

Better Regulation

Consolidated version of the Pensions Act 1990 (No. 25)

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Please Note: References in this Act, Pensions Act 1990 (No. 25), or in any other enactment to the Pensions Board shall, on and after the commencement of section 26 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013, be construed as references to the Pensions Authority. Commencement Order - (SI 103/2014 - The Social Welfare and Pensions (Miscellaneous Provisions) Act 2013 (Sections 22(b), 26, 27, 28, 29 and 34) (Commencement) Order 2014)

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Pensions Act, 1990 (No. 25)

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Introductory Text

Number 25 of 1990

AN ACT TO REGULATE OCCUPATIONAL PENSION SCHEMES AND TO PROVIDE FOR EQUAL TREATMENT OF MEN AND WOMEN UNDER OCCUPATIONAL BENEFIT SCHEMES, FOR THOSE PURPOSES TO PROVIDE FOR THE ESTABLISHMENT OF A BODY

TO BE KNOWN AS AN BORD PINSEAN - THE PENSIONS BOARD) TO SUPERVISE SUCH SCHEMES AND THEIR OPERATION, TO DEFINE THE FUNCTIONS OF THAT BODY AND TO PROVIDE FOR CONNECTED MATTERS.

[24th July, 1990]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:


Acts Referred to

Companies Acts, 1963 to 1986
European Assembly Elections Act, 1977, No. 30
European Assembly Elections Act, 1984, No. 6
Finance Act, 1972, No. 19
Health Acts, 1970 to 1987
Industrial Relations Act, 1946, No. 26
Insurance Act, 1989, No. 3
Local Government Act, 1941, No. 23
Maternity (Protection of Employees) Act, 1981, No. 2
Perpetual Funds (Registration) Act, 1933, No. 22
Registration of Title Act, 1964, No. 16
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1. Short title and commencement.

 In force

- (1) This Act may be cited as the Pensions Act, 1990.
- (2) This Act shall come into operation on such day or days as may be appointed by order or orders of the Minister, either generally or with reference to a particular purpose or provision, and different days may be so appointed for different purposes and different provisions of this Act.

2. Interpretation.

✓ In force

(1) In this Act, unless the context otherwise requires -

"accumulated value" in relation to contributions, means the amount which the trustees determine to be equal to -

- (a) the realisable value of the portion of the resources of the scheme that, in accordance with the rules of the scheme, represents those contributions, less
- (b) the amount of so much of the expenses of the scheme as, under the rules of the scheme, are to be discharged out of that portion;

"actuarial funding certificate" has the meaning assigned to it by section 42;

"actuarial value" means the equivalent cash value of a benefit (including, where appropriate, provision for any revaluation of such benefit) calculated by reference to appropriate financial assumptions and making due allowance for the probability of survival to normal pensionable age and thereafter in accordance with normal life expectancy on the assumption that the member of a scheme, at the effective date of calculation, is in a normal state of health having regard to his age;

"actuary", in relation to a scheme or regulatory own funds trust RAC, means a person appointed in pursuance of this Act as actuary, for the purposes of this Act, of the scheme or regulatory own funds trust RAC;

"additional voluntary contributions" means such contributions (if any) as are paid on a voluntary basis by a member of a scheme and are designed to fully provide additional benefits;

"administrator" has the meaning assigned to it by section 13(1) of the Finance Act, 1972;

"auditor", in relation to a scheme, trust RAC or the business of a PRSA provider, means a person appointed in pursuance of this Act to act as auditor, for the purpose of this Act, of the scheme, trust RAC or the business of a PRSA provider, as the case may be;

"authorised person", means a person authorised as an authorised person under section 18;

"benefits", in relation to a scheme, means, other than in Part VII, either or both of the following, that is to say -

- (a) benefit for the member of a scheme at normal pensionable age or in respect of earlier or later retirement, or on leaving the relevant employment, and
- (b) benefit for the member's widow, widower, or dependants or others, on the death of the member;

"the Board" means the body established by section 9;

"chairman of the Board" shall be construed in accordance with paragraph 3 of the First Schedule;

"the chief executive" means the chief officer of the Board appointed under section 15;

"competent authority" means -

- (a) in relation to the State, the Pensions Authority, and
- (b) in relation to another Member State, the competent authority designated by that Member State to perform the functions of the competent authority under the Directive of 2016 for that Member State;

"contract of employment" other than in Part VII, means -

- (a) a contract of service or apprenticeship, or
- (b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act, 1971, and is acting in the course of that business, to do or perform personally any work or services for a third person (whether or not the third person is party to the contract),

whether the contract is expressed or implied or if express, whether it is oral or in writing;

"credit institution" means a credit institution within the meaning of Article 4.1 of Directive 2006/48/EC [OJ L 177, 30.06.2006, p. 1] of the European Parliament and the Council relating to the taking up and pursuit of the business of credit institutions which is authorised in accordance with and for the purposes of that Directive;

"defined benefit scheme" means, subject to section 27, a scheme which is not a defined contribution scheme;

"defined contribution scheme" means, subject to section 27, a scheme which, under its rules, provides long service benefit the rate or amount of which, for each member who qualifies for long service benefit, is in total directly determined by the accumulated value of the contributions paid by or in respect of the member and includes a scheme the contributions under which are used, directly or indirectly, to provide -

- (a) benefits other than long service benefit, and
- (b) long service benefit the rate or amount of which is in total directly determined by the accumulated value of the part of the contributions aforesaid that is used for the provision of the long service benefit,

but, subject to section 27, excludes any scheme which, under the rules of the scheme, guarantees or specifies a given investment performance;

"Directive" means Directive 2003/41/EC [OJ L 235, 23.09.2003, p. 10] of the European Parliament and of the Council as amended by Directive 2009/138/EC [OJ L 335, 17.12.2009, p. 1] of the European Parliament and of the Council and Directive 2010/78/EU [OJ L 331, 15.12.2010, p. 120] of the European Parliament and of the Council;

"Directive of 2016" means Directive (EU) 2016/2341 [OJ No. L 354, 23.12.2016, p.37] of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast);

"early retirement rule" means a provision of a scheme under which a member may retire with entitlement to an immediate benefit where either-

- (i) the member's right is subject to the consent of some person or the satisfaction of some condition not relating only to age or period of service in relevant employment or both, or
- (ii) the calculation of the member's immediate retirement benefit involves or may involve an actuarial reduction which exceeds 0.25 per cent., or such other percentage as may be prescribed, multiplied by the number of completed months by which the member's age at retirement is less than a stated age;

"effective date of the actuarial funding certificate" has the meaning assigned to it by section 42;

"effective date of the funding standard reserve certificate" has the meaning assigned to it by section 42;

"EIOPA" means the European Insurance and Occupational Pensions Authority established by Regulation (EU) No. 1094/2010 of the European Parliament and of the Council [OJ No. L 331, 15.12.2010, p.48];

"employee" means a person of any age who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer; and for the purposes of this Act, a person holding office under, or in the service of, the State (including a civil servant, within the meaning of the Civil Service Regulation Act, 1956) shall be deemed to be an employee employed by the State or Government, as the case may be, and an officer or servant of a local authority for the purposes of the Local Government Act, 1941, or of a harbour authority, a health board or a member of staff of an education and training board shall be deemed to be an employee employed by the authority or board, as the case may be;

"employer" in relation to an employee, means (except in sections 49 and 50B in Part VII and subject to section 154) the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment subject to the qualification that the person who under a contract of employment referred to in paragraph (b) of the definition of "contract of employment" is liable to pay the wages of the individual concerned in respect of the work or service concerned shall be deemed to be the individual's employer;

"enactment" has the same meaning as it has in the Interpretation Act 2005;

"external member" in relation to a scheme, means any person who, having been admitted to membership under the rules of the scheme, remains entitled to any benefit under the scheme in respect of a period of service whilst employed outside the State;

"External Report" shall be construed in accordance with section 26N;

"External Report reviewer" shall be construed in accordance with section 26O;

"external scheme" means a scheme established under the law of a country other than the State;

"the establishment day" means the day appointed by the Minister under section 8;

"functions" includes powers and duties;

"funded scheme" means a scheme under which some or all of its resources are set aside in advance to provide benefits in a manner which is independent of the employer's business activities;

"funding standard" shall be construed in accordance with section 44;

"funding standard liabilities" in relation to a relevant scheme, means on any date the aggregate of the liabilities and estimated expenses referred to in section 44(1), calculated as if the actuary had prepared an actuarial funding certificate having that date as the effective date and as if the percentage referred to in section 44(1)(a)(v) was 100 per cent but, for the purposes of section 44(2), shall exclude liabilities for benefits which relate to contributions or a transfer of rights from another scheme to the extent that the benefits provided are directly determined by the accumulated value of those contributions or the amount transferred and a given investment performance is not guaranteed or specified in relation to those contributions or the amount transferred;

"funding standard reserve" in relation to a relevant scheme, means on any date an amount calculated in accordance with section 44(2) in relation to the scheme on that date;

"funding standard reserve certificate" has the meaning assigned to it by section 42;

"immediate retirement benefit" means a benefit payable to a member under the rules of a scheme immediately on retirement from relevant employment but does not include a refund of the member's contributions with or without interest or a transfer of an amount of money from the scheme -

- (i) to another scheme, or
- (ii) for application under a policy or contract of insurance approved by the Revenue Commissioners under Chapter II of Part I of the Finance Act, 1972;

"key function holder" has the meaning assigned to it by section 64AA;

"long service benefit" means the benefits which will be payable under a scheme in accordance with an obligation to or in respect of a member of a scheme on the assumption that he remains in relevant employment until such time as he attains normal pensionable age;

"member", means-

- (a) in relation to a scheme, subject to sections 62 and 154, any person who, having been admitted to membership under the rules of the scheme, remains entitled to any benefit under the scheme in respect of a period of service whilst employed within the State,
- (b) in relation to a trust RAC, any person whose occupational activities entitle or will entitle the person to retirement benefits (within the meaning of Article 6 of the Directive) in accordance with the rules of the trust RAC;

"Member State" means -

- (a) a Member State of the European Union, other than the State, and
- (b) not being such a Member State, a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993;

"the Minister" means the Minister for Social Welfare;

"multi-employer scheme" means a scheme which applies to persons employed by more than one employer;

"normal pensionable age" means the later of -

- (a) the earliest age at which a member of a scheme is entitled under the rules of the scheme (other than under any early retirement rule) to receive an immediate retirement benefit, or
- (b) the age of 60 years:

Provided that if a member of a scheme is required to retire from relevant employment at an age below 60 years with entitlement under the rules of the scheme to receive an immediate retirement benefit, normal pensionable age means the age at which the member is required to retire from relevant employment;

"occupational pension scheme" means any scheme or arrangement other than an overseas pension scheme within the meaning of section 770(1) of the Taxes Consolidation Act 1997 -

- (a) which is comprised in one or more instruments or agreements, and
- (b) subject to section 154, which provides or is capable of providing in relation to employees in any description of employment within the State, benefits, and
- (c)
 - (i) which has been approved of by the Revenue Commissioners for the purpose of Chapter 1 of Part 30 of the Taxes Consolidation Act 1997, or
 - (ii) the application for approval of which under Chapter 1 of Part 30 of the Taxes Consolidation Act 1997 is being considered, or
 - (iii) which is a statutory scheme to which section 776 of the Taxes Consolidation Act 1997 applies, or
 - (iv) which is a scheme to which section 790B of the Taxes Consolidation Act 1997 applies, or
 - (v) which is a scheme, other than a scheme specified in subparagraph (i), (ii) or (iii), the benefits of which are paid in whole or in part out of moneys provided from the Central Fund or moneys provided by the Oireachtas, or
 - (vi) which has been approved by the Revenue Commissioners for the purpose of one or more of the following -
 - (I) section 32 of the Finance Act 1921, or
 - (II) section 34 of the Finance Act 1958, or
 - (III) section 222 or 229 of the Income Tax Act 1967;

"one-member arrangement" means -

- (a) a scheme which is established solely for one person and for that person permanently to be the sole member and that member has discretion in respect of the manner in which the resources of that scheme are invested,
- (b) a trust RAC which is established solely for one person and for that person permanently to be the sole member and that member has discretion in respect of the manner in which the resources of that trust RAC are invested, or
- (c) a scheme referred to in paragraph (a) or a trust RAC referred to in paragraph (b) which is the subject of a pension adjustment order and which, pursuant to that order, includes, in addition to the member referred to in paragraph (a), or as the case may be paragraph (b), a person referred to in that order;

"outsourcing arrangement" means an arrangement of any form between a registered administrator and another person for the performance by that other person of a process, service or activity which would otherwise be undertaken by the registered administrator itself, and "outsourced" shall, other than in Parts VIB and IIA, be construed accordingly;

"pension adjustment order" means an order under section 12(2) or (3) of the Family Law Act 1995 or section 17(2) or (3) of the Family Law (Divorce) Act 1996;

"Pensions Council" means the body established by section 26B;

"pensioneer trustee" means a person who is for the time being approved by the Revenue Commissioners to act as such in accordance with requirements imposed under Part 30 of the Taxes Consolidation Act 1997;

"prescribed" means prescribed by regulations made by the Minister under this Act;

"preserved benefit" has the meaning assigned to it by section 28(2);

"professional trustee" means a person who -

- (a) holds himself out as having special knowledge, skills and expertise with respect to pension trusts, and
- (b) in the course of a profession or business provides trustee services to schemes or trust RACs;

"prospective member" means any person who is already in relevant employment and who, by virtue of his contract of service or the rules of the scheme is or will be eligible to join the scheme or will in any event join the scheme if his service in relevant employment continues and the relevant terms of his contract of employment or, as the case may be, the relevant terms of the rules of the scheme remain unaltered during that time;

"prudential supervision" shall be construed in accordance with Part IIA;

"PRSA" has the meaning assigned to it by section 91;

"PRSA provider" has the meaning assigned to it by section 91;

"reckonable service" means service in the relevant employment during membership of the scheme but does not include service as a member of the scheme where either -

- (a) the only benefit under the scheme in respect of such service is in respect of death prior to normal pensionable age, or
- (b) the member has been notified in writing by the trustees that such service does not entitle him to long service benefit;

"registered administrator" means a person registered with the Board as a registered administrator under Part VIA;

"regulations" means regulations made by the Minister under this Act;

"regulatory own funds certificate" has the meaning assigned to it by section 53J;

"regulatory own funds scheme" has the meaning assigned to it by section 53E;

"regulatory own funds trust RAC" has the meaning assigned to it by section 53E;

"relevant employment" means any employment (or any period treated as employment) to which a scheme applies;

"relevant scheme" means a scheme to which Part IV applies by virtue of section 41;

"resources", in relation to a scheme or trust RAC, means the funds out of which the benefits provided by the scheme or trust RAC are payable from time to time, including the proceeds of any policy of insurance taken out, or annuity contract entered into, for the purposes of the scheme or trust RAC;

"revaluation percentage" has the meaning assigned to it by section 33;

"rules", in relation to a scheme or trust RAC, means the provisions of a scheme or trust RAC, by whatever name they are called;

"scheme" other than in Part VII and section 121, means an occupational pension scheme;

"section" in relation to a sectionalised scheme, means -

- (a) one of the distinct classes referred to in the definition of the latter expression into which the persons to whom the scheme applies are divided, or
- (b) one of the distinct parts of the resources of the scheme referred to in the said definition which is to be applied in the manner referred to in the said definition,

or both, as the case may require;

"sectionalised scheme" means a multi-employer scheme under the rules of which -

- (a) the persons to whom the scheme applies are divided into distinct classes, and
- (b) with respect to each such class, save in accordance with such conditions as may be prescribed, a distinct part of the resources of the scheme -
 - (i) is required to be applied in the provision of benefits for and in respect of the persons in that class, and
 - (ii) cannot be applied in the provision of benefits for and in respect of the persons in any other class, other than a class with no members in reckonable service;

"SFD Regulation" means Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 [OJ L 317, 9.12.2019, p. 1] on sustainability-related disclosures in the financial services sector as amended by Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 [OJ L 198, 22.6.2020, p. 13];;

"small scheme" means a scheme with less than 100 members who are entitled to but are not receiving an immediate retirement benefit under the scheme;

"small trust RAC" means a trust RAC which has less than 100 members;

"small trust Retirement Annuity Contract" means a trust RAC which has less than 100 members;

"trust RAC" means a trust scheme within the meaning of section 784(4) of the Taxes Consolidation Act 1997 which has been approved by the Revenue Commissioners for the purposes of section 784(4) or 785(5) of that Act or the application for approval of which under either of those provisions is being considered;

"trust Retirement Annuity Contract" means a trust scheme within the meaning of section 784(4) of the Taxes Consolidation Act 1997 which has been approved by the Revenue Commissioners for the purposes of section 784(4) or 785(5) of that Act or the application for approval of which under either of those provisions is being considered;

"trustees", means -

- (a) in relation to a scheme established under a trust or to a trust RAC, the trustees of the scheme or trust RAC, and
- (b) in relation to a scheme established otherwise than under a trust (except in sections 54(2), 55(1A), 59, 59A, 59AA, 62, 63 and 64), the administrator of the scheme.

(2) In this Act -

- (a) a reference to a Part is to a Part of this Act unless it is indicated that a reference to a Part of a Schedule to this Act or of some other enactment is intended,
- (b) a reference to a section or a Schedule is a reference to a section of, or a Schedule to, this Act unless it is indicated that reference to some other enactment is intended,
- (c) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

(3) In this Act a reference to an enactment shall be construed as a reference to that enactment as amended or extended by any other enactment including this Act.

(4) A word or expression that is used in this Act and is also used in the Directive has, unless the contrary intention appears, the same meaning in this Act as it has in the Directive.

- (5) References in this Act to the provision of information by any person to the Board shall, unless the context otherwise requires, be construed as including references to the provision of the information by that person to the Board in such form as the Board may require, including by electronic means.
- (6) A reference to the Directive or a reference to any Article or sub-Article of that Directive shall be construed as a reference to the Directive of 2016 and shall be read in accordance with the correlation table in Annex II of that Directive (EU).
- (7) A word or expression that is used in this Act as amended by the European Union (Occupational Pension Schemes) Regulations 2021 has, unless the contrary intention appears, the same meaning in this Act as so amended, as it has in the Directive of 2016.
- (8) References in this Act to the provision of information by a trustee to a member or a beneficiary shall, unless otherwise specified in another Part or section of this Act, be construed as including references to the provision of the information to a member or a beneficiary by means of any electronic method.

3. Offences.

✓ In force

(1)

- (a) Where -
- (i) a trustee in his capacity as trustee,
 - (ii) an employer,
 - (iii) a PRSA provider,
 - (iv) an actuary or auditor of a scheme or a PRSA or an auditor of a trust RAC in his capacity as such actuary or auditor,
 - (v) a person who is required under regulations made under section 5A to carry out any of the duties imposed upon trustees by this Act or by any regulations thereunder, in his capacity as such a person,
 - (vi) a registered administrator, or
 - (vii) any other person,
- contravenes a provision of this Act or a regulation thereunder, he shall be guilty of an offence.
- (b) Where a person of whom a requirement is made by the Financial Services and Pensions Ombudsman under subsection (1) or (2) of section 137 fails to comply with that requirement, he shall be guilty of an offence.
- (c) In a prosecution for an offence under paragraph (a) it shall be a defence for the accused person to prove that the contravention to which the offence relates was attributable to:
- (i) a contravention by one or more other persons of a provision of this Act or a regulation thereunder and that he took such reasonable steps (if any) in the circumstances as were open to him to secure the compliance of the person or persons aforesaid with the provision concerned, or
 - (ii) a failure by an actuary, auditor or other person to prepare a document which the accused person had instructed the actuary, auditor or other person to prepare and that the accused person took such reasonable steps (if any) in the circumstances as were open to him to secure the preparation of the said document by the actuary, auditor or other person aforesaid.
- (ca) In a prosecution for an offence under paragraph (a) insofar as it relates to a contravention of a provision of Part VIB, it shall be a defence for a trustee of a scheme or trust RAC or a person who is, or was, a key function holder against whom the proceedings are brought to prove that he or she took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (d) The defence set out in paragraph (c) is not available to a registered administrator in respect of the failure by another person to perform any process, service, or activity outsourced to that person by the registered administrator.

(2) Where in any report, certificate or other document required for the purposes of any provision of this Act or regulations thereunder, a person makes a statement which is, to his knowledge, false or misleading in any material particular, he shall be guilty of an offence.

(2A) Where an employee is dismissed from an employment solely or mainly because, in good faith, the employee -

- (a) notified the Board of an alleged breach of this Act, other than of Part VII,
- (b) made to the Board a report under section 83 or a voluntary report of any matter concerning the state and conduct of a scheme, trust RAC or PRSA, other than a matter to which Part VII applies,
- (c) made a reference under section 38, 53, 58, 64A or 81G,
- (d) gave evidence in any proceedings under this Act, other than Part VII, or

- (e) gave notice to his employer of his intention to do anything referred to in paragraph (a), (b), (c) or (d),

the employer shall be guilty of an offence.

(2B)

- (a) On conviction of an employer for an offence under this section, the Court may, if it thinks fit and the dismissed employee is present or represented in court and consents -
- (i) order the re-instatement by the employer of the dismissed person in the position which that person held immediately before the dismissal on the terms and conditions on which that person was employed immediately before that dismissal, together with a term that the reinstatement shall be deemed to have commenced on the day of the dismissal,
 - (ii) order the re-engagement by the employer of the dismissed person either in the position which that person held immediately before the dismissal or in a different position which would be reasonably suitable for that person on such terms and conditions as are reasonable having regard to all the circumstances, or
 - (iii) impose on the employer, in addition to any fine imposed under subsection (3), a fine not exceeding the amount which, in the opinion of the Court, the dismissed person would have received from the employer concerned by way of remuneration if the dismissal had not occurred:
- Provided that that amount shall not exceed -
- (I) if the conviction was a summary conviction, an amount which together with the fine imposed under subsection (3) does not exceed €3,500,
 - (II) if the conviction was on indictment, an amount equal to 104 weeks' remuneration of the dismissed person.
- (b) The amount of a fine imposed under paragraph (a) shall be paid to the employee concerned.
- (c) Without prejudice to any right of appeal by any other person, the employee concerned may appeal against the amount of the fine under paragraph (a), either (as the case may be) to the High Court or to the judge of the Circuit Court in whose circuit the district court district (or any part thereof) of the judge of the District Court by whom the fine was imposed is situated, and the decision on such an appeal shall be final.
- (d) Proof of the payment by an employer of a fine imposed under paragraph (a) shall be a defence to any civil action brought against him or application made under any enactment by the employee concerned in respect of the remuneration referred to in subparagraph (iii) of that paragraph.

(3) Subject to subsection (3A), a person guilty of an offence under subsection (1), (2) or (2A) shall be liable -

- (a) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding one year, or to both, or
- (b) on conviction on indictment to a fine not exceeding €25,000 or imprisonment for a term not exceeding 2 years, or to both.

(3A) A person guilty of an offence under this Act consisting of a contravention of subsection (1) or (2) of section 58A or subsection (3) or (4) of section 121 shall be liable -

- (a) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding one year, or to both, or
- (b) on conviction on indictment to a fine not exceeding €25,000 or imprisonment for a term not exceeding 5 years, or to both.

(3B) A person who obstructs or impedes an External Report reviewer in the preparation of an External Report shall be guilty of an offence.

(4) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence

and shall be liable to be proceeded against and punished as if he were guilty of the first-mentioned offence.

- (5) Proceedings for a summary offence -
- (a) under any provision of this Act (other than subsection (1) (b)) may be brought and prosecuted by the Board,
 - (b) under subsection (1) (b) may be brought and prosecuted by the Financial Services and Pensions Ombudsman.
- (6) Notwithstanding the provisions of section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be commenced -
- (a) at any time within 2 years from the date on which the offence was committed, or
 - (b) at any time within 6 months from the date on which evidence sufficient in the opinion of the Board or Financial Services and Pensions Ombudsman, as the case may be, to justify initiating the proceedings, comes to the Board's or Financial Services and Pensions Ombudsman's knowledge, not being later than 5 years from the date on which the offence concerned was committed.
- (7) A fine imposed under this section shall not be paid out of the resources of any scheme or trust RAC or out of the assets of any PRSA, as the case may be.

3A. Notice by Board of intention to prosecute.

✓ In force

- (1) Where the Board has reasonable grounds for believing that a person to whom section 3(1) or (4) or 18(5) applies has committed an offence to which this section applies and is liable to summary prosecution by the Board, the Board may give to the person a notice in writing in the prescribed form stating that -
- (a) the person is alleged to have committed that offence,
 - (b) the person may during a period of 21 days beginning on the date of the notice -
 - (i) remedy as far as practicable to the satisfaction of the Board any default that constitutes the offence, and
 - (ii) make to the Board a specified payment of a prescribed amount accompanied by the notice,
- and
- (c) a prosecution of the person to whom the notice is given in respect of the alleged offence will not be instituted during the period specified in the notice and, if the default is remedied to the satisfaction of the Board and the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.
- (1A) This section applies to an offence under -
- (a) section 3(1)(a) arising out of a contravention of any of the following provisions of this Act, namely sections 18(2)(c), 25, 26T, 34, 43, 47, 55(1), (3), (4) or (5), 56(1) or (2A), 58A(3), 59(1B), (1C) or (2)(a)(iii) or (iv), 59(1) (ca) or (1F), 59C, 60, 113(2) and 121(5),
 - (b) section 54(1) or (4), or
 - (c) regulations made under any of the provisions referred to in paragraphs (a) and (b) or regulations made under this Act relating to those provisions.
- (2) Where a notice is given under subsection (1) -
- (a) the person to whom it applies may, during the period specified in the notice, make to the Board the payment specified in the notice, accompanied by the notice,
 - (b) the Board may receive the payment and issue a receipt for it, and any payment so received shall not in any circumstances be recoverable by the person who made it, and
 - (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice and, if the default is remedied to the satisfaction of the Board and the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence shall be instituted.
- (3) In a prosecution for an offence to which this section applies, the onus of showing that a payment pursuant to a notice under this section has been made shall lie on the defendant.
- (4) All payments made to the Board under this section shall be paid into or disposed of for the benefit of the Exchequer in the manner that the Minister for Public Expenditure and Reform may direct.
- (5)
- (a) A notice under subsection (1) may be given to the person to whom it applies -
 - (i) by delivering it to the person, or
 - (ii) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been provided, at that address, or
 - (iii) by sending it by post in a prepaid letter addressed to the person at the address at which the person ordinarily resides or, in a case in which an address for service has been provided, to that address.
 - (b) Where a notice is to be given to a person who is the owner or occupier of land and the name of the person cannot be ascertained by reasonable inquiry, it may be addressed to the person by using the words 'the owner' or, where appropriate, 'the occupier'.

- (c) For the purposes of this section, a company within the meaning of the Companies Acts 1963 to 2005 shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.
- (6) Any amount prescribed for the purposes of subsection (1)(b)(ii) shall not in any case exceed the maximum fine which may be imposed on summary conviction for the offence concerned.
- (7) Payments made to the Board under this section shall not be paid out of the resources of any scheme or trust RAC or out of the assets of any PRSA, as the case may be.
- (8) This section does not apply to a registered administrator.

3B. Prosecutions.

✓ In force

- (1) Every document purporting to be a copy of, or extract from, any document kept by the Board and purporting to be certified by an officer of the Board authorised in that behalf by the Board, whose official position it shall not be necessary to prove, to be a true copy of, or extract from, that document shall, without proof of the signature of that officer, unless the contrary is proved, be admissible in evidence in all legal proceedings as of equal validity with the original document.
- (2) In any legal proceedings (including proceedings relating to an offence) a certificate signed by an officer of the Board authorised in that behalf, whose official position it shall not be necessary to prove, is, without proof of that officer's signature, admissible, unless the contrary is proved-
- (a) if it certifies that the officer has examined the relevant records and that it appears from those records that a specified notice was given or sent to a stated person at, or left at, the address and on the date stated therein, as evidence that the notice was given or sent to that person at, or left at, that address on that date,
 - (b) if it certifies that the officer has examined the relevant records and that it appears from those records that a specified notice was given or sent to a stated person, or left at the address and on the date stated therein, as evidence that the notice was received by that person at that address by a date 3 days after the date on which the document was given or sent to the person at, or left at, that address,
 - (c) if it certifies a document as a copy of the registration details of a scheme or trust RAC with the Board by the trustees of that scheme or trust RAC in accordance with section 60, as evidence of the registration,
 - (d) if it certifies that the officer has examined the relevant records and that it appears from those records that during a specified period a document or any other thing was not received from a specified person, as evidence that the person did not during that period provide that document or thing and that the document or thing was not received by the Board, or
 - (e) if it certifies a document to be a copy of an authorisation by the Board under section 16, authorising the delegation of functions to the chief executive or a member of staff of the Board, including but not limited to the function of instituting proceedings on behalf of the Board, as evidence that the functions are so delegated.
- (3) In this section-
- ‘officer of the Board’ means a member of the Board, the chief executive or member of staff of the Board;
- ‘notice’ means any request, notice or other document.

3C. Admissibility of certain documents in proceedings for an offence.

✓ In force


- (1) In proceedings for an offence under this Act consisting of a contravention of subsection (1) or (2) of section 58A or subsection (3) or (4) of section 121 -
- (a) a payroll document, or a document that purports to be a payroll document, shall be admissible as evidence of the matters specified in the document,
 - (b) a document (other than a payroll document) prepared or kept in the ordinary course of business, or that purports to have been prepared or kept in the ordinary course of business, by a person who had, or may reasonably be considered to have had, personal knowledge of the matters specified in the document shall be admissible as evidence of the matters specified in the document, and
 - (c) a document that purports to be a reproduction in legible form of a document to which paragraph (a) or (b) applies stored in non-legible form shall be admissible as evidence of the matters specified therein, if the court before which the proceedings have been brought is satisfied that it was reproduced in the course of the normal operation of the reproduction system concerned.
- (2) Subsection (1)(b) and subsection (1)(c) (in so far as it relates to a document to which subsection (1)(b) applies) shall not apply to a document -
- (a) containing information that is privileged from disclosure in proceedings for an offence,
 - (b) prepared for the purposes, or in contemplation, of -
 - (i) the investigation of any offence,
 - (ii) an investigation or inquiry carried out pursuant to or under any enactment,
 - (iii) any proceedings whether civil or criminal, or
 - (iv) proceedings of a disciplinary nature, or
 - (c) prepared after the alleged commission of the offence concerned.
- (3) Nothing in this section shall operate to render inadmissible in proceedings for an offence any document as evidence of any matter specified therein, that is so admissible by virtue of any rule of law or enactment other than this Act.
- (4) In this section
- 'business' includes any trade, profession or other occupation carried on -
- (a) for reward or otherwise, and
 - (b) either in the State or outside the State;
- 'payroll document' means a payslip, payroll ledger, book of account or other document prepared or kept by or on behalf of an employer in respect of one or more than one of his or her employees that contains a record of payments or deductions made by, or on behalf of, that employer in respect of the employee or employees concerned.

3D. Presumptions in proceedings for an offence.

✓ In force

- (1) In proceedings for an offence under this Act consisting of a contravention of subsection (1) or (2) of section 58A or subsection (3) or (4) of section 121, it shall be presumed, unless the contrary is shown, that a payroll document referred to in section 3C found on the premises of any employer relates to an employee of that employer.
- (2) Where a document is retrieved from an electronic storage and retrieval system, it shall be presumed, unless the contrary is shown, that the person who ordinarily uses that system is the author of the document.

4. Exchange of information.

 In force

- (1) Notwithstanding anything contained in any enactment -
 - (a) information held by the Board or the Financial Services and Pensions Ombudsman for the purposes of this Act may be transferred by the Board or the Financial Services and Pensions Ombudsman, as the case may be, to the Revenue Commissioners, and
 - (b) information held by the Revenue Commissioners for the purposes of Chapters 1, 2 and 2A of Part 30 of the Taxes Consolidation Act 1997, relating to occupational pension schemes, trust RACs and PRSAs may be transferred by the Revenue Commissioners to the Board or to the Financial Services and Pensions Ombudsman.
- (2) The Board and every other supervisory authority established in the State may exchange among themselves all information which is necessary to enable the Board and each such authority to perform effectively their respective functions of a supervisory nature.
- (3) The Board may disclose information relating to occupational pension schemes, trust Retirement Annuity Contracts and Personal Retirement Savings Accounts to a supervisory authority established outside the State for the purpose of enabling or assisting the performance by that authority of functions corresponding to those of the Board under this Act.

5. Regulations generally.

✓ In force

- (1) The Minister may make regulations -
 - (a) for any purpose in relation to which regulations are provided for by any of the provisions of this Act, and
 - (b) for prescribing any matter or thing referred to in this Act as prescribed or to be prescribed.
- (2) Except in so far as this Act otherwise provides, any power conferred thereby to make regulations may be exercised -
 - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case, and
 - (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases in relation to which the power is exercised or different provision for different cases or classes of case, or different provision as respects the same case or class of case for different purposes of this Act,
 - (iii) any such provision either unconditionally or subject to any specified condition.
- (2A) The power to make regulations under this section includes power to make provision by regulation to give effect to-
 - (a) any provision of the Treaties of the European Communities, or
 - (b) any act adopted by an institution of the European Communities which regulates any of the matters to which this Act applies.
- (3) Without prejudice to any specific provision of this Act, any regulations may contain such incidental or supplementary provisions as may appear to the Minister to be expedient for the purpose of the regulations.
- (3A) Without prejudice to any specific provision of this Act, any regulations may provide -
 - (a) for any of the provisions of this Act, or any of those regulations, to apply to the different sections of a sectionalised scheme as though each section were a separate scheme for any or all of the purposes of this Act, and
 - (b) if provision as aforesaid is made in relation to a provision of this Act, that the provision so applied shall have effect subject to specified modifications, being modifications the making of which the Minister considers necessary or expedient in consequence of the application of the provision in that manner and which, in every case, conform to the purposes, principles and spirit of this Act.
- (3B) For the avoidance of doubt, regulations referred to in subsection (3A) may provide for any or all of the provisions of this Act or any or all of those regulations, to apply both to the different sections of the scheme concerned as though each were a separate scheme and to the scheme as a whole.
- (4)
 - (a) The Minister may, with the consent of the Minister for Justice, make regulations specifying guidelines for the purposes of section 12 and the reference in subsection (1) of the said section 12 to any relevant guidelines for the time being in force under paragraph (c) or (cc) of section 10(1) shall be construed as a reference to any relevant guidelines specified as aforesaid and for the time being in force.
 - (b) Without prejudice to the generality of paragraph (a), guidelines specified by regulations under that paragraph may -
 - (i) make provision in relation to the manner in which a contingent benefit, a designated benefit, a residual benefit or a transfer amount payable under a scheme, the actuarial value referred to in subsection (10) of section 12 or the value and the amounts referred to in subsection (25) of section 12 should be

calculated and, in particular, but without prejudice to the generality of the foregoing, provide that, in making such a calculation, regard should be had to one or more of the following:

- (I) whether the scheme concerned is a defined contribution scheme or not,
 - (II) the amount of retirement benefit payable (or which, but for the making of the relevant order for the decree of judicial separation, would have been payable) under the scheme concerned to or in respect of the member spouse concerned,
 - (III) the period of reckonable service of the member spouse for the purposes of such retirement benefit,
 - (IV) the period concerned and the percentage concerned specified in the order concerned under subsection (2) of section 12 pursuant to paragraphs (i) and (ii) respectively, of that subsection,
 - (V) the value, the actuarial value or the accumulated value, as may be appropriate, of the whole or the appropriate part of such retirement benefit as aforesaid,
 - (VI) whether, at the date of the making of the relevant order under subsection (2) of section 12, the member spouse was an active member of the scheme concerned or was being paid retirement benefit, or was entitled to any other benefit payment of which is deferred, under the scheme concerned,
 - (VII) the amount of contingent benefit payable (or which, but for the making of the relevant order for the decree of judicial separation, would have been payable) under the scheme concerned on the death of the member spouse concerned,
 - (VIII) the percentage concerned specified in the order concerned under subsection (3) of section 12,
- (ii) specify the manner in which a transfer amount should be applied under section 12,
- (iii) specify the manner and the circumstances in which a contingent benefit, a designated benefit, a residual benefit or a transfer amount should be paid or applied pursuant to section 12 (including the period, and the manner of its ascertainment, during which such a payment should be made) and, in particular, but without prejudice to the generality of the foregoing, where -
- (I) the member spouse concerned retires upon or before or after attaining normal pensionable age,
 - (II) the member spouse dies before payment of the designated benefit has commenced,
 - (III) the member spouse dies after payment of the designated benefit has commenced,
 - (IV) the member spouse ceases to be an active member of the scheme concerned,
 - (V) the person in whose favour the relevant order under subsection (2) of section 12 is made dies before payment of the designated benefit has commenced,
 - (VI) the person in whose favour the order aforesaid is made dies after payment of the designated benefit has commenced,
 - (VII) the person in whose favour the said order is made ceases to be a dependent member of the family as defined in section 2 of the Family Law Act, 1995,
 - (VIII) in the circumstances specified in subsection (5) of section 12, a

spouse makes an application under that subsection,

- (IX) the trustees of the scheme concerned apply the transfer amount concerned under or in accordance with subsection (6) or (8) of section 12,

and

- (iv) make such other provision as may be necessary or expedient for the purposes of section 12 and for enabling it to have full effect.

- (c) In making regulations under paragraph (a), regard shall be had to any relevant principles, purposes or policies of this Act, the Income Tax Acts, the Family Law Act, 1995, any relevant current practices of the Revenue Commissioners in approving schemes, any relevant guidelines, guidance notes or codes of practice of the Board and any relevant guidelines of the Society of Actuaries in Ireland for the time being in force and the desirability of promoting equity and consistency in the treatment of individual cases, minimising any costs incurred under section 12 and conforming with good pensions practice.

- (d) In this subsection -

'accumulated value' means -

- (i) the realisable value of the units, shares or securities at a particular date, or averaged over a particular period before that date in which, pursuant to the rules of the scheme, the contributions for retirement benefit paid by or in respect of a member spouse under the scheme are invested, or
- (ii) the realisable value of the contributions for retirement benefit paid by or in respect of a member spouse under a defined contribution scheme, together with the notional rate of interest or other investment return prescribed under the rules of the scheme, or
- (iii) the amount of the proceeds of any insurance policies in which, pursuant to the rules of the scheme, the contributions for retirement benefit paid by or in respect of a member spouse under the scheme are invested,

less, in each case, the amount of any of the expenses of the scheme that, pursuant to the rules thereof, fall to be discharged out of the said realisable value or proceeds;


'active member', 'actuarial value', 'contingent benefit', 'defined contribution scheme', 'designated benefit', 'retirement benefit', 'scheme' and 'transfer amount' have the meanings assigned to them by section 12;

'residual benefit' means the amount of retirement benefit remaining in respect of the member spouse concerned after deduction therefrom of the relevant designated benefit or the amount of contingent benefit in respect of the member spouse concerned remaining after deduction therefrom of the amount of contingent benefit payable pursuant to an order under subsection (3) of section 12 or the amount of payment made under subsection (7) of section 12;

'section 12' means section 12 of the Family Law Act, 1995.

- (5) The Minister may, after consultation with the Minister for Enterprise, Trade and Employment and with the consent of the Minister for Public Expenditure and Reform, make regulations prescribing any matter or thing in relation to a scheme, trust RAC or PRSA for the purpose of enabling any provision of the Protection of Employees (Part-Time Work) Act, 2001, or the Protection of Employees (Fixed-Term Work) Act 2003 to have full effect.


5A. Regulations.

 In force

Regulations may provide that the provisions of this Act and of regulations thereunder shall apply to -

- (a) schemes with external members, or
- (b) external schemes, or
- (c) schemes where the majority of the trustees are not resident within the State,

with and subject to such modifications as may be prescribed and such regulations may require persons other than the trustees of such schemes to carry out in relation to those schemes any of the duties imposed upon trustees by this Act or by regulations thereunder.

5B. External schemes. In force

Regulations may exclude external schemes or certain categories of external schemes or any scheme provided under the Agreement between the Government of Ireland and Government of the United Kingdom of Great Britain and Northern Ireland establishing Implementation Bodies done at Dublin on the 8th day of March 1999 from the application of some or all of the provisions of this Act and of regulations made thereunder.

6. Laying of regulations before Houses of Oireachtas.

✓ In force

Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything done thereunder.

7. Expenses.

✓ In force

The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

7A. Professional Guidance of the Society of Actuaries in Ireland.

✓ In force

So long as any:


- (a) professional guidance issued by the Society of Actuaries in Ireland;
- (b) guidance issued by the Board; or
- (c) guidance issued by any other person;

for any purpose of this Act is for the time being specified by regulations made under this Act, any such guidance so specified shall not be altered by the Society, the Board or other person respectively without the prior consent of the Minister.

Part II Establishment of Pensions Board (ss. 8-26B)

✓	8. Establishment day.
✓	9. Establishment of Board.
✓	9A. Change of name of Pensions Board and chief executive
✓	10. Functions of Board.
✓	11. Conferral of additional functions on Board.
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✓	20. Advances by Minister to Board.
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✓	22. Accounts and audits of Board.
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✓	23. Reports and information to Minister.
✓	24. Disclosure of information.
✓	25. Fees payable to Board.
✓	26. Provision in relation to determinations by Board under sections 38, 53, 58, and 75.
✓	26A. Indemnity.
✓	26B. Pensions Council.

8. Establishment day.


 In force

The Minister may by order appoint a day to be the establishment day for the purposes of this Part.

9. Establishment of Board.

✓ In force

- (1) On the establishment day there shall stand established a body to be known as An Bord Pinsean - The Pensions Board, and in this Act referred to as "the Board", to perform the functions conferred on it by this Act.
- (2) The provisions of the First Schedule shall have effect with respect to the Board.

9A. Change of name of Pensions Board and chief executive In force

- (1) The name of the Pensions Board is changed, and on and after the commencement of section 26 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013 it shall be known, in the English language, as the Pensions Authority or, in the Irish language, as An tÚdarás Pinsean.
- (2) References in this Act or in any other enactment to the Pensions Board shall, on and after the commencement of section 26 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013, be construed as references to the Pensions Authority.
- (3) The position, heretofore known as the chief executive of the Pensions Board shall, on and after the commencement of section 26 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013, be known as the Pensions Regulator.
- (4) References in this Act or in any other enactment to the chief executive of the Pensions Board shall, on and after the commencement of section 26 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013, be construed as references to the Pensions Regulator.
- (5) In this section, 'enactment' has the same meaning as it has in the Interpretation Act 2005.

10. Functions of Board.

✓ In force

- (1) The functions of the Board shall be -
- (a) to monitor and supervise the operation of this Act and pension developments generally, including the activities of PRSA providers as such providers, the provision of PRSA products and the operation of Personal Retirement Savings Accounts;
 - (b) to advise the Minister either at his request or on its own initiative on all matters relating to the functions assigned to the Board under this Act and on matters relating to pensions generally;
 - (c) to -
 - (i) issue guidelines or guidance notes on the duties and responsibilities of trustees of schemes and trust RACs and codes of practice on specific aspects of their responsibilities; and
 - (ii) issue guidelines or guidance notes on the duties and responsibilities of PRSA providers in relation to PRSA products and with respect to such products;
 - (cc) to issue guidelines or guidance notes generally on the operation of this Act and on the provisions of the Family Law Act 1995, the Family Law (Divorce) Act 1996 and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, relating to pension schemes (within the meaning of section 2 of the Family Law Act 1995, section 2 of the Family Law (Divorce) Act 1996 and section 109 and 187 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010);
 - (d) to encourage the provision of appropriate training facilities for trustees of schemes and trust RACs;
 - (e) to advise the Minister on all matters arising in relation to this Act and, in particular, on standards for trustees of schemes and trust RACs and on their implementation;
 - (f) to publish an annual report and such other reports as it may from time to time consider necessary;
 - (fa) to perform the functions conferred on the Board by this Act;
 - (fb) to be the competent authority in the State for the purposes of the Directive of 2016,
 - (fc) for the purposes of paragraph (fb), to perform the functions of the competent authority in the State for the purposes of the Directive of 2016,
 - (fd) to monitor compliance by the trustees of schemes and trust RACs with the SFD Regulation,
 - (g) to perform such tasks as the Minister may from time to time request.
- (1A) Without prejudice to subsection (1), the Pensions Authority shall carry out the prudential supervision under Part IIA in order to protect the rights of members and beneficiaries, and ensure the stability and soundness, of schemes and trust RACs.
- (2) The Board shall have such powers as are necessary for or incidental to the performance of its functions.

11. Conferral of additional functions on Board.


✓ In force

- (1) The Minister may, with the consent of the Minister for Public Expenditure and Reform, by order -
 - (a) confer on the Board such additional functions connected with the functions for the time being of the Board as he considers appropriate, and
 - (b) make such provision as he considers necessary or expedient in relation to matters ancillary to or arising out of the conferral on the Board of functions so conferred.
- (2) The Minister may by order amend or revoke an order under this section (including an order under this subsection).
- (3) Every order made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which the House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

12. Consultants and advisers.

✓ In force

Subject to the prior approval of the Minister, the Board may from time to time engage such consultants or advisers as it may consider necessary for the performance of its functions, and any fees due to a consultant or adviser engaged under this section shall be paid by the Board out of moneys at its disposal.

13. Gifts. In force

- (1) The Board may accept gifts of money, land or other property upon such trusts or conditions (if any) as may be specified by the donor.
- (2) The Board shall not accept a gift if the trusts or conditions attached to it would be inconsistent with its functions.

14. Committees of Board.

✓ In force

- (1) The Board may establish committees to assist and advise it in relation to the performance of any of its functions.
- (2) The members of a committee established under this section shall be appointed by the Board.
- (3) A committee established under this section may include persons who are not members of the Board.
- (4) A member of a committee established under this section may be removed from office at any time by the Board.
- (5) The Board may at any time dissolve a committee established under this section.
- (6) The Board may appoint a person to be chairman of a committee established under this section.
- (7) There may be paid out of the income of the Board to members of a committee established under this section such allowances for expenses incurred by them as the Board may, with the consent of the Minister and the Minister for Public Expenditure and Reform, determine.

15. Chief executive.

✓ In force

- (1) There shall be a chief officer of the Board who shall be known, and is referred to in this Act, as the chief executive.
- (2) The chief executive shall be appointed, and may be removed from office at any time, by the Board with the consent of the Minister.
- (3) The chief executive shall not be a member of the Board.
- (3A) The Pensions Regulator shall be a member of the Pensions Council.
- (4) The chief executive shall carry on and manage and control generally the administration and business of the Board and perform such other functions as may be determined by the Board.
- (5) The chief executive shall devote the whole of his time to his duties as chief executive and shall not hold any other office or position without the consent of the Board.
- (6) The chief executive shall hold office on and subject to such terms and conditions (including terms and conditions relating to remuneration) as may be approved of by the Minister with the consent of the Minister for Finance.
- (7) The chief executive shall be paid, out of moneys at the disposal of the Board, such allowances for expenses incurred by him in the performance of his functions as may be determined by the Minister with the consent of the Minister for Finance.
- (8) The chief executive may make proposals to the Board on any matter relating to its activities.

16. Staff of Board.

✓ In force

- (1) The Board may appoint such, and such number of, persons to be members of the staff of the Board as it may determine with the consent of the Minister and the Minister for Finance.
- (2)
 - (a) A member of the staff of the Board shall hold his office or employment on such terms and conditions (including terms and conditions relating to remuneration and superannuation) as the Board may, with the consent of the Minister and the Minister for Finance, determine.
 - (b) A member of the staff of the Board referred to in paragraph (a) shall be paid, out of the moneys at the disposal of the Board, such remuneration and allowances for expenses incurred by him as the Board may, with the consent of the Minister and the Minister for Finance, determine.
 - (c) The Board may, with the consent of the Minister, at any time remove any officer or servant of the Board from being its officer or servant.
- (3) The grades of the staff of the Board, and the number of staff in each grade, shall be determined by the Board with the consent of the Minister and the Minister for Finance.
- (4) The Board may perform any of its functions through or by the chief executive or any other member of its staff duly authorised by the Board in that behalf.

17. Superannuation of staff of Board.

✓ In force

- (1) The Board may, with the consent of the Minister and the Minister for Finance, make a scheme or schemes for the granting of superannuation benefits to or in respect of persons appointed to whole-time positions on the staff of the Board.
- (2) A scheme under subsection (1) shall fix the time and conditions of retirement for all persons (including the chief executive) to or in respect of whom superannuation benefits are payable under the scheme or schemes and different times and conditions may be fixed in respect of different classes of persons.
- (3) The Board may, with the consent of the Minister and the Minister for Finance, make a scheme amending or revoking a scheme under this section including a scheme under this subsection.
- (4) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this section such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.
- (5) No superannuation benefits shall be granted by the Board on the resignation, retirement or death of a member of the staff of the Board (including the chief executive) otherwise than in accordance with a scheme or schemes under this section.
- (6) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

18. Authorised persons.

✓ In force

- (1) The Board may authorise in writing such and so many persons as it considers necessary to be authorised persons to inspect or investigate on its behalf -
 - (a) the state and conduct of a scheme or trust RAC,
 - (b) the state of a PRSA product, or
 - (c) the activities of a registered administrator in that capacity.
- (2) The Board or an authorised officer may, by notice in writing -
 - (a) in relation to a scheme or trust RAC, require the employer concerned or the trustees or the registered administrator of the scheme or trust RAC,
 - (b) in relation to a PRSA provider, require the officers and employees of the PRSA provider in respect of its PRSA activities,
 - (c) in relation to an employer, require him in relation to his obligations under section 121, and
 - (d) in relation to a registered administrator, require him,

to furnish it, within such reasonable period as is specified in the notice, with such information and explanations and such books of account and other documents in relation to the scheme, the trust RAC, the PRSA products provided by the PRSA provider or the activities of the registered administrator in that capacity, as the case may be, as are so specified.
- (3) An authorised person shall be furnished with a certificate of his appointment as an authorised person and when exercising any power conferred on him by this section or section 26V(8) as an authorised person shall, if requested by a person affected, produce the certificate or a copy thereof to the person.
- (3A) An authorised person, for the purpose of obtaining any information which may be required by the Board in relation to a scheme, a trust RAC, a PRSA product or the activities of a registered administrator in that capacity, may -
 - (a) at all reasonable times enter the premises of any employer, trustee, registered administrator, PRSA provider or agent, as the case may be,
 - (b) make such examination or inquiry as may be necessary to determine whether the provisions of this Act are being or have been complied with,
 - (c) inspect and take copies of or extracts from any records (including in the case of information in a non-legible form a copy of an extract from such information in permanent legible form) relating to the scheme, the trust RAC, the PRSA product or the activities of the registered administrator in that capacity,
 - (d) remove and retain any books of account and other documents and other records in relation to the scheme, the trust RAC, the activities of the PRSA provider as such a provider or the activities of the registered administrator in that capacity for a reasonable period for their further examination or for the purpose of any legal proceedings, and
 - (e) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford him all reasonable assistance in relation thereto.
- (4) The duty to produce or provide any information, document, material or explanation shall extend to any person being an officer or employee of the employer, of the PRSA provider in relation to its activities as such a provider, of the registered administrator in relation to its activities in that capacity, of a trustee or of an agent, as the case may be, or appears to the Board or the authorised person to have that information, document, material or explanation in his possession or under his control.
- (4A) An authorised person shall not, other than with the consent of the occupier, enter a private dwelling unless he has obtained a warrant from the District Court under subsection (4D) authorising such entry.
- (4B) Where an authorised person in the exercise of his powers under this section is prevented from entering any premises an application may be made under subsection (4D) authorising such entry.
- (4C) An authorised person, where he considers it necessary, may be accompanied by a member of the Garda

Síochána when performing any powers conferred on an authorised person by this Act.

- (4D) If a judge of the District Court is satisfied on the sworn information of an authorised person that there are reasonable grounds for suspecting that there is information required by an authorised person under this section held on any premises or any part of any premises, the judge may issue a warrant authorising an authorised person, accompanied by other authorised persons, at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter the premises and exercise all or any of the powers conferred on an authorised person under this section.
- (5) A person who -
- (a) wilfully obstructs an authorised person in the exercise of his powers under this section, or
 - (b) refuses or fails without reasonable excuse to produce to the authorised person or to the Board any information, document, material or explanation when required to do so under this section, or
 - (c) refuses or fails without reasonable excuse to answer any questions put to him by the authorised person or by the Board with respect to -
 - (i) the affairs of the scheme or trust RAC, or
 - (ii) the activities of the PRSA provider as such a provider or of the registered administrator in that capacity,
 commits an offence punishable -
 - (I) on summary conviction by a fine not exceeding €5,000 or imprisonment for a term not exceeding one year, or both,
 - (II) on conviction on indictment by a fine not exceeding €25,000 or imprisonment for a term not exceeding 2 years, or both.
- (6) In this section 'agent' includes -
- (a) in relation to a scheme, a trust RAC or a PRSA provider -
 - (i) the actuaries, administrators, registered administrators, auditors and other accountants, and
 - (ii) the financial and other advisers,
 to the scheme, trust RAC or PRSA provider,
 - (aa) in relation to a scheme or trust RAC, any person who -
 - (i) is a key function holder, or
 - (ii) is a service provider referred to in section 64AM and who has entered into an arrangement referred to in that section,
 for that scheme or trust RAC,
 - (b) in relation to a registered administrator -
 - (i) the auditors and other accountants, and the financial and other advisers, to the registered administrator, and
 - (ii) any person with whom the registered administrator has an outsourcing arrangement,
 and
 - (c) in relation to an employer - the auditors and other accountants, and the financial and other advisers, to the employer.
- (7) A reference in this section to an officer, employee or agent of an employer, scheme, trust RAC, registered administrator or PRSA provider includes a reference to a person who has been, but no longer is, an officer, employee or agent (as the case may be) of the employer, scheme, trust RAC, registered administrator or PRSA provider.

- (8) The Board may prepare or cause to have prepared one or more reports on any investigation carried out under this section and may make a copy of any such report available to any person whom the Board considers appropriate.
- (9) For the purposes of the law of defamation, the publication by the Board of any report prepared under this section shall be absolutely privileged.
- (10) A fine imposed under this section shall not be paid out of the resources of any scheme or trust RAC or out of the assets of any PRSA, as the case may be.

19. Membership of either House of Oireachtas or of European Parliament by members or staff of Board.

✓ In force

- (1) Where a member of the Board is -
- (a) nominated as a member of Seanad Éireann, or
 - (b) elected as a member of either House of the Oireachtas or as a representative in the European Parliament, or
 - (c) regarded pursuant to section 15 (inserted by the European Assembly Elections Act, 1984) of the European Assembly Elections Act, 1977, as having been elected to the European Parliament to fill a vacancy,
- he shall thereupon cease to be a member of the Board.
- (2) Where a person who is a member of the staff of the Board is -
- (a) nominated as a member of Seanad Éireann, or
 - (b) elected as a member of either House of the Oireachtas or as a representative in the European Parliament, or
 - (c) regarded pursuant to section 15 (inserted by the European Assembly Elections Act, 1984) of the European Assembly Elections Act, 1977 as having been elected to the European Parliament to fill a vacancy,
- he shall thereupon stand seconded from employment by the Board and shall not be paid by, or be entitled to receive from, the Board any remuneration or allowances in respect of the period commencing on such nomination or election or when he is so regarded as having been elected, as the case may be, and ending when he ceases to be a member of either such House or a representative in such Parliament.
- (3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or is a representative in the European Parliament shall, while he is so entitled or is such a representative, be disqualified from becoming a member of the Board or the staff of the Board.
- (4) Without prejudice to the generality of subsection (2), that subsection shall be construed as prohibiting, inter alia, the reckoning of a period mentioned in that subsection as service with the Board for the purposes of any superannuation benefits.

20. Advances by Minister to Board.

✓ In force

The Minister may from time to time with the consent of the Minister for Public Expenditure and Reform, advance to the Board out of moneys provided by the Oireachtas, such sums as the Minister may determine for the purposes of expenditure by the Board in the performance of its functions.

20A. Borrowing by Board.

✓ In force

The Board may, for the purpose of providing for current or capital expenditure, from time to time, borrow money (whether on the security of the assets of the Board or otherwise), including money in a currency other than the currency of the State, subject to the consent of the Minister and the Minister for Finance and to such conditions as they may determine.

21. Disclosure by member of Board of interest in proposed contract.

✓ In force

A member of the Board who has -

- (a) any material or financial interest in any body corporate with which the Board proposes to make any contract, or
- (b) any material or financial interest in any contract which the Board proposes to make,

shall disclose to the Board the fact of that interest and the nature thereof, and shall take no part in any deliberation or decision of the Board relating to the contract, and the disclosure shall be recorded in the minutes of the Board.

22. Accounts and audits of Board.

✓ In force

- (1) The Board shall keep in such form as may be approved of by the Minister with the concurrence of the Minister for Public Expenditure and Reform all proper and usual accounts of all moneys received or expended by the Board including an income and expenditure account and balance sheet and, in particular, shall keep all such special accounts as the Minister may from time to time direct.
- (2) Accounts kept in pursuance of this section shall be submitted as soon as may be after the end of the financial year of the Board to which they relate to the Comptroller and Auditor General for audit and a copy of the income and expenditure account and of the balance sheet and of such other (if any) of its accounts as the Minister may direct and a copy of the Comptroller and Auditor General's report on the account shall be presented to the Minister as soon as may be and the Minister shall cause copies of each of the documents aforesaid to be laid before each House of the Oireachtas.

22A. Attendance before Committee of Public Accounts.

✓ In force

- (1) The chief executive shall, whenever he is required to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on—
- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Board or the chief executive is required to prepare under this Act,
 - (b) the economy and efficiency of the Board in the use of its resources,
 - (c) the systems, procedures and practices employed by the Board for the purpose of evaluating the effectiveness of its operations, and
 - (d) any matter affecting the Board referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in paragraph (a), (b) or (c)) that is laid before Dáil Éireann.
- (2) In the performance of his duties under subsection (1), the chief executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

23. Reports and information to Minister.

✓ In force


- (1) The Board shall furnish to the Minister such information regarding its income and expenditure as he may from time to time require.
- (2) As soon as may be after the end of each financial year of the Board, but not later than 6 months thereafter, the Board shall make a report to the Minister of its activities during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.
- (3) Each report under subsection (2) shall include information in such form and regarding such matters as the Minister may direct.
- (4) The Board shall, whenever so requested by the Minister, furnish to him information in relation to such matters as he may specify concerning or relating to the scope of its activities generally, or in respect of any account prepared by the Board or any report specified in subsection (2) or (4) or section 22(2) or the policy and activities, other than day to day activities, of the Board.

24. Disclosure of information.

✓ In force

- (1) A person shall not, without the consent of the Board, disclose any information obtained by him while performing (or as a result of having performed) duties as a member, or member of the staff of, or member of a committee of, or an adviser or consultant to, the Board.
- (1A) A person shall not, without the consent of the Minister, disclose any information obtained by him or her while performing (or as a result of having performed) duties as a member of the Pensions Council.
- (2) A person who contravenes subsection (1) or (1A) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £5000.
- (3) Nothing in subsection (1) shall prevent the disclosure of information in a report made to the Board or by or on behalf of the Board to the Minister.
- (3A) Nothing in subsection (1A) shall prevent the disclosure of information in a report made to the Pensions Council or by or on behalf of the Pensions Council to the Minister.

25. Fees payable to Board.

 In force

The trustees of a scheme or trust RAC shall pay annually to the Board out of the resources of the scheme or trust RAC fees of such amount as may be prescribed with the consent of the Minister for Public Expenditure and Reform and different fees may be prescribed under this section in respect of different classes of schemes or trust RACs.

26. Provision in relation to determinations by Board under sections 38, 53, 58, and 75.

✓ In force

- (1)
 - (a) A question falling to be determined by the Board under section 38, 53, 58, 59A, 64A or 81G shall be determined by it either, in its absolute discretion, without or after an oral hearing by the Board (or such member or members of the Board or other person or persons as the Board may authorise for that purpose).
 - (b) Any person concerned may make representations to the Board in relation to such a question as aforesaid and in reaching its determination the Board shall take account of any such representations.
- (2) Representations under subsection (1) shall be made in writing or, if an oral hearing is being held under subsection (1) in relation to the question concerned, at the hearing:

Provided that representations at an oral hearing shall be made in accordance with any procedure prescribed under subsection (6).
- (3) The person or persons holding an oral hearing under this section shall have power to take evidence on oath and for that purpose any of the persons aforesaid may administer oaths to persons attending as witnesses at the hearing.
- (4)
 - (a) The person or any of the persons holding an oral hearing under this section may, by giving notice in that behalf in writing to a person, require the person to attend on such day and at such time and place as is specified in the notice to give evidence at the hearing in relation to the question to be determined by the Board or to produce at the hearing any documents in his possession, custody or control relating to any such question or to do both.
 - (b) A notice under paragraph (a) may be given either by delivering it to the person to whom it relates or by sending it by post in a prepaid registered letter addressed to the person at the address at which he ordinarily resides.
 - (c) A person to whom a notice under paragraph (a) has been given and who refuses to give evidence or gives false evidence at an oral hearing under this section or refuses or wilfully fails to produce any document to which the notice relates at such a hearing shall be guilty of an offence and shall be liable -
 - (i) on summary conviction, to a fine not exceeding £5000 or to imprisonment for a term not exceeding one year, or to both,
 - (ii) on conviction on indictment, to a fine not exceeding £25,000 or to imprisonment for a term not exceeding 2 years, or to both.
 - (d) A fine imposed under this section shall not be paid out of the resources of any scheme or trust RAC, as the case may be.
- (5) The person or persons holding an oral hearing under this section may order a person concerned to pay to any other person concerned a reasonable sum in respect of expenses occasioned by the person in relation to the hearing and any such sum may be recovered by the person concerned from the other person concerned, as a simple contract debt in any court of competent jurisdiction.
- (6) Subject to the provisions of this Act, the procedure at oral hearings under this section shall be such as may be prescribed and regulations for the purposes of this subsection may, without prejudice to the generality of the foregoing, make provision for the notification of persons concerned of the making of representations under this section, of the date, time and place of such hearings and of determinations of the Board under section 38, 53, 58, 59A, 64A or 81G, for the circumstances (if any) in which persons concerned may present their cases at such hearing through representatives (including legal representatives), for the making of a sufficient record of the proceedings at such hearings and for such other matters as the Minister considers necessary or expedient for the purposes of this section and for giving full effect to it.

26A. Indemnity.

✓ In force

The Minister may, in the manner and to the extent and subject to the terms and conditions that the Minister may determine from time to time in consultation with the Minister for Public Expenditure and Reform, indemnify any person who is or was a member, chief executive officer or officer of, or member of any committee of, the Board in respect of any act by or omission of that person in the performance of his or her functions under this Act unless the act or omission is shown to have been in bad faith.

26B. Pensions Council.

✓ In force


- (1) On the commencement of section 29 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013 there shall stand established a body to be known, in the English language, as the Pensions Council or, in the Irish language, as An Chomhairle Pinsean to perform the functions assigned to it by this section.
- (2) The functions of the Pensions Council shall be to advise the Minister, either on its own initiative or at the Minister's request, on matters relating to pensions generally.
- (3) The Pensions Council shall consist of the following members -
 - (a) a chairperson, and
 - (b) not fewer than 8, and not more than 12, ordinary members.
- (4) The members of the Pensions Council shall be appointed by the Minister in accordance with this section.
- (5) The Minister shall designate one member of the Pensions Council as chairperson.
- (6) An ordinary member of the Pensions Council shall hold office for such period, not exceeding 5 years from the date of his or her appointment, as the Minister shall determine.
- (7) A member of the Pensions Council whose term of office expires by effluxion of time shall be eligible for reappointment to the Pensions Council.
- (8) The ordinary members of the Pensions Council shall include -
 - (a) the Pensions Regulator,
 - (b) one member nominated by the Minister as a representative of the Department of Social Protection,
 - (c) one member nominated by the Minister for Finance as a representative of the Central Bank,
 - (d) one member nominated by the Minister for Public Expenditure and Reform as a representative of the Department of Public Expenditure and Reform, and
 - (e) not fewer than 4, and not more than 8, other members, each of whom the Minister considers to have the relevant skills, specialist knowledge, experience or expertise to enable him or her to carry out his or her functions under this Act.
- (9) A member of the Pensions Council may resign from the Pensions Council by letter addressed to the Minister, and the resignation shall take effect on the date specified in the letter, or the date on which the Minister receives the letter, whichever is the later.
- (10) A member of the Pensions Council may at any time be removed from membership of the Pensions Council by the Minister if, in the Minister's opinion, the member has become incapable through illhealth of performing his or her functions, or has committed stated misbehaviour, or his or her removal appears to the Minister to be necessary for the effective performance by the Pensions Council of its functions.
- (11) A member of the Pensions Council shall cease to be and shall be disqualified from being a member of the Pensions Council where such member -
 - (a) is adjudicated bankrupt,
 - (b) makes a composition or arrangement with creditors,
 - (c) on conviction on indictment by a court of competent jurisdiction is sentenced to a term of imprisonment, or
 - (d) is disqualified or restricted from being a director of any company (within the meaning of the Companies Acts).
- (12) The Minister shall determine the procedures of the Pensions Council.

Part IIA Prudential supervision (ss. 26C-26AB)

	Chapter 1 General (ss. 26C-26E)
	Chapter 2 Prudential supervision (ss. 26F-26I)
	Chapter 3 Supervisory review process (ss. 26J-26L)
	Chapter 4 Advisory Notice and External Report (ss. 26M-26S)
	Chapter 5 Part VIB compliance statement (ss. 26T-26U)
	Chapter 6 Information to be provided to Pensions Authority (ss. 26V-26W)
	Chapter 7 Professional secrecy and exchange, and transmission, of information (ss. 26X-26AB)

Chapter 1 General (ss. 26C-26E)

✓	26C. Interpretation for Part.
✓	26D. Conflict between Part and schemes or trust RAC.
✓	26E. Service of documents for purpose of Part.

26C. Interpretation for Part. In force

- (1) In this Part -
- "outsourced" has, notwithstanding section 2(1), the same meaning as it has in the Directive of 2016;
- "prudential supervision" shall be construed in accordance with the Directive of 2016.
- (2) Without prejudice to section 2(7), a word or expression that is used in this Part and is also used in the Directive of 2016 shall, unless the context otherwise requires, have the same meaning in this Part as it has in the Directive.

26D. Conflict between Part and schemes or trust RAC.

✔ In force

- (1) The provisions of this Part shall override any rule of a scheme or trust RAC to the extent that that rule conflicts with those provisions.
- (2) Any question as to whether any provision of this Part conflicts with any rule of a scheme or trust RAC, shall be determined by the Pensions Authority on application to it in writing in that behalf by a person referred to in subsection (3).
- (3) The following persons shall be entitled to make an application under this section in respect of a scheme or trust RAC -
 - (a) in the case of a scheme -
 - (i) the trustees of the scheme,
 - (ii) any member or prospective member of the scheme, and
 - (iii) any employer of persons in relevant employment to which the scheme applies, and
 - (b) in the case of a trust RAC, the trustees or any member of the trust RAC.
- (4) An appeal to the High Court on a point of law from a determination of the Pensions Authority under subsection (2) in relation to a scheme or trust RAC may be brought by the person who made, or a person who was entitled to make, the application concerned under subsection (2) not later than 6 months after the date of that determination of the Pensions Authority.


26E. Service of documents for purpose of Part.

✓ In force


- (1) A notice or other document that is required to be given, or sent, to, or served on, a person under this Part shall be addressed to the person by name and shall be given, sent or served to the person in one of the following ways:
- (a) by delivering it to the person;
 - (b) by leaving it at the address at which the person ordinarily resides or carries on business or, in a case in which an address for service has been furnished, to that address;
 - (c) by sending it by post in a pre-paid registered letter or by any other form of recorded delivery to the address at which the person ordinarily resides or carries on business, or in a case in which an address for service has been furnished, to that address;
 - (d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given or issues to, him or her in that manner.
- (2) For the purposes of subsection (1), a company within the meaning of the Companies Acts or the Companies Act 2014, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

Chapter 2 Prudential supervision (ss. 26F-26I)

✓	26F. Objective of prudential supervision.
✓	26G. Scope of prudential supervision.
✓	26H. General principles of prudential supervision.
✓	26I. Prudential supervision: functions relating to powers of intervention and duties of Pensions Authority.

26F. Objective of prudential supervision. In force

The main objective of prudential supervision is to protect the rights of members and beneficiaries and to ensure the stability and soundness of schemes and trust RACs.

26G. Scope of prudential supervision. In force

Without prejudice to any provision of this Act, a scheme or trust RAC shall be subject to prudential supervision by the Pensions Authority including the supervision by the Pensions Authority of the following where applicable:

- (a) the conditions of operation;
- (b) technical provisions;
- (c) funding of technical provisions;
- (d) regulatory own funds;
- (e) available solvency margin;
- (f) required solvency margin;
- (g) investment rules;
- (h) investment management;
- (i) system of governance; and
- (j) information to be provided to members and beneficiaries.

26H. General principles of prudential supervision.

✓ In force

- (1) Without prejudice to section 10(1A), the Pensions Authority shall be responsible for the prudential supervision of schemes and trust RACs.
- (2) The Pensions Authority shall carry out prudential supervision of schemes and trust RACs -
 - (a) based on a forward-looking and risk-based approach, and
 - (b) in a manner that comprises an appropriate combination of off-site activities and on-site inspections.
- (3) The Pensions Authority shall apply the functions under this Part in a manner which is proportionate to the size, nature, scale and complexity of the activities of the scheme or trust RAC.
- (4) The Pensions Authority shall take into consideration the potential impact of its actions on the stability of the financial systems in the European Union, particularly in emergency situations when it is performing its functions under this Part and section 10(1A).

26I. Prudential supervision: functions relating to powers of intervention and duties of Pensions Authority.

✓ In force

- (1) The Pensions Authority shall require every scheme and trust RAC registered under section 60 to have in place -
 - (a) sound administrative procedures,
 - (b) sound accounting procedures, and
 - (c) adequate internal control mechanisms.
- (2) Where the Pensions Authority makes a decision to prohibit or restrict the activities of a scheme or trust RAC, it shall set out in that decision detailed reasons for it and shall notify the scheme or trust RAC concerned of that decision and without prejudice to the generality of the foregoing, such decision includes a direction under section 152.
- (3) Without prejudice to the generality of subsection (2), the Pensions Authority shall notify EIOPA where it has -
 - (a) revoked an authorisation under section 150, or
 - (b) given a direction under section 152(2).


Chapter 3 Supervisory review process (ss. 26J-26L)

✓	26J. Supervisory review process.
✓	26K. Monitoring tools for financial condition of scheme or trust RAC.
✓	26L. Stress-test.

26J. Supervisory review process.

✓ In force

- (1) The Pensions Authority shall, subject to subsections (2) and (3), review the strategies, processes and reporting procedures established by the trustees of a scheme or trust RAC to comply with this Part, Part VIB and sections 50(2C), 59(1E), 59A(1A), 59A(1B), 59AB, 149(1), 151A, 151B and 152(1) ('supervisory review').
- (2) When carrying out a supervisory review the Pensions Authority shall take into account -
 - (a) the size, nature, scale and complexity of the activities of the scheme or trust RAC, and
 - (b) the circumstances in which the scheme or trust RAC is operating and, where relevant, the person (if any) carrying out the outsourced key functions or any other activity for the trustees of the scheme or trust RAC.
- (3) A supervisory review shall comprise the following:
 - (a) an assessment of the qualitative requirements relating to the system of governance;
 - (b) an assessment of the risks that the scheme or trust RAC faces;
 - (c) an assessment of the ability of the scheme or trust RAC to assess and manage those risks.
- (4) The Pensions Authority shall determine the minimum frequency and scope of the supervisory review referred to in this section having regard to the size, nature, scale and complexity of the activities of the scheme or trust RAC concerned.
- (5) Where the Pensions Authority carries out a supervisory review of a scheme or trust RAC -
 - (a) it may request information for the purposes of carrying out that review from -
 - (i) the trustees of that scheme or trust RAC or an employee of that scheme or trust RAC,
 - (ii) a person who is an agent referred to in section 18(6), and
 - (iii) the employer or an officer or employee of the employer, and
 - (b) a person referred to in paragraph (a), to whom a request referred to in that paragraph has been made shall provide information to the Pensions Authority as the Pensions Authority may request in the course of carrying out the supervisory review.

26K. Monitoring tools for financial condition of scheme or trust RAC. In force

- (1) The Pensions Authority shall have in place one or more monitoring tools that enable it to identify deteriorating financial conditions in a scheme or trust RAC and to monitor how that deterioration is remedied.
- (2) Where, in the application of a monitoring tool referred to in subsection (1), the Pensions Authority requires information for the purposes of that application in respect of a scheme or trust RAC, the trustees of such scheme or trust RAC shall provide the Pensions Authority with information requested by it for the purposes of that application.

26L. Stress-test.

✓ In force

- (1) Without prejudice to section 26K, the Pensions Authority may, by notice in writing, require the trustees of a scheme or trust RAC to -
- (a) carry out a stress-test, or
 - (b) cause a stress-test to be carried out,
- in respect of the scheme or trust RAC concerned for the purposes of enabling the identification of deteriorating financial conditions in that scheme or trust RAC and to monitor how that deterioration is remedied.
- (2) A notice under subsection (1) shall state -
- (a) information relating to the stress-test that is to be carried out in respect of the scheme or trust RAC,
 - (b) having regard to the matters to be assessed under subsection (3) -
 - (i) one or more methodologies to be used in the stress-test,
 - (ii) different sets of economic circumstances, and
 - (iii) the reporting arrangement,
 that are to be applied, by the trustees of the scheme or trust RAC in the stress-test, and
 - (c) the date, referred to in subsection (4), on which the trustees shall notify the Pensions Authority of the results of the stress-test.
- (3) A stress-test shall assess -
- (a) the adequacy of the methods and practices of the scheme or trust RAC designed to identify possible events or future changes in economic conditions that could have an adverse effect on the overall financial standing of the scheme or trust RAC, and
 - (b) the ability of the scheme or trust RAC to withstand those possible events or future changes in economic conditions.
- (4) The date on which the results of a stress-test shall be notified to the Pensions Authority shall be -
- (a) not later than 3 months from the date of receipt of the notification under subsection (1), or
 - (b) a date specified by the Pensions Authority.
- (5) Where the trustees of a scheme or trust RAC have been given a notice under subsection (1), the trustees shall -
- (a) carry out the stress-test, or cause the stress-test to be carried out, and
 - (b) notify the Pensions Authority of the results of the stress-test not later than -
 - (i) 3 months from the date of receipt of that notice, or
 - (ii) where a date was specified in that notice, that date.
- (6) The Pensions Authority shall review the results of a stress-test provided to it pursuant to subsection (5).
- (7) A notice under subsection (2) may also include any other matter relating to the matters to be assessed under subsection (3).

Chapter 4 Advisory Notice and External Report (ss. 26M-26S)

✓	26M. Advisory Notice.
✓	26N. Notice to trustees to provide External Report.
✓	26O. External Report reviewer.
✓	26P. Contract with External Report reviewer.
✓	26Q .Completion of External Report.
✓	26R. External Report: supplemental provisions.
✓	26S. Pensions Authority not bound by External Report nor liable for it.

26M. Advisory Notice.

✓ In force

- (1) The Pensions Authority may for the purposes of prudential supervision, subject to subsection (3), serve a notice ('Advisory Notice') on the trustees of a scheme or trust RAC where -
- (a) in the opinion of the Pensions Authority, the trustees of the scheme or trust RAC concerned are failing to act in a manner that would enable the trustees concerned to satisfy a requirement under -
 - (i) this Part,
 - (ii) Part VIB, or
 - (iii) this Part and Part VIB,
 - or
 - (b) following a supervisory review under section 26J and having considered that review, it is of the opinion that there are one or more weaknesses or deficiencies (or both) in the scheme or trust RAC concerned for which a remedy is required to address,
- for the purpose of advising the trustees concerned of the action that is required to be taken to satisfy a requirement referred to in paragraph (a) or provide a remedy to address the weakness or deficiency (or both) referred to in paragraph (b).
- (2) An Advisory Notice shall -
- (a) state the opinion, referred to in paragraph (a), or as the case may be paragraph (b), of subsection (1), of the Pensions Authority,
 - (b) specify -
 - (i) the requirements, referred to in subsection (1)(a), or
 - (ii) the weakness or deficiency (or both), referred to in subsection (1)(b),
 - (c) specify the reasons for the opinion referred to in paragraph (a),
 - (d) advise the trustees concerned of the action that is required to be taken to -
 - (i) satisfy the requirements referred to in paragraph (b)(i), or
 - (ii) provide a remedy to address the weakness or deficiency (or both) referred to in paragraph (b)(ii),
 - (e) specify a date by which the action referred to in paragraph (d) is to be taken by the trustees concerned, and
 - (f) specify a date on which the trustees concerned shall notify the Pensions Authority as to the steps taken by them to carry out the action referred to in paragraph (d) having had regard to the date referred to in paragraph (e).
- (3) Where the Pensions Authority proposes to serve an Advisory Notice, it shall -
- (a) notify the trustees concerned, in writing, of its intention to serve an Advisory Notice,
 - (b) inform the trustees, in respect of such proposal, of -
 - (i) the opinion required under subsection (1) in respect of which it is proposed to serve the Advisory Notice,
 - (ii) the requirements, referred to in subsection(1)(a), that are required to be satisfied, or as the case may be, the weakness or deficiency (or both) referred to in subsection (1)(b),
 - (iii) the reasons for that opinion, and
 - (iv) the actions which would be required to take as a remedy to ensure the satisfaction of the requirements referred to in subsection (1)(a) or address a weakness or deficiency referred to in subsection (1)(b)(or both), and

- (c) inform the trustees concerned that they may make a submission, in writing, on the matters specified in the notification under this subsection, to the Pensions Authority within 21 days of receipt of the notification under this subsection.
- (4) Where a submission referred to in subsection (3)(c) -
 - (a) is made to the Pensions Authority within the period referred to in that subsection, it shall consider the submission and having had regard to all the circumstances of the scheme or trust RAC concerned, it may -
 - (i) if it is satisfied that it is reasonable to do so, serve an Advisory Notice on the trustees of the scheme or trust RAC concerned, with or without modification of any matter specified in the notification under subsection (3) and the Advisory Notice may include any matter set out in, or arising from, the submission referred to in subsection (3)(c), or
 - (ii) if it is not satisfied that it is reasonable to do so, decide not to serve the Advisory Notice and it shall notify, in writing, the trustees concerned of its decision, or
 - (b) has not been made within the period referred to in subsection (3)(c), the absence of the submission shall not operate to prevent the service of the Advisory Notice after that period has elapsed.
- (5) Where the Pensions Authority is of the opinion that the trustees of a scheme or trust RAC, on whom an Advisory Notice has been served, have taken the action specified in the Advisory Notice, it shall withdraw the Advisory Notice and notify the trustees accordingly.
- (6) Nothing in this section shall operate to prevent, after the Advisory Notice has been served, the institution of proceedings (including proceedings under section 3) in respect of a failure to comply with a provision, specified in the Advisory Notice.
- (7) The Advisory Notice and the information, if any, provided by the trustees shall be admissible in evidence in legal proceedings (including proceedings under section 3).
- (8) The trustees of a scheme or trust RAC may appeal an Advisory Notice served on them under this section to the High Court.

26N. Notice to trustees to provide External Report.

✓ In force

- (1) Where the Pensions Authority is -
- (a) in the course of a supervisory review under section 26J,
 - (b) following receipt of a stress-test under section 26L, or
 - (c) following receipt of a Part VIB compliance statement under section 26T,
- of the opinion that the information provided to it by, or pursuant to, the supervisory review, stress-test or Part VIB compliance statement -
- (i) is not sufficient for it to determine, for the purposes of the prudential supervision of a scheme or trust RAC, that the scheme or trust RAC is, or the trustees of such scheme or trust RAC are, in compliance with one, or more, of the provisions specified in subsection (2), or
 - (ii) has given grounds for concern as to whether the scheme or trust RAC is, or the trustees of such scheme or trust RAC are, for the purposes of prudential supervision of a scheme or trust RAC, in compliance with Part VIB,
- the Pensions Authority may, by notice in writing given to the trustees of the scheme or trust RAC concerned, require the trustees, within a period specified in the notice, to provide the Pensions Authority with a report on the matters set out in subsection (3) that is prepared by an External Report reviewer (in this Part referred to as 'External Report') for the purposes of the prudential supervision of that scheme or trust RAC.
- (2) The External Report shall, for the purposes of prudential supervision, examine the compliance by the scheme or trust RAC concerned or the trustees of such scheme or trust RAC with Part VIB and make a determination of such compliance in respect of one or more provisions of that Part.
- (3) A notice under subsection (1) shall state -
- (a) the date of the notice,
 - (b) the period within which the trustees of the scheme or trust RAC concerned shall nominate a person to the Pensions Authority for approval under section 26O,
 - (c) the purpose of the External Report,
 - (d) the scope of the External Report,
 - (e) the timetable for completion of the External Report,
 - (f) the matters, referred to in subsection (2), that are required to be reported on,
 - (g) whether the External Report is to include recommendations,
 - (h) the form of the External Report,
 - (i) where appropriate, the methodology to be used in the preparation of the External Report, and
 - (j) any other matter relating to a provision of Part VIB, to which the Pensions Authority, having regard to the requirements of the prudential supervision of a scheme or trust RAC under this Part, considers appropriate.

26O. External Report reviewer.

✓ In force

- (1) An External Report shall be prepared by a person (in this Part referred to as the 'External Report reviewer') who is nominated by -
- (a) the trustees of the scheme or trust RAC concerned, within the period specified in the notice given under section 26N(1) and approved under subsection (4), or
 - (b) the Pensions Authority, where -
 - (i) no person is nominated by the trustees under paragraph (a) within the period specified in the notice given under section 26N(1), or
 - (ii) the Pensions Authority is not satisfied with the person nominated under paragraph (a).
- (2) The External Report reviewer shall be a person appearing to the Pensions Authority to have the skills that are necessary to prepare an objective report on the matters concerned and, without prejudice to the generality of the foregoing, may be an auditor, actuary, accountant, investment manager, lawyer or any other person with relevant business, technical or technological skills required for the purpose of preparing the External Report.
- (3) The trustees of a scheme or trust RAC shall nominate a person to be an External Report reviewer and submit that nomination to the Pensions Authority for approval of that nomination and when considering whether to approve a nomination under subsection (4)(a) or make a nomination under subsection (1)(b), the Pensions Authority shall have regard to the circumstances giving rise to the requirement for the External Report and whether the person it proposes to approve or nominate appears to have -
- (a) the competence and capabilities and knowledge necessary to prepare an External Report on the matters concerned,
 - (b) the ability to complete the External Report within the period specified by the Pensions Authority in the notice given under section 26N,
 - (c) any relevant specialised knowledge, including specialised knowledge of the operation of a scheme or trust RAC and the matters to be reported on, and
 - (d) any potential conflict of interest in reviewing the matters to be reported on and has sufficient detachment, having regard to any existing professional or commercial relationships, to give an objective opinion.
- (4) The Pensions Authority may approve a nomination referred to in subsection (1)(a) and where -
- (a) it approves the nomination, or
 - (b) makes a nomination under subsection (1)(b),
- it shall notify the trustees of the scheme or trust RAC concerned, in writing, as soon as practicable.

26P. Contract with External Report reviewer.


✓ In force

- (1) Where an External Report reviewer is approved or nominated by the Pensions Authority under section 26O, the trustees of the scheme or trust RAC concerned shall enter into a written contract with the External Report reviewer.
- (2) It shall be a term of the contract referred to in subsection (1) that -
 - (a) the External Report reviewer is required to prepare, for the trustees of the scheme or trust RAC concerned, an External Report in accordance with the notice given under section 26N(1) and to provide that External Report to the trustees as soon as practicable after it is completed,
 - (b) that any duty owed by the External Report reviewer to the trustees concerned which might limit the provision of information or opinion by those trustees to the External Report reviewer in preparing an External Report under this Part shall be waived,
 - (c) that the External Report reviewer is required and permitted to provide to the Pensions Authority the following where the Pensions Authority so requests -
 - (i) periodic updates on progress and issues arising,
 - (ii) interim reports,
 - (iii) documents and working papers,
 - (iv) copies of any draft of the External Report given to the trustees concerned, and
 - (v) specific information about the planning and progress of the work to be undertaken (which may include project plans, progress reports including the amount of work completed, details of time spent, costs to date and details of any significant findings and conclusions), and
 - (d) that the contract is not varied or rescinded in such a way as to extinguish or alter the provisions included in the contract under this subsection.
- (3) If the Pensions Authority considers it appropriate, it may request the trustees of the scheme or trust RAC in respect of which the External Report is being made, to give to the Pensions Authority a copy of the draft contract before it is made with the External Report reviewer and the Pensions Authority may require modifications to be made to the draft contract as it considers appropriate.

26Q .Completion of External Report.

✓ In force

- (1) When the External Report reviewer has completed the External Report, he or she shall deliver it to the trustees of the scheme or trust RAC concerned.
- (2) The trustees referred to in subsection (1) shall as soon as practicable deliver a copy of the External Report to the Pensions Authority not later than the date specified in the notice given under section 26N(1).
- (3) Where the External Report reviewer is unable to deliver the External Report to the trustees on or before the date referred to in subsection (2), the External Report reviewer shall notify the trustees of the scheme or trust RAC concerned and the Pensions Authority as soon as practicable of the delay and provide an estimate of time required to deliver the External Report.
- (4) The Pensions Authority shall, on receipt of the External Report, have regard to it and examine the information set out in it and consider whether, in respect of one or more provisions set out in the notice referred to in section 26N, the scheme or trust RAC or the trustees of a scheme or trust RAC -
 - (a) is, or are, in compliance with those provisions,
 - (b) is, or are, not in compliance with those provisions, or
 - (c) is, or are, in compliance with some of those provisions and not in compliance with some of them.

26R. External Report: supplemental provisions. In force



- (1) The costs of, and any costs incidental to, the preparation of the External Report under this section shall be borne by the scheme or trust RAC.
- (2) The trustees of a scheme or trust RAC in respect of which an External Report is prepared shall give all such assistance to the External Report reviewer as he or she may reasonably require for the purposes of the preparation of an External Report.

26S. Pensions Authority not bound by External Report nor liable for it.

✓ In force

- (1) The Pensions Authority shall not be bound by the content of an External Report and an External Report shall not be taken to be a decision or opinion of the Pensions Authority for any purpose.
- (2) The Pensions Authority shall not be liable for any acts or omissions of an External Report reviewer.


Chapter 5 Part VIB compliance statement (ss. 26T-26U)

	26T. Part VIB compliance statement.
	26U. Section 26T: supplemental and transitional provisions.

26T. Part VIB compliance statement.

✓ In force

- (1) Not later than 31 January of each year, the trustees of a scheme or trust RAC shall prepare a statement in relation to the matters specified in subsection (2) ('Part VIB compliance statement') for the immediately preceding year for the purposes of prudential supervision.
- (2) A Part VIB compliance statement shall specify information relating to Part VIB.
- (3) The form of the Part VIB compliance statement shall be specified by the Pensions Authority following consultation with the Minister.
- (4) The trustees referred to in subsection (1) shall submit the Part VIB compliance statement to the Pensions Authority not later than 1 month after that statement is prepared in accordance with subsection (1).
- (5) The trustees referred to in subsection (1) shall certify that the information provided in the Part VIB compliance statement has been reviewed for accuracy and completeness and shall be certified by -
 - (a) at least 2 trustees of the scheme or trust RAC, or
 - (b) where a body corporate is appointed as the sole trustee of that scheme or trust RAC, at least 2 directors of that body corporate.
- (6) Where the Part VIB compliance statement has been submitted to the Pensions Authority, the Pensions Authority may, by notice in writing, request the trustees of a scheme or trust RAC to furnish the Authority, within a period as is specified in the notice, with information and documentation in respect of any matter specified in the Part VIB compliance statement.
- (7) Where the Pensions Authority has requested further information and documentation under subsection (6), the trustees of the scheme or trust RAC concerned shall provide that information and documentation within the period specified in the notice under subsection (6).

26U. Section 26T: supplemental and transitional provisions. In force

For the purposes of the first Part VIB compliance statement under section 26T -

- (a) where a scheme or trust RAC is registered under section 60 on or before the date of the coming into operation of this section, the first Part VIB compliance statement shall be prepared not later than 31 January 2022 in respect of 2021, or
- (b) where a scheme or trust RAC is registered under section 60 after the day on which this section comes into operation, the first Part VIB compliance statement shall be prepared not later than 31 January immediately following the day on which the scheme or trust RAC is registered in respect of the period from the day on which the scheme or trust RAC is registered to 31 December immediately following that day.

Chapter 6 Information to be provided to Pensions Authority (ss. 26V-26W)

✓	26V. Information to be provided to Pensions Authority.
✓	26W. Transparency and accountability.

26V. Information to be provided to Pensions Authority.

✓ In force

- (1) Without prejudice to any other provision of this Act, the Pensions Authority may require -
 - (a) the trustees of a scheme or trust RAC, or
 - (b) a person who carries out a key function referred to in Part VIB,
 to provide the Pensions Authority, at any time, with information concerning all business matters or to forward all business documents to it for the purposes of prudential supervision and the request shall be made by notice in writing and shall specify the date by which the information is to be provided.
- (2) The trustees referred to in subsection (1)(a) or a person referred to in subsection (1)(b) shall comply with a request under subsection (1) and not later than the date specified in the notice.
- (3) Without prejudice to any other provision of this Act, the Pensions Authority shall supervise relationships between a scheme or trust RAC and -
 - (a) a person, or
 - (b) another scheme or trust RAC,
 when the first-mentioned scheme or trust RAC outsources a key function, or any other activities, to that person or the second-mentioned scheme or trust RAC, and all subsequent re-outsourcing, influencing the financial situation of the scheme or trust RAC or being in a material way relevant for effective supervision.
- (4) Without prejudice to any other provision of this Act, the Pensions Authority may require the trustees of a scheme or trust RAC to provide information to it in relation to the supervision of relationships under subsection (3).
- (5) Without prejudice to any other provision of this Act, the Pensions Authority may request the trustees of a scheme or trust RAC to furnish it with all or any of the following:
 - (a) the own-risk assessment;
 - (b) the statement of investment policy principles;
 - (c) the annual accounts and annual reports;
 - (d) any other documents which the Pensions Authority considers are necessary for the purposes of prudential supervision of the scheme or trust RAC concerned under this Part.
- (6) Without prejudice to any other provision of this Act, the Pensions Authority may specify a document that is necessary for the purposes of the performance by it of its functions, under this Part, in relation to prudential supervision and, shall, in any such specification include the following documents -
 - (a) internal interim reports,
 - (b) actuarial valuations and detailed assumptions,
 - (c) asset-liability studies,
 - (d) evidence of consistency with the investment-policy principles,
 - (e) evidence that contributions have been paid in as planned,
 - (f) reports by the persons responsible for auditing the annual accounts referred to in section 56,
 and the Pensions Authority shall publish a list of any document it has specified under this subsection.
- (7) Without prejudice to any other provision of this Act, the Pensions Authority may carry out an on-site inspection for the purposes of the prudential supervision of the scheme or trust RAC under this Part -
 - (a) at or on any premises in or at which the trustees of a scheme or trust RAC carries on its business, and
 - (b) where appropriate, at or on any premises where outsourced and all subsequent re-outsourced activities are carried out,
 to check if activities are carried out in accordance with the supervisory rules.

- (8) For the purposes of subsection (7), the Pensions Authority may direct an authorised person to carry out an on-site inspection referred to in subsection (7) and section 18(3) shall apply to the authorised person who carries out the on-site inspection.
- (9) Without prejudice to any other provision of this Act, the Pensions Authority may, at any time, request the trustees of a scheme or trust RAC to provide it with information concerning outsourced activities and any subsequent re-outsourced activities for the purposes of prudential supervision of the scheme or trust RAC under this Part.

26W. Transparency and accountability.

✓ In force

- (1) Without prejudice to any other provision of this Act, the Pensions Authority shall perform the functions in this Part, Part VIB, sections 10(1A), 50(2C), 59(1E), 59A(1A), 59A(1B), 59AB, 149(1), 151A, 151B and 152(1) in a transparent, independent and accountable manner with due respect for the protection of confidential information.
- (2) Without prejudice to any other provision of this Act, the Pensions Authority shall publish -
 - (a) information regarding the supervisory review process under this Part,
 - (b) aggregate statistical data on key aspects of the application of the prudential framework on its website,
 - (c) the main objective of prudential supervision and information on its main functions and activities, and
 - (d) information in relation to the enforcement of this Part, Part VIB and a measure arising from the Directive of 2016.

Chapter 7 Professional secrecy and exchange, and transmission, of information (ss. 26X-26AB)

✓	26X. Professional secrecy and use, and exchange, of confidential information.
✓	26Y. Transmission, by Pensions Authority, of information to Central Bank, and other persons.
✓	26Z. Disclosure of information to certain persons: financial requirements.
✓	26AA. Conditions for exchange of information.
✓	26AB. Provision of information, etc. to EIOPA.

26X. Professional secrecy and use, and exchange, of confidential information.

✓ In force

- (1) Without prejudice to the generality of section 24(1) and subject to subsections (2) and (4), a person referred to in section 24 (including a person who is or was at any time, an auditor or expert acting on behalf of the Pensions Authority) is bound by the obligation of professional secrecy, and shall not divulge confidential information received by him or her in the course of his or her duties to any person or authority except in summary or aggregate form ensuring that a scheme or trust RAC cannot be identified other than in accordance with that section.
- (2) Where a scheme or trust RAC is being wound up, subsection (1) shall not operate to prevent the disclosure of information referred to in that subsection under section 24(3) nor in any civil or criminal proceedings.
- (3) Without prejudice to any other provision of this Act and subject to subsections (2) and (4), where the Pensions Authority receives confidential information pursuant to this Part, Part VIB or Part XII or section 150(1), 151A, 151B or 152(2), it shall use that information for the following purposes:
 - (a) to check that the conditions for taking up occupational retirement provision business are met by a scheme or trust RAC before it commences its activities;
 - (b) to facilitate the monitoring of the activities of a scheme or trust RAC including the monitoring of the technical provisions, the solvency, the system of governance, and the information provided to members and beneficiaries;
 - (c) to impose corrective measures;
 - (d) where there is a requirement, under any enactment, to publish key performance indicators of all individual schemes or trust RACs, which may assist a member and beneficiary in taking a financial decision regarding his or her pension;
 - (e) in an appeal, taken in respect of a decision of the Pensions Authority under this Part or Part VIB or section 50, 59A, 149, 150, 151, 151A, 151B, 152 or 153; and
 - (f) in proceedings in respect of a provision of this Act taken where such provision concerns a measure provided for in the Directive or the Directive of 2016.
- (4) Subject to this Part, subsections (1), (2) and (3) shall not operate to prevent the Pensions Authority from -
 - (a) exchanging information under section 4(2),
 - (b) disclosing information under section 4(3),
 - (c) exchanging information between it, in the discharge of its supervisory functions, and another competent authority in the State in the discharge of their supervisory functions and any of the following in the State in respect of such discharge -
 - (i) authorities responsible for the supervision of financial sector entities and other financial organisations and the authorities responsible for the supervision of financial markets and without prejudice to the generality of the foregoing includes the Central Bank of Ireland,
 - (ii) authorities or bodies charged with responsibility for maintaining the stability of the financial system through the use of macro-prudential rules, and
 - (iii) reorganisation bodies or authorities aiming at protecting the stability of the financial system,
 - (d) exchanging information with a person who is involved in the winding up of a scheme or trust RAC or other similar procedures,
 - (e) exchanging information with a person who is responsible for carrying out a statutory audit of the accounts of a scheme or trust RAC, an insurance undertaking or other financial institution, and
 - (f) disclosing information to a person who administers the winding up of a pension scheme where the information is necessary for the performance of such administration.
- (5) A person with, or to, whom information, referred to in subsection (4), is exchanged or disclosed shall be bound by the obligation of professional secrecy and shall not divulge such information received by him or

her to any person or authority except in summary or aggregate form ensuring that a scheme or trust RAC cannot be identified other than in accordance with this Part.

- (6) Nothing in subsections (1), (2) and (3) shall operate to prevent an exchange, or disclosure of information between the Pension Authority and any of the following:
- (a) the trustees of a scheme or a trust RAC that is being wound up and other similar procedures;
 - (b) a person responsible for the overseeing of the persons responsible for carrying out of a statutory audit of the accounts of a scheme or trust RAC, insurance undertakings and other financial institutions;
 - (c) an actuary and the Society of Actuaries of Ireland.
- (7) Subsections (1) to (3) shall be without prejudice to the right of inquiry conferred on the European Parliament by Article 226 of the Treaty on the Functioning of the European Union.

26Y. Transmission, by Pensions Authority, of information to Central Bank, and other persons.

✓ In force

- (1) Section 26X(1) to 26X(3) shall not operate to prevent the Pensions Authority from transmitting information to all or any of the following:
 - (a) the Central Bank of Ireland;
 - (b) the European Systemic Risk Board;
 - (c) EIOPA;
 - (d) the European Supervisory Authority (European Banking Authority);
 - (e) the European Supervisory Authority (European Securities and Markets Authority).
- (2) This section, and sections 26X(4), 26X(5), 26X(6), 26Z and 26AA shall not operate to prevent a person, authority or body referred to in subsection (1) from communicating to the Pensions Authority such information as the Pensions Authority may need for the purposes of section 26X(3).
- (3) A person with, or to whom information is exchanged or disclosed pursuant to this section shall be bound by the obligation of professional secrecy and shall not divulge such information received by him or her to any person or authority except in summary or aggregate form ensuring that a scheme or trust RAC cannot be identified other than in accordance with this Part.

26Z. Disclosure of information to certain persons: financial requirements.

✓ In force

- (1) Sections 26X(1), 26X(3) and 26AA shall not operate to prevent the disclosure of confidential information between the Pensions Authority and the Minister, any other Minister of the Government, a supervisory authority referred to in section 4, a body established under an enactment, a credit institution, financial institution, investment services and insurance undertakings, or where appropriate, an inspector acting on behalf of such persons.
- (2) A disclosure referred to in subsection (1) shall be made only where necessary for reasons of prudential control and prevention and resolution of a failing scheme or trust RAC.
- (3) A person with, or to whom information is exchanged or disclosed pursuant to this section shall not divulge such information received by him or her to any person or authority except in summary or aggregate form ensuring that a scheme or trust RAC cannot be identified other than in accordance with this Part.
- (4) Information received under section 26X(4) and obtained by means of onsite verification may only be disclosed with the express consent of the Pensions Authority, or where appropriate, any other competent authority from which the information originated or, as the case may be, the competent authority of the Member State in which the on-site verification was carried out and without prejudice to the generality of the foregoing such information may be disclosed between the Pensions Authority and the Minister, any other Minister of the Government and a supervisory authority referred to in section 4 with such express consent of the Pensions Authority where it carried out that verification, or the competent authority of the other Member State in which that verification was carried out.

26AA. Conditions for exchange of information.

✓ In force

- (1) For the purposes of an exchange of information under section 26X(4), a transmission of information under section 26Y and a disclosure of information under section 26Z, the following conditions shall apply:
- (a) the information shall be exchanged, transmitted or disclosed for the purpose of carrying out oversight or supervision;
 - (b) a person with, or to whom information is exchanged or disclosed pursuant to this section shall not divulge such information received by him or her to any person or authority except in summary or aggregate form ensuring that a scheme or trust RAC cannot be identified other than in accordance with this Part;
 - (c) where it originates from another Member State, it shall not be disclosed without the express agreement of the competent authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.
- (2) Section 26X(3) shall not operate to prevent the exchange of information between the Pensions Authority and Director of Corporate Enforcement referred to in section 945 of the Companies Act 2014 and for the purposes of such exchange -
- (a) the information exchanged must be intended for the purpose of detection, investigation and scrutiny,
 - (b) a person with, or to whom information is exchanged or disclosed pursuant to this section shall be bound by the obligation of professional secrecy and shall not divulge such information received by him or her to any person or authority except in summary or aggregate form ensuring that a scheme or trust RAC cannot be identified other than in accordance with this Part, and
 - (c) where it originates from another Member State, it shall not be disclosed without the express agreement of the competent authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

26AB. Provision of information, etc. to EIOPA.

✓ In force

- (1) The Pensions Authority shall, subject to subsection (2), report to EIOPA in respect of the provisions of this Part and 59AB which are -
- (a) of a prudential nature, and
 - (b) are not covered by social and labour law on the organisation of pension schemes referred to in Article 11(1) of the Directive of 2016,
- in respect of a scheme or trust RAC.
- (2) A report under subsection (1) shall be made at least every 2 years.
- (3) Nothing in subsection (2) shall operate to prevent a report under subsection (1) from being made from time to time as the Pensions Authority considers appropriate.

Part III Preservation of Benefits (ss. 27-39A)

✓	27. Interpretation (Part III).
✓	28. Entitlement to preserved benefit.
✓	29. Preserved benefit - defined benefit scheme.
✓	30. Preserved benefit - defined contribution scheme.
✓	31. Payment of preserved benefit.
✓	32. Non-entitlement to refund of contributions.
✓	32A. Entitlement to refund of contributions where no entitlement to preserved benefit
✓	33. Revaluation of preserved benefit.
✓	34. Entitlement to transfer payment.
✓	35. Power of trustees to effect transfer payment.
✓	35A. Minimum Value of Contributory Retirement Benefit.
✓	36. Provisions of schemes relating to forfeiture and lien to be disregarded.
✓	37. Exclusion from and modification of Part III and Second Schedule.
✓	38. Conflict between Part III and schemes.
✓	39. Schemes may provide higher benefits.
✓	39A. Waiting period

27. Interpretation (Part III).

✓ In force

- (1) In this Part and the Second Schedule, except where the context otherwise requires -

"contributory retirement benefit", means a member's ordinary retirement benefit multiplied by the member's reckonable service during which, under the rules of the scheme, he was required to pay contributions to the scheme and divided by the member's total reckonable service;

"contributory scheme", means a defined benefit scheme under the rules of which members are, or have been, required to pay contributions to the scheme;

"Directive of 2014", means Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 [OJ No. L 128, 30.4.2014, p. 1] on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights;

"minimum contributory retirement benefit", means a contributory retirement benefit of at least the minimum value required under section 35A;

"ordinary retirement benefit", means long service benefit, excluding any such benefit which is secured by way of additional voluntary contributions or which represents a transfer of accrued rights from another scheme;

"qualifying service", in relation to a member of a scheme, means the aggregate of every period of reckonable service, whether or not continuous in each case, under -

- (a) the scheme,
- (b) every other scheme relating to the same employment,
- (c) every other scheme relating to any other employment in respect of which rights to long service benefit have been granted under the scheme in substitution for accrued rights under such other scheme:

Provided that no such period, or part thereof, shall be counted more than once;

"transfer payment" has the meaning assigned to it by section 34(2).

- (2) Where the rate or amount of part of the long service benefit payable under a defined benefit scheme is directly determined by the accumulated value of the contributions paid by or in respect of the member, then, for the purposes of this Part and the Second Schedule, the scheme in so far as it relates to such part of the long service benefit shall be treated as a defined contribution scheme and, in so far as it relates to other benefits (including the remaining part of the long service benefit) shall be treated as a defined benefit scheme.
- (3) References in this Part and the Second Schedule to a defined contribution scheme or a defined benefit scheme shall be construed as including references to a part of such scheme.
- (4) A word or expression which is used in this Part and the Second Schedule and which is also used in the Directive of 2014 has, unless the context otherwise requires, the same meaning in this Part and the Second Schedule as it has in that Directive.

28. Entitlement to preserved benefit.

✓ In force

- (1) Subject to section 37, this Part and the Second Schedule shall apply to any member of a scheme who has service in relevant employment after 1 January 1991.
- (2) A member of a scheme whose service in relevant employment terminates otherwise than on death before normal pensionable age shall be entitled to a benefit (in this Act referred to as a 'preserved benefit') if -
 - (a) his service in relevant employment so terminates after 1 January 1991 but on or before 1 June 2002, and he has completed at least five years' qualifying service of which at least two such years fall after 1 January 1991, or
 - (b) his service in relevant employment so terminates after 1 June 2002, and he has completed at least two years' qualifying service which fall after 1 January 1991.

29. Preserved benefit - defined benefit scheme.

✓ In force

- (1) In this section -

"contingent pension" has the meaning assigned to it by subsection (5);

"scheme" means a defined benefit scheme.
- (2) A preserved benefit shall be provided under a scheme only in respect of -
 - (a) a long service benefit, or
 - (b) where, by the exercise of an option under subsection (5), the trustees so determine, a contingent pension.
- (3) A preserved benefit shall be calculated in accordance with Part A of the Second Schedule.
- (4) Subject to subsection (5), on the death of a member of a scheme who is entitled to a preserved benefit under the scheme before such benefit commences to be payable, an amount shall be payable under the scheme to his personal representative in respect thereof equal to the actuarial value of the preserved benefit (including any preserved benefit under subsections (6) and (7) immediately before the death of the member concerned.
- (5)
 - (a) Where a scheme provides for a pension payable to, or for, either or both the widowed spouse or any dependants of the member concerned in the event of that member's death while in relevant employment prior to his attaining normal pensionable age (in this section referred to as "a contingent pension") the trustees of the scheme may, in lieu of the benefit specified in subsection (4), provide under the scheme a contingent pension calculated in accordance with paragraph 1 and, where appropriate, paragraph 4 of Part A of the Second Schedule and such benefit shall be deemed to form part of that member's preserved benefit.
 - (b) For the purposes of paragraph (a), references in paragraphs 1 and 4 of Part A of the Second Schedule to long service benefit shall be construed as references to a contingent pension within the meaning of this section.
- (6) Where a member of a scheme is entitled to additional long service benefit under the scheme by virtue of the payment of additional voluntary contributions, a preserved benefit in respect of such benefit shall be calculated in accordance with paragraph 3 of Part A of the Second Schedule:


Provided that if the member has received a refund of any such contributions paid by him during any period of reckonable service prior to 1 January 1991, then, in calculating the amount of any preserved benefit under this subsection, any period of reckonable service prior to 1 January 1991 shall be disregarded.
- (7) Where additional long service benefit has been granted under a scheme to a member in respect of a transfer of accrued rights from another occupational pension scheme, where such accrued rights result from the termination of the employment to which that occupational pension scheme applies, that benefit shall be provided as part of the preserved benefit under subsection (2):

Provided that if the member has received a refund of the contributions paid by him to the other occupational pension scheme prior to 1 January 1991 which were included in the rights transferred from the other occupational pension scheme then, in calculating the amount of any preserved benefit under this subsection, any additional long service benefit accrued under that other occupational pension scheme prior to 1 January 1991, shall be disregarded.

30. Preserved benefit - defined contribution scheme.

✓ In force

- (1) In this section -
- "appropriate contributions" shall be construed in accordance with subsections (4), (5) and (6);
- "accumulated value" in relation to any appropriate contributions, shall be construed in accordance with section 2;
- "scheme" means a defined contribution scheme.
- (2) A preserved benefit shall be provided under a scheme and it shall be such that its actuarial value at the date on which payment of it commences is equal to the accumulated value on that date of the appropriate contributions in respect of the member concerned under the scheme.
- (3) On the death of a member of a scheme who is entitled to a preserved benefit before such benefit commences to be payable, an amount shall be payable under the scheme to his personal representative in respect thereof equal to the accumulated value of the appropriate contributions under the scheme in respect of the member immediately before his death.
- (4) Subject to subsections (5) and (6), the appropriate contributions shall be the contributions paid by or in respect of the member concerned for the purposes of long service benefit from -
- (a) in the case of a member who is entitled to a preserved benefit under section 28(2)(a), 1 January 1991 or, if later, the date of the commencement of the relevant employment,
- (b) in the case of a member who is entitled to a preserved benefit under section 28(2)(b), the date of the commencement of the relevant employment,
- but excluding additional voluntary contributions and any payment representing a transfer of accrued rights from another scheme.
- (5) Where a member of a scheme is entitled to additional long service benefit under the scheme by virtue of the payment of additional voluntary contributions, the appropriate contributions shall be all such contributions:
- Provided that if the member has received a refund of any such contributions paid by him prior to 1 January 1991, the appropriate contributions shall be the contributions paid by him from 1 January 1991.
- (6) Where additional long service benefit has been granted under a scheme to a member in respect of a transfer of accrued rights from another occupational pension scheme, where such accrued rights result from the termination of the employment to which that scheme applies, the appropriate contributions shall be the amount of the payment received by the trustees of the scheme in respect of such accrued rights:
- Provided that if the member has received a refund of contributions paid by him, prior to 1 January 1991, under that occupational pension scheme which were included in the rights transferred, the appropriate contributions shall be the portion of the payment received by the trustees which represented rights accrued after that date.
- (7) Where benefits under a scheme are secured under one or more policies of assurance, the realisable value, on the date on which payment of preserved benefit commences, of the resources of the scheme which represent the appropriate contributions paid by or on behalf of a member shall, for the purposes of this Part, be the proportion of the proceeds of every such policy applicable to those contributions.

31. Payment of preserved benefit. In force

- (1) A preserved benefit shall be payable out of the resources of the scheme.
- (2) Except as provided for in this Part, a preserved benefit shall be payable in accordance with, and subject to, the rules of the scheme being the rules as at the date of the termination of the relevant employment.

32. Non-entitlement to refund of contributions.

✓ In force

- (1) A member of a scheme who is entitled to preserved benefit under the scheme in accordance with section 28(2)(a) shall not be entitled to receive a refund of any contributions paid to that scheme after 1 January 1991.
- (2) A member of a scheme who is entitled to preserved benefit under the scheme in accordance with section 28(2)(b) shall not be entitled to receive a refund of any contributions paid to that scheme.
- (3) A member of a scheme who would be entitled to preserved benefit under the scheme in accordance with the provisions of this Part if his service in relevant employment were to terminate shall not be entitled to receive a refund of any contributions paid to that scheme.

32A. Entitlement to refund of contributions where no entitlement to preserved benefit

✓ In force

- (1) Where the service in relevant employment of an outgoing worker of a scheme is terminated and the outgoing worker is not, at the time of the termination, entitled to a preserved benefit under a scheme, the outgoing worker shall be entitled to receive a refund in the manner specified in subsection (2) of the contributions paid to the scheme by, or on behalf of, the outgoing worker.
- (2) For the purposes of the refund referred to in subsection (1), the trustees of the scheme shall-
- (a) in the case of a defined benefit scheme, refund the outgoing worker the pension contributions paid by or on behalf of the outgoing worker, or
 - (b) in the case of a defined contribution scheme, refund the outgoing worker-
 - (i) the sum of the contributions paid by, on behalf of, and in respect of the outgoing worker, whether the contributions were paid by that outgoing worker or the employer, or by both of them, or
 - (ii) the value of the investments arising from the contributions paid by, on behalf of, and in respect of the outgoing worker whether the contributions were paid by that outgoing worker or the employer, or by both of them.
- (3) Where the rules of a scheme provide for a refund of an amount that is greater than the amount of-
- (a) pension contributions referred to in paragraph (a) or (b)(i) of subsection (2), or
 - (b) the value of investments referred to in paragraph (b)(ii) of subsection (2),
- nothing in subsection (2) shall operate to prevent the greater amount being refunded to the outgoing worker.

33. Revaluation of preserved benefit.

✓ In force

- (1) In this section and Part B of the Second Schedule "revaluation year" means a year beginning on or after 1 January 1996.
- (2) Where in respect of any preserved benefit payable under a defined benefit scheme to or in respect of a member and calculated in accordance with any or all of paragraphs 2, 3 and 4 of Part A of the Second Schedule, there is a period of at least one year between -
 - (a) the commencement of the first revaluation year or the date of the termination of the member's relevant employment, whichever is the later, and
 - (b) the date on which he attains or would attain normal pensionable age or the date of his death, whichever is the earlier,

then, the preserved benefit shall be revalued annually as soon as may be after the end of each revaluation year in accordance with the provisions of Part B of that Schedule.
- (3) A revaluation shall not be made under this section in respect of a member of a scheme after -
 - (a) the date of payment of preserved benefit to or in respect of him, or
 - (b) the date of his attainment of normal pensionable age, or
 - (c) the date of his death,

whichever is the earliest.
- (4) The Minister, after consultation with the Minister for Public Expenditure and Reform, shall, in respect of each revaluation year, prescribe the percentage (in this Act referred to as "the revaluation percentage") which shall determine the amount by which the preserved benefit is to be adjusted by the revaluation thereof under this section for that year.
- (5) The percentage prescribed under subsection (4) in respect of a revaluation year shall be -
 - (a) in respect of a revaluation year ending on or before 31 December 2012 -
 - (i) the percentage that equals the increase in the general level of consumer prices during that year calculated by the Minister in such manner as he or she thinks appropriate, or
 - (ii) 4 per cent,

whichever is the lesser, and
 - (b) in respect of a revaluation year ending on or after 1 January 2013 -
 - (i) the percentage that equals the increase or decrease in the general level of consumer prices during that year calculated by the Minister in such manner as he or she thinks appropriate, or
 - (ii) 4 per cent,

whichever is the lesser.
- (6) The Minister may by regulations -
 - (a) vary the percentage specified in subparagraph (ii) of subsection (5)(a) or subparagraph (ii) of subsection (5)(b), but any such variation shall not apply in the case of a preserved benefit the entitlement to which arises before the date of the making of the regulations concerned, and
 - (b) increase the percentage specified in subparagraph (ii) of subsection (5)(b) in respect of any revaluation year to wholly or partly take account of any negative percentage prescribed under subsection (5)(b) in a previous revaluation year in respect of a member whose benefit had previously been adjusted by that negative percentage.
- (7) Where, in the opinion of the Minister, no change in the general level of consumer prices occurred during a revaluation year, he shall not prescribe a percentage under subsection (4) in relation to that year and the revaluation of any preserved benefit that, but for this subsection, would fall to be made as soon as may

be after the end of that year shall not be made.

34. Entitlement to transfer payment.

✓ In force

- (1) This section shall apply to a member of a funded scheme who is entitled to a preserved benefit under this Part.
- (2) A member of a scheme to whom this section applies shall be entitled to the transfer of an amount of money from the scheme (in this Part referred to as a 'transfer payment') in accordance with subsection (3) equal -
 - (a) in the case of a defined benefit scheme, to the actuarial value of the preserved benefit, and of any amount payable under section 29(4), on the date on which the relevant application under subsection (3) is received by the trustees or on a date selected by the trustees which is not earlier than three months before, nor later than three months after, the first-mentioned date, and
 - (b) in the case of a defined contribution scheme, to the accumulated value of the appropriate contributions under the scheme in respect of the member, such value to be determined on a date not later than three months following the date of the receipt of the application,

and in each case regulations may prescribe that the transfer payment is to be calculated in accordance with any applicable professional guidance issued by the Society of Actuaries in Ireland and specified in the regulations or with any other applicable guidance issued by any other person (including the Board or the Minister) and specified in the regulations:

Provided that-

- (i) in the case of a member who is entitled to a preserved benefit under section 28(2)(b), the part of the transfer payment which represents the actuarial value of benefits specified in section 44(a)(v) may be reduced by multiplying it by the specified percentage shown in the most recent actuarial funding certificate having an effective date after 1 June 2002 in respect of that scheme, and
 - (ii) in the case of a defined benefit scheme, if the actuary advises the trustees that he is reasonably satisfied that, if he were to prepare an actuarial funding certificate under section 42 having an effective date of the day upon which the amount of the transfer payment is expected to be made, he would not certify that the scheme satisfies the funding standard provided for in section 44, the amount of the transfer payment applied by the trustees after 2 April 2003 may be reduced by the trustees, on the advice of the actuary, having regard to the provisions of section 48.
- (3) A member of a scheme who is entitled to a transfer payment under subsection (2) may exercise such right by making an application in writing to the trustees of the scheme providing them with such information as they may reasonably require and directing them to apply the transfer payment -
 - (a) in the making of a payment to another funded scheme which provides or is capable of providing long service benefit and of which he is a member or a prospective member, or
 - (b) in the making of one or more payments falling to be made under policies or contracts of assurance that are effected on behalf of the member with one or more undertakings (within the meaning of the Insurance Act, 1989) and that are approved by the Revenue Commissioners for the purposes of Chapter I of Part 30 of the Taxes Consolidation Act 1997, which policies or contracts of assurance shall not be deemed to be an occupational pension scheme for the purposes of this Act, or
 - (c) in the making of a payment to another scheme which is not a funded scheme, which provides or is capable of providing long service benefit, of which he is a member or a prospective member and the trustees of which are willing to accept payments made under this paragraph, or
 - (d) where so prescribed, and in accordance with such conditions as may be prescribed, in the making of a payment to the trustees, custodians, managers or administrators of an arrangement for the provision of retirement benefits established within the State, not being an arrangement of the kind mentioned in paragraph (a), (b) or (c), or
 - (e) where so prescribed, and in accordance with such conditions as may be prescribed, in the making of a payment to the trustees, custodians, managers or administrators of an arrangement for the provision of retirement benefits established outside the State.

- (4) Where the trustees of a scheme receive an application under subsection (3), they shall apply the transfer payment concerned, within the period of 3 months following the date of the receipt of the application, in the manner directed by the application under subsection (3).
- (5) Where -
- (a) a person has exercised the entitlement conferred on him under subsection (2), and
 - (b) the trustees of the scheme from which the transfer payment is being made have complied with the provisions of subsection (4),
- then, they shall be discharged from any obligation to provide benefits to which the transfer payment relates.
- (6) Where a member of a scheme directs the application of a transfer payment in accordance with subsection (3)(a) or (c), the trustees of the scheme to which the transfer payment is being made shall accept such payment and shall provide benefits of an actuarial value that is equivalent to the amount of the transfer payment in such form as they may determine.
- (7) A member of a scheme shall not be entitled to a transfer payment under this section if -
- (a) payment of his preserved benefit has commenced, or
 - (b) he fails to exercise the entitlement within a period of 2 years (or such longer period as may be provided for by the scheme or determined by the trustees of the scheme) after the date of the termination of the relevant employment concerned.

35. Power of trustees to effect transfer payment.

✔ In force

- (1) Subject to subsection (1A), notwithstanding anything contained in section 34, the trustees of a scheme may, in such circumstances as may be prescribed, instead of providing a preserved benefit out of the resources of the scheme, effect, without the consent of the member concerned, a transfer payment from the scheme by making one or more payments referred to in section 34(3)(b) or (d).
- (1A) In the case of an outgoing worker, the trustees of a scheme may effect a transfer payment from the scheme by making one or more payments referred to in section 34(3) where an outgoing worker has provided consent in writing.
- (2) Where the trustees of a scheme have effected a transfer payment in accordance with subsections (1) or (1A) they shall be discharged from any obligation to provide benefits to which the transfer payment relates.

35A. Minimum Value of Contributory Retirement Benefit.

✓ In force

- (1) Where the service in relevant employment of a member of a contributory scheme terminates after 1 June 2002 -
- (a) at or after normal pensionable age, or
- (b) within five years before normal pensionable age,
- and the member is entitled under the rules of the scheme to a contributory retirement benefit, the amount of the contributory retirement benefit shall, if necessary, be increased so that its actuarial value is not less than the minimum value calculated in accordance with Part C of the Second Schedule.
- (2) No part of the amount of any increase to a contributory retirement benefit to be made under subsection (1) shall be provided by reducing the amount of any other benefit payable under the rules of the scheme concerned.
- (3) Any increase in contributory retirement benefit arising under subsection (1) shall be payable out of the resources of the scheme.
- (4) Except as provided for in this Part, a contributory retirement benefit increased under subsection (1) shall be payable in accordance with, and subject to, the rules of the scheme, being the rules as at the date of the termination of the relevant employment.

36. Provisions of schemes relating to forfeiture and lien to be disregarded.

✓ In force

- (1) Any provision of a scheme -
- (a) providing for the forfeiture of a preserved benefit or of a minimum contributory retirement benefit, or
 - (b) enabling the employer of a member to exercise a lien on the member's preserved benefit or a member's minimum contributory retirement benefit,
- shall be disregarded for the purpose of this Part.
- (2) Notwithstanding paragraph (a) of subsection (1) where a member of a scheme or such other person who is entitled to preserved benefit or a contributory retirement benefit is or becomes bankrupt (within the meaning of the Bankruptcy Act, 1988), or assigns or charges or attempts to assign or charge the benefit, the trustees of the scheme may, at their discretion, apply any provision of the scheme, under which a benefit may be forfeited and paid, to the member or such other person specified in the provision.

37. Exclusion from and modification of Part III and Second Schedule.

✓ In force

- (1) Where the Minister is of the opinion that the benefits provided under schemes or categories of schemes during a period that the Minister considers to be of reasonable length for the purposes of this subsection are no less favourable to the members concerned than those required by this Act to be provided under the schemes or categories of schemes, he may by regulations made with the consent of the Minister for Public Expenditure and Reform exclude those schemes or categories of schemes from the application of this Part and the Second Schedule.
- (2) Where the Minister considers that it would be unreasonable, having regard to their nature and character, and would be contrary to the interests of their members, to require specified schemes or categories of schemes to comply fully with specified provisions of this Part and the Second Schedule, he may by regulations made with the consent of the Minister for Public Expenditure and Reform provide that those provisions shall apply in relation to those schemes or categories of schemes with specified modifications, being modifications that in the opinion of the Minister are reasonable and do not materially alter those provisions.
- (3) Where the Minister so provides by regulations, then notwithstanding anything in this Part, in the cases specified in the regulations -
 - (a) a period of a person's reckonable service under a scheme in different employments may be treated for the purposes of this Part as a period of reckonable service under the scheme in such one or more of those employments as may be specified;
 - (b) a person's reckonable service in any employment may be treated in the case of interruption of such employment as terminated or not terminated;
 - (c) a member's service in relevant employment may be treated as terminated or not terminated.
- (4) The Minister may by regulations specify the method of calculating preserved benefit and the minimum value of contributory retirement benefit under section 35A payable under schemes and for such adjustments of the amounts of such benefit as may be necessary to facilitate its computation.
- (4A) Regulations may specify the method of calculating preserved benefit and the minimum value of contributory retirement benefit under section 35A payable under schemes where on termination of relevant employment a member has periods of reckonable service in more than one scheme relating to the same employment or in a defined benefit scheme and a defined contribution scheme which are both part of the one scheme.
- (5) This Part shall not apply to a scheme established under the Defence Forces (Pensions) Acts, 1932 to 1975.

38. Conflict between Part III and schemes.

✓ In force

- (1) The provisions of this Part, of any regulations made there under and of the Second Schedule shall override any rule of a scheme to the extent that that rule conflicts with those provisions.
- (2) Any question as to -
- (a) whether any provision of this Part (including the application of any provision as modified by regulations), any regulations made thereunder or the Second Schedule conflicts with any rule of a scheme, or
 - (b) whether a scheme is a defined benefit scheme or a defined contribution scheme for the purposes of this Part,
- or
- (c) whether a member's service in relevant employment may be treated as terminated for the purposes of this Part,
- shall be determined by the Board on application to it in writing in that behalf by a person specified in subsection (3).
- (3) The following persons shall be entitled to make an application under subsection (2) in respect of a scheme:
- (a) the trustees of the scheme;
 - (b) any person who is an employer of persons in relevant employment to which the scheme applies;
 - (c) any member or prospective member of the scheme;
 - (d) such other persons (if any) as may be prescribed, being persons who, in the opinion of the Minister, ought to be entitled to make such an application.
- (4) An appeal to the High Court on a point of law from a determination of the Board under subsection (2) in relation to a scheme, may be brought by the person who made or a person who was entitled to make the application concerned under subsection (2) not later than six months after the date of the determination by the Board.

39. Schemes may provide higher benefits.

✓ In force

- (1) Nothing in the other provisions of this Part or in the Second Schedule shall be construed as precluding a scheme from providing benefits, in lieu of preserved benefit or minimum contributory retirement benefit, on a higher scale, or payable at any earlier, or, at the request of the member of the scheme, at any later time or otherwise more favourably than is provided for under this Part:
- Provided that -
- (a) such benefits are of an actuarial value that is equivalent to or greater than that of preserved benefit,
 - (b) on the death of a member before any such benefit commences to be payable the amount thereof shall not be less than the amount that would, but for this section, have been payable by virtue of section 29(4) or 30(3), as appropriate,
 - (c) a member who is entitled to preserved benefit under this Part shall not be entitled to receive a refund of any contributions paid to the scheme in contravention of section 32,
 - (d) such benefits shall be provided to the same extent to or in respect of members whose service in relevant employment terminates as a consequence of their moving to another Member State as to or in respect of members whose service in relevant employment terminates for any other reason.
- (2) Where a scheme provides benefits to or in respect of a member whose service in relevant employment terminates but who is not entitled to a preserved benefit under this Part, such benefits shall, be provided to the same extent to or in respect of members whose service in relevant employment terminates as a consequence of their moving to another Member State as to or in respect of members whose service in relevant employment terminates for any other reason.

39A. Waiting period

✓ In force

- (1) Notwithstanding anything contained in the rules of a scheme in respect of a waiting period, where an outgoing worker is eligible to become a member of a scheme, he or she shall be admitted as a member of the scheme after a waiting period that is not greater than-
- (a) 12 months from the date of commencement of the service in relevant employment of that person, or
 - (b) in the case of a person whose service in relevant employment commenced before the relevant date and the scheme rules require a waiting period of-
 - (i) 12 months to be admitted into it, that person shall be admitted into the scheme 12 months from the day on which that service commenced, or
 - (ii) more than 12 months to be admitted into it and on the relevant date a period of 12 months has elapsed from the day on which that service commenced, that person shall be admitted into the scheme on the relevant date.
- (2) In this section, 'relevant date' means 13 September 2019.

Part IV Funding Standard (ss. 40-53)

✓	40. Interpretation (Part IV).
✓	41. Application.
✓	42. Actuarial funding certificate.
✓	43. Effective dates for actuarial funding certificates.
✓	44. Provisions relating to funding standard.
✓	45. Provisions relating to schemes commencing before 1 June 2002.
✓	46. Matters to which actuary is to have regard.
✓	47. Limitations on calculation of resources of relevant scheme.
✓	48. Priorities on winding up of relevant scheme.
✓	48A. 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).
✓	48B. Payment of moneys by Minister for Finance in respect of liabilities accruing under certain relevant schemes
✓	49. Funding proposal.
✓	50. Direction by Board to trustees.
✓	50A. Power to amend relevant scheme.
✓	50B. Direction by Board to trustees to wind up scheme.
✓	50C. Application to High Court
✓	51. Qualification for appointment as actuary of scheme.
✓	51A. Review of actuarial work.
✓	52. Exclusion from and modification of Part IV and Third Schedule.
✓	53. Conflict between Part IV and schemes.

40. Interpretation (Part IV).

✓ In force

In this Part and the Third Schedule, except where the context otherwise requires -

"additional resources" means, on any date, resources in addition to the resources used to determine whether the scheme satisfies the funding standard on the same date;

"funding proposal" has the meaning assigned to it in section 49;

"index-linked benefits" means benefits which, under the rules of a scheme, are increased while in payment at a rate wholly or partly linked to increases in an index of the cost of living or of wages or salaries or increases in salaries actually or notionally payable to serving employees in the relevant employment;

"certified percentage" means a percentage specified for the purposes of section 45(4);

"specified percentage" has the meaning assigned to it by section 44.

41. Application.

✓ In force

- (1) Subject to section 52, this Part shall apply to any scheme other than -
- (a) a defined contribution scheme, or
 - (b) a small scheme under which service in the relevant employment after the 1st day of January, 1993, does not entitle the members to long service benefit and, where any long service benefit is determined by reference to a member's earnings, such earnings in the case of all members relate to a date or a period prior to the 1st day of January, 1993, or
 - (c) to such extent as may be prescribed, a small scheme the winding up of which has commenced.
- (2) Notwithstanding subsection (1) but subject to paragraph (aa) -
- (a) this Part shall apply to -
 - (i) a defined contribution scheme which is a regulatory own funds scheme,
 - (ii) a defined contribution scheme which is paying benefits to or in respect of members where those benefits are not secured under a policy or policies of assurance with one or more undertakings, and
 - (iii) a small scheme of the type referred to in paragraph (b) of subsection (1) which is a regulatory own funds scheme,
 - (aa) the provisions of this Part which relate to the funding standard reserve shall not apply to -
 - (i) a defined contribution scheme which is a regulatory own funds scheme, or
 - (ii) a small scheme of the type referred to in paragraph (b) of subsection (1) which is a regulatory own funds scheme,
 - (b) subsections (1), (1A), (1AA), (1AB), (1B) and (2) of section 48 (amended by section 16 of the Social Welfare and Pensions Act 2009) shall apply to any scheme other than a defined contribution scheme, and
 - (c) subsections (3), (3A), (3B) and (4) of section 48 shall apply to every scheme.

42. Actuarial funding certificate.

✓ In force

- (1) The trustees of a relevant scheme shall, from time to time in accordance with section 43, submit to the Board a certificate, in this Act referred to as "an actuarial funding certificate".
- (1A) On and after 1 June 2012, the trustees of a relevant scheme shall, from time to time in accordance with section 43, submit to the Board a certificate, in this Act referred to as "a funding standard reserve certificate".
- (2) The trustees of a relevant scheme shall cause actuarial funding certificates to be prepared by an actuary who shall certify therein that as at the date, in this Act referred to as "the effective date of the actuarial funding certificate", on which the liabilities and resources of the scheme are calculated for the purposes of section 44(1) either -
 - (a) the scheme satisfies the funding standard provided for in section 44(1), or
 - (b) the scheme does not satisfy the funding standard.
- (2A) The trustees of a relevant scheme shall cause funding standard reserve certificates to be prepared by an actuary who shall certify therein that as at the date, in this Act referred to as "the effective date of the funding standard reserve certificate", on which the funding standard reserve is calculated for the purposes of section 44(2) either -
 - (a) the scheme satisfies the funding standard reserve, or
 - (b) the scheme does not satisfy the funding standard reserve.
- (3) In the case of a relevant scheme which commenced before 1 June 2002, the first actuarial funding certificate submitted in accordance with section 43 having an effective date after 1 June 2002 shall also state the certified percentage in relation to the scheme.
- (4) Regulations under this section may -
 - (a) prescribe the form and content of an actuarial funding certificate and a funding standard reserve certificate, and
 - (b) require the actuary, in completing an actuarial funding certificate and a funding standard reserve certificate, to comply with the applicable professional guidance issued by the Society of Actuaries in Ireland and specified in the regulations or with any other applicable guidance issued by any other person (including the Board or the Minister) and specified in the regulations.
- (5) The Board, where it considers that it is necessary or appropriate and would not be contrary to the interests of the members of a scheme, may modify the requirements of subsections (1), (1A), (2) and (2A) in respect of such scheme in such circumstances and on such terms as it considers appropriate.

43. Effective dates for actuarial funding certificates.

✓ In force

- (1) The first actuarial funding certificate shall have an effective date -
- (a) in the case of a relevant scheme which commenced before 1 January 1991, not later than 1 January 1994, and
 - (b) in the case of a relevant scheme which commenced on or after 1 January 1991, not later than 3½ years after the commencement of the scheme, and
 - (ba) in the case of a scheme to which this Part applies by virtue of the amendment effected by section 31(a) of the Social Welfare and Pensions Act 2005, not later than 1 April 2007, and
 - (bb) in the case of a relevant scheme which commenced after 22 September 2005, not later than 3 years after the commencement of the scheme, and
 - (c) in the case of a scheme to which this Part applies by virtue of the amendment effected by section 32(a) of the Social Welfare and Pensions Act 2005, not later than 1 January 2007, and
 - (d) in the case of a scheme which has been excluded, in whole or in part, from the application of this Part by virtue of regulations made under section 52 and which is no longer so excluded, not later than 6 months after the date on which the exclusion ceases to apply, and
 - (e) notwithstanding paragraphs (a) and (b), in the case of each of the following relevant schemes:
 - (i) the Bord Na Móna (Members) Superannuation Scheme 1959;
 - (ii) the Dublin Port and Docks Board Unestablished Employees' Superannuation Scheme 1990;
 - (iii) the Dublin Port and Docks Board Officers' Superannuation Scheme 1961;
 - (iv) the Dublin Port and Docks Board Established Grade A Employees' Superannuation Scheme;
 - (v) the Foynes Port Company Pension Scheme;
 - (vi) the Shannon Estuary Port Company Superannuation Plan (Limerick Harbour Commissioners Officers' Superannuation Scheme 1962);
 - (vii) the Superannuation Scheme for Employees of the Pilotage Authority of the Dublin Pilotage District 1994;
 - (viii) the Port of Waterford Company Pension and Death Benefits Plan;
 not later than 1 January 2009,
- and, subject to subsections (1A) and (1B), a subsequent actuarial funding certificate shall have an effective date not later than 3½ years after the effective date of the immediately preceding certificate.
- (1A) Where, in accordance with subsection (1), an actuarial funding certificate, having an effective date after 22 September 2005, has been prepared, any subsequent actuarial funding certificate shall have an effective date not later than 3 years after the effective date of the immediately preceding certificate.
- (1B) Notwithstanding subsections (1) and (1A) and subject to section 53M, in the case of a relevant scheme which is a regulatory own funds scheme an actuarial funding certificate shall be submitted to the Board having an effective date of:
- (a) in the case of a relevant scheme which on 23 September 2010 was a regulatory own funds scheme, not later than 6 months after the date on which Chapter 2 of Part 4 of the Social Welfare and Pensions Act 2011 comes into operation;
 - (b) in the case of a relevant scheme which commences after 23 September 2010 and which from the relevant scheme's commencement is a regulatory own funds scheme -
 - (i) not later than 4 weeks after the date of commencement of the relevant scheme, or
 - (ii) not later than 4 weeks after the date on which Chapter 2 of Part 4 of the Social

Welfare and Pensions Act 2011 comes into operation,

whichever is the later;

(c) in the case of a relevant scheme which at its commencement was not a regulatory own funds scheme but becomes a regulatory own funds scheme after 23 September 2010 -

(i) not later than 4 weeks after the date on which the scheme becomes a regulatory own funds scheme, or

(ii) not later than 4 weeks after the date on which Chapter 2 of Part 4 of the Social Welfare and Pensions Act 2011 comes into operation,

whichever is the later.

(1C) While a relevant scheme to which this Part applies remains a regulatory own funds scheme each actuarial funding certificate submitted after the appropriate effective date referred to in subsection (1B) shall have an effective date not later than one year after the effective date of the immediately preceding certificate.

(1D) Where, in accordance with subsection (1B) or (1C) an actuarial funding certificate has been prepared and the relevant scheme subsequently ceases to be a regulatory own funds scheme, any subsequent actuarial funding certificate shall have an effective date not later than 3 years after the effective date of the immediately preceding certificate.

(1E) In the case of a relevant scheme, a funding standard reserve certificate shall have the same effective date as the actuarial funding certificate for the scheme where the effective date of that actuarial funding certificate falls on or after 1 June 2012.

(2) Subject to subsections (2A), (3), (3A), (3B) and (4), an actuarial funding certificate and, on or after 1 June 2012, a funding standard reserve certificate shall be submitted to the Board by the trustees of the scheme within 9 months (or such other period as may be prescribed) of the effective date of the relevant certificate.

(2A) Notwithstanding the foregoing provisions of this section, the Board may, by notice in writing to the trustees of a relevant scheme, require the trustees to submit to the Board, by such date as may be specified in the notice, an actuarial funding certificate or funding standard reserve certificate having as an effective date such date as is specified in that notice and the trustees shall comply with any such notice.

(3) If an annual report prepared under subsection (1) of section 55 -

(a) does not contain the statement by an actuary required under subsection (3) or (4) of that section, as appropriate,

(b) contains the statement by an actuary required under that subsection (3) but the actuary does not state therein that he or she is reasonably satisfied that, if he or she were to prepare under section 42 an actuarial funding certificate and, on or after 1 June 2012, a funding standard reserve certificate having an effective date of the last day of the period to which the annual report relates, he or she would certify, in the case of an actuarial funding certificate, that the scheme satisfies the funding standard, or, in the case of a funding standard reserve certificate, that the scheme satisfies the funding standard reserve, or

(c) contains the statement by an actuary required under that subsection (4) but the actuary does not state therein that he or she is reasonably satisfied, in the case of an actuarial funding certificate that the scheme will satisfy the funding standard at the effective date of the next actuarial funding certificate or, where applicable, any later date specified under subsection (3) or (3B) of section 49, and, in the case of a funding standard reserve certificate, that the scheme will satisfy the funding standard reserve at the effective date of the next funding standard reserve certificate, or, where applicable, any later date specified under section 49(3B),

then, subject to subsection (3A), in each case, the trustees of the scheme shall submit an actuarial funding certificate and, on or after 1 June 2012, a funding standard reserve certificate to the Board within 12 months of the last day of the period to which the annual report relates and such certificate or certificates shall have an effective date not earlier than the last day of the period to which the annual report relates,

(3A) Subsection (3) shall not apply in relation to an annual report prepared under subsection (1) of section 55 where, on the last day of the period to which the report relates, the relevant scheme was a regulatory own funds scheme.

- (3B) Subject to section 53M an actuarial funding certificate required under subsection (1B) or (1C) shall be submitted to the Board by the trustees of the regulatory own funds scheme within 3 months of the effective date of the certificate.
- (4) The Board, on application to it in that behalf by the trustees of a scheme, may extend the time limit within which an actuarial funding certificate or a funding standard reserve certificate shall be submitted to the Board under subsection (2), (2A), (3) or (3B), as the case may be, for a period not exceeding 6 months where the Board considers the extension is appropriate having regard to the circumstances of the application concerned.

44. Provisions relating to funding standard.

✓ In force

- (1) Subject to the subsequent provisions of this Part, a relevant scheme shall be deemed to have satisfied the funding standard if, in the opinion of the actuary, the resources of the scheme at the effective date of the actuarial funding certificate would have been sufficient, if the scheme had been wound up on that date, to provide for -
- (a) the liabilities of the scheme consisting of -
- (i) 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,
 - (ii) benefits in the course of payment to which paragraph 1 of the Third Schedule relates,
 - (iii) benefits, other than those referred to in subparagraphs (i) and (ii), which consist of a transfer of rights from another scheme to which paragraph 2 of the Third Schedule relates,
 - (iv) benefits, other than those referred to in subparagraphs (i), (ii) and (iii), to which paragraphs 3 and 4 of the Third Schedule relate, and
 - (v) the percentage (in this Part referred to as the 'specified percentage') of any benefits, other than those referred to in subparagraphs (i), (ii) and (iii), to which paragraph 5 of the Third Schedule relates,
- and
- (b) the estimated expenses of administering the winding up of the scheme.
- (2) Subject to the subsequent provisions of this Part, a relevant scheme shall be deemed to have satisfied the funding standard reserve if, in the opinion of the actuary, the additional resources of the scheme at the effective date of the funding standard reserve certificate are at least equal to the aggregate of -
- (a) an amount equal to $A \times (B - C)$ where -
- A is 15 per cent (or such higher percentage, being not more than 50 per cent, or lower percentage, being not less than zero per cent as may be prescribed by the Minister),
 - B is the amount of the funding standard liabilities of the scheme at the effective date of the funding standard reserve certificate, and
 - C is the amount, subject to a maximum of an amount equal to the funding standard liabilities, of the resources of the scheme invested in the following assets -
 - (i) securities issued under section 54(1) of the Finance Act 1970 and known as bonds,
 - (ii) securities issued under the laws of a Member State (other than the State) that correspond to securities referred to in subparagraph (i),
 - (iii) cash deposits with one or more credit institutions,
 - (iv) such other assets of a type that offers a similar degree of security to those assets referred to in subparagraphs (i), (ii) or (iii) as may be prescribed by the Minister,
- and
- (b) the amount by which the funding standard liabilities of the scheme would increase on the effective date of the funding standard reserve certificate if the interest rate or interest rates assumed for the purposes of determining the funding standard liabilities was one half of one per cent (or such higher percentage, being not more than 5 per cent, or lower percentage, being not less than zero per cent, as may be prescribed by the Minister) less than the interest rate or interest rates (as appropriate) assumed for the purposes of determining the funding standard liabilities for the actuarial funding certificate which has the same effective date as

the funding standard reserve certificate less the amount by which the resources of the scheme would increase at the same date as a result of the same change in interest rate or interest rates.

- (c) For the purposes of paragraphs (a) and (b), resources shall not include resources which relate to contributions or a transfer of rights from another scheme to the extent that the benefits provided are directly determined by the accumulated value of those contributions or the amount transferred and a given investment performance is not guaranteed or specified in relation to those contributions or the amount transferred.

45. Provisions relating to schemes commencing before 1 June 2002.


✓ In force

- (1) This section applies to relevant schemes that came into operation before 1 June 2002.
- (2) The actuary shall determine the percentage, if any, of the benefits under a scheme to which paragraph 5 of the Third Schedule relates that, in his opinion, could have been provided at the effective date of the first actuarial funding certificate having an effective date after 1 June 2002 in relation to the scheme from the resources of the scheme if -
 - (a) the scheme had been wound up on that date, and
 - (b)
 - (i) the liabilities of the scheme for benefits under the scheme specified in subparagraphs (i), (ii), (iii) and (iv) of paragraph (a) of section 44(1), and
 - (ii) the estimated expenses of administering a winding up, had already been discharged from resources of the scheme.
- (3) The first actuarial funding certificate having an effective date after 1 June 2002 in relation to a scheme shall state a percentage (in this Part referred to as "the certified percentage"), being the lesser of -
 - (a) the percentage determined by the actuary pursuant to subsection (2), and
 - (b) 100 per cent.
- (4) For the purposes of this Part -
 - (a) where an actuarial funding certificate relates to an effective date not later than 1 June 2002, the specified percentage shall be 0 per cent,
 - (b) where an actuarial funding certificate relates to an effective date after 1 June 2002 but not later than 1 June 2012, the specified percentage shall be the certified percentage,
 - (c) where an actuarial funding certificate relates to an effective date after 1 June 2012 and on 1 June 2002 the scheme concerned was a funded scheme, the specified percentage shall be 100 per cent.

46. Matters to which actuary is to have regard.

✓ In force

- (1) In completing an actuarial funding certificate or funding standard reserve certificate, the actuary -
- (a) in addition to complying with the other provisions of this Part, shall have regard to such financial or other assumptions as he considers to be appropriate on the effective date of the certificate,
 - (b) notwithstanding anything contained in the rules of a relevant scheme, may assume that the liabilities of the scheme on winding up could have been provided by applying all or part of the resources of the scheme in the making of -
 - (i) a payment to another scheme, or
 - (ii) one or more payments falling to be made under policies or contracts of assurance that are effected on behalf of the member with one or more undertakings (within the meaning of the Insurance Act, 1989) and that are approved of by the Revenue Commissioners under Chapter 1 of Part 30 of the Taxes Consolidation Act, 1997,
 such payment or payments to be equal to the actuarial value of the benefits specified in subparagraphs (i), (ii), (iii) and (iv) of section 44(1)(a), and the percentage of the benefits specified in section 44(1)(a)(v), and
 - (c) notwithstanding anything contained in the rules of a relevant scheme, may assume that the liabilities of the scheme in respect of index-linked benefits on winding up in respect of any persons who are receiving benefits or have reached normal pensionable age are equal to the actuarial value of benefits with fixed rate increases where those fixed rate increases are calculated in accordance with any applicable guidance issued by the Society of Actuaries in Ireland or any other person (including the Board or the Minister) in relation to the preparation of actuarial funding certificates or funding standard reserve certificates in accordance with section 42.
- (2) In determining the benefits to be paid on the winding up of a relevant scheme, the actuary shall, in addition to complying with section 48, have regard to such financial or other assumptions as he considers to be appropriate.

47. Limitations on calculation of resources of relevant scheme. In force

- (1) In respect of any calculation made for the purposes of this Part, the resources of a relevant scheme on any date to which such calculation relates shall exclude resources or investments within a prescribed class or type or in excess of a prescribed percentage.
- (2) The Minister may make regulations requiring the trustees of a relevant scheme to comply with any applicable guidance issued by any person (including the Board or the Minister) and specified in the regulations in relation to determining whether or not resources or investments shall be included for the purposes of any calculation made for the purposes of this Part.

48. Priorities on winding up of relevant scheme.

✓ In force

- (1) In applying the resources of a relevant scheme which has been wound up after 1 January 1997, the trustees shall discharge the liabilities of the scheme for the following benefits in the following order -
- (a) where the scheme is wound up on or before 1 June 2002 -
 - (i) firstly, 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, were within the categories referred to in that paragraph, to the extent that they are not already discharged, and
 - (ii) secondly, the benefits specified in paragraphs 2 and 3 of the Third Schedule to or in respect of those members of the scheme who, at the date of the winding up, were within the categories referred to in those paragraphs, to the extent that they are not already discharged,

before discharging the liabilities of the scheme for other benefits, and
 - (b) where the scheme is wound up after 1 June 2002 -
 - (i) firstly, 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,
 - (ii) secondly, 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, were within the categories referred to in that paragraph, to the extent that they are not already discharged, and
 - (iii) thirdly, 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, were within the categories referred to in those paragraphs, to the extent that they are not already discharged,

before discharging the liabilities of the scheme for other benefits.
- (1A) Notwithstanding subsection (1), in applying the resources of a relevant scheme that is wound up after the passing of the Social Welfare and Pensions Act 2009, or had wound up and had not discharged any of the liabilities of the scheme at the date of the passing of the Social Welfare and Pensions Act 2009, the trustees shall discharge the liabilities of the scheme for the following benefits in the following order:
- (a) firstly, 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;
 - (b) secondly, 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;
 - (c) thirdly, 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 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
 - (d) fourthly, 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.
- (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.

(1B) The liabilities of the scheme in respect of the benefits to which paragraph (d) of subsection (1A) applies shall rank equally between each other and shall be paid in full unless the resources of the scheme are insufficient to meet those liabilities, in which case they shall abate in equal proportions as between each other.

(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.
- (2) If, after discharging the liabilities of a scheme to which subsection (1)(b), (1A), (1AA) or (1AB) applies for the benefits specified in those subsections and any other benefits arising under the rules of the scheme, any resources of the scheme remain, then, before returning any part of the resources of the scheme to the employer, the trustees shall, to the extent that they have not already done so, provide out of the resources of the scheme for revaluation of the benefits specified in paragraph 4 of the Third Schedule, calculated in accordance with section 33 as though these benefits were specified in paragraphs 2 and 3 of the Third Schedule.
- (3) In applying the resources of a relevant scheme which has been wound up, the trustees may discharge, notwithstanding anything contained in the rules of the scheme and without the consent of the member concerned, the liability of the scheme for benefits payable to or in respect of any member by -
 - (a) making a payment to another funded scheme which provides or is capable of providing long service benefit and of which he is a member or a prospective member, or
 - (b) the making of one or more payments under policies or contracts of assurance that are effected on behalf of the member with one or more undertakings (within the meaning of the Insurance Act 1989) which policies or contracts are -
 - (i) approved by the Revenue Commissioners under Chapter 1 of Part 30 of the Taxes Consolidation Act 1997, or
 - (ii) in a form which has been certified by the Board under section 53B (inserted by section 42 of the Social Welfare and Pensions Act 2010),
 and which policies or contracts of assurance shall not be deemed to be an occupational pension scheme for the purposes of this Act, or
 - (c) where so prescribed, and in accordance with such conditions as may be prescribed, the making of a payment to the trustees, custodians, managers or administrators of an arrangement for the provision of retirement benefits established within the State, not being an arrangement of the kind mentioned in paragraphs (a) or (b),

of an aggregate amount not less than the actuarial value of the benefits payable on the winding up under the rules of the scheme, subject always to subsections (1), (1A), (1AA), (1AB) and (2).
- (3A) In purchasing an annuity in substitution for an index-linked benefit in a relevant scheme which has been wound up or in making a payment or payments under subsection (3), the trustees of a scheme which does not have sufficient resources to discharge all of the liabilities of the scheme for benefits specified in subsections (1)(b), (1A), (1AA) and (1AB) may, notwithstanding anything contained in the rules of the scheme and without the consent of the member concerned, discharge the liability of the scheme for an index-linked benefit by purchasing an annuity with fixed rate increases or deem the actuarial value of an index-linked benefit to be equal to the actuarial value of a benefit with fixed rate increases, provided that such fixed rate increases are calculated in accordance with any applicable guidance issued by the Society of Actuaries in Ireland in relation to the preparation of actuarial funding certificates or funding standard reserve certificates in accordance with section 42.
- (3B) If the liabilities of a scheme for index-linked benefits are reduced under subsection (3A) any resources which remain in the scheme after discharging the liabilities of the scheme for all benefits specified in subsections (1)(b), (1A), (1AA) and (1AB) shall be applied in increasing the benefits payable to and in respect of those persons specified in subsections (1)(b)(ii), (1A)(b), (1AA)(b), (1AA)(d), (1AB)(b), (1AB)(d) and (1AB)(e) who were entitled to index-linked benefits under the rules of the scheme at the date of the winding up.
- (4) Nothing in this section requires liabilities for benefits to be discharged before liabilities for expenses, fees and costs associated with the winding up of the scheme.

- (5) For the purposes of this section, a relevant scheme is wound up on the date of the doing of such act, the happening of such event, or the making of such decision as, under the rules of the scheme, requires that the scheme be wound up, and "date of the winding up" shall, in relation to a relevant scheme, be construed accordingly.
- (6) References in the Third Schedule to effective date of the certificate shall, for the purposes of this section, be construed as references to the date of the winding up of the relevant scheme concerned.
- (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.

48A. 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).

✓ In force

- (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.

48B. Payment of moneys by Minister for Finance in respect of liabilities accruing under certain relevant schemes

✓ In force

- (1) The Minister for Finance may, at the request of the Minister, following consultation with the Minister for Public Expenditure and Reform, pay moneys to an approved person for the purpose of the discharge by the approved person of the liabilities of an eligible pension scheme, referred to in paragraph (b) of the definition of eligible pension scheme.
- (2) The Minister for Finance may, after consultation with the Minister for Public Expenditure and Reform, authorise a person to be an approved person for the purposes of this section.
- (3) The moneys referred to in subsection (1) that are 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 produce thereof.
- (4) In this section -
 'approved person' means a person authorised under subsection (2);
 'eligible pension scheme' means a relevant scheme where the date of the winding up of the scheme is on or after 25 January 2007 and before 25 December 2013 and in respect of which -
 - (a) 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, at the date of the winding up insolvent for the purposes of the Protection of Employees (Employers' Insolvency) Act 1984, and
 - (b) the resources of the relevant scheme are not sufficient to discharge in whole or in part, the liabilities of the scheme in respect of -
 - (i) 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, and
 - (ii) 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.
- (5) A reference to 'effective date of the certificate' in the Third Schedule shall, insofar as it relates to an eligible pension scheme, be construed as a reference to the date of the winding up of the eligible pension scheme concerned, with any necessary modifications.

49. Funding proposal.

✓ In force

- (1) Where, in accordance with the provisions of section 43, the trustees of a scheme (other than a regulatory own funds scheme) -
- (a) submit an actuarial funding certificate which certifies that at the effective date of the certificate the scheme does not satisfy the funding standard, or
 - (b) on or after 1 January 2016, submit a funding standard reserve certificate which certifies that at the effective date of the certificate the scheme does not satisfy the funding standard reserve,
- they shall, subject to regulations under subsection (2A), submit to the Board a proposal (in this Part referred to as a 'funding proposal') in accordance with the provisions of this section.
- (2) A funding proposal shall -
- (a) contain a proposal designed to ensure that, in the opinion of the actuary -
 - (i) the scheme could reasonably be expected to satisfy the funding standard at the effective date of the next actuarial funding certificate or any later date specified under subsection (3) or (3B) where the funding proposal is submitted before 1 January 2016 and the effective date of the next actuarial funding certificate or any later date specified under subsection (3) or (3B) is before that date, and
 - (ii) in any other case, the scheme could reasonably be expected to satisfy the funding standard at the effective date of the next actuarial funding certificate or any later date specified under subsection (3) or (3B) and the funding standard reserve at the effective date of the next funding standard reserve certificate or any later date specified under subsection (3B),
 and
 - (b) comply with regulations made under subsection (2A),
 - (c) be certified by the actuary as meeting the requirements of paragraph (a),
 - (d) be signed by or on behalf of the employer and by or on behalf of the trustees of the scheme, in each case signifying agreement to the proposal, and
 - (e) be submitted by the trustees of the scheme with the actuarial funding certificate or funding standard reserve certificate to which it relates.
- (2A) Regulations under this section may -
- (a) require the actuary, in certifying a funding proposal under subsection (2) or the failure of the scheme to satisfy the funding standard in accordance with subsection (3), to comply with any applicable professional guidance issued by the Society of Actuaries in Ireland and specified in the regulations or with any other applicable guidance issued by any other person (including the Board or the Minister) and specified in the regulations,
 - (b) require the trustees to comply with any applicable guidance issued by any person (including the Board or the Minister), and specified in the regulations, setting out -
 - (i) the requirements with which a funding proposal shall comply, and
 - (ii) the terms on and the circumstances in which the trustees are required to notify the Board of a failure by any person to comply with a term of a funding proposal,
 - (c) prescribe the terms on and circumstances in which -
 - (i) a date later than the effective date of the next actuarial funding certificate or next funding standard reserve certificate may be specified by the Board in accordance with subsection (3B),
 - (ii) the trustees are not required to submit a funding proposal under subsection (1), and
 - (iii) the Board may, by notice in writing to the trustees, declare that a funding

proposal is no longer a valid funding proposal for the purposes of this section where there has been a failure to comply with a term of the funding proposal or the trustees of the scheme so request,

and

- (d) prescribe guidance issued by any person (including the Board or the Minister) in respect of the matters specified in subparagraphs (i) to (iii) of paragraph (c).

(3) Before 1 June 2012, subject to regulations under this section, the Board, on application to it in that behalf by the trustees of a scheme (other than a regulatory own funds scheme), may, in relation to the scheme, in the circumstances and on the terms that it considers appropriate, for the purposes of subsection (2)(a) (i), specify a date later than the effective date of the next actuarial funding certificate—

- (a) in a case where the actuary concerned certifies that the failure of the scheme to satisfy the funding standard relates wholly or mainly to either or both of the following:

- (i) the assets of the scheme being less than expected where-

- (I) this is due to the performance of relevant markets in relation to investments made with the resources of the scheme and that the performance of those markets in relation to those investments is not inconsistent with the performance generally of relevant markets for investment in the same period, and
- (II) having regard to the performance generally of relevant markets for investment, the Board considers that specifying a later date is necessary or appropriate and not contrary to the interests of the members of the scheme;

or

- (ii) the liabilities of the scheme being greater than expected where-

- (I) this is due to such factors and circumstances as shall be prescribed, and
- (II) the Board considers that specifying a later date is necessary or appropriate and not contrary to the interests of members of the scheme;

or

- (b) in the case of a scheme referred to in section 43(1)(d) or 43(1)(e), where, the Board considers that specifying a later date is necessary or appropriate and not contrary to the interests of members of the scheme.

(3A) The Board, on application to it in that behalf by the trustees of a scheme (other than a regulatory own funds scheme), may, in relation to the scheme, in the circumstances and on the terms that it considers appropriate, modify the requirements of paragraphs (b), (c), (d) or (e) of subsection (2) where -

- (a) administrative difficulties have arisen from circumstances outside the control of the trustees of the scheme or schemes,
- (b) the modification does not materially alter those paragraphs, and
- (c) the Board considers the modification necessary or appropriate and that it is not contrary to the interests of the members of the scheme.

(3B) On or after 1 June 2012, the Board on application to it in that behalf by the trustees of a scheme (other than a regulatory own funds scheme) may, in relation to the scheme, on the terms and in the circumstances prescribed or set out in guidance prescribed by regulations made under subsection (2A) -

- (a) for the purposes of subsection (2) (a) (i) specify a date later than the effective date of the next actuarial funding certificate, and
- (b) for the purposes of subsection (2) (a) (ii) specify a date later than the effective date of the next actuarial funding certificate or funding standard reserve certificate.

(4) In this section "employer " means the employer who undertakes the role of principal employer for the purposes of such scheme's approval by the Revenue Commissioners under Chapter 1 of Part 30 of the

Taxes Consolidation Act, 1997 or, where the Board is of the opinion that there is no such principal employer or that it is not possible to identify such employer, such other employer or employers participating in the scheme as the Board, in its absolute discretion, may, on application to it by the trustees of the scheme, specify and notify in writing to the trustees;

50. Direction by Board to trustees.

✓ In force

- (1) 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 in respect of members of the scheme then in relevant employment, who have not reached normal pensionable age and members whose service in relevant employment has ceased, who have not reached normal pensionable age and who have an entitlement to a preserved benefit or any other benefit under the scheme, the payment of which has not commenced, to reduce the benefits that would be payable to or in respect of those members from the scheme 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 (inserted by section 18 of the Social Welfare and Pensions Act 2009),
 - (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.
- (1A) The Board may, by notice in writing, following an application by the trustees or otherwise, direct the trustees of a 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 future increases in 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 (inserted by section 18 of the Social Welfare and Pensions Act 2009),
 - (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.
- (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.

(2) In relation to a direction made under subsection (1), (1A) or (1B) -

- (a) paragraph 2(2) of the Second Schedule and paragraph 4(b)(i)(I) of the Third Schedule shall not apply in so far only as they conflict with the reduction in benefits pursuant to such a direction, and
- (b) the benefits which may be reduced following such a direction shall include -
 - (i) a preserved benefit where an entitlement to the preserved benefit has arisen, and
 - (ii) any revaluation of a preserved benefit under section 33 where such revaluation relates to a revaluation year which ends,

prior to the date with effect from which measures are put in place pursuant to the direction.

(2A) A reduction in benefits effected pursuant to a direction under subsection (1), (1A) or (1B) shall -

- (a) be such as, in the opinion of the actuary concerned, ensures that, immediately following the reduction, the scheme will satisfy the funding standard and, on or after 1 January 2016, the funding standard reserve, or

- (b) in the case of a scheme referred to in paragraph (c) or (g) of subsection (1), paragraph (c) or (g) of subsection (1A) or paragraph (c) or (g) of subsection (1B), be such as, in the opinion of the actuary concerned, ensures that the scheme could reasonably be expected to -
 - (i) satisfy the funding standard at the effective date of the next actuarial funding certificate or any later date specified under subsection (3) or (3B) of section 49 where the funding proposal is submitted before 1 January 2016 and the effective date of the next actuarial funding certificate or any later date specified under the said subsection (3) or (3B) is before that date, and
 - (ii) in any other case, satisfy the funding standard at the effective date of the next actuarial funding certificate or any later date specified under subsection (3) or (3B) of section 49 and the funding standard reserve at the effective date of the next funding standard reserve certificate or any later date specified under the said subsection (3B).
- (2B) Where the Pensions Authority gives a direction under subsection (1), (1A) or (1B), other than on application by the trustees, the trustees of the scheme shall -
 - (a) within one month of the date of the notice, notify in writing such persons as may be prescribed of the following -
 - (i) the direction,
 - (ii) the measures specified by the Pensions Authority in the notice or, if no measures are specified, such measures as the trustees consider may be necessary to reduce the benefits under the scheme, and
 - (iii) the right of such persons as may be prescribed to bring an appeal to the High Court under subsection (6),

and

 - (b) submit a copy of the notification made under paragraph (a) to the Pensions Authority not later than 10 days after the date of the notification.
- (2C) Subject to subsection (2D), where -
 - (a) the Pensions Authority gives a direction under subsection (1A) or (1B), whether on application by the trustees of a scheme or otherwise, and
 - (b) a final decision has been taken that results in a reduction of benefits payable to, or in respect of, persons referred to in subsection (3)(a)(i)(III),

the trustees of the scheme shall inform those persons -


 - (i) of the reduction in benefits referred to in subsection (1A) or (1B) without delay after the final decision has been taken and not later than one month from the date on which that final decision was taken, and
 - (ii) 3 months before that final decision is implemented.
- (2D) For the purposes of subsection (2C), where the Pensions Authority gives a direction referred to in that subsection which -
 - (a) specifies the measures to be taken by the trustees of the scheme to reduce the benefits, the date of the final decision referred to in subsection (2C) shall be the date of the notification of the direction given under subsection (1A) or (1B), or
 - (b) does not specify the measures to be taken by the trustees of the scheme to reduce the benefits, the date of the final decision referred to in subsection (2C) shall be the date of the decision taken by the trustees of the scheme in respect of the measures that are necessary to reduce the benefits pursuant to a direction under subsection (1A) or (1B).
- (3) Where the Board gives a direction under subsection (1), (1A) or (1B), the trustees of the scheme shall -
 - (a)
 - (i) within one month of the date of the notice, put in place such measures as may be specified in the notice or, if no measures are specified, such measures as may be necessary to reduce the benefits under the scheme, in respect of all or any of the -

- (I) members of the scheme then in relevant employment who had not reached normal pensionable age,
 - (II) members whose service in relevant employment has ceased and who have not reached normal pensionable age and who have an entitlement to a preserved benefit or any other benefit under the scheme, and
 - (III) subject to subsection (2C), persons receiving benefits under the scheme or who have reached normal pensionable age,

that would be payable to or in respect of them from the scheme, but, in respect of persons specified in clause (III), only those benefits referred to in subsection (1A) or (1B), and
- (ii) within a period of 2 months of the date of the notice, or such longer period as the Board considers appropriate, notify the members of the scheme of the reduction in benefits,
- (b) within a period of 4 months of the date of the notice, submit to the Board -
 - (i) confirmation that the trustees have complied with paragraph (a) and, where relevant, subsection (2C),
 - (ii) copies of the notifications issued to members of the scheme and other persons under subparagraph (ii) of paragraph (a) and subsection (2C), and
 - (iii)
 - (I) an actuarial funding certificate and, on or after 1 January 2016, a funding standard reserve certificate certifying that at the effective date, being the effective date of the reduction in benefits, the scheme satisfies the funding standard and, on or after 1 January 2016, the funding standard reserve, or
 - (II) in the case of a scheme where a funding proposal has been submitted to the Board pursuant to section 49 and paragraph (c) or (g) of subsection (1), paragraph (c) or (g) of subsection (1A) or paragraph (c) or (g) of subsection (1B) applies, a statement by an actuary in such form as may be prescribed that he or she is reasonably satisfied that at the effective date of the reduction in benefits -
 - (A) the scheme will satisfy the funding standard at the effective date of the next actuarial funding certificate or, where applicable, any later date specified under subsection (3) or (3B) of section 49 where the funding proposal has been submitted before 1 January 2016 and the effective date of the next actuarial funding certificate or any later date specified under the said subsection (3) or (3B) is before that date, or
 - (B) in any other case the scheme will satisfy the funding standard at the effective date of the next actuarial funding certificate or, where applicable, any later date specified under subsection (3) or (3B) of section 49, and the funding standard reserve at the effective date of the next funding standard reserve certificate, or where applicable, any later date specified under the said subsection (3B).
- (4) The Minister may make regulations requiring the trustees of a relevant scheme to comply with any applicable guidance issued by any person (including the Board or the Minister) and specified in the regulations setting out -
 - (a) the form by which the trustees of a relevant scheme may apply to the Board for a direction under this section, and
 - (b) the requirements to be met by the trustees in relation to any such application, including a requirement that the trustees give notice to the members of the scheme or other persons receiving benefits under the scheme of any proposal to apply for a direction under this section and to give those members and other persons an opportunity to make representations to the

trustees in relation to the proposal before the application for a direction is made.

- (5) The Minister may make regulations for the purposes of this section, and, without prejudice to the generality of the foregoing, the regulations may provide that where the Board proposes to make a direction under subsection (1), (1A) or (1B) other than on application by the trustees -
- (a) the Board may by notice in writing require a specified person to furnish the Board with such information as may be prescribed within the period specified in the notice,
 - (b) the trustees of the scheme and the employer to whom the scheme relates shall make such notifications and provide such information to such persons as may be prescribed, when and in such manner as the Pensions Authority may specify,
 - (c) such persons as may be prescribed shall be afforded an opportunity to make submissions to the Board, in respect of the proposed direction within such period as may be prescribed, and
 - (d) the Board shall, prior to making a direction, consider any such submissions.
- (6) An appeal to the High Court on a point of law from a direction of the Board under subsection (1), (1A) or (1B), made other than on application by the trustees, may be brought by such persons as may be prescribed not later than 21 days after the date of the notification under subsection (2B) and subsection (2C).
- (7) A direction of the Board under subsection (1), (1A) or (1B), made other than on application by the trustees, shall not take effect -
- (a) during the period of 21 days after the date of the notification made under subsection (2B) and subsection (2C),
 - (b) if an appeal against the direction is brought during the period referred to in paragraph (a), before the date of the final determination of the appeal or any appeal from such determination or the withdrawal of either such appeal.
- (8) Where the Board makes a direction under subsection (1), (1A) or (1B), other than on application by the trustees, the periods specified in subsection (3) shall be deemed to run from the date on which the direction takes effect.
- (9) In this section, 'annual amount' has the meaning assigned to it by section 48(8).

50A. Power to amend relevant scheme. In force

- (1) Subject to this section and section 50, the trustees of a scheme (other than a regulatory own funds scheme) may -
 - (a) for the purpose of ensuring that the winding up of the scheme will not be required by reason only of the scheme not having sufficient resources to enable the liabilities of the scheme to be discharged,
 - (b) after compliance with regulations (if any) under this section, and
 - (c) with the consent of the Board,make such amendments to the scheme as they consider appropriate.
- (2) The Minister may make regulations requiring the trustees of a relevant scheme to give notice to the members of the scheme of any proposal to amend the scheme pursuant to this section and to give those members an opportunity to make representations to the trustees of the scheme in relation to the proposal before any amendment to the scheme is made.
- (3) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations.
- (4) Notwithstanding the rules of a relevant scheme, the consent of the members of the scheme to the amendment of the scheme pursuant to this section shall not be required.
- (5) This section shall not operate to limit any power to amend the rules of a relevant scheme, that apart from this section, vests in the trustees of the scheme.

50B. Direction by Board to trustees to wind up scheme.

✓ In force

- (1) The Board may, subject to this section, by notice in writing direct the trustees of a relevant scheme (other than a regulatory own funds scheme) to wind up the scheme with effect from such date as is specified in the notice if -
 - (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 trustees of the scheme fail to submit a funding standard reserve certificate within the period specified in section 43,
 - (d) 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
 - (e) the trustees of the scheme have failed to comply with a direction under subsection (1), (1A) or (1B) of section 50 within the period specified in subsection (3)(a)(i) of that section.
- (2) A direction under this section shall be in writing and may include directions to -
 - (a) the trustees of the scheme,
 - (b) any employer to whom the scheme relates, or
 - (c) the registered administrator of the scheme,
 in respect of the manner, including the relevant time limits, within which the winding up is to proceed.
- (3) A person shall comply with a direction given to him or her under this section.
- (4) The winding up of a scheme pursuant to a direction under this section shall have the same effect as if it had been made under powers conferred by or under the rules of the scheme.
- (5) A direction under this section may be made, and shall be complied with, notwithstanding any enactment or rule of law or any rule of the scheme or any agreement which would otherwise prevent the winding up or require the implementation of any procedure or the obtaining of any consent to effect the winding up of the scheme.
- (6) The Minister may make regulations for the purposes of this section and, without prejudice to the foregoing, the regulations may provide that before the Board makes a direction under this section -
 - (a) the Board may by notice in writing require a specified person to furnish the Board with such information as may be prescribed within the period specified in the notice,
 - (b) the trustees of the scheme and the employer to whom the scheme relates shall make such notifications and provide such information to such persons as may be prescribed, when and in such manner as the Pensions Authority may specify,
 - (c) such persons as may be prescribed shall be afforded an opportunity to make submissions to the Board in respect of the proposed direction, within such period as may be prescribed, and
 - (d) prior to making a direction, the Board shall consider any such submissions.
- (7) Where the Board makes a direction under this section in respect of a scheme, any direction made under subsection (1), (1A) or (1B) of section 50 and referred to in subsection (1)(e), in relation to the scheme shall cease to have effect from the date on which the direction under this section comes into effect.
- (8) The cessation of a direction made under subsection (1), (1A) or (1B) of section 50, pursuant to subsection (7), shall not prejudice the initiation of a prosecution of any person for having failed to comply with that direction or any other requirement of that section, prior to the date of the direction under this section.
- (9) The Board shall, not later than 21 days after the date on which it makes a direction under this section, publish a notice in a daily newspaper circulating in the State, setting out particulars of the direction.

- (10) An appeal to the High Court on a point of law from a direction under this section may be brought not later than 21 days after the date of publication of the notice under subsection (9) by such person as may be prescribed.
- (11) A direction under this section shall not come into effect -
 - (a) during the period of 21 days after the date of publication of the notice under subsection (9), or
 - (b) if an appeal against the direction is brought during the period referred to in paragraph (a), before the date of the final determination of the appeal or any appeal from such determination or the withdrawal of either such appeal.
- (12) In this section, 'employer' in relation to a scheme means the current or former employer of any person in respect of whom benefits are or have been payable under the scheme.

50C. Application to High Court

✓ In force

- (1) If the Board is of the opinion that a person has not complied with or is not complying with -
- (a) a direction under subsection (1), (1A) or (1B) of section 50,
 - (b) a direction under section 50B, or
 - (c) a requirement under subsection (2B) or (3) of section 50,
- the Board may apply to the High Court for an order compelling the person to comply with the direction or requirement concerned.
- (2) Where, following an application by the Board under subsection (1), the High Court is satisfied that it is appropriate to do so, the Court may make an order compelling the person to comply with the direction or requirement concerned.
- (3) Where the High Court makes an order under subsection (2), it may, for the purpose of giving full effect to the order, include such conditions in the order and make such ancillary or other orders as it deems fit.

51. Qualification for appointment as actuary of scheme.

✔ In force

- (1) A person shall not be qualified for appointment as actuary for the purposes of this Act to a scheme or regulatory own funds trust RAC -
- (a) unless he possesses the prescribed qualifications, or
 - (b) if he is a member of a class of persons standing prescribed for the time being for the purposes of this section.
- (2) A person shall not act as actuary to a particular scheme or regulatory own funds trust RAC at a time when he is disqualified under this Act for appointment to that office and, if an actuary of a scheme or regulatory own funds trust RAC becomes so disqualified during his term of office as such actuary, he shall thereupon vacate his office and give notice in writing to the trustees of the scheme or regulatory own funds trust RAC that he has vacated his office by reason of such disqualification.

51A. Review of actuarial work.

✓ In force

- (1) The Minister may make regulations requiring any actuary appointed to a scheme or trust RAC to have his or her actuarial work in relation to the scheme reviewed for compliance with this Act and any regulations made under this Act.
- (2) The review under subsection (1) shall be carried out in accordance with professional guidance issued by the Society of Actuaries in Ireland for that purpose or with any applicable guidance issued by any other person (including the Minister) and specified in the regulations.
- (3) The professional guidance issued by the Society of Actuaries in Ireland or any other guidance referred to in subsection (2) shall include provisions relating to prescribed matters which matters may include but not necessarily be limited to the following:
 - (a) the appointment of a reviewing actuary;
 - (b) the frequency of reviews;
 - (c) the timescale for reviews.
- (4) Any information relating to the scheme or trust RAC that is required for the purposes of the review in accordance with subsection (1) shall be made available by the actuary to the scheme or trust RAC to the person conducting the review.
- (5) In this section 'actuarial work' means:
 - (a) actuarial valuation reports prepared by an actuary in accordance with section 56;
 - (b) actuarial funding certificates or funding standard reserve certificates prepared by an actuary in accordance with section 42;
 - (c) funding proposals certified by an actuary in accordance with section 49;
 - (d) annual statements made by an actuary in accordance with section 55;
 - (e) regulatory own funds trust RAC technical provisions certificates prepared by an actuary for the purposes of section 53G;
 - (f) regulatory own funds certificates prepared by an actuary in accordance with section 53J.

52. Exclusion from and modification of Part IV and Third Schedule.

✔ In force

- (1) Where the Minister considers that some or all of the benefits under specified schemes or categories of schemes are, or may be, paid in whole or in part out of moneys provided from the Central Fund or moneys provided by the Oireachtas, he may by regulations made with the consent of the Minister for Public Expenditure and Reform exclude those schemes or categories of schemes from the application of this Part and the Third Schedule.
- (2) Where the Minister considers that -
- (a) it would be unreasonable, having regard to their nature, character and resources and the methods by which benefits payable under them are funded, and
 - (b) it would be contrary to the interests of their members,
- to require specified schemes or categories of schemes to comply fully with specified provisions of this Part and the Third Schedule, he may by regulations made with the consent of the Minister for Public Expenditure and Reform provide that those provisions shall apply in relation to those schemes or categories of schemes with specified modifications, being modifications that, in the opinion of the Minister, are reasonable and do not materially alter those provisions.


53. Conflict between Part IV and schemes.

✓ In force

- (1) The provisions of this Part and of any regulations made thereunder shall override any rule of a scheme to the extent that that rule conflicts with those provisions.
- (2) Any question as to -
 - (a) whether any provision of this Part (including any such provision as modified by regulations), any regulation made thereunder or the Third Schedule conflicts with any rule of a scheme, or
 - (b) whether a scheme is a defined benefit scheme or a defined contribution scheme for the purposes of this Part,shall be determined by the Board on application to it in writing in that behalf by a person who, in relation to the scheme, corresponds to a person mentioned in section 38(3) in relation to a scheme mentioned therein.
- (3) An appeal to the High Court on a point of law from a determination of the Board, under subsection (2) in relation to a scheme, may be brought by the person who made, or a person who was entitled to make, the application concerned under subsection (2) not later than six months after the date of the determination by the Board.

Part IVA Certification of Certain Policies or Contracts of Assurance (ss. 53A-53D)

✓	53A. Definition.
✓	53B. Certification of certain policies or contracts of assurance.
✓	53C. Register of policies or contracts of assurance certified under section 53B.
R	53D. Existing Policies or Contracts of Assurance.

53A. Definition. In force

In this Part "undertaking" means an undertaking within the meaning of the Insurance Act 1989.

53B. Certification of certain policies or contracts of assurance.

✔ In force

- (1) The Board may certify a form of policy or contract of assurance, submitted to the Board by an undertaking in that behalf, in respect of schemes that are approved by the Revenue Commissioners under Chapter 1 of Part 30 of the Taxes Consolidation Act 1997, where the Board is satisfied that the form of policy or contract of assurance is designed -
- (a) to provide the sums payable to the scheme in respect of some or all of the benefits in relation to a person who, under the scheme -
 - (i) is receiving benefits, or
 - (ii) has reached normal pensionable age,or
 - (b) to discharge the liability of the scheme for some or all of the benefits payable to or in respect of a person who under a scheme -
 - (i) is receiving benefits, or
 - (ii) has reached normal pensionable age.
- (2) For the purpose of obtaining certification under subsection (1) an undertaking shall furnish to the Board such information in such form as may be prescribed for the purposes of this section.
- (3) A policy or contract of assurance referred to in subsection (1) may include a policy or contract of assurance which is referenced by -
- (a) securities issued under section 54(1) of the Finance Act 1970 and known as bonds, or
 - (b) securities issued under the laws of a Member State (other than the State) that correspond to securities referred to in paragraph (a).
- (4) Certification by the Board under subsection (1) shall be subject to such terms and conditions as the Board may consider appropriate.

53C. Register of policies or contracts of assurance certified under section 53B.

✓ In force

The Board shall -

- (a) keep a register in which there shall be entered such particulars as may be prescribed, for the purposes of this Part, in relation to policies or contracts of assurance that have been certified under section 53B and such register shall be open for inspection by any member of the public at all reasonable times on payment of such fee as the Board may determine, and
- (b) maintain, in accordance with regulations, an up to date database of information relating to particulars referred to in paragraph (a).

53D. Existing Policies or Contracts of Assurance.

R Repealed

[deleted]

Part IVB Regulatory Own Funds Schemes (ss. 53E-53N)

✓	53E. Interpretation.
✓	53F. Application.
✓	53G. Regulatory own funds trust RAC technical provisions certificate.
✓	53H. Requirement to hold additional resources.
✓	53I. Amount of regulatory own funds requirement.
✓	53J. Certification of regulatory own funds requirement.
✓	53K. Notification of regulatory own funds status.
✓	53L. Failure to satisfy funding standard, technical provisions requirement or regulatory own funds requirement.
✓	53M. Supervisory regulatory own funds certificate.
✓	53N. De facto regulatory own funds scheme or regulatory own funds trust RAC.

53E. Interpretation.

✓ In force

In this Part, except where the context otherwise requires -

"biometric risks" means risks linked to death, disability and longevity;

"regulatory own funds certification date" shall be construed in accordance with subsection (2) of section 53J;

"regulatory own funds notification date" shall be construed in accordance with subsection (2) of section 53K;

"regulatory own funds proposal" has the meaning assigned to it by section 53L;

"regulatory own funds requirement" means the requirement to hold additional resources under section 53H, and references in this Part to "satisfying" the regulatory own funds requirement mean that the regulatory own funds scheme or the regulatory own funds trust RAC holds sufficient additional resources to at least satisfy that requirement;

"regulatory own funds scheme" means a relevant scheme where the relevant scheme and not any sponsoring undertaking to whom the relevant scheme relates -

- (a) underwrites any liability to cover against biometric risks,
- (b) guarantees a given investment performance, or
- (c) guarantees a given level of benefits;

"regulatory own funds trust RAC" means a trust RAC which -

- (a) underwrites any liability to cover against biometric risks,
- (b) guarantees a given investment performance, or
- (c) guarantees a given level of benefits;

"regulatory own funds trust RAC technical provisions certificate" means a certificate prepared by an actuary certifying if, in the opinion of the actuary, the resources of the regulatory own funds trust RAC at the effective date of the certificate would have been sufficient to satisfy the technical provisions requirement, if the regulatory own funds trust RAC had been wound up on that date;

"technical provisions" means -

- (a) in relation to a regulatory own funds scheme on any date the regulatory own funds scheme's funding standard liabilities,
- (b) in relation to a regulatory own funds trust RAC on any date, were the regulatory own funds trust RAC to be wound up on that date, the sum of the value of the liabilities of the regulatory own funds trust RAC to provide benefits in accordance with the rules of the trust RAC and the estimated expenses of administering the winding up of the trust RAC calculated in accordance with any applicable guidance specified in regulations;

"technical provisions certification date" means the effective date as construed in accordance with section 53G;

"technical provisions requirement" means in relation to a regulatory own funds trust RAC, the requirement to hold resources to provide for the technical provisions, and references in this Part to "satisfying" the technical provisions requirement mean that the regulatory own funds trust RAC holds sufficient resources to at least satisfy that requirement;

"undertaking" has the meaning assigned to it by the Insurance Act 1989;

53F. Application.

✓ In force

- (1) This Part applies to a regulatory own funds scheme and a regulatory own funds trust RAC other than -
- (a) a scheme which the Minister has by regulations made under section 52 excluded from the application of Part IV,
 - (b) a scheme which is a statutory scheme to which section 776 of the Taxes Consolidation Act 1997 applies and where benefits are paid in whole or in part out of moneys provided from the Central Fund or moneys provided by the Oireachtas and the rules of which provide that an appeal may be made to a Minister of the Government,
 - (c) a scheme or trust RAC the winding up of which has commenced,
 - (d) [deleted]
 - (e) a scheme or trust RAC the only benefits under which are payable in respect of the death of a member where those benefits are fully secured under a policy or policies of assurance with one or more than one undertaking.
- (2) Notwithstanding the amendment of this section by the European Union (Occupational Pension Schemes) Regulations 2021 (S.I. No. 128 of 2021), as respects a one-member arrangement established before the coming into operation of those Regulations, the provisions of this section shall only on and from the expiry of 5 years from the date of the coming into operation of those Regulations apply to such one-member arrangement.

53G. Regulatory own funds trust RAC technical provisions certificate.

✓ In force

- (1) Subject to section 53M, the trustees of a regulatory own funds trust RAC shall cause the technical provisions and the technical provisions requirement for a regulatory own funds trust RAC to be calculated by an actuary and a regulatory own funds trust RAC technical provisions certificate to be prepared and submitted to the Board and the first such certificate shall have an effective date of:
 - (a) in the case of a trust RAC which on 23 September 2010 was a regulatory own funds trust RAC, not later than 6 months after the date on which Chapter 2 of Part 4 of the Social Welfare and Pensions Act 2011 comes into operation;
 - (b) in the case of a trust RAC which commences after 23 September 2010 and which from the trust RAC's commencement is a regulatory own funds trust RAC -
 - (i) not later than 4 weeks after the date of commencement of the trust RAC, or
 - (ii) not later than 4 weeks after the date on which Chapter 2 of Part 4 of the Social Welfare and Pensions Act 2011 comes into operation,
 whichever is the later,
 - (c) in the case of a trust RAC which at its commencement was not a regulatory own funds trust RAC but becomes a regulatory own funds trust RAC after 23 September 2010 -
 - (i) not later than 4 weeks after the date on which the trust RAC becomes a regulatory own funds trust RAC, or
 - (ii) not later than 4 weeks after the date on which Chapter 2 of Part 4 of the Social Welfare and Pensions Act 2011 comes into operation,
 whichever is the later.
- (2) While a trust RAC remains a regulatory own funds trust RAC each subsequent regulatory own funds trust RAC technical provisions certificate submitted after the appropriate effective date referred to in subsection (1) shall have an effective date of not later than one year after the effective date of the immediately preceding certificate.
- (3) Subject to section 53M, a regulatory own funds trust RAC technical provisions certificate required under subsection (1) or (2) shall be submitted to the Board by the trustees of the regulatory own funds trust RAC within 3 months of the effective date of the certificate.
- (4) The regulatory own funds trust RAC technical provisions certificate shall be in such form and contain such information and particulars as the Minister may from time to time prescribe.
- (5) The Minister may by regulations require an actuary when calculating the technical provisions of a regulatory own funds trust RAC to comply with the applicable professional guidance issued by the Society of Actuaries in Ireland and specified in the regulations or with any other guidance prescribed by the Minister.

53H. Requirement to hold additional resources.

✓ In force

- (1) A regulatory own funds scheme and a regulatory own funds trust RAC shall hold on a permanent basis—
 - (a) sufficient resources to satisfy the technical provisions of the regulatory own funds scheme or the technical provisions requirement of the regulatory own funds trust RAC, as appropriate, and
 - (b) additional resources over and above the resources referred to in paragraph (a) to serve as a safety capital to absorb any discrepancies between the anticipated and actual expenses and profits of the regulatory own funds scheme or the regulatory own funds trust RAC.
- (2) The additional resources required under paragraph (b) of subsection (1) shall be the amount of the regulatory own funds requirement referred to in section 53I, free of all foreseeable liabilities.
- (3) The trustees of a regulatory own funds scheme or regulatory own funds trust RAC shall take all reasonable steps to ensure that the regulatory own funds scheme or regulatory own funds trust RAC complies with the requirements of this section.

53I. Amount of regulatory own funds requirement.

✓ In force

- (1) The amount of the regulatory own funds requirement is the aggregate of -
- (a) subject to subsection (3), a percentage which shall be prescribed and which shall be not less than 4 per cent of the technical provisions of the regulatory own funds scheme or the regulatory own funds trust RAC; and
 - (b) a percentage which shall be prescribed and which shall be not less than 0.3 per cent of the capital at risk for the members of, or other persons entitled to benefits under, the regulatory own funds scheme or regulatory own funds trust RAC in respect of which the capital at risk is not a negative figure and where the capital at risk is as calculated in accordance with subsection (2).
- (2) For the purposes of paragraph (b) of subsection (1) "capital at risk" means -
- (a) to the extent that the benefit payable on death or disability of a member or other person entitled to benefits under the regulatory own funds scheme or regulatory own funds trust RAC comprises a lump sum benefit, the amount of that lump sum benefit on death or disability, and
 - (b) to the extent that the benefit payable on death or disability of a member or other person entitled to benefits under the regulatory own funds scheme or regulatory own funds trust RAC comprises the purchase of an annuity, the payment of a sum by instalments or any other kind of periodical payments, the current value of that benefit calculated in a manner which is consistent with the determination of the regulatory own funds scheme's or regulatory own funds trust RAC's technical provisions,
- less the regulatory own funds scheme's or regulatory own funds trust RAC's technical provisions in relation to those persons.
- (3) The Minister may prescribe that the percentage for the purposes of paragraph (a) of subsection (1) shall be increased to such greater percentage not exceeding 50 per cent, as he or she may decide of the technical provisions of the regulatory own funds scheme or the regulatory own funds trust RAC if and to the extent that the resources of the regulatory own funds scheme or the regulatory own funds trust RAC are invested in assets other than -
- (a) securities issued under section 54(1) of the Finance Act 1970 and known as bonds,
 - (b) securities issued under the laws of a Member State (other than the State) that correspond to securities referred to in paragraph (a), or
 - (c) cash deposits with one or more credit institutions, and
- the proportion of the technical provisions of the regulatory own funds scheme or the regulatory own funds trust RAC to which such increased percentage shall be applied shall be calculated in accordance with the formula -
- $$A \times B/C$$
- where -
- A is the amount of the technical provisions of the regulatory own funds scheme or the regulatory own funds trust RAC,
 - B is the amount of the resources of the regulatory own funds scheme or the regulatory own funds trust RAC invested in assets other than those referred to in paragraph (a), (b) or (c), and
 - C is the amount of the resources of the regulatory own funds scheme or the regulatory own funds trust RAC.
- (4) In respect of any calculation to be made for the purposes of this Part, the resources of a regulatory own funds scheme or a regulatory own funds trust RAC shall exclude investments in excess of such a percentage as may be prescribed by the Minister, within such a class or description of investments as may be prescribed by the Minister.

53J. Certification of regulatory own funds requirement.

✓ In force

- (1) Subject to section 53M, the trustees of a regulatory own funds scheme or regulatory own funds trust RAC shall, from time to time in accordance with this section, cause a certificate, in this Part referred to as a "regulatory own funds certificate", to be prepared by an actuary who shall certify therein that as at the regulatory own funds certification date -
 - (a) the regulatory own funds scheme or regulatory own funds trust RAC satisfies the regulatory own funds requirement, or
 - (b) the regulatory own funds scheme or regulatory own funds trust RAC does not satisfy the regulatory own funds requirement.
- (2) Subject to section 53M, the regulatory own funds certification date for -
 - (a) a relevant scheme which is a regulatory own funds scheme shall be the same as the effective date of the actuarial funding certificate prepared for the regulatory own funds scheme under subsection (1B) or (1C) of section 43, or
 - (b) a regulatory own funds trust RAC shall be the same as the effective date of the regulatory own funds trust RAC technical provisions certificate prepared for the regulatory own funds trust RAC under section 53G.
- (3) The trustees of a regulatory own funds scheme and a regulatory own funds trust RAC shall submit the regulatory own funds certificate to the Board within 3 months of the regulatory own funds certification date.
- (4) The Minister may by regulations prescribe the form and content of a regulatory own funds certificate.
- (5) The Minister may by regulations require an actuary when completing a regulatory own funds certificate, to comply with the applicable professional guidance issued by the Society of Actuaries in Ireland and specified in the regulations or with any other guidance prescribed by the Minister.

53K. Notification of regulatory own funds status.

✓ In force

- (1) Subject to section 53N, the trustees of a scheme or trust RAC which becomes a regulatory own funds scheme or a regulatory own funds trust RAC shall so notify the Board on or before the regulatory own funds notification date.
- (2) Subject to section 53N, the regulatory own funds notification date shall be:
- (a) in the case of a relevant scheme or trust RAC which on 23 September 2010 was a regulatory own funds scheme or a regulatory own funds trust RAC, not later than 6 months after the date on which Chapter 2 of Part 4 of the Social Welfare and Pensions Act 2011 comes into operation;
 - (b) in the case of a relevant scheme or trust RAC which commences after 23 September 2010 and which from the relevant scheme's or trust RAC's commencement is a regulatory own funds scheme or regulatory own funds trust RAC -
 - (i) not later than 4 weeks after the date of commencement of the relevant scheme or trust RAC, or
 - (ii) not later than 4 weeks after the date on which Chapter 2 of Part 4 of the Social Welfare and Pensions Act 2011 comes into operation,whichever is the later;
 - (c) in the case of a relevant scheme or trust RAC which at its commencement was not a regulatory own funds scheme or regulatory own funds trust RAC but becomes a regulatory own funds scheme or regulatory own funds trust RAC after 23 September 2010 -
 - (i) not later than 4 weeks after the date on which the scheme or trust RAC becomes a regulatory own funds scheme or a regulatory own funds trust RAC, or
 - (ii) not later than 4 weeks after the date on which Chapter 2 of Part 4 of the Social Welfare and Pensions Act 2011 comes into operation,whichever is the later.

53L. Failure to satisfy funding standard, technical provisions requirement or regulatory own funds requirement.


✓ In force

- (1) Where -
- (a)
- (i) in accordance with section 43, the trustees of a regulatory own funds scheme submit an actuarial funding certificate which certifies that at the effective date of the certificate the regulatory own funds scheme does not satisfy the funding standard, or
- (ii) in accordance with section 53G, the trustees of a regulatory own funds trust RAC submit a regulatory own funds trust RAC technical provisions certificate which certifies that at the effective date of the certificate the regulatory own funds trust RAC does not satisfy the technical provisions requirement,
- or
- (b) in accordance with section 53J or 53M, the trustees of a regulatory own funds scheme or regulatory own funds trust RAC submit a regulatory own funds certificate which certifies that at the regulatory own funds certification date the regulatory own funds scheme or regulatory own funds trust RAC does not satisfy the regulatory own funds requirement,
- they shall submit to the Board a proposal (in this Part referred to as a "regulatory own funds proposal") in accordance with this section.
- (2) A regulatory own funds proposal shall contain a proposal designed to ensure the regulatory own funds scheme or regulatory own funds trust RAC satisfies -
- (a)
- (i) where paragraph (a)(i) of subsection (1) applies, the funding standard within 2 years of the effective date of the actuarial funding certificate referred to in that paragraph, or
- (ii) where paragraph (a)(ii) of subsection (1) applies, the technical provisions requirement within 2 years of the effective date of the regulatory own funds trust RAC technical provisions certificate referred to in that paragraph,
- and
- (b) where paragraph (b) of subsection (1) applies, the regulatory own funds requirement within 2 years of the regulatory own funds certification date applicable to the certificate referred to in that paragraph.
- (3) A regulatory own funds proposal shall be submitted to the Board by the trustees within 4 months of the regulatory own funds certification date applicable to the certificate referred to in paragraph (b) of subsection (1).
- (4) If the Board is satisfied that a regulatory own funds proposal submitted in accordance with subsection (3) is likely to enable the regulatory own funds scheme or regulatory own funds trust RAC to satisfy:
- (a)
- (i) where paragraph (a)(i) of subsection (1) applies, the funding standard, or
- (ii) where paragraph (a)(ii) of subsection (1) applies, the technical provisions requirement,
- and
- (b) where paragraph (b) of subsection (1) applies, the regulatory own funds requirement,
- within 2 years of the regulatory own funds certification date applicable to the certificate referred to in paragraph (b) of subsection (1), it shall approve the regulatory own funds proposal or, if it is not so satisfied, it shall reject the regulatory own funds proposal.
- (5) Where the trustees of a regulatory own funds scheme or a regulatory own funds trust RAC -

- (a) do not submit a regulatory own funds certificate within 3 months of the regulatory own funds certification date,
- (b) do not submit a regulatory own funds proposal under subsection (1),
- (c) do not submit a regulatory own funds proposal within the period referred to in subsection (3),
- (d) submit a regulatory own funds proposal which is rejected by the Board under subsection (4), or
- (e) submit a regulatory own funds proposal which is approved by the Board but the regulatory own funds scheme or the regulatory own funds trust RAC does not, within 2 years of the regulatory own funds certification date applicable to the certificate referred to in subsection (1), satisfy the funding standard or the technical provisions requirement (as applicable) and the regulatory own funds requirement,


the Board may by notice in writing direct the trustees in accordance with subsection (6).

- (6) Where subsection (5) applies, and notwithstanding anything contained in the rules of the regulatory own funds scheme or the regulatory own funds trust RAC the Board may direct the trustees -
 - (a) to wind-up the regulatory own funds scheme or the regulatory own funds trust RAC with effect from such date and subject to such conditions as the Board may consider appropriate, and
 - (b) to take, by such date as the Board may specify, such one or more of the measures specified in subsection (7) as the Board considers appropriate in the circumstances, either indefinitely or for a specified period.
- (7) The following measures are specified for the purposes of paragraph (b) of subsection (6):
 - (a) to cease or modify future accrual of benefits,
 - (b) to cease to accept further contributions from or in respect of members,
 - (c) to refrain from making investments of a specified class,
 - (d) to -
 - (i) maintain funds, or
 - (ii) effect insurance of a value,
 equal to the whole or a specified portion of the regulatory own funds scheme's liabilities.
- (8) Where the trustees fail to take the measure or measures specified by the Board under subsection (6)(b) by such date as the Board has specified, the Board may direct the trustees to wind-up the regulatory own funds scheme or the regulatory own funds trust RAC with effect from such date and subject to such conditions as the Board may consider appropriate.
- (9) An appeal to the High Court on a point of law from a direction of the Board under subsection (6) or (8) may be brought by the trustees of the regulatory own funds scheme or the regulatory own funds trust RAC within 21 days of the date of the direction of the Board.

53M. Supervisory regulatory own funds certificate. In force

The Board, whenever it considers appropriate, may by notice in writing to the trustees of a regulatory own funds scheme or a regulatory own funds trust RAC, require the trustees to submit to the Board within the period specified in the notice an actuarial funding certificate or a regulatory own funds trust RAC technical provisions certificate, and a regulatory own funds certificate having -

- (a) in the case of an actuarial funding certificate or a regulatory own funds trust RAC technical provisions certificate such an effective date as is specified in the notice, and
- (b) in the case of a regulatory own funds certificate, such a regulatory own funds certification date as is specified in the notice.

53N. De facto regulatory own funds scheme or regulatory own funds trust RAC. In force

- (1) If at any time it appears to the Board that a scheme or trust RAC is a scheme or trust RAC to which this Part applies but that the trustees of the scheme or the trust RAC have not made the notification required to be made under and in accordance with section 53K, the Board may by notice in writing to the trustees of the scheme or the trust RAC determine that the scheme or trust RAC is a regulatory own funds scheme or a regulatory own funds trust RAC with effect from the date specified in the notice.
- (2) Where the Board determines that a scheme or a trust RAC is a regulatory own funds scheme or a regulatory own funds trust RAC and gives written notice of such determination to the trustees of the regulatory own funds scheme or the regulatory own funds trust RAC pursuant to subsection (1), the regulatory own funds notification date for that scheme or trust RAC shall be the date falling 4 weeks after the date specified in the notice referred to in subsection (1).
- (3) An appeal to the High Court on a point of law from a determination of the Board under subsection (1) may be brought by the trustees of the regulatory own funds scheme or the regulatory own funds trust RAC within 21 days after the date of determination of the Board.

Part V Disclosure of Information in relation to Schemes and Trust RACs and Remittance of Contributions by Employers (ss. 54-58A)

✓	54. Disclosure of information in relation to schemes.
✓	54A. Provision of information by trustees of scheme or trust RAC in respect of certain stress-tests
✓	54B. Provision of information generally by trustees of scheme or trust RAC
✓	55. Annual reports.
✓	56. Audited accounts and actuarial valuations.
RC	56A. Indexation of pensions when in payment.
✓	57. Modification of Part V.
✓	58. Conflict between Part V and schemes.
✓	58A. Obligation of employer to remit contributions under scheme.

54. Disclosure of information in relation to schemes.

✓ In force

- (1) The actuary to, or the trustees or registered administrator of, a scheme or a trust RAC or any employer to whom a scheme relates shall furnish such information to such persons in such circumstances and within such time limits as may be prescribed in relation to the following, that is to say:
 - (a) the constitution and status of the scheme or trust RAC;
 - (b) the administration and finances of the scheme or trust RAC, including any commission, charge, expense or remuneration paid or received in connection with the scheme or trust RAC;
 - (ba) compliance with sections 59(1) (ca) and 59AA;
 - (c) the rights and obligations that arise or may arise under the scheme or trust RAC;
 - (ca) the actuarial work within the meaning of section 51A(5) in relation to the scheme or regulatory own funds trust RAC, including but not necessarily limited to documents, data and advice, relating to the documents referred to in section 51A(5),
 - (d) such other matters as may be prescribed which appear to the Minister to be relevant to—
 - (i) schemes of a particular description to which the scheme belongs, or
 - (ii) trust RACs of a particular description to which the trust RAC belongs.
- (1A) The trustees of a scheme or trust RAC shall, further to a request made by the Pensions Authority, furnish it, by a date specified in the request, with such information as the Authority may require in relation to compliance with section 59(1F).
- (2) For the purposes of facilitating the discharge by the trustees of a scheme or trust RAC (other than a small trust RAC which is not a regulatory own funds trust RAC) of their obligations under subsection (1), the trustees shall appoint a registered administrator to perform, in relation to that scheme or trust RAC, the duties specified in section 64G(1)(b).
- (3) The appointment of a registered administrator under subsection (2) does not relieve the trustees of any of their obligations under subsection (1).
- (4)
 - (a) The trustees or a registered administrator of a scheme may request an employer to whom the scheme relates to furnish them with such information as they may reasonably require for the purposes of their functions under this Act or regulations thereunder and the employer shall comply with any such request.
 - (aa) Any employer to whom a scheme relates may request the trustees or a registered administrator of the scheme to furnish him with such information as he may reasonably require for the purposes of his functions under this Act or regulations thereunder and the trustees or that registered administrator, as the case may be, shall comply with any such request.
 - (ab) A registered administrator of a scheme or trust RAC may request the trustees or auditors of that scheme or trust RAC, or the actuary of a scheme or regulatory own funds trust RAC, to furnish him with such information as he may reasonably require for the purposes of his functions under this Act or regulations thereunder, and the trustees, auditors or actuary shall comply with any such request.
 - (b) The actuary to a scheme or to a regulatory own funds trust RAC or the auditor of a scheme or trust RAC may request the trustees or registered administrator of the scheme or the trust RAC or any employer to whom the scheme relates to furnish him with such information as he may reasonably require for the purposes of his functions under this Act or regulations thereunder and the trustees, registered administrator or employer, as the case may be, shall comply with any such request.
 - (c) The Board may by notice in writing request an employer, the actuary to whom a scheme relates, or the actuary to or trustees or registered administrator of a scheme or trust RAC, to furnish the Board with such information and within such time limits as the Board may specify in relation to the matters described in subsection (1) and the employer, actuary, trustees or registered administrator, as the case may be, shall comply with any such request.

- (ca) The Board may by notice in writing request a registered administrator to furnish to the Board such information relating to its activities in that capacity and within such time limits as the Board specifies in the notice, and the registered administrator shall comply with any such request.
 - (d) The Minister may make regulations providing that some or all of the information required to be disclosed in accordance with this section shall be prepared in accordance with the advice of an actuary and any applicable professional guidance issued by the Society of Actuaries in Ireland and specified in the regulations or with any applicable guidance issued by any other person (including the Minister) and specified in the regulations.
- (5) A person who contravenes this section commits an offence punishable, on summary conviction, by a fine not exceeding €5,000 or imprisonment for a term not exceeding one year, or both.
- (5A) A fine imposed under this section shall not be paid out of the resources of any scheme or trust RAC, as the case may be.
- (6) [deleted]
- (7) [deleted]
- (8) Notwithstanding the amendment of this section by the European Union (Occupational Pension Schemes) Regulations 2021, a small trust RAC to which subsection (7) applied immediately before the coming into operation of those Regulations shall comply with this section not later than 31 December 2021.

54A. Provision of information by trustees of scheme or trust RAC in respect of certain stress-tests

✓ In force

- (1) Where the Pensions Authority is requested by EIOPA under the Regulation of 2010 to coordinate the carrying out of a stress-test referred to in that Regulation, the Pensions Authority shall –
 - (a) consider which schemes or trust RACs are to carry out the stress-test having had regard to the request made by EIOPA, and
 - (b) request the trustees of any scheme or trust RAC to –
 - (i) carry out any such stress-test, and
 - (ii) provide the Pensions Authority with information concerning the results of that stress-test by a date specified in the request.
- (2) The trustees of a scheme or trust RAC referred to in paragraph (b) of subsection (1) shall comply with the request made under that paragraph.
- (3) In this section and in section 54B, 'Regulation of 2010' means Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC.
- (4) A word or expression that is used in this section or in section 54B has, unless the context otherwise requires, the same meaning in this section or in section 54B as it has in the Regulation of 2010.

54B. Provision of information generally by trustees of scheme or trust RAC

✓ In force

- (1) Where the Pensions Authority is requested by EIOPA under the Regulation of 2010 to provide EIOPA with information referred to in that Regulation, the Pensions Authority shall –
- (a) consider which schemes or trust RACs are to provide information having regard to the request made by EIOPA, and
 - (b) request the trustees of any such scheme or trust RAC to provide the Pensions Authority with the information it requires by a date specified in the request.
- (2) The trustees of a scheme or trust RAC referred to in paragraph (b) of subsection (1) shall comply with the request made under that paragraph.

55. Annual reports.

✓ In force

- (1) The trustees of a scheme or a trust RAC shall prepare an annual report containing information in relation to such matters as may be prescribed with the consent of the Minister for Public Expenditure and Reform concerning the operation of the scheme or the trust RAC during whichever of the following periods the trustees may select, that is to say:
- (a) each year beginning on the date specified for the purpose of the scheme or the trust RAC -
 - (i) in any document comprising the scheme or the trust RAC or which is included among the documents comprising it, or
 - (ii) in the rules of the scheme or the trust RAC,
 - (b) each year beginning on the 1st day of January, or
 - (c) each year beginning on such other day as may be agreed upon by the trustees and the Board.
- Provided that -
- (i) where the period selected by the trustees is altered, a report prepared for a period other than a year, such period not to exceed 23 months, shall, with the approval of the Board, be regarded as an annual report for the purposes of this section, and
 - (ii) where the scheme or the trust RAC is in operation for part only of the year selected, a report prepared for a period including that part of the year and not exceeding 23 months shall be regarded as an annual report for the purposes of this section.
- (1A) For the purposes of facilitating the discharge by the trustees of a scheme or trust RAC of their obligations under subsection (1), the trustees shall appoint a registered administrator in relation to that scheme or trust RAC.
- (1B) The appointment of a registered administrator under subsection (1A) does not relieve the trustees of any of their obligations under subsection (1) or under regulations made under this Act.
- (2) Subsection (1) of this section shall not apply to -
- (a) a scheme or a trust RAC, the only benefit under which is in respect of death prior to normal pensionable age, or
 - (b) a small scheme other than a small scheme which is a regulatory own funds scheme under which service in the relevant employment after the 1st day of January, 1997, does not entitle the members of the scheme to long service benefit and, where any long service benefit is determined by reference to a member's earnings, such earnings in the case of all members relate to a date or a period before the 1st day of January, 1997, or
 - (c) where so prescribed and to such extent as may be prescribed, a small scheme the winding up of which has commenced, unless, in accordance with the regulations prescribing the class of scheme for the purpose of this paragraph, the Board considers it necessary or appropriate and in the interests of the members of the scheme having regard to the circumstances of any particular case that subsection (1) should apply in whole or in part, or
 - (d) [deleted]
- (3) Where an actuarial funding certificate having an effective date after 1 January 2001 and, on or after 1 June 2012, a funding standard reserve certificate has been prepared under section 42 in relation to a scheme each annual report prepared under subsection (1) which relates to a period ending on a day which falls after the effective date of the actuarial funding certificate or funding standard reserve certificate shall, unless subsection (4) applies to it, include a statement by an actuary, in such form as may be prescribed, as to whether he or she is reasonably satisfied that, if he or she were to prepare under section 42 an actuarial funding certificate and, on or after 1 June 2012, a funding standard reserve certificate having an effective date of the last day of the period to which the annual report relates, he or she would certify -
- (a) in the case of the actuarial funding certificate, that the scheme satisfies the funding standard provided for in section 44(1), and
 - (b) in the case of the funding standard reserve certificate, that the scheme satisfies the funding standard reserve provided for in section 44(2).

- (4) Where in the most recent actuarial funding certificate or funding standard reserve certificate prepared under section 42 in relation to a scheme the actuary certifies that, in the case of an actuarial funding certificate, at the effective date of the actuarial funding certificate the scheme does not satisfy the funding standard, or, in the case of a funding standard reserve certificate, at the effective date of the funding standard reserve certificate the scheme does not satisfy the funding standard reserve and a funding proposal has been submitted by the trustees of the scheme to the Board in accordance with section 49, each annual report prepared under subsection (1) which relates to a period ending on a day which falls after the effective date of the actuarial funding certificate or funding standard reserve certificate shall include a statement by an actuary, in such form as may be prescribed, as to whether he or she is reasonably satisfied at the last day of the period to which the annual report relates that -
- (a) in the case of the actuarial funding certificate, the scheme will satisfy the funding standard at the effective date of the next actuarial funding certificate or, where applicable, any later date specified under subsection (3) or (3B) of section 49, or
 - (b) in the case of the funding standard reserve certificate, the scheme will satisfy the funding standard reserve at the effective date of the next funding standard reserve certificate or, where applicable, any later date specified under section 49(3B).
- (5) Where an annual report prepared under subsection (1) -
- (a) does not contain the statements by the actuary required under subsection (3) or (4), as appropriate, or
 - (b) contains the statements by an actuary required under subsection (3) (a) and (b) but the actuary does not state therein that he or she is reasonably satisfied that, if he or she were to prepare under section 42 an actuarial funding certificate and a funding standard reserve certificate having an effective date of the last day of the period to which the annual report relates, he or she would certify, in the case of an actuarial funding certificate, that the scheme satisfies the funding standard provided for in section 44(1), or, in the case of a funding standard reserve certificate, that the scheme satisfies the funding standard reserve provided for in section 44(2), or
 - (c) contains the statements by an actuary required under subsection (4) (a) and (b) but the actuary does not state therein that he or she is reasonably satisfied at the last day of the period to which the annual report relates that, in the case of an actuarial funding certificate, the scheme will satisfy the funding standard at the effective date of the next actuarial funding certificate or, where applicable, any later date specified under subsection (3) or (3B) of section 49, or that, in the case of a funding standard reserve certificate, the scheme will satisfy the funding standard reserve by the effective date of the next funding standard reserve certificate or, where applicable, any later date specified under section 49(3B),
- then in each case the trustees of the scheme shall notify the Board in writing to that effect within such time limit as may be prescribed.
- (6) Regulations may prescribe that an actuary, in making the statements referred to in subsection (3) or (4) shall comply with the applicable professional guidance issued by the Society of Actuaries in Ireland and specified in the regulations or with any applicable guidance issued by any other person (including the Minister or the Board) and specified in the regulations.
- (7) Subsections (3), (4), (5) and (6) shall not apply to a regulatory own funds scheme.
- (8) Notwithstanding the amendment of this section by the European Union (Occupational Pension Schemes) Regulations 2021 -
- (a) a small trust RAC to which the exemption in subsection (1A) applied before the day on which those Regulations come into operation, shall make the appointment referred to in subsection (1A) not later than 31 December 2021,
 - (b) a one-member arrangement to which the exemption in subsection (1A) applied before the day on which those Regulations come into operation, this section shall only on and from the expiry of 5 years from the date of such coming into operation, apply to such onemember arrangement, and
 - (c) for the purposes of the preparation of the first annual report following the coming into operation of those Regulations -
 - (i) in the case of a small trust RAC referred to in paragraph (a), the first annual report shall be prepared in respect of a year specified in paragraph (a), (b) or (c) of subsection (1) which falls after the expiration 31 December 2021, and

- (ii) in the case of a one-member arrangement referred to in paragraph (b), the first annual report shall be prepared in respect of a year specified in paragraph (a), (b) or (c) of subsection (1) which falls after the expiration of the 5 year period referred to in paragraph (b).

56. Audited accounts and actuarial valuations.

✓ In force

- (1) The trustees of a scheme or a trust RAC shall -
- (a) cause the accounts of the scheme or trust RAC in respect of such periods as may be prescribed to be audited by the auditor of the scheme or trust RAC,
 - (b) cause the resources and liabilities of the scheme (including the benefits in respect of UK members which the scheme is required to provide under the Occupational Pension Schemes (Schemes with External Members) (United Kingdom) Regulations, 2000) to be valued by the actuary of the scheme at such times as may be prescribed, and
 - (c) in respect of each such audit and valuation, cause to be prepared the documents to which this section applies.
- (2) The documents to which this section applies are -
- (a) the accounts of the scheme or trust RAC concerned,
 - (b) the auditor's report on the accounts specified in paragraph (a), and
 - (c) the actuary's report on his valuation of the assets and liabilities of the scheme or regulatory own funds trust RAC.
- (2A) The trustees of a defined contribution scheme or a trust RAC shall cause the liabilities of the scheme or the trust RAC to be valued in such a manner and at such times as may be prescribed.
- (3) For the purposes of this Act a person shall not be qualified for appointment as auditor of a scheme or trust RAC or the business of a PRSA provider -
- (a) unless he is qualified to be appointed as an auditor of a company in accordance with the Companies Acts, 1963 to 1990, or
 - (b) if he is a member of a class of persons standing prescribed for the time being for the purposes of this section.
- (4) A person shall not act as auditor of a particular scheme or particular trust RAC or of the business of a particular PRSA provider at a time when he is disqualified under this section, for appointment to that office and, if an auditor of the scheme or trust RAC becomes so disqualified during his term of office as such auditor, he shall thereupon vacate his office and give notice in writing to the trustees of the scheme or trust RAC or to the PRSA provider that he has vacated his office by reason of such disqualification.
- (4A) [deleted]
- (5) The form and content of any document to which this section applies may be prescribed with the consent of the Minister for Public Expenditure and Reform and those documents shall comply with any regulation under this subsection.
- (6)
- (a) Subsection (1) and paragraphs (a) and (b) of subsection (2) shall not apply to -
 - (i) a scheme that is not a funded scheme, or
 - (ii) a scheme or a trust RAC, the only benefit under which is in respect of death prior to normal pensionable age, or
 - (iii) a small scheme other than a small scheme which is a regulatory own funds scheme under which service in the relevant employment after the 1st day of January, 1997, does not entitle the members to long service benefit and, where any long service benefit is determined by reference to a member's earnings, such earnings in the case of all members relate to a date or a period before the 1st day of January, 1997, or
 - (iv) to such extent as may be prescribed, a small scheme the winding up of which has commenced.
 - (b) Paragraph (b) of subsection (1) and paragraph (c) of subsection (2) shall not apply to -

- (i) a scheme that is a defined contribution scheme, other than a defined contribution scheme to which section 41(2) (a) of this Act applies, or
- (ii) a scheme that is not a funded scheme, or
- (iii) a scheme the only benefit under which is in respect of death prior to normal pensionable age, or
- (iv) a small scheme other than a small scheme which is a regulatory own funds scheme under which service in the relevant employment after the 1st day of January, 1997, does not entitle the members to long service benefit and, where any long service benefit is determined by reference to a member's earnings, such earnings in the case of all members relate to a date or a period before the 1st day of January, 1997, or
- (v) to such extent as may be prescribed, a small scheme the winding up of which has commenced.

(7) [deleted]

56A. Indexation of pensions when in payment.

N Not yet in force

- (1) In this section "indexation", in relation to a pension, means the provision of an increase, in each successive year of the period during which the pension is paid, of the amount of the pension, each such increase that is so provided being equal to a percentage of the amount of the pension in payment at the time the increase falls to be made, being a percentage at least equal to the lower of -
 - (a) the percentage increase in the general level of consumer prices during a period of twelve months ending at any time within twelve months before the increase of the amount of pension falls to be made, determined by the trustees in such manner as they think appropriate, and
 - (b) four per cent.
- (2) This section applies to a scheme to which section 56(1)(b) applies, the rules of which do not require either -
 - (a) indexation of pensions, or
 - (b) the provision of an increase, in each successive year of the period during which each pension thereunder is paid, of the amount of the pension, each such increase that is specified in the scheme being not less than 3 per cent of the amount of the pension in payment at the time the increase falls to be made.
- (3) The trustees of a scheme to which this section applies shall, at intervals not exceeding 3½ years, cause the actuary to value the additional liability which would be imposed on the scheme by the indexation of pensions payable thereunder.
- (4) The actuary of a scheme to which this section applies shall report on the additional liability and the resulting requirement for contributions which would be imposed on the scheme by the indexation of pensions as regards -
 - (a) pensions then in payment under the scheme, and
 - (b) pensions not then in payment thereunder whose payment is anticipated.
- (5) The trustees of a scheme to which this section applies shall, following receipt of the actuary's report referred to in subsection (4), consider the possibility of effecting indexation of -
 - (a) pensions then in payment under the scheme, and
 - (b) pensions not then in payment thereunder whose payment is anticipated,
 and, where effecting such indexation of pensions would require the exercise of a discretion by any other person, they shall report on the results of their consideration to that person.
- (6) Where a person receives a report from the trustees of a scheme under subsection (5), he shall furnish to the trustees a response by him to that report.
- (7) Regulations may provide for -
 - (a) the matters to be addressed by the actuary of a scheme in his report with respect to the matters referred to in subsection (4),
 - (b) the matters to be addressed by a person in making a response under subsection (6), and
 - (c) the period within which a person required to respond under subsection (6) shall so respond.

57. Modification of Part V.

✓ In force

Where the Minister considers that it would be unreasonable, having regard to their nature and character and the size of their membership, to require specified schemes or trust RACs or categories of schemes or trust RACs to comply fully with sections 54, 55, 56 and 56A, he may by regulations made with the consent of the Minister for Public Expenditure and Reform provide that, in relation to those schemes or trust RACs, one or more or all of those sections shall not apply, or shall apply with specified modifications, being modifications the making of which are compatible with the Directive and that, in the opinion of the Minister, are reasonable and are not such as to relieve the trustees of the obligation to furnish such information under those sections as is appropriate in all the circumstances.

58. Conflict between Part V and schemes.

✓ In force

- (1) The provisions of this Part and of any regulations made thereunder shall override any rule of a scheme or trust RAC to the extent that that rule conflicts with those provisions.
- (2) Any question as to -
 - (a) whether any provision of this Part (including the application of any provision as modified by regulations) or any regulation made thereunder conflicts with any rule of a scheme or a trust RAC, or
 - (b) whether a scheme is a defined benefit scheme or a defined contribution scheme for the purposes of this Part,shall be determined by the Board on application to it in writing in that behalf -
 - (i) in the case of a scheme, by a person who, in relation to the scheme, corresponds to a person mentioned in section 38(3) in relation to the scheme mentioned therein,
 - (ii) in the case of a trust RAC, by a person who is a member or trustee of the trust RAC.
- (3) An appeal to the High Court on a point of law from a determination of the Board under subsection (2) in relation to a scheme or a trust RAC, may be brought by the person who made, or a person who was entitled to make, the application concerned under subsection (2) not later than six months after the date of the determination by the Board.
- (4) [deleted]

58A. Obligation of employer to remit contributions under scheme.

✓ In force

- (1) An employer who deducts any sum from the wages or salary of an employee for remittance to the trustees of a scheme or trust RAC or to another person on their behalf, shall remit every such sum to the trustees or that other person on their behalf, as the case may be, within 21 days following the end of the month in which the deduction was made. An employer shall not make any deductions from the sum required to be remitted by him under this subsection.
- (2) Where an employer is obliged (whether under a contract of employment, the terms of a scheme or trust RAC or otherwise) to pay any sum expressed as a cash amount or as a percentage or proportion of an employee's wages or salary (other than a sum deducted from the employee's wages or salary), on behalf of or in respect of that employee, to the trustees of a defined contribution scheme or to another person on their behalf, he shall, within 21 days following the end of every month, pay to the trustees of the scheme or trust RAC or that other person on their behalf, as the case may be, a sum equal to the appropriate cash amount or percentage or proportion of every payment of wages or salary made to that employee during that month. An employer shall not make any deduction from the sum required to be paid by him under this subsection.
- (3) An employer who -
 - (a) deducts any sum from the wages or salary of an employee for remittance to the trustees of a scheme or trust RAC or to another person on their behalf, or
 - (b) is obliged (whether under a contract of employment, the terms of a scheme or trust RAC or otherwise) to pay any sum, on behalf of or in respect of an employee (other than a sum deducted from the employee's wages or salary), to the trustees of a defined contribution scheme or to another person on their behalf,
 shall give or cause to be given to the employee concerned and to the trustees or that other person on their behalf, a statement in writing not less frequently than once a month specifying -
 - (i) the total amount deducted from the employee's salary or wages and remitted to the trustees or that other person on their behalf, as the case may be, and
 - (ii) where appropriate, the total amount paid, on behalf of or in respect of the employee (other than any amount deducted from the employee's wages or salary), to the trustees or that other person on their behalf, as the case may be,
 in the preceding month or, if the previous such statement was given less than a month before, in the period since that previous statement was given.
- (4) Notwithstanding subsection (3), an employer may disregard for the purposes of the statement referred to in that subsection any amount deducted from the wages or salary of an employee, and any amount paid on behalf of or in respect of an employee, that is not to be applied as a contribution to secure long service benefit or as a contribution to a trust RAC.
- (5) The requirements of subsection (3) relating to an employee shall be regarded as having been satisfied if particulars of the amount remitted under subparagraph (i) of that subsection or the amount paid under subparagraph (ii) of that subsection are included in the statement given to the employee concerned under section 4 f the Payment of Wages Act 1991.
- (6) In subsections (1) and (2) 'month' means-
 - (a) a calendar month, or
 - (b) a period of 28 days beginning on a day to be determined by the trustees of the scheme concerned, and each consecutive period of 28 days thereafter (or such shorter period as the trustees of the scheme may determine) each such consecutive period beginning on the day after the last day of the period immediately preceding such period.

Part VI Trustees of Schemes (ss. 59-64A)

✓	59. General duties of trustees of schemes.
✓	59A. Qualifications of trustees.
✓	59AA. Trustee training.
✓	59AB. Investment rules
✓	59B. Reduction of benefit.
✓	59C. Increases to pensions in payment.
✓	59D. Duties of trustees on winding-up of scheme.
✓	59E. Duties of trustees in connection with bulk transfer.
✓	59F. Invalidity of amendments to scheme rules and of exercises of discretion in certain circumstances.
✓	59G. Trustee consent for early retirement.
✓	59H. Power to amend scheme rules in certain circumstances
✓	60. Duty to register scheme.
✓	61. Restriction of Perpetual Funds (Registration) Act, 1993.
✓	61A. Rule against perpetuities.
✓	61B. Restriction on borrowing.
✓	62. Selection by members of funded schemes of persons for appointment as trustees.
✓	63. Appointment and removal of trustees by High Court.
✓	63A. Suspension of trustees.
✓	63B. Offence.
✓	64. Appointment and removal of trustees by Board.
✓	64A. Conflict between Part VI and schemes.

59. General duties of trustees of schemes.

✓ In force

- (1) Without prejudice to the duties of trustees generally and in addition to complying with the other requirements of this Act, the duties of trustees of schemes and trust RACs shall include the following:
- (a) to ensure, in so far as is reasonable, that the contributions payable by the employer and the members of the scheme, where appropriate, are received and that the sums referred to in subsection (1) or (2) of section 58A are invested in accordance with paragraph (b) within 10 days of the latest date on which those sums should have been remitted or paid by the employer under subsection (1) or (2), as the case may be, of section 58A;
 - (aa) to ensure that the contributions to a trust RAC are invested in accordance with paragraph (b) within 10 days of the end of the month in which those contributions are received;
 - (b) to provide for the proper investment of the resources of the scheme or trust RAC in accordance with section 59AB and, subject to that section, and subsection (2), in accordance with the rules of the scheme or trust RAC;
 - (c) where appropriate, to make arrangements for the payment of the benefits as provided for under the rules of the scheme or trust RAC as they become due, whether in the State or in any other Member State, net of any taxes and transaction charges which may be applicable;
 - (ca) to undertake trustee training in accordance with section 59AA,
 - (d) to ensure that proper membership and financial records are kept;
 - (e) if the scheme is wound up, to apply the resources of the scheme in discharging its liabilities without undue delay in accordance with the rules of the scheme and, where applicable, with section 48;
 - (f) to ensure that at all times there is a registered administrator appointed in compliance with subsection (1AA).
- (1A) [deleted]
- (1AA) The trustees of a scheme or trust RAC may appoint different registered administrators to perform the duties specified, respectively, in paragraphs (a) and (b) of section 64G(1), together, in the case of each of those registered administrators, with the duty specified in paragraph (c) insofar as that duty relates to whichever of the first-mentioned duties that administrator is appointed to perform, but, subject to subsection (1AC), must not appoint more than one registered administrator to perform any one of the first-mentioned duties.
- (1AB) A person who -
- (a) on the day immediately before the date of commencement of section 27 of the Social Welfare and Pensions Act 2008, was retained by the trustees of a scheme or trust RAC to perform on behalf of the trustees any of the duties specified in section 64G(1) under an arrangement having effect as between the parties beyond that day, and
 - (b) with effect from the date of that commencement, is a registered administrator,
- is to be taken, for the purposes of this Part and Part VIA, to have been appointed, in pursuance of the requirements of this Part, to perform the duties to which the arrangement relates.
- (1AC) Where, on the day immediately before the date of commencement of section 27 of the Social Welfare and Pensions Act 2008, more than one person was retained by the trustees of a scheme or trust RAC to perform on behalf of the trustees the duty specified in paragraph (a) or (b) of section 64G(1) under an arrangement having effect as between the parties beyond that day, the Board may, in its absolute discretion and subject to such conditions as it sees fit, allow more than one registered administrator to be appointed by those trustees in respect of that duty.
- (1B) Trustees of a scheme or trust RAC shall, subject to subsection (1C) -
- (a) prepare and maintain a written statement of the investment policy principles applied to the resources of the scheme or trust RAC,
 - (b) review the statement at least every 3 years, and
 - (c) revise the statement at any time following any significant change in investment policy which

is inconsistent with the statement.

- (1C) The statement referred in subsection (1B) shall include the prescribed matters and shall be prepared and maintained in the form and manner that may be prescribed.
- (1D) A member or a beneficiary, or the Pensions Authority, may request a copy of the statement referred to in subsection (1B).
- (1E) The trustees of a scheme or trust RAC shall make the statement referred to in subsection (1B) available on request and without prejudice to the generality of the foregoing, following a request under subsection (1D), shall provide that statement –
 - (a) in the case of a request by a member or beneficiary, not later than 4 weeks from the date on which the request was made, or
 - (b) in the case of a request made by the Pensions Authority, within such time as the Pensions Authority may specify.
- (1F) The trustees of a scheme or trust RAC shall comply with the following articles of the SFD Regulation:
 - (a) article 3(1);
 - (b) article 4(1), (2), (3), (4);
 - (c) article 5;
 - (d) article 6(1), (3);
 - (e) article 7;
 - (f) article 8(1), (2), (2a);
 - (g) article 9(1), (2), (3), (4), (4a);
 - (h) article 10(1);
 - (i) article 11(1), (2);
 - (j) article 12(1);
 - (k) article 13(1);
 - (l) article 15(1).
- (2) Where, and to the extent that, the rules of a scheme provide for the trustees to invest the resources of the scheme in accordance with directions given by the members –
 - (a) the trustees shall –
 - (i) determine in accordance with the rules what different types of investments of those resources could be made at the direction of the members;
 - (ii) determine in accordance with the rules how those resources are to be invested in cases where the members give no direction;
 - (iii) in such circumstances and within such time limits as may be prescribed, furnish to the members such information as may be prescribed in relation to the determinations made by them in relation to the matters referred to in subparagraphs (i) and (ii), and
 - (iv) take such steps as are reasonable to ensure that the members have any further information necessary to enable the members to make informed decisions with regard to the giving of directions in relation to the different types of investment referred to in subparagraph (i),

and
 - (b) where the trustees comply with the requirements of paragraph (a), they shall incur no liability solely by reason of giving effect to the directions of the members given in accordance with the rules.

- (3) The trustees of a scheme may, at any time, notwithstanding anything contained in the rules of the scheme and without the consent of the members -
- (a) make one or more payments on behalf of the scheme to a policy or contract of assurance certified by the Board under section 53B whereby all sums payable under such policy or contract will as and when received by the trustees, be held by them upon trust for the purposes of the scheme,
 - (b) discharge the liability of the scheme for some or all of the benefits payable to or in respect of a person -
 - (i) receiving benefits under the scheme, or
 - (ii) who has reached normal pensionable age,
- by making on behalf of that person, one or more than one payment to a policy or contract of assurance certified by the Board under section 53B.
- (4) If, in any proceedings brought against a trustee of a scheme for breach of trust in relation to the performance by him or her of a function conferred under subsection (3), it appears to the court hearing the case that the trustee is or may be liable in respect of the breach of trust but that he or she acted honestly and reasonably and that having regard to all of the circumstances of the case he or she ought fairly to be excused for the breach of trust, the court may relieve him or her in whole or in part from his or her liability on such terms as the court deems appropriate.
- (5) Notwithstanding the amendment of this section by the European Union (Occupational Pension Schemes) Regulations 2021, the trustees of a small trust RAC established before the coming into operation of those Regulations shall comply with section 59(1)(f) not later than 31 December 2021.

59A. Qualifications of trustees.

✓ In force

- (1) A person shall not act as a trustee of a scheme or trust RAC unless the person -
- (a) is, having regard to section 64AE, of good repute and integrity,
 - (b) has the qualifications and knowledge which, together with the qualifications and knowledge of the other trustees, are collectively adequate to enable all the trustees of the scheme or trust RAC to ensure the sound and prudent management of that scheme or trust RAC, and
 - (c) has experience which, together with the experience of the other trustees, is collectively adequate having regard to the requirement in subsection (1A), to enable all the trustees to ensure the sound and prudent management of that scheme or trust RAC.
- (1A) At least one of the trustees of the scheme or trust RAC shall have not less than 2 years' experience as a trustee of a scheme or trust RAC within the immediately preceding 3 years which is of a type that is adequate for him or her to ensure the sound and prudent management of that scheme or trust RAC.
- (1B) Where, as referred to in section 64AC(2), a body corporate is appointed as the sole trustee of a scheme or trust RAC -
- (a) each of the directors of that body corporate shall be, having regard to section 64AE, of good repute and integrity,
 - (b) the directors of that body corporate shall have the qualifications, knowledge and, subject to paragraph (c), experience which, together with the qualifications, knowledge and experience of the other directors, are collectively adequate to enable them to ensure the sound and prudent management of that scheme or trust RAC, and
 - (c) at least one of the directors who effectively run the scheme or trust RAC shall have, within the immediately preceding 3 years, not less than 2 years' experience as a trustee or as a director of a body corporate appointed as trustee of a scheme or trust RAC, which is of a type that is adequate for him or her to ensure the sound and prudent management of the scheme or trust RAC.
- (2) Regulations shall -
- (a) provide that trustees of a scheme or trust RAC shall possess, or employ or enter into arrangements with advisers who possess, the qualifications and experience specified in those regulations, and
 - (b) specify-
 - (i) the circumstances in which trustees will be regarded as possessing the specified qualifications and experience referred to in paragraph (a), and
 - (ii) the manner in which trustees may satisfy the Board that they have employed or entered into arrangements with advisers who possess the qualifications and experience referred to in paragraph (a).
- (3) Any question as to whether a trustee or a person proposing to act as trustee satisfies the requirements of this section shall be determined by the Board -
- (a) on its own initiative for the purpose of carrying out its supervisory functions under this Act, or
 - (b) at the request in writing of the trustee or person to whom the question relates.
- (4) For the purpose of making a determination under subsection (3), the Board may by giving notice in writing in that behalf require any trustee of a scheme or trust RAC or any other person to submit to it the information that may be prescribed in the form and manner and within the time that may be prescribed.
- (5) The Board shall notify in writing the trustee or person to whom the question relates of its determination and of its reasons for the determination.
- (6) No claim shall lie against the Board arising directly or indirectly from any determination of the Board under this section.
- (7) Subject to subsection (9), a person to whom a determination under subsection (3) relates may appeal to the High Court from the determination on a point of law within 21 days after the date of the notification of

the determination to the person under subsection (5).

- (8) In the case of a person who is a trustee of a scheme or trust RAC, a determination by the Board under subsection (3) that the person does not satisfy the requirements of this section shall have the effect of removing that person as trustee but without prejudice to the validity of any acts done by the trustee before removal under this section.
- (9)
- (a) A trustee in respect of whom a determination is made under subsection (3) that the trustee does not satisfy the requirements of this section may, within 21 days after the date of the notification under subsection (5) (or such longer period as the High Court may fix, being a period that, having regard to the circumstances of any particular case, the court considers to be reasonable), appeal to the High Court against the making of the determination to which the notification relates.
 - (b) On an appeal under this subsection the High Court may make such order confirming, annulling or varying the determination concerned and such order as to costs as it thinks fit.
 - (c) The Board, the trustees, the employer and the members of the scheme or trust RAC concerned shall be entitled to be represented and heard on any appeal under this subsection.
 - (d) A determination under this section shall not come into operation -
 - (i) during the period of 21 days after the date of the notification under subsection (5), or
 - (ii) if an appeal against the determination is brought during the period referred to in subparagraph (i), before the final determination of the appeal or any appeal from such determination or the withdrawal of either such appeal.
- (10) In the case of a person who is a trustee of a scheme or trust RAC, a determination by the Board under subsection (3) shall not operate as a discharge of any liabilities of that person.

59AA. Trustee training.

✓ In force

- (1) An employer who operates a scheme or trust RAC shall arrange for the trustees of that scheme or trust RAC (and, in the case of a trustee which is a body corporate, for all the directors of that body corporate) to receive appropriate training in relation to -
- (a) this Act, the regulations made under it and any other law of general application governing the operation of that scheme or trust RAC,
 - (b) the duties and responsibilities of trustees generally, and
 - (c) such other matters relevant to the effective management of a scheme or trust RAC, as the case requires, as are prescribed.
- (2) An employer to whom subsection (1) applies shall arrange training -
- (a) for a person for whom the relevant date is not earlier than the date of commencement of section 28 of the Social Welfare and Pensions Act 2008, within six months from the relevant date and every two years thereafter, and
 - (b) for a person for whom the relevant date is earlier than the date of commencement of section 28 of the Social Welfare and Pensions Act 2008, within two years from the date of that commencement and every two years thereafter.
- (2A) For the purposes of subsection (2), the relevant date is -
- (a) in relation to a trustee who is a natural person - the date of appointment of the person as a trustee of the scheme or trust RAC concerned,
 - (b) in relation to a director of a body corporate that becomes a trustee of the scheme or trust RAC concerned - the date of appointment of the body corporate as a trustee of that scheme or trust RAC, and
 - (c) in relation to a person who becomes a director of a body corporate that is a trustee of the scheme or trust RAC - the date of appointment of the person as a director of that body corporate.
- (3) An employer is not required to arrange appropriate training for -
- (a) a pensioner trustee, or
 - (b) a professional trustee.

59AB. Investment rules

✓ In force

- (1) The trustees of a scheme or trust RAC shall invest in accordance with the prudent person rule (within the meaning of the Directive of 2016) and without prejudice to the generality of the foregoing shall invest in accordance with this section.
- (2) When investing, the trustees of a scheme or trust RAC –
 - (a) shall invest the resources of the scheme or trust RAC in the best long term interests of members and beneficiaries as a whole, and in the case of a potential conflict of interest, shall ensure that the investment is made in the sole interest of members and beneficiaries,
 - (b) in accordance with the prudent person rule referred to in subsection (1), may take into account the potential long-term impact of investment decisions on environmental, social and governance factors,
 - (c) shall invest the resources of the scheme or trust RAC in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole,
 - (d) shall invest the resources of the scheme or trust RAC predominantly in regulated markets and, where there is investment in assets which are not admitted to trading on a regulated financial market, shall keep any such investment to prudent levels,
 - (e) shall comply with subsection (3) if investing in derivative instruments,
 - (f) shall invest in such a manner that the resources shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole,
 - (g) for the purposes of paragraph (f), where they invest in assets issued by the same issuer or by issuers belonging to the same group, shall invest in a manner that shall not expose the scheme or trust RAC to excessive risk concentration,
 - (h) if they have invested in the employer, shall not invest more than 5% of the resources of the scheme as a whole and, where the employer belongs to a group, they shall not invest more than 10% of those resources in the undertakings belonging to the same group as the employer, and
 - (i) for the purposes of paragraph (h), shall, where a scheme is sponsored by a number of employers, invest in those employers prudently and shall take into account the need for proper diversification.
- (3) In the case of investment in derivative instruments referred to in subsection (2)(e) and for the purposes, by the trustees of a scheme or trust RAC, of such investment, such investment by trustees of a scheme or trust RAC shall be possible insofar as such instruments contribute to a reduction in investment risks or facilitate efficient portfolio management and –
 - (a) they shall be valued on a prudent basis, taking into account the underlying asset,
 - (b) they shall be included in the valuation of the assets of the scheme or trust RAC, and
 - (c) the trustees shall avoid excessive risk exposure to a single counterparty and to other derivative operations.
- (4) The Pensions Authority shall –
 - (a) monitor the adequacy of the credit assessment processes of schemes, and
 - (b) assess the use of references to credit ratings issued by credit rating agencies as defined in point (b) of Article 3(1) of Regulation (EC) No. 1060/2009 of the European Parliament and of the Council [OJ No. L302, 17.11.2009, p.1], in their investment policies and, where appropriate encourage mitigation of the impact of such references, with a view to reducing sole and mechanistic reliance on such credit ratings.
- (5) For the purposes of subsection (2) –
 - (a) investment in a collective investment undertaking shall be treated as being invested in a regulated market in accordance with subsection (2)(d) and diversified in accordance with subsection (2)(f) to the extent that the investments held by that undertaking are themselves

so invested,

- (b) investment in an insurance policy falling within the class of insurance specified at paragraph III of Annex II of Directive 2009/138/EC of the European Parliament and of the Council [OJ No. L 335, 17.12.2009, p.1] shall be treated as invested on a regulated market in accordance with subsection (2)(d) and diversified in accordance with subsection (2)(f) to the extent that the selection, by the trustees referred to in subsection (2), of the investments by which the return on the insurance policy will be determined complies with those subsections,
 - (c) investment in an insurance policy the terms of which provide that the proceeds of the insurance policy at maturity will be equal to or greater than the amount of the investment over the term of the insurance policy, shall be treated as invested on a regulated market in accordance with subsection (2)(d) and diversified in accordance with subsection (2)(f),
 - (d) investment in an insurance policy of a type to which Article 2(3)(a)(ii) of Directive 2009/138/EC of the European Parliament and of the Council relates shall be treated as invested on a regulated market in accordance with subsection (2)(d) and diversified in accordance with subsection (2)(f), and
 - (e) investment in bonds issued by the government of any Member State shall be treated as diversified in accordance with subsection (2)(f).
- (6) Subsection (2)(d) applies in respect of the proportion of the assets of the scheme or trust RAC attributable to each individual member of the scheme or trust RAC in the same manner as they apply to the assets of the scheme or trust RAC as a whole.
- (7) For the purposes of subsection (4) and the monitoring by the Pensions Authority referred to in that subsection, the trustees of a scheme shall –
- (a) notify the Pensions Authority, in such form as the Pensions Authority may specify, where all or part of the resources of the scheme are directly invested in debt instruments, excluding investments in collective investment undertakings and investments in an insurance policy, and
 - (b) on request by the Pensions Authority, furnish it with all relevant information on the credit assessment process applied by a scheme.
- (8) For the purposes of subsection (2)(h) and (2)(i) and subject to subsection (9), in the case of a scheme investment of all or part of the resources of the scheme in the employer or, where the employer belongs to a group, that group, such investment –
- (a) shall be deemed to include investment in –
 - (i) property, other than land or buildings, which is used for the purpose of any business carried on by the employer, or as the case may be, that group,
 - (ii) loans to the employer or as the case may be, that group,
 - (iii) moneys due to the scheme held by the employer or as the case may be, that group, or
 - (iv) shares or other securities issued by a person in that group, and
 - (b) shall not include –
 - (i) investment in a cash deposit with any person in that group who, in accordance with, or pursuant to, any enactment, is an authorised deposit taking institution, or
 - (ii) investment in –
 - (I) an insurance policy or contract of assurance issued by a person in that group who is the holder of an authorisation within the meaning of Article 2 of the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994),
 - (II) a segregated fund or a managed fund, or other collective investment fund, managed by a person in that group who is the holder of an authorisation issued by the Central Bank of Ireland pursuant to –
 - (A) the Investment Intermediaries Act 1995,

- (B) the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017), or
 - (C) any other enactment,
 - (III) a unit trust scheme authorised by the Central Bank of Ireland under the Unit Trusts Act 1990 and managed by a person in that group,
 - (IV) an investment company authorised by the Central Bank of Ireland under Part 24 of the Companies Act 2014,
 - (V) a collective investment scheme authorised by the Central Bank of Ireland under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011),
 - (VI) an undertaking for collective investment in transferable securities authorised by a competent authority in another Member State in accordance with Council Directive 2009/65/EC of the European Parliament and of the Council, or
 - (VII) bonds issued by the government of any Member State.
- (9) For the purposes of subsection (8)(a), a reference to 'investment' shall be deemed to include the proportion attributable to the resources of the scheme (whether directly or through any intervening fund) of any investment in the group referred to in that subsection –
- (a) by the manager of –
 - (i) a segregated fund,
 - (ii) a managed fund,
 - (iii) any other collective investment fund,
 - (iv) a unit trust scheme,
 - (v) an investment company, or
 - (vi) a collective investment scheme, or
 - (b) which is comprised in an investment fund to which an insurance policy or contract of assurance falling within Class III or Class VII of the classes of insurance specified in Annex I to the European Communities (Life Assurance) Framework Regulations, 1994 is connected.
- (10) In this section –
- 'collective investment undertaking' means –
- (a) an investment undertaking within the meaning assigned to it by section 739B of the Taxes Consolidation Act 1997,
 - (b) a unit trust which neither is, nor is deemed to be, an authorised unit trust scheme within the meaning of the Unit Trust Act 1990,
 - (c) an undertaking for collective investment in transferable securities within the meaning assigned to it by Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009, situate in any Member State,
 - (d) a common contractual fund within the meaning of section 739I(1)(a)(i) of the Taxes Consolidation Act 1997, or
 - (e) an alternative investment fund within the meaning assigned to it by Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 [\[OJ No. L 174, 1.07.2011, p. 1\]](#) situated in any Member State;
- 'insurance policy' means an insurance policy or contract of assurance issued by any person who is the holder of an authorisation –
- (a) granted by the Central Bank of Ireland under the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015), or

- (b) granted by the authority charged with the duty of supervising the activities of insurance undertakings in a Member State other than the State in accordance with Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009.
- (11) This section shall not apply in respect of investments made by the trustees of a one-member arrangement before the coming into operation of the European Union (Occupational Pension Schemes) Regulations 2021.

59B. Reduction of benefit.

✓ In force

- (1) Subject to subsections (2) and (2A), notwithstanding anything in the rules of a scheme, where a benefit provided for under the rules is payable in the form of an annual pension and such benefit has commenced, the trustees of the scheme shall not reduce the amount of the benefit payable to such person in any subsequent year below the amount of benefit payable in the preceding year.
- (2) The trustees of a scheme may reduce the amount of a benefit to which a person is in receipt under the scheme -
- (a)
- (i) where the benefit has been determined without taking into account a pension payable to the person and where the rules of the scheme permit the subsequent reduction of the benefit by taking into account such pension at or after the date at which that pension commences to be payable to the person, or
 - (ii) where such benefit has been determined taking into account a pension payable to the person where such pension is less than the full personal rate of old age (contributory) pension then payable and where the rules of the scheme permit the subsequent reduction of the benefit by taking into account the full personal rate of old age (contributory) pension or retirement pension at or after the date at which that full rate of old age (contributory) pension or retirement pension commences to be payable to the person,
- (b) where the rules of the scheme permit -
- (i) the conversion into a capital sum of part of the benefit,
 - (ii) a pension payable to a dependant in return for a surrender of part of the benefit,
 - (iii) forfeiture of or the exercise of a lien on the benefit not prohibited by section 36 of this Act,
 - (iv) a reduction of the benefit as a consequence of dependency ceasing,
 - (v) a reduction or cessation of the benefit prior to normal pensionable age where the member had retired prior to that age on account of ill-health and subsequently recovers, or
 - (vi) a reduction of the benefit as a consequence of the exercise of an option by the member,
- or
- (c) where the reduction is required to comply with other provisions of this Act.
- (2A) Subsection (1) shall not apply in relation to a scheme where a direction has been made under section 50(1B).
- (3) In subsection (2) -
- ‘old age (contributory) pension’ means old age (contributory) pension under Part II of the Social Welfare (Consolidation) Act, 1993;
- ‘pension’ means -
- (a) disablement pension,
 - (b) death benefit under sections 60, 61 or 62,
 - (c) old age (contributory) pension,
 - (d) retirement pension,
 - (e) invalidity pension,
 - (ea) surviving civil partner's (contributory) pension,
 - (f) widow's (contributory) pension, or

(g) widower's (contributory) pension,
under Part II of the Social Welfare (Consolidation) Act, 1993;

'retirement pension' means retirement pension under Part II of the Social Welfare (Consolidation) Act, 1993.

- (4) Where the Minister considers that it would be unreasonable, having regard to their nature and character, and would be contrary to the interests of their members, to require specified schemes or categories of schemes to comply fully with specified provisions of this section, he may by regulations made with the consent of the Minister for Public Expenditure and Reform provide that those provisions shall apply in relation to those schemes or categories of schemes with specified modifications, being modifications that, in the opinion of the Minister, are reasonable and do not materially alter those provisions.

59C. Increases to pensions in payment.

✓ In force

- (1) In this section -
- "integrated pension"
means a scheme pension, the calculation of the amount of which involves a State pension offset;
- "scheme pension"
means a pension payable under an occupational pension scheme;
- "State pension" means -
- (a) disablement pension,
 - (b) death benefit under section 60, 61 or 62,
 - (c) old age (contributory) pension,
 - (d) retirement pension,
 - (e) invalidity pension,
 - (ea) surviving civil partner's (contributory) pension,
 - (f) widow's (contributory) pension, or
 - (g) widower's (contributory) pension,
- under Part II of the Social Welfare (Consolidation) Act, 1993;
- "State pension offset"
in relation to the calculation of a scheme pension, means a deduction or offset, the amount of which depends on the amount of a State pension;
- "updated State pension offset"
in relation to the calculation of an increase to a scheme pension after its commencement, means a State pension offset, the amount of which depends on the amount of a State pension at, or during a period up to, the date the increase to the scheme pension is calculated or made.
- (2) Where the trustees of a scheme increase an integrated pension at any time after it has commenced, notwithstanding the rules of the scheme they shall not calculate the increase by reference to an updated State pension offset.
- (3) Where, but for subsection (2), the trustees of a scheme would calculate an increase to an integrated pension by reference to an updated State pension offset, notwithstanding the rules of the scheme they shall instead calculate the increase by:
- (a) calculating the amount of the scheme pension which would notionally be payable immediately before the increase if the amount of the State pension offset had at all times been nil;
 - (b) calculating the percentage by which the scheme pension, as so calculated, would be increased if the amount of the State pension offset continued to be nil; and
 - (c) increasing the scheme pension actually in payment by that percentage.

59D. Duties of trustees on winding-up of scheme.

✓ In force

Regulations may provide that, in relation to a scheme which is wound up on or after the commencement of section 43 of the Pensions (Amendment) Act, 2002, -

- (a) the trustees shall, within such period and in such manner as may be prescribed, notify such persons as may be prescribed of the winding-up of the scheme,
- (b) the trustees shall, in the course of applying the resources of the scheme in consequence of the winding-up, provide such information to such persons in such circumstances as may be prescribed, and
- (c) neither the trustees nor any employer to whose employment the scheme relates, shall exercise any discretion -
 - (i) as to the payment of any of the resources of the scheme to any such employer, or
 - (ii) as to the abatement of benefits in case of an insufficiency of resources,

unless the members have first been afforded such opportunity as may be prescribed to make observations to the trustees or the employer, as may be appropriate, and unless the trustees or employer (as the case may be) have given due consideration to such observations.

59E. Duties of trustees in connection with bulk transfer.

✓ In force

- (1) In this section, "bulk transfer" means the transfer by the trustees of a scheme of an amount of money or other resources in discharge of their liability under the scheme to provide benefits in respect of a group of members -
- (a) to the trustees of another scheme or schemes where either -
 - (i) the scheme under which the transfer is made and the scheme under which the transfer is received apply to employment with the same employer, or
 - (ii) the scheme under which the transfer is made and the scheme under which the transfer is received apply to employment with different employers, and
 - (I) the transfer is made in consequence of a financial transaction between the employers, or
 - (II) one of the employers is a subsidiary (within the meaning of section 155 of the Companies Act, 1963) of the other, or both are subsidiaries of the same company, or
 - (b) to Personal Retirement Savings Accounts where either -
 - (i) the person, being the employer to whose employment the scheme under which the transfer is made relates ("the first-mentioned employer"), will contribute to those accounts, or
 - (ii) an employer, other than the first-mentioned employer, will contribute to those accounts, and
 - (I) the transfer is made in consequence of a financial transaction between that employer and the first-mentioned employer, or
 - (II) one of those two employers is a subsidiary (within the meaning of section 155 of the Companies Act, 1963) of the other, or both are subsidiaries of the same company.
- (2) Regulations may provide that, before any bulk transfer is effected -
- (a) the trustees of the scheme under which the bulk transfer is to be made shall provide such information to such persons in such circumstances as may be prescribed,
 - (b) in cases where the consent of the members in respect of whom the transfer is to be effected is not to be obtained, such persons as may be prescribed shall be afforded such opportunity as may be prescribed to make observations to the trustees of the scheme under which the bulk transfer is to be made or to any employer to whose employment the scheme applies, and the trustees or the employer, as the case may be, shall give due consideration to such observations,
 - (c) the trustees of the scheme under which the bulk transfer is to be made shall ensure that such other conditions as may be prescribed have been satisfied, and
 - (d) the trustees of a scheme under which the bulk transfer is to be received shall provide such information to such persons in such circumstances as may be prescribed.

59F. Invalidity of amendments to scheme rules and of exercises of discretion in certain circumstances.

✓ In force

- (1) This section shall apply to -
- (a) any amendment to the rules of a scheme, and
 - (b) any exercise of any discretionary power under a scheme,
- which has the effect of augmenting the benefit of any member or members so as materially to alter the balance of interests between the members, or between the members and the employer or employers (other than an amendment or exercise made or done pursuant to section 50) which is made or done -
- (i) within twelve months before or six months after -
 - (I) the making of a bulk transfer within the meaning of section 59E,
 - (II) the making of an agreement or arrangement relating to or connected with the sale of all or part of the business or interests of a person, being the employer of any employees who are members of the scheme,
 - (III) the making of an agreement or arrangement relating to or connected with the purchase by a person, being the employer of any employees who are members of the scheme, of all or part of the business or interests of another person or persons, where, pursuant to that purchase, the trustees or the said employer propose or are required to take any action in relation to the scheme, or
 - (IV) the making of any amendment to the rules of the scheme which would cause the scheme or any part of it to become a defined contribution scheme,
- or
- (ii) within twelve months before, or at any time after, the winding-up of the scheme.
- (2) Regulations may provide that any amendment of rules, or any exercise of a power to which this section applies shall be invalid unless -
- (a) the members affected by the amendment have consented in writing to the amendment,
 - (b) the actuary has provided a certificate to the trustees containing such statements by the actuary in respect of such matters as may be prescribed,
 - (c) the trustees are satisfied that the changes effected by such amendment or exercise were not effected with a view to altering materially the balance of interests under the scheme between members or groups of members, or between members and the employer or employers, by reason only of the fact that the bulk transfer, arrangements or agreement or winding-up had taken place or were to take place, as the case may be, or
 - (d) such other conditions as may be prescribed are satisfied.
- (3) No legal proceedings shall lie against a person by reason only of anything which that person has done or omitted to do in reliance in good faith on an amendment of rules or exercise of a power rendered invalid by virtue of regulations under subsection (2).
- (4) No person who receives any money under a scheme in reliance in good faith on an amendment of rules or exercise of a power rendered invalid by virtue of regulations under subsection (2) shall be required to repay such money.

59G. Trustee consent for early retirement.

✔ In force

In the case of a defined benefit scheme the rules of which include an early retirement rule, notwithstanding the terms of that rule -

- (a) if the actuary advises the trustees that he or she is reasonably satisfied that if the actuary were to prepare an actuarial funding certificate under section 42 having an effective date of the day on which any member's immediate retirement benefit by virtue of that early retirement rule is expected to commence, the actuary would not certify that the scheme satisfies the funding standard provided for in section 44(1), or
- (b) on or after 1 January 2016, if the actuary advises the trustees that he or she is reasonably satisfied that if the actuary were to prepare a funding standard reserve certificate under section 42 having an effective date of the day on which any member's immediate retirement benefit by virtue of that early retirement rule is expected to commence, the actuary would not certify that the scheme satisfies the funding standard reserve provided for in section 44(2),

the member's right to the immediate retirement benefit by virtue of that early retirement rule is subject to the consent of the trustees of the scheme.

59H. Power to amend scheme rules in certain circumstances

✓ In force

- (1) Notwithstanding anything in this Act or any other enactment or any rule of law or the rules of a scheme -
- (a) where the trustees of a scheme are permitted to reduce the amount of a benefit in accordance with section 59B(2)(a), they may make such amendments to the rules of the scheme as they consider appropriate to permit the reduction of the benefit payable to a person who reaches the age of 65 years on or after 1 January 2014 as if the State pension (contributory) commenced to be payable to that person from the age of 65 years, and
 - (b) where the trustees of a scheme are required by the rules of the scheme to pay an integrated pension calculated by reference to the State pension (contributory) payable from the age of 65 years to a person who reaches the age of 65 years on or after 1 January 2014, they may make such amendments to the rules of the scheme as they consider appropriate to permit the application of the State pension offset in respect of that person by reference to a notional amount as if the State pension (contributory) had commenced to be payable to that person from the age of 65 years.
- (2) In subsection (1) -
- 'integrated pension' has the meaning assigned to it by section 59C;
- 'State pension (contributory)' means the State pension (contributory) under Part 2 of the Social Welfare Consolidation Act 2005;
- 'State pension offset' has the meaning assigned to it by section 59C.

60. Duty to register scheme.

✓ In force

- (1) Subject to the following subsections, it shall be the duty of trustees of a scheme or trust RAC to ensure that the scheme or trust RAC is registered with the Board.
- (2) A scheme shall be registered not later than -
 - (a) in case the scheme commenced before the commencement of this section, one year after such commencement,
 - (b) in any other case, one year after the commencement of the scheme.
- (2A) A trust RAC shall be registered not later than—
 - (a) in case the trust RAC commenced before the commencement of Part 1 of Schedule 2 to the Social Welfare and Pensions Act 2007, one year after such commencement,
 - (b) in any other case, one year after the commencement of the trust RAC.
- (3) It shall be the duty of the trustees of a scheme or trust RAC to provide the Board, in such a manner as may be prescribed, with such information as may be prescribed for the purposes of this section.

61. Restriction of Perpetual Funds (Registration) Act, 1993.

✓ In force

- (1) Sections 7, 8, 10, 12(2), and, in so far as it relates to those sections, section 14 of the Perpetual Funds (Registration) Act, 1933 shall not apply in the case of a scheme.
- (2) The validity or effect of any alteration in the rules of a scheme shall not be affected by the failure to register such alteration in the Register of Perpetual Funds notwithstanding any provision in the rules of the scheme requiring such registration.

61A. Rule against perpetuities.

✓ In force

- (1) The rules of law and equity relating to perpetuities, inalienability and accumulations and the provisions of the Accumulations Act, 1892, shall not apply and shall be deemed never to have applied to any trust to which this section applies.
- (2) Subject to subsection (3), this section shall apply to -
 - (a) any trust which as created had or subsequently has as its main purpose the provision of relevant benefits within the meaning of section 13(1) of the Finance Act, 1972, and which is capable of receiving approval under Chapter II of Part I of that Act, and
 - (b) any trust which is also an occupational pension scheme notwithstanding that it may cease to be an occupational pension scheme.
- (3) This section shall not apply to any trust the resources of which have, whether in whole or in part, been returned before the passing of the Pensions (Amendment) Act, 1996, by reason of the rules or provisions referred to in subsection (1).
- (4) The persons (if any) having the power to amend a trust to which this section applies may amend the said trust so as to dispense with any limitations on the duration of the said trust the purpose of which is to ensure compliance with the rules or provisions referred to in subsection (1), notwithstanding any provision of the said trust to the contrary.

61B. Restriction on borrowing.

✓ In force

- (1) Notwithstanding anything in the rules of the scheme or trust RAC and subject to regulations under subsection (2), trustees of a scheme or trust RAC may neither borrow money nor act as a guarantor on behalf of a third party.
- (2) Subject to the Directive, regulations may provide that in the circumstances and subject to the conditions and restrictions that may be prescribed, trustees of a scheme or trust RAC may borrow money.
- (3) This section shall not apply in respect of borrowing arrangements entered into by the trustees of a one-member arrangement before the coming into operation of the European Union (Occupational Pension Schemes) Regulations 2021.

62. Selection by members of funded schemes of persons for appointment as trustees.

✓ In force

- (1) The Minister, subject to section 59A shall provide by regulations, in respect of schemes having not less than a specified number of members, that the members of any such scheme may select, or approve of the selection by the employer concerned, of a person or a specified number of persons who shall be appointed to be a trustee or trustees of the scheme (or who shall be retained as such trustee or trustees, as the case may be).
- (2) Regulations under this section -
 - (a) shall determine the circumstances in which a person, or category of persons, who, having been admitted to membership of the scheme and remaining entitled to any benefit under the scheme, is or are to be regarded for the purpose of this section as being a member or members of the scheme,
 - (b) may specify the manner in which the selection, or the approval of the selection by the employer concerned, of a person or persons for appointment or retention as a trustee or trustees by members of schemes, for the purpose of subsection (1), shall be made, and
 - (c) may make such other provision as the Minister considers necessary or expedient for the purpose of this section and for enabling it to have full effect.
- (3) Notwithstanding anything in subsection (1), regulations under that subsection may provide that they shall not apply to multi-employer schemes or to specified multi-employer schemes or classes of such scheme.

63. Appointment and removal of trustees by High Court.

✓ In force

- (1) The High Court (in this Part referred to as "the court") may, on application to it by the Board by petition, make an order -
 - (a) for the removal of a trustee of a scheme or trust RAC and the appointment of a new trustee, and
 - (b) that a trustee so removed shall not act as a trustee of a scheme or trust RAC for such period as the Court may order.
- (2) The Court may make an order under subsection (1) in relation to the trustees of a scheme or trust RAC, if it considers -
 - (a) that any of the trustees have failed to carry out any of the duties imposed on them by law (including this Act), or
 - (b) that the scheme or trust RAC is being or has been administered in such a manner as to jeopardise the rights and interests thereunder of the members of the scheme or trust RAC.
- (3)
 - (a) A petition under this section shall be served only on the existing trustees unless the court directs otherwise.
 - (b) Upon the hearing of a petition under this section, the Board, the existing trustees of the scheme or trust RAC concerned, the employer concerned and the members of the scheme or trust RAC shall be entitled to be heard unless the court directs otherwise.
- (4) A trustee of a scheme or trust RAC appointed under this section shall, as well before as after the resources of the scheme or trust RAC become by law vested in him have the same powers, authorities and discretions and may in all respects act as if he had been originally appointed a trustee by the rules of the scheme or trust RAC.
- (5) An order under this section may make provision for such ancillary and consequential matters (including the vesting of the property of the scheme or trust RAC concerned in the trustees appointed by the order and (notwithstanding anything contained in the rules of the scheme or trust RAC) the making of payments from the resources of the scheme or trust RAC or from the employer to the trustees appointed by the order in respect of fees, expenses or other matters relating to their duties as such trustees) as the court considers necessary or expedient.
- (6) An order under this section shall not operate further or otherwise as a discharge to any former trustee of the scheme or trust RAC concerned than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.
- (7) Where any land of which the ownership is registered under the Registration of Title Act, 1964, becomes vested, by order under this section, in any person or persons, the registering authority under that Act shall, upon production of the relevant order under this section, and upon payment of the appropriate fee, register that person or those persons in the appropriate register maintained under that Act as owner (within the meaning of that Act) of the land.
- (8) Where an order is made under this section, any assets vested by the order that immediately before the commencement of the order were standing registered in the books of any bank, corporation or company or were entered in any register kept in pursuance of any enactment in the names of the former trustees of the scheme or trust RAC concerned shall, upon such commencement, be transferred into the names of the new trustees of the scheme or trust RAC.

63A. Suspension of trustees.

✓ In force

(1) The Court may, on application to it by the Board, make an order on such terms and subject to such directions as to notification of relevant parties as it may think suspending a trustee of a scheme or trust RAC from being a trustee of the scheme or trust RAC to which the application relates -

- (a) pending completion of an investigation by or on behalf of the Board into the state and conduct of the scheme or trust RAC,
 - (b) where proceedings have been instituted against him for an offence involving dishonesty or deception and have not been concluded,
 - (c) where a petition has been presented to the Court for an order adjudging him bankrupt and proceedings on the petition have not been concluded,
 - (d) where the trustee is a company, if a petition for the winding up of the company has been presented to the Court and proceedings on the petition have not been concluded,
 - (e) where an application has been made to the Court for a disqualification order against him under Part VII of the Companies Act, 1990, and proceedings on the application have not been concluded, or
 - (f) where the trustee is a company and, if any director were a trustee, the Court would have power to suspend him under paragraph (b), (c) or (e).
- (2) An order under subsection (1) may apply to a particular scheme or trust RAC, a particular class of schemes or trust RACs or schemes or trust RACs in general.
- (3) An order under subsection (1)(a) shall be in force for a period not exceeding 12 months: However, on application to it by the Board, the Court may by order extend that period for a further period not exceeding 12 months.
- (4) An order made under subsection (1) (other than under paragraph (a)) shall be in force until the proceedings to which the order relates are determined.
- (5) Where an order is made under subsection (1) the person suspended by the order from acting as a trustee shall not, while the order is in force, exercise any functions as a trustee of a scheme or trust RAC to which the order applies.
- (6) An order under subsection (1) may be made on any of the grounds in paragraphs (b) to (e) of that subsection whether or not the proceedings were instituted, the petition was presented or the application was made (as the case may be)—
- (a) in the case of a scheme, before or after the passing of the Pensions (Amendment) Act 1996,
 - (b) in the case of a trust RAC, before or after the commencement of Part 1 of Schedule 2 to the Social Welfare and Pensions Act 2007.
- (7) The Court may, on the application of any person suspended under subsection (1), by order revoke the order, either generally or in relation to a particular scheme or trust RAC or a particular class of schemes or trust RACs, but a revocation made at any time cannot affect anything done before that time.
- (8) An order under this section may make provision as respects the period of the trustee's suspension for matters arising out of it and in particular for enabling any person to execute any instrument in his name or otherwise act for him and for adjusting any provisions of the scheme or trust RAC governing the proceedings of the trustees to take account of the reduction in the number capable of acting.
- (9) Where the Court makes an order under subsection (1) it may by that order or by a further order appoint any person to be a trustee in place of, and for such period as the Court may direct not exceeding the period of suspension of, the person suspended from acting as a trustee.
- (10) An order referred to in subsection (9) may make provision for such ancillary and consequential matters (including the vesting of the property of the scheme or trust RAC concerned in the trustees appointed by the order and (notwithstanding anything contained in the rules of the scheme or trust RAC) the making of payments from the resources of the scheme or trust RAC or from the employer to the trustees appointed by the order in respect of fees, expenses or other matters relating to their duties as such trustees) as the Court considers necessary or expedient.

- (11) Where an order referred to in subsection (9) ceases to have an effect, the Court may by a further order make provision for the vesting of the property of the scheme or trust RAC concerned in the persons who are the trustees of the said scheme or trust RAC.
- (12) Where any land of which the ownership is registered under the Registration of Title Act, 1964, becomes vested, by order under this section in any person or persons, the registering authority under that Act shall, upon production of the relevant order under this section, and upon payment of the appropriate fee, register that person or those persons in the appropriate register maintained under that Act as owner (within the meaning of that Act) of the land.
- (13) Where an order is made under this section, any assets vested by the order that immediately before the commencement of the order were standing registered in the books of any bank, corporation or company or were entered in any register kept in pursuance of any enactment in the names of the former trustees of the scheme or trust RAC concerned shall, upon such commencement, be transferred into the names of the new trustees of the scheme or trust RAC.

63B. Offence.

✓ In force

- (1) A person who purports to act as trustee of a scheme or trust RAC while prohibited from being a trustee of a scheme or trust RAC under section 59A or removed from being a trustee of a scheme or trust RAC under section 63 or suspended from being a trustee of a scheme or trust RAC under section 63A shall be guilty of an offence and shall be liable -
- (a) on summary conviction to a fine not exceeding £5000 or to imprisonment for a term not exceeding one year, or to both,
 - (b) on conviction on indictment to a fine not exceeding £25,000 or to imprisonment for a term not exceeding two years, or to both.
- (2) A fine imposed under this section shall not be paid out of the resources of any scheme or trust RAC, as the case may be.

64. Appointment and removal of trustees by Board.

✓ In force

- (1) Where in relation to a scheme or trust RAC, there are no trustees or the trustees cannot be found, the Board may, if it considers it desirable to do so, by order under its seal -
 - (a) appoint a new trustee or new trustees of the scheme or trust RAC in substitution, where appropriate, for any existing trustee or trustees; and
 - (b) vest, subject where necessary to transfer in the books of any bank, corporation or company, the assets of the scheme or trust RAC in the persons appointed trustees of the scheme or trust RAC by the order.
- (2) The Board shall, not later than 21 days after the date of an order under this section, publish a notice in a daily newspaper published in and circulating throughout the State giving particulars of the order.
 - (a) [deleted]
 - (b) [deleted]
- (3) Every trustee of a scheme or trust RAC appointed under this section shall, as well before as after the resources of the scheme or trust RAC become by law vested in him, have the same powers, authorities and discretions and may in all respects act as if he had been originally appointed a trustee by the rules of the scheme or trust RAC.
- (4)
 - (a) A person having an interest may, within 21 days after the publication of a notice under subsection (2) (or such longer period as the court may fix, being a period that, having regard to the circumstances of any particular case, the court considers to be reasonable), appeal to the court against the making of the order to which the notice relates.
 - (b) On an appeal under this subsection the court may make such order confirming, annulling or varying the order concerned and such order as to costs as it thinks fit, but if the court annuls or varies an order under this section that has come into operation, the annulment or variation shall be without prejudice to the validity of anything previously done thereunder.
 - (c) The following shall be entitled to be represented and heard on any appeal under this section:
 - (i) in the case of a scheme, the Board, the trustees, the employer and the members of the scheme;
 - (ii) in the case of a trust RAC, the Board and the trustees and members of the trust RAC.
 - (d) An order under this section shall not come into operation -
 - (i) during the period of 21 days from the date of the publication of the notice under subsection (2) in relation to the order, or
 - (ii) if an appeal against the order is brought during the period aforesaid, before the final determination of the appeal or any appeal from such determination or the withdrawal of either such appeal.
- (5) An order under this section may make provision for such ancillary and consequential matters (including the vesting of the property of the scheme or trust RAC concerned in the trustees appointed by the order and (notwithstanding anything contained in the rules of the scheme or trust RAC) the making of payments from the resources of the scheme or trust RAC or from the employer to the trustees appointed by the order in respect of fees, expenses or other matters relating to their duties as such trustees) as the Board considers necessary or expedient.
- (6) An order under this section shall not operate as a discharge of any liabilities of a former trustee of the scheme or trust RAC concerned to any greater or different extent than the appointment of new trustees under any power for that purpose contained in any instrument would have operated.
- (7) Where a body corporate is appointed under this section to be, or a body corporate appointed under this section becomes, sole trustee of a scheme or trust RAC the terms of which provide for or require the appointment of more than one trustee, then, during such time as the body corporate holds the office of trustee of the scheme or trust RAC and is the only such trustee -

- (a) the rules of the scheme or trust RAC shall be deemed to provide for or require the appointment of one trustee only, and
 - (b) one trustee only shall be deemed to have been originally appointed under the terms of the scheme or trust RAC.
- (8) Where any land of which the ownership is registered under the Registration of Title Act, 1964, becomes vested, by an order under this section, in any person or persons, the registering authority under that Act shall, upon production of a copy of the order sealed with the seal of the Board, and upon payment of the appropriate fee, register that person or those persons in the appropriate register maintained under that Act as owner (within the meaning of that Act) of the land.
- (9) Where an order is made under this section, any assets vested by the order that immediately before the commencement of the order were standing registered in the books of any bank, corporation or company or were entered in any register kept in pursuance of any enactment in the names of the former trustees of the scheme or trust RAC concerned shall, upon production after such commencement of a copy of the order sealed with the seal of the Board, be transferred into the names of the new trustees of the scheme or trust RAC.


64A. Conflict between Part VI and schemes.

✔ In force

- (1) The provisions of this Part and of any regulations made thereunder shall override any rule of a scheme or trust RAC to the extent that that rule conflicts with those provisions.
- (2) Any question as to -
- (a) whether any provision of this Part (including the application of any provision as modified by regulations) or any regulations made thereunder conflicts with any rule of a scheme or a trust RAC, or
 - (b) whether a scheme is a defined benefit scheme or a defined contribution scheme for the purposes of this Part,
- shall be determined by the Board on application to it in writing in that behalf—
- (a) in the case of a scheme, by a person who, in relation to the scheme, corresponds to a person mentioned in section 38(3) in relation to the scheme mentioned therein,
 - (b) in the case of a trust RAC, by a person who is a member or trustee of the trust RAC.
- (3) An appeal to the High Court on a point of law from a determination of the Board under subsection (2) in relation to a scheme, or trust RAC may be brought by the person who made, or a person who was entitled to make, the application concerned under subsection (2) not later than six months after the date of the determination by the Board.

Part VIA Registered Administrators (ss. 64B-64P)

✓	64B. Interpretation (Part VIA).
✓	64C. Register of Administrators.
✓	64D. Registration.
✓	64E. Renewal of registration.
✓	64F. Disqualifications.
✓	64G. Duties of registered administrators.
✓	64H. Termination of registration.
✓	64I. Appeals.
✓	64J. Offences.
✓	64K. Address for service.
✓	64L. Publication of termination, non-renewal or restriction.
✓	64M. Effect of registration or renewal.
✓	64N. Effect of termination or non-renewal.
✓	64O. Obligations of registered administrator following notification from Board.
RC	64P. Services of registered administrator and sale of other products.

64B. Interpretation (Part VIA). In force

In this Part except where the context otherwise requires -

"annual benefit statement" means the statement required by regulations under this Act to be furnished -

- (a) at least once in each scheme year, by the trustees of a scheme to a member whose service in relevant employment has not terminated before normal pensionable age, or
- (b) at least once in each trust RAC year, by the trustees of a trust RAC (other than a small trust RAC) to a member who has not commenced to receive benefit in accordance with the rules of the trust RAC;

containing such information as is prescribed in relation to the member's individual interest in the scheme or trust RAC, as the case may be;

"core administration functions" means the duties of a registered administrator specified in section 64G(1);

"Register" means the Register of Administrators referred to in section 64C;

"registration year" in relation to a registered administrator, means the period of 12 months commencing on the date on which the registration under section 64D(3), or the renewal of the registration under section 64E(2), of the registered administrator takes effect.

64C. Register of Administrators.

✓ In force

- (1) The Board shall establish and maintain for the purposes of this Act a register to be known as the Register of Administrators.
- (2) Subject to such requirements as are prescribed for the purposes of this subsection, the Register shall be in such form, and contain such entries and additions, as the Board considers appropriate for the purpose of maintaining an accurate record of the names and other particulars of persons registered under this Part.
- (3) The Register shall be kept at the offices of the Board and be made available for inspection by any person free of charge during office hours.
- (4) A copy of an entry in the Register shall, on request, be issued by the Board on payment of such fee (if any), not exceeding the reasonable cost of making the copy, as is prescribed.
- (5) In any proceedings a document purporting to be a copy of such an entry and to be certified by an officer of the Board to be a true copy of the entry shall, without proof of the signature of the person purporting so to certify the document or that he or she was such an officer, be received in evidence and shall, unless the contrary is shown, be deemed to be a true copy of the entry and to be evidence of the matters stated in it.

64D. Registration.

✔ In force

- (1) A person shall not perform core administration functions for the trustees of a scheme or trust RAC unless that person is registered with the Board as a registered administrator in accordance with this section.
- (2) A person may apply to the Board for registration as a registered administrator by lodging with the Board an application for registration in the prescribed form.
- (3) The Board shall -
 - (a) cause the name of an applicant to be placed on the Register if it is satisfied that the applicant -
 - (i) is not disqualified under section 64F, and
 - (ii) meets such other requirements as are prescribed,and
 - (b) refuse to register the applicant if it is not so satisfied.
- (4) The Board shall notify the applicant in writing of its decision and of the reasons for its decision.

64E. Renewal of registration.


✓ In force

- (1) An application for renewal of registration must be in the prescribed form and, subject to subsection (4), lodged with the Board not later than 30 days before the end of the registration year of the registered administrator immediately preceding the year for which renewal is sought.
- (2) Where the Board receives an application for renewal of registration under subsection (1), the Board -
 - (a) shall renew the registration if it is satisfied that -
 - (i) the applicant continues to meet the requirements of section 64D(3), and
 - (ii) paragraph (b) (ii) does not apply to the applicant,
 - or
 - (b) may decide either not to renew that registration, or to renew it subject to conditions, if -
 - (i) it is not satisfied that the applicant continues to meet all of the requirements of section 64D(3), or
 - (ii) as a result of an audit of the applicant under section 18 or 54(4)(ca), it is satisfied that the registered administrator has failed to a material extent to properly perform any of the core administration functions for which it has had responsibility or to comply with a condition imposed under this paragraph.
- (3) The conditions that may be imposed under subsection (2) are -
 - (a) the restriction that the registered administrator may provide core administration functions only to trustees to whom it provided those functions during the registration year immediately preceding the date of renewal; and
 - (b) any other condition that is prescribed for the purposes of this subsection.
- (4) The Board may consider a late application for renewal and, having regard to the circumstances, may -
 - (a) either deal with the application as if it had been made within time or reject it; and
 - (b) if it decides, after the date of expiry of the registration, that it should be renewed, renew it with effect from that date of expiry.
- (5) The Board shall notify the applicant in writing of its decision and of the reasons for its decision.

64F. Disqualifications.

✔ In force

- (1) A person is not entitled to become, or to remain, registered under this Part if the person -
- (a) is an undischarged bankrupt,
 - (b) has made a composition or arrangement with his creditors and has not discharged his obligations under that composition or arrangement,
 - (c) has been convicted of an offence involving fraud or dishonesty,
 - (d) is a company any director of which is prohibited under this section from being a registered administrator, or
 - (e) is a person who is for the time being subject to the restrictions imposed by section 150 of the Companies Act 1990.
- (2) A person is not entitled to be registered under this Part if -
- (a) an earlier registration of the person under this Part was terminated under section 64H, and
 - (b) a period of less than 12 months has elapsed since the date of termination.

64G. Duties of registered administrators. In force

- (1) A registered administrator shall -
- (a) prepare on behalf of the trustees an annual report in the prescribed form and deliver it to the trustees not less than one month prior to the date by which the trustees are required by regulations under this Act to make the annual report available;
 - (b) prepare on behalf of the trustees annual benefit statements for members and deliver them to the trustees not less than one month prior to the date by which the trustees are required by regulations under this Act to make such statements available;
 - (c) keep accurate and sufficient records of members and of their entitlements to enable the registered administrator to discharge the duties specified in paragraphs (a) and (b); and
 - (d) discharge such other duties as are prescribed.
- (2) A registered administrator which becomes disqualified from acting under section 64F shall immediately notify that fact in writing to the Board and to the trustees of each scheme or trust RAC of which it is the registered administrator.
- (3) A contract for the performance of the core administration functions between trustees and a registered administrator may not be terminated by either party by less than 90 days' prior written notice, except where the Board has decided not to renew the administrator's registration under section 64E(2) or has terminated that registration under section 64H.
- (4) Where a registered administrator has an outsourcing arrangement, the registered administrator remains fully responsible for discharging all of its obligations under this Act.

64H. Termination of registration.


✔ In force

- (1) The Board may terminate the registration of a registered administrator if the Board is satisfied that the registered administrator -
 - (a) has expressly requested the termination of registration;
 - (b) has failed to comply with the requirements of this Act;
 - (c) has not complied with a condition imposed by the Board under section 64E(2)(b); or
 - (d) is disqualified under section 64F from registration under this Part.
- (2) As soon as practicable after the Board terminates the registration of a person as a registered administrator under subsection (1) it shall notify the person in writing of the termination and the reasons for that termination.


64I. Appeals.

✓ In force


- (1) Where -
- (a) under section 64D(3)(b), a person's application for registration has been refused,
 - (b) under section 64E(2)(b) -
 - (i) a person's application for renewal of registration has been refused, or
 - (ii) the Board has imposed one or more conditions on a person,
- or
- (c) under section 64H(1), a person's registration has been terminated,
- the person may, within 21 days of the date of the notification under section 64D(4), 64E(5) or 64H(2) (or such longer period as the High Court allows before the expiration of those 21 days, being a period that, having regard to the circumstances of any particular case, the court considers to be reasonable), appeal to the High Court against the making of the decision to which the notification relates.
- (2) On an appeal under this section the High Court may make such order confirming, annulling or varying the decision concerned and such order as to costs as it thinks fit.
- (3) The Board, the trustees of the scheme or trust RAC and the registered administrator concerned are entitled to be represented and heard on any appeal under this section.
- (4) A decision of the Board referred to in subsection (1) does not take effect -
- (a) until the expiration of the period of 21 days after the date of the notification referred to in that subsection, or
 - (b) if an appeal against the decision is brought during that period of 21 days, until the final determination, or withdrawal, of the appeal or of any appeal from that determination.

64J. Offences. In force

Proceedings in respect of any offence relating to a registered administrator under this Act with regard to an act or omission alleged to have been committed outside the State may be taken in any place in the State, and the act or omission may for all incidental purposes be treated as having been committed in that place.

64K. Address for service. In force


- (1) Every person whose name is entered on the Register of Administrators shall furnish to the Board an address for service in the State.
- (2) The Board shall place details of that address on the Register of Administrators.
- (3) Every notice required by or under this Act to be given to a registered administrator by the Board shall be served by the Board personally on, or sent by post to, the registered administrator at the address so furnished to the Board.

64L. Publication of termination, non-renewal or restriction. In force

Subject to section 64I, if the Board -


- (a) terminates the registration of a registered administrator under section 64H,
- (b) decides not to renew the registration of a registered administrator under section 64E(2)(b), or
- (c) renews the registration of a registered administrator subject to one or more conditions under section 64E(2)(b),

it shall publish notice of that fact in Iris Oifigiúil and in one or more newspapers circulating in the State within 28 days of the termination, non-renewal or renewal, as the case may be.

64M. Effect of registration or renewal. In force

Registration, or the renewal of the registration, of a person under this Part does not constitute a warranty as to the fitness or suitability of that person to act as a registered administrator, and the Board -

- (a) is not liable in respect of any losses incurred by a trustee resulting from the appointment of a particular registered administrator, and
- (b) has no duty to any trustee or any other person regarding the performance by a registered administrator of the core administration functions.

64N. Effect of termination or non-renewal. In force

Where, under this Part, the Board terminates, or decides not to renew, a registration, the decision of the Board shall not operate as a discharge of any liabilities of a person who has acted as a registered administrator.

640. Obligations of registered administrator following notification from Board.

✔ In force

(1) Subject to section 64I, where a person has been notified by the Board -

- (a) that its registration is terminated,
- (b) that its registration is not renewed, or
- (c) that the Board has imposed conditions on the operations of the person as a registered administrator,

the person shall immediately notify in writing the trustees of each scheme or trust RAC of which the person is the registered administrator that it has received a notice from the Board and the content of that notice.

(2) If a person has been notified by the Board that -

- (a) its registration is terminated, or
- (b) its registration is not renewed,

it shall, not more than two months from the date of the notification, transfer all information held by it relating to each scheme or trust RAC of which it was the registered administrator, as directed by the trustees of that scheme or trust RAC, to such other registered administrator as is nominated by the trustees or to the trustees.

64P. Services of registered administrator and sale of other products.**N** Not yet in force

- (1) A service or product shall not be marketed or sold to trustees in such a manner as to make the purchase of that service or product dependent on the purchase of the services of a particular registered administrator.
- (2) The services of a registered administrator shall not be marketed or sold in such a manner as to make the entering into of a contract in respect of the services of the registered administrator dependent on the purchase of any other service or product.


Part VIB Conditions governing activities (ss. 64AA-64AU)

	General (s. 64AA)
	System of governance: general provisions (ss. 64AB-64AK)
	Governance requirements: documents concerning governance (s. 64AL)
	Chapter 2 Outsourcing and investment management (ss. 64AM-64AO)
	Chapter 3 Depositary (ss. 64AP-64AU)

General (s. 64AA)



64AA. Interpretation for Part

64AA. Interpretation for Part In force

- (1) In this Part -
- "key function holder" means a person who carries out a key function specified in section 64AH;
- "outsourced" has, notwithstanding section 2(1), the same meaning as it has in the Directive of 2016.
- (2) Without prejudice to section 2(7), a word or expression that is used in this Part and is also used in the Directive of 2016 shall, unless the context otherwise requires, have the same meaning in this Part as it has in the Directive.

System of governance: general provisions (ss. 64AB-64AK)

✓	64AB. General governance requirements
✓	64AC. Governance: requirements in respect of number of trustees
✓	64AD. Requirements for fit and proper management: key function holder and persons to whom key function outsourced
✓	64AE. Requirements for fit and proper management: requirements in respect of good repute and integrity for appointment as trustee, key function holder; and for person to whom key function outsourced
✓	64AF. Section 64AE: supplementary provisions relating to evidence of compliance with proper requirements
✓	64AG. Remuneration Policy
	System of governance: key functions (ss. 64AH-64AK)

64AB. General governance requirements

✓ In force

- (1) Without prejudice to any other provision of this Act, the trustees of a scheme or trust RAC shall put in place an effective system of governance which provides for sound and prudent management of the activities of that scheme or trust RAC and those trustees shall provide that such system of governance includes -
 - (a) an adequate and transparent organisational structure with a clear allocation and appropriate segregation of responsibilities which shall -
 - (i) set out the functions and activities required to manage the scheme or trust RAC, and
 - (ii) specify the person who is responsible for performing each such function and carrying out any such activity, and
 - (b) an effective system for ensuring the transmission of information.
- (2) The system of governance referred to in subsection (1) shall include consideration of environmental, social and governance factors related to investment assets in investment decisions.
- (3) The trustees referred to in subsection (1) shall regularly review the system of governance referred to in subsection (1).
- (4) The trustees of a scheme or trust RAC shall ensure that the system of governance referred to in subsection (1) is proportionate to the size, nature, scale and complexity of the scheme or trust RAC concerned.
- (5) The trustees of a scheme or trust RAC shall, subject to subsection (6), establish, and apply, written policies in relation to -
 - (a) risk management,
 - (b) internal audit, and
 - (c) where relevant, actuarial and outsourced activities.
- (6) The trustees referred to in subsection (1) shall approve the written policies referred to in subsection (5) before those policies are established and applied.
- (7) The trustees referred to in subsection (5) shall -
 - (a) review the policies referred to in that subsection at least once every 3 years, and
 - (b) adapt any of the policies referred to in paragraph (a) where there is, or has been, any significant change in the system or area with which any of those policies is concerned including any change provided by, or under, any enactment.
- (8) The trustees of a scheme or trust RAC shall put in place an effective internal control system which shall include -
 - (a) administrative procedures,
 - (b) accounting procedures,
 - (c) an internal control framework, and
 - (d) appropriate reporting arrangements at all levels of the scheme or trust RAC concerned.
- (9) The trustees of a scheme or trust RAC shall, subject to subsection (10), take reasonable steps to ensure continuity and regularity in the performance of the scheme or trust RAC of its activities, including the development of contingency plans.
- (10) For the purposes of subsection (9), the trustees referred to in that subsection shall employ appropriate and proportionate systems, resources and procedures.

64AC. Governance: requirements in respect of number of trustees

✓ In force

- (1) A scheme or a trust RAC shall, subject to subsection (2), have at least 2 persons appointed as trustees of the scheme or trust RAC who effectively run that scheme or trust RAC.
- (2) Where a body corporate is appointed as the sole trustee of a scheme or trust RAC, the requirement under subsection (1) to appoint at least 2 trustees who effectively run the scheme or trust RAC shall, in the case of such body corporate, be deemed to be satisfied where the body corporate, subject to subsection (3), has at least 2 directors who effectively run that scheme or trust RAC and the requirements of section 59A(1B) are satisfied.
- (3) Where immediately before the coming into operation of the European Union (Occupational Pension Schemes) Regulations 2021 -
 - (a) a scheme or trust RAC referred to in subsection (1) had less than 2 persons appointed as trustees of the scheme or trust RAC who effectively run that scheme or trust RAC, another person shall be appointed as a trustee of that scheme or trust RAC not later than 31 December 2021, or
 - (b) a body corporate referred to in subsection (2) had less than 2 directors appointed as directors of that body corporate who effectively run that scheme or trust RAC, another person shall be appointed as a director to effectively run that scheme or trust RAC not later than 31 December 2021.

64AD. Requirements for fit and proper management: key function holder and persons to whom key function outsourced

✓ In force

- (1) The trustees of a scheme or trust RAC shall not appoint a person to carry out a key function in relation to the scheme or trust RAC unless they are satisfied that the person -
- (a) is, having regard to section 64AE of good repute and integrity,
 - (b) where the key function concerned is the actuarial key function, or the internal audit key function, possesses the professional qualifications, knowledge and experience that are adequate to properly carry out that key function, and
 - (c) where the key function concerned is a key function other than those specified in paragraph (b), possesses the qualifications, knowledge and experience that are adequate to properly carry out that key function.
- (2) Where a key function is to be outsourced under section 64AM, the trustees of the scheme or trust RAC shall not appoint a service provider referred to in that section to carry out an outsourced key function unless they are satisfied that the contract provider -
- (a) is, having regard to section 64AE, of good repute and integrity, and
 - (b) where the key function to be outsourced is the actuarial key function, or the internal audit key function, possesses the professional qualifications, knowledge and experience that are adequate to properly carry out that key function when outsourced, and
 - (c) where the key function to be outsourced is a key function other than those specified in paragraph (b), possesses the qualifications, knowledge and experience that are adequate to properly carry out that key function when outsourced.
- (3) The Pensions Authority may require, by notice in writing, information from the trustees referred to in subsections (1) and (2) as to whether any person -
- (a) who carries out a key function, or
 - (b) to whom a key function is outsourced under section 64AM, satisfies the requirements of subsection (1) or, as the case may be, subsection (2).
- (4) The trustees referred to in subsection (3) shall provide the information requested by the Pensions Authority under subsection (3).

64AE. Requirements for fit and proper management: requirements in respect of good repute and integrity for appointment as trustee, key function holder; and for person to whom key function outsourced

✓ In force

For the purposes of satisfying the requirement of good repute and integrity referred to in sections 59A and 64AD a person, or as the case may be, a body corporate does not satisfy that requirement if -

- (a) the person, or as the case may be, the body corporate or any director of that body corporate has been convicted of -
 - (i) an offence involving fraud or dishonesty,
 - (ii) an offence of money laundering under the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2018, or
 - (iii) an offence in respect of conduct in a place other than the State that would constitute an offence of the kind referred to in subparagraph (i) or (ii),
- (b) the person -
 - (i) is an undischarged bankrupt,
 - (ii) has made a composition or arrangement with his or her creditors and has not discharged his or her obligations under that composition or arrangement,
 - (iii) is, or is deemed to be, the subject of an order under section 160 of the Companies Act 1990, or a disqualification order within the meaning of Chapter 4 of Part 14 of the Companies Act 2014, whether by virtue of that Chapter or any other provision of that Act, or
 - (iv) is a person to whom a declaration under section 150 of the Companies Act 1990 Act applies or is a restricted person within the meaning of Chapter 3 of Part 14 of the Companies Act 2014,
- (c) in the case of a body corporate, the body corporate -
 - (i) has commenced a voluntary winding-up,
 - (ii) is subject to a winding-up order or is the subject of proceedings for such an order, or
 - (iii) has proposed a compromise or arrangement that is sanctioned under section 453(2) of the Companies Act 2014, or
- (d) in the case of a body corporate, a director of that body corporate -
 - (i) is subject to a declaration under section 819 of the Companies Act 2014 made against him or her or deemed to be the subject of such declaration by virtue of Chapter 5 of Part 14 of that Act,
 - (ii) is the subject of, or is deemed to be subject to, a disqualification in respect of conduct in a place other than the State that would constitute a disqualification order within the meaning of Chapter 4 of Part 14 of the Companies Act 2014.

64AF. Section 64AE: supplementary provisions relating to evidence of compliance with proper requirements

✓ In force

- (1) Where -
- (a) the Pensions Authority requires proof of good repute, proof of no previous bankruptcy, or both, in respect of a person who is a national of another Member State where such person, in respect of a scheme or trust RAC, acts, or proposes to act, as a trustee or carries out, or proposes to carry out, a key function, and
 - (b) notwithstanding any other requirements that may be specified in this Part in relation to proof of such matters,
- the Pensions Authority may, by notice in writing, request the trustees of the scheme or trust RAC to furnish it with any record or document specified in subsection (2).
- (2) For the purposes of subsection (1) and subject to subsection (3), the Pensions Authority shall accept -
- (a) an extract from the judicial record of the other Member State, or
 - (b) in the absence of a judicial record in the other Member State an equivalent record or document, issued by a competent judicial or administrative authority designated to issue such records or documents in the Member State of which the person is a national or in the State which demonstrate compliance with the required proofs.
- (3) In the event that no equivalent document referred to in paragraph (b) of subsection (2) is issued by a competent judicial or administrative authority in the Member State of which the person is a national or the State, he or she may provide the Pensions Authority with -
- (a) a declaration on oath made in accordance with the law of the other Member State, or
 - (b) a statutory declaration under the Statutory Declarations Act 1938 in the form prescribed,
- stating that the requirements of good repute, no previous bankruptcy, or both, are satisfied by him or her.
- (4) Where the Pensions Authority makes a request referred to in subsection (1), the trustees of the scheme or trust RAC shall present the record or document, referred to in subsection (2) or (3), to the Pensions Authority within 3 months of the date of issuance, or date of making, of that record or document.

64AG. Remuneration Policy

✓ In force

- (1) The trustees of a scheme or trust RAC shall establish and apply a sound remuneration policy determined in accordance with the principles set out in subsection (4) in respect of -
 - (a) the trustees of the scheme or trust RAC,
 - (b) persons who carry out key functions,
 - (c) other categories of staff employed by the trustees of the scheme or trust RAC whose professional activities have a material impact on the risk profile of the scheme or trust RAC, and
 - (d) a service provider referred to in section 64AM to whom a key function or other activity referred to in that section is outsourced unless such service provider is covered by the Directives specified in subsection (4)(e).
- (2) Without prejudice to section 54(1)(b), unless otherwise provided in Regulation (EU) 2016/679 [\[OJ No. L 119, 4.5.2016, p.1\]](#), the trustees of a scheme or a trust RAC shall regularly disclose publicly relevant information regarding their remuneration policy.
- (3) The trustees of a scheme or a trust RAC shall comply with paragraphs (a) to (g) of subsection (4) when, pursuant to subsection (1), establishing and applying the remuneration policy for the scheme or trust RAC.
- (4) The remuneration policy established and applied in accordance with subsection (1) shall:
 - (a) be established, implemented and maintained in line with the activities, risk profile, objectives, and the long-term interest, financial stability and performance of the scheme or trust RAC as a whole, and shall support the sound, prudent and effective management of the scheme or trust RAC;
 - (b) be in line with the long-term interests of members and beneficiaries of the scheme or trust RAC;
 - (c) include measures aimed at avoiding conflicts of interest;
 - (d) be consistent with sound and effective risk management and shall not encourage risk-taking which is inconsistent with the risk profiles and rules of the scheme or trust RAC concerned;
 - (e) apply to the scheme or trust RAC and to the service providers referred to in section 64AM, unless those service providers are covered by Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU [\[OJ No. L 176, 27.6.2013 p. 338\]](#) and 2014/65/EU [\[OJ No. L 173 12.6.2014 p. 349\]](#) of the European Parliament and of the Council;
 - (f) establish and set out the general principles of the remuneration policy and provide that the trustees of the scheme or trust RAC shall review and update that policy at least once every 3 years;
 - (g) provide for clear, transparent and effective governance with regard to remuneration and the manner in which it is overseen.
- (5) The trustees referred to in subsection (3) shall, pursuant to paragraph (f) of subsection (4) -
 - (a) review and update the general principles of the remuneration policy within the period referred to in that paragraph, and
 - (b) implement the remuneration policy.
- (6) The trustees of a scheme or a trust RAC, when establishing and applying the remuneration policy under subsection (1), shall establish and apply that policy in a manner that is proportionate to -
 - (a) the size and internal organisation of the scheme or trust RAC, and
 - (b) the size, nature, scale and complexity of the activities of the scheme or the trust RAC.
- (7) The trustees of a scheme or trust RAC shall establish and apply the remuneration policy for the scheme or trust RAC where a scheme or trust RAC is established immediately before the day on which the European Union (Occupational Pension Schemes) Regulations 2021 come into operation, not later than 31

December 2021.

System of governance: key functions (ss. 64AH-64AK)

✓	64AH. Key functions: general provisions
✓	64AI. Key function: risk management function
✓	64AJ. Internal Audit function
✓	64AK. Key function: actuarial function for regulatory own funds scheme and regulatory own funds trust RAC

64AH. Key functions: general provisions

✓ In force

- (1) The trustees of a scheme or trust RAC shall put in place the following key functions for that scheme or trust RAC:
 - (a) a risk management function;
 - (b) an internal audit function;
 - (c) where applicable, an actuarial function.
- (2) The trustees of a scheme or trust RAC shall enable the holders of key functions to undertake their duties effectively in an objective, fair and independent manner.
- (3) Subject to subsection (4), the trustees of a scheme or trust RAC may allow a person or persons to carry out more than one of the key functions.
- (4) Subsection (3) shall not apply to the internal audit function referred to in subsection (1) of section 64AJ which shall be independent from the other key functions referred to in subsection (1) and shall be carried out by a person who does not carry out another key function in respect of the scheme or trust RAC.
- (5) Subject to subsections (6) and (7), the trustees of a scheme or trust RAC shall not allow a person who carries out a key function referred to in subsection (1) for a scheme or trust RAC to carry out the same key function for the employer.
- (6) Subject to subsection (7), the trustees of a scheme or trust RAC may, taking into account the size, nature, scale and complexity of the activities of the scheme or trust RAC, allow the same person, or persons, to carry out the same key function in both the scheme or trust RAC and the employer.
- (7) The trustees referred to in subsection (6) shall not allow the same person, or persons, referred to in subsection (6) to carry out the same key function referred to in that subsection unless they have put in place a written protocol which explains how any conflicts of interest between the scheme or trust RAC and the employer are prevented or managed.
- (8) A person who carries out a key function shall report any material findings and recommendations in respect of the key function concerned to the trustees of the scheme or trust RAC concerned.
- (9) Where a report is made under subsection (8), the trustees of a scheme or trust RAC shall determine what action is to be taken in respect of that report.

64AI. Key function: risk management function

✓ In force

- (1) The trustees of a scheme or trust RAC shall establish and maintain an effective risk management function which shall comply with this section.
- (2) For the purposes of subsection (1), the trustees referred to in that subsection shall establish and maintain the risk management function in a manner that is proportionate to -
 - (a) the size of that scheme or trust RAC and its internal organisation, and
 - (b) the size, nature, scale and complexity of the activities of that scheme or trust RAC.
- (3) The trustees referred to in subsection (1) shall ensure that the risk management function referred to in that subsection is structured in such a way that facilitates the functioning of a risk management system for which those trustees shall adopt strategies, processes and reporting procedures necessary to ensure that the risks, at an individual and at an aggregated level, to which the scheme or trust RAC is or could be exposed and their interdependencies can be identified, measured, monitored, managed and be regularly reported on to those trustees.
- (4) The trustees referred to in subsection (1) shall ensure the risk management system referred to in subsection (3) is effective and well integrated into -
 - (a) the organisational structure, and
 - (b) the decision-making processes of the scheme or trust RAC.
- (5) The risk management system referred to in subsection (3) shall cover, in a manner that is proportionate to the size and internal organisation of the scheme or trust RAC concerned, as well as to the size, nature, scale and complexity of the activities of the scheme or trust RAC, risks which can occur in a scheme or trust RAC, or in undertakings to which tasks or activities of a scheme or trust RAC has been outsourced, at least in the following areas, where applicable:
 - (a) underwriting and reserving;
 - (b) asset-liability management;
 - (c) investment, in particular derivatives, securitisations, and similar commitments;
 - (d) liquidity and concentration risk management;
 - (e) operational risk management;
 - (f) insurance and other risk mitigation techniques; and
 - (g) environmental, social and governance risks relating to the investment portfolio and the management thereof.
- (6) Where in accordance with the rules of the scheme or trust RAC, the members and beneficiaries of the scheme or trust RAC bear risks, the risk management system referred to in subsection (3) shall also assess those risks from the perspective of the members and beneficiaries.
- (7) Where the person carrying out the risk management key function makes a report or recommendation to the trustees referred to in subsection (1), the trustees shall have regard to that report or recommendation.
- (8) The trustees referred to in subsection (1) shall, as a general principle, have regard to the objective of having an equitable spread of risks and benefits between generations in their activities.

64AJ. Internal Audit function

✓ In force

- (1) The trustees of a scheme or trust RAC shall establish and maintain an effective internal audit function which shall comply with this section.
- (2) The internal audit function referred to in subsection (1) shall include an evaluation of the adequacy and effectiveness of the internal control system and other elements of systems of governance including, where relevant, outsourced activities.
- (3) Where the person carrying out the internal audit key function provides a report or makes a recommendation to the trustees of a scheme or trust RAC, the trustees shall have regard to that report or recommendation.
- (4) The scope and detail of the internal audit function shall be proportionate to -
 - (a) the size and internal organisation of the scheme or trust RAC, and
 - (b) the size, nature, scale and complexity of the activities of the scheme or the trust RAC.

64AK. Key function: actuarial function for regulatory own funds scheme and regulatory own funds trust RAC

✓ In force

- (1) This section applies to -
 - (a) a regulatory own funds scheme referred to in section 53E, or
 - (b) a regulatory own funds trust RAC referred to in section 53E,

which provides cover for biometric risk, or guarantees an investment performance or a given level of benefits.
- (2) Without prejudice to any other provision of this Act, the trustees of a regulatory own funds scheme to which this section applies, or a regulatory own funds trust RAC to which this section applies, shall establish and maintain an effective actuarial function to -
 - (a) co-ordinate and oversee the calculation of technical provisions,
 - (b) assess the appropriateness of methodologies and underlying models used in the calculation of the technical provisions referred to in paragraph (a) and the assumptions made for that purpose,
 - (c) assess the sufficiency and quality of the data used in the calculation of the technical provisions referred to in paragraph (a),
 - (d) compare the assumptions underlying the calculation of the technical provisions referred to in paragraph (b) with the experience,
 - (e) report to the trustees of that regulatory own funds scheme or regulatory own funds trust RAC on the reliability and adequacy of the calculation of technical provisions referred to in paragraph (a),
 - (f) express an opinion on the overall underwriting policy in the event of that regulatory own funds scheme or regulatory own funds trust RAC having such a policy,
 - (g) express an opinion on the adequacy of insurance arrangements in the event of that regulatory own funds scheme or regulatory own funds trust RAC having such arrangements, and
 - (h) contribute to the effective implementation of the risk management system.
- (3) For the purposes of subsection (2), the trustees of a regulatory own funds scheme or regulatory own funds trust RAC referred to in that subsection, shall appoint at least one independent person, who satisfies the requirements of section 51, as an actuary to carry out the actuarial function referred to in subsection (2).
- (4) For the purpose of making an appointment under subsection (3), the trustees of the regulatory own funds scheme or regulatory own funds trust RAC may appoint an independent person who -
 - (a) has been appointed to perform -
 - (i) in the case of a regulatory own funds scheme, the functions specified in sections 42(2) or 53J, or
 - (ii) in the case of a regulatory own funds trust RAC, the functions specified in section 53G or 53J, or
 - (b) is a person other than a person referred to in paragraph (a).
- (5) Where, pursuant to subsection (2) -
 - (a) a report referred to in subsection (2)(e) is made to the trustees referred to in that subsection, the trustees shall have regard to that report, and
 - (b) an opinion referred to in subsection (2)(f) or subsection (2)(g) is expressed, the trustees shall have regard to that opinion.

Governance requirements: documents concerning governance (s. 64AL)



64AL. Own-risk assessment

64AL. Own-risk assessment

✓ In force

- (1) The trustees of a scheme or trust RAC shall carry out and document an own-risk assessment of the scheme or trust RAC in accordance with this section.
- (2) For the purposes of subsection (1), the trustees referred to in that subsection shall carry out and document the own-risk assessment in a manner which is proportionate to -
 - (a) the size and internal organisation of the scheme or trust RAC concerned, and
 - (b) the size, nature, scale and complexity of the activities of the scheme or trust RAC concerned.
- (3) The trustees referred to in subsection (1) shall carry out the own-risk assessment referred to in that subsection -
 - (a) at least once every 3 years, and
 - (b) without delay following any significant change in the risk profiles of the scheme or trust RAC.
- (4) The trustees of a scheme or trust RAC shall, when carrying out and documenting the own-risk assessment referred to in subsection (1), have regard to the size and internal organisation of the scheme or trust RAC concerned as well as to the size, nature, scale and complexity of its activities and include the following:
 - (a) a description of how own-risk assessment is integrated into the management process and into the decision-making processes of the scheme or trust RAC;
 - (b) an assessment of the effectiveness of the risk management system;
 - (c) a description of how the scheme or trust RAC prevents conflicts of interest with the employer, where the scheme or trust RAC outsources key functions to the employer in accordance with section 64AH(5);
 - (d) an assessment of the overall funding needs of the scheme or trust RAC, including a description of the recovery plan where applicable;
 - (e) an assessment of the risks to members and beneficiaries relating to the paying out of their retirement benefits and the effectiveness of any remedial action considering, where applicable -
 - (i) indexation mechanisms, and
 - (ii) benefit reduction mechanisms, including the extent to which accrued pension benefits can be reduced, under which conditions and by whom;
 - (f) a qualitative assessment of the mechanisms protecting retirement benefits, including, as applicable, guarantees, covenants or any other type of financial support by the employer, insurance or reinsurance by an undertaking covered by Directive 2009/138/EC or coverage by a pension protection scheme, in favour of the scheme or trust RAC or the members and beneficiaries;
 - (g) a qualitative assessment of the operational risks;
 - (h) where environmental, social and governance factors are considered in investment decisions, an assessment of new or emerging risks, including risks related to climate change, use of resources and the environment, social risks and risks related to the depreciation of assets due to regulatory change.
- (5) For the purposes of subsection (4), the trustees of a scheme or trust RAC shall, subject to subsections (6) and (7), have in place methods to identify and assess the risks -
 - (a) to which the scheme or trust RAC is, or could be, exposed to in the short term and the long term, and
 - (b) which may have an impact on the ability of that scheme or trust RAC to meet its obligations.
- (6) The trustees referred to in subsection (4) shall ensure that the methods referred to in subsection (5) are proportionate to the size, nature, scale and complexity of the risks inherent in the activities of the scheme or a trust RAC concerned.

- (7) The methods referred to in subsections (5) shall be described in the own-risk assessment.
- (8) The trustees of a scheme or trust RAC shall take into account an own-risk assessment carried out under this section in respect of the scheme or trust RAC concerned when making a strategic decision in respect of the scheme or trust RAC.

Chapter 2 Outsourcing and investment management (ss. 64AM-64AO)

✓	64AM. Outsourcing
✓	64AN. Request by Pensions Authority in relation to section 64AM arrangement
✓	64AO. Investment management

64AM. Outsourcing

✓ In force

- (1) Subject to subsections (2) to (5) and section 64AN, the trustees of a scheme or trust RAC may enter into an arrangement to entrust any activity, including -
 - (a) a key function, and
 - (b) the management of that scheme or trust RAC,
 whether in whole or in part, to a service provider operating on behalf of the scheme or trust RAC concerned in respect of such activity, key function and management.
- (2) Where the trustees referred to in subsection (1) enter into an arrangement referred to in that subsection, in respect of a key function or any other activity referred to in that subsection, the trustees of the scheme or trust RAC concerned shall, notwithstanding that arrangement, be fully responsible for compliance with their obligations under this Act in respect of any such key function or such activity.
- (3) Where the trustees referred to in subsection (1) enter into an arrangement referred to in that subsection, in respect of a key function or any other activity referred to in that subsection, the trustees of that scheme or trust RAC shall satisfy themselves that the arrangement entered into by them shall not be undertaken in a manner that would lead to any of the following:
 - (a) impairing the quality of the system of governance of the scheme or trust RAC concerned;
 - (b) unduly increasing the operational risk to the scheme or trust RAC concerned;
 - (c) impairing the ability of the Pensions Authority to monitor the compliance of the scheme or trust RAC with its obligations under this Act;
 - (d) undermining the continuous and satisfactory service to members and beneficiaries of the scheme or trust RAC.
- (4) The trustees referred to in subsection (1) shall ensure the proper functioning of any key function or activity, referred to in subsection (1), which is the subject of an arrangement referred to in that subsection and shall -
 - (a) in the process of selecting a service provider, have regard to the requirements of this subsection when selecting the service provider, and
 - (b) monitor, during the course of the period of the arrangement, the activities of that service provider.
- (5) The trustees referred to in subsection (1) shall -
 - (a) when outsourcing pursuant to subsection (1), a key function, an activity or the management referred to in that subsection, enter into a written agreement with the service provider in respect of the arrangement under subsection (1), and
 - (b) provide that the agreement referred to in paragraph (a) clearly defines -
 - (i) the rights and obligations of the scheme or trust RAC concerned, and
 - (ii) the rights and obligations of the service provider, and subsections (6) to (9) shall apply to that agreement.
- (6) An agreement referred to in subsection (5) shall be legally enforceable in a court of competent jurisdiction.
- (7) Subject to subsection (8), the trustees referred to in subsection (1) shall notify the Pensions Authority of the making of an arrangement under subsection (1) not later than 4 weeks from the making of that arrangement.
- (8) Where an arrangement concerns the outsourcing of a key function or the management of a scheme or trust RAC, the trustees of that scheme or trust RAC shall notify the Pensions Authority before the agreement in respect of that arrangement enters into force.
- (9) The trustees referred to in subsection (1) shall, as soon as practicable, notify the Pensions Authority of any subsequent important developments with respect to any outsourced activities.

64AN. Request by Pensions Authority in relation to section 64AM arrangement

✓ In force

- (1) Where the trustees of a scheme or a trust RAC have entered into an arrangement referred to in section 64AM, the Pensions Authority may, by notice in writing, request -
- (a) the trustees of the scheme or trust RAC concerned,
 - (b) the service provider concerned, and
 - (c) without prejudice to the generality of paragraph (b), a person who, on behalf of a service provider, performs, or carries out, any matter which is required to be performed or carried out pursuant to that arrangement,
- to furnish it with any information, document or material relating to that arrangement within a period as the Pensions Authority may specify in the notice.
- (2) A person to whom a notice under subsection (1) is given shall comply with the request set out in the notice.

64AO. Investment management

✓ In force

- (1) Nothing in this Act shall operate to restrict the trustees of a scheme or trust RAC from appointing, for the management of the investment portfolio of the scheme or trust RAC concerned, an investment manager established in another Member State which is duly authorised for carrying out such management in accordance with -
- (a) Directive 2009/65/EC,
 - (b) Directive 2009/138/EC,
 - (c) Directive 2011/61/EU,
 - (d) Directive 2013/36/EU, and
 - (e) Directive 2014/65/EU.
- (2) Nothing in this Act shall operate to restrict the trustees of a scheme or trust RAC from appointing, for the management of the investment portfolio of the scheme or trust RAC concerned, an authorised entity referred to in Article 2(1) of Directive of 2016.

Chapter 3 Depositary (ss. 64AP-64AU)

✓	64AP. Appointment of depositary
✓	64AQ. Depositary: safekeeping of assets and depositary liability
✓	64AR. Depositary: oversight duties
✓	64AS. Certain requirements where no depositary appointed by trustees of scheme or trust RAC
✓	64AT. Conflict between Part and scheme or trust RAC
✓	64AU. Application of Part to one-member arrangement: transitional provisions

64AP. Appointment of depositary

✓ In force

- (1) Where the trustees of a scheme or trust RAC appoint a depositary, any such appointment may be made in respect of a depositary established in another Member State and the depositary is -
 - (a) duly authorised in accordance with Directive 2013/36/EU or Directive 2014/65/EU, or
 - (b) accepted as a depositary for the purposes of Directive 2009/65/EC or Directive 2011/61/EU.
- (2) Where the trustees of a scheme or trust RAC appoint a depositary -
 - (a) the trustees shall appoint the depositary by means of a written contract, and
 - (b) the contract referred to in paragraph (a) shall state that the trustees shall furnish the depositary with all the information that is necessary for the depositary to perform its functions provided for under this Part.
- (3) Where the trustees of a scheme or trust RAC appoint a depositary, when carrying out the functions set out in sections 64AQ and 64AR the trustees and the depositary appointed shall act honestly, fairly, professionally, independently and in the interests of the members and beneficiaries of the scheme or trust RAC.
- (4) A depositary referred to in subsection (2) shall not carry out activities with regard to the scheme or trust RAC which may create conflicts of interest between the trustees of that scheme or trust RAC, the members and beneficiaries of that scheme or trust RAC and itself, unless -
 - (a) the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and
 - (b) the potential conflicts of interest are properly identified, managed, monitored and disclosed, in accordance with subsection (5), to the members and beneficiaries of that scheme or trust RAC and to the trustees of the scheme or trust RAC concerned.
- (5) For the purposes of the disclosure referred to in subsection (4)(b), to members and beneficiaries, where the depositary discloses, in accordance with subsection (4)(b), a conflict of interest to the trustees of the scheme or trust RAC concerned, the trustees shall -
 - (a) disclose that conflict of interest to the members and beneficiaries as soon as practicable after it is made to them, and
 - (b) as soon as practicable, notify the depositary, in writing, that it has made the disclosure to the members and beneficiaries under paragraph (a).

64AQ. Depositary: safekeeping of assets and depositary liability

✓ In force

- (1) Where the assets of a scheme or trust RAC consisting of financial instruments that can be held in custody are entrusted to a depositary for safekeeping, the depositary shall -
- (a) hold in custody all financial instruments which can be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary, and
 - (b) ensure that the financial instruments which can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the rules laid down in Directive 2014/65/EU, opened in the name of the trustees of the scheme or trust RAC, so that they can be clearly identified as vested in those trustees on behalf of the members and beneficiaries of that scheme or trust RAC at all times.
- (2) Where the assets of a scheme or trust RAC consist of other assets that are not referred to in subsection (1), the depositary shall -
- (a) verify, in accordance with subsection (3), that the trustees of the scheme or trust RAC are the owners, on behalf of the members and beneficiaries of the scheme or trust RAC, of the assets,
 - (b) maintain a record of those assets, and
 - (c) keep its records up-to-date.
- (3) The verification required under subsection (2) shall be carried out on the basis of information or documents provided by the trustees of the scheme or trust RAC and, where available, on the basis of external evidence.
- (4) A depositary shall be liable to the trustees of the scheme or trust RAC and the members and beneficiaries for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them.
- (5) The liability of a depositary, referred to in subsection (4), shall not be affected by the fact that the depositary has entrusted to a third party all or some of the assets in its safe-keeping.

64AR. Depositary: oversight duties

✓ In force

Where the trustees of a scheme or trust RAC have appointed a depositary for oversight duties, the depositary appointed for those duties, in addition to the obligations set out in section 64AQ(1), 64AQ(2) and 64AQ(3) shall -

- (a) carry out instructions of the trustees of the scheme or trust RAC, unless those instructions conflict with any requirement under any enactment or rule of law or the rules of the scheme or trust RAC,
- (b) ensure that in any transaction involving the assets of the scheme or trust RAC any consideration is remitted to the scheme or trust RAC within the usual time limits, and
- (c) ensure that income produced by assets is applied in accordance with the rules of the scheme or trust RAC.

64AS. Certain requirements where no depositary appointed by trustees of scheme or trust RAC

✓ In force


Where no depositary is appointed by the trustees of a scheme or trust RAC, for the purpose of -

- (a) the safe-keeping of assets of the scheme or trust RAC and oversight duties or, as the case may be, the safe-keeping of assets, the trustees of that scheme or trust RAC shall make arrangements to prevent or resolve (or both) any conflict of interest in the course of performing tasks that are otherwise performed by a depositary and an asset manager,
- (b) the safe-keeping of assets under section 64AQ, the trustees of that scheme or trust RAC shall -
 - (i) ensure that financial instruments are subject to due care and protection,
 - (ii) keep records that enable them to identify all assets of the scheme or trust RAC at all times and without delay,
 - (iii) take the necessary measures to avoid conflicts of interest in relation to the safekeeping of assets of that scheme or trust RAC, and
 - (iv) inform the Pensions Authority, on request, about the manner in which assets are being kept, and
- (c) oversight duties referred to in section 64AR the trustees of the scheme or trust RAC shall implement procedures which ensure that tasks, otherwise subject to oversight by a depositary, are being duly performed within the scheme or trust RAC concerned.

64AT. Conflict between Part and scheme or trust RAC

✔ In force

- (1) The provisions of this Part shall override any rule of a scheme or trust RAC to the extent that that rule conflicts with those provisions.
- (2) Any question as to whether any provision of this Part conflicts with any rule of a scheme or trust RAC, shall be determined by the Pensions Authority on application to it in writing in that behalf by a person referred to in subsection (3).
- (3) The following persons shall be entitled to make an application under this section in respect of a scheme or trust RAC -
 - (a) in the case of a scheme -
 - (i) the trustees of the scheme,
 - (ii) any member or prospective member of the scheme, and
 - (iii) any employer of persons in relevant employment to which the scheme applies, and
 - (b) in the case of a trust RAC, the trustees or any member of the trust RAC.
- (4) An appeal to the High Court on a point of law from a determination of the Pensions Authority under subsection (2) in relation to a scheme or trust RAC may be brought by the person who made, or a person who was entitled to make, the application concerned under subsection (2) not later than 6 months after the date of that determination of the Pensions Authority.

64AU. Application of Part to one-member arrangement: transitional provisions In force

As respects a one-member arrangement established before the coming into operation of this Part, the provisions of this Part shall only on and from the expiry of 5 years from the date of such coming into operation apply to such one-member arrangement.

Part VII Equal Pension Treatment in Occupational Benefit Schemes (ss. 65-81J)

✓	65. Interpretation (Part VII).
✓	66. Discriminatory grounds for the purposes of this Part.
✓	67. Categories of persons to whom this Part applies.
✓	68. Indirect discrimination for the purposes of this Part.
✓	69. Obligation to comply with the principle of equal pension treatment.
✓	70. Principle of equal pension treatment.
D	70A. Benefits granted under a scheme at discretion of its management body.
✓	71. Savings in relation to the gender ground.
✓	72. Savings in relation to the age, family and civil status grounds.
✓	73. Special provisions relating to the disability ground.
✓	74. Procuring, etc. discrimination or victimisation is an offence.
D	74A. Equal treatment: contract of employment.
✓	75. Compliance with statutory requirements, etc.
✓	76. Burden of proof.
✓	77. Exclusion of discrimination on particular grounds in certain employments.
✓	78. Equal pension treatment and access.
✓	79. Benefits granted under a scheme at discretion of its management body.
✓	80. Non-compliance, compulsory levelling-up - gender.
✓	81. Non-compliance, compulsory levelling-up - grounds other than the gender ground.
✓	81A. Maternity provisions.
✓	81B. Family leave provisions.
✓	81C. Principle of equal pension treatment and collective agreements, etc.
✓	81D. Principle of equal pension treatment and contracts of employment.
✓	81E. The forum for seeking redress.
✓	81F. The forum for seeking redress - supplemental provisions.
✓	81G. Disputes as to whether a scheme is defined benefit or defined contribution.
✓	81H. Redress which may be ordered.
✓	81I. Reports to the Director General of the Workplace Relations Commission.



81J. Application of Employment Equality Act 1998.

65. Interpretation (Part VII).

✓ In force

(1) In this Part, unless the context otherwise requires -

"act" includes a deliberate omission;

"the Act of 1946" means the Industrial Relations Act 1946;

"agency worker" means an employee whose contract of employment is as mentioned in paragraph (b) of the definition of such a contract in this subsection;

"civil status" means civil status within the meaning of the Civil Registration Act 2004 as amended by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

"complainant" has the meaning assigned to it by section 81E(4);

"contract of employment" means, subject to subsection (2) -

(a) a contract of service or apprenticeship, or

(b) any other contract whereby an individual agrees with a person carrying on the business of an employment agency, within the meaning of the Employment Agency Act 1971, to do or perform personally any work or service for another person (whether or not that other person is a party to the contract), whether the contract is express or implied and, if express, whether it is oral or in writing;

"disability" means -

(a) the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body,

(b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,

(c) the malfunction, malformation or disfigurement of a part of a person's body,

(d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or

(e) a condition, illness or disease which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour,

and shall be taken to include a disability which exists at present, or which previously existed but no longer exists, or which may exist in the future or which is imputed to a person;

"discrimination", includes the issue of an instruction to discriminate;

"the discriminatory grounds" has the meaning assigned to it by section 66(2);

"dismissal" includes the termination of a contract of employment by the employee (whether prior notice of termination was or was not given to the employer) in circumstances in which, because of the conduct of the employer, the employee was or would have been entitled to terminate the contract without giving such notice, or it was or would have been reasonable for the employee to do so, and "dismissed" shall be construed accordingly;

"employee" subject to subsection (2), means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and, where the context admits, includes a member or a former member of a regulatory body;

"employer" subject to subsection (2), means, in relation to an employee, the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment;

"employment agency" means a person who, whether for profit or otherwise, provides services related to the finding of employment for prospective employees or the supplying of employees to employers;

"family status" means responsibility -

(a) as a parent or as a person in loco parentis in relation to a person who has not attained the age of 18 years, or

- (b) as a parent or the resident primary carer in relation to a person of or over that age with a disability which is of such a nature as to give rise to the need for care or support on a continuing, regular or frequent basis,

and, for the purposes of paragraph (b), a primary carer is a resident primary carer in relation to a person with a disability if the primary carer resides with the person with the disability;

"indirect discrimination" shall be construed in accordance with section 68;

"member" means any person who, having been admitted to membership under the rules of a scheme, remains entitled to any benefit under such scheme in respect of a period of membership whilst employed or self-employed within the State;

"occupational benefit scheme" means -

- (a) in relation to self-employed persons, any occupational pension scheme or arrangement which is comprised in one or more instruments or agreements and which provides, or is capable of providing, occupational benefits in relation to self-employed persons in any description of self-employment within the State, but does not include -
- (i) any individual contract made by or on behalf of a self-employed person, or
 - (ii) any scheme for a self-employed person which has only one member, or
 - (iii) any scheme in so far as benefits are financed by contributions paid by the members on a voluntary basis,
- or
- (b) in relation to employed persons, any occupational pension scheme or arrangement which is comprised in one or more instruments or agreements and which provides, or is capable of providing, occupational benefits in relation to employed persons in any description of employment within the State, but does not include -
- (i) any insurance contract made by or on behalf of an employed person to which the employer is not a party, or
 - (ii) any scheme in so far as benefits are financed by contributions paid by the members on a voluntary basis;

"occupational benefits" means benefits (other than remuneration to which sections 19 and 29 of the Employment Equality Act 1998 apply), in the form of pensions, payable in cash or in kind in respect of -

- (a) termination of service,
- (b) retirement, old age or death,
- (c) interruptions of service by reason of sickness or invalidity,
- (d) accidents, injuries or diseases arising out of or in the course of a person's employment,
- (e) unemployment, or
- (f) expenses incurred in connection with children or other dependants,

and, in the case of a member who is an employee, includes any other benefit corresponding to a benefit provided by virtue of the Social Welfare Acts, the Maternity Protection Act 1994 or the Health Acts 1947 to 2001 which is payable to or in respect of the member as a consequence of his employment;

"proceedings" means -

- (a) proceedings before the person, body or court dealing with a request or reference under this Part by or on behalf of a person, and
- (b) any subsequent proceedings, including proceedings on appeal, arising from the request or reference,

but does not include proceedings for an offence under this Part;

"qualifying service" in relation to a member of a scheme, means the aggregate of every period of

reckonable service, whether or not continuous in each case, under -

- (a) the scheme,
- (b) every other scheme relating to the same employment,
- (c) every other scheme relating to any other employment in respect of which rights to long service benefit have been granted under the scheme in substitution for accrued rights under such other scheme:

Provided that no such period, or part thereof, shall be counted more than once;

"regulatory body" means a body which -

- (a) is an organisation of workers or employers,
- (b) is a professional or trade organisation, or
- (c) controls entry to, or the carrying on of, a profession, vocation or occupation;

"religious belief" includes religious background or outlook;

"respondent" has the meaning assigned to it by section 81E(4);

"rule" in relation to a scheme, means a provision of a scheme, by whatever name it is called;

"scheme" means an occupational benefit scheme;

"sexual orientation" means heterosexual, homosexual or bisexual orientation;

"Traveller community" means the community of people commonly so called who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the Island of Ireland;

"victimisation" shall be construed in accordance with subsection (3).

(2) For the purposes of this Part -

- (a) a person holding office under, or in the service of, the State (including a member of the Garda Síochána or the Defence Forces) or otherwise as a civil servant, within the meaning of the Civil Service Regulation Act 1956, shall be deemed to be an employee employed by the State or Government, as the case may be, under a contract of service,
- (b) an employee, officer or servant of a local authority for the purposes of the Local Government Act 2001, a harbour authority, a health board or a member of staff of an education and training board shall be deemed to be an employee employed by the authority or board, as the case may be, under a contract of service, and
- (c) in the case of a contract mentioned in paragraph (b) of the definition of contract of employment in subsection (1), no person except another agency worker may be regarded as being in a comparable situation for the purposes of section 66.

(3) For the purposes of this Part, victimisation occurs where the dismissal or other adverse treatment of an employee by his employer occurs as a reaction to -

- (a) the employee notifying the Director General of the Workplace Relations Commission or the Board of an alleged breach of this Part,
- (b) a complaint of a breach of the principle of equal pension treatment made by the employee to the employer,
- (c) any proceedings by a complainant,
- (d) an employee having represented or otherwise supported a complainant,
- (e) the work of an employee having been compared with that of another employee for any of the purposes of this Part,
- (f) an employee having been a witness in any proceedings under this Part,

- (g) an employee having opposed by lawful means an act which is unlawful under this Part, or
- (h) an employee having given notice of an intention to take any of the actions mentioned in the preceding paragraphs.

66. Discriminatory grounds for the purposes of this Part.

✓ In force

- (1) For the purposes of this Part, discrimination shall be taken to occur where -
- (a) a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds mentioned in subsection (2) (in this Part referred to as the 'discriminatory grounds') which -
 - (i) exists,
 - (ii) existed but no longer exists,
 - (iii) may exist in the future, or
 - (iv) is imputed to the person concerned,
 - (b) a person who is associated with another natural person ('the other person') -
 - (i) is treated, by virtue of that association, less favourably than a person who is not so associated is, has been or would be treated in a comparable situation, and
 - (ii) similar treatment of the other person on any of the discriminatory grounds would, by virtue of paragraph (a), constitute discrimination.
- (2) As between any 2 persons, the discriminatory grounds (and the descriptions of those grounds for the purposes of this Part) are -
- (a)
 - (i) that one is a woman and the other is a man, or
 - (ii) that one is a woman and the other is a man and they have the same civil status or both have family status,
(in this Part referred to as 'the gender ground'),
 - (b) that they are of different civil status (in this Part referred to as 'the civil status ground'),
 - (c) that one has family status and the other does not (in this Part referred to as 'the family status ground'),
 - (d) that they are of different sexual orientation (in this Part referred to as 'the sexual orientation ground'),
 - (e) that one has a different religious belief from the other, or that one has a religious belief and the other has not (in this Part referred to as 'the religion ground'),
 - (f) that, subject to subsection (3), they are of different ages (in this Part referred to as 'the age ground'),
 - (g) that one is a person with a disability and the other either is not or is a person with a different disability (in this Part referred to as 'the disability ground'),
 - (h) that they are of different race, colour, nationality or ethnic or national origins (in this Part referred to as 'the ground of race'),
 - (i) that one is a member of the Traveller community and the other is not (in this Part referred to as 'the Traveller community ground').
- (3) The age ground applies only in relation to a person who is above the maximum age in respect of which there is a requirement under any enactment that he attend school.

67. Categories of persons to whom this Part applies.


✓ In force

- (1) For the purposes of this Part, 'X' and 'Y' represent 2 persons who differ as follows:
- (a) in relation to the gender ground, X and Y are of different gender;
 - (b) in relation to the civil status ground, X and Y have different civil status;
 - (c) in relation to the family status ground, X has family status and Y does not, or vice versa;
 - (d) in relation to the sexual orientation ground, X and Y are of different sexual orientations;
 - (e) in relation to the religion ground, X and Y have different religious beliefs or X has a religious belief and Y does not, or vice versa;
 - (f) in relation to the age ground, X and Y are of different ages;
 - (g) in relation to the disability ground, X is a person with a disability and Y is not, or vice versa, or X and Y are persons with different disabilities;
 - (h) in relation to the ground of race, X and Y differ as to race, colour, nationality or ethnic or national origins or any combination of those factors;
 - (i) in relation to the Traveller community ground, X is a member of the Traveller community and Y is not, or vice versa.
- (2) Subject to subsection (1), nothing in this Part affects the operation of the Interpretation Acts 1937 to 1997 in so far as they provide that, unless the contrary intention appears -
- (a) words importing the masculine gender shall be construed as also importing the feminine gender, and
 - (b) words importing the feminine gender shall be construed as also importing the masculine gender.
- (3) In this Part, any reference to X and Y which does not apply to a specific discriminatory ground shall be treated as a reference to X and Y in the context of each of the discriminatory grounds considered separately.

68. Indirect discrimination for the purposes of this Part.

✓ In force

- (1) For the purposes of this Part, indirect discrimination occurs where an apparently neutral rule of the scheme concerned would put persons (whether each of them is X or Y) who differ in a respect mentioned in section 66(2) at a particular disadvantage in respect of any of the discriminatory grounds compared with other persons, being members or prospective members of that scheme.
- (2) Where indirect discrimination occurs, the rule of the scheme concerned shall be treated as being in breach of the principle of equal pension treatment in relation to the persons referred to in subsection (1) on the discriminatory ground in respect of which the disadvantage is claimed unless the rule is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
- (3) In any proceedings statistics are admissible for the purpose of determining whether indirect discrimination has occurred.

69. Obligation to comply with the principle of equal pension treatment. In force

Subject to the provisions of this Part, every scheme shall comply with the principle of equal pension treatment.

70. Principle of equal pension treatment.

✓ In force

- (1) Subject to this Part, the principle of equal pension treatment is that there shall be no discrimination on any of the discriminatory grounds (including, subject to section 68(2), indirect discrimination) in respect of any rule of a scheme.
- (2) The principle of equal pension treatment shall apply in relation to members' dependants as it applies in relation to members.
- (3) Nothing in this Part shall prohibit a rule of a scheme which provides different occupational benefits to or in respect of different members on grounds which do not breach the principle of equal pension treatment.

70A. Benefits granted under a scheme at discretion of its management body.

D Deleted

[deleted]

71. Savings in relation to the gender ground.

✓ In force

- (1) In determining whether a rule of a scheme complies with the principle of equal pension treatment in relation to the gender ground, account shall not be taken of -
- (a) any difference, on the basis of the sex of the members, in the levels of contributions which the employer makes, to the extent that the difference is for the purposes of -
 - (i) removing or limiting differences, as between men and women in the amount or value of benefits provided under a defined contribution scheme, or
 - (ii) ensuring the adequacy of the funds necessary to cover the cost of the benefits defined under a defined benefit scheme,
 - (b) any difference, on the basis of the sex of members in the amount or value of -
 - (i) benefits provided under a defined contribution scheme to the extent that the difference is justifiable on actuarial grounds, or
 - (ii) certain elements of benefits provided under a defined benefit scheme, to the extent that the difference results from the effects of the use of actuarial factors differing according to sex at the time when the funding of such scheme is implemented, such as -
 - (I) the conversion into a capital sum of part of a periodic pension,
 - (II) transfer of occupational benefits,
 - (III) a reversionary pension payable to a dependant in return for the surrender of part of a pension, or
 - (IV) a reduced pension where the employee opts to take early retirement,
 - (c) any special treatment for the benefit of women to whom section 81A(1) relates,
 - (d) any difference of treatment for self-employed persons in relation to any optional provisions available,
 - (e) any difference of treatment in relation to additional benefits available,
 - (f) any right to claim a flexible pensionable age provided the conditions are the same for men and women.
- (2) In this section -
- "additional benefits available" means those provisions of a scheme -
- (a) which apply only in the case of members who elect for them to do so, and
 - (b) whose purpose is to secure for those members benefits in addition to those otherwise provided under such scheme;
- "optional provisions available" means those provisions of a scheme -
- (a) which apply only in the case of members who elect for them to do so, and
 - (b) whose purpose is to secure for those members -
 - (i) a choice with respect to the date on which benefits under such a scheme are to commence, or
 - (ii) a choice between any two or more benefits.

72. Savings in relation to the age, family and civil status grounds.

✓ In force

- (1) It shall not constitute a breach of the principle of equal pension treatment on the age ground for a scheme to -
- (a) fix age or qualifying service, or a combination of both, as a condition or criterion for admission to the scheme,
 - (b) fix different ages or qualifying service, or a combination of both, as conditions or criteria for admission to the scheme for employees or groups or categories of employees,
 - (c) fix age or qualifying service, or a combination of both, as a condition or criterion for entitlement to benefits under the scheme,
 - (d) fix different ages or qualifying service, or a combination of both, as conditions or criteria for entitlement to benefits under the scheme for employees or groups or categories of employees,
 - (e)
 - (i) fix age or qualifying service, or a combination of both, as a condition or criterion in relation to the accrual of rights under a defined benefit scheme or in relation to the level of contributions to a defined contribution scheme, or
 - (ii) fix different ages or qualifying service, or a combination of both, as conditions or criteria in relation to the accrual of rights under a defined benefit scheme or in relation to the level of contributions to a defined contribution scheme for employees or groups or categories of employees,

where, in the context of the relevant employment, to do so is appropriate and necessary by reference to a legitimate objective of the employer, including legitimate employment policy, labour market and vocational training objectives,
 - (f) use criteria as to age in actuarial calculations:
- Provided that this does not result in a breach of the principle of equal pension treatment on the gender ground.
- (2) It shall not constitute a breach of the principle of equal pension treatment on the marital or family status ground for a scheme to provide more favourable occupational benefits where those more favourable benefits are in respect of any person in respect of whom, under the rules of the scheme, a benefit is payable on the death of the member, provided that this does not result in a breach of the said principle on the gender ground.
- (3) It shall not constitute a breach of the principle of equal pension treatment on the civil status or sexual orientation ground to provide more favourable occupational benefits to a deceased member's widow or widower provided that it does not result in a breach of the said principle on the gender ground.
- (4) In this section any reference to the fixing of age or ages for entitlement to benefits includes a reference to the fixing of retirement age or ages for entitlement to benefits.

73. Special provisions relating to the disability ground.

✓ In force

- (1) Nothing in this Part shall make it unlawful for a scheme to have rules which provide for differences of treatment in respect of a member with a disability for work of a particular description, if, by reason of that disability, the amount of work done by the member during a particular period is less than the amount of similar work done, or which could reasonably be expected to be done, during that period by a member without the disability, provided that it does not result in discrimination on the gender ground.
- (2) Where, by virtue of subsection (1), X as a person with a disability is provided with different treatment, Y, as a person without a disability, or with a different disability, shall not be entitled under this Part to that treatment.
- (3) Nothing in this Part shall make it unlawful for a scheme to have a rule which provides for more favourable occupational benefits to be paid to a member with a disability where that member avails himself of early retirement on the grounds of that disability.

74. Procuring, etc. discrimination or victimisation is an offence.

✔ In force

A person who procures or attempts to procure another person to do anything which -

(a) constitutes a breach of the principle of equal pension treatment, or

(b) constitutes victimisation for the purposes of this Part,

shall be guilty of an offence.

74A. Equal treatment: contract of employment.

D Deleted

[deleted]

75. Compliance with statutory requirements, etc.


✓ In force

- (1) Nothing in this Part renders unlawful any act done in compliance with any provision of the Maternity Protection Act 1994 or the Adoptive Leave Act 1995 and, accordingly, any such act does not constitute a breach of the principle of equal pension treatment on the civil status ground.
- (2) Nothing in this Part renders unlawful any act done in compliance with any provision made by or under -
- (a) section 5 of the Air Navigation and Transport Act 1946,
 - (b) section 12 of the Merchant Shipping Act 1947,
 - (c) section 29 of the Transport (Miscellaneous Provisions) Act 1971,
 - (d) section 3 of the Merchant Shipping (Certification of Seamen) Act 1979, or
 - (e) section 5 of the Irish Aviation Authority Act 1993,
- and, accordingly, any such act does not constitute a breach of the principle of equal pension treatment on the age ground or the disability ground.
- (3) Nothing in this Part renders unlawful any act done in compliance with -
- (a) the Protection of Young Persons (Employment) Act 1996,
 - (b) the National Minimum Wage Act 2000, or
 - (c) section 3 of the Redundancy Payments Act 1971, as amended by section 5 of the Redundancy Payments Act 1979,
- and, accordingly, any such act does not constitute a breach of the principle of equal pension treatment on the age ground.
- (4) Nothing in this Part renders unlawful any act done in compliance with paragraph 1 of Schedule 3 to the Redundancy Payments Act 1967 and, accordingly, any such act does not constitute a breach of the principle of equal pension treatment on the age ground.


76. Burden of proof.

✓ In force

- (1) Where in any proceedings facts are established by or on behalf of a complainant from which it may be reasonably inferred that there has been a breach of the principle of equal pension treatment in relation to him, it is for the respondent to prove the contrary.
- (2) This section is without prejudice to any other enactment or rule of law in relation to the burden of proof in proceedings which may be more favourable to a complainant.
- (3) Where, in any proceedings as arising from a reference of a matter by the Board to the Director under section 85(1) of the Employment Equality Act 1998 as it applies to this Part, facts are established by or on behalf of the Board from which it may be reasonably inferred that an action or a failure mentioned in a paragraph of that provision has occurred, it is for the respondent to prove the contrary.
- (4) In this section "proceedings" means proceedings under this Part.

77. Exclusion of discrimination on particular grounds in certain employments. In force

In relation to the principle of equal pension treatment on the age ground or the disability ground, nothing in this Part applies in relation to employment in the Defence Forces.

78. Equal pension treatment and access. In force

An employer shall comply with the principle of equal pension treatment in relation to the manner in which he affords his employees access to a scheme.

79. Benefits granted under a scheme at discretion of its management body.

✓ In force

Where the granting of an occupational benefit under a scheme is at the discretion of any person, that person shall comply with the principle of equal pension treatment in the exercise of such discretion.

80. Non-compliance, compulsory levelling-up - gender.

✓ In force

- (1) Subject to subsection (5), where a rule of a scheme does not comply with the principle of equal pension treatment on the gender ground, it shall, to the extent that it does not so comply, be rendered null and void by the provisions of this Part with effect from -
 - (a) in the case of a rule that purports to have effect only on or after a date that falls on or after the commencement of section 22 of the Social Welfare (Miscellaneous Provisions) Act 2004, the date on and from which it purports to have effect,
 - (b) in the case of a rule that purports to have effect on and from a date that falls before that commencement (but not a date falling before the 8th day of April, 1976) -
 - (i) if the rule relates to employed persons, the date on and from which it purports to have effect, not being a date earlier than -
 - (I) subject to clause (II), the 17th day of May, 1990,
 - (II) the 8th day of April, 1976 in the case of employed persons who -
 - (A) initiated proceedings or made an equivalent claim before the 17th day of May, 1990, alleging that the scheme did not comply with the principle of equal pension treatment or was discriminatory as aforesaid, or
 - (B) were denied access to the scheme,
 - (ii) if the rule relates to self-employed persons, the date on and from which it purports to have effect, not being a date earlier than the 1st day of January, 1993, and the more favourable treatment accorded by it to X (or Y as the case may be) shall be accorded by it to Y (or X as the case may be) in respect of periods of membership in that scheme, or periods of denial of access to that scheme, up to the date on which the rule is amended to comply with the principle of equal pension treatment.
- (2) Where more favourable treatment is accorded to any persons under a scheme by virtue of subsection (1), the trustees of the scheme or (where appropriate) the employer shall, subject to subsection (5), take such measures as are necessary to give effect to that subsection.
- (3) Where any rule of a scheme relating to employed persons is rendered null and void by subsection (1), nothing in this Part shall preclude any rights or obligations, relating to a period of membership in that scheme before the 17th day of May, 1990, from remaining subject to the provisions of the scheme in force during that period of membership -
 - (a) during the period beginning on the 17th day of May, 1990 and ending on the 31st day of December, 1998, or, in the case of retirement ages, the 31st day of December, 2017, or
 - (b) in respect of members who cease to be in relevant employment to which that scheme applies before or during the period referred to in paragraph (a).
- (4) Where any rule of a scheme relating to self-employed persons is rendered null and void by subsection (1), nothing in this Part shall preclude any rights or obligations, relating to a period of membership in that scheme before the 1st day of January, 1993, from remaining subject to the provisions of the scheme in force during that period of membership.
- (5) Where a scheme to which a person has been denied access in contravention of this Part requires the payment of member contributions to it as a condition of membership, the admission of that person as a member of that scheme shall be conditional on the payment by the member of appropriate back contributions to the scheme from the beginning of the period in respect of which admission to the scheme is granted in accordance with this section.
- (6) In this section "appropriate back contributions to the scheme", in relation to a scheme, means -
 - (a) in a case where the rules of the scheme so provide, the amount of member contributions due for the period concerned at the appropriate contribution rate applying during that period calculated by reference to the salary applying at the time the contributions are being paid, or
 - (b) in any other case, the amount of contributions due, calculated in accordance with the rules of the scheme, from the beginning of the period in respect of which admission to the scheme is

granted in accordance with this section.

81. Non-compliance, compulsory levelling-up - grounds other than the gender ground.

✓ In force

- (1) Subject to subsection (5), where a rule of a scheme does not comply with the principle of equal pension treatment on any ground other than the gender ground or the ground of race, it shall, to the extent that it does not so comply, be rendered null and void by the provisions of this Part with effect from the date on and from which it purports to have effect, not being a date earlier than the 2nd day of December, 2003 and the more favourable treatment accorded to X (or Y as the case may be) shall be accorded to Y (or X as the case may be) in respect of periods of membership in that scheme, or periods of denial of access to that scheme, up to the date on which the rule is amended to comply with the principle of equal pension treatment in respect of the relevant discriminatory grounds.
- (2) Subject to subsection (5), where a rule of a scheme does not comply with the principle of equal pension treatment on the ground of race, it shall, to the extent that it does not so comply, be rendered null and void by the provisions of this Part with effect from the date on and from which it purports to have effect, not being a date earlier than the 19th day of July, 2003 and the more favourable treatment accorded to X (or Y as the case may be) shall be accorded to Y (or X as the case may be) in respect of the period of membership in that scheme, or periods of denial of access to that scheme, up to the date on which the rule is amended to comply with the principle of equal pension treatment in respect of the ground of race.
- (3) Where more favourable treatment is accorded to any persons under a scheme by virtue of subsection (1) or (2), the trustees of the scheme or (where appropriate) the employer shall, subject to subsection (5), take such measures as are necessary to give effect to that subsection.
- (4) Where any rule of a scheme is rendered null and void by subsection (1) or (2), nothing in this Part shall preclude any rights or obligations, relating to a period of membership in that scheme before the period in respect of which the rule is null and void, from remaining subject to the provisions of the scheme in force during that period of membership.
- (5) Subsections (5) and (6) of section 80 shall apply in relation to this section as they apply in relation to section 80.

81A. Maternity provisions.

✓ In force

- (1) Subject to the provisions of this section, nothing in this Part shall prevent a scheme from providing special treatment for women in connection with pregnancy or childbirth.
- (2) Where a scheme contains a rule -
 - (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of qualifying maternity absence in the case of a woman who -
 - (i) is, or
 - (ii) immediately before the commencement of such period, was, an employee and which treats that woman in a manner other than that in which she would be treated under the scheme if she was not absent from work and was in receipt of remuneration from her employer during the period, or
 - (b) which requires the amount of any benefit payable under the scheme to or in respect of any such woman, to the extent that it falls to be determined by reference to her earnings in respect of a period which includes a period of qualifying maternity absence, to be determined other than it would so be determined if she was not absent from work, and was in receipt of remuneration from her employer during that period,it shall be regarded to that extent as not complying with the principle of equal pension treatment.
- (3) Where a scheme is regarded as not complying with the principle of equal pension treatment by virtue of subsection (2), the trustees of the scheme or (where appropriate) the employer concerned shall take such measures as are necessary to ensure that the treatment accorded to the woman concerned under the scheme is no less favourable than that which would be accorded to her thereunder throughout the period of maternity absence concerned if she were not absent from work and was in receipt of remuneration from her employer during that period.
- (4) In this section "period of qualifying maternity absence" means any period -
 - (a) throughout which a woman is absent from work due to pregnancy or child-birth, and
 - (b) in respect of which her employer, or (if she is no longer in his employment), her former employer, pays her any remuneration.
- (5) This section is without prejudice to rights conferred by the Maternity Protection Act 1994 and, in particular, section 22 of that Act.

81B. Family leave provisions.

✓ In force

- (1) Where a scheme contains a rule -
- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of qualifying family leave in the case of a member who is an employee and which treats the member in a manner other than that in which he would be treated under the scheme if he was not absent from work, and was in receipt of remuneration from his employer, during that period, or
 - (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to his earnings in respect of a period which includes a period of qualifying family leave, to be determined other than it would be so determined if he was not absent from work and was in receipt of remuneration from his employer during that period,
- it shall be regarded to that extent as not complying with the principle of equal pension treatment.
- (2) Where a scheme is regarded as not complying with the principle of equal pension treatment by virtue of subsection (1), the trustees of a scheme or (where appropriate) the employer concerned shall take such measures as are necessary to ensure that the treatment accorded to the member concerned under the scheme is no less favourable than that which would be accorded to him thereunder throughout the period of family leave concerned if he was not absent from work and was in receipt of remuneration from his employer during that period.
- (3) In this section "period of qualifying family leave" means any period -
- (a) throughout which a member is absent from work for family reasons, and
 - (b) in respect of which the employer pays him any remuneration.

81C. Principle of equal pension treatment and collective agreements, etc.

✓ In force

- (1) Subject to subsection (3) -
- (a) if a rule or term of an agreement or order to which this section applies would not, if it were a rule of a scheme, comply with the principle of equal pension treatment on the gender ground, it shall, to the extent that it would not so comply, be rendered null and void and the provisions of section 80(1), (2), (5) and (6) shall apply to that rule or term as they apply to a rule of a scheme in respect of employees,
 - (b) if a rule or a term of an agreement or order to which this section applies would not, if it were the rule of a scheme, comply with the principle of equal pension treatment on any ground other than the gender ground, it shall, to the extent that it would not so comply, be rendered null and void and the provisions of section 81(1), (2), (3) and (5) shall apply to that rule or term as they apply to a rule of a scheme in respect of employees.
- (2) This section applies to -
- (a) a collective agreement relating to employees,
 - (b) an employment regulation order within the meaning of Part IV of the Act of 1946, and
 - (c) a registered employment agreement within the meaning of Part III of that Act.
- (3) Where any rule or term of an agreement or order is rendered null and void by subsection (1) (a), nothing in this Part shall affect any rights accrued or obligations incurred under that rule or term relating to the period before the 17th day of May, 1990 -
- (a) during the period beginning on the 17th day of May, 1990, and ending on the 31st day of December, 1998, or, in the case of retirement ages, the 31st day of December, 2017, or
 - (b) in respect of employees who cease to be in employment to which that rule or term applies before or during the period referred to in section 80(1).
- (4) Where any rule or term of an agreement or order is rendered null and void by subsection (1)(b), nothing in this Part shall affect any rights accrued or obligations incurred under that rule or term before the period in respect of which the rule is null and void.

81D. Principle of equal pension treatment and contracts of employment.

✓ In force

- (1) Where a contract of employment contains a term (whether expressed or implied) which, if it were a rule of a scheme, would not comply with the principle of equal pension treatment on the gender ground, the term shall, to the extent that it would not so comply, be rendered null and void and the provisions of section 80 shall apply to that term as they apply to a rule of a scheme in respect of employees.
- (2) Where a contract of employment contains a term (whether expressed or implied) which, if it were a rule of a scheme, would not comply with the principle of equal pension treatment on any of the discriminatory grounds other than the gender ground, the term shall, to the extent that it would not so comply, be rendered null and void and the provisions of section 81 shall apply to that term as they apply to a rule of a scheme in respect of employees.
- (3) Where more favourable treatment is accorded to any person under a term (whether expressed or implied) of a contract of employment by virtue of subsection (1) or (2) and section 80 or 81 as applied by that subsection, the employer shall take such measures as are necessary to give effect to that subsection and that section as so applied.

81E. The forum for seeking redress.

✓ In force

- (1) A person who claims not to be receiving, or not to have received, equal pension treatment in accordance with this Part or to have been penalised in circumstances amounting to victimisation may, subject to subsections (3) to (6) and subsections (1) and (2) of section 81F, seek redress by referring the case to the Director General of the Workplace Relations Commission.
- (2) [deleted]
- (3) If the grounds for such a claim arise in relation to a breach of the principle of equal pension treatment on the gender ground, the person making the claim may, subject to subsections (4) to (7) and section 81F(1), seek redress by referring the case to the Circuit Court instead of to the Director General of the Workplace Relations Commission.
- (4) In this Part, in relation to a case referred under any provision of this section or section 81F -

"the complainant " means -

 - (i) the person by whom it is referred, or
 - (ii) where such a person is unable, by reason of an intellectual or a psychological disability, to pursue it effectively, his or her parent, guardian or other person acting in place of a parent;

"the respondent" means any or all of the following -

 - (a) the person who is alleged to have discriminated against the complainant in breach of the principle of equal pension treatment,
 - (b) the person who is responsible for admitting members to a scheme,
 - (c) the person who is alleged to be responsible for the victimisation and includes the trustees of an occupational benefit scheme.
- (5) Subject to subsection (6), a claim for redress in respect of a breach of the principle of equal pension treatment or victimisation may not be referred under this section after the end of the period of 6 months from the date of termination of the relevant employment.
- (6) On application by a complainant, the Director General of the Workplace Relations Commission, or the Circuit Court as the case may be, may, for reasonable cause, direct that, in relation to the complainant, subsection (5) shall have effect as if for the reference in it to a period of 6 months there were substituted a reference to such period not exceeding 12 months as is specified in the direction, and where such a direction is given, this Part shall have effect accordingly.
- (7) Where a delay by a complainant in referring a case under this section is due to any misrepresentation by the respondent, subsection (5) shall be construed as if the reference in it to the date of termination of relevant employment were a reference to the date on which the fact of misrepresentation came to the complainant's notice.

81F. The forum for seeking redress - supplemental provisions.

✓ In force

- (1) Where a claim for redress under this Part (other than on the age or disability ground) -
 - (a) relates to employment in the Defence Forces, and
 - (b) is made by a member thereof,


then the claim shall, in the first instance, be referred for redress under the procedure contained in section 104 of the Employment Equality Act 1998 as it applies to this Part.
- (2) Where subsection (1) applies to a claim for redress, the complainant shall not refer a case under subsection (1) or (3) of section 81E unless -
 - (a) a period of 12 months has elapsed after the referral under section 104 of the Employment Equality Act 1998 (as it applies to this Part) to which the claim relates and the procedures under subsection (2)(a) of the said section 104 have not been requested or have not been completed, or
 - (b) the complainant is not satisfied with the decision given under subsection (2)(b) of the said section 104 on the claim,

and, in a case to which paragraph (a) or (b) relates, the end of the period of time which is applicable under subsection (5) of section 81E (including, where appropriate, applicable under that subsection by reference to subsection (7) of section 81E) shall be construed as -

 - (i) the end of that period, or
 - (ii) the end of the period of 28 days from the expiration of the period referred to in paragraph (a) or the date of the decision referred to in paragraph (b),

whichever last occurs.
- (3) A party to any proceedings under this Part before the Director General of the Workplace Relations Commission or Labour Court may be represented by any individual or body authorised by the party in that behalf.
- (4)
 - (a) Not later than 42 days from the date of a decision of the Director General of the Workplace Relations Commission on an application by a complainant for an extension of time under section 81E(6), the complainant or respondent may appeal against the decision to the Labour Court on notice to the Director General of the Workplace Relations Commission specifying the grounds of the appeal.
 - (b) On the appeal the Labour Court may affirm, quash or vary the decision.
 - (c) Unless otherwise agreed by the complainant and respondent, effect shall not be given to a decision of the Director General of the Workplace Relations Commission on such application until -
 - (i) the period of 42 days mentioned in paragraph (a) has expired, or
 - (ii) any appeal against it has been determined,

whichever first occurs.
- (6) Section 81E and this section are subject to section 104 of the Employment Equality Act 1998 as it applies to this Part.

81G. Disputes as to whether a scheme is defined benefit or defined contribution. In force

- (1) Any dispute as to whether a scheme is a defined benefit scheme or a defined contribution scheme for the purposes of this Part shall be determined by the Board on application to it in writing in that behalf by a person who, in relation to the scheme, corresponds to a person mentioned in section 38(3) in relation to the scheme mentioned therein.
- (2) An appeal to the High Court on a point of law from a determination of the Board under subsection (1) in relation to a scheme may be brought by the person who made, or a person who was entitled to make, the application concerned under subsection (1) within six months after the date of the determination by the Board and, on the hearing of that appeal, the High Court may determine the point of law accordingly.

81H. Redress which may be ordered.


✓ In force

- (1) Subject to this section, the types of redress for which a decision of the Director General of the Workplace Relations Commission on a reference under section 81E may provide are such one or more of the following as may be appropriate in the circumstances of the particular case:
- (a) an order requiring that section 80 or 81 be complied with;
 - (b) an order that a person or persons specified in the order implement the principle of equal pension treatment from the date on which the rule of the scheme is amended to comply with an order under paragraph (a);
 - (c) an order that a person or persons specified in the order take a course of action which is specified in the order from a date so specified;
 - (d) an order for compensation for the effects of acts of victimisation which occurred not earlier than 6 years before the date of the referral of the case under section 81E;
 - (e) an order for re-instatement or re-engagement, with or without an order for compensation.
- (3) The types of redress for which the Circuit Court may provide on a reference under section 81E(3) are such one or more of the orders referred to in subsection (1) as may be appropriate in the circumstances of the case, and no enactment relating to the jurisdiction of the Circuit Court shall be taken to limit the amount of compensation which may be ordered by the Circuit Court by virtue of this subsection.
- (4) The maximum amount which may be ordered by the Director General of the Workplace Relations Commission by way of compensation under subsection (1)(d) or (1)(e), in any case where the complainant was in receipt of remuneration at the date of the reference of the case, or if it was earlier, the date of dismissal, shall be an amount equal to 104 times either -
- (a) the amount of that remuneration, determined on a weekly basis, or
 - (b) where it is greater, the amount, determined on a weekly basis, which the complainant would have received at that date but for the act of victimisation in question,
- and in any other case, shall be €12,700.
- (5) Where the case for which the redress is to be provided is referred to the Director General of the Workplace Relations Commission and arises in breach of the principle of equal pension treatment on the gender ground, the Director General of the Workplace Relations Commission may, in addition to making an order for compensation, also order the payment of interest, at the rate which is applicable under section 22 (1) of the Courts Act 1981 -
- (a) in respect of the whole or any part of the amount of the compensation, and
 - (b) in respect of the period beginning on the relevant date and ending on the date of the payment,
- and, for the purposes of paragraph (b), 'the relevant date' means the first day of the period (if any) to which the compensation is expressed to be referable or, if there is no such period, the date of the reference under section 81E(1).
- (6) An order for compensation under this section may not be made in favour of the Board in a case referred by the Board to the Director General of the Workplace Relations Commission under section 85 (1) of the Employment Equality Act 1998 as it applies to this Part.
- (7) Where an act constitutes victimisation both under this Part and the Employment Equality Act 1998 or the Equal Status Act 2000, redress may be provided under only one of them.
- (8) Where a delay in referring a case under this Part to the Director General of the Workplace Relations Commission or Circuit Court is attributable to the respondent's having misrepresented to the complainant the facts of the case, references in this section to the date of referral shall be construed as references to the date of the misrepresentation.
- (9) 'Remuneration' for the purposes of subsection (4) in relation to an employee includes occupational benefits and any consideration whether in cash or in kind which the employee receives, directly or indirectly, from the employer in respect of the employment.

81I. Reports to the Director General of the Workplace Relations Commission.

✓ In force

- (1) If requested to do so by the Director General of the Workplace Relations Commission, the Board shall answer, and prepare a report on any question specified by the Director General of the Workplace Relations Commission and arising on the reference relating to an occupational pension scheme.
- (2) Where a report is prepared for the Director General of the Workplace Relations Commission under subsection (1), then -
 - (a) the Board shall furnish a copy of the report to the complainant and the respondent and to any other person to whom it relates, and
 - (b) the Director General of the Workplace Relations Commission may rely on the report for the purposes of issuing a decision.


81J. Application of Employment Equality Act 1998. In force

- (1) In this section "the Act of 1998" means the Employment Equality Act 1998.
- (2) Sections 74, 76, 77A, 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.
- (3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Part VIIA Matters relating to satisfaction by certain members or certain persons of certain requirements relating to age at marriage or civil partnership (ss. 81K-81N)

✓	81K. Interpretation
✓	81L. Satisfaction of certain requirements relating to marriage or civil partnership in certain circumstances
✓	81M. Contributions required for benefits referred to in section 81L(1)(a)
✓	81N. Enforcement of entitlement of beneficiary

81K. Interpretation

 In force

- (1) In this Part -
- "Act of 2010" means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;
- "Act of 2015" means the Marriage Act 2015;
- "civil partnership registration" has the meaning assigned to it by the Act of 2010;
- "member" shall be construed in accordance with subsection (2);
- "retires", in relation to a member, includes early retirement of a member under the defined benefit scheme concerned;
- (2) In this Part references to 'member' includes, in addition to the meaning assigned to it by section 2, a member who has died and references to 'member' shall be construed accordingly.
- (3) In this Part references to a day on which a member retires or has retired shall be construed as meaning the day on which a benefit under the defined benefit scheme concerned becomes payable to the member.

81L. Satisfaction of certain requirements relating to marriage or civil partnership in certain circumstances

✓ In force

- (1) Where in a defined benefit scheme -
- (a) that scheme provides certain benefits for the widow, widower, spouse or civil partner of the member on the death of the member ('beneficiary'),
 - (b) that scheme fixes, as a condition for entitlement to benefits referred to in paragraph (a) under such scheme -
 - (i) the age by which the member shall have married or entered into a civil partnership with the beneficiary, or
 - (ii) that the member shall have married or entered into a civil partnership with the beneficiary on, or before, the day on which the member retires,
- and
- (c) a member of that scheme attained the age fixed for the satisfaction of the condition referred to in paragraph (b)(i) or, in the case of the condition referred to in paragraph (b)(ii), retired and -
 - (i) on or before the day on which the member attained that age or retired he or she was in a committed relationship with a person of the same sex, and
 - (ii) on the day on which the member attained that age or retired the member could not satisfy the condition referred to in paragraph (b)(i), or as the case may be, (b)(ii) as the member was unable -
 - (I) to marry the person referred to in subparagraph (i) or to have a marriage, referred to in section 12 of the Act of 2015, with that person recognised in the State by virtue of the Act of 2015 not having come into operation, or
 - (II) to enter into a civil partnership registration with the person referred to in subparagraph (i) or to have a relationship, referred to in section 5 of the Act of 2010, with that person recognised in the State as a civil partnership by virtue of the Act of 2010 not having come into operation,
- that member is deemed, on the date on which this section comes into operation, to have satisfied the condition referred to in paragraph (b)(i) or (b)(ii) if -
- (i) within 36 months of the coming into operation of the Act of 2010 the member entered into a civil partnership registration with the person referred to in paragraph (c)(i),
 - (ii) on or before the date on which this section comes into operation, a relationship referred to in section 5 of the Act of 2010 between the member and the person referred to in paragraph (c)(i) was recognised as a civil partnership in the State pursuant to an order made under section 5 of the Act of 2010,
 - (iii) within 36 months of the coming into operation of the Act of 2015, the member married the person referred to in paragraph (c)(i), or
 - (iv) within 36 months of the coming into operation of section 12 of the Act of 2015, a marriage between the member and the person referred to in paragraph (c)(i) was, in accordance with that section, recognised in the State.
- (2) A member who, in accordance with subsection (1), is deemed to have satisfied the condition referred to in paragraph (b)(i) or (b)(ii) of subsection (1) shall be entitled to the benefits referred to in subsection (1)(a) if -
- (a) the contributions that are required for the purpose of obtaining the entitlement to those benefits have been paid into the scheme, and
 - (b) where, in respect of the contributions referred to in paragraph (a), an amount is required, under section 81M, to be paid into the scheme, the amount has been paid into the scheme in accordance with that section.

- (3) Information in respect of the relationship referred to in subparagraph (i) of paragraph (c) of subsection (1) shall be provided by the member or person referred to in that subparagraph and shall be attested as to the truth of that information by a statutory declaration made by that member or person.
- (4) For the purposes of subsection (1)(c)(ii), references to a member being unable to enter into a marriage or civil partnership includes complying with any notice requirements pursuant to the Act of 2015 or under the Act of 2010.
- (5) Where before the day on which this section comes into operation, a member who would have satisfied paragraph (i), (ii), (iii) or (iv) of subsection (1) has died, the benefits referred to in paragraph (a) of subsection (1) shall be calculated on and from the day on which this section comes into operation.

81M. Contributions required for benefits referred to in section 81L(1)(a)

✓ In force

- (1) Where a person referred to in section 81L(1)(c)(i) applies to the trustees for the payment of the benefits referred to in section 81L(1)(a) and the trustees are not satisfied that the contributions, that are required to be paid into the scheme by the member for the purpose of that member obtaining entitlement to those benefits, have been paid, the trustees shall -
 - (a) calculate an amount, in respect of those contributions, to be paid into the scheme and the interest (if any) applied in respect of those contributions under subsection (4), and
 - (b) notify the person in writing of the required amount.
- (2) Without prejudice to subsection (1), a member or, on the death of a member, a person referred to in section 81L(1)(c)(i) may, at any time, apply to the trustees of the scheme for a statement in writing as to whether all contributions required for obtaining entitlement to the benefits referred to in section 81L(1)(a) have been paid into the scheme and where some or all of those contributions -
 - (a) have not been paid, or
 - (b) were refunded to the member, or a personal representative of a member, whether before or after retirement or otherwise,

the amount to be paid in respect of those contributions, and the interest to be applied in respect of those contributions under subsection (4).
- (3) A member or a person referred to in subsection (1) or (2) may, at any time following a notification referred to in subsection (1) or a statement in subsection (2), make a payment to the trustees of a scheme in respect of the contributions required for obtaining entitlement to the benefits referred to in section 81L(1)(a).
- (4) For the purpose of calculating the amount to be paid into the scheme in order to obtain the entitlement to the benefits referred to in section 81L(1)(a), the trustees may apply a rate of interest in respect of the amount to be paid in respect of contributions that are required for obtaining those benefits where some or all of those contributions were -
 - (a) refunded to the member, or the personal representative of a member, and where the rate of interest is applied, it shall be applied from the date of the refund of those contributions to the date on which the calculation of the amount is made, or
 - (b) not paid by the member and where the rate of interest is applied, it shall be applied from the date they would have been paid to the date on which the calculation of the amount is made.
- (5) The rate of interest to be applied by the trustees for the purpose of the calculation referred to in subsection (4) shall be the rate of interest specified in the rules of the scheme or an amount specified by an actuary for the scheme.
- (6) When calculating the amount to be paid into the scheme in respect of the contributions required for obtaining entitlement to the benefits referred to in section 81L(1)(a), the trustees shall, in a notification under subsection (1) or a statement under subsection (2) -
 - (a) specify the rate of interest applied in the calculation of that amount, and
 - (b) where, having regard to the dates referred to in paragraphs (a) and (b) of subsection (4), a different rate of interest is applied for a different period, they shall specify the different rates of interest applied for each such period.
- (7) The trustees of the scheme may request further information and documents in respect of an application made to them under this section.

81N. Enforcement of entitlement of beneficiary

✓ In force

- (1) Where, in respect of a member referred to in section 81L(1)(c), a person referred to in section 81L(1)(c)(i) -
- (a) married that member in the State within the period referred to in section 81L(1)(iii) or whose marriage to that member was recognised in the State within the period specified in section 81L(1)(iv), or
 - (b) entered into a civil partnership registration with that member within the period referred to in section 81L(1)(i) or whose relationship with that member is recognised as a civil partnership in the State pursuant to an order referred to, and made within the period specified, in section 81L(1)(ii),
- has not received the benefits referred to in section 81L(1)(a) due to him or her, the person (in this section 'applicant') may apply to the Circuit Court for an order under subsection (3).
- (2) An application under subsection (1) shall be made within 12 months of -
- (a) the death of the member, or
 - (b) where the member died on or before the coming into operation of this Part, the day on which this Part comes into operation,
- and shall be made on notice to the trustees of the scheme.
- (3) The Circuit Court may make an order directing the trustees of the defined benefit scheme to pay the benefits referred to in section 81L(1)(a) which are due to the applicant where it is satisfied that the following requirements have been met:
- (a) the applicant and the member were in a committed relationship referred to in section 81L(1)(c)(i) on or before the day referred to in that provision;
 - (b) the marriage or civil partnership registration was entered into, or as the case may be, recognised in the State in accordance with subparagraphs (i), (ii), (iii) or (iv) of section 81L(1);
 - (c) the trustees have confirmed to the satisfaction of the Court that the requirements of section 81L(2) have been satisfied.

Part VIII Compulsory and Voluntary Reporting to the Board (ss. 82-85)

✓	82. Definition (Part VIII).
✓	83. Obligation to disclose misappropriation, etc., of resources of schemes to Board.
✓	84. Protection of person making report to Board.
✓	85. Privilege for Board publishing reports made to it under section 83, etc.

82. Definition (Part VIII).

✓ In force

In this Part "relevant person" means, in relation to a scheme, trust RAC or PRSA, a person who -

- (a) is an auditor of the scheme or trust RAC, or
- (b) is an actuary of the scheme or trust RAC, or
- (c) is a trustee of the scheme or trust RAC, or
- (ca) is an administrator, investment manager or custodian of the PRSA, or
- (cb) is a registered administrator, or
- (d) is an insurance intermediary (within the meaning of section 2 of the Investment Intermediaries Act, 1995), in relation to the scheme or trust RAC, or
- (e) is an investment business firm (within the meaning of section 2 of the Investment Intermediaries Act, 1995), and -
 - (i) has advised on the scheme, trust RAC or PRSA, or
 - (ii) has received any payment in relation to the investment of any of the resources of the scheme, trust RAC or PRSA, or
- (f) has been instructed to prepare, or who has prepared, an annual report of the scheme or trust RAC in accordance with section 55, or
- (g) has been appointed by the trustees of the scheme or trust RAC to carry out, or who is carrying out, any of the duties of the trustees of the scheme or trust RAC under section 59, or
- (h) is the PRSA provider, or
- (i) is a PRSA actuary, or
- (j) is an auditor of the business of a PRSA provider, or
- (k) is an employee of an employer referred to in section 121, or
- (l) is a key function holder, or
- (m) is a depositary referred to in Part VIB..


83. Obligation to disclose misappropriation, etc., of resources of schemes to Board.

✓ In force


- (1) Subject to subsection (2), where a relevant person has reasonable cause to believe that a material misappropriation or a fraudulent conversion of the resources of a scheme, trust RAC or PRSA in relation to which he is a relevant person has occurred, is occurring or is to be attempted, that person shall, as soon as practicable, give to the Board a report in writing of the particulars of the misappropriation or conversion, as the case may be.
- (2) Subsection (1) does not apply to any belief formed as a result of information obtained-
- (a) in the case of a scheme, before 2 July 1996,
 - (aa) in the case of a PRSA, before 7 November 2002,
 - (b) in the case of a trust RAC, before 27 April 2007,
 - (c) by a registered administrator before the commencement of section 27 of the Social Welfare and Pensions Act 2008.
- (2A) Where a relevant person referred to in paragraph (i) or (j) of section 82 has reason to believe that a PRSA provider has carried on activities in relation to PRSA products referred to in Part X otherwise than in accordance with that Part, that person shall, as soon as is practicable, give to the Board a report in writing of the particulars of such activities.
- (2B) Where a relevant person referred to in section 82(j) has reason to believe that a PRSA provider has not operated a custodian account in accordance with the requirements of Part X that person shall, as soon as practicable, report the matter in writing to the Board.
- (2C) Where a relevant person referred to in paragraph (h), (i) or (j) of section 82 has reason to believe that an employer has failed or is failing to comply with the provisions of section 121, that person shall, as soon as is practicable, give to the Board a report in writing of the particulars of such failure.
- (2D) Where a relevant person referred to in section 82(h) knows that an employer has failed to remit one or more contributions on behalf of that employer's employees to the relevant person, that person shall, as soon as is practicable, give to the Board a report in writing of the particulars of such failure and shall also inform the relevant PRSA contributor or contributors of the failure.
- (2E) Any relevant person may of his own volition report to the Board in relation to the operation and performance of any PRSA product to which he is a relevant person and the Minister may, by regulations, prescribe the format of such a report and the conditions subject to which it may be made.
- (2F) Every relevant person shall, at such intervals and subject to such conditions as may be prescribed, make reports to the Board in the prescribed format in respect of any PRSA for which he bears any responsibility.
- (2G) Where a relevant person referred to in section 82(k) has reason to believe that his employer has failed or is failing to comply with the provisions of section 121, that person may of his own volition report such failure to the Board.
- (2H) Where a relevant person referred to in paragraph (l) of section 82 has reason to believe that -
- (a) there is a substantial risk that the scheme or trust RAC will not comply with a materially significant requirement under this Act or any other enactment which could have a significant impact on the interests of the members and beneficiaries, or
 - (b) a significant material breach of requirements under this Act or any other enactment applicable to the scheme or trust RAC and its activities has occurred in the context of the key function of that relevant person,
- and -
- (i) the relevant person has reported his or her belief in respect of paragraphs (a) or (b), or both, to the trustees of the scheme or trust RAC, and
 - (ii) the trustees of the scheme or trust RAC have failed to take appropriate action to remedy the risk or breach within 21 days of the report made to them in accordance with paragraph (i),
- the relevant person shall inform the Pensions Authority of that substantial risk or significant material breach as soon as reasonably practicable from the expiry of the period referred to in paragraph (ii).

- (3) A relevant person shall be guilty of an offence if the person -
- (a) fails to comply with subsection (1), (2A), (2B), (2C), (2D) or (2F), or
 - (b) knowingly or wilfully makes a report under subsection (1), (2A), (2B), (2C), (2D) or (2F) which is incorrect.
- (4) Where a relevant person is found guilty of an offence under this section the person shall be liable -
- (a) on summary conviction to a fine not exceeding £5000 or to imprisonment for a term not exceeding one year, or to both,
 - (b) on conviction on indictment to a fine not exceeding £25,000 or to imprisonment for a term not exceeding two years, or to both.
- (5) In a prosecution for an offence under subsection (3) it shall be a defence for the accused to show that the contravention to which the offence relates was attributable to another person failing to comply with subsection (1) and that the accused took such reasonable steps in the circumstances as were open to him to secure the compliance of that other person with that subsection.
- (6) In a prosecution for an offence under subsection (3) in relation to a failure to comply with subsection (1) it shall be a defence for the accused to show that he was, in the ordinary scope of professional engagement as a barrister or solicitor, assisting or advising in the preparation of legal proceedings and would not have had reasonable cause to believe that a material misappropriation or a fraudulent conversion of the resources of the scheme, trust RAC or PRSA had taken place if he had not been so assisting or advising.
- (7) A fine imposed under this section shall not be paid out of the resources of any scheme or trust RAC or out of the assets of any PRSA, as the case may be.

84. Protection of person making report to Board.

 In force

Where a person makes a report, whether in writing or otherwise, in good faith to the Board of any matter concerning the state and conduct of a scheme or trust RAC or the state of a PRSA, whether or not that person is a relevant person and whether or not the report is required to be made under section 83, no duty to which the person may be subject shall be regarded as contravened and no liability or action shall lie against the person in any court for so doing.

85. Privilege for Board publishing reports made to it under section 83, etc. In force

For the purposes of the law of defamation, the publication by the Board of any report made to it -


- (a) under section 83, or
- (b) otherwise of any matter concerning the state and conduct of a scheme or trust RAC or the state of a PRSA,

shall be absolutely privileged.

Part IX Miscellaneous Applications to the High Court (ss. 86-90)

✓	86. Definition.
✓	87. Court may order employer to pay arrears of contributions.
✓	88. Court may order restoration of resources of scheme or trust RAC.
✓	89. Court may order disposal of investment.
✓	90. Injunctions.

86. Definition.

 In force

In this Part "the Court", means the High Court.

87. Court may order employer to pay arrears of contributions.


✓ In force

- (1) Subject to subsection (2), the Court may, on application to it by the Board, make an order directing an employer to pay arrears of contributions to a scheme.
- (2) The Court may make an order under subsection (1) if it is satisfied -
 - (a) that any contributions payable to the scheme by that employer on his own account have become due and remain unpaid, or
 - (b) that any contributions payable to the scheme by a member of the scheme have been deducted by that employer from the pay of the member but have not been paid to the scheme.

88. Court may order restoration of resources of scheme or trust RAC.

✓ In force

If, on application to it by the Board, the Court is satisfied that any of the resources of a scheme or trust RAC have been wrongfully paid or transferred to any person, and that such payment or transfer is likely to jeopardise the rights and interests of the members under the scheme or trust RAC, the Court may order such person, and any other person who the Court is satisfied was knowingly concerned in the wrongful payment or transfer, to take such steps as the Court may direct for restoring the resources of the scheme or trust RAC to the level at which they would have been if such wrongful payment or transfer had not been made.

89. Court may order disposal of investment. In force

- (1) Subject to this section, the Court may, on application to it by the Board, make an order directing the trustees of a scheme or trust RAC to dispose of any investment held for the purposes of the scheme or trust RAC.
- (2) The Court may make an order under subsection (1) when it is satisfied that the retention of the investment is likely to jeopardise the rights and interests under the scheme or trust RAC of the members of the scheme or trust RAC.
- (3) Subject to subsection (4), where the Court makes an order under subsection (1) it may by that order, or by a further order, direct the trustees, and any other person who the Court is satisfied was knowingly concerned in the investment, to take such steps as the Court may direct for restoring the resources of the scheme or trust RAC to the level at which they would have been if the investment had not been made.
- (4) An order under subsection (3) shall not be made unless the Court is satisfied that the investment was not made bona fide in the interests of the members of the scheme or trust RAC and that the person against whom the order is to be made was aware of this or ought reasonably to have been aware of this.

90. Injunctions.

✓ In force

- (1) If, on application to it by the Board, the Court is satisfied that there is a reasonable likelihood that a particular person will do any act which constitutes a misuse or misappropriation of any of the resources of a scheme or trust RAC and that such misuse or misappropriation is likely to jeopardise the rights and interests under the scheme or trust RAC, of the members of the scheme or trust RAC, the Court may grant an injunction restraining him from doing so.
- (2) If, on application to it by the Board, the Court is satisfied that there is a reasonable likelihood that any of the resources of the scheme or trust RAC will be invested in a manner which is likely to jeopardise the rights and interests under the scheme or trust RAC, of the members of the scheme or trust RAC, the Court may grant an injunction prohibiting such investment.
- (3) If, on application to it by the Board, the Court is satisfied that the state and conduct of a scheme or trust RAC are being investigated by or on behalf of the Board and that the order hereinafter mentioned is desirable to ensure that the rights and interests under the scheme or trust RAC, of the members of the scheme or trust RAC, are not jeopardised pending the outcome of such investigation, the Court may grant an injunction prohibiting any person from disposing of, selling, pledging, charging or otherwise dealing with any of the resources of the scheme or trust RAC.
- (4)
 - (a) If, on application to it by the Board, the Court is satisfied -
 - (i) that the Board has received a request from the competent authority of another Member State (within the meaning of section 148) for assistance in prohibiting the free disposal of assets of an institution for occupational retirement provision registered or authorised in that Member State and which are held by a custodian or depositary in the State, and
 - (ii) that the request referred to in subparagraph (i) is appropriate and necessary to prevent or remedy any irregularities prejudicial to the interests of members and beneficiaries,

the Court may grant an injunction restraining any person from disposing of or otherwise dealing with the assets to which the application refers.
 - (b) If the Court grants an injunction under paragraph (a), it may by order make provision for such ancillary and consequential matters as it considers necessary or expedient to enable the competent authority that made the request to perform any of its functions in relation to the assets to which the injunction applies.

Part X Personal Retirement Savings Accounts (ss. 91-125)

✓	91. Interpretation (Part X).
✓	92. Application required for approval of PRSA product.
✓	93. Procedures for the granting of approval of PRSA products.
✓	94. Grant of approval of a PRSA product and code of conduct.
✓	95. Misleading statements.
✓	96. Application requirements.
✓	97. Suspension and withdrawal of approval of a PRSA product.
✓	98. Ownership of assets.
✓	99. Reporting obligations of PRSA providers.
✓	100. Unapproved PRSA products.
✓	101. PRSA products: supplemental provisions.
✓	102. Personal Retirement Savings Account product and Review of Coverage.
✓	103. Investment.
✓	104. Charges.
✓	105. Suspension or variation of contributions.
✓	106. Contributions.
✓	107. Security of contributions.
✓	108. Transfers between PRSA providers.
✓	109. Payment of PRSA assets to contributor.
✓	110. Marketing and sale of PRSAs.
✓	111. Preliminary disclosure certificate.
✓	112. Obligation to furnish Statements of Reasonable Projection.
✓	113. Disclosure before transfer from a scheme to a PRSA.
✓	114. General disclosure obligations.
✓	115. Power of Minister to prescribe information to be disclosed.
✓	116. Statement of Reasonable Projection.
✓	117. Functions of Board in relation to PRSAs.
✓	118. Functions of the auditor.
✓	119. Functions of the PRSA actuary.

✓	120. Functions of the administrator.
✓	121. Obligation of employer to provide access and to pay and to remit contributions.
RC	122. Replacement of buy-out bonds.
✓	123. Additional voluntary contribution arrangements.
✓	124. Transfers to defined benefit schemes and defined contribution schemes.
✓	125. Retirement annuity contracts and defined contribution schemes.

91. Interpretation (Part X).

✓ In force

(1) In this Part, unless the context otherwise requires -

"administrator" means a person to whom a PRSA provider delegates in pursuance of this Part its administrative functions in relation to a PRSA;

"applicant" means a person who applies for approval of a PRSA product under section 94;

"Central Bank" means the Central Bank of Ireland;

"charges" includes -

- (a) fees, levies or penalties imposed by the PRSA provider;
- (b) fees, levies or penalties imposed or made on or in relation to any pooled fund held for the purposes of a PRSA and on or in relation to any pooled fund held within such a pooled fund;
- (c) the net proceeds of the process commonly known as stocklending (involving the sale of assets with an agreement for repurchase) of the assets held (including those held within any pooled fund and any pooled fund held within such a pooled fund) for the purposes of a PRSA that do not accrue to the PRSA contributor;
- (d) the proceeds of any rounding of unit prices of the pooled funds held for the purposes of a PRSA and on any pooled fund held within those pooled funds that do not accrue to the PRSA contributor;
- (e) any deductions from the assets to meet the costs of auditors or custodians, including such deductions from the assets of the pooled funds held for the purposes of a PRSA and from any pooled fund held within those pooled funds;
- (f) any value-added tax on the charges;
- (g) the costs of transactions in investments (including transactions of investments held within any pooled fund and any pooled fund held within those pooled funds) that are incurred in excess of those that would be incurred on a competitive arm's length basis;
- (h) any reduction in the interest rate received on deposits or investment return obtained on other assets below that which would be obtainable on a competitive arm's length basis from other comparable deposits or assets;
- (i) any deduction from the PRSA assets or a contribution for the benefit of the PRSA provider, any intermediary, including an investment business firm authorised under the Investment Intermediaries Act, 1995, or a member firm authorised under the Stock Exchange Act, 1995, or the employer;
- (j) the charges on any insurance contract held as a PRSA asset that would be included within illustrations of projected benefits produced in accordance with the Life Assurance (Provision of Information) Regulations 2001 (S.I. No. 15 of 2001);
- (k) such amounts in respect of such other matters as may be prescribed; but does not include -
 - (i) any stamp duty or other similar turnover taxes or levies imposed by or under any enactment that have been charged or made in relation to the purchase or sale of investments;
 - (ii) any irrecoverable withholding taxes on investment income;
 - (iii) any fees or levies imposed by or under any enactment that are deducted from the assets of the PRSA contributor or from the assets of the pooled funds held for the purposes of a PRSA and from any pooled fund held within those pooled funds;
 - (iv) the costs of transactions in investments (including those held within any pooled fund and any pooled fund held within those pooled funds) that are incurred on a competitive arm's length basis;
 - (v) the costs of routine property maintenance and collection of rents due in respect of property investments (including those held within any pooled fund and any pooled fund held within those pooled funds) incurred on a competitive arm's length basis;

- (vi) where an insurance contract is held as a PRSA asset, any deductions made solely for the purposes of smoothing the investment returns allocated to individual policies;
- (vii) such amounts in respect of such other matters as may be prescribed;

and "charge" shall have a similar meaning;

"collective investment scheme" means -

- (a) a unit trust scheme authorised by the Central Bank under the Unit Trusts Act, 1990;
- (b) a designated investment company authorised by the Central Bank under Part XIII of the Companies Act, 1990;
- (c) a collective investment scheme authorised by the Central Bank under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 1989 (S.I. No. 78 of 1989);
- (d) a collective investment scheme established in another Member State that has been authorised in accordance with Council Directive 85/611/EEC of 20 December 1985;
- (e) the business of an investment limited partnership established under the Investment Limited Partnerships Act, 1994; or
- (f) any other collective investment scheme established in another state, the marketing of the units of which to members of the public in the State is approved by the Central Bank;

but does not include a collective investment scheme that is marketed solely to investors of such class or classes as may be determined by the Central Bank ;

"contribution" means a payment made directly or indirectly by or on behalf of a contributor to the relevant custodian account of a PRSA provider for investment on the contributor's behalf in accordance with the terms of a PRSA contract;

"contributor" means an individual who enters into a PRSA contract with a PRSA provider and shall include an individual in whose name a PRSA contract is concluded by the trustees of a scheme for the purpose of distributing the appropriate assets of the scheme on a winding up or on making a transfer payment in accordance with section 35;

"Court" means the High Court;

"credit institution" means a credit institution within the meaning of Article 1 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000, relating to the taking up and pursuit of the business of credit institutions;

"custodian" means -

- (a) a credit institution authorised to carry on business in the State with a paid-up share capital of at least €6.35 million or its equivalent in foreign currency; or
- (b) a branch, established in the State, of a credit institution with a paid-up share capital of at least €6.35 million or its equivalent in foreign currency; or
- (c) a company incorporated in the State which -
 - (i) is wholly owned by a credit institution provided the liabilities of the custodian are guaranteed by the said credit institution and the said credit institution has paid-up share capital of at least €6.35 million or its equivalent in a foreign currency; or
 - (ii) is wholly owned by an institution in a state other than a Member State which is deemed by the Central Bank to be the equivalent of a credit institution to which the Directive would apply, provided the liabilities of the custodian are guaranteed by the said institution and the said institution has a paid-up share capital of at least €6.35 million or its equivalent in a foreign currency; or
 - (iii) is wholly owned by an institution or company either in a Member State or in a state other than a Member State which is deemed by the Central Bank to be an institution or company which provides contributors with protection equivalent to that provided by a custodian under paragraph (a) or (b) of this definition or subparagraph (i) or (ii) of this paragraph and provided the liabilities of the company acting as custodian are guaranteed by the said institution or company and that institution or company has a

paid-up share capital of at least €6.35 million or its equivalent in a foreign currency;

and which receives and holds the assets of Personal Retirement Savings Accounts by virtue of a custodian contract;

"custodian account" means a financial arrangement under which a custodian keeps in its custody the cash, securities and other assets (other than assets consisting of a policy of insurance or units or shares in a collective investment scheme) being all the cash, securities and other assets that have been remitted under a PRSA contract to the custodian (and, for the purposes of this Part, a custodian account may include the use by the custodian of other financial institutions, sub-custodians or nominees for the safekeeping of the said cash, securities and other assets);

"custodian contract" means a contract concluded between a PRSA provider and a custodian whereby contributions and all other assets of a PRSA (other than assets consisting of a policy of insurance or units or shares in a collective investment scheme) are transmitted to the custodian to hold on behalf of the PRSA provider;

"default investment strategy" means an investment strategy established by a PRSA provider, in accordance with section 103, for the investment of the contributions of contributors;

"investment manager" means -

- (a) an investment firm authorised in accordance with Council Directive 93/22/EEC of 10 May 1993 by a competent authority where the firm's authorisation permits it to engage in the proposed activities as an investment manager under this Part; and
- (b) an insurance undertaking authorised to transact insurance business in the State, whether by establishment, branch or provision of services, that falls within any of the Classes of Insurance I, III or VII as set out in the Annex to the Council Directive 79/267/EEC of 5 March 1979; and
- (c) a credit institution,

and to whom a PRSA provider has by contract delegated in whole or in part its investment functions under this Part (but such delegation shall, in the case of an undertaking referred to in paragraph (b) of this definition, be restricted to activities comprising the effecting and carrying out of life assurance policies);

"payroll deduction"

means a deduction from the salary or wages of an employee for the purposes of making contributions in respect of the employee to a PRSA;

"Personal Retirement Savings Account"

means a personal retirement savings account established by a contributor with a PRSA provider under the terms of a PRSA contract;

"PRSA"

means a personal retirement savings account established by a contributor with a PRSA provider under the terms of a PRSA contract;

"Personal Retirement Savings Account actuary"

means a person who is employed by a PRSA provider or has entered into a contractual arrangement with a PRSA provider to provide actuarial services in respect of a PRSA product or products and who complies with such requirements for such employment or such appointment as such an actuary as the Minister may determine from time to time and specifies in regulations;

"PRSA actuary"

means a person who is employed by a PRSA provider or has entered into a contractual arrangement with a PRSA provider to provide actuarial services in respect of a PRSA product or products and who complies with such requirements for such employment or such appointment as such an actuary as the Minister may determine from time to time and specifies in regulations;

"Personal Retirement Savings Account assets"

means the assets held on behalf of a contributor in a PRSA and includes the value of any contributions made to that PRSA by any employer of the contributor;

"PRSA assets"

means the assets held on behalf of a contributor in a PRSA and includes the value of any contributions made to that PRSA by any employer of the contributor;

"Personal Retirement Savings Account contract"

means a contract entered into between a PRSA provider and a contributor in respect of a PRSA product which contract complies with this Part;

"PRSA contract"

means a contract entered into between a PRSA provider and a contributor in respect of a PRSA product which contract complies with this Part;

"Personal Retirement Savings Account product" has the meaning assigned to it by section 102;

"PRSA product" has the meaning assigned to it by section 102;

"Personal Retirement Savings Account provider" means -

- (a) an investment firm authorised in accordance with Council Directive 93/22/EEC of 10 May 1993 by a competent authority where the firm's authorisation permits it to engage in the proposed activities as such a provider under this Part; and
- (b) an insurance undertaking authorised to transact insurance business in the State, whether by establishment, branch or provision of services, that falls within any of the Classes of Insurance I, III or VII as set out in the Annex to the Council Directive 79/267/EEC of 5 March 1979; and
- (c) a credit institution,

which produces, markets or sells Personal Retirement Savings Account products;

"PRSA provider" means -

- (a) an investment firm authorised in accordance with Council Directive 93/22/EEC of 10 May 1993 by a competent authority where the firm's authorisation permits it to engage in the proposed activities as such a provider under this Part; and
- (b) an insurance undertaking authorised to transact insurance business in the State, whether by establishment, branch or provision of services, that falls within any of the Classes of Insurance I, III or VII as set out in the Annex to the Council Directive 79/267/EEC of 5 March 1979; and
- (c) a credit institution,

which produces, markets or sells Personal Retirement Savings Account products;

"pooled fund" means -

- (a) a collective investment scheme; or
- (b) an internal linked fund the benefit of which is made available by means of a contract of insurance of an insurance undertaking authorised to transact investment business in the State, whether by establishment, branch, or provision of services, that falls within Class III as set out in the Annex to the Council Directive 79/267/EEC of 5 March 1979;

"Standard Personal Retirement Savings Account"

means a PRSA expressed, in the PRSA contract relating to it, to be a "Standard Personal Retirement Savings Account" or "Standard PRSA";

"Standard PRSA"

means a PRSA expressed, in the PRSA contract relating to it, to be a "Standard Personal Retirement Savings Account" or "Standard PRSA";

"Statement of Reasonable Projection" has the meaning assigned to it by section 116.

- (2) Without prejudice to subsection (5), a notice, direction or other document under this Part or regulations made thereunder shall, unless otherwise specified in this Part or the regulations concerned and subject to

subsection (3), be addressed to the person concerned by name and may be served on or given to the person in one of the following ways -

- (a) by delivering it to the person, or
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address or a service has been furnished, at that address, or
- (c) by sending it by post in a prepaid letter to the address at which the person ordinarily resides or, in a case in which an address or a service has been furnished, to that address, or
- (d) in the case of an officer or employee of a PRSA provider, whether authorised to receive the notice, direction or other document concerned or not, by sending it to him by post in a prepaid letter to the address of the principal office of that PRSA provider.

(3) Where a notice, direction or other document under this Part or regulations made thereunder is to be served on or given to a person who is the owner or occupier of land and the name of the person cannot be ascertained by reasonable inquiry, it may be addressed to the person by using the words the owner or, as the case may require, the occupier.

(4) For the purposes of subsection (2), a company within the meaning of the Companies Acts, 1963 to 2001, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(5) References in this Part (other than in section 112(1), in so far as it relates to the furnishing of the information concerned under paragraph (a) thereof, and section 114(1)) to the provision of information by a PRSA provider to a contributor or a person referred to in section 111(1) (a 'prospective contributor') shall, unless the context otherwise requires, be construed as including references to the provision of the information by the PRSA provider to the contributor or prospective contributor -


- (a) by means of any electronic method,
- (b) by means of telephone, or
- (c) by any other means provided for in the PRSA contract concerned or as may otherwise be agreed between the provider and the contributor or prospective contributor,

but the use of any of those means for that purpose shall not relieve the provider of the obligation to ensure that the contributor or prospective contributor receives the information.

92. Application required for approval of PRSA product.

✓ In force

- (1) A person who wishes to produce, market or sell a PRSA product shall make an application to the Board and the Revenue Commissioners for the grant, under section 94, of approval by the Board and the Revenue Commissioners of the product.
- (2) The approval of a PRSA product under section 94 shall not constitute a warranty as to the solvency of the person who will produce the product and neither the Board nor the Revenue Commissioners shall -
 - (a) be liable in respect of any losses incurred through the insolvency or default of a person who produces a product that has been so approved, or
 - (b) have any duty to any contributor regarding the investment performance of a PRSA product.


93. Procedures for the granting of approval of PRSA products. In force

The procedures to be followed in respect of the granting of approval of PRSA products under section 94 shall be determined by the Board.

94. Grant of approval of a PRSA product and code of conduct.

✓ In force

- (1) An application for approval of a PRSA product under this section shall -
 - (a) be made in writing and signed by two directors of the applicant and be in such form and contain such particulars as the Board and the Revenue Commissioners may from time to time determine, and
 - (b) be accompanied by a certificate provided by a PRSA actuary and two directors of the applicant stating that it is the opinion of the actuary and those directors that the product complies with the requirements of this Part and any regulations made under section 103(2).
- (2) A product shall not be approved under this section by the Board unless the applicant satisfies the Board -
 - (a) that the product complies with the requirements of this Part and any regulations made under section 103(2).
 - (b) that, as regards the producing, marketing or selling by the applicant of the product, the applicant -
 - (i) has adequate levels of expertise to carry on those activities,
 - (ii) will establish and follow proper procedures so as to enable the Board to be supplied with all information necessary for the performance by the Board of its supervisory functions in relation to those activities and to enable members of the public to be supplied with any information which the Board may specify, and
 - (iii) has organised the structure of its business, in so far as the carrying on of those activities is concerned, in a manner that will facilitate the Board in performing its supervisory functions in relation to those activities, and
 - (c) in case the applicant is an undertaking referred to in paragraph (b) of the definition of 'PRSA provider' in section 91(1), the activities referred to in paragraph (b)(i) will be carried on solely for the purpose of the effecting and carrying out by it of life assurance policies.
- (3) A product shall not be approved under this section by the Revenue Commissioners unless -
 - (a) the Board has notified them that it has approved the product under subsection (2), and
 - (b) in accordance with the provisions of Chapter 2A (inserted by section 4 of the Pensions (Amendment) Act 2002) of Part 30 of the Taxes Consolidation Act, 1997, they approve the product for the purposes of this subsection.
- (4) If an application for approval under this section relates to two or more products, the Board and the Revenue Commissioners may approve or refuse to approve one or more of the products as they consider appropriate.
- (5) The Board shall prepare, and amend from time to time as it considers appropriate, a code of conduct with respect to the producing, marketing and selling by PRSA providers of PRSA products and may attach to any approval granted by it and the Revenue Commissioners under this section (whether at the time of the grant of approval or any time thereafter) a condition requiring the relevant PRSA provider to comply, in respect of the product, with the code.
- (6) In preparing a code under subsection (5), the Board shall have regard to -
 - (a) the need to provide for the protection of PRSA contributors, and
 - (b) the need to provide for effective supervision of the producing, marketing and selling of PRSA products.

95. Misleading statements. In force

Any person who, in purported compliance with section 94(1), makes a statement knowing it to be false or misleading in a material particular shall be guilty of an offence.

96. Application requirements.

✓ In force

- (1) An applicant shall comply with the following provisions -
 - (a) the applicant shall, unless it has satisfied the Board that it intends to provide and is capable of providing such a service itself, enter into a contractual arrangement with one or more investment managers to provide an investment service in respect of its PRSA product or products in accordance with this Part in the event that those products are approved by the Board,
 - (b) the applicant shall enter into a contractual arrangement with an auditor to provide services for the purposes of section 118 in respect of the applicant's PRSA products in the event that those PRSA products are approved by the Board,
 - (c) the applicant shall, unless it has satisfied the Board that it intends to provide and is capable of providing such services itself, enter into a contractual arrangement with one or more administrators to provide administration services in respect of its PRSA product or products in accordance with this Part in the event that those products are approved by the Board,
 - (d) unless the applicant employs a PRSA actuary under a contract of service, the applicant shall enter into a contractual arrangement with a PRSA actuary to provide services in respect of the applicant's PRSA product or products and its business in accordance with this Part in the event that those products are approved by the Board,
 - (e) subject to subsections (2) and (3), the applicant shall enter into a custodian contract with one or more than one custodian to hold moneys paid by or on behalf of PRSA contributors in accordance with this Part under PRSA contracts and the PRSA assets relating to those PRSA contracts in the event that the applicant's PRSA products are approved by the Board,
 - (f) the applicant shall, at the time of application, pay to the Board such fee as may be prescribed.
- (2) If the PRSA provider is an undertaking referred to in paragraph (b) of the definition of 'PRSA provider' in section 91(1) (and, accordingly, its activities as such a provider are confined to activities for the purposes of the effecting and carrying out by it of life assurance policies) -
 - (a) paragraphs (b) and (e) of subsection (1) shall not apply to it, and
 - (b) the definition of 'contribution' in section 91(1), and section 107(2) and subsections (3), (4) and (5) of section 121 shall, in relation to it, apply as if the references in that definition and that section and those subsections to 'the relevant custodian account of a PRSA provider' were references to 'a PRSA provider'.
- (3) If a PRSA provider satisfies the Board that it is capable of providing the services referred to in paragraph (e) of subsection (1) in respect of its PRSA products and that it intends to do so, paragraph (b) and paragraph (e) of the said subsection (1) shall not apply to it.
- (4) All information concerning the structure of any PRSA and description of any PRSA product which an applicant intends to market and sell as the Board may require shall be submitted to the Board at the time of application for approval of the PRSA product.
- (5) The Board may at any time prior to the grant or refusal of approval of a PRSA product request the applicant to furnish further information to it in relation to the application.
- (6) An applicant shall be informed by the Board whether or not approval of the PRSA product concerned has been granted by it -
 - (a) within 3 months after the receipt of the application, or
 - (b) where further information in relation to the application has been sought by the Board under subsection (5), within 3 months after the receipt by the Board of the further information.
- (7)
 - (a) Where the Board refuses an application for approval under section 94 the applicant may appeal to the Court in a summary manner against that refusal.
 - (b) The sole ground upon which such an appeal may be taken is that the Board, did not, in a material respect, comply with the requirements of this Part or regulations in dealing with the said application.

- (c) On the hearing of such an appeal, the Court -
 - (i) if it is satisfied that the said requirements have been complied with, shall confirm the decision of the Board, and
 - (ii) if it is satisfied that the said requirements have not been complied with in any material respect, shall set aside the decision of the Board and remit the matter to the Board who shall thereupon reconsider the matter and make a decision in accordance with those requirements.

97. Suspension and withdrawal of approval of a PRSA product.

✓ In force

- (1) The Board, after, where appropriate, consultation with the Revenue Commissioners, may at any time suspend or withdraw the approval under section 94 of a PRSA product if the Board is satisfied that the relevant PRSA provider -
 - (a) has expressly requested the withdrawal of the approval;
 - (b) has ceased to carry on the business of PRSA provider for more than 6 months;
 - (c) no longer complies with the requirements of this Part or regulations thereunder for the granting of an approval under section 94 in respect of products produced by it;
 - (d) has failed, to a serious extent, to comply with its obligations under this Part or regulations thereunder; or
 - (e) if, since the grant of the approval, the circumstances relevant to the grant have changed and are such that, if an application for the approval of the PRSA product were made in the changed circumstances, it would be refused by either the Board or the Revenue Commissioners or, if in the light of information available to the Board at that time, the Board, on any other grounds of a substantial nature, considers it appropriate to suspend or withdraw the approval.
- (2) Whenever the Board suspends or withdraws approval of a PRSA product under subsection (1) (other than in pursuance of a request by the relevant PRSA provider to do so) it shall notify the relevant PRSA provider in writing that it has suspended or withdrawn the approval.
- (3) The Board may, if it is satisfied that the grounds referred to in paragraph (c) or (d) of subsection (1) exist, require the relevant PRSA provider not to accept new contributors or further contributions in respect of the PRSA product or products concerned during such period as the Board may determine and the PRSA provider shall comply with that requirement.
- (4) Whenever approval is suspended or withdrawn by virtue of subsection (1) the relevant PRSA provider shall immediately inform in writing any contributor who may be affected by such suspension or withdrawal of that suspension or withdrawal.
- (5) On a PRSA provider being notified under subsection (2) that approval of the PRSA product or products concerned has been withdrawn, it shall immediately transfer or make arrangements without undue delay for the transfer of the PRSA assets, the subject of each such product, to such other PRSA provider or providers as may be nominated by the contributors concerned. In the event of a contributor not making such a nomination within a reasonable period of time, then such transfer shall be made to such PRSA provider or providers as shall be approved by the Board.
- (6) Subject to subsections (5) and (8), whenever approval has been withdrawn by virtue of subsection (1), all PRSA contracts to which the relevant PRSA provider at the time of such withdrawal is a party may be terminated by it but without any imposition of a penalty on the relevant PRSA contributors.
- (7) The Minister may by regulations enable the Board to suspend or withdraw an approval in circumstances specified in the regulations, being circumstances additional to those specified in subsection (1), and may specify in these regulations terms, conditions and restrictions upon and subject to which the power so conferred on the Board may be exercised.
- (8) The Minister may by regulations require a PRSA provider to notify the Board, as soon as may be after the event's occurrence, of the fact that an event specified in the regulations has occurred.
- (9) Where approval of a PRSA product is withdrawn, the relevant PRSA provider shall continue to be subject to the duties and obligations imposed by this Act and regulations thereunder and any other conditions or requirements imposed by the Board pursuant to this Act or such regulations until all the liabilities, duties and obligations of the said PRSA provider as such a provider have been discharged to the satisfaction of the Board.
- (10) The Board shall publish notice of withdrawal of approval of a PRSA product in Iris Oifigiúil and in one or more newspapers circulating in the State within 28 days of such withdrawal.
- (11) Where the Board gives a direction or makes a requirement of a PRSA provider pursuant to this Act or regulations thereunder, the Board may, if it is satisfied that the direction or requirement has not been complied with, apply to the Court and the Court may confirm, vary or set aside the direction or requirement on such terms and for such period as the Court thinks fit.

(12)

- (a) Where the Board suspends or withdraws an approval, the relevant PRSA provider may appeal to the Court in a summary manner against that suspension or withdrawal.
- (b) The sole ground upon which such an appeal may be taken is that the Board, did not, in a material respect, comply with the requirements of this Part or regulations thereunder in exercising the powers concerned.
- (c) On the hearing of such an appeal, the Court -
 - (i) if it is satisfied that the said requirements have been complied with, shall confirm the decision of the Board, and
 - (ii) if it is satisfied that the said requirements have not been complied with in any material respect, shall set aside the decision of the Board and remit the matter to the Board who shall thereupon reconsider the matter and make a decision in accordance with those requirements.

98. Ownership of assets.


✓ In force

- (1) A contributor to a PRSA shall be the beneficial owner of the PRSA assets of that PRSA.
- (2) No legal or equitable charge may subsist over the PRSA assets of a PRSA for so long as a contributor is, by virtue of subsection (1), the beneficial owner of them.

99. Reporting obligations of PRSA providers.

✓ In force

- (1) A PRSA provider shall prepare and deliver to the Board in respect of each period of 3 months -
 - (a) a report in relation to the PRSA business of the provider, and
 - (b) a return relating to the contributors to its PRSA products which shall include such personal information in relation to each such contributor as the Board may require for the purpose of meeting its obligations under section 117(1) relating to recording and maintaining statistics of contributors.
- (2) Each return and report referred to in subsection (1) shall be signed by 2 directors of the PRSA provider and be in such form and contain such particulars and be delivered to the Board within such period as may be prescribed.
- (3) A PRSA provider shall, within such period after the year concerned as may be prescribed, deliver to the Board, in respect of each financial year of the provider, its audited accounts.
- (4) A contributor shall, if requested by the PRSA provider to do so, inform the PRSA provider of his personal public service number for the purpose of enabling the provider to comply with subsection (1)(b).
- (5) A PRSA provider shall promptly notify the Board of any material fact or circumstance which relates to that PRSA provider or the conduct of its activities as such a provider which might reasonably influence the Board in determining whether or not to exercise the powers under section 97.

100. Unapproved PRSA products. In force

A person shall not produce, market or sell a PRSA product which is not for the time being approved by the Board and the Revenue Commissioners under section 94.

101. PRSA products: supplemental provisions.


✓ In force

- (1) A product which does not comply with the requirements of this Part or regulations thereunder may not be marketed or sold as a PRSA product and the term 'Personal Retirement Savings Account' or 'PRSA' may not be applied to describe such product.
- (2) None of the following terms, namely -
 - (a) 'Personal Retirement Savings Account' or 'PRSA',
 - (b) 'Standard Personal Retirement Savings Account' or 'Standard PRSA',
 may be registered as a trademark.
- (3) A PRSA contract shall indicate in general terms that, under and in accordance with Part XI of the Pensions Act, 1990, it is the right of the contributor to refer a complaint or dispute under the contract to the Financial Services and Pensions Ombudsman.
- (4) A PRSA contract shall provide for the payment of the PRSA assets to the contributor as they become due, whether in the State or in any other Member State, net of any taxes and transaction charges which may be applicable.
- (5) The Investment Intermediaries Act, 1995, is amended -
 - (a) in section 2(1), by the insertion in the definition of 'investment instruments', after paragraph (m), of the following:
 - '(n) Personal Retirement Savings Accounts within the meaning of Part X of the Pensions Act, 1990,'
 - (b) in section 25(b) -
 - (i) by the deletion in subparagraph (vi) of 'or',
 - (ii) by the substitution in subparagraph (vii) of 'policies, or' for 'policies.', and
 - (iii) by the insertion after subparagraph (vii) of the following:
 - '(viii) Personal Retirement Savings Accounts within the meaning of Part X of the Pensions Act, 1990.'
 and
 - (c) in section 26(1)(a) by the substitution of 'tracker bonds, insurance policies or Personal Retirement Savings Accounts within the meaning of Part X of the Pensions Act, 1990 ' for 'tracker bonds or insurance policies'.
- (6) Section 3(1) of the Stock Exchange Act, 1995, is amended, in the definition of 'investment instruments' -
 - (a) by the deletion in paragraph (d) of 'and', and
 - (b) by the insertion after paragraph (d) of the following:
 - '(dd) Personal Retirement Savings Accounts within the meaning of Part X of the Pensions Act, 1990, and'.

102. Personal Retirement Savings Account product and Review of Coverage.

✓ In force

- (1) In this Part "Personal Retirement Savings Account product" or "PRSA product" means an arrangement to which a PRSA provider is a party and under which it agrees, in consideration of payments to it, in the form of charges, to receive moneys from or on behalf of a contributor and invest those moneys in a manner nominated by the contributor or the PRSA provider.
- (2) The Minister shall cause -
 - (a) a report in relation to the extent of the application of occupational and other pensions (other than pensions under the Social Welfare Acts), in respect of such matters as the Minister considers to be relevant, to the population to be prepared by such persons as the Minister may determine not later than 3 years after the commencement of section 3 of the Pensions (Amendment) Act, 2002, in respect of the insertion of section 121 into this Act and a copy of that report to be furnished to the Minister, and
 - (b) a copy of that report to be laid before each House of the Oireachtas within 6 months after its preparation.

103. Investment. In force


- (1)
- (a) A PRSA provider shall prepare a default investment strategy for each PRSA product which it operates.
 - (b) The PRSA provider shall implement the default investment strategy in respect of each PRSA contract except where a contributor elects in writing not to have the strategy applied to the PRSA contract to which he contributes, in which case the strategy shall not apply to that contract accordingly.
- (2) The Minister may by regulations specify requirements to be complied with in relation to the investment of PRSA assets and such regulations shall, in relation to the default investment strategy referred to in subsection (1), provide for at least the following:
- (a) subject to the provision referred to in paragraph (b), a requirement that such a strategy adopt an investment profile consistent with fulfilling the reasonable expectations of a typical contributor with respect to the said PRSA product for the purposes of making savings for retirement;
 - (b) notwithstanding such a requirement, a provision specifying that the elements of such a strategy may vary between individual contributors to PRSA products falling within the same class according to any known characteristics of those individual contributors and that contributors shall not be required to make decisions as to the choice of specific investments made by the PRSA provider or its investment managers.
- (3) Subject to provision being made for temporary holdings in cash for liquidity purposes, a default investment strategy may only provide for investment in one or more pooled funds. Any such pooled fund shall have -
- (a) appropriate diversification of investments, including appropriate diversification of credit and counterparty risks,
 - (b) appropriate liquidity of investments,
 - (c) charges that are readily identifiable,
 - (d) unit or share prices that are determined on most working days,
 - (e) unit or share prices that are widely published not less frequently than weekly, and
 - (f) unit or share prices that are determined with regard for equity between different generations of unitholders or shareholders.
- (4) Subject to provision being made for temporary holdings in cash for liquidity purposes, a Standard PRSA may only have PRSA assets that comprise investments in one or more pooled funds. Any such pooled fund shall comply with each of the conditions specified in paragraphs (a) to (f) of subsection (3).

104. Charges.

✓ In force

- (1) The charges to be made under a PRSA contract shall neither -
 - (a) in the contract, nor
 - (b) in any promotional or other material relating to such a contract,be expressed in cash terms.
- (2) The charges made under a PRSA contract shall be calculated on one of the following bases:
 - (a) as a percentage of each contribution; or
 - (b) as a percentage of the value of the PRSA assets; or
 - (c) as a percentage of each contribution and a percentage of the value of the PRSA assets.
- (3) The charges expressed as a percentage of each contribution may only vary between PRSA contracts offered by the same PRSA provider according to -
 - (a) the particular PRSA product,
 - (b) the method of distribution,
 - (c) the procedure for the payment of contributions, whether by cheque, payroll deduction, direct debit or other procedures,
 - (d) the investments held,
 - (e) the time that has elapsed since the contributor entered into the PRSA contract,
 - (f) the amount of the contribution.
- (4) The charges expressed as a percentage of the value of PRSA assets may only vary between PRSA contracts offered by the same PRSA provider according to -
 - (a) the particular PRSA product,
 - (b) the method of distribution,
 - (c) the procedure for the payment of contributions, whether by cheque, payroll deduction, direct debit or other procedures,
 - (d) the investments held,
 - (e) the time that has elapsed since the contributor entered into the PRSA contract,
 - (f) the amount of PRSA assets to which the particular PRSA contract relates.
- (5) The amount of any particular charge made under a Standard PRSA contract, being a charge made on the basis referred to in -
 - (a) paragraph (a) of subsection (2), or
 - (b) paragraph (c) of that subsection in so far as it relates to contributions,shall not exceed 5 per cent of the amount of the contribution in respect of which it is made.
- (6) The total amount of all charges made to the PRSA assets of a Standard PRSA, being charges made on the basis referred to in -
 - (a) paragraph (b) of subsection (2), or
 - (b) paragraph (c) of that subsection in so far as it relates to the value of those assets,shall not exceed a rate of 1 per cent per annum of those assets.
- (7) No initial charges, whether expressed as a percentage of contribution or otherwise, shall be made on transfers received from other pension arrangements entered into by a contributor.

- (8) No charges shall be made under a PRSA contract in respect of a termination by a contributor of a PRSA contract to which he is party or in respect of a transfer of funds effected from such a contract.
- (9) The Minister may by regulations require a PRSA provider to give notice (the period of which shall not be less than a period specified in the regulations) to a contributor or a prospective contributor of charges proposed to be made by it under a PRSA contract.
- (10) The Minister may by regulations require that the amounts of charges made under a PRSA contract shall not be greater than such amounts as are specified in the regulations.
- (11) A PRSA provider shall give prior notification of at least 2 months to a contributor of any increases in charges proposed to be made under a PRSA contract.

105. Suspension or variation of contributions. In force

Any provision of a PRSA contract which purports to provide for the imposition of a penalty or charge on a contributor if he -

- (a) suspends payment of a contribution or recommences the payment of a contribution the payment of which he has suspended, or
- (b) varies the amount of his contributions,

shall be void.

106. Contributions.

✓ In force

- (1) A contributor who is in receipt of benefits under a PRSA may pay contributions into the PRSA.
- (2) For the avoidance of doubt, contributions to a PRSA may be made by a person who has entered into a PRSA contract, notwithstanding that at the time of the making of the contributions, he is not employed or self-employed.
- (3) An employer may pay, at his own expense, contributions into the employee's PRSA.
- (4) Subject to subsection (5), a PRSA contract may specify that the amount of a contribution shall not be less than an amount specified in the contract.
- (5)
 - (a) The Minister may by regulations provide that the amount of a contribution shall not be less than an amount specified in the regulations ('the minimum amount') and shall not be greater than an amount specified in the regulations; any provision of a PRSA contract purporting to specify that the amount of a contribution shall not be less than an amount specified in the contract, being an amount which is greater than the minimum amount, shall be void.
 - (b) Unless otherwise permitted by regulations made under paragraph (a) -
 - (i) a PRSA contract shall not specify as the minimum amount of a contribution an amount exceeding €300 per annum,
 - (ii) without prejudice to subparagraph (i), a PRSA contract shall not specify as the minimum amount of a contribution an amount exceeding €10 in respect of each transaction carried out by electronic funds transfer (including direct debits) or exceeding €50 in respect of each transaction carried out by other methods of payment.

107. Security of contributions.

✓ In force

- (1) Prior to the investment of any payments made under a PRSA contract, a PRSA provider, not being a PRSA provider referred to in subsection (2) or (3) of section 96, shall ensure such payments are held in a custodian account through a custodian with whom it has entered into a custodian contract in accordance with subsection (1)(e) of section 96 in such a manner that they are clearly identifiable and legally separate from the assets of the PRSA provider.
- (2) Subject to section 121(3), every contribution to a PRSA contract shall be paid to the custodian account of the relevant PRSA provider.
- (3) The use by a custodian of the services of other financial institutions, sub-custodians or nominees in order to provide for the safekeeping in a custodian account of the payments referred to in subsection (1) shall not relieve the custodian of any of its obligations, duties or liabilities under a custodian contract.
- (4) Where a contribution is paid to an intermediary, including an investment business firm authorised under the Investment Intermediaries Act, 1995, or a member firm authorised under the Stock Exchange Act, 1995, in respect of a PRSA contract entered into by a PRSA provider, the contribution shall be treated as having been paid to the PRSA provider when it is paid to the intermediary. Nothing in this subsection shall render a PRSA provider liable for a contribution paid to an intermediary in respect of a PRSA contract entered into by a PRSA provider, where the PRSA provider has given reasonable notice in writing to the PRSA contributor, that the intermediary has no authority to collect such contributions on behalf of the PRSA provider.

108. Transfers between PRSA providers.

✓ In force

- (1) Any provision of a PRSA contract purporting to prohibit a contributor from entering into another PRSA contract and transferring his PRSA assets to the PRSA provider with whom he has entered into the other such contract shall be void.
- (2) Any provision of a PRSA contract purporting to require a payment by a contributor in respect of a transfer of the kind referred to in subsection (1) shall be void.
- (3) A provider of a Standard PRSA which is nominated by an employer and which facilitates access by the employees of the employer by means of payroll deductions shall accept transfers of any PRSA assets that may be held by those employees.

109. Payment of PRSA assets to contributor.

✔ In force

(1) Save in accordance with Chapter 2A of Part 30 of the Taxes Consolidation Act, 1997, a PRSA provider shall not pay the PRSA assets to a contributor, except where -

- (a) the amount of the contributor's PRSA assets with that PRSA provider, at the time of a request by the contributor for or offer by the provider, does not exceed €650 or such other amount as the Minister may, by regulations, specify, and
- (b) no contributions have been received from the contributor for a period of at least 2 years prior to the said request or offer,

in which case, if the PRSA provider complies with the condition referred to in subsection (2), he may refund the contributor's PRSA assets to him and, in the case of an offer by the PRSA provider of a payment, without the contributor's consent.

- (2) The condition mentioned in subsection (1) is that a period of 3 months or more has expired from the service of a written statement by the PRSA provider on the contributor advising the contributor to transfer his PRSA assets to another PRSA or pension arrangement or to make further contributions.

110. Marketing and sale of PRSAs.

✓ In force

- (1) A Standard PRSA shall not be marketed or sold in such a manner as makes the entering into of a contract in respect of it dependent on any other product being purchased.
- (2) No document relating to the marketing or sale of a Standard PRSA may solicit the purchase of, or otherwise advertise any other product.
- (3) The Minister may by regulations enable the Board to impose such conditions or requirements on a PRSA provider in respect of advertising by the provider of its activities as such a provider as the Board considers necessary in the interests of -
 - (a) the orderly and proper regulation and supervision of PRSA providers, or
 - (b) the protection of contributors

111. Preliminary disclosure certificate.

✓ In force

- (1) Before offering to enter into a PRSA contract with a person, a PRSA provider shall furnish to that person a certificate (which shall be known and is in this Act referred to as a "preliminary disclosure certificate").
- (2) A preliminary disclosure certificate shall specify the benefits and the level of them which the person referred to in subsection (1) could reasonably expect to receive from the PRSA concerned on the expiration of a period specified in the regulations made by the Minister for the purposes of this section and calculated in accordance with those regulations on the basis of projected contributions to be made during the said period and otherwise on the basis of assumptions specified in the regulations.
- (3) A PRSA contract shall not be enforceable against a person until a period of 30 days has elapsed from the date on which the PRSA provider has given to that person a Statement of Reasonable Projection in accordance with section 112(2)(a).
- (4) The Minister may make regulations requiring a PRSA provider to make, in accordance with the regulations, full disclosure to the person referred to in subsection (1) and contributors of all potential and actual commissions payable and other charges payable by contributors in respect of a PRSA product, other than a Standard PRSA, provided by the PRSA provider.
- (5) Each person who provides a service to a PRSA provider with respect to its business of providing PRSA products (including each person referred to in section 96(1)) shall furnish to the PRSA provider such information in relation to commissions and expenses charged by him in relation to the provision of that service as is necessary to enable the PRSA provider to comply with its obligations under subsection (4).
- (6) The Minister may make regulations providing that some or all of the following information shall be provided by a PRSA provider or intermediary to the person referred to in subsection (1) and contributors before the conclusion of the PRSA contract concerned:
 - (a) whether the PRSA contract replaces, in whole or in part, an existing PRSA contract or retirement annuity contract with the PRSA provider concerned or any other PRSA provider or insurer which has been or is to be cancelled or in respect of which any benefit or cover has been or is to be reduced;
 - (b) where an existing PRSA contract or retirement annuity contract has been or is to be cancelled or any benefit or cover has been or is to be reduced, the financial consequences, if any, for the contributor.
- (7) In this section, "insurer" has the meaning assigned to it by section 2 of the Insurance Act 1989.
- (8) The Minister may make regulations providing that some or all of the information contained in a preliminary disclosure certificate or required to be disclosed in accordance with subsection (6) shall be prepared in accordance with-
 - (a) the advice of the PRSA actuary, and
 - (b) any guidance notes issued by the Society of Actuaries in Ireland for that purpose.

112. Obligation to furnish Statements of Reasonable Projection.

✓ In force

- (1) A PRSA provider shall furnish to the contributor to a PRSA operated by it a Statement of Reasonable Projection -
- (a) annually (and a statement under this paragraph shall be in printed and no other form),
 - (b) subject to subsection (3), at any time on being requested by the contributor to do so, and
 - (c) on the happening of any of the events referred to in subsection (2).
- (2) The events referred to in subsection (1)(c) are -
- (a) the entry by the person referred to in section 111(1) into a PRSA contract with the provider, and
 - (b) an increase in the number or amounts of charges that may be made under the PRSA contract concerned.
- (3) A PRSA provider shall not be obliged to comply with a request under subsection (1)(b) unless the contributor concerned gives reasonable notice to him of the request but the provider may not require more than 7 days' notice for this purpose.
- (4) Where a Statement of Reasonable Projection falls to be furnished by virtue of subsection (1)(c), it shall be furnished to the contributor concerned within 7 days from the happening of the event concerned referred to in subsection (2).
- (5) The Minister may by regulations require a PRSA provider to provide a Statement of Reasonable Projection to a contributor on the happening of a specified event (not being an event referred to in subsection (2)).

113. Disclosure before transfer from a scheme to a PRSA.

✓ In force

- (1) Subject to subsections (3) and (6), a PRSA provider shall not accept the transfer of funds from a scheme to the PRSA which that PRSA provider operates unless it has previously ensured that there has been furnished by it, or an intermediary on its behalf, to the person wishing to make such a transfer (that is to say, the member of the scheme) -
 - (a) a certificate setting out a comparison of the benefits which may accrue from the scheme and which may accrue from the PRSA, and
 - (b) a written statement of the reasons why such a transfer is or is not in the interest of the person wishing to make such a transfer.
- (2) The trustee of the scheme referred to in paragraph (a) of subsection (1) shall, at the request of the person referred to in that subsection, furnish to that person or the PRSA provider referred to in that subsection a statement of the benefits which may accrue from the scheme in respect of that person.
- (3) Subsection (1) shall not apply to a transfer -
 - (a) of a sum less than €10,000, or
 - (b) which represents a return of contributions, or the value of accrued benefits, to a member who has less than two years' service in the employment in respect of which the scheme was operative and has no preserved benefit.
- (4) The Minister may by regulations prescribe the form of the certificate referred to in subsection (1)(a) and the statement referred to in subsection (1)(b) and the requirements to be satisfied before such a certificate or statement may be furnished under that subsection which shall include a requirement that the person preparing such certificate or statement has such professional indemnity insurance as shall be specified in the regulations.
- (5) Without prejudice to the generality of subsection (4), regulations under that subsection may prescribe-
 - (a) that some or all of the information contained in a certificate referred to in subsection (1) (a) and the statement referred to in subsection (1)(b) shall be prepared in accordance with-
 - (i) the advice of the PRSA actuary, and
 - (ii) any guidance notes issued by the Society of Actuaries in Ireland for that purpose,
 and
 - (b) that some or all of the information contained in the statement of the benefits to be furnished by trustees under subsection (2) shall be prepared in accordance with-
 - (i) the advice of the scheme actuary, in the case of a defined benefit scheme, and
 - (ii) any guidance notes issued by the Society of Actuaries in Ireland for that purpose.
- (6) This section does not apply to a scheme the winding-up of which has been notified to the Board in accordance with Article 14 of the Occupational Pension Schemes (Disclosure of Information) (No. 2) Regulations 1998 (S.I. No. 349 of 1998).

114. General disclosure obligations.

✓ In force

- (1) A PRSA provider shall give to the contributor to a PRSA operated by it, at intervals of not greater than 6 months' duration, a statement of account in printed and no other form specifying, as at the date of preparation of the statement -
 - (a) the total contributions credited to the contributor by the PRSA provider since the PRSA contract was entered into by him, and
 - (b) where a previous statement of account under this subsection has been given to the contributor, the total contributions credited to the contributor by the PRSA provider during the period between the date of preparation of the last previous such statement and the date of preparation of the current statement.
- (2) A statement of account given in accordance with subsection (1) shall, where appropriate, differentiate between contributions paid by the employee and those paid by his employer.
- (3) A statement of account given pursuant to subsection (1) shall state the value of the PRSA on the date of preparation of the statement.
- (4) A PRSA provider shall furnish a report, at intervals of not greater than 6 months' duration, to the contributors on the performance of all investment funds in which the moneys of the said contributors' contributions are invested.
- (5) In subsection (3) 'value of the PRSA' means the amount of money that would be available to the contributor concerned for transfer out of the PRSA on the date of preparation of the statement concerned.

115. Power of Minister to prescribe information to be disclosed.

✓ In force

The Minister may by regulations -

- (a) prescribe the form and contents of a Statement of Reasonable Projection,
- (b) as respects any obligation imposed by or under this Part to disclose information (other than in the form of such a statement), where not otherwise specified therein, prescribe -
 - (i) the type of information which must be disclosed to a contributor,
 - (ii) the format in which information must be disclosed,
 - (iii) the manner of its disclosure,
 - (iv) the periods within which such disclosure must be made,
 - (v) the persons to whom such disclosure must be made, and
 - (vi) the persons who may be obliged to make such disclosure,
- (c) provide that the requirements of this Part in relation to the disclosure of information shall not apply, or shall only apply to a specified extent, in respect of a Standard PRSA.

116. Statement of Reasonable Projection.


✓ In force

- (1) In this Part "Statement of Reasonable Projection" means a statement prepared by a PRSA provider for a PRSA contributor which specifies the level of benefit which could reasonably be expected at a specified date or dates to be payable under the contributor's PRSA contract based on the value of the PRSA at the date of the statement and using such assumptions as to future contributions and investment returns as may be specified in regulations.
- (2) A Statement of Reasonable Projection shall contain such warnings as are prescribed for the benefit of a potential or actual contributor to a PRSA.
- (3) A Statement of Reasonable Projection shall advise a potential or actual contributor to a PRSA of the importance of making adequate financial provision for retirement and of obtaining appropriate financial advice in that regard.
- (4) A Statement of Reasonable Projection shall include a statement of the value, at the date of the preparation of the statement, of the old age (contributory) pension, within the meaning of Chapter 12 of Part II of the Social Welfare (Consolidation) Act, 1993, as a percentage of earnings of a typical employee calculated in such manner as may be specified in regulations.
- (5) The Minister may by regulations prescribe that some or all of the information contained in a Statement of Reasonable Projection shall be prepared in accordance with-
 - (a) the advice of the PRSA actuary, and
 - (b) any guidance notes issued by the Society of Actuaries in Ireland for that purpose.

117. Functions of Board in relation to PRSAs.

✓ In force

- (1) The Board shall -
 - (a) keep a register in which there shall be entered such particulars as may be prescribed in relation to PRSA providers and PRSA products and such register shall be open for inspection by any member of the public at all reasonable times on payment of such fee as the Board may determine, and
 - (b) maintain, in accordance with regulations, an up to date database of statistics related to the PRSA assets of, and contributions and contributors to, Personal Retirement Savings Accounts provided by each PRSA provider, the activities of each PRSA provider in respect of its business as such a provider and the extent to which each particular default investment strategy applies in relation to a contributor to each PRSA.
- (2)
 - (a) Sections 87 to 89 shall apply to a PRSA.
 - (b) For the purposes of such application, the following expressions used in sections 87 to 89 shall, in those sections, have the meanings assigned to them by this paragraph -
 - (ii) "employer" means an employer whose employees are contributors to a PRSA,
 - (ii) "trustee" means, as the context requires, a custodian or an investment manager,
 - (iii) "scheme" means a PRSA,
 - (iv) "member" means a contributor to a PRSA,
 - (v) "resources" means the assets of a PRSA.
- (3) The Board shall, from time to time, conduct reviews of actual charges purported to be made under PRSA contracts and shall, in accordance with regulations, monitor PRSA providers' promotional and other material to determine whether all charges and other matters required by regulations under this Part to be expressed in such material are expressed clearly therein.
- (4) A failure by a PRSA provider to express clearly in its promotional material or any other of its material prescribed for the purposes of this section any charge or other matter as aforesaid shall constitute, for the purpose of section 97(1) (d), a serious failure by it to comply with its obligations under this Part.
- (5) Each PRSA provider shall pay in each year to the Board a fee of such amount as may be prescribed by the Minister with the consent of the Minister for Public Expenditure and Reform.
- (6) Regulations may be made by the Minister requiring each PRSA provider to furnish such information and reports as are specified in the regulations to the Board for the purpose of enabling the Board to perform its functions under this section.
- (7) Notwithstanding anything in this Part, the Board may, with the consent of the person concerned, delegate to such person as is, in the opinion of the Minister, suitable for the purpose and stands prescribed for the purposes of this subsection, the performance of one or more of its functions under this Part in relation to PRSA providers and applications for approval of PRSA products.


118. Functions of the auditor. In force

The auditor, appointed by the PRSA provider under section 96(1)(b), shall, in accordance with such regulations as may be made by the Minister, prepare, and furnish to the Board, a report in relation to the PRSA provider's custodian account and the operation thereof.

119. Functions of the PRSA actuary.

✓ In force

- (1) The PRSA actuary with whom a PRSA provider has entered into the contractual arrangement mentioned in section 96(1)(d) or who is employed by it shall determine, at such intervals and within such periods and with respect to such matters as are specified in regulations, the extent to which the said provider has complied with this Part and regulations made thereunder.
- (2) Such an actuary shall, as a result of that determination, certify, if in his opinion such be the case and within the period and in the form specified in regulations, that the deduction of any amount from a PRSA product by way of a charge -
 - (a) is consistent with the amounts indicated by the PRSA provider concerned in documentation made available to members of the public as being the amounts that would be deducted from the product by way of charges, and
 - (b) complies with this Part and regulations made thereunder.
- (3) Regulations may prescribe that in-
 - (a) making a determination under this section,
 - (b) preparing a certificate under this section, or
 - (c) signing a certificate required under section 94(1)(b),a PRSA actuary shall comply with any applicable professional guidance issued by the Society of Actuaries in Ireland for this purpose and specified in the regulations or with any applicable guidance issued by any other person (including the Minister) and specified in those regulations.
- (4) For the purpose of enabling a PRSA actuary to make a determination under subsection (1), regulations may prescribe the form and manner and content of a declaration to be furnished by the PRSA provider that all information requested by the PRSA actuary pursuant to his or her functions under this Part and regulations made under this Part has been provided to the PRSA actuary and is accurate.

120. Functions of the administrator. In force

Any contractual arrangement entered into in accordance with section 96(1)(c) shall include a provision requiring the administrator concerned to make provision in relation to such matters as may be prescribed.

121. Obligation of employer to provide access and to pay and to remit contributions.

✓ In force

- (1) An employer who is not operating a scheme or who is operating a scheme which limits eligibility for membership of it or imposes a waiting period for membership of it which is greater than 6 months from the date of commencement of employment shall, in respect of at least one type of Standard PRSA -
 - (a) enter for the benefit of his excluded employees into a contractual arrangement with one or more PRSA providers to enable those employees to participate in such a PRSA,
 - (b) deduct, at the request of any excluded employee and on receipt of the appropriate information from the employee, such sums of money as are determined by the employee and the employer from the wage or salary of the employee, and
 - (c) subject to subsections (2) and (3), remit the said sums to the Standard PRSA the subject of the contractual arrangement referred to in paragraph (a) or, if there is more than one such Standard PRSA, to the Standard PRSA chosen by the excluded employee.
- (2) An employer referred to in subsection (1) shall -
 - (a) notify excluded employees of their right to contribute to a Standard PRSA by the means referred to in paragraph (b) of that subsection,
 - (b) allow PRSA providers or intermediaries reasonable access to excluded employees at their workplace for the purpose of concluding Standard PRSA contracts, and
 - (c) subject to work requirements, allow excluded employees reasonable paid leave of absence to enable them to make arrangements for the establishment of a Standard PRSA.
- (3) An employer who deducts any sum from the wages or salary of an employee in respect of a PRSA contract entered into by that employee shall remit every such sum to the relevant custodian account of the PRSA provider within 21 days following the end of the month in which the deduction was made. An employer shall not make any deductions from the sum required to be remitted by him under this subsection.
- (4) Where an employer is obliged (whether under a contract of employment or otherwise) to pay any sum expressed as a cash amount or expressed as a percentage or proportion of an employee's wages or salary (other than a sum deducted from the employee's wages or salary) to the relevant custodian account of a PRSA provider on behalf of or in respect of that employee, he shall, within 21 days following the end of every month, pay to the relevant custodian account of the PRSA provider, a sum equal to the appropriate cash amount or percentage or proportion of every payment of wages or salary made to that employee during that month. An employer shall not make any deduction from the sum required to be paid by him under this subsection.
- (5) An employer who -
 - (a) deducts any sum from the wages or salary of an employee in respect of a PRSA contract entered into by that employee, or
 - (b) is obliged (whether under a contract of employment, or otherwise) to pay any sum to the relevant custodian account of a PRSA provider on behalf of or in respect of an employee (other than a sum deducted from the employee's wages or salary),
 shall give or cause to be given to the employee and the PRSA provider concerned a statement in writing not less frequently than once a month specifying -
 - (i) the total amount deducted from the employee's salary or wages and remitted to the relevant custodian account of the PRSA provider, and
 - (ii) where appropriate, the total amount paid to the relevant custodian account of the PRSA provider on behalf of or in respect of the employee (other than any amount deducted from the employee's wages or salary),
 in the preceding month or, if the previous such statement was given less than a month before, in the period since that previous statement was given.
- (6) The requirements of subsection (5) relating to an employee shall be regarded as having been satisfied if particulars of the amount remitted under subparagraph (i) of that subsection or the amount paid under subparagraph (ii) of that subsection are included in the statement given to the employee concerned under

section 4 of the Payment of Wages Act 1991.

(6A) In subsections (3) and (4) 'month' means-

- (a) calendar month, or
- (b) period of 28 days beginning on a day to be determined by the PRSA provider of the PRSA concerned, and each consecutive period of 28 days thereafter (or such shorter period as the PRSA provider of the PRSA concerned may determine) each such consecutive period beginning on the day after the last day of the period immediately preceding such period.

(7) An employer who enables his employees to participate in a Standard PRSA pursuant to this section shall have no duty to those employees regarding the investment performance of that Standard PRSA but shall ensure that the PRSA product is approved in accordance with this Part.

(8) Section 285(2) of the Companies Act, 1963, is amended -

- (a) in paragraph (i), by the substitution for 'salaries of employees.' of 'salaries of employees;', and
- (b) by the insertion of the following paragraph after paragraph (i):
 - '(j) any payments due by the company pursuant to arrangements concerning a Personal Retirement Savings Account (within the meaning of the Pensions Act, 1990) in respect of employees of the company whether such payments are due in respect of the company's contribution under those arrangements or in respect of such contributions as are payable by the employees to the company under those arrangements and which have been deducted from the wages or salaries of employees.'

(9) Section 7 of the Protection of Employees (Employers' Insolvency) Act, 1984, is amended by the insertion after 'scheme' in each place where that word occurs of 'or Personal Retirement Savings Account (within the meaning of the Pensions Act, 1990)'.

(10) In this section -

"excluded employee" means, in relation to an employer -

- (a) in case the employer is not operating a scheme, each employee of the employer, and
- (b) in any other case, an employee of the employer who is not eligible for membership of any scheme operated by the employer and who, if he remains an employee, will not under the rules of any scheme operated by the employer become eligible for membership within 6 months from the date of commencement of employment with the employer;

"membership" means, in relation to a scheme, membership during which the person concerned would accrue an entitlement to long service benefit;

"scheme" means an occupational pension scheme and an overseas pension scheme within the meaning of section 770(1) of the Taxes Consolidation Act 1997.

122. Replacement of buy-out bonds.


N Not yet in force

- (1) Notwithstanding anything contained in this or any other enactment, a person may not effect a policy or contract of insurance of the kind formerly approved by the Revenue Commissioners for the purpose of receiving payments from retirement benefit schemes approved under Chapter 1 of Part 30 of the Taxes Consolidation Act, 1997, and any such policy or contract which is purported to be entered into after the commencement of section 3 of the Pensions (Amendment) Act, 2002, in respect of this section shall be void.
- (2) The persons who are parties to a contract of the kind referred to in subsection (1) may, by mutual agreement and subject to and in accordance with regulations, terminate the contract and transfer the assets the subject of the contract into one or more than one PRSA.

123. Additional voluntary contribution arrangements.

✓ In force

- (1) On and from the commencement of section 3 of the Pensions (Amendment) Act, 2002, in respect of this section an occupational pension scheme which has as its only purpose the payment of additional voluntary contributions by a person who is the sole member of the scheme shall not be established and any such scheme which is purported to be established after such commencement shall be void.
- (2) If a scheme does not include an option enabling the payment of voluntary contributions, the employer who operates such a scheme (the 'first scheme') shall, unless he operates another scheme which permits payment of voluntary contributions by members of the first scheme, subject to and in accordance with regulations, permit his employees who are members of the first scheme to participate in one or more than one Standard PRSA and such employees shall be 'excluded employees' for the purposes of subsections (1) and (2) of section 121.

124. Transfers to defined benefit schemes and defined contribution schemes. In force

- (1) The Minister may by regulations make provision in relation to the transfer of PRSA assets into a defined benefit scheme or a defined contribution scheme.
- (2) Transfers of the kind referred to in subsection (1) may be made, in accordance with such conditions as may be prescribed, to any arrangement for the provision of retirement benefits established outside the State to the same extent that transfers are permitted from a scheme.

125. Retirement annuity contracts and defined contribution schemes.

✓ In force

- (1) The persons who are parties to a retirement annuity contract may, by mutual agreement and subject to and in accordance with regulations, cancel the contract and effect a transfer of the assets the subject of that contract into one or more than one PRSA.
- (2) Where a defined contribution scheme is to be terminated and its assets transferred to one or more than one PRSA established in respect of the members of the scheme, the employer who operates the scheme shall ensure that all relevant information relating to the termination of the trust and the conclusion of a PRSA contract as may be prescribed is made available in writing to the members of the said scheme at least 3 months before any transfer from or termination of the trust is made or effected.

Part XI Pensions Ombudsman (ss. 126-147)

R	126. Interpretation (Part XI).
R	127. Establishment of Pensions Ombudsman.
R	128. Appointment of Pensions Ombudsman.
R	129. Term of office of Pensions Ombudsman.
R	130. Salary and superannuation.
R	131. Functions of Pensions Ombudsman.
R	132. Procedures for internal resolution of disputes.
R	133. Consultants and advisers.
R	134. Exchange of information.
R	135. Death or disability of actual or potential beneficiary.
R	136. Staying court proceedings where a complaint is made or a dispute referred.
R	137. Powers of Pensions Ombudsman in respect of investigations.
R	138. Conduct of investigations.
R	139. Determinations of Pensions Ombudsman.
R	140. Appeal to High Court from determinations of Pensions Ombudsman.
R	141. Enforcement of determinations of Pensions Ombudsman.
R	142. Notices.
R	143. Accounts and audits of Pensions Ombudsman.
R	143A. Attendance before Committee of Public Accounts.
R	144. Reports and information to Minister.
R	145. Disclosure of Information.
R	146. Staff of Pensions Ombudsman.
R	147. Expenses of Pensions Ombudsman.

126. Interpretation (Part XI).

R Revoked

[deleted]

127. Establishment of Pensions Ombudsman.

R Revoked

[deleted]

128. Appointment of Pensions Ombudsman.

R Revoked

[deleted]

129. Term of office of Pensions Ombudsman.

R Revoked

[deleted]

130. Salary and superannuation.

R Revoked

[deleted]

131. Functions of Pensions Ombudsman.

R Revoked

[deleted]

132. Procedures for internal resolution of disputes.

R Revoked

[deleted]

133. Consultants and advisers.

R Revoked

[deleted]

134. Exchange of information.

R Revoked

[deleted]

135. Death or disability of actual or potential beneficiary.

R Revoked

[deleted]

136. Staying court proceedings where a complaint is made or a dispute referred.

R Revoked

[deleted]

137. Powers of Pensions Ombudsman in respect of investigations.

R Revoked

[deleted]

138. Conduct of investigations.

R Revoked

[deleted]

139. Determinations of Pensions Ombudsman.

R Revoked

[deleted]

140. Appeal to High Court from determinations of Pensions Ombudsman.

R Revoked

[deleted]

141. Enforcement of determinations of Pensions Ombudsman.

R Revoked

[deleted]

142. Notices.

R Revoked

[deleted]

143. Accounts and audits of Pensions Ombudsman.

R Revoked

[deleted]

143A. Attendance before Committee of Public Accounts.

R Revoked

[deleted]

144. Reports and information to Minister.

R Revoked

[deleted]

145. Disclosure of Information.

R Revoked

[deleted]

146. Staff of Pensions Ombudsman.

R Revoked

[deleted]

147. Expenses of Pensions Ombudsman.

R Revoked

[deleted]

Part XII Cross-border Schemes (ss. 148-154)

✓	148. Interpretation (Part XII).
✓	148A. Service of documents for purpose of Part
✓	149. Authorisation to operate cross-border schemes.
✓	150. Revocation of authorisation.
✓	151. Approval to accept contributions.
✓	151A. Transfer from IORP in another Member State to receiving scheme or trust RAC.
✓	151B. Transfers from scheme or trust RAC to IORP in another Member State.
✓	152. Miscellaneous provisions relating to monitoring and enforcement.
✓	153. Functions of the Board in relation to institutions in another Member State.
✓	154. Application of this Act to members in another Member State.

148. Interpretation (Part XII).

✓ In force

(1) In this Part -

"Court" means the High Court;

"cross-border activity" means operating a scheme or trust RAC where the relationship between the sponsoring undertaking, and the members and beneficiaries concerned, is governed by the social and labour law of a Member State other than the State;

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993;

"main administration", without prejudice to section 2(7), shall be construed in accordance with the Directive of 2016;

"receiving IORP" means an IORP, within the meaning of the Directive of 2016, registered or authorised in a Member State other than the State, receiving all or part of a scheme or trust RAC's liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from a scheme or trust RAC registered in the State;

"receiving scheme or trust RAC" means a scheme or trust RAC which receives or seeks to receive all or part of a pension scheme's liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from a transferring IORP (within the meaning of the Directive of 2016) registered or authorised in a Member State other than the State;

"relevant statutory requirements" means the statutory provisions relevant to the field of schemes or trust RACs, that may be prescribed;

"social and labour law", in relation to a Member State, means the social and labour law (within the meaning of Article 11 of the Directive of 2016) of that Member State relevant to occupational pension schemes (within the meaning of that Article);

"transferring IORP" means an IORP (within the meaning of the Directive of 2016) registered or authorised in a Member State other than the State, transferring all or part of a pension scheme's liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a receiving scheme or trust RAC;

"transferring scheme or trust RAC" means a scheme or trust RAC transferring all or part of its liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a receiving IORP;

"undertaking", in relation to a scheme or trust RAC, means a sponsoring undertaking (within the meaning of the Directive of 2016) whose relationship with its members and beneficiaries is governed by the social and labour law of another Member State, which makes, or proposes to make, contributions to the scheme or trust RAC.

(2) In this Part Member State shall be read as including reference to those States which are Contracting Parties to the EEA Agreement.

(3) Without prejudice to section 2(7), a word or expression that is used in this Part and is also used in the Directive of 2016 shall, unless the context otherwise requires, have the same meaning in this Part as it has in the Directive.

148A. Service of documents for purpose of Part

✓ In force

- (1) A notice or other document that is required to be given, or sent, to, or served on, a person under this Part shall be addressed to the person by name and shall be given, sent or served to the person in one of the following ways:
- (a) by delivering it to the person;
 - (b) by leaving it at the address at which the person ordinarily resides or carries on business or, in a case in which an address for service has been furnished, to that address;
 - (c) by sending it by post in a pre-paid registered letter or by any other form of recorded delivery to the address at which the person ordinarily resides or carries on business, or in a case in which an address for service has been furnished, to that address;
 - (d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given or issues to, him or her in that manner.
- (2) For the purposes of subsection (1), a company within the meaning of the Companies Acts or the Companies Act 2014, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

149. Authorisation to operate cross-border schemes.

✓ In force

- (1) The trustees of a scheme or trust RAC shall not accept any contributions to a scheme or trust RAC from an undertaking unless -
 - (a) in respect of the scheme or trust RAC concerned
 - (i) the trustees are authorised by the Pensions Authority under this section, and
 - (ii) approval has been granted, or deemed to have been granted, under section 151 in relation to the undertaking concerned, or
 - (b) in the case of a scheme or trust RAC which is a receiving scheme or trust RAC referred to in section 151A(13) -
 - (i) the trustees of that scheme or trust RAC are deemed, under section 151A(13)(a), to be authorised under this section, and
 - (ii) approval in respect of section 151 has been deemed, under section 151A(13)(b), to have been granted in relation to the undertaking concerned.
- (2) An application for authorisation under this section shall -
 - (a) be in writing and be in the form that may be prescribed, and
 - (b) contain the information that may be prescribed and different information may be prescribed for different schemes or trust RACs or categories of schemes or trust RACs.
- (3) The trustees of a small scheme or small trust RAC who wish to apply for authorisation under this section shall, notwithstanding that it is a small scheme or small trust RAC and in addition to the other requirements of subsection (2), comply with the provisions of this Act that are prescribed from time to time for the purposes of this section.
- (4) The conditions of authorisation are that-
 - (a) the trustees and the scheme or trust RAC comply with the provisions of this Act applicable to the trustees and the scheme or trust RAC and, in the case of a small scheme or a small trust RAC, comply with subsection (3), and
 - (b) the trustees and the scheme or trust RAC comply with any other conditions that may be prescribed.
- (5) The Board shall, where it is satisfied that the scheme or trust RAC satisfies all the conditions for authorisation under subsection (4), grant the authorisation.
- (6) An authorisation under this section shall be in writing.
- (7) Where the Pensions Authority is not satisfied that -
 - (a) the trustees of the scheme or trust RAC, or
 - (b) the scheme or trust RAC,
 comply, or complies, with the conditions of authorisation under subsection (4), it shall refuse authorisation under this section and shall notify the trustees of the scheme or trust RAC, in writing, of that decision and of the right of appeal within the period referred to in subsection (8).
- (8) Where the Pensions Authority has refused to make an authorisation under this section, the trustees of the scheme or trust RAC may, not later than 21 days from the date of the notification, referred to in subsection (7), of that decision appeal to the High Court against that decision to refuse authorisation under this section.
- (9) On the hearing of an appeal referred to in subsection (8), the High Court may make one of the following orders -
 - (a) an order confirming the decision to refuse authorisation, or
 - (b) an order quashing the decision to refuse authorisation.
- (10) The Court may also make such ancillary orders as it considers appropriate.

150. Revocation of authorisation.

✓ In force

- (1) The Board may revoke an authorisation under section 149 or an authorisation deemed, under section 151A(13)(a) -
 - (a) on being satisfied that any of the conditions for authorisation under section 149(4) have not been or are not being complied with, or
 - (b) where the trustees of the scheme or trust RAC make a written request to the Board for revocation of the authorisation including the reasons for that request.
- (2) Before revoking an authorisation under this section the Board shall -
 - (a) notify the trustees of the scheme or trust RAC in writing of its intention to revoke the authorisation and of the reasons for the revocation,
 - (b) notify the trustees in writing that the trustees or a person acting on their behalf may make representations to the Board in relation to the intended revocation within 14 days after the date of issue of the notification, and
 - (c) consider any representations made under paragraph (b) before deciding whether or not to proceed with the revocation.
- (3) Where the Board revokes an authorisation under this section, it shall notify in writing the trustees of the scheme or trust RAC and the competent authorities of any relevant host Member State of the revocation.
- (4) Where the trustees of the scheme or trust RAC receive notification of revocation under subsection (3), they shall immediately notify in writing any undertaking from whom they accept contributions to the scheme or trust RAC and shall cease to accept any further contributions from those undertakings from the date of receipt of the notification.
- (5) The Board shall publish or cause to have published notice of revocation of an authorisation in Iris Oifigiúil and in at least one daily newspaper circulating in the State within 21 days after the date of the notification of the revocation under subsection (3).
- (6) Where the Board revokes an authorisation under this section, the trustees may, within 21 days after the date of the notification of the revocation under subsection (3), appeal to the Court against the decision of the Board to revoke.
- (7) On the hearing of an appeal, the Court may make one of the following orders -
 - (a) an order confirming the decision appealed against, or
 - (b) an order quashing that decision.
- (8) The Court may also make such ancillary orders as it considers appropriate.
- (9) Nothing in this section in regard to the revocation of an authorisation shall affect the validity of anything done in accordance with the authorisation before the revocation of the authorisation.
- (10) Unless the Court otherwise orders, revocation under this section of an authorisation takes effect on and from the date of receipt of the notification under subsection (3), irrespective of whether or not the trustees appeal against the revocation under this section.

151. Approval to accept contributions.

✓ In force

- (1) Where the trustees of a scheme or trust RAC who are authorised under section 149 propose to accept contributions to the scheme or trust RAC from a particular undertaking the trustees shall notify the Board in writing.
- (2) A notification under subsection (1) shall be in the form that may be prescribed and shall contain the following particulars:
 - (a) the name and location of the main administration of the sponsoring undertaking from whom the trustees propose to accept contributions;
 - (b) the name of the host Member State which shall, where applicable, be identified by the sponsoring undertaking;
 - (c) any other information that may be prescribed.
- (3) On receipt of a notification under subsection (1), the Board may request the trustees to provide further information in relation to the notification.
- (4) The Pensions Authority shall assess the administrative structure, the financial situation of the scheme or trust RAC and the trustees compliance with the requirements specified in section 59A and where it is of the opinion that such administrative structure, such financial situation and such trustee compliance are compatible with the proposed cross-border activity, the Pensions Authority shall, within 3 months after the date of receipt of the notification under subsection (1), notify in writing -
 - (a) the competent authority of the host Member State of any relevant information contained in the notification, and
 - (b) the trustees of the scheme or trust RAC that approval has been granted by it in relation to the undertaking specified in the notification.
- (4A) Where the Pensions Authority decides not to grant approval under subsection (4), the Pensions Authority shall, within 3 months of the date of the receipt of the notification under subsection (1), issue a decision in writing to the trustees of the scheme or the trust RAC with the reasons for this decision.
- (4B) Where -
 - (a) the Pensions Authority has issued a decision under subsection (4A), the trustees of the scheme or trust RAC may within 21 days after the date of issue of the decision under subsection (4A), appeal to the High Court against the decision of the Pensions Authority, or
 - (b) the Pensions Authority has not communicated the relevant information contained in the notification under subsection (1) to the competent authority of the host Member State within 3 months from the date of the receipt by it of that notification, the trustees of the scheme or trust RAC may within 21 days of the expiry of that 3 month period, appeal to the High Court against the failure of the Pensions Authority to act.
- (5) If no notification is received from the Pensions Authority under subsection (4) within the period specified in that subsection or as the case may be, subsection (4A) within the period specified in that subsection, approval is deemed to have been granted in relation to the undertaking specified in the notification under subsection (1) at the end of that period.
- (6) Where the Pensions Authority has notified the competent authority of the host Member State under subsection (4)(a) and that competent authority notifies the Pensions Authority of -
 - (a) pursuant to paragraph 7 of Article 11 of the Directive of 2016 -
 - (i) the requirements of social and labour law, and
 - (ii) the information requirements referred to in Title IV of the Directive of 2016, of the host Member State which apply to the cross-border activity, and
 - (b) pursuant to Article 33 of the Directive of 2016, a requirement, if any, under the law of the host Member State to appoint one or more depositaries for the safekeeping of assets and oversight duties,

the Pensions Authority shall, as soon as reasonably practicable following receipt of such notification, by

that competent authority, of the matters specified in paragraphs (a) and (b), notify the trustees of the scheme or trust RAC concerned of those matters.

(6A) Where the competent authority of the host Member State referred to in subsection (6), informs the Pensions Authority, pursuant to paragraph 9 of Article 11 of the Directive of 2016, of significant changes to –

(a) the requirements referred to in subsection (6)(a) which may affect the characteristics of the scheme or trust RAC concerned insofar as it concerns the cross-border activity, or

(b) where the requirements referred to in subsection (6)(b) apply, those requirements,

the Pensions Authority shall, as soon as reasonably practicable following receipt of such changes, notify the trustees of the scheme or trust RAC of those changes.

(7) Where approval is granted or deemed to have been granted under this section, the trustees shall not accept contributions from the undertaking specified in the notification under subsection (1) until the earlier of –

(a) 6 weeks after the date on which the Board notifies the trustees of the scheme or trust RAC under subsection (4), or 6 weeks after the date on which the approval is deemed to have been granted under subsection (5) has expired, or

(b) the date the trustees of the scheme or trust RAC have received information from the Board in accordance with subsection (6).

151A. Transfer from IORP in another Member State to receiving scheme or trust RAC.

✓ In force

- (1) The trustees of a scheme or trust RAC may, in accordance with this section, receive all or part of a pension scheme's liabilities, technical provisions and other obligations and rights as well as corresponding assets or cash equivalent thereof, from a transferring IORP.
- (2) The trustees of a receiving scheme or trust RAC seeking to receive a transfer from a transferring IORP shall submit an application for authorisation of a transfer to the Pensions Authority.
- (3) An application under subsection (2) shall include the following information:
 - (a) the written agreement between the transferring IORP and the trustees of the receiving scheme or trust RAC setting out the conditions of the transfer;
 - (b) a description of the main characteristics of the transferring IORP's pension scheme;
 - (c) a description of the liabilities or technical provisions to be transferred, and other obligations and rights, as well as corresponding assets or cash equivalent thereof;
 - (d) the name and the location of the main administration of the transferring IORP and the Member State in which it is registered or authorised;
 - (e) the name and the location of the main administration of the receiving scheme or trust RAC and the Member State in which it is registered or authorised;
 - (f) the location of the main administration of the sponsoring undertaking and the name of the sponsoring undertaking;
 - (g) evidence that the transfer has been approved by a majority of the members and a majority of the beneficiaries of the pension scheme of the transferring IORP or their representatives in compliance with the requirements of the national law of the Member State concerned, and, where applicable, the approval of the sponsoring undertaking;
 - (h) where the transfer results in cross-border activity, the name of the Member State whose social and labour law is applicable to the members and beneficiaries concerned.
- (4) The Pensions Authority may request the trustees to provide further information in relation to any of the matters specified in paragraphs (a) to (h) of subsection (3).
- (5) On receipt of the information under subsection (3), the Pensions Authority shall, as soon as practicable and not later than 7 days, send a copy of that information to the competent authority of the transferring IORP.
- (6) The trustees of a receiving scheme or trust RAC shall not accept a transfer of all or part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from a transferring IORP unless -
 - (a) the transfer is authorised by the Pensions Authority under this section, and
 - (b) the prior consent of the competent authority of the transferring IORP has been obtained.
- (7) The Pensions Authority shall assess whether -
 - (a) all of the information referred to in paragraphs (a) to (h) of subsection (3) has been provided to it by the receiving scheme or trust RAC,
 - (b) the administrative structure, the financial situation of the receiving scheme or trust RAC and the trustees' compliance with section 59A are compatible with the proposed transfer,
 - (c) the long term interests of the members and beneficiaries of the receiving scheme or trust RAC, and the transferred part of the transferring IORP pension scheme, are adequately protected during and after the transfer,
 - (d) where the transfer results in cross-border activity, the technical provisions of the receiving scheme or trust RAC are fully funded at the date of the transfer, and
 - (e) the assets to be transferred are sufficient and appropriate in accordance with the provisions of this Act to cover the liabilities, technical provisions and other obligations and rights to be

transferred,

and where the Pensions Authority is satisfied that the matters referred to in paragraphs (a) to (e) have been complied with, the Pensions Authority shall authorise the transfer of the pension scheme's liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from the transferring IORP to the receiving scheme or trust RAC.

- (8) The Pensions Authority shall send a notification of the authorisation in writing to -
- (a) the trustees of the receiving scheme or trust RAC, within 3 months of receiving the application referred to in subsection (2), and
 - (b) the competent authority of the transferring IORP, within 2 weeks of the date of granting the authorisation under this section.
- (9) Where the Pensions Authority is not satisfied that any of the matters referred to in paragraphs (a) to (e) of subsection (7) have been complied with, it shall refuse to authorise the transfer and shall -
- (a) send, to the trustees of the receiving scheme or trust RAC, a notification in writing of -
 - (i) the refusal, and
 - (ii) the reasoning for that refusal,
 within 3 months of the date of the receipt of the application under subsection (2), and
 - (b) send a notification in writing of the refusal to the competent authority of the transferring IORP within 2 weeks of the date of the refusal of the authorisation under this subsection.
- (10) Where -
- (a) the Pension Authority refuses to authorise the transfer to the receiving scheme or trust RAC under subsection (9), or
 - (b) the Pension Authority fails to act within the 3 month period referred to in subsection (8)(a),
- the trustees of the receiving scheme or trust RAC may appeal to the High Court in the case of a refusal to authorise the transfer referred to in paragraph (a), within 21 days from the date on which the Pensions Authority notifies the trustees of its refusal under subsection (9), or in the case of a failure to act referred to in paragraph (b), the expiry of the 3 month period referred to in subsection (8)(a).
- (11) On the hearing of an appeal referred to in subsection (10), the High Court may make -
- (a) an order confirming the refusal to authorise the transfer referred to in subsection (10)(a) or confirming that the Pension Authority has failed to act within the period referred to in subsection (10)(b), or
 - (b) an order quashing the refusal to authorise the transfer referred to in subsection (10)(a),
- and may make such ancillary orders as it considers appropriate.
- (12) Where the Pensions Authority has authorised a transfer under subsection (7) and the transfer results in cross-border activity and the competent authority of the home Member State of the transferring IORP notifies the Pensions Authority of -
- (a) pursuant to Article 12(11) of the Directive of 2016 -
 - (i) the requirements of social and labour law, and
 - (ii) the information requirements referred to in Title IV of the Directive of 2016,
 of the home Member State of the transferring IORP which will apply to the cross-border activity, and
 - (b) pursuant to Article 33(1) of the Directive of 2016, a requirement, if any, under the law of the home Member State of the transferring IORP to appoint one or more depositaries for the safekeeping of assets and oversight duties,

the Pensions Authority shall within one week of receipt of such notification, by that competent authority, of the matters specified in paragraphs (a) and (b), notify the trustees of the receiving scheme or trust RAC of those matters.

- (13) Where, in accordance with subsection (7), the Pensions Authority has authorised the transfer of a pension scheme's liabilities, technical provisions, other obligations, rights, any assets, or cash equivalent referred to in subsection (7) from a transferring IORP to a receiving scheme or trust RAC and the transfer results in cross-border activity, the trustees of the receiving scheme or trust RAC concerned shall be deemed -
- (a) to be authorised under section 149 for cross-border activity, and
 - (b) to have been granted approval under section 151 to accept contributions from the undertaking to which the transfer relates,
- and sections 149(4), 150 and 152 shall apply in respect of that scheme or trust RAC.
- (14) The trustees of the receiving scheme or trust RAC may effect the transfer and begin to operate the scheme or trust RAC where -
- (a) a transfer is authorised under subsection (7), on receipt of the notification referred to in subsection (8)(a), or
 - (b) no information on the decision is received from the Pensions Authority by the trustees of the receiving scheme or trust RAC on the expiry of the period referred to in subsection (12), at the expiry of the period.
- (15) In the case of a disagreement about the procedure or content of an action or inaction of the Pensions Authority or the competent authority of the transferring IORP, including a decision to refuse a cross-border transfer, the Pensions Authority may request EIOPA to carry out non-binding mediation in accordance with point (c) of the second paragraph of Article 31 of Regulation (EU) No. 1094/2010.
- (16) The trustees of the receiving scheme or trust RAC shall ensure that the costs of the transfer under this section shall not be borne by the incumbent members and beneficiaries of the scheme or trust RAC.
- (17) In the case of the trustees of a small scheme or small trust RAC deemed, under subsection 13(a), to be authorised under section 149 for cross-border activity, the trustees of that small scheme or small trust RAC shall comply with the provisions of this Act that are prescribed from time to time for the purposes of section 149.

151B. Transfers from scheme or trust RAC to IORP in another Member State.

✓ In force

- (1) The trustees of a scheme or trust RAC may, in accordance with this section, transfer all or part of the liabilities, technical provisions and other obligations and rights as well as corresponding assets or cash equivalent thereof, of that scheme or trust RAC to a receiving IORP.
- (2) The trustees of a transferring scheme or trust RAC who intend to transfer all or part of a scheme's, or trust RAC's, liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a receiving IORP shall not make that transfer unless the trustees have obtained the prior approval to the transfer by -
 - (a) a majority of -
 - (i) the members, and
 - (ii) the beneficiaries,
 of that scheme or trust RAC, and
 - (b) the sponsoring undertaking, where applicable.
- (3) The trustees referred to in subsection (2) shall, for the purpose of obtaining the prior approval referred to in subsection (2) -
 - (a) notify, in writing, the members and beneficiaries of the transferring scheme or trust RAC of the intention to transfer, and
 - (b) provide information in that notification concerning the conditions of the transfer.
- (4) A transfer referred to in subsection (1) shall require -
 - (a) the prior consent of the Pensions Authority, and
 - (b) when the prior consent referred to in paragraph (a) has been obtained, the authorisation of the competent authority of the receiving IORP.
- (5) Where the Pensions Authority receives an application for authorisation under this section of a transfer from the competent authority of the receiving IORP, the Pensions Authority shall assess whether -
 - (a) in the case of a partial transfer of the scheme's or trust RAC's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, the long term interests of the members and beneficiaries of the remaining part of the transferring scheme or trust RAC are adequately protected,
 - (b) the individual entitlements of the members and beneficiaries are at least the same after the transfer, and
 - (c) the assets corresponding to the scheme or trust RAC to be transferred are, in accordance with this Act, sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred.
- (6) Where the Pensions Authority is satisfied of the matters set out in paragraphs (a) to (c) of subsection (5), it shall, within 8 weeks of the date of receipt of the application for authorisation of a transfer from the competent authority of the receiving IORP, communicate to that competent authority that it consents to the transfer.
- (7) Where the Pensions Authority is not satisfied of any of the matters set out in paragraphs (a) to (c) of subsection (5), it shall, within 8 weeks of the date of receipt of the application for authorisation of a transfer from the competent authority of the receiving IORP, communicate to that competent authority that it does not consent to the transfer.
- (8) Where the Pensions Authority receives a notification pursuant to Article 12(11) of the Directive of 2016 from the competent authority of a receiving IORP and the transfer results in cross-border activity, the Pensions Authority shall inform the competent authority of the receiving IORP of the relevant statutory requirements within 4 weeks from the date of receipt of that notification.
- (9) Where a transfer authorised by the competent authority of the receiving IORP results in cross-border activity, section 153(3) to (7) shall apply in respect of the supervision by the Pensions Authority of the receiving IORP within the State.

- (10) In the case of a disagreement about the procedure or content of an action or inaction of the Pensions Authority or the competent authority of the receiving IORP, including a decision to authorise or refuse a cross-border transfer, the Pensions Authority may request EIOPA to carry out non-binding mediation in accordance with point (c) of the second paragraph of Article 31 of Regulation (EU) No. 1094/2010.
- (11) The trustees of the transferring scheme or trust RAC shall ensure that the costs of the transfer under this section shall not be borne by the remaining members and beneficiaries of the scheme or trust RAC.

152. Miscellaneous provisions relating to monitoring and enforcement.

✓ In force

- (1) The trustees of a scheme or trust RAC to whom approval has been granted or deemed to have been granted under section 151 shall ensure that the scheme or trust RAC is operated in a manner which is consistent with the social and labour law and information requirements of any relevant host Member State and a requirement, if any, under the law of any relevant Member State to appoint a depositary.
- (2) Where -
 - (a) the competent authority of the host Member State, in pursuance of Article 11(10) of the Directive of 2016, inform the Pensions Authority that the trustees of the scheme or trust RAC are operating the scheme or trust RAC in a manner which is not consistent with -
 - (i) the requirements of social and labour law,
 - (ii) the information requirements, referred to in Title IV of the Directive of 2016, or
 - (iii) a requirement, if any, to appoint a depositary under the law,of that host Member State, or
 - (b) it otherwise comes to the attention of the Board that the arrangement between the undertaking and the individuals in respect of whom the undertaking makes or proposes to make contributions is no longer compatible with the scheme or trust RAC,the Board may give a direction in writing to the trustees -
 - (i) to take or refrain from taking the steps specified in the direction, or
 - (ii) to cease taking further contributions from the undertaking.
- (3) Where the Board gives a direction to the trustees of a scheme or trust RAC under subsection (2), the Board may, if it is satisfied that the direction has not been complied with, apply to the Court and the Court may confirm, vary or set aside the direction on the terms and for the period the Court considers appropriate.
- (4) Where the Board gives a direction under subsection (2), the trustees of the scheme or trust RAC may appeal to the Court from the direction within 21 days after the date of the direction and the Court may confirm, vary or set aside the direction on the terms and for the period that the Court considers appropriate.
- (5) Where the trustees of a scheme or trust RAC receive contributions from an undertaking the Board may, in the form and manner that may be prescribed, require trustees of the scheme or trust RAC to take, or refrain from taking, any steps that may be prescribed for the purpose of ring-fencing some or all of the assets or liabilities (or both) of the scheme or trust RAC.

153. Functions of the Board in relation to institutions in another Member State.

✓ In force

- (1) Where -
- (a) an employer or self-employed person makes or proposes to make contributions to an institution for occupational retirement provision that has its main administration in another Member State, and
 - (b) the relationship between the employer and the members and beneficiaries concerned is governed by the social and labour law of the State,
- any function which Article 11 of the Directive of 2016 requires or authorises to be exercised by the competent authorities of the State is exercisable by the Pensions Authority.
- (2) Where the Board receives a notification pursuant to Article 11(4) of the Directive of 2016 from the competent authority in another Member State, the Board shall inform the competent authority of the relevant statutory requirements within 6 weeks after the date of that notification.
- (3) Where there is a significant change in any relevant statutory requirements, the Board shall as soon as reasonably practicable inform any competent authority to which it has provided information under subsection (2) of that change.
- (4) Where an employer or self-employed person makes contributions to an institution referred to in subsection (1) the Board shall -
- (a) monitor compliance by the institution with the relevant statutory requirements, and
 - (b) if the Board becomes aware of any contravention by the institution of any relevant statutory requirement, inform the competent authority of the Member State concerned of the contravention.
- (5) If the Board is satisfied that, despite the notification referred to in subsection (4)(b), the contravention persists, the Board may, after informing the competent authority of the Member State concerned, give a direction in writing to the employer or self-employed person -
- (a) to take or refrain from taking the steps specified in the direction, or
 - (b) to cease making further contributions to the institution concerned.
- (6) Where the Board gives a direction to an employer or self-employed person under subsection (5), the Board may, if it is satisfied that the direction has not been complied with, apply to the Court and the Court may confirm, vary or set aside the direction on the terms and for the period the Court considers appropriate.
- (7) Where the Board gives a direction under subsection (5), the employer or self-employed person may appeal to the Court from the direction within 21 days after the date of the direction and the Court may confirm, vary or set aside the direction on the terms or for the period the Court considers appropriate.


154. Application of this Act to members in another Member State.

✔ In force

- (1) Regulations may provide that any provisions of this Act which are for the time being prescribed as relevant statutory requirements, shall not apply to schemes or trust RACs or trustees of schemes or of trust RACs with regard to individuals in respect of whom an undertaking makes or proposes to make contributions to the scheme or trust RAC concerned.
- (2) Save where otherwise provided for by this Act, references in this Act and regulations made under this Act -
- (a) to members, shall be read as including references to individuals in respect of whom an undertaking makes or proposes to make contributions to a scheme,
 - (b) to a scheme or schemes, shall be read as including references to a scheme which provides or is capable of providing benefits to the individuals referred to in paragraph (a) in another Member State, and
 - (c) to an employer, shall be read as including references to an undertaking with regard to any individuals in respect of whom an undertaking makes or proposes to make contributions to a scheme.

Part XIII Co-operation by Pensions Authority (ss. 155-156)

✓	155. Interpretation.
✓	156. Co-operation generally.

155. Interpretation. In force

A word or an expression that is used in this Part has the same meaning as it has in the Directive of 2016.

156. Co-operation generally.

✓ In force

- (1) Without prejudice to any other provision of this Act, the Pensions Authority shall collaborate with the Commission in relation to facilitating the supervision of the operation of schemes and trust RACs to which Part IIA applies.
- (2) Without prejudice to any other provision of this Act, or any other enactment, the Pensions Authority shall -
 - (a) co-operate with EIOPA for the purposes of the Directive of 2016 in accordance with Regulation (EU) No. 1094/2010,
 - (b) provide EIOPA, as soon as practicable, with all information required by EIOPA in order for it to carry out its duties under the Directive of 2016 and under Regulation (EU) No. 1094/2010 in accordance with Article 35 of that Regulation, and
 - (c) communicate to EIOPA information from the register referred to in section 60.
- (3) The Pensions Authority may request the trustees of a scheme or trust RAC to provide it with information it requires for the purposes of the provision of information referred to in subsection (2)(b) and may, for that purpose, specify a date on which the information is to be provided to it.
- (4) Where the Pensions Authority makes a request under subsection (3), the trustees of the scheme or trust RAC concerned shall provide the information requested by the date specified for its provision.
- (5) Without prejudice to any other provision of this Act, the Pensions Authority shall exchange best practices with regard to the format and content of the Pension Benefit Statement referred to in Regulation 33 of the European Union (Occupational Pension Schemes) Regulations 2021.

First Schedule An Bord Pinsean - The Pensions Board

✓ In force

Section 9(2).

1. The Board shall be a body corporate with perpetual succession and an official seal and power to sue and be sued in its corporate name and, with the consent of the Minister, to acquire, hold and dispose of land or an interest in land or to acquire, hold and dispose of any other property.
2. The Board shall consist of a chairman, and 2 ordinary members, who shall be appointed to the Board by the Minister.
3. A person appointed to be the chairman of the Board may be referred to (including in any document relating to appointment) by that designation or by such other designation as the Board considers with the concurrence of the Minister appropriate.
4. The chairman of the Board may at any time resign his office by letter addressed to the Minister.
5. Notwithstanding paragraph 10(1) the Minister may at any time remove the chairman of the Board from office.
- 5A. If the chairman of the Board dies, resigns, becomes disqualified or is removed from office the Minister shall appoint a person to be chairman of the Board and the person so appointed shall hold office for the remainder of the term of office of the chairman occasioning the vacancy and shall be eligible for re-appointment as chairman of the Board.
6. Subject to the provisions of this Schedule, the chairman of the Board shall hold office on such terms and conditions as the Minister may determine.
7. The chairman of the Board shall be paid, out of moneys at the disposal of the Board, such remuneration (if any) and allowances for expenses incurred by him (if any) as the Minister, with the consent of the Minister for Finance, may determine.
8.
 - Of the ordinary members of the Pensions Authority -
 - (a) one shall be nominated by the Minister and shall be an officer and representative of the Department of Social Protection, and
 - (b) one shall be nominated by the Minister for Finance and shall be an officer and representative of the Department of Finance.
9. Each ordinary member of the Board shall be a part-time member of the Board and, subject to the provisions of this Schedule, shall hold office on such terms and conditions as the Minister may determine.
10.
 - (1) The term of office of the chairman shall be 5 years.
 - (2) The term of office of an ordinary member of the Board shall be such period not exceeding 5 years as the Minister may, with the consent of the Minister for Finance, determine when appointing him and, subject to the provisions of this Schedule, shall be eligible for re-appointment as such member.
11.
 - (1) If an ordinary member of the Board dies, resigns, becomes disqualified or is removed from office or is appointed chairman of the Board under paragraph 5A, the Minister shall appoint a person to be a member of the Board to fill the casual vacancy so occasioned and the person so appointed shall be appointed in the same manner as the member of the Board who occasioned the casual vacancy.
 - (2) A person appointed to be a member of the Board by virtue of this subparagraph shall hold office for the remainder of the term of office of the member occasioning the vacancy he is appointed to fill and shall be eligible for re-appointment as a member of the Board.
12. A member of the Board whose term of office expires by effluxion of time shall be eligible for re-appointment as a member of the Board.

13. Notwithstanding paragraph 10(2) the Minister may at any time remove an ordinary member of the Board from office.
14. An ordinary member of the Board may at any time resign his office as a member by letter addressed to the Minister.
15. A member of the Board shall be disqualified from holding and shall cease to hold office if he is adjudged bankrupt or makes a composition or arrangement with creditors or is sentenced by a court of competent jurisdiction to a term of imprisonment or penal servitude.
16. [deleted]
17. The Board shall hold such and so many meetings as it considers appropriate for the performance of its functions.
18. The Minister may fix the date, time and place of the first meeting of the Board.
19. The quorum for a meeting of the Board shall be 2.
20. At a meeting of the Board -
 - (a) the chairman of the Board shall, if present, be the chairman of the meeting,
 - (b) if and so long as the chairman of the Board is not present or if the office of chairman is vacant, the members of the Board who are present shall choose one of their number to be chairman of the meeting.
21. The chairman of the Board, and each ordinary member of the Board, present at a meeting thereof shall have a vote.
22. Every question at a meeting of the Board shall be determined by a majority of the votes of the members present and voting on the question and, in the case of an equal division of votes, the chairman of the meeting shall have a second or casting vote.
23. The Board may act notwithstanding one vacancy among its members.
24. Subject to the provisions of this Schedule, the Board shall regulate, by standing orders or otherwise, the procedure and business of the Board.
25. The Board shall, as soon as may be after its establishment, provide itself with a seal.
26. The seal of the Board shall be authenticated by the signature of the chairman of the Board or some other member thereof authorised by the Board to act in that behalf and by the signature of an officer of the Board authorised by the Board to act in that behalf.
27. Judicial notice shall be taken of the seal of the Board and every document purporting to be an instrument made by the Board and to be sealed with the seal (purporting to be authenticated in accordance with paragraph 26) of the Board shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.
28. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Board by any person generally or specially authorised by the Board in that behalf.

Second Schedule Preservation and Revaluation of Benefits and Minimum Value of Contributory Retirement Benefit

✓ In force

Section 29.

Part A Preservation of Benefits

Calculation of Preserved Benefit - Defined Benefit Scheme

1.
 - (1) In the case of a defined benefit scheme, a preserved benefit shall consist of -
 - (a) basic preserved benefit calculated under paragraph 2, and
 - (b) preserved benefit in respect of additional long service benefit provided by additional voluntary contributions calculated under paragraph 3, and
 - (c) preserved benefit in respect of additional long service benefit provided by a transfer of accrued rights from another scheme, and
 - (d) in the case of a member of the scheme who is entitled to preserved benefit under section 28(2)(b), additional preserved benefit calculated under paragraph 4.
 - (2) Where a scheme provides for benefits to be calculated in relation to a member's pensionable earnings at, or in a specified period prior to his attaining, normal pensionable age or on earlier death, or in some other way relative to such earnings, preserved benefit shall be calculated, in a corresponding manner, by reference to his earnings at, or in the same period before, the date of termination of his relevant employment.

Basic Preserved Benefit

2.
 - (1) Where the basis of calculating long service benefit does not alter between 1 January 1991 or, if later, the date of commencement of the member's relevant employment and the date of termination of relevant employment the amount of basic preserved benefit shall be calculated in accordance with the formula -

$$A \times \frac{B_1}{C}$$

where -

A is the amount of long service benefit (excluding any such benefit which is being secured by way of additional voluntary contributions or which represents a transfer of accrued rights from another scheme or which represents an increase required under section 35A) calculated at the date of termination of the member's relevant employment,

B1 is the period of reckonable service completed after 1 January 1991, and

C is the period of reckonable service that would have been completed if the member had remained in relevant employment until normal pensionable age and such service had continued to qualify for long service benefit.
 - (2) Where the basis of calculating long service benefit is altered between 1 January 1991 or, if later, the date of commencement of the member's relevant employment and the date of termination of the member's relevant employment the amount of basic preserved benefit shall be the sum of -
 - (a) the amount calculated in accordance with the formula set out in subparagraph (1) where A is calculated on the basis of the rules of the scheme in force at 1 January 1991 or, if later, the date of commencement of the member's relevant employment, and
 - (b) an amount calculated in accordance with the formula -

where -

$$D \times E$$

—

F

D is the amount of the difference in long service benefit calculated at the date of termination of relevant employment applicable to the alteration,

E is the period of reckonable service completed after the date on which the basis of calculation was altered, and

F is the period of reckonable service that would have been completed from the date of such alteration if the member had remained in relevant employment until normal pensionable age and such service had continued to qualify for long service benefit:

Provided that where there is more than one such alteration each alteration shall be separately calculated in accordance with this formula and they shall be aggregated for the purposes of the calculation of the amount.

- (3) Any preserved benefit calculated under this paragraph shall be subject to a minimum of such amount as will ensure that the actuarial value of such benefit is equal to the amount of any contributions (excluding additional voluntary contributions) paid by the member in respect of the period of reckonable service completed after 1 January 1991 together with compound interest thereon at the rate, if any, applicable under the rules of the scheme to refunds of members' contributions on leaving service.

Preserved benefit in respect of additional voluntary contributions

3.

- (1) In the case of an additional long service benefit referred to in section 29(6), preserved benefit, in respect of such additional benefit, shall include an amount calculated in accordance with the formula -

$$X \times Y$$

—

Z

where -

X is the amount of such additional benefit (or increase in benefit),

Y is the period of reckonable service for which the member of the scheme has contributed towards such benefit (or increase in benefit), and

Z is the period of reckonable service for which such member would have contributed towards such benefit (or increase in benefit) if he had remained in relevant employment until normal pensionable age.

- (2) For the purposes of subparagraph (1), 'increase in benefit' means a benefit secured by an increase in the rate of contribution previously contracted and each such increase in benefit shall for the purposes of this paragraph be treated separately.

Additional preserved benefit

4. In the case of a defined benefit scheme, the amount of additional preserved benefit shall be the greater of, namely -

- (a) an amount calculated in accordance with the formula -

$$G - J$$

where -

G is the benefit (excluding any such benefit which is being secured by way of additional voluntary contributions or which represents a transfer of accrued rights from another scheme) to which the member is entitled upon termination of relevant employment under the rules of the scheme (disregarding any provision for revaluation or increase of that benefit after the date of termination of relevant employment), and

J is the basic preserved benefit calculated under paragraph 2;

and

- (b) an amount calculated in accordance with the formula -

$$H - J$$

where -

H is a benefit of such amount as will ensure that its actuarial value is equal to the amount of any contributions (excluding additional voluntary contributions) paid by the member together with compound interest thereon at the rate, if any, applicable under the rules of the scheme to refunds of members' contributions on leaving service, and

J is the basic preserved benefit calculated under paragraph 2;

and

- (c) an amount calculated in accordance with the formula -

$$A \times \frac{B_2}{C}$$

where

A has the value ascribed to it in paragraph 2(1) but calculated on the basis described in paragraph 2(2)(a) if the basis of calculating long service benefit has altered between 1 January 1991 or, if later, the date of commencement of the member's relevant employment and the date of termination of the member's relevant employment,

B₂ is the period of reckonable service completed up to 1 January 1991, and

C has the value ascribed to it in paragraph 2(1).

Part B Revaluation of Preserved Benefits

5.

- (1) Any preserved benefit, including any previous revaluation, payable under a defined benefit scheme shall be revalued annually at the end of each revaluation year, by adjusting the amount of preserved benefit as at -
- (a) the last day of the previous calendar year,
 - (b) the date of termination of relevant employment in any case where a member's relevant employment has terminated since the last day of the previous calendar year, or
 - (c) in any case where the amount of preserved benefit has been reduced pursuant to a direction under subsection (1) of section 50 since the last day of the previous calendar year or termination of relevant employment (as appropriate), the date on which such reduction was effected,

by the appropriate amount.

- (2) Except as provided for in paragraphs 6 and 7 the appropriate amount shall be calculated in accordance with the formula -

where -

$$\frac{P \times R}{100}$$

100

P is the amount of preserved benefit as at -

- (a) the last day of the previous calendar year,
- (b) the date of termination of relevant employment in any case where a member's relevant employment has terminated since the last day of the previous calendar year, or
- (c) in any case where the amount of preserved benefit has been reduced pursuant to a direction under subsection (1) of section 50 since the last day of the previous calendar year or termination of relevant employment (as appropriate), the date on which such reduction was effected, and

R is the revaluation percentage:

Provided that in any case where a member's relevant employment has terminated since the last day of the previous calendar year R is X/twelfths of the revaluation percentage where X is the number of complete months from the date on which the member's relevant employment terminated to the end of the revaluation year.

6.

- (1) This paragraph applies to a scheme which provides long service benefit the rate or amount of which is calculated by reference to -
 - (a) the member's average pensionable earnings over the period of service on which such benefit is based, or
 - (b) the member's total pensionable earnings over the period of service on which such benefit is based.
- (2) Any preserved benefit provided under a scheme to which this paragraph applies shall be revalued -
 - (a) by revaluing the pensionable earnings of the member concerned during each revaluation year in any manner in which they could have been revalued during that year if the member had remained in the same reckonable service, or
 - (b) in accordance with paragraph 5,
 whichever the trustees of the scheme consider appropriate.

7.

- (1) This paragraph applies to a scheme which provides long service benefit -
 - (a) the rate or amount of which is calculated by reference solely to the member's length of service, or
 - (b) which is of a fixed amount.
- (2) Any preserved benefit provided under a scheme to which subparagraph (1) applies shall be revalued in accordance with paragraph 5, provided that where the trustees of a scheme consider that by revaluing a preserved benefit in such a manner that a member whose service in relevant employment has terminated would be treated more favourably than a member who remains in reckonable service in relation to the period of reckonable service to which the preserved benefit applies, they may revalue the preserved benefit on such other basis and such other dates as they consider just and equitable.

- 8. In the case of a member who is entitled to a preserved benefit under section 28(2)(a), no part of the appropriate amount to be added to preserved benefit under this Part shall be provided by reducing the amount of any benefit payable under the rules of the scheme concerned in respect of reckonable service

completed before 1 January 1991.

Part C Minimum Value of Contributory Retirement Benefit

9. The minimum value of contributory retirement benefit shall be the actuarial value of an amount calculated in accordance with the formula -

$$\frac{360 - Q}{300} \times R$$

where -

Q is -

- (a) if relevant employment terminates before normal pensionable age, the number of complete calendar months by which the date of termination of the relevant employment precedes normal pensionable age subject to a minimum of 0 and a maximum of 60, and
- (b) if relevant employment terminates on or after normal pensionable age, nil,

and

R is the amount of any contributions (excluding additional voluntary contributions) paid by the member to the scheme together with compound interest thereon at the rate, if any, applicable under the rules of the scheme to refunds of members' contributions on leaving service.

Third Schedule Funding Standard - Benefits

✓ In force

Section 44.

1. The benefits for the purposes of this paragraph shall be all future benefits payable under the rules of the scheme to or in respect of a person who at the effective date of the certificate is receiving benefits or has reached normal pensionable age, excluding future increases in such benefits which are, at the effective date of the certificate, contingent upon the exercise of some person's discretion.
2. The benefits for the purposes of this paragraph shall be any additional benefits secured for or granted to or in respect of a member of a scheme under the scheme by way of additional voluntary contributions or a transfer of rights from another scheme. Such benefits shall be calculated as at the effective date of the certificate and shall be -
 - (a) where, at the effective date of the certificate, the member's service in relevant employment has terminated and a transfer payment has not been applied in accordance with section 34 or 35, preserved benefit payable in respect of such additional benefits calculated in accordance with Part III or, if no such preserved benefit is payable, the benefits payable under the rules of the scheme in respect of the additional voluntary contributions or the transfer of rights, and
 - (b) where, at the effective date of the certificate, the member is in relevant employment, preserved benefit in respect of such additional benefits calculated in accordance with Part III, as if the member's service in relevant employment had terminated on such date but, other than for the purposes of section 48, disregarding any provision requiring the completion of a minimum period of qualifying service.
3. The benefits for the purposes of this paragraph shall be calculated as at the effective date of the certificate and shall be -
 - (a) in the case of a member of that scheme whose service in relevant employment terminated after 1 January 1991 but prior to the effective date of the certificate and in respect of whom a transfer payment has not been applied in accordance with section 34 or 35 the greater of -
 - (i) the preserved benefits to which the member is entitled under section 28 and which are referred to in paragraph 1(1)(a), (b) and (c) of the Second Schedule (including future revaluations thereof and those benefits payable on the death of the member entitled to preserved benefit) calculated in accordance with Part III, and
 - (ii) the benefits payable under the rules of the scheme in respect of reckonable service completed after 1 January 1991, and
 - (b) in the case of a member of that scheme then in relevant employment, the greater of -
 - (i) the preserved benefits to which the member would be entitled under section 28 and which are referred to in paragraph 1(1)(a), (b) and (c) of the Second Schedule (including future revaluations thereof and those benefits payable on the death of the member entitled to preserved benefit) calculated in accordance with Part III, and
 - (ii) the long service benefits payable under the rules of the scheme in respect of reckonable service completed after 1 January 1991 but prior to the effective date of the certificate together with any other benefits payable on the death of the member entitled to long service benefit in respect of such period of reckonable service,

calculated as if the member's service in relevant employment has terminated on the effective date of the certificate but, other than for the purposes of section 48, disregarding any provision requiring the completion of a minimum period of qualifying service which may prevent the member concerned from acquiring an entitlement to benefit on termination of such employment
4. The benefits for the purposes of this paragraph shall be calculated as at the effective date of the certificate and shall be -
 - (a) any benefit payable under the rules of the scheme in respect of reckonable service completed prior to 1 January 1991 to or in respect of a member of that scheme -

- (i) whose service in relevant employment terminated prior to the effective date of the certificate, and
- (ii) who has not exercised any right to a transfer payment to another scheme,

and

- (b) a benefit payable to or in respect of a member then in relevant employment whose reckonable service commenced before 1 January 1991 being -

- (i) subject to clause (ii), in the case of a defined benefit scheme, the greater of -

- (I) the amount determined by the formula -

$$\frac{L \times M}{N}$$

—

N

where -

L is the amount of long service benefit calculated as at the effective date of the certificate on the basis of the rules of the scheme in force on 1 January 1991,

M is the period of reckonable service completed prior to 1 January 1991, and

N is the period of reckonable service that would have been completed if the member had remained in relevant employment until normal pensionable age and such service had continued to qualify for long service benefit:

Provided that, where the rules of the scheme in force at 1 January 1991 provided for benefits to be calculated in relation to a member's pensionable earnings at, or in a specified period prior to, his attaining normal pensionable age or in some other way relative to such earnings, the benefit under this clause may be calculated in a corresponding manner by reference to his earnings at, or in the same period before the effective date of the certificate, and

- (II) the long service benefits payable under the rules of the scheme in respect of reckonable service completed before 1 January, 1991, together with any other benefits payable on the death of the member entitled to long service benefit in respect of such period of reckonable service calculated as if the member's service in relevant employment had terminated on the effective date of the certificate but disregarding any provision which may prevent the member concerned from acquiring an entitlement to benefit on termination of relevant employment, less, where under paragraph 3 the amount of benefits calculated in accordance with subparagraph (b) (i) of that paragraph exceeds the amount calculated in accordance with subparagraph (b) (ii) of that paragraph, the difference between these two amounts.

- (ii) in the case of a defined benefit scheme where the rate or amount of part of the long service benefit payable thereunder is directly determined by an amount of contribution paid by or in respect of the member of the scheme -

- (I) in so far as it relates to such part of the long service benefit, a benefit whose actuarial value is equal to the then accumulated value of the contributions paid by or in respect of the member of the scheme for the purpose of long service benefit prior to 1 January 1991, and
- (II) in so far as it relates to the remaining part of long service benefit, a benefit calculated in accordance with clause (i).

- 5. The benefits for the purposes of this paragraph shall be calculated as at the effective date of the certificate and shall be, to the extent that they have not already been specified in any of the preceding

paragraphs -

- (a) in the case of a member of that scheme whose service in relevant employment terminated after 1 June 2002 but prior to the effective date of the certificate and in respect of whom a transfer payment has not been applied in accordance with section 34 or 35, the greater of -
 - (i) the preserved benefits to which the member is entitled under section 28 and which are referred to in paragraph 1(1)(d) of the Second Schedule (including future revaluations thereof and those benefits payable on the death of the member entitled to preserved benefit) calculated in accordance with Part III,
 - (ii) any minimum contributory retirement benefit to which the member is entitled under section 35A, and
 - (iii) the benefits payable under the rules of the scheme,

and

- (b) in the case of a member of that scheme then in relevant employment, the greater of -
 - (i) the preserved benefits to which the member would be entitled under section 28 and which are referred to in paragraph 1(1)(d) of the Second Schedule (including future revaluations thereof and those benefits payable on the death of the member entitled to preserved benefit) calculated in accordance with the provisions of Part III,
 - (ii) any minimum contributory retirement benefit to which the member would be entitled under section 35A, and
 - (iii) the long service benefits payable under the rules of the scheme in respect of reckonable service completed prior to the effective date of the certificate and, where the member would be entitled to an immediate retirement benefit if he unilaterally terminated his service in relevant employment on the effective date of the certificate, any increase in long service benefit arising under section 35A together with any other benefits payable on the death of the member entitled to long service benefit in respect of such period of reckonable service,

calculated as if the member's service in relevant employment had terminated on the effective date of the certificate but, other than for the purposes of section 48, disregarding any provision requiring the completion of a minimum period of qualifying service which may prevent the member concerned from acquiring an entitlement to benefit on termination of such employment.

Fourth Schedule Application of Employment Equality Act 1998

✓ In force

Section 81J.

Ref. No.	Section of Employment Equality Act 1998	Words appearing in section of Employment Equality Act 1998	Substituted words for the purposes of Part VII
(1)	(2)	(3)	(4)
1.	Section 74	' "the complainant" has the meaning given by section 77(4);'	' "the complainant" has the meaning given by section 81E(4) of the Pensions Act 1990; "discrimination" means discrimination in breach of the principle of equal pension treatment;'
2.	Section 74	' "the respondent" has the meaning given by section 77(4); "victimisation" shall be construed in accordance with subsection (2)'	' "occupational benefits" has the meaning given by section 65 of the Pensions Act 1990; "the principle of equal pension treatment" has the meaning given by section 70 of the Pensions Act 1990; "respondent" has the meaning given by section 81E(4) of the Pensions Act 1990; "victimisation" shall be construed in accordance with section 65 (4) of the Pensions Act 1990.'
3.	Section 76(1)	'(b) that another person ("Y") who is responsible for providing remuneration to X is not providing that remuneration as required by an equal remuneration term, or'	'(b) that another person ("Y") who is responsible for complying with the principle of equal pension treatment in relation to X is not complying with that principle, or'
4.	Sections 74(3), 76(1), 78(5), 79(1), 79(3A), 85, 93(3), and 102	'section 77'	'section 81E of the Pensions Act 1990'
5.	Section 76(2) (b)	'remuneration'	'occupational benefits'

6.	Sections 78(1) and 101(2)	'section 77(1)'	'section 81E(1) of the Pensions Act 1990'
8.	Section 79(3)	'(3) If, in a case which is referred on the ground that the complainant is not receiving remuneration in accordance with an equal remuneration term, a question arises whether the different rates of remuneration to which the case relates are lawful by virtue of section 19(5) or 29(5), the Director may direct that that question shall be investigated as a preliminary issue and shall proceed accordingly.'	'(3) If, in a case which is referred on the ground that the complainant is not receiving occupational benefits in accordance with the principle of equal pension treatment, a question arises as to whether the situation of the complainant is a comparable one for the purposes of this Part, the Director may direct that that question shall be investigated as a preliminary issue and shall proceed accordingly.'
9.	Section 83(6)	'consult the Labour Court'	'consult the Minister for Social and Family Affairs, the Labour Court'
10.	Sections 79(6)(a), 85(3) and 91(2)	'section 82'	'section 81H of the Pensions Act 1990'
11.	Sections 80(1), 81, 101(3), 103(3), and 104(2)(a)	'section 77(3)'	'section 81E(3) of the Pensions Act 1990'
12.	Sections 85(1) to 85(5), 85(6), 86(1), 88(3)(c), 91(4) and 91(7)	'Authority'	'Pensions Board'
13.	Sections 85(1)(c), 85(1)(f) and 101(1)	'an equal remuneration term or an equality clause'	'the principle of equal pension treatment'
14.	Section 85(4)(b)	'an equal remuneration term or equality clause'	'the principle of equal pension treatment'
15.	Section 85(1)(e)	'section 14'	'section 74 of the Pensions Act 1990'

16.	Section 85(2) (b)	'the equal remuneration term or equality clause'	'the principle of equal pension treatment'
17.	Section 85(6)	'Authority's'	'Pensions Board's'
18.	Sections 86(1) and 87(1)	'section 9'	'section 81C of the Pensions Act 1990'
19.	Section 86(2) (a)	'paragraph (b) or (c) of section 9(3)'	'section 81C(2)(b) and (c) of the Pensions Act 1990'
20.	Section 86(2) (b)	'remuneration or whose conditions of employment'	'occupational benefits'
21.	Section 88(3) (a)	'section 77(4)'	'section 81E(4) of the Pensions Act 1990'
22.	Section 93(3)	'remuneration'	'remuneration and occupational benefits'
23.	Section 97(1)	'the Director,'	'the Director, the Pensions Board,'
24.	Section 97(2)	'or otherwise acquired by, the Labour Court, the Director or'	'or otherwise acquired by, the Labour Court, the Director, the Pensions Board or'
25.	Section 98(1) (b)	'(a) to (d) of section 74(2)'	'(a) to (h) of section 65(3) of the Pensions Act 1990'
26.	Section 98(5)	'section 82,'	'section 81H of the Pensions Act 1990,'
27.	Section 98(5)	'paragraph (c) or (f) of section 82(1)'	'section 81H(1) of the Pensions Act 1990'
28.	Section 98(5)	'provision of section 82'	'provision of section 81H of the Pensions Act 1990'
29.	Section 100(3)	'the Minister or'	'the Minister, the Pensions Board or'
30.	Section 101(1)	'the equal remuneration term or the equality clause'	'the principle of equal pension treatment'

30A.	Section 101A(2)	"Where the conduct of an employer constitutes both a contravention of Part III or IV and a contravention of either the Protection of Employees (Part-Time Work) Act 2001 or the Protection of Employees (Fixed-Term Work) Act 2003, relief may not be granted to the employee concerned in respect of the conduct under both this Act and either of the said Acts."	"Where the conduct of an employer constitutes both a contravention of Part VII of the Pensions Act 1990 and a contravention of either the Protection of Employees (Part-Time Work) Act 2001 or the Protection of Employees (Fixed-Term Work) Act 2003, relief may not be granted to the employee concerned in respect of the conduct under both this Act as it applies to Part VII of the Pensions Act 1990 and either of the said Acts."
31.	Section 104(1)	'section 77(10)'	'section 81F(2) of the Pensions Act 1990'