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Explanatory Memorandum](#)

**AN BILLE UM BEARTA AIRGEADAIS ÉIGEANDÁLA AR
MHAITHE LE LEAS AN PHOBAIL (LEASÚ), 2011
FINANCIAL EMERGENCY MEASURES IN THE PUBLIC
INTEREST (AMENDMENT) BILL 2011**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

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PRELIMINARY AND GENERAL

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BILL

entitled

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AN ACT TO PROVIDE FOR THE AMENDMENT OF THE FINANCIAL EMERGENCY MEASURES IN THE PUBLIC INTEREST ACT 2009 IN ORDER TO PROVIDE FOR THE PAYMENT OF A CONTRIBUTION BY JUDGES AND MILITARY JUDGES; TO PROVIDE FOR THE AMENDMENT OF THE FINANCIAL EMERGENCY MEASURES IN THE PUBLIC INTEREST (NO. 2) ACT 2009 IN ORDER TO PROVIDE FOR THE REDUCTION OF THE REMUNERATION OF JUDGES AND TO PROVIDE FOR CERTAIN OTHER AMENDMENTS OF THAT ACT; TO PROVIDE FOR THE AMENDMENT OF THE FINANCIAL EMERGENCY MEASURES IN THE PUBLIC INTEREST ACT 2010 IN RELATION TO THE APPLICATION OF THAT ACT IN RESPECT OF THE CENTRAL BANK OF IRELAND; TO PROVIDE FOR THE REMUNERATION OF PERSONS APPOINTED AFTER PARTICULAR DATES TO JUDICIAL OFFICES AND CERTAIN OTHER OFFICES; AND TO PROVIDE FOR RELATED MATTERS.

25 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Financial Emergency Measures in the Public Interest (Amendment) Act 2011. Short title and commencement.

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

35 2.—The following provisions are repealed: Repeals.

(a) subsections (3) and (4) of section 43 of the Court Officers Act 1926; and

(b) section 43 of the Courts of Justice Act 1936.

PART 2

AMENDMENT OF ACTS RELATING TO FINANCIAL EMERGENCY MEASURES IN THE PUBLIC INTEREST 5

Amendment of section 1 of Financial Emergency Measures in the Public Interest Act 2009.

3.—Section 1 of the Financial Emergency Measures in the Public Interest Act 2009 is amended, in the definition of “public servant”, by—

(a) the deletion of “or” at the end of paragraph (c), 10

(b) the insertion of the following paragraphs after paragraph (d):

“(e) a judge, or

(f) a military judge appointed under Chapter IVC of Part V of the Defence Act 1954 (as amended by the Defence (Amendment) Act 2011).” 15

and

(c) the deletion of “, a member of the judiciary or a military judge appointed under Chapter IVC of Part V of the Defence Act 1954 (as amended by the Defence (Amendment) Act 2007)”. 20

Amendment of section 2 of Financial Emergency Measures in the Public Interest Act 2009.

4.—(1) Section 2 of the Financial Emergency Measures in the Public Interest Act 2009 is amended—

(a) in subsection (2), by the insertion of “, other than a public servant referred to in paragraph (e) or (f) of the definition of that term in section 1,” after “a person to whom this section applies”, and 25

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

“(3B) The person who is responsible for, or authorises, the payment of remuneration to a public servant referred to in paragraph (e) or (f) of the definition of that term in section 1 shall deduct or cause to be deducted an amount at the applicable rate or rates specified in the Table to this subsection in respect of the year 2012 and each subsequent year in respect of the year concerned from the remuneration from time to time payable to such a public servant for any such year. 30 35

TABLE

Amount of remuneration	Rate of deduction
Up to €15,000	Exempt
Any excess over €15,000 but not over €20,000	5 per cent
Any excess over €20,000 but not over €60,000	10 per cent
Any amount over €60,000	10.5 per cent

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10 (2) The amendments effected by *subsection (1)* shall apply to a military judge appointed under Chapter IVC of Part V of the Defence Act 1954 notwithstanding section 184L(4) of that Act.

15 5.—Section 1 of the Financial Emergency Measures in the Public Interest (No. 2) Act 2009 is amended, in the definition of “public servant”, by—

Amendment of section 1 of Financial Emergency Measures in the Public Interest (No. 2) Act 2009.

(a) the deletion of “or” at the end of paragraph (c),

(b) the insertion of the following paragraphs after paragraph (d):

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“(e) a judge who was appointed to judicial office before the commencement of *section 9* of the *Financial Emergency Measures in the Public Interest (Amendment) Act 2011*, or

25

(f) a military judge appointed under Chapter IVC of Part V of the Defence Act 1954 (as amended by the Defence (Amendment) Act 2011).”

and

30

(c) the deletion of “, a member of the judiciary or a military judge appointed under Chapter IVC of Part V of the Defence Act 1954 (as amended by the Defence (Amendment) Act 2007)”.

6.—Section 2 of the Financial Emergency Measures in the Public Interest (No. 2) Act 2009 is amended—

Amendment of section 2 of Financial Emergency Measures in the Public Interest (No. 2) Act 2009.

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(a) in subsection (1), by the substitution of “a public servant, other than a public servant referred to in paragraph (e) or (f) of the definition of that term in section 1,” for “a public servant”,

(b) by the insertion of the following subsection after subsection (1):

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“(1A) A relevant provision that fixes the remuneration, or any part of the remuneration, of a public servant referred to in paragraph (e) of the definition of that term in section 1 shall be taken to have been amended, with effect on and from 1 January 2012, in accordance with this section.”

and

- (c) by the insertion of the following subsection after subsection (2A):

“(2B) The provisions of subsections (1) and (2) and Table 1 to this section shall, for the purpose of the application of those provisions to the remuneration of the holders of certain offices specified in this subsection, have effect on and from the commencement of *section 6(c)* of the *Financial Emergency Measures in the Public Interest (Amendment) Act 2011* as if the reductions provided for in subsections (2) and (2A) (in the case of the holders of the offices referred to in paragraphs (a), (b) and (c)) and that Table were as follows and a relevant provision that fixes the remuneration, or any part of the remuneration, of the holders of any of the offices specified in this subsection shall be taken to have been so amended with effect on and from that commencement: 5
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- (a) in the case of the Taoiseach, a 29.96 per cent reduction of remuneration in lieu of a reduction of 25 per cent of remuneration; 20
- (b) in the case of the Tánaiste, a 24.83 per cent reduction of remuneration in lieu of a reduction of 19.5 per cent of remuneration;
- (c) in the case of a Minister of the Government, a 24.83 per cent reduction of remuneration in lieu of a reduction of 19.5 per cent of remuneration; 25
- (d) in the case of a Minister of State, a 15.96 per cent reduction of remuneration in lieu of a reduction of 10 per cent of remuneration; 30
- (e) in the case of the Ceann Comhairle, a 24.83 per cent reduction of remuneration in lieu of a reduction of 15 per cent of remuneration;
- (f) in the case of the Leas-Cheann Comhairle, a 15.96 per cent reduction of remuneration in lieu of a reduction of 10 per cent of remuneration; 35
- (g) in the case of the Attorney General, a 24.83 per cent reduction of remuneration in lieu of a reduction of 15 per cent of remuneration; and 40
- (h) in the case of the Comptroller and Auditor General, a 21.15 per cent reduction of remuneration in lieu of a reduction of 15 per cent of remuneration.”.

Amendment of section 3 of Financial Emergency Measures in the Public Interest (No. 2) Act 2009.

7.—Section 3 of the Financial Emergency Measures in the Public Interest (No. 2) Act 2009 is amended— 45

- (a) in subsection (1)—

(i) in paragraph (b), by the substitution of the following for subparagraph (ii) and the provisions of that paragraph after subparagraph (ii):

5 “(ii) a later date specified by the Minister by order in accordance with subsection (3).

10 and who, on ceasing to be a public servant, is entitled to payment of a pension under a public service pension scheme in respect of his or her service as a public servant or a person who was at some time before the date specified under subparagraph (ii) a public servant and has a preserved benefit in a public service pension scheme in respect of which the preserved pension age of the person falls on or before that date. and”.

and

20 (ii) by the substitution of the following paragraph for paragraph (c):

25 “(c) a person who becomes entitled to payment of a public service pension as a spouse, civil partner or child of a former public servant to whom paragraph (a) or (b) applied.”.

and

(b) in subsection (4), by the insertion of the following definition:

30 “ ‘civil partner’ has the meaning it has in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.”.

8.—The Financial Emergency Measures in the Public Interest Act 2010 is amended—

Amendment of
Financial
Emergency
Measures in the
Public Interest Act
2010.

35 (a) in section 1, in paragraph (g) of the definition of “public service body”, by the insertion of “subject to section 1A,” before “the Central Bank of Ireland”. and

(b) by the insertion of the following section after section 1:

40 “Application of Act to Central Bank of Ireland.

1A.—(1) This Act applies in respect of the Central Bank of Ireland only with its consent, given in writing to the Minister by the Governor of that Bank, and with the consent of the Minister for Finance given in writing to the Minister.

45 (2) Where the consents referred to in subsection (1) have been given to the Minister, the Minister shall cause a notice to that effect to be published in *Iris Oifigiúil* and shall specify in the notice the date from

which this Act applies to the persons concerned, which date shall not be earlier than the date on which the last such consent was given.”.

PART 3

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REMUNERATION OF JUDGES AND CERTAIN OTHER OFFICE HOLDERS

Amendment of section 46 of Courts (Supplemental Provisions) Act 1961.

9.—Section 46 of the Courts (Supplemental Provisions) Act 1961 is amended—

(a) by the insertion of the following subsection after subsection (3A): 10

“(3AA) Subsections (1) to (3A) shall be construed subject to subsections (9A) to (9C).”.

(b) in subsection (9), by the substitution of the following paragraph for paragraph (a):

“(a) The Government may, whenever they consider it appropriate to do so, by order increase the annual sums payable by way of remuneration to the several judges of the Supreme Court, the High Court, the Circuit Court and the District Court who were appointed to those judicial offices before the commencement of *section 9 of the Financial Emergency Measures in the Public Interest (Amendment) Act 2011*.”. 15 20

(c) by the insertion of the following subsections after subsection (9): 25

“(9A) Subject to subsection (9B), the annual sums payable by way of remuneration to the several judges of the Supreme Court, the High Court, the Circuit Court and the District Court who are appointed to any of those judicial offices on or after the commencement of *section 9 of the Financial Emergency Measures in the Public Interest (Amendment) Act 2011* shall be the following, namely— 30

(a) to the Chief Justice, the sum of €226,376,

(b) to the President of the High Court, the sum of €210,206. 35

(c) to each ordinary judge of the Supreme Court, the sum of €197,272.

(d) to the President of the Circuit Court, the sum of €190,805.

(e) to each ordinary judge of the High Court, the sum of €185,956. 40

(f) to the President of the District Court, the sum of €145,644.

(g) to each ordinary judge of the Circuit Court, the sum of €140,623, and 45

(h) to each ordinary judge of the District Court, the sum of €122,512.

(9B) If, in the case of a person who—

5 (a) on the commencement of *section 9* of the *Financial Emergency Measures in the Public Interest (Amendment) Act 2011*, holds a judicial office, and

(b) at any time after that commencement, is appointed to another judicial office,

10 the application of subsection (9A) to the person would result in the remuneration of the person under this section being reduced, then that subsection shall not apply to that person and he or she shall continue to be paid the remuneration that he or she would have been entitled to be paid as the holder of the first-mentioned judicial office.

15 (9C) (a) The Government may, whenever they consider it appropriate to do so, by order increase the annual sums payable by way of remuneration to the several judges of the Supreme Court, the High Court, the Circuit Court and the District Court to whom subsection (9A) applies.

20 (b) An order under this subsection may, if so expressed, have retrospective effect.”,

and

25 (d) in subsection (10), by inserting “or (9C)” after “under subsection (9)”.

10.—Section 46A(2) of the Courts (Supplemental Provisions) Act 1961 is amended by the substitution of “an order under subsection (9) or (9C) of section 46” for “an order under section 46(9)”.
Amendment of section 46A(2) of Courts (Supplemental Provisions) Act 1961.

30 **11.**—(1) Subject to *subsection (2)*, section 1(1)(b) of the Presidential Establishment Act 1938 is amended by the insertion of “, provided for in subsection (9A) of section 46 of the Courts (Supplemental Provisions) Act 1961 and increased by an order (if any) made under subsection (9C) of that section or by the operation of section 46A of that Act,” after “the remuneration of the Chief Justice”.
Amendment of section 1(1)(b) of Presidential Establishment Act 1938.

(2) The amendment effected by *subsection (1)* shall not apply to the person who, on the commencement of this section, holds the office of President.

40 **12.**—(1) Section 3 of the Ombudsman Act 1980 is amended by the substitution of the following subsection for subsection (1):
Amendment of section 3 of Ombudsman Act 1980.

“(1) There shall be paid to the holder of the office of Ombudsman such remuneration and allowances for expenses as the Minister may determine.”.

(2) The amendment effected by *subsection (1)* shall not apply to the person who, on the commencement of this section, holds the office of Ombudsman.

Amendment of
section 105 of
Planning and
Development Act
2000.

13.—Section 105 of the Planning and Development Act 2000 is amended by the substitution of the following subsection for subsection (14): 5

“(14) Subject to the provisions of this section, the chairperson shall hold office on such terms and conditions (including terms relating to allowances for expenses) as the Minister, with the consent of the Minister for Public Expenditure and Reform, 10 determines.”.



[Click here for Bill](#)

**AN BILLE UM BEARTA AIRGEADAIS ÉIGEANDÁLA AR
MHAITHE LE LEAS AN PHOBAIL (LEASÚ), 2011
FINANCIAL EMERGENCY MEASURES IN THE PUBLIC
INTEREST (AMENDMENT) BILL 2011**

EXPLANATORY MEMORANDUM

1. Purpose of the Bill

1.1 The primary purpose of this Bill is to apply the Financial Emergency Measures in the Public Interest Acts of 2009 to serving members of the judiciary in line with the outcome of the referendum on the Twenty Ninth Amendment of the Constitution, amending section 35.5 of the Constitution in relation to judicial remuneration held on 28th October 2011. Section 35.5 of the Constitution has been amended to read as follows:

“35.5.1° The remuneration of judges shall not be reduced during their continuance in office save in accordance with this section.

35.5.2° The remuneration of judges is subject to the imposition of taxes, levies or other charges that are imposed by law on persons generally or persons belonging to a particular class.

35.5.3° Where, before or after the enactment into law of this section, reductions have been or are made by law to the remuneration of persons belonging to classes of persons whose remuneration is paid out of public money and such law states that those reductions are in the public interest, provision may also be made by law to make proportionate reductions to the remuneration of judges.”

1.2 The Bill will also:

- include the removal of the exemption for a military judge, once appointed, from the application of the Acts of 2009.
- make the necessary legislative amendments to reduce the pay for new members of the judiciary, for certain officeholders and other public servants, and

- amend the Financial Emergency Measures in the Public Interest Acts to provide for the application of the public service pension reduction to Central Bank pensioners and to clarify the position regarding former public servants with preserved pension benefits.

2. Provisions of the Bill

2.1 Part 1 — Preliminary and General

2.1.1 **Sections 1 and 2** are standard provisions in legislation, providing for the short title of the Bill, commencement provisions, and repeals of legislation. Section 1(2) provides for the commencement and coming in to operation of the Bill in whole or in part on a day or days as determined by the Minister for Public Expenditure and Reform.

2.1.2 **Section 2** proposes to repeal the provision allowing for the automatic entitlement of newly appointed judges to an usher or crier.

2.2 Part 2 — Amendment of Acts relating to Financial Emergency Measures in the Public Interest

2.2.1 **Sections 3 and 4** make the necessary amendments to the Financial Emergency Measures in the Public Interest Act 2009 to delete the exemption of judges and military judges from the application of the pension-related deduction. A Table is set out in section 4 setting out the full year rates for the pension-related deduction to apply from 2012.

2.2.2. **Sections 5 and 6** make the necessary amendments to the Financial Emergency Measures in the Public Interest (No. 2) Act 2009 (the “No. 2 Act”) to remove the exemption of judges and military judges from the application of the pay reduction. Section 6 states that the same pay reductions as applied on 1 January 2010 will apply with effect from 1 January 2012 to the judiciary; the pay cuts involved will range from 8% to 15% depending on the current salary as set out in Table 2 of section 2 of the No. 2 Act. In addition, section 6 amends the pay reductions applied to the Taoiseach, Ministerial and other political officeholders to enshrine in legislation the pay reduction applied on the formation of the Government. These pay reductions have been applied on an administrative basis pending enactment of the necessary legislation.

2.2.3 **Section 7** makes a technical amendment to the No. 2 Act which confirms the position of persons who left or leave the public service with a preserved pension age falling after the end of the “grace period”. Such persons would receive a pension calculated subject to the pay reduction from 1 January 2010 and the amendment puts this position beyond doubt.

2.2.4 **Section 8** provides for the application of the pension reduction to Central Bank pensioners and is a necessary legal requirement to respect the independence of the Central Bank under the EU treaties.

2.3 Part 3 — Remuneration of Judges and Certain other Office Holders

2.3.1 **Section 9** amends section 46 of the Courts (Supplemental Provisions) Act 1961 to provide for revised salary rates for

members of the judiciary appointed after the Bill is commenced. The revised rates reflect the pay reduction under the No. 2 Act as well as the ten per cent reduction applied at the beginning of 2011 to the pay scale of new entrants appointed to the public service entry grades. As passage of this legislation will enable the application of the pension-related deduction to serving and new entrant judges, the pay rates as published are expressed, in line with all other public servants subject to the pension-related deduction, as gross rates (i.e. before application of the pension-related deduction). The section also protects the salary rate of serving members of the judiciary by providing that they will retain their existing salary if appointed to another role. Under this provision, the existing power of the Government to increase the pay of serving or new entrant judges by order, if necessary with retrospective effect, is retained.

2.3.2 **Section 10** is a technical consequential amendment arising from the amendments provided for in Section 9.

2.3.3 **Section 11** amends the Presidential Establishment Act 1938, as amended, to provide that a future President will be on a pay rate ten per cent above the pay rate for a new entrant Chief Justice, provided for under Section 9. It will not apply to the current President, whose pay cannot be reduced while in office under the Constitution.

2.3.4 **Section 12** amends section 3 of the Ombudsman Act 1980 to provide that the salary and allowances for expenses of the next person appointed as Ombudsman will be determined by the Minister for Public Expenditure and Reform, rather than being linked to that of a High Court judge as is currently the case. Under subsection (2) the salary of the current Ombudsman is not affected by this change.

2.3.5 **Section 13** amends section 105 of the Planning and Development Act 2000, to provide that the terms and conditions (including salary and allowances for expenses) of the Chairperson of An Bord Pleanála will be determined by the Minister for the Environment, Community and Local Government, with the consent of the Minister for Public Expenditure and Reform, rather than being linked to that of a High Court judge as is currently the case. This is in line with the approach normally used when setting the pay and conditions of a public servant.

3. Exchequer and Financial Implications

3.1 There will be an immediate cost saving to the Central Fund of some €5.5 million arising from the application of the 2009 Acts to the pay of serving members of the judiciary. The replacement of ushers and criers with lower cost support staff for future judges will also result in some savings over time as will the new lower pay rate for future judges.

*Department of Public Expenditure and Reform,
November, 2011.*

