



Number 49 of 2013

Social Welfare and Pensions (No. 2) Act 2013



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SOCIAL WELFARE AND PENSIONS (NO. 2) ACT 2013

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Number 49 of 2013

SOCIAL WELFARE AND PENSIONS (NO. 2) ACT 2013

An Act to amend and extend the Social Welfare Acts; to amend and extend the Pensions Act 1990; to make additional provision for the discharge of the liabilities in the winding up of certain occupational pension schemes and to provide for the discharge of liabilities of such schemes where employers are insolvent on or before the date of the wind up of such schemes; to provide for the payment, in certain circumstances, by the Minister for Finance of moneys to secure the discharge of certain liabilities in respect of certain occupational pension schemes that are being wound up where certain employers are insolvent on or before the date of the wind up of such schemes; to make additional provision for the restructuring of certain occupational pension schemes and for that purpose to provide for the reduction in the benefits being paid to certain persons under such schemes; and to provide for related matters. [25th December, 2013]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title, construction and collective citations

1. (1) This Act may be cited as the Social Welfare and Pensions (No. 2) Act 2013.
- (2) The Social Welfare Acts and *Parts 1* and *2* shall be read together as one.
- (3) The Pensions Acts 1990 to 2013 and *Part 3* shall be read together as one and may be cited together as the Pensions Acts 1990 to 2013.

PART 2

AMENDMENTS TO SOCIAL WELFARE ACTS

Definition

2. In this Part “Principal Act” means the Social Welfare Consolidation Act 2005.

Amendment of section 301 of Principal Act**3. (1) Section 301 of the Principal Act is amended—**

(a) by substituting the following subsection for subsection (1):

“(1) A deciding officer may at any time—

(a) revise any decision of a deciding officer—

(i) where it appears to him or her that the decision was erroneous—

(I) in the light of new evidence or new facts which have been brought to his or her notice since the date on which the decision was given, or

(II) by reason of some mistake having been made in relation to the law or the facts,

or

(ii) where—

(I) the effect of the decision was to entitle a person to any benefit within the meaning of section 240, and

(II) it appears to the deciding officer that there has been any relevant change of circumstances which has come to notice since that decision was given,

or

(b) revise any decision of an appeals officer where—

(i) the effect of the decision of the appeals officer was to entitle a person to any benefit within the meaning of section 240, and

(ii) it appears to the deciding officer that there has been any relevant change of circumstances which has come to notice since the decision of the appeals officer was given,

and the provisions of this Part as to appeals apply to a revised decision under this subsection in the same manner as they apply to an original decision of a deciding officer.”,

(b) by substituting the following subsection for subsection (2A) (inserted by section 18 of the Social Welfare and Pensions Act 2008):

“(2A) A deciding officer may at any time revise any determination of a designated person—

(a) where it appears to him or her that the determination was erroneous—

(i) in the light of new evidence or new facts which have been brought to his or her notice since the date on which the determination was made, or

(ii) by reason of some mistake having been made in relation to the law or the facts,

or

(b) where—

(i) the effect of the determination was to entitle a person to supplementary welfare allowance, and

(ii) it appears to the deciding officer that there has been any relevant change of circumstances which has come to notice since that determination was made,

and the provisions of this Part as to appeals shall apply to a decision of a deciding officer under this subsection in the same manner as they apply to an original decision of a deciding officer.”,

and

(c) by inserting the following subsection after subsection (4):

“(5) In subsections (1)(a)(ii)(II), (1)(b)(ii) and (2A)(b)(ii), the reference to any relevant change of circumstances means any relevant change of circumstances that occurred before, or occurs on or after, the coming into operation of the *Social Welfare and Pensions (No. 2) Act 2013*.”.

(2) Where, before the coming into operation of *subsection (1)*, a request had been made under section 301 of the Principal Act for a decision or a revised decision on the grounds that there had been any relevant change of circumstances and the request had not been determined, that request shall be determined in accordance with section 301 of the Principal Act as if that section had not been amended by *subsection (1)*.

Amendment of section 317 of Principal Act

4. (1) The Principal Act is amended by substituting the following section for section 317:

“Revision by appeals officer of decision of appeals officer

317. (1) An appeals officer may at any time revise any decision of an appeals officer—

(a) where it appears to him or her that the decision was erroneous in the light of new evidence or new facts which have been brought to his or her notice since the date on which it was given, or

(b) where—

(i) the effect of the decision was to entitle a person to any benefit within the meaning of section 240, and

(ii) it appears to the appeals officer that there has been any relevant change of circumstances which has come to notice since that decision was given.

- (2) In subsection (1)(b)(ii), the reference to any relevant change of circumstances means any relevant change of circumstances that occurred before, or occurs on or after, the coming into operation of the *Social Welfare and Pensions (No. 2) Act 2013*.”.
- (2) Where, before the coming into operation of *subsection (1)*, a request had been made under section 317 of the Principal Act for a revised decision on the grounds that there had been any relevant change of circumstances and the request had not been determined, that request shall be determined in accordance with section 317 of the Principal Act as if that section had not been amended by *subsection (1)*.

Amendment of section 324 of Principal Act

5. (1) Section 324 (amended by section 18 of the Social Welfare and Pensions Act 2008) of the Principal Act is amended—
- (a) by substituting the following subsection for subsection (1):
- “(1) A designated person may at any time—
- (a) revise a determination of a designated person in relation to entitlement to supplementary welfare allowance—
- (i) where it appears to him or her that the determination was erroneous—
- (I) in the light of new evidence or new facts which have been brought to his or her notice since the date on which the determination was made, or
- (II) by reason of some mistake having been made in relation to the law or the facts,
- or
- (ii) where—
- (I) the effect of the determination was to entitle a person to supplementary welfare allowance, and
- (II) it appears to the designated person that there has been any relevant change of circumstances since that determination was made,
- or
- (b) revise the decision of an appeals officer where—
- (i) the effect of the decision of the appeals officer was to entitle a person to supplementary welfare allowance, and
- (ii) it appears to the designated person that there has been any relevant change of circumstances which has come to notice since that decision was given,

and the provisions of this Part as to appeals apply to a revised determination or a revised decision under this subsection, as the case may be, in the same manner as they apply to an original determination of a designated person.”,

and

(b) by inserting the following subsection after subsection (2):

“(3) In subsections (1)(a)(ii)(II) and (1)(b)(ii), the reference to any relevant change of circumstances means any relevant change of circumstances that occurred before, or occurs on or after, the coming into operation of the *Social Welfare and Pensions (No. 2) Act 2013*.”.

(2) Where, before the coming into operation of *subsection (1)*, a request had been made under section 324 of the Principal Act for a revised decision or a revised determination on the grounds that there had been any relevant change of circumstances and the request had not been determined, that request shall be determined in accordance with section 324 of the Principal Act as if that section had not been amended by *subsection (1)*.

Amendment of Schedule 3 to Principal Act

6. Schedule 3 to the Principal Act is amended in the manner specified in the *Schedule*.

PART 3

AMENDMENTS TO PENSIONS ACT 1990

Definition

7. In this Part “Act of 1990” means the Pensions Act 1990.

Amendment of section 41 of Act of 1990

8. Section 41(2) of the Act of 1990 is amended in paragraph (b) by inserting “(1AA), (1AB),” after “subsections (1), (1A),”.

Amendment of section 48 of Act of 1990

9. Section 48 of the Act of 1990 is amended—

(a) by inserting the following subsections after subsection (1A):

“(1AA) Notwithstanding subsections (1) and (1A), in applying the resources of a relevant scheme, other than a relevant scheme referred to in subsection (1AB), that is wound up after the passing of the *Social Welfare and Pensions (No. 2) Act 2013*, the trustees shall discharge the liabilities of the relevant scheme for the following benefits in the following order:

- (a) firstly—
- (i) all additional benefits secured or granted by way of additional voluntary contributions or a transfer of rights from another scheme to which paragraph 2 of the Third Schedule relates to the extent that the rights to which the transfer relates were originally secured or granted by way of additional voluntary contributions, and
 - (ii) benefits, the rate or amount of which is directly determined by the accumulated value of the contributions paid by or in respect of a member, or a transfer of rights from another scheme to the extent that the rate or amount of the rights to which the transfer relates is directly determined by the accumulated value of the contributions paid by or in respect of the member;
- (b) secondly, in respect of the benefits (not including post-retirement increases in such benefits) specified in paragraph 1 of the Third Schedule to or in respect of those persons who, at the date of the winding up of the scheme, were within the categories referred to in that paragraph, the portion specified in subsection (1AC), to the extent that those benefits have not already been discharged;
- (c) thirdly, 50 per cent of the benefits (not including post-retirement increases in such benefits) specified in paragraphs 2, 3 and 4 of the Third Schedule to or in respect of those members of the scheme who, at the date of the winding up of the scheme, were within the categories referred to in those paragraphs, to the extent that those benefits have not already been discharged;
- (d) fourthly, the benefits (not including post-retirement increases in such benefits) specified in paragraph 1 of the Third Schedule to or in respect of those persons who, at the date of the winding up of the scheme, were within the categories referred to in that paragraph, to the extent that those benefits have not already been discharged;
- (e) fifthly, the benefits (not including post-retirement increases in such benefits) specified in paragraphs 2, 3 and 4 of the Third Schedule to or in respect of those members of the scheme who, at the date of the winding up of the scheme, were within the categories referred to in those paragraphs, to the extent that those benefits have not already been discharged; and
- (f) sixthly, the benefits specified in paragraphs 1, 2, 3 and 4 of the Third Schedule to or in respect of those persons and members of the scheme who, at the date of the winding up of the scheme, were within any of the categories referred to in any of those paragraphs, to the extent that those benefits have not already been discharged,
- before discharging the liabilities of the scheme for other benefits.

(1AB) Notwithstanding subsections (1) and (1A), in applying the resources of a relevant scheme that is wound up after the passing of the *Social Welfare and Pensions (No. 2) Act 2013* and at the date of the winding up the employer participating in the relevant scheme is, or where more than one employer participates in such scheme, all of the employers participating in the scheme are, insolvent for the purposes of the Act of 1984, the trustees shall discharge the liabilities of the relevant scheme for the following benefits in the following order:

(a) firstly—

(i) all additional benefits secured or granted by way of additional voluntary contributions or a transfer of rights from another scheme to which paragraph 2 of the Third Schedule relates to the extent that the rights to which the transfer relates were originally secured or granted by way of additional voluntary contributions, and

(ii) benefits, the rate or amount of which is directly determined by the accumulated value of the contributions paid by or in respect of a member, or a transfer of rights from another scheme to the extent that the rate or amount of the rights to which the transfer relates is directly determined by the accumulated value of the contributions paid by or in respect of the member;

(b) secondly, 50 per cent of the benefits specified in paragraph 1 of the Third Schedule to or in respect of those persons who, at the date of the winding up of the scheme, were within the categories referred to in that paragraph, to the extent that those benefits have not already been discharged;

(c) thirdly, 50 per cent of the benefits specified in paragraphs 2, 3 and 4 of the Third Schedule to or in respect of those members of the scheme who, at the date of the winding up of the scheme, were within the categories referred to in those paragraphs, to the extent that those benefits have not already been discharged;

(d) fourthly, in respect of the benefits (not including post-retirement increases in such benefits) specified in paragraph 1 of the Third Schedule to or in respect of those persons who, at the date of the winding up of the scheme, were within the categories referred to in that paragraph—

(i) the annual amount, or

(ii) €12,000,

whichever is the lesser, to the extent that those benefits have not already been discharged;

(e) fifthly, the benefits (not including post-retirement increases in such benefits) specified in paragraph 1 of the Third Schedule to or in

respect of those persons who, at the date of the winding up of the scheme, were within the categories referred to in that paragraph, to the extent that those benefits have not already been discharged;

- (f) sixthly, the benefits (not including post-retirement increases in such benefits) specified in paragraphs 2, 3 and 4 of the Third Schedule to or in respect of those members of the scheme who, at the date of the winding up of the scheme, were within the categories referred to in those paragraphs, to the extent that those benefits have not already been discharged; and
- (g) seventhly, the benefits specified in paragraphs 1, 2, 3 and 4 of the Third Schedule to or in respect of those persons and members of the scheme who, at the date of the winding up of the scheme, were within any of the categories referred to in any of those paragraphs, to the extent that those benefits have not already been discharged,

before discharging the liabilities of the scheme for other benefits.

(1AC) For the purposes of paragraph (b) of subsection (1AA), the portion of the benefits shall be—

- (a) where the annual amount is €12,000 or less—
 - (i) the annual amount, or
 - (ii) €12,000,whichever is the lesser, or
- (b) where the annual amount is greater than €12,000 and is less than €60,000—
 - (i) €12,000, or
 - (ii) 90 per cent of the annual amount,whichever is the greater, or
- (c) where the annual amount is €60,000 or more—
 - (i) €54,000, or
 - (ii) 80 per cent of the annual amount,whichever is the greater.”,

(b) by inserting the following subsections after subsection (1B):

“(1C) The liabilities of the relevant scheme in respect of the benefits referred to in—

- (a) each of the paragraphs (a) to (f) of subsection (1AA) shall rank equally between each other and shall be paid in full unless the resources of the relevant scheme are insufficient to meet those liabilities, in which case they shall abate in equal proportions as

between each other, and

- (b) each of the paragraphs (a) to (g) of subsection (1AB) shall rank equally between each other and shall be paid in full unless the resources of the relevant scheme are insufficient to meet those liabilities, in which case they shall abate in equal proportions as between each other.

(1D) Where in the discharge of the liabilities of a relevant scheme under subsection (1AB), the resources of the relevant scheme are not sufficient to discharge, in whole or in part, the liabilities of the scheme in respect of the benefits referred to in paragraphs (b), (c) and (d) of subsection (1AB), or any of those benefits referred to in any of those paragraphs, the Minister for Finance shall, in accordance with section 48A, pay the amount certified under section 48A that is required to provide for the discharge of those liabilities in respect of those benefits in accordance with those paragraphs.”

- (c) in subsection (2), by substituting “subsection (1)(b), (1A), (1AA) or (1AB) applies” for “subsection (1)(b) or (1A) applies”,
- (d) in subsection (3), by substituting “subsections (1), (1A), (1AA), (1AB) and (2)” for “subsections (1) and (2)”,
- (e) in subsection (3A), by substituting “in subsections (1)(b), (1A), (1AA) and (1AB)” for “in subparagraphs (i), (ii) and (iii) of subsection (1)(b) and paragraphs (a), (b), (c) and (d) of subsection (1A)”,
- (f) in subsection (3B)—
- (i) by substituting “in subsections (1)(b), (1A), (1AA) and (1AB)” for “in subparagraphs (i), (ii) and (iii) of subsection (1)(b) and paragraphs (a), (b), (c) and (d) of subsection (1A)”, and
- (ii) by substituting “in subsections (1)(b)(ii), (1A)(b), (1AA)(b), (1AA)(d), (1AB)(b), (1AB)(d) and (1AB)(e)” for “in subparagraph (ii) of subsection (1) (b) and paragraph (b) of subsection (1A)”,

and

- (g) by inserting the following subsections after subsection (6):

“(7) In this section—

- (a) references to a post-retirement increase shall not include a post-retirement increase which became payable before the date of the winding up, and
- (b) references to an employer being insolvent for the purposes of the Act of 1984 shall be construed in accordance with that Act.

(8) In this section—

‘Act of 1984’ means the Protection of Employees (Employers’

Insolvency) Act 1984;

‘annual amount’, in relation to benefits, means the benefits payable to or in respect of a person in the form of an annual pension expressed as an annual amount.”.

Insertion into Act of 1990 of new section 48A

10. The Act of 1990 is amended by inserting the following new section after section 48:

“Payment of certain amounts by Minister for Finance where resources of relevant scheme are not sufficient to discharge liabilities in respect of benefits referred to in section 48(1D)

48A. (1) Where the resources of a relevant scheme referred to in section 48(1D) are not sufficient to discharge the liabilities, referred to in section 48(1D), of that scheme in respect of the benefits referred to in section 48(1D)—

- (a) the trustees of that scheme shall direct the actuary appointed to that scheme to prepare a statement of the difference between those liabilities in respect of the benefits referred to in section 48(1D) and the resources of that scheme that are available to discharge those liabilities in respect of those benefits, and
- (b) the statement referred to in paragraph (a) shall—
 - (i) include a statement of the amount required to discharge the liabilities in respect of the benefits referred to in that paragraph (in this section referred to as the ‘relevant amount’), and
 - (ii) include a statement by the actuary appointed to the relevant scheme that the relevant amount is the amount required for the discharge of the liabilities of that relevant scheme in respect of the benefits referred to in section 48(1D).

(2) The trustees referred to in subsection (1) shall—

- (a) apply to the Board to certify the relevant amount concerned, and
- (b) submit a copy of the statement referred to in subsection (1) with that application.

(3) Where the Board is satisfied that—

- (a) the statement referred to in subsection (1) has been prepared in accordance with guidelines and guidance notes prescribed in regulations made by the Minister under subsection (11), and
- (b) the relevant amount has been calculated in accordance with those guidelines and guidance notes,

the Board shall certify the relevant amount as being the amount required for the discharge of the liabilities of the relevant scheme

concerned in respect of the benefits referred to in section 48(1D) and shall, when certifying the relevant amount, have regard to the guidelines made by the Minister under subsection (10)(b).

- (4) Where the Board has certified a relevant amount under subsection (3) (in this section referred to as the 'certified amount'), the trustees shall—
 - (a) apply to the Minister to request the payment by the Minister for Finance of an amount equal to the certified amount for the purpose of the discharge by the trustees of the liabilities of the relevant scheme in respect of the benefits referred to in section 48(1D), and
 - (b) include in such application the statement referred to in subsection (1).
- (5) Where, in respect of an application under subsection (4), the Minister is satisfied that the certified amount has been certified in accordance with subsection (3), the Minister shall request the Minister for Finance to pay out of the Central Fund to the trustees of the relevant scheme concerned, an amount equal to the certified amount for the purpose of the discharge, by the trustees of that relevant scheme, of the liabilities of that scheme in respect of the benefits referred to in section 48(1D).
- (6) The Minister for Finance shall, in consultation with the Minister for Public Expenditure and Reform, approve the request made under subsection (5).
- (7) Where a request has been approved under subsection (6), the Minister for Finance shall pay out of the Central Fund to the trustees of the relevant scheme concerned an amount equal to the certified amount for the purpose of the discharge, by the trustees of that scheme, of the liabilities of that scheme in respect of the benefits referred to in section 48(1D).
- (8) Where the Minister for Finance pays an amount to the trustees of a relevant scheme under subsection (7), the trustees of that scheme shall use that amount for the purpose of discharging the liabilities of the relevant scheme for the benefits referred to in section 48(1D).
- (9) The amount referred to in subsection (7) that is required by the Minister for Finance for the making of a payment under that subsection shall be paid out of the Central Fund or the growing product thereof.
- (10) The Minister shall—
 - (a) make, in consultation with the Board, guidelines in respect of the preparation of the statement referred to in subsection (1) and an application under subsection (2), and
 - (b) make guidelines in respect of the certification by the Board of a

relevant amount under subsection (3).

- (11) The Minister may make regulations requiring the trustees of a relevant scheme to comply with—
 - (a) guidelines or guidance notes issued by the Board under section 10, and
 - (b) guidelines made by the Minister under subsection (10)(a),
in respect of the preparation of the statement referred to in subsection (1) and an application by the trustees under subsection (2).
- (12) The Minister shall, 12 months after the passing of the *Social Welfare and Pensions (No. 2) Act 2013* and on each anniversary of such passing, prepare a report on the applications made under subsection (4), the requests made by the Minister to the Minister for Finance under subsection (5) and the amounts paid out of the Central Fund under subsection (7) during the preceding 12 months and shall, as soon as practicable, after the preparation of the report, cause a copy of the report to be laid before each House of the Oireachtas.”

Amendment of section 50 of Act of 1990

11. Section 50 of the Act of 1990 is amended—

(a) by inserting the following subsections after subsection (1A):

“(1B) The Board may, by notice in writing, following an application by the trustees or otherwise, direct the trustees of a relevant scheme (other than a regulatory own funds scheme) to take such measures as may be specified by the Board in the notice or, if no measures are specified in the notice, such measures as may be necessary to reduce, in accordance with subsection (1C) and subject to subsection (1D), the benefits payable from the scheme to or in respect of persons receiving benefits under the scheme or persons who have reached normal pensionable age, where—

- (a) the trustees of the scheme fail to submit an actuarial funding certificate within the period specified in section 43,
- (b) the actuarial funding certificate certifies that the scheme does not satisfy the funding standard and the trustees of the scheme have not submitted a funding proposal in accordance with section 49,
- (c) the actuarial funding certificate certifies that the scheme does not satisfy the funding standard and the trustees of the scheme have submitted a funding proposal in accordance with section 49,
- (d) the Board consents to the amendment of a scheme in accordance with section 50A,
- (e) the trustees of the scheme fail to submit a funding standard reserve

certificate within the period specified in section 43,

- (f) the funding standard reserve certificate certifies that the scheme does not satisfy the funding standard reserve and the trustees of the scheme have not submitted a funding proposal in accordance with section 49, or
 - (g) the funding standard reserve certificate certifies that the scheme does not satisfy the funding standard reserve and the trustees of the scheme have submitted a funding proposal in accordance with section 49.
- (1C) A reduction in the benefits referred to in subsection (1B) shall, subject to subsection (1D), be made as follows:
- (a) where the annual amount is €12,000 or less, no reduction shall be made from such annual amount;
 - (b) where the annual amount is greater than €12,000 and is less than €60,000, the reduction in such annual amount shall not exceed 10 per cent;
 - (c) where the annual amount is €60,000 or more, the reduction in such annual amount shall not exceed 20 per cent.

(1D) Where—

- (a) the reduction referred to in subsection (1C) would result in the annual amount being reduced to less than €12,000, that reduction shall operate to reduce such annual amount to €12,000, and
 - (b) the annual amount is €60,000 or more and the reduction referred to in subsection (1C) would result in such annual amount being reduced to less than €54,000, that reduction shall operate to reduce such annual amount to €54,000.”
- (b) in subsection (2), by substituting “, (1A) or (1B)” for “or (1A)”,
 - (c) in subsection (2A)—
 - (i) by substituting “, (1A) or (1B)” for “or (1A)”, and
 - (ii) in paragraph (b), by substituting “, paragraph (c) or (g) of subsection (1A) or paragraph (c) or (g) of subsection (1B)” for “or paragraph (c) or (g) of subsection (1A)”,
 - (d) in subsection (3)—
 - (i) by substituting “, (1A) or (1B)” for “or (1A)”,
 - (ii) in paragraph (a)(i), by inserting “or (1B)” after “subsection (1A)”, and
 - (iii) in paragraph (b)(iii)(II), by substituting “, paragraph (c) or (g) of subsection (1A) or paragraph (c) or (g) of subsection (1B)” for “or paragraph (c) or (g) of subsection (1A)”,

- (e) in subsection (5), by substituting “, (1A) or (1B)” for “or (1A)”,
- (f) in subsection (6), by substituting “, (1A) or (1B)” for “or (1A)”,
- (g) in subsection (7), by substituting “, (1A) or (1B)” for “or (1A)”,
- (h) in subsection (8), by substituting “, (1A) or (1B)” for “or (1A)”, and
- (i) by inserting the following subsection after subsection (8):

“(9) In this section, ‘annual amount’ has the meaning assigned to it by section 48(8).”.

Amendment of section 50B of Act of 1990

12. Section 50B of the Act of 1990 is amended—

- (a) in subsection (1)(e), by substituting “subsection (1), (1A) or (1B)” for “subsection (1) or (1A)”,
- (b) in subsection (7), by substituting “subsection (1), (1A) or (1B)” for “subsection (1) or (1A)”, and
- (c) in subsection (8), by substituting “subsection (1), (1A) or (1B)” for “subsection (1) or (1A)”.

Amendment of section 50C of Act of 1990

13. Section 50C(1) of the Act of 1990 is amended in paragraph (a) by substituting “subsection (1), (1A) or (1B)” for “subsection (1) or (1A)”.

Amendment of section 59B of Act of 1990

14. Section 59B of the Act of 1990 is amended—

- (a) in subsection (1), by substituting “subsections (2) and (2A)” for “subsection (2)”, and
- (b) by inserting the following subsection after subsection (2):

“(2A) Subsection (1) shall not apply in relation to a scheme where a direction has been made under section 50(1B).”.

SCHEDULE

Section 6

AMENDMENT OF SCHEDULE 3 TO PRINCIPAL ACT

Item Number	Provision Amended	Amendment
1.	Table 2	In Reference No.1, substitute “7 or 8;” for “7, 8 or 8A;”.
2.	Table 2	Delete Reference No.18A.