refers).
- deleting paragraph (d) from subsection (2). Section 250(2) currently provides:

*(2) Every social welfare inspector shall investigate and report to the Minister on any claim for or in respect of benefit and any question arising on or in relation to that benefit, or an application for, or the use of, a personal public service number in accordance with sections 262 to 271 and any question arising on or in relation to that application or use which may be referred to him or her by the Minister, and may, for the purpose of the investigation and report require—*

*(d) a person liable to contribute under section 346(1) or any employer of that person, to give to the social welfare inspector the information and to produce to him or her the documents, within the period that may be prescribed, as he or she may reasonably require.*

Section 346(1) which is referred to in paragraph (d) is in Part 12 of the Act which is being repealed. As a result of this amendment, a social welfare inspector will no longer be able to require “a person liable to contribute under section 346(1) or any employer of that person” to “give to the social welfare inspector the information and to produce to him or her the documents, within the period that may be prescribed, as he or she may reasonably require.”

- amending subsection 250(7) by deleting a reference to “Part 12”. As a result, social welfare inspectors will have no role in relation to Part 12 which is being repealed (Head 4 refers). As a result, social welfare inspectors will have no role in relation to entering a premises for the purposes of Part 12 which is being repealed (Head 4 refers).
- Amending subsection 250(7A) by deleting a reference to “Part 12” from that subsection. A member of the Garda Síochána seconded to the Minister for a purpose referred to in subsection (1) will have no role in relation to entering a premises for the purposes of Part 12 which is being repealed (Head 4 refers).

**Commencement:** This section should be subject to a commencement order.

### **Head 3 - Decisions by deciding officers**

Section 300 of the Principal Act is amended in subsection (2) by the deletion of paragraph (i).

#### **Note**

##### **Purpose of this Head**

This is an amendment consequential on the revocation of Part 12 of the Act (see Head 4). It deletes a reference to Part 12 from section 300(2)(i).

##### **Background**

The Government established a Child Maintenance Review Group in 2020 to examine a number of issues regarding child maintenance in Ireland and to prepare a report for the Minister for Social Protection in relation to three terms of reference -

- (i) The current treatment within the Department of Social Protection of child maintenance payments,
- (ii) The current provisions relating to the liable relatives regarding child maintenance, and
- (iii) The establishment of a State Child Maintenance Agency.

The Report of the Group was published in November 2022 and the Government accepted the recommendations in relation to the social welfare system. The recommendations are as follows -

- (i) Child maintenance payments to be excluded from social welfare means tests,
- (ii) The requirement for Lone Parents to make efforts to seek maintenance as an eligibility condition for Social Welfare Payments to be removed
- (iii) The Liable Relatives provisions to be discontinued.

As a result of that Government Decision, Part 12 of the Act which sets out the “Liability to Maintain Family” provisions is to be repealed (Head 4 refers) and this is a consequential amendment.

##### **Head**

Section 300 sets out the provisions regarding decisions by Deciding Officer. This Head amends those provisions in order to remove paragraph (i) of subsection (2) which provides that Deciding Officers decide questions arising under “Part 12 (liability to maintain family)”. As a result, Deciding Officers will have no role under Part 12 – as that Part is being repealed (Head 4 refers) there will no longer be any questions arising under that Part.

**Commencement:** This section should be subject to a commencement order.

## **Head 4 – Liability to Maintain Family (Part 12)**

The Principal Act is amended by the repeal of Part 12.

### **Note**

#### **Purpose of this Head**

The purpose of this Head is to repeal Part 12 of the Act (that is sections 344 to 358 inclusive). This is required as a result of a Government Decision that the liable relative provisions should be discontinued. This decision followed a recommendation to that effect in the Report of the Child Maintenance Review Group.

#### **Background**

The Government established a Child Maintenance Review Group in 2020 to examine a number of issues regarding child maintenance in Ireland and to prepare a report for the Minister for Social Protection in relation to three terms of reference -

- (i) The current treatment within the Department of Social Protection of child maintenance payments,
- (ii) The current provisions relating to the liable relatives regarding child maintenance, and
- (iii) The establishment of a State Child Maintenance Agency.

The Report of the Group was published in November 2022 and the Government accepted the recommendations in relation to the social welfare system. The recommendations are as follows -

- (i) Child maintenance payments to be excluded from social welfare means tests,
- (ii) The requirement for Lone Parents to make efforts to seek maintenance as an eligibility condition for Social Welfare Payments to be removed
- (iii) The Liable Relatives provisions to be discontinued.

As a result of that Government Decision, Part 12 of the Act which sets out the “Liability to Maintain Family” provisions is being repealed.

A number of the other Heads (specifically Heads 1, 2, and 3) are consequential on this amendment.

#### **Head**

The purpose of this Head is to repeal Part 12 of the Act in order to implement the Government Decision to discontinue the liable relative provisions. Part 12 encompasses Sections 344 to 358 inclusive all refer to the obligations of the liable parent to maintain the family, and deals with the district court and attachment orders. In repealing Part 12, the following sections of the Act are repealed:

- 344 Interpretation.
- 345 Liability to maintain family.
- 346 Contribution towards benefit or allowance.
- 347 Attachment of earnings order.
- 348 Employer’s obligations in relation to attachment of earnings order.
- 349 Payments under attachment of earnings order.
- 350 Powers of District Court.
- 351 Changes in employment.

- 352 Determinations by District Court.
- 353 Liable relative in service of State.
- 354 Discharge, variation or lapse of attachment of earnings order.
- 355 Cesser.
- 356 Offences.
- 357 Payments under order of court to offset contributions.
- 358 Recipient of benefit or allowance to transfer to competent authority payments under order of court.

**Commencement:** This section should be subject to a commencement order.

## Head 5 - Definitions (Schedule 3)

The Principal Act is amended in Part 1 of Schedule 3 by the substitution of the following for the definition of “maintenance payments”:

““maintenance payments” means any payment received under or pursuant to any maintenance arrangement, excluding maintenance payments made to or in respect of a qualified child, that may be prescribed;”

### Note

#### **Purpose of this Head**

The purpose of this amendment is to ensure that child maintenance payments are no longer assessed as means for the purposes of any social welfare means test. This is in line with the Recommendations of the Review of Child Maintenance Payments in relation to the Social Welfare system which were accepted by Government in November 2022.

The proposed construction is intended to avoid the introduction of new terms “child maintenance” and/or “spousal maintenance” which would have to then also have to be defined.

Also, while child maintenance payments will no longer be assessed in means tests, the amendments are designed to ensure that the treatment of other maintenance payments that a person might have (effectively, spousal maintenance) will continue to benefit from e.g., the housing disregard which is currently applied to all maintenance payments.

#### **Background**

The Government established a Child Maintenance Review Group in 2020 to examine a number of issues regarding child maintenance in Ireland and to prepare a report for the Minister for Social Protection in relation to three terms of reference -

- (i) The current treatment within the Department of Social Protection of child maintenance payments,
- (ii) The current provisions relating to the liable relatives regarding child maintenance, and
- (iii) The establishment of a State Child Maintenance Agency.

The Report of the Group was published in November 2022 and the Government accepted the recommendations in relation to the social welfare system. The recommendations are as follows -

- (i) Child maintenance payments to be excluded from social welfare means tests,
- (ii) The requirement for Lone Parents to make efforts to seek maintenance as an eligibility condition for Social Welfare Payments to be removed
- (iii) The Liable Relatives provisions to be discontinued.

As a result of that Government decision, this amendment is required to exclude child maintenance from assessment in the means tests for social welfare payments.



## Head

In Schedule 3, Part 1, the current definition of “maintenance payments” is:

“maintenance payments” means any payment received under or pursuant to any maintenance arrangement that may be prescribed;

This Head replaces that definition with a new definition of maintenance payments which specifically excludes maintenance payments made to or in respect of a qualified child. The new definition being:

“maintenance payments” means any payment received under or pursuant to any maintenance arrangement, excluding maintenance payments made to or in respect of a qualified child, that may be prescribed;”

A number of other amendments are required as a consequence of this and these are provided in Head 6.

### Regulations in to distinguish child maintenance from other forms of maintenance

As a result of this change to the definition of “maintenance payment”, the Department will need to be able to distinguish between child maintenance and any other maintenance which a person might be in receipt of (effectively, spousal maintenance) so that child maintenance payments can be disregarded in the means test. This is something new for the Department as currently no such distinction is required to be made.

In some cases, people will have a court order (or a mediation agreement) which will clearly state that a specified amount of maintenance is for the child/ren and specified amount is for the spouse. However, not everyone will have such documentation, in which case the position will be less clear. As a result, the Department will need to specify what will be deemed to be child maintenance in those circumstances.

It is intended that this detail would be provided in Regulations. It is considered that the Minister has to the power to make such regulations due to the inclusion of the phrase “that may be prescribed” in the definition of “maintenance payments”:

“maintenance payments” means any payment received under or pursuant to any maintenance arrangement, excluding maintenance payments made to or in respect of a qualified child, that may be prescribed;”

In the making of any such Regulations, the Minister shall have regard to:

- the policies and objectives of the Government in relation to child maintenance and child poverty;
- the need to protect the Exchequer; and
- the need to ensure the most beneficial, effective and efficient use of resources.

**Commencement:** This section should be subject to a commencement order.

## **Head 6 - Jobseeker's Allowance Pre-Retirement Allowance, Disability Allowance, and Farm Assist (Schedule 3, Part 2); State Pension (Non-Contributory) (Schedule 3, Part 3); and Blind Pension, Widow's (Non-Contributory) Pension, Guardian's Payment (Non-Contributory), One-Parent Family Payment and Carer's Allowance (Schedule 3, Part 5)**

Schedule 3 of the Principal Act is amended—

- (a) in Part 2 by the deletion of “(including maintenance payments made to or in respect of a qualified child)” from Rule 1.(2)(b)(ii);
- (b) in Part 3 by the deletion of “(including maintenance payments made to or in respect of a qualified child)” from Rule 1.(2)(b)(i); and
- (c) in Part 5 by the deletion of “(including maintenance payments made to or in respect of a qualified child)” from Rule 1.(2)(b)(ii).

### **Note**

#### **Purpose of this Head**

This amendment is consequential on the amendment to the definition of “maintenance payments” as set out in Head 5. It is intended to reflect the exclusion of child maintenance payments in the new definition of “maintenance payments” while ensuring that the housing disregard continues to apply to any other maintenance payments which a person may be in receipt of. This amendment will apply to the means testing provisions for:

- (a) Jobseeker's Allowance Pre-Retirement Allowance, Disability Allowance, and Farm Assist (Schedule 3, Part 2);
- (b) State Pension (Non-Contributory) (Schedule 3, Part 3); and
- (c) Blind Pension, Widow's (Non-Contributory) Pension, Guardian's Payment (Non-Contributory), One-Parent Family Payment and Carer's Allowance (Schedule 3, Part 5)

#### **Background**

The Government established a Child Maintenance Review Group in 2020 to examine a number of issues regarding child maintenance in Ireland and to prepare a report for the Minister for Social Protection in relation to three terms of reference -

- (i) The current treatment within the Department of Social Protection of child maintenance payments,
- (ii) The current provisions relating to the liable relatives regarding child maintenance, and
- (iii) The establishment of a State Child Maintenance Agency.

The Report of the Group was published in November 2022 and the Government accepted the recommendations in relation to the social welfare system. The recommendations are as follows -

- (i) Child maintenance payments to be excluded from social welfare means tests,
- (ii) The requirement for Lone Parents to make efforts to seek maintenance as an eligibility condition for Social Welfare Payments to be removed
- (iii) The Liable Relatives provisions to be discontinued.

As a result of that Government decision, Head 5 provides for a new definition of “maintenance payments” in order to exclude child maintenance from assessment in the means tests for social welfare payments. This Head provides for a consequential amendment.

## Head

The Head provides for three changes to Schedule 3 of the Principal Act as follows:

### (a) Part 2 of Schedule 3

Rule 1.(2)(b) of Part 2 of Schedule 3 provides a list of items that are excluded from assessment in the means test for Jobseeker’s Allowance Pre-Retirement Allowance, Disability Allowance, and Farm Assist. Specifically, Rule 1.(2)(b)(ii) provides:

(ii) any moneys received by way of maintenance payments (including maintenance payments made to or in respect of a qualified child) in so far as those payments do not exceed the annual housing costs actually incurred by the person subject to the maximum amount that may be prescribed, together with one-half of any amount of maintenance payment in excess of the amount disregarded in respect of housing costs actually incurred (if any),

The purpose of this amendment is to delete the reference to “(including maintenance payments made to or in respect of a qualified child)” so that the provision reads as follows:

(ii) any moneys received by way of maintenance payments in so far as those payments do not exceed the annual housing costs actually incurred by the person subject to the maximum amount that may be prescribed, together with one-half of any amount of maintenance payment in excess of the amount disregarded in respect of housing costs actually incurred (if any),

This amendment is needed as a consequence of the change to the definition of “maintenance payments” (as provided for in Head 5).

### (b) Part 3 of Schedule 3

Rule 1.(2)(b) of Part 3 of Schedule 3 provides a list of items that are excluded from assessment in the means test for State Pension (Non-Contributory). Specifically, Rule 1.(2)(b)(i) provides:

(i) any moneys received by way of maintenance payments (including maintenance payments made to or in respect of a qualified child) in so far as they do not exceed the annual housing costs actually incurred by the person subject to the maximum amount that may be prescribed, together with one-half of any amount of maintenance payment in excess of the amount disregarded in respect of housing costs actually incurred (if any),

The purpose of this amendment is to delete the reference to “(including maintenance payments made to or in respect of a qualified child)” so that the provision reads as follows:

(i) any moneys received by way of maintenance payments in so far as they do not exceed the annual housing costs actually incurred by the person subject to the maximum amount that may be prescribed, together with one-half of any amount of maintenance payment in excess of the amount disregarded in respect of housing costs actually incurred (if any),

This amendment is needed as a consequence of the change to the definition of “maintenance payments” (as provided for in Head 5).

(c) Part 5 of Schedule 3

Rule 1.(2)(b) of Part 5 of Schedule 3 provides a list of items that are excluded from assessment in the means test for Blind Pension, Widow’s (Non-Contributory) Pension, Guardian’s Payment (Non-Contributory), One-Parent Family Payment and Carer’s Allowance. Specifically, Rule 1.(2)(b)(ii) provides:

(ii) in the case of blind pension, widow’s (non-contributory) pension, widower’s (non-contributory) pension, surviving civil partner’s (non-contributory) pension or one-parent family payment, any moneys received by way of maintenance payments (including maintenance payments made to or in respect of a qualified child) in so far as they do not exceed the annual housing costs actually incurred by the person subject to the maximum amount that may be prescribed, together with one-half of any amount of maintenance payment in excess of the amount disregarded in respect of housing costs actually incurred (if any)

The purpose of this amendment is to delete the reference to “(including maintenance payments made to or in respect of a qualified child)” so that the provision reads as follows:

(ii) in the case of blind pension, widow’s (non-contributory) pension, widower’s (non-contributory) pension, surviving civil partner’s (non-contributory) pension or one-parent family payment, any moneys received by way of maintenance payments in so far as they do not exceed the annual housing costs actually incurred by the person subject to the maximum amount that may be prescribed, together with one-half of any amount of maintenance payment in excess of the amount disregarded in respect of housing costs actually incurred (if any)

This amendment is needed as a consequence of the change to the definition of “maintenance payments” (as provided for in Head 5).

**Commencement:** This section should be subject to a commencement order.

**ENDS**

**13 June 2023**