

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**



18 June 2007

Case document No. 2

International Federation for Human Rights (FIDH) v. Ireland
Complaint No. 42/2007

**OBSERVATIONS FROM THE GOVERNMENT ON THE
ADMISSIBILITY**

Registered at the Secretariat on 15 June 2007

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

Complaint No. 42/2007

International Federation of Human Rights

v.

Ireland

WRITTEN OBSERVATIONS OF IRELAND ON THE ADMISSIBILITY OF COMPLAINT

1. Introduction

- 1.1 Pursuant to Article 6 of the Additional Protocol to the European Social Charter, Ireland, represented by its Agent, Ms Patricia O'Brien, Legal Adviser, Department of Foreign Affairs, with an address for service at the office of the Permanent Representative of Ireland to the Council of Europe of Ireland, 11, Boulevard Président Edwards, 67000 Strasbourg, France submits the following observations in respect of the Complaint of the

International Federation of Human Rights (FIDH) registered at the Secretariat of the European Social Charter on 26 February 2007.

- 1.2 The observations of Ireland on the admissibility of the complaint are without prejudice to any arguments on the merits which Ireland may advance, should the complaint be declared admissible by the Committee.
- 1.3 By a collective complaint of 26 February 2007, the International Federation of Human Rights (“the FIDH”) alleges that Ireland has failed satisfactorily to apply Article 23 of Part II (in conjunction with Article E of Part V) of the Revised European Social Charter of 1996 and that it has failed satisfactorily to apply or implement Article 12.4 of Part II of the Revised Social Charter. Article 23 deals with the “the right of elderly persons to social protection”, whilst Article E contains a general horizontal provision on “non-discrimination”. Article 12, for its part, deals with “the right to social security”.
- 1.4 The FIDH has made the complaint on behalf of Ms Kathleen Waddington and persons who are in receipt of Irish contributory old age pensions but who do not reside permanently in Ireland. It alleges that the refusal of the Irish authorities to allow access to such persons to the Free Travel Scheme while visiting Ireland on holiday is discriminatory and incompatible with Articles 12 paragraph 4 and/or 23 of the Charter.

2. Observations

- 2.1 Ireland submits that the complaint of the FIDH is inadmissible for the following reasons:

The Complainant Organisation has not demonstrated particular competence in respect of the rights of the elderly, the subject-matter of its complaint, such as to enable it to sustain the current complaint.

The Complainant Organisation would appear to be championing the rights of one particular individual in a manner that is incompatible with the objective of the collective complaints system.

The complaint made does not concern a category of persons who come within the personal scope of the Revised European Social Charter (“the Charter”);

Insofar as it relates to an alleged breach of Article 12 paragraph 4, the complaint does not relate to any right guaranteed by the Charter and falls outside the material scope of the Charter;

The complaint is based on a manifestly erroneous misconception, *i.e.* that the Free Travel Scheme as it applies to people aged 66 or over constitutes a secondary benefit attaching to qualification for old age pension in Ireland.¹

The Committee should have regard to the competence of the European Community in this matter.

2.2 *Competence of the FIDH*

2.2.1 Ireland does not contest that the FIDH is, in principle, an organisation that may submit collective complaints. The complaint itself recites (on page 2) that the FIDH “*is an international non-governmental organisation which has*

¹ As indicated in the Department of Social and Family Affairs’ Guidelines included in the appendix to these observations, a certain number of other categories of persons who are not necessarily aged 66 or over are entitled on satisfying specified conditions (including residency) to be granted free travel passes. However, as the complaint concerns elderly persons, these written observations focus on those persons alone.

consultative status with the Council of Europe” and that it is “*included in the list established by the Governmental committee of international non-governmental organisations entitled to lodge complaints under [...]*”. This is not contested by Ireland as, for the purposes of Article 1(b) of the Collective Complaints Protocol, the FIDH is currently registered on the Governmental Committee’s list for the period 1 July 2006 to 30 June 2010. However, it does not suffice merely to be included on the said list for an NGO to be entitled to make a complaint in a particular case.

2.2.2 In this respect Ireland refers to Article 3 of the Collective Complaints Protocol. It provides (in relevant part):

“The international non-governmental organisations [...] referred to in Article 1(b) [...] may submit complaints in accordance with the procedure prescribed by the aforementioned provisions only in respect of those matters regarding which they have been recognised as having particular competence” (emphasis added).²

In respect of the complaint that it has made and for the reasons set out in point 2.2.3-4 below, the FIDH has not demonstrated in its application that it satisfies the conditions of Article 3.

2.2.3 As the admissibility of each complaint must be assessed on its own merits, Ireland submits that an applicant’s claim to particular competence must be demonstrated by it in its application. Even in those complaints where the competence of a Complainant Organisation has not been contested, the Committee in its admissibility decisions has had regard to the question of whether an NGO had “particular competence” in relation to the subject matter of the complaint.³

² The relevant part of the equally authentic French text reads “*dans les domaines pour lesquels elles [i.e. the organisations] ont été reconnues particulièrement qualifiées*”.

³ See e.g. International Federation of Human Rights (FIDH) v. Greece, Complaint No. 7/2000, Admissibility decision of 28 June 2000; and International Federation of Human Rights (FIDH) v. France, Complaint No. 14/2003, Admissibility decision of 16 May 2003.

2.2.4 Ireland notes that among the other bodies included on the Governmental Committee's list for the purpose of Article 1(b) of the Collective Complaints Protocol are other NGOs which, unlike the FIDH, could clearly be expected to have some particular competence, at least insofar as the protection of the rights of elderly persons in general may be concerned. Furthermore, in Ireland's submission the FIDH has not indicated in its application any recognised competence in respect of any of the matters which are the subject matter of the application.

2.2.5 In Ireland's submission, consideration of this question in admissibility proceedings should involve a rigorous assessment.⁴ The Committee is required to be satisfied that a complainant has not just some competence in the field to which the subject-matter of its complaint relates, but, instead, that it has a recognised particular competence. Since the FIDH has not referred to its having (let alone demonstrated that it has) any such competence in respect of the subject-matter of the present complaint, it follows that the complaint made in this instance by it is inadmissible in its entirety for failing to comply with Article 3 of the Collective Complaints Protocol.

2.3 *Absence of collective nature of complaint*

2.3.1 In the summary of its complaint (on page 1) the FIDH refers to "*persons in receipt of Irish Contributory Old Age Pensions*" who do not reside permanently in Ireland and who are not allowed benefit from the Free Travel Scheme when they return to Ireland "*to visit relatives or friends, take part in social or cultural gatherings, or visit the graves of deceased family members*", whilst (on page 4) it states that: "*This complaint concerns the exclusion from the Free travel Scheme of all people in receipt of Irish Old*

⁴ See e.g. the assessment of Churchill and Khaliq, 'The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?' (2004) 15 *EJIL* 417, p. 428.

Age Pensions who live outside Ireland [...]. The complainant then focuses briefly on what it describes as “*the largest single group of such people*”, to wit those resident in the United Kingdom, and speculates that significant numbers of these people “*live lonely, impoverished and isolated lives in Britain*” (also on page 4). Based on this speculation, it assumes that closer contact with family and friends (in Ireland) could help reduce the isolation of these elderly persons and could assist them, for the purpose of Article 23, paragraph 1(a), of the Charter “*to lead a decent life and play an active part in public, social and cultural life*” (on page 5). Referring then to what it describes as “*Irish Pensioners in the UK*”, the focus is then placed on the case of Ms Waddington and why access to a free travel pass for her will improve her quality of life, although one is informed that “*a number of other Irish pensioners have been refused free travel on the same ground as Mrs Waddington*” (on page 6).

2.3.2 The only certainty to emerge from the different *foci* in the complaint is the case of Ms Waddington. In other words, her case is clearly the one championed by the FIDH in its complaint. A collective complaint cannot focus on the case of a single individual without being deprived of its collective character. For the purpose of retaining its collective character, it does not suffice to refer to others who may be in the same position as that named individual. The present complaint is largely a complaint on behalf of Ms Waddington dressed up as a collective complaint and, as such, is inadmissible under the Collective Complaints Protocol.⁵

2.4 *Personal scope of the Charter*

2.4.1 The complaint made by the FIDH does not fall within the scope *ratione personae* of the Charter. The first paragraph of the Appendix states (in relevant part):

⁵ *SAIGI-Syndicat des Hauts Fonctionnaires v. France*, Complaint No. 29/2005, Decision on Admissibility 14 June 2005, in particular paragraph 7-8.

”Without prejudice to Article 12, paragraph 4, [...] the persons covered by [...] Articles 20 to 23 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned [...].”

2.4.2 The first paragraph of the Appendix applies so as to require Ireland to grant the benefit in question to foreigners lawfully resident or working regularly within the territory of Ireland. The fact that the personal scope of the Charter requires benefits to be extended to foreigners being nationals of other contracting parties who are lawfully resident or working regularly within the State clearly implies that benefits under the Charter can be limited to being provided to persons resident in the territory of a contracting party only.

2.4.3 The benefit in question here is one which is granted on two conditions – age and residence – being met. The Charter does not require that the benefit be extended to all nationals and to foreigners who are nationals of other contracting parties and are resident in Ireland but, rather, obliges contracting parties to ensure that foreigners (as defined) who are resident are granted the same benefits as nationals who are resident. Because of the nature of the benefit – the fact that it is dependant upon residence – the limitation implicit in the personal scope means that the Charter does not oblige Ireland to confer the benefit on persons who are not normally resident in Ireland, but rather obliges Ireland to grant that benefit to resident foreigners who fall within the first paragraph of the Appendix.

2.4.4 It is clear from the Appendix to the Charter that, apart from a number of specific situations (only that envisaged in Article 12, paragraph 4, having any potential relevance in this case), the Charter does not *oblige* contracting parties to extend to persons who are resident in other contracting parties the rights and facilities that it requires them to accord to those who are lawfully resident on their territory. However, this is precisely what the complaint that

has been lodged by the FIDH seeks to achieve. Its complaint relates to an Irish national (Ms Waddington and potentially to others in a similar situation) who is resident in a contracting party other than Ireland (*i.e.* in the case of Ms Waddington in the United Kingdom). Such a person is not entitled to invoke Article 23 of the Charter against Ireland.

2.4.5 Clearly, a State which has become a contracting party may extend the benefit of the rights and facilities of the Charter to foreigners who are not resident on its territory. If it does so, this would constitute a voluntary decision of the State concerned and not one that would be obligated by the Charter. No such decision as regards the Free Travel Scheme the subject of the complaint of the FIDH has been made by Ireland. That a possible extension not dissimilar to that for which the Complainant Organisation contends is under consideration by the Irish authorities in consultation with the European Commission is irrelevant in so far as the admissibility of the present complaint in this regard is concerned.

2.4.6 Nor can the fact that the complaint also cites Article 12, paragraph 4, preclude it from being manifestly inadmissible. That provision obliges contracting parties to undertake:

“to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:

a equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;

b the granting, maintenance and resumption of social security rights by such means as the accumulation of

insurance or employment periods completed under the legislation of each of the Parties”.

The Appendix qualifies the above by commenting that:

“The words “and subject to the conditions laid down in such agreements” in the introduction to this paragraph are taken to imply inter alia that with regard to benefits which are available independently of any insurance contribution, a Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Parties.”

2.4.7 As the benefit in question is available independently of any insurance contribution (as explained in more detail in paragraph 2.5 below), this provision evidently allows a residence condition to be applied in such cases, thereby excluding from the scope of this Paragraph the persons on whose behalf the complaint is being made. Article 12 paragraph 4 does not include an obligation to extend such benefits to residents of other contracting parties.

2.4.8 Furthermore, it is clear that the obligation contained in Article 12 paragraph 4 is an obligation of conduct and not one of result. In fact as is outlined at paragraph 2.6.1 below, Ireland has in fact been making strenuous efforts, within the framework of the European Community, to extend the free travel scheme and has entered into an arrangement with the Northern Irish authorities to create an all-island free travel scheme. It follows that the complaint is, on its face, manifestly inadmissible.

2.5 *Nature of the Free Travel Scheme*

2.5.1 The FIDH seeks to argue that, as the free travel pass is administered in a manner that takes into account, *inter alia*, whether or not a person is in receipt of a contributory old age pension in the State, it falls to be treated as akin to a form of “*secondary benefit attaching to qualification for the pension*” (page 9), and, hence, falls within the scope of Article 12, paragraph 4 of the

Charter. Since there is no residence requirement for contributory old age pensions, there should, according to the FIDH, be no residency requirement for access to a pass under the Free Travel Scheme. This submission is based on a manifestly misconceived premise, the effect of which is to render manifestly inadmissible the entire submission, to wit that the grant of the pass may be equated with a secondary benefit attaching to qualification for the pension.

2.5.2 As the Complainant Organisation itself acknowledges, the contributory old age pension is a statutory social security payment the basis for which is provided in a succession of Social Security Acts.⁶ Contrariwise, the Free Travel Scheme is, and has been at all times since its introduction in 1967, a non-statutory scheme administered by the Department of Social and Family Affairs. There is therefore a critical difference between the two: one is a pension which is available as of right to those who meet the conditions laid down in the relevant legislation (in essence the conditions as to age and as to the making of the requisite number of contributions set out in section 109 of the Social Welfare Consolidation Act 2005, as amended); while the other is a discretionary benefit that will be granted if the Minister for Social and Family Affairs is satisfied that the conditions he or she has by administrative decision laid down but which may at any time be changed by a further administrative decision (subject only to general requirements flowing from the principles of constitutional and natural justice that apply to all administrative decision-making in Ireland under which the Minister would, in particular, be precluded from applying such new conditions with retrospective effect) are met.

⁶ The principal Act is now the Social Welfare Consolidation Act 2005 (No. 26 of 2005). This has recently been amended by the Social Welfare Law Reform and Pensions Act 2006 (No. 5 of 2006), under which, *inter alia*, the name of the pension was formally changed to State Pension (Contributory) with effect from the 29th September 2006. For the convenience of the Committee, Ireland will use in these observations the former name as that is the name used by the complainant.

2.5.3 The Complainant Organisation, however, erroneously seeks to eschew the obvious difficulty this places in the way of its complaint regarding the alleged breach of Article 12 of the Charter by relying, in essence, upon the manner in which the Free Travel Scheme is administered. Thus, the FIDH argues that, because the Department of Social and Family Affairs assumes that all persons who reach the age of 66 and who become entitled to a State pension, whether contributory or non-contributory, will wish to avail of the free travel pass and, accordingly, issues such persons automatically with passes (unless, of course, they indicate that they do not wish to have a pass), *i.e.* such persons do not have to make a formal application for a pass, the grant of the pass must be regarded as a “*secondary benefit attaching to qualification for the pension*”. This argument is based on a fundamental misconception, as this is purely an administrative practice for the convenience of eligible persons.

2.5.4 For the convenience of the ECSR, a copy of the most-up-to date “Internal Guidelines Used for Processing Free Travel Applications” is included as an Appendix to these observations.

2.5.5 As regards elderly persons, in order to qualify for the Free Travel Scheme, only two conditions must be satisfied, neither of which has anything intrinsically to do with entitlement to a contributory Irish State pension.⁷ They are (see section 3.2 of the Guidelines on pages 4 and 5) that:

- The applicant must be living permanently in the State (*i.e.* on an all-year-round basis);
- The applicant must be aged 66 or over.

⁷ Cf footnote 1 as the complaint concerns elderly persons, these written observations focus on those persons alone, although a certain number of other categories of persons who are not necessarily aged 66 or over are entitled on satisfying specified conditions (including residency) to be granted free travel passes.

There is no requirement to be in receipt of a pension (contributory or non contributory) or any other payment.

2.5.6 In so far as non-contributory pensions are concerned, the residence requirement is by definition satisfied because the person concerned would not be entitled to the pension if he or she were not resident in the State.⁸ As regards the recipients of contributory pensions who may be resident anywhere in the world (and as the Complainant Organisation points out on page 5 approximately 40,271 recipients of such pensions in 2006 were so resident), their place of residence is checked and no pass is issued unless that place of residence is within the territory of the State. It is, therefore, clear that it is not an entitlement to the pension that gives rise to an entitlement to a free travel pass under the Free Travel Scheme as it currently stands.

2.5.7 It follows that the complaint, in so far as it relates to an alleged breach of Article 12, paragraph 4 of the Charter is manifestly inadmissible because the benefit is available independently of any insurance contribution, and the Appendix specifically affords the right to impose a residence condition in such cases. The complaint, therefore, in so far as it relates to an alleged breach of Article 12, paragraph 4, does not relate to any right guaranteed by the Charter and hence falls outside the material scope, *ratione materiae*, of the Charter.

⁸ Under section 153 of the Social Welfare Consolidation Act 2005, in the version inserted by section 16(1)(a) of the Social Welfare Law Reform and Pensions Act 2006, the conditions for entitlement to a non-contributory pension are, cumulatively, that: *“(a) the person has attained pensionable age, (b) the means of the person as calculated in accordance with the Rules contained in Part 3 of Schedule 3 do not exceed the appropriate highest amount of means at which pension may be paid to that person in accordance with section 156, and (c) the person is habitually resident in the State at the date of the making of the application for State pension (non-contributory).”*

2.6 *Membership of the European Community*

2.6.1 Since the beginning of 2006, Ireland has been in contact with the European Commission concerning the free travel scheme. Complex legal issues arise in connection with any proposed extension of free travel to cover all pensioners who receive Irish contributory pensions. It has been indicated that any such extension which would limit access to the free travel scheme to pensioners who receive Irish old-age pensions may fall foul of Community law and in particular Articles 12, 17, 18 of the EC Treaty. Ongoing contacts between the Commission and Ireland continue to explore possible solutions which might allow extension of the scheme, in line with EC law.

2.6.2 Ireland submits that to undertake the course of action proposed by FIDH would contravene legal obligations flowing from its membership of the European Communities.

2.6.3 The relationship between the obligations of member states of the Council of Europe who are party to its human rights instruments and their obligations as members of other international organisations, and in particular the European Community, raises important and complex issues, which have been considered on a number of occasions by the European Court of Human Rights, most recently in *Bosphorous Hava Yollari Turizmve Ticaret Anonim Şirketi (Bosphorus Airways) v. Ireland*.⁹

2.6.4 The Committee should have regard to the benefits of membership of international organisations such as the European Community and should note the “current trend towards extending and strengthening international cooperation”.¹⁰

⁹ [GC], no 45036/98, ECHR 2005 -VI

¹⁰ *Beer and Regan v. Germany* [GC], no. 28934/95, § 62, 18 February 1999.

2.6.5 Whilst contracting parties to the Charter are not absolved from responsibility with respect to their obligations thereunder by virtue of their membership of another international organisation, it is submitted that, where that organisation protects fundamental rights in a manner which can be considered equivalent to that for which the Charter provides, the Committee should exercise a presumption that a State has not departed from its Charter obligations.¹¹ Should the Committee declare the complaint admissible, Ireland reserves the right to make further submissions on this point in its observations on the merits of the complaint.

3. Conclusion

3.1 In the light of the foregoing, Ireland respectfully submits that the entire complaint is manifestly inadmissible and should be dismissed as such by the ECSR.

¹¹ *Bosphorus Hava Yollari Turizmve Ticaret Anonim Şirketi (Bosphorus Airways) v. Ireland*, [GC], no 45036/98, § 156, ECHR 2005 –VI)

ANNEX A

DEPARTMENT OF SOCIAL AND FAMILY AFFAIRS

INTERNAL GUIDELINES USED FOR
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FREE TRAVEL

1. LEGISLATION

The Free Travel Scheme is non-statutory, having been introduced and extended by Ministerial Announcement.

2. ADMINISTRATION

The Free Travel Scheme is administered by the Free Travel Section, in the Social Welfare Services Office, Sligo.

3. DESCRIPTION OF SCHEME/QUALIFYING CONDITIONS:

3.1 WHAT IS FREE TRAVEL?

The Free Travel Scheme operated by the Department of Social and Family Affairs, allows people who are aged 66 years or over and who are permanently residing in the State, to travel free of charge on most CIE public transport services, LUAS, as well as on the public transport services of a large number of private operators in various parts of the country. Certain incapacitated people under age 66 are also entitled to free travel.

CIE services are provided by Iarnrod Eireann, Bus Eireann and Bus Atha Cliath. A list of private operators who participate in the Free Travel Scheme can be obtained from Free Travel Section.

Permanent residents of the Aran Islands and Tory Island may avail of Free Travel on scheduled private air services between the Islands and the mainland. Free Travel on these services, to and from the Aran Islands (only) is available to non resident Free Travel Pass Holders at a reduced rate - See APPENDIX 2 of this Guide for full details.

Free Travel is also available on Cross-Border bus and rail journeys between the Republic of Ireland and Northern Ireland. - Details of the special arrangements which apply to Cross-Border Free Travel are given in APPENDIX 3 of this Guide.

In addition, if you are aged 66 or over, the All Ireland Free Travel Scheme will entitle you to travel for free on transport services operating internally within Northern Ireland, using a Senior Smartpass card. See Appendix 4 for full details.

3.2 ELIGIBILITY FOR FREE TRAVEL?

To avail of Free Travel, a person must first apply for a Free Travel Pass from this Department. The applicant will qualify, if s/he is living permanently in the State (i.e. on an all-year-round basis) and is aged 66 or over.

If the applicant is under age 66, in addition to permanently residing in the State, s/he must satisfy any of the conditions below;

(a) be a recipient of one of the following payments;

- Invalidity Pension
- Blind Person's Pension
- Disability Allowance (DA)
- Carer's Allowance (you may get a single status pass only, if you are aged under 66)
- Incapacity Supplement or Workmen's Compensation Supplement with Disablement Pension, for at least 12 months
- a Social Security Invalidity/Incapacity Pension/Benefit, or an equivalent payment, for at least 12 months, from a country covered by EC Regulations*, or from a country with which Ireland has a bilateral Social Security Agreement*

(b) live in Health Board approved residential care and has previously received either Disability Allowance (from this Department) or Disabled Person's Maintenance Allowance (DPMA - from a Health Board) or would satisfy the medical conditions and means test for Disability Allowance

(c) Be a specified carer for a person getting Constant Attendance Allowance or Prescribed Relatives Allowance from this Department (you may get a single status pass only, if you are under age 66)

(d) s/he is blind or severely visually impaired.

(e) be a widowed person aged between 60 and 65 years

inclusive, whose late spouse held a Free Travel Pass from this Department, and who prior to his/her death, resided with him/her on a permanent basis, and who is now receiving one of the following payments and who satisfies the other conditions of the scheme;

- State Pension (transition),(payable at age 65)
- Widow(er)'s Contributory or Non-Contributory Pension
- Widow(er)'s Pension under the Occupational Injuries Benefits Scheme
- One-Parent-Family Payment
- Widow's or Widower's Pension under the Occupational Injuries Benefit Scheme
- An equivalent Social Security Pension/Benefit from a country covered by EC Regulations, or from a country with which Ireland has a Bilateral Social Security Agreement
- an ORDINARY Garda Widow's Pension from the Department of Justice.

*** [Countries covered by EC Regulations;** Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Norway, Poland, Portugal, Republic of Cyprus (Cyprus South), Romania, Slovakia, Slovenia, Spain, Sweden, the Netherlands, the United Kingdom (excluding the Channel Islands and the Isle of Man).

*** [Countries with which Ireland has a Bilateral Social Security Agreement;** Australia, Austria, Canada, New Zealand, the United States of America, Quebec, Switzerland.

3.3 HOW TO OBTAIN A FREE TRAVEL PASS?

A Free Travel Pass will be issued automatically at age 66 if the applicant is getting a Pension from this Department. Likewise, if the applicant is under age 66, a Free Travel Pass will issue, on being awarded an Invalidity Pension, Blind Person's Pension, Disability Allowance, or a Carer's Allowance.

In all other circumstances, a person must apply for a Free Travel Pass by completing an Application Form (FT1) which is available from their local Post Office or their nearest Social Welfare Local Office. The completed form, along with any supporting documentation required, should be forwarded to the following address:

Department of Social and Family Affairs

Free Travel Section
FREEPOST
Social Welfare Services Office
College Road
Sligo

* No stamp is required when posting the application form to the Department.

3.4 FREE TRAVEL FOR THE APPLICANT'S SPOUSE/PARTNER

Where a Free Travel applicant is married, or co-habiting (that is, living with a man or woman as husband and wife), s/he may be entitled to a Free Travel Pass that will allow the spouse/partner to accompany the Pass Holder free of charge when travelling. (This does not apply to persons under age 66 who are in receipt of Carer's Allowance or who are nominated carers for people getting a Constant Attendance Allowance or Prescribed Relatives Allowance from this Department).

3.5 FREE TRAVEL FOR A COMPANION

(where the applicant is unfit to travel alone)

Certain incapacitated people who are medically unfit to travel alone are entitled to a Companion Free Travel Pass. This type of Pass allows any one person, aged 16 years or over (not necessarily the spouse/partner), to accompany the Pass Holder free of charge, when travelling. The conditions for receipt of a Companion Free Travel pass are set out in Appendix 2 of this Guide.

3.6 WHEN CAN A FREE TRAVEL PASS BE USED?

A Free Travel Pass may be used to travel free of charge on the following transport services at anytime on scheduled services:

- Bus Atha Cliath
(NITELINK and Special Airport services are excluded)
- Bus Eireann
- Provincial City Services in Cork and Limerick cities

- Dart
- LUAS
- Participating Private scheduled services
- Participating Cross-Border scheduled Services (Between Republic of Ireland and Northern Ireland - See Appendix 3) "

3.7 WHEN IS FREE TRAVEL NOT AVAILABLE?

Free Travel is not available....

(a) on services which are not listed in the official rail and bus time-tables of Bus Atha Cliath, Bus Eireann or Iarnrod Eireann

(b) on excursion and special bus or rail services

(c) on organised group journeys

(d) on Bus Atha Cliath NITELINK services

(e) on Bus Atha Cliath special Airport Services

(f) on First Class or Super Class travel on any service (unless the appropriate fare supplement is paid)

3.8 HOW TO USE A FREE TRAVEL PASS

If travelling by Bus Atha Cliath, Bus Eireann or on private bus operator services, the Pass Holder must produce their Free Travel Pass to the bus driver on boarding the bus. A bus ticket is not issued, nor required.

Before using Iarnrod Eireann Mainline, DART or Outer Suburban services, the Pass Holder must present his/her Free Travel Pass at the ticket booking desk in the train station of departure, in order to obtain a free rail ticket. If undertaking a day return journey only, the Pass Holder will be issued with a Day Return ticket. In all other cases, a Single

journey ticket will be issued, and a further Single journey ticket must be obtained before making the return journey.

When using Private Ferry services, the Pass Holder should present his/her Free Travel Pass to the Ferry Operator. In some instances, a ticket will be issued.

3.9 EVIDENCE OF IDENTITY

Whenever a person is travelling using their Free Travel Pass, s/he must produce their Pass for inspection to an Inspector of the Transport Operator or to an Official of the Department of Social and Family Affairs, if asked. If considered necessary, the Pass Holder and/or his/her accompanying spouse/partner must also produce evidence of their identity by providing a sample of signature to the officials mentioned above. These officials have the authority to confiscate a Free Travel Pass if there are reasonable grounds for suspecting that the Pass is being misused.

If a passholder lives in Dublin, Cork city, Galway city, Limerick city or Waterford city, they are also required to produce a Free Travel Photo ID, which can be obtained from CIE, free of charge.

3.10 WHAT TO DO IF THE FREE TRAVEL PASS IS LOST?

If a Free Travel pass is lost or stolen, the Pass Holder should complete form FT27 in order to apply for a replacement Free Travel Pass. This form is available on request from the Department's Free Travel Section or can be downloaded from the Department's website at www.welfare.ie.

3.11 IN WHAT CIRCUMSTANCES MUST THE FREE TRAVEL PASS BE RETURNED ?

In the event of any of the following occurring, the Free Travel Pass must be returned to the address given below:

- The Pass Holder does not continue to reside on a permanent basis in the State

- The Pass Holder changes address (Pass must be returned for change of address and renewal)

- The Pass Holder no longer satisfies the criteria applicable to his/her particular Free Travel entitlement (Companion status will be amended as necessary, and appropriate replacement Pass will be issued)

- the pass is worn or illegible

- the passholder is no longer in receipt of a qualifying payment

3.12 FURTHER INFORMATION

Information on the Free Travel Scheme is available from:

Free Travel Section
Department of Social and Family Affairs
Social Welfare Services Office
College Road,
Sligo.

Telephone: Locall 1890 500 000 Extension 48345 (from
Republic of Ireland or 00 353 71 9148345 (from
Northern Ireland or overseas)

3.13 DEPARTMENT OF DEFENCE FREE TRAVEL SCHEME

The DEPARTMENT OF DEFENCE operates it's own Free Travel Scheme for Veterans of the War of Independence. Information on this Scheme is available from:

Department of Defence
Renmore,
Galway

Telephone: Galway (091) 752277

4. APPLICATION GUIDELINES:

4.1 NEED TO APPLY ?

Where a person is receiving a Pension from this Department, a Free Travel Pass will be automatically issued on his/her 66th birthday.

A person aged under 66 years, who is awarded any of the payments listed below, will be automatically issued a Free Travel Pass

- Invalidity Pension

- Blind Person's Pension

- Disability Allowance

- Carer's Allowance

If you are not in receipt of any of the above, you must complete an application form, FT1. This form is available from your local post office or from Free Travel Section at the address given at 3.3.

4.2 READ THE INFORMATION LEAFLET

Before completing Form FT1, the applicant should first read Information Leaflet SW40 for details of the qualifying conditions for a Free Travel Pass.

4.3 COMPLETE THE FORM

Applicants should ensure that the following has been done before

submitting their application form:

- Birth/Marriage Certificates, as required, are enclosed

- Medical Certification, where necessary, is submitted.

- Application form is signed and dated.

- PPS Number (Personal Public Service) is supplied. If you do not know this number, please contact your local Social Welfare Office.

4.4 FREE TRAVEL COMPANION PASS

See Appendix 1 of this Guide

5. FREE TRAVEL ENTITLEMENT MONITORING

5.1 HOW LONG DOES FREE TRAVEL ENTITLEMENT CONTINUE ?

Where the Pass Holder is aged 66 years or over, Free Travel entitlement continues as long as s/he permanently resides in the State.

Where the Pass Holder is aged under 66 years, Free Travel entitlement continues as long as s/he permanently resides in the State, and continues to receive one of the qualifying payments for Free Travel listed in Section 3.2 of this Guide.

5.2 FREE TRAVEL RETENTION

Where a pass holder transfers to another payment from the Department of Social and Family Affairs, or participates in certain types of community work projects:

A Free Travel Pass holder receiving Disability Allowance or Blind Person's Pension who transfers to a Back-to-Work Allowance scheme (BTWA) may retain his/her Free Travel Pass for the duration of the BTWA payment (3 years for most transferees, but 4 years for people in designated Partnership Areas, who take up self employment).

A Free Travel Pass holder who participates in a Community Employment project, an Employee Support Scheme or a Pilot Project for People with Disabilities, is entitled to retain the Free Travel Pass for the duration of the project.

A Free Travel Pass holder who receives Invalidity Pension, Disability Allowance or Blind Person's Pension, may retain his/her Free Travel Pass on transfer to any other Department of Social and Family Affairs payment (excluding Unemployment Benefit/Assistance, Disability Benefit and Pre-Retirement Allowance).

5.3 WHAT HAPPENS IF THE PASS HOLDER DIES ?

In the event of the death of the Pass Holder, the representative(s) of the deceased should return his/her Free

Travel Pass to the Free Travel Section, with a covering note stating "deceased".

6. REQUESTS FOR CASE REVIEW

As the Free Travel Scheme is a Non-Statutory Scheme, there is no legislative right of appeal to the Social Welfare services Office. However, a person who is dissatisfied with a decision in relation to his/her application for Free Travel is entitled to a review by another and more senior official of the Department.

Any person who wishes to have a decision reviewed should write to Free Travel Section, Social Welfare Services Office, College Road, Sligo, stating in detail why s/he thinks the decision is incorrect.

The case will be considered fully and fairly, and the person notified in writing of the outcome, at an early date.

APPENDIX 1

ELIGIBILITY FOR COMPANION FREE TRAVEL:

A Companion Free Travel Pass entitles the Pass Holder to have any one person, aged 16 years or over, to accompany him/her free of charge when travelling.

The following people are eligible to receive a Companion Free Travel Pass:

Free Travel Passholders aged 66 or over:

- You are aged 66 to 69 inclusive and are medically assessed as unfit to travel alone.
- You are aged 70 or over and are medically unfit to travel alone
- You are receiving full-time care and attention from someone who is getting Carers Allowance from this Department.
- You are certified by either the Irish Wheelchair Association or by your GP as being a permanent wheelchair user.
- You are blind or severely visually impaired **and**
 - you satisfy the blindness conditions for the Blind Pension or
 - you are registered as a blind person with either the National Council for the Blind of Ireland or the National League of the Blind of Ireland.

Free Travel Passholders aged under 66:

- You are getting Disability Allowance or Invalidity Pension or Disablement Pension and Incapacity Supplement and are medically assessed as unfit to travel alone.

- You live in Health Service Executive (HSE) - approved residential care, and are medically assessed as unfit to travel alone and you:
 - were previously getting Disability Allowance,
 - or
 - are assessed as being medically suitable for Disability Allowance.

- You are blind or severely visually impaired and you:
 - are getting a Blind Pension
 - or
 - satisfy the blindness condition for the Blind Pension
 - or
 - are registered as a blind person with either the National Council for the Blind of Ireland or the National League of the Blind of Ireland

- You are getting one of the qualifying payments listed below and you are certified by either the Irish Wheelchair Association or by your GP as being a permanent wheelchair user

- You are receiving full-time care and attention from someone who is getting Carers Allowance from this Department. To qualify for a companion pass based on this condition, you must be entitled to a Free Travel Pass in your own right. See conditions for free travel (**Section 3.2**).

Free Travel Companion Pass for a visually-impaired child:

A visually impaired child will qualify for a Free Travel Companion Pass if they are under age 18 and either they:

- satisfy the blindness condition for a Blind Pension,
- or
- are registered with the National Council for the Blind or the National League of the Blind of Ireland.

Parent or Guardian:

You must return the child's Free Travel Companion Pass to Free Travel Section if:

- the child's eyesight improves and they no longer satisfy either of the conditions above,
- the child no longer lives permanently in the State,
- the child changes address (when you return the Free Travel Pass you will get a new pass for the child with the new address).

Each Free Travel Companion Pass shows an expiry date. To get a new Pass you must return the current Pass along with an up-to-date Ophthalmic Medical Certificate.

Only the child named on the Free Travel Companion Pass can use it, they cannot give it to another person to use.

QUALIFYING PAYMENTS

These payments apply if you are under age 66:

- Invalidity Pension,
- Blind Pension,
- Incapacity Supplement or Workmen's Compensation with Disablement Pension for at least 12 months (under the Occupational Injuries Benefit Scheme),
- Disability Allowance,
- an Invalidity Payment or similar payment for at least 12 months from a country covered by EC Regulations or from a country with which Ireland has a Bilateral Social Security Agreement.

APPENDIX 2

SPECIAL FREE TRAVEL ARRANGEMENTS

AIRLINE SERVICE TO/FROM THE ARAN ISLANDS, CO. GALWAY

Free Travel Pass Holders, residing on a permanent basis on any of the Aran Islands (i.e. Inis Mor, Inis Meain, Inisheer), are entitled to travel free of charge on Aer Arann services from the islands to Galway City and vice versa. Aer Arann operates an airline service between the Aran Islands and Aerphort Chonamara at Indreabhan, Co. Galway. The company also provides a shuttle bus service between Aerphort Chonamara and Galway City.

A Pass Holder may undertake up to 12 single journeys (or up to 6 return journeys between the Aran Islands and Galway City each year. Any number of additional journeys may also be made at a special reduced rate. Where the appropriate type of Free Travel Pass is held, the Pass Holder's spouse/partner may accompany him/her free of charge on these trips. If a Companion Free Travel Pass is held, any one person, aged 16 years or over, may accompany the Pass Holder free of charge.

Pass Holders not permanently residing on the Aran Islands may travel on Aer Arann's airline and bus services between Galway City and the Aran Islands at a reduced cost. The Pass Holder's spouse/partner, or a companion may accompany him/her at the reduced rate, where the appropriate type of Pass is held [This concession also applies to Northern Ireland Travel Pass holders undertaking cross-border journeys to and from the Aran Islands (but not to their spouse or companion, unless s/he is a Pass holder in his/her own right - See APPENDIX 3, first paragraph).

HELICOPTER SERVICE TO/FROM TORY ISLAND, CO DONEGAL

Free Travel Pass Holders residing on a permanent basis on Tory Island, Co. Donegal, are entitled to travel free of charge on the helicopter service, which is operated during the Winter period only, between the island and Falcarragh on the mainland. A Pass holder may undertake up to 8 single journeys (or up to 4 return journeys) each year. The spouse/partner or companion of the Pass Holder may accompany you him/her free of charge, where the appropriate type of Free Travel Pass is

held.

APPENDIX 3

CROSS-BORDER FREE TRAVEL

CROSS-BORDER FREE TRAVEL

A Free Travel Pass may be used to travel free of charge on cross-border journeys between the Republic of Ireland and Northern Ireland and vice versa. The Pass Holder's spouse/partner person may accompany him/her free of charge where the appropriate type of Pass is held. Alternatively, if the Pass Holder holds a Companion Free Travel Pass, any one companion aged 16 years or over may accompany him/her free of charge.

Residents of Northern Ireland who hold a Northern Ireland Concessionary Travel Pass may also travel free on cross-border journeys. However, the spouse/partners or companions of Northern Ireland Pass Holders are not entitled to Free Travel on such journeys unless they also hold a Concession Travel Pass in their own right.

EXTENT OF FREE CROSS-BORDER JOURNEYS AVAILABLE

A Cross-Border Free Travel journey must originate in one jurisdiction and terminate in the other jurisdiction.

The Cross-Border journey may be undertaken using one mode of transport only i.e. bus or train. It is not possible to use a combination of both modes of transport.

The journey must be undertaken on the basis of one through-ticket. This means, for example, that the Pass Holder can travel free by train from say, Cork to Belfast, provided that the free ticket which s/he obtained in the Cork railway station clearly denotes Belfast as the final destination. The same principle applies when travelling by bus on Cross-Border journeys.

TRANSPORT OPERATORS WHO PROVIDE FREE CROSS-BORDER TRAVEL

The following Transport Operators provide Cross-Border Free Travel services for both Republic of Ireland and Northern Ireland Pass Holders:

Bus Eireann

Ulsterbus

Iarnrod Eireann

Northern Ireland Railway

Lough Swilly Bus Company, Letterkenny, Co. Donegal

Halpenny Transport Ltd., Blackrock, Dundalk, Co. Louth

Patrick Gallagher, Brinalack, Letterkenny, Co. Donegal

Foyle Coaches, Clar, Redcastle, Co. Donegal

TRAVELLING BY BUS

When travelling by bus, the Free Travel Pass should be presented to the bus driver, on boarding the bus, before departure.

On Bus Eireann, Ulsterbus and Lough Swilly Bus Company services, the bus driver will issue the Pass Holder with a single journey ticket. This ticket is valid on the date of issue only. If the Pass Holder wishes to undertake a return Cross-Border bus journey, s/he should get a single journey ticket for the outward part of the journey, and later, a further single journey ticket for the homeward journey.

If travelling with any of the other bus operators mentioned in paragraph 3 above, the Pass Holder will be issued with either a single or a return journey ticket as required.

TRAVEL BY RAIL

To undertake a Cross-Border journey by train, the Pass Holder must first complete a Travel Warrant. Warrants are available in most train stations in Northern Ireland, and the Republic of Ireland, in Information Offices of the Department of Social and Family Affairs (Republic of Ireland) and in Offices of the Department of Social Security (Northern Ireland). The Pass Holder should present the completed warrant and his/her Travel Pass at the ticket desk in the train station of departure. S/he will then be issued with either a free single or a free return Standard Class ticket as required.

The Free Travel entitlement is Standard Class travel.

If the Pass Holder wishes to travel "First Plus" class, s/he may do so on payment of the appropriate fare supplement.

To avoid unnecessary delay at the ticket desk, the Pass Holder should complete the Warrant well in advance of undertaking the rail journey and obtain a free rail ticket at least 15 minutes before the train is due to depart.

BREAKS IN CROSS-BORDER RAIL JOURNEYS

It is not necessary to complete a Cross-Border Free Travel train journey in one day. For example, if travelling from Cork to Belfast, the Pass Holder may spend up to 2 nights in Dublin as part of his/her journey. However, the outward part of the journey must be fully completed within 3 days of the date of issue of the ticket.

TRANSFER BETWEEN CONNOLLY AND HEUSTON RAILWAY STATIONS

If, as part of a Cross-Border Free Travel rail journey, the Pass Holder has to transfer between Connolly and Heuston stations in Dublin, s/he may travel free of charge on Bus Atha Cliath's route no. 90 bus.

REFUNDS/DISCOUNTS

No monetary refunds or discounts will be given for late train departures, or for any other delays experienced while undertaking a Cross-Border Free Travel journey.

APPENDIX 4

ALL-IRELAND FREE TRAVEL SCHEME (AIFT)

What is it?

The AIFT scheme allows a Free Travel Passholder (FTPH) to travel for free on the various travel services operating within Northern Ireland.

Similarly Northern Ireland Senior Smartpass holders will be entitled to travel for Free on the various services within the Republic of Ireland using their existing Senior Smartpass.

The scheme is effective from the 2nd April 2007.

Who can travel?

- To qualify for free travel within Northern Ireland, you must be **aged 66 or over** and satisfy the conditions of the Free Travel Scheme.

- Under the terms of the concessionary fares scheme in Northern Ireland, only Free Travel Passholders over age 66 are entitled to travel free of charge in Northern Ireland. The spouse/partner or companion is not eligible to accompany the Passholder for free in Northern Ireland under this scheme.

- Similarly only the NI passholder is eligible for Free Travel in ROI i.e. no spouse/companion

- A spouse/partner or companion may continue to travel with the Free Travel Passholder for free on cross-border journeys (i.e. journeys starting in the Republic of Ireland and ending in Northern Ireland or vice versa).

- Free Travel Passholders wishing to avail of AIFT within Northern Ireland must first obtain a Senior SmartPass card.

- A DSFA Free Travel Pass cannot be used for free travel within Northern Ireland, the customer must have a Senior SmartPass. In addition, the Senior SmartPass card cannot be used for free travel within the Republic of Ireland, the customer must use their existing Free Travel Pass.

How can a customer get a Senior Smartpass?

- An application form (FTNI1) must be completed (using black pen or biro). As these forms are individually bar coded, photo copies cannot be used.

- This application must be brought to the customers nearest Social Welfare Local Office* along with:

- A recent passport standard colour photograph

and

- Evidence of identity (driving licence/passport/any other form of photo id, if available)

and

- Evidence of address (a recent utility bill, e.g. electricity/gas/phone/waste charges bill or a bank/building society/credit union statement)

and

- Current Free Travel Pass and Pension book (if available)

- Following processing of the application a Senior SmartPass card, together with instructions for use, will be posted direct to the customer's home address by post. It may take up to six weeks to process the application.

- As it may take up to six weeks to process applications, customers wishing to avail of the scheme should be encouraged to make their applications as soon as possible.

* Details of Local Offices are listed in the SW4, on the green pages of the phone directory and also on the Department's website www.welfare.ie/contact/index

How will AIFTS impact on the current Cross Border Scheme?

- Free Travel Passholders, both under and over age 66,

with their spouse/partner or companion will continue to be eligible for Cross Border travel on the basis of their existing Free Travel Pass. (Cross Border travel means journeys which commence in the Republic of Ireland and ends in Northern Ireland or vice versa).

ANNEX C

Legislation referred to

Section 153, Social Welfare Consolidation Act 2005 (No.26 of 2005), as amended by the Social Welfare Law Reform and Pensions Act 2006 (No.5 of 2006).

153. Subject to this Act, a person shall be entitled to State pension (non-contributory) where—

- (a) the person has attained pensionable age,
- (b) the means of the person as calculated in accordance with the Rules contained in Part 3 of Schedule 3 do not exceed the appropriate highest amount of means at which pension may be paid to that person in accordance with section 156, and
- (c) the person is habitually resident in the State at the date of the making of the application for State pension (non-contributory).

Section 109, Social Welfare Consolidation Act 2005 (No.26 of 2005), as amended by the Social Welfare Law Reform and Pensions Act 2006 (No.5 of 2006)

109.

1. The contribution conditions for old age (contributory) pension are—
 - (a) subject to subsection (3), that the claimant has entered into insurance before attaining the age of 56 years,
 - (b) that the claimant has qualifying contributions in respect of not less than 156 contribution weeks since his or her entry into insurance, and
 - (c) that the claimant has a yearly average or, in the case of a person who attains pensionable age on or after 6 April 1992, an alternative yearly average of not less than 48.

2. In the case of a person, other than a person who on or before 6 April 1997 is a voluntary contributor paying contributions under Chapter 4 of Part 2, who attained pensionable age on or after 6 April 2002, but before 6 April 2012, subsection (1)(b) shall be read as if “260” were substituted for “156”.
3.
 - (a) In the case of a person who attained the age of 57 years before 1 July 1974, subsection (1)(a) shall be read as if “60” were substituted for “56”.
 - (b) In the case of a person who attained the age of 57 years on or after 1 July 1974, subsection (1)(a) shall be read as if “58” were substituted for “56”.
 - (c) In the case of a person who attained the age of 56 years on or after 1 April 1975, subsection (1)(a) shall be read as if “57” were substituted for “56” and paragraph (b) shall not apply on his or her attaining the age of 57 years.
 - (d) In the case of a person who attained the age of 55 years on or after 1 October 1977, paragraph (c) shall not apply on his or her attaining the age of 56 years and paragraph (b) shall not apply on his or her attaining the age of 57 years.
 - (e) In the case of a person who became a self-employed contributor for the first time on or after 6 April 1988 and was not previously an employed contributor under this Act or the National Health Insurance Acts 1911 to 1952 before becoming so insured, and who on or before 6 April 1988 had attained the age of 56 years but had not attained the age of 62 years, subsection (1)(a) shall be read as if “62” were substituted for “56” for the purposes of qualifying for a pension under subsections (18) and (19).
4.
 - (a) A person who attained the age of 69 years on or after 1 July 1974 but before 5 January 1976 may have his or her entitlement to old age (contributory) pension determined under the Acts relating to social welfare in operation before 1 July 1974 where that would be to the person's advantage.
 - (b) A person who attained the age of 69 years before 1 July 1974 and has been awarded an old age (contributory) pension under the Acts relating to social welfare in operation before that date shall on and after that date have a right to that pension at the rate for the time being payable by reference to a yearly average equal to the yearly average calculated in his or her case under those Acts.

5. (a) A person who attained the age of 68 years on or after 1 April 1975 but before 3 January 1977 may have his or her entitlement to old age (contributory) pension determined under the Acts relating to social welfare in operation before 1 April 1975 where that would be to the person's advantage.
- (b) A person who attained the age of 68 years before 1 April 1975 and has been awarded an old age (contributory) pension under the Acts relating to social welfare in operation before that date shall on and after that date have a right to that pension at the rate for the time being payable by reference to a yearly average equal to the yearly average calculated in his or her case under those Acts.
6. (a) A person who attained the age of 67 years on or after 1 October 1977 but before 1 January 1979 may have his or her entitlement to old age (contributory) pension determined under the Acts relating to social welfare in operation before 1 October 1977 where that would be to the person's advantage.
- (b) A person who attained the age of 67 years before 1 October 1977 and has been awarded an old age (contributory) pension under the Acts relating to social welfare in operation before that date shall, on and after that date, have a right to that pension at the rate for the time being payable by reference to a yearly average equal to the yearly average calculated in his or her case under those Acts.
7. Regulations may provide for modifications of the meaning of yearly average contained in section 108 (2) or of the contribution conditions set out in this section.
8. (a) Subject to paragraph (b) and subsection (9), regulations may provide for entitling to old age (contributory) pension a claimant who would be entitled to that pension but for the fact that he or she has a yearly average of less than 48.
- (b) For the purposes of paragraph (a), in the case of a claimant who has a yearly average of less than 20, he or she is required to have qualifying contributions in respect of not less than 260 contribution weeks since his or her entry into insurance.
9. Regulations under subsection (8) shall provide, subject to subsection (10), that old age (contributory) pension payable by virtue of those regulations shall be payable at a rate less than that specified in Schedule 2, and the rate specified by the regulations may vary by reference to the yearly average so calculated, but any increase of that pension payable under section 112 (2) shall be the same as if the claimant had a yearly average of not less than 48.

10. In the case of person who, on 5 April 2001, is entitled to or in receipt of a pension by virtue of regulations under subsection (8) which includes an increase under section 112 (1), subsection (9) shall not operate so as to reduce the rate of the increase payable under section 112 (1) below the rate that may be prescribed.
11. Contributions paid or credited under this Part, or paid, excused or deemed to be or treated as paid under the National Health Insurance Acts 1911 to 1952 (other than, in the case of a person who is not a relevant person, contributions paid by or in respect of a person at the rate specified in Article 81(2)(a), 82(2)(a) or 83(2)(a) of the Regulations of 1996), shall be taken into account in the manner and subject to the conditions and limitations that may be prescribed for the purpose of the satisfaction of the contribution conditions for old age (contributory) pension.
12. Regulations under subsection (11) may also provide for modifications, in the case of persons who were insured under the National Health Insurance Acts 1911 to 1952 or who were absent from the State before 3 October 1960, of any of the contribution conditions for old age (contributory) pension.
13. Where a person, other than in the case of a relevant person, becomes an employed contributor by virtue of paragraph (b) of section 12 (1) and would not, apart from that paragraph, be an employed contributor, his or her entry into insurance by virtue of that paragraph is deemed not to be an entry into insurance for the purposes of subsection (1) and for those purposes the person's entry into insurance is deemed to occur when he or she first becomes an employed contributor by virtue of paragraph (a) of section 12 (1).
14. Subject to subsection (15), regulations may provide for entitling to old age (contributory) pension a person who would be entitled to that pension but for the fact that the contribution condition in subsection (1)(c) is not satisfied where that person, having earlier ceased to be an employed contributor became, as a consequence and at the time of the coming into operation of section 12 of the Social Welfare Act 1973 , an employed contributor in respect of whom contributions reckonable for the purposes of the contribution conditions for entitlement to old age (contributory) pension were payable.
15. Regulations for the purposes of subsection (14) shall provide that old age (contributory) pension payable by virtue of those regulations shall be payable at a rate less than that specified in Schedule 2, and the rate specified by the regulations may vary with the extent to which the contribution condition in subsection (1)(c) is satisfied.
16. Regulations may provide, subject to subsection (17), for entitling to old age (contributory) pension a relevant person who would be entitled thereto but for the fact that the contribution condition set out in subsection (1)(c) is not

satisfied and who in respect of any period has been employed mainly in one or more of the employments in respect of which employment contributions at the rate specified in Article 81(2)(a), 82(2)(a) or 83(2)(a) of the Regulations of 1996 were paid.

17. Regulations for the purposes of subsection (16) shall provide that old age (contributory) pension payable by virtue of those regulations shall—

(a) be payable at a rate less than that specified in Schedule 2, and the rate specified by the regulations may vary in relation to the proportion to which the number of—

(i) employment contributions paid in respect of or credited to the insured person, and

(ii) self-employment contributions paid by him or her, and

(iii) voluntary contributions paid by him or her,

reckonable for old age (contributory) pension purposes bears to the total number of those employment contributions, self-employment contributions and voluntary contributions, but any increase of pension in respect of a qualified child shall be paid at the rate specified in Schedule 2,

and

(b) where the amount calculated in accordance with paragraph (a) is a multiple of 5 cent but not also a multiple of 10 cent, be rounded up to the nearest 10 cent, and where the amount is not a multiple of 5 cent or 10 cent, be rounded to the nearest 10 cent.

18. Subject to subsection (19), a pension shall be payable in the case of a person who—

(a) became a self-employed contributor for the first time on or after 6 April 1988 and who on or before that date had attained the age of 56 years and who fails to satisfy the contribution conditions in subsection (1)(c) or (8), or

(b) satisfies the contribution condition in section 109 (1)(a) by virtue of subsection (3)(e) and who, but for subsection (3)(e) fails to satisfy the contribution conditions in subsection (1) or (8),

and who has qualifying contributions in respect of not less than 260 weeks since becoming a self-employed contributor.

19. The rate of pension payable in accordance with subsection (18) shall be payable at half the rate specified in column (2) at reference 3 of Part 1 of Schedule 2 and any increases payable under section 112 (1) or (2) shall be payable at half the rate specified in columns (3) and (4) at reference 3 of Part 1 of Schedule 2.

20. The total amount payable by way of pension in accordance with subsections (18) and (19) shall be rounded up to the nearest 10 cent where it is a multiple of 5 cent but not also a multiple of 10 cent and shall be rounded to the nearest 10 cent where it is not a multiple of 5 cent or 10 cent.