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Shóisialach
Tuarascáil maidir le “Class K PRSI”
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Houses of the Oireachtas
Joint Committee on Education and Social
Protection
Report on Class K PRSI
February 2016



Chair's Foreword

I would like to thank Senator Gerard Craughwell for the work that he has undertaken in completing the Report on this important matter for the Joint Committee. I believe that the recommendations in the Report will be of assistance to the Minister for Social Protection in giving consideration to this matter.

It should be noted that the issues addressed in the report are based on legal advice obtained by the Rapporteur, Senator Craughwell, and not by the Joint Committee itself.

I would also like to thank the Members of the Joint Committee for their engagement on this issue, the Library & Research Service of the Houses of the Oireachtas and the Committee Secretariat for its assistance and support.

Joanna Tuffy, T.D.

Chair

Joint Committee on Education and Social Protection



Rapporteur's Foreword

I am very grateful to the Joint Committee on Education and Social Protection of which I am a member for the opportunity to be the Rapporteur on the important issue of Class K PRSI.

Since taking my Seanad seat in October 2014, I have been actively engaging with City and County Councillors on the issues that are important to them. Having surveyed Councillors on their terms and conditions of employment, the issue of Class K PRSI emerged as a key area of concern. Class K PRSI for Office Holders was first introduced in 2011 and is deducted at the rate of 4% from the salaries of all Office Holders and from Councillor's Representational Payments. However, unlike other employment based PRSI deductions there are no ensuing benefits. While this has serious implications for Councillor's pension entitlements and other benefits, it also has broader implications for local democracy and for equality and diversity in Local Government representation.

At the heart of this report on Class K PRSI are the issues of fairness and proportionality. The broad range of recommendations made offer a number of administrative, legislative and legal options for change and I look forward to further discussion and review.

To conclude, I would like to thank City and County Councillors from all over Ireland who generously gave of their time to engage with me on this issue and to the staff and executive of the Association of Irish Local Government for their submission. I would also like to thank my assistant Jean Webster for her work on this report and the Secretariat to the Joint Committee on Education and Social Protection for their support and assistance.

Senator Gerard Craughwell

Joint Committee on Education and Social Protection

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1. INTRODUCTION

At a meeting of the Joint Committee on Education and Social Protection on the 22nd of September 2015, an Tánaiste and Minister for Social Protection Joan Burton TD suggested that the Committee might produce a report on the issue of Class K PRSI which had been raised by Senator Gerard Craughwell during the course of the meeting. It was subsequently agreed that Senator Craughwell would act as rapporteur in the preparation of a report by the Committee.

Minster Burton indicated that with all party agreement, she would be willing to examine the issue as she had already received representations on it.

2. AIMS AND OBJECTIVES

The purpose of this report is to:

- Situate Class K PRSI in the context of the historical evolution of social insurance in Ireland
- Outline the development of Class K PRSI
- Identify and examine the unique implications for City and County Councillors of paying Class K PRSI
- Formulate a set of proposals to resolve the issues identified.

3. HOW THE SOCIAL INSURANCE SYSTEM WORKS

The social insurance system operates through the Social Insurance Fund and contributions are paid into the Fund to finance a range of contributory social insurance benefits, pensions and other payments. There is also provision for the Exchequer to make a subvention to the Fund if expenditure exceeds income. Since 1979 the term Pay Related Social Insurance (PRSI) has been used to describe contributory social insurance but for the purposes of this report the term social insurance is used throughout.

Irish social insurance schemes fall into three categories:

1. Contributory social insurance schemes
2. Non-contributory means tested assisted schemes
3. Universal Child Benefit Payment

The social assistance arrangements are on a means-tested basis and do not form part of the Social Insurance Fund. The Child Benefit payment also does not form part of the Social Insurance Fund. The focus of this report is therefore solely on contributory social insurance schemes and Class K in particular

3.1 Components of Social Insurance

There are two components to social insurance in Ireland:

- A contributory component
- A social solidarity component

3.2 Contributory Component

Payments from contributors are paid into a Social Insurance Fund on a pay-as-you-go basis. This means that current payments are paid for by current contributors. There is thus an intergenerational dependency as today's recipients of benefits from the Fund are reliant on the contributions of today's workers and their employers. Any shortfall arising from a gap between income and expenditure is made up by a subvention from the Exchequer as stated above.

The Social Welfare (Consolidation) Act 2005 provides that there are two categories of person who are compulsorily insured; employed contributors and self-employed contributors. An employed contributor is broadly defined as every person over the age of 16 years and under pensionable age that is in insurable employment. Insurable employment means employment in the State under any contract of service or apprenticeship, written or oral, whether expressed or implied. Certain employments are not insurable employment, e.g. where a husband or wife is employed by his or her spouse. The contributions payable by employed contributors provide insurance for: state pension (contributory); widow's, widower's or

surviving civil partner's (contributory) pension; guardian's payment (contributory); deserted wives benefit; illness benefit; invalidity pension; jobseeker's benefit; adoptive benefit; occupational injuries benefit; health and safety benefit; maternity benefit; treatment benefit; bereavement grant; and carer's benefit.

A self-employed contributor is a person over the age of 16 years and under pensionable age who has reckonable income or reckonable emoluments. The contributions payable by self-employed contributors provide insurance for widow's, widower's or surviving civil partner's (contributory) pension, guardian's payment (contributory) and state pension (contributory), maternity benefit, adoptive benefit and bereavement grant.

Certain people in public sector employments such as permanent and pensionable, civil or public servants, army personnel and Gardaí pay PRSI at a lower rate referred to as modified insurance. In addition, their employer also pays, in certain cases, lower employer's PRSI contributions. This category is colloquially referred to as 'modified contributors'.

A further category of contributor, known as a voluntary contributor, can make voluntary contributions where under pensionable age and with qualifying contributions of not less than 520 weeks. Applicants must agree to pay voluntary contributions from the start of the contribution week that follows the week in which they leave compulsory insurance.

Thus all contributors can enjoy a certainty based on statutory entitlements built up through contributions made during working life. This is most clearly apparent in the case of Retirement, Old Age and Widow's and Widower's Pensions. The Social Insurance contributor knows that the prescribed amounts will be paid when the contingency in question arises, that no means test or other such factor enters the picture and that he/she has a reasonable expectation that rates of payment will be regularly updated into the future. However, Office Holders paying Class K PRSI are the only class for which no entitlements result.

3.3 Social Solidarity Component

While we lack a clear definition of the "solidarity component" of social insurance, it is widely referenced as meaning that the costs of social benefits and programmes are shared collectively as a society. It can be interpreted as a form of mutual support and social insurance contributions are not risk rated. In contrast, private insurance premiums are calculated using actuarial principles so the higher the risk, the higher the premium.

If the same principles were applied to social insurance, then those with a higher risk of unemployment, disability or even death would pay higher contributions than those with lower levels of risk. Thus the solidarity element of social insurance varies with the extent to which risks are pooled within social insurance. The greater the risk pooling the greater the extent to which higher risk individuals are subsidising lower risk individuals underpinned by the solidarity principle. The Report of the Commission on Social Welfare in 1986 stated:

“We regard the system of social insurance as an expression of social solidarity and citizenship in which the risks, costs and benefits should be shared as widely as possible in the community. Social insurance creates a sense of entitlement to benefits and generates support among the public for their benefits ...In our view, the system of social insurance should be as comprehensive as possible, and all income earners should contribute to, and benefit from, the system” (Commission on Social Welfare , 1986, p. 10)

It is interesting to note that at the very inception of the Social Insurance Scheme in 1911, it was seen as a contract between the citizen and the State and not a commercial relationship. It was in essence based on rules of entitlement based on contributions. Thus the introduction of Class K PRSI in 2011 as a type of insurance without any entitlements at all represents a very significant policy shift.

4. HISTORICAL EVOLUTION OF SOCIAL INSURANCE

To fully understand the significance of the introduction of Class K PRSI in 2011 and the significant shift in policy that it represents, it is useful to review the evolution of Social Insurance since its inception prior to independence under the *1911 National Insurance Act*. This Act introduced insurance based schemes for employees in the form of unemployment and sickness benefit. The scheme was financed by contributions from insured persons, employers and the State.

Subsequent developments involved administrative consolidation, the inclusion of “additional risks” and new groups being brought into the PRSI net. These are outlined in Table 1 below and while not exhaustive, the list is indicative of the major policy developments in the area.

Table 1: Development of Social Insurance 1911-2014

YEAR	DEVELOPMENT	DESCRIPTION
1911	Unemployment Benefit & Sickness Benefit	First compulsory insurance scheme in Britain and Ireland. Sickness Benefit was run by a range of approved societies which number in the region of 65 by 1933
1933	Establishment of the National Health Insurance Society	Amalgamated all approved societies into one
1935	Widow's and Orphan's Pensions	Contributory and non-contributory introduced together
1942	Wet Time Insurance	For workers whose income was affected by inclement weather
1952	Social Welfare (Insurance)Act	Brought unemployment, health and widows, orphans together in a single co-ordinated scheme. Also included some new groups such as male employees in domestic service and agriculture. Social Insurance fund established
1961	Old Age Pension	First contributory old age pension payable at age 70
1970	Retirement Pension Invalidity Pension	Bridged gap for those who retired at 65
1973	Deserted Wife's Benefit	Satisfied on either Husband's or Wife's Insurance record
1974	Pay-related benefit	Earnings related supplement to flat rate unemployment and sickness benefit
1979	Pay-related Social Insurance (PRSI)	Standard percentage rates for the various classes
1988	Self Employed	Limited range of benefits e.g. pensions
1991	Part-time workers	Benefits
1994	Widower's Pension & Homemaker's scheme	For those taking time out of work to take care of a child
1995	New Civil/Public Sector Workers	Public Sector Workers recruited since 6 th April 1995 pay full-rate contributions
1997	Increased benefits to self-employed	Class S to provide cover for Maternity and Adoptive Benefit
2011	Office Holders	Office Holders liable for Class K on income above a certain limit.
2014	Unearned income	Class K may also apply to unearned income

5. REVIEW OF THE SOCIAL INSURANCE FUND

The social insurance system has been examined and reviewed on a number of occasions. Under Social Welfare legislation, regular Actuarial Reviews of the Social Insurance Fund are completed every five years. The first review was published in 2002 and the second in 2007.

All three reviews sought to establish the medium and longer term financial situation of the Fund. In June 2012, the *Actuarial Review of the Social Insurance Fund* (KPMG, 2012) was published.

Some of the findings provide a background for the introduction of Class K PRSI and will enable us to measure its efficacy in the context of the principles of redistribution and solidarity. The latest review offers projections covering a 55 year period from 2011 to 2066, and has informed and will influence short, medium and long-term policy developments in social insurance. At the heart of the reviews is the adequacy of the current contributions to finance current benefits. In contrast to the period when the fund was in surplus, the 2010 review shows that the Fund had a significant shortfall. In 2011 this reached €1.5 billion. Expenditure was €9 billion and income was €7.5 billion. Recent figures from the Department of Social Protection indicate that the social funding deficit is improving and the projected shortfall was a €180m at the end of 2015. It is notable that Pension expenditure is projected to rise from 57% of Fund spending in 2011 to 85% in 2066 due to population ageing. Given the emphasis on measures to reduce expenditure from the SI fund to ensure its sustainability into the future, it was no surprise that Budget 2011 introduced a suite of wider changes to the Social Insurance Scheme to increase revenue. The introduction of Class K PRSI was part of this development

6. INTRODUCTION OF CLASS K PRSI

6.1 Legislation

The imposition of the 4% tax on public office holders was introduced by the Minister for Social Protection, Éamon Ó Cuív, at the Committee Stage of the Social Welfare (Miscellaneous Provisions) (No. 2) Bill 2010. On 8 December 2010, the Minister for Social Protection stated:

“I have already outlined a number of changes to the PRSI system which are included in this Bill. In addition to these changes, I will be introducing amendments on Committee Stage to provide for the application of PRSI to share options and gains and for a 4% charge to the Social Insurance Fund, with no benefits accruing, which will apply to holders of public offices.” (Houses of the Oireachtas, 2010)

There was a very brief debate on the issue and on the 14 December 2010, Deputy Michael Ring asked about this 4% tax, which would be payable without any benefit from the social insurance fund.

In response, the Minister for Social Protection stated:

Deputy Éamon Ó Cuív: *As the law is written there is no gain.*

Deputy Michael Ring: *Is that legal?*

Deputy Éamon Ó Cuív: *If we make it the law it is legal.*

Deputy Róisín Shortall: *Is it fair?*

Deputy Éamon Ó Cuív: *“I will put it another way. What would have been said if we had awarded ourselves a 4% payment? For example, civil servants employed before 1995 make a contribution and get a very marginal gain.*

They get a pro rata State pension and that depends on whether one has ordinary contributions. If we had said we were to get an A rate pension in return for a payment of 4% it would be said we had done it for our own gain, that we always look after ourselves very well and why should someone get a Deputy’s pension and a State pension.”

Thus Section 14 of the Social Welfare and Pensions Act 2010 introduced a new Chapter 5A to Part 2 of the Social Welfare Consolidation Act 2005 with effect from 1 January 2011. The new s30B of the Social Welfare Consolidation Act 2005 provides:

“(1) Contributions shall be paid by public office holders in accordance with this Chapter.

(2) A public body that is responsible for, or authorises, the payment of remuneration to a public office holder shall collect, or cause to be collected, a contribution at the rate of 4 per cent of the total remuneration payable to that public office holder in respect of the holding of a public office.

(3) Subject to this section, the liability for a contribution under subsection (1) applies to the payment of any remuneration to a public office holder in respect of the holding of a public

office— (a) in respect of the contribution year commencing on 1 January 2011, and (b) in respect of each subsequent contribution year.

(4) Where in any contribution week a payment of not more than €100 per week (or the equivalent thereof in respect of a public office holder remunerated otherwise than on a weekly basis) is made to or for the benefit of a public office holder in respect of the remuneration of that person arising from the holding of a public office, a contribution under subsection (1) shall not be payable by that public office holder in respect of that remuneration arising from the holding of that public office

(5) where the total amount of remuneration arising from the holding of a public office does not exceed €5,200 in any contribution year, any contributions under subsection (1) in respect of that contribution year shall be repaid to the public office holder.”

Therefore from the 1st January 2011, certain public office holders including the President, members of the Oireachtas, the judiciary, the Attorney General, the Comptroller and Auditor General, certain military judges, certain members of the European Parliament and Local Authority members were required to pay PRSI at a rate of 4% on all income over €5,200 a year. This category of contributors to the Social Insurance Fund is referred to as Class K contributors. Again it is important to note that payment of Class K PRSI by office holders does not establish any social insurance entitlements and Class K contributors stand alone

In response to a question by Deputy Leo Varadkar in January 2011, as to what benefits Class K officer holders would receive for their contribution to the Social Insurance Fund, Minister O’Cuiv stated:

“Office holders are not, by definition, bound by the arrangements of a contract of service as they are not employees. Furthermore, social insurance legislation provides that the income derived from office-holding is not liable to Class S social insurance contribution. However in accordance with the solidarity principle of the Social Insurance Fund, it has now been decided by Government that office holders should contribute to the social insurance system. The PRSI charge to public office holders will not generate any subsequent benefit entitlement” (Houses of the Oireachtas 2011)

In response to a similar question from Deputy Sandra McLellan in February 2013, the Tánaiste and Minister for Social Protection Joan Burton stated:

“Where an individual ceases to be an Office Holder, they may qualify for assistance as a jobseeker. The jobseeker’s schemes provide income support for people who have lost work and unable to find alternative employment....Under current arrangements any person including former public representatives, who satisfies these criteria may, subject to the circumstances of an individual case qualify for Jobseeker’s Allowance” (Houses of the Oireachtas 2013)

In other words, having served as a Councillor and having paid contributory PRSI on his/her representational payment, he/she would only have access to Jobseekers Allowance thus creating a serious disincentive to participation in local democracy.

The Minister went on to say that:

“Persons, who cease to be covered by compulsory social insurance, including Office Holders, may opt to protect their existing long-term social insurance pension entitlements by becoming insured on a voluntary basis and paying Voluntary Contributions. Payment of Voluntary Contributions does not provide social insurance cover for short term benefits such as jobseeker’s benefit. Persons who wish to become a Voluntary Contributor must satisfy certain contributions and must apply to become a Voluntary Contributor within 12 months after the end of the contribution year in which they were last compulsory insured (Houses of the Oireachtas 2013)

6.2 Further Extension of Class K PRSI

Liability for class K PRSI was further extended in 2013 and 2014 to bring more previously exempt people and types of income into this particular category. Since 2013 Class K also applies to the additional self-employed income from a trade or profession of a modified rate contributor and on any unearned income they have. From the 1st January 2014 Class K may also apply to the unearned income of employed contributors and occupational pensioners aged under 66 years where this is the only additional income.

Everyone over the age of 16 and under pensionable age who have earnings from employment or who are in receipt of an occupational pension and have additional unearned income from rental, investment dividends, and interest on deposits and savings are also liable to Class K PRSI charge. Office holders earning less than €5,200 per year have no liability under Class K but are treated under Class M for occupational pensioners with a nil liability under Class K.

7. OFFICE HOLDERS

Office Holders constitute a discrete group for the purposes of social insurance contributions. Unlike employed contributors, Office Holders do not have a contract of employment and what is generally understood as a master/servant relationship but neither are they self-employed. They have a unique status as Office Holders. In 2011 Minister Leo Varadkar told the Examiner Newspaper (Examiner , 2011) that he believed it was always wrong that politicians did not pay PRSI but felt “it unfair that there is no benefit accruing”. He also pointed out that “There are so many different classes of PRSI but we are the only ones who pay and get nothing back”.

This in itself contradicts Government Policy which sees social insurance as offering “excellent value for those on lower incomes and people with shorter working lives”. We also know that the solidarity principle underpinning our social insurance system does not necessarily apply “a priori” only to those on low income but to all those who through the occurrence of social risks, lose a substantial portion of their earning capacities.

As Office Holders, politicians would be well aware of the social risk associated with their profession; the risk of not being elected again, the risk of long periods out of office and the consequent implications for every aspect of their lives and financial situations.

7.1 Local Authority Members

Within the group of Office Holders, Local Authority Members is a special case for a number of reasons:

- Their representational payment of €16,765 is at the bottom of the pay scale compared to other Office Holders who are all fulltime in their posts and are compensated accordingly in terms of their salary type payment and subsequent pension (Senators, TDs, President, Attorney General, Judges, etc.).
- The salary type payment of Councillors is also subject to deductions including PAYE, USC and PRSI of 4%. For most Councillors these deductions will mean a take home payment of a little over €8,000 per annum plus fixed allowances for travel and for membership of committees where appropriate. Unlike their non-office holding counterparts in industrial, commercial and service type employments who pay 4%

PRSI at Class A, Local Authority Members get no benefit whatsoever from their contributions.

- The office can no longer be considered to be part-time in nature. In fact information given to the rapporteur shows that the workload of councillors has increased dramatically since the Local Government Act 2014 reduced the overall number of councillors in the State from 1,627 to 949. Since the passing of the Act, Councillors with an enlarged workload and extended electoral areas are spending even more time fulfilling their public obligations leaving less time for other paid employment.
- While many Councillors are self-employed or in full-time employment, others are unemployed and the representational payment is their only source of income but unlike their self-employed or employed counterparts their PRSI does not accrue any benefits.
- Historically Ireland has an outstanding tradition of long service in Local Authority membership with many councillors serving careers spanning several decades. So for example a councillor who took up office in 2014 and who serves for 40 years paying PRSI at the same rate as employed contributors will not have accrued anything towards a contributory old age pension.

7.2 Direct Implications for Local Authority Members

- Should a Councillor lose his/her seat he/she is not entitled to claim unemployment benefits and this can also affect the Councillor's ability to benefit from certain training schemes.
- The lack of entitlement also extends to the spouses of Councillors.
- As mentioned earlier in the report, the only way offered to Councillors to "top up" their access to benefits at retirement was by means of "voluntary contributions" A councillor who has no other employment or self-employment and is under 66 years could apply to become a voluntary contributor to ensure continuity of their insurance record. The caveat that the Councillor could only become a voluntary contributor at the rate of PRSI they previously contributed to provided that he/she had already 364 weeks of PRSI paid was acceptable to most Councillors and offered a viable option. However the timeframe during which those previously employed paying Class A or S would be admitted as a voluntary contributor was the end of the following year in

which they ceased being compulsorily insurable if they were an employee and two years since they last paid Class S if self-employed.

- The voluntary contribution does not preserve any benefit except for the Old-Age Pension. In short under Class K, the employer pays nothing while the Local Authority Member has to contribute an additional €450 to secure a pension while his/her private/public sector equivalent has access to both pension and a wide range of social insurance benefits.
- Local Authority Members and indeed all Office Holders must pay Class K PRSI for as long as they are in office whereas all other citizens cease to make contributions after the age of 66.

7.3 Implications for the development of Local Democracy

- **Fairness:** The consequence of the introduction of Class K PRSI has implications not just for individual Councillors and their families but also for the broader development of Local Democracy. The *Local Government Reform Act* which came into effect on June 1 2014 introduced profound changes for local democracy including an expansion of roles, new governance arrangements, stronger oversight measures for elected members, mergers of some Local Authorities, the removal of municipal status, extended electoral areas and increased workload for Councillors. Feedback from Councillors indicates that being a Local Authority member is now very much a 24/7 job. It is a job for which Councillors and indeed their constituents believe that they should be adequately compensated for not just through their Representational Payment but by having appropriate terms and conditions. Considerable disquiet and even anger has been expressed by Councillors at what they believe to be unequal and unfair treatment. No other Office Holding group have been vociferous as they have access to better pension packages and better salary type payments. There is however widespread support amongst TDs and Senators for the Councillors' case and many are advocating on their behalf.
- **Equality and Diversity:** The core principles of Equality and Diversity are a priority for Local Authorities in terms of policy development and service delivery. To ensure that Councillors fully represent our increasingly diverse communities it is essential that they themselves are a diverse group. We already have gender quotas to encourage the election of women at National level but at local level terms and

conditions of employment including Class K PRSI represent a serious barrier to participation by women, the unemployed and the low paid of both genders. If this persists there is a grave danger that participation in local democracy will become the preserve of the wealthy with all of the attendant negative consequences that this would bring.

8. INTERNATIONAL COMPARISONS

It is worth noting that in most other European Countries a retirement pension becomes a right after a certain number of years' service in a Local Authority (Council of Europe , 2010). For example in Belgium after the age of 60, locally elected representatives receive a retirement pension proportional to their contributions. In Finland elected representatives are entitled to a pension on reaching 63. This is proportional to their contributions and follows the principle applying to employees working on a fixed term contract. In the Netherlands and Switzerland both full time and part time local representatives contribute to a pension scheme. In Portugal full-time elected representatives make pension contributions although the resulting pension may not be drawn concurrently with a professional pension for the same period.

In Sweden elected representatives contribute to a pension scheme contributing as a full-time or part-time member. Ireland, Italy, Luxemburg, Germany and the UK make no pension provision but of these Ireland is the only country where social insurance deductions are made but no pension provision provided.

9. POSSIBLE LEGAL IMPLICATIONS OF CLASS K PRSI

As well as having implications for the individual welfare of representatives and the development of local democracy there may be legal implications associated with the imposition of Class K PRSI without benefit on Office Holders. A determination on this could only be made by the High Court but a brief review of the main issues is useful for this report.

9.1 The Constitution

The Constitution does not make express reference to the right to receive social welfare. **Article 45** which is expressly stated not to be cognisable by the courts provides as follows:

The principles of social policy set forth in this Article are intended for the general guidance of the Oireachtas. The application of those principles in the making of laws shall be the care of the Oireachtas exclusively, and shall not be cognisable by any Court under any provisions of this Constitution (Bunreacht Na hÉireann , 1937)

Thus the Oireachtas is entitled to enact Social Welfare Legislation regardless of the anomalies that this may create.

However Article 43.1 of the Constitution protects the property rights of an individual and provides:

1. *The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods*
2. *The State accordingly guarantees to pass no law attempting to abolish the right to private ownership of the general right to transfer, bequeath or inherit property.*

This article gives constitutional protection to pensions as a property right and could provide the foundation to challenge the imposition of 4% Class K contributors.

However Article 43.2 does contain a caveat which states:

1. *The State recognises however that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice.*
2. *The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good*

However the right to own property pursuant to Article 43.1 must be read with Article 40.3 which provides:

1. *That State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.*
2. *The State shall, in particular, by its laws protect as best it may from just attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen*

Thus it would appear that the State can encroach on an individual's property rights where required by the "exigencies of the common good" subject to the obligation of the State and by extension the courts, to protect those rights from unjust attack.

9.2 The questions to be asked in the context of the imposition of Class K PRSI without benefit are:

1. Was the decision made by the Minister for Social Protection Eamon O'Cuiv TD to extend the payment of Class K PRSI to all Office Holders sufficiently in the "exigencies of the common good" to justify the attack on the property (pension rights) of Office Holders and Local Authority Members in particular?
2. If the objective of the introduction of Class K PRSI was to generate additional income for the Social Insurance Fund by deducting approx. €669 in PRSI from each City and County Councillor every year, should this be balanced by them having access to the benefits accruing from the deduction as is the case in every other class of PRSI?
3. While the policy of increasing revenue for the Social Fund can be considered to be entirely justifiable, were the means used to implement this policy proportionate?
4. Even if this Class K PRSI deduction is proportionate, is it appropriate for just one sector of society to fund a specific policy without getting any benefit?

While these questions can only be answered by the Courts, they can usefully inform further discussion and legislative reform on the issue.

10. CONCLUSIONS

In this report a review of the historical development of Social Insurance has been undertaken. It is apparent that the imposition of Class K PRSI on all Office Holders HAS created a serious anomaly and represents a significant departure from previous social insurance reform as it takes without giving anything in return. It lies outside of what has come to be accepted given the contributory and solidaristic nature of Irish Social Insurance.

Apart from having serious financial implications for some Councillors, it also has social consequences and may represent a barrier to access for aspiring local politicians who will not be able to afford to become a public representative. It will also have serious repercussions for the diversity and equality of local democracy and while we are all cognisant of the serious shortfall in the Social Insurance fund the monies collected are comparatively small. Thus the hardship suffered by Councillors who will have no benefits, and no pensions cannot be justified by the €635,000 that it will generate for the Social Insurance Fund every year. Furthermore, it is out of line with international practice as Ireland is the only European country which deducts money from Local Representatives and gives nothing in return.

It is worth noting that the issue of Class K PRSI for Office Holders may be open to successful legal challenge under Constitution and the European Convention on Human Rights on the grounds of an attack on property rights and the issue of proportionality. In the light of all of the above, the following recommendations are made.

11. RECOMMENDATIONS

1. That the issue of Class K PRSI for office holders be given due consideration by the Minister for Social Protection.
2. That the issue be referred to the Advisory Group on Tax and Social Welfare for review, and to consider if Class A benefits for those currently subject to Class K PRSI would be appropriate.
3. That the differences in circumstances between Office Holders be made clear as they are not a homogenous group and should not be treated as such in the social welfare legislation.
4. That a full debate on Class K PRSI take place with the Minister for Social Protection in both Houses of the Oireachtas.

5. That the Association of Irish Local Government and the Local Authority Members Association be consulted as part of the review process.
6. That a subsequent review and reform of the legislation be considered as a matter of urgency.
7. That the issue be considered as part of a wider discussion on the terms and conditions of employment of Local Authority Members and the ongoing review of the operation of the Local Government Reform Act 2014.

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Appendix 1: Terms of Reference

a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—
 - (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 164,
 - (c) Estimates for Public Services, and
 - (d) other mattersas shall be referred to the Select Committee by the Dáil, and
 - (e) Annual Output Statements, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:
 - (a) matters of policy for which the Minister is officially responsible,
 - (b) public affairs administered by the Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
 - (d) Government policy in respect of bodies under the aegis of the Department,
 - (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
 - (f) the general scheme or draft heads of any Bill published by the Minister,
 - (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,

- (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
 - (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
 - (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
- (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
 - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.
- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.
- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.

b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70])

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.
- (4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

Appendix 2: Committee Membership

31st Dáil

Members of the Joint Committee on Education and Social Protection

Deputies



Joanna Tuffy TD
Chairperson of the Committee



Aengus Ó Snodaigh TD



Brendan Ryan TD



Clare Daly TD



James Bannon TD



Charlie McConalogue TD



Catherine Bryne TD



Ciaran Cannon TD



Jim Daly TD



Ray Butler TD



Willie O'Dea TD



Jonathan O'Brien TD



Michael Conaghan TD



Joan Collins TD



Noel Harrington TD

24th Seanad
Members of the Joint Committee on Education and Social Protection
Senators



Senator Gerard Craughwell
Rapporteur



Senator Marie Moloney



Senator Marie-Louise O'Donnell



Senator Averil Power



Senator Jim D'Arcy



Senator Mary Moran

