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PENSIONS (AMENDMENT) ACT, 2002

AN ACT TO AMEND AND EXTEND THE PENSIONS ACT,
1990, AND TO PROVIDE FOR RELATED MATTERS.

[13th April, 2002]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Pensions (Amendment) Act, 2002. Short title, collective citation, construction and commencement.

(2) The Principal Act, the Pensions (Amendment) Act, 1996, and this Act may be cited together as the Pensions Acts, 1990 to 2002, and shall be construed together as one.

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

(4) Without prejudice to the generality of the foregoing, different days may be so appointed for the coming into operation of *section 3* of this Act as respects different provisions of the Part inserted in the Principal Act by that section.

2.—In this Act— Definitions.

“Minister” means the Minister for Social, Community and Family Affairs;

“Principal Act” means the Pensions Act, 1990.

PART 2

PERSONAL RETIREMENT SAVINGS ACCOUNTS

3.—The Principal Act is amended by the insertion of the following Part after Part IX— Insertion of Part X in Principal Act.

PERSONAL RETIREMENT SAVINGS ACCOUNTS

Interpretation
(Part X).

91.—(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; Pr.2 S.3
- (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;

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(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;

‘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—

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- (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

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

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‘Personal Retirement Savings Account actuary’ or ‘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; Pr.2 S.3

‘Personal Retirement Savings Account assets’ or ‘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’ or ‘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’ or ‘PRSA product’ has the meaning assigned to it by section 102;

‘Personal Retirement Savings Account provider’ or ‘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

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Class III as set out in the Annex to the Council Directive 79/267/EEC of 5 March 1979;

‘Standard Personal Retirement Savings Account’ or ‘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.

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(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.

Application required for approval of PRSA product.

92.—(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.

Procedures for the granting of approval of PRSA products.

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

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

94.—(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—

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(a) the Board has notified them that it has approved the product under subsection (2), and

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(b) in accordance with the provisions of Chapter 2A (inserted by section 4 of this Act) 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.

Misleading statements.

95.—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.

Application requirements.

96.—(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, that paragraph (e) shall not apply to it. Pr.2 S.3

(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.

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Suspension and withdrawal of approval of a PRSA product.

97.—(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. Pr.2 S.3

(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

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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.

Ownership of assets.

98.—(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.

Reporting obligations of PRSA providers.

99.—(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. Pr.2 S.3

(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.

Unapproved PRSA products.

100.—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.

PRSA products: supplemental provisions.

101.—(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 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’.

Personal Retirement Savings Account product and Review of Coverage.

102.—(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

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Act and a copy of that report to be furnished to the Minister, and Pr.2 S.3

- (b) a copy of that report to be laid before each House of the Oireachtas within 6 months after its preparation.

Investment.

103.—(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,

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- (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).

Charges.

104.—(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, Pr.2 S.3

(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

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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 changes to charges proposed to be made under a PRSA contract.

Suspension or variation of contributions.

105.—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.

Contributions.

106.—(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)— Pr.2 S.3

(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.

Security of contributions.

107.—(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.

Transfers between PRSA providers.

108.—(1) Any provision of a PRSA contract purporting to prohibit a contributor from

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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.

Payment of PRSA assets to contributor.

109.—(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.

Marketing and sale of PRSAs.

110.—(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

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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.

Preliminary disclosure certificate.

111.—(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 15 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).

Obligation to furnish Statements of Reasonable Projection.

112.—(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),

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(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)).

Disclosure before transfer from a scheme to a PRSA.

113.—(1) Subject to subsection (3), 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 trustees of the scheme referred to in subsection (1)(a) 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) Except in the case of a person who is, for the time being, a member of a scheme accruing benefit under that scheme, subsection (1) shall not apply to a transfer—

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(a) of a sum less than €4,000, 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.

General disclosure obligations.

114.—(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.

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(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.

Power of Minister to prescribe information to be disclosed.

115.—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.

Statement of Reasonable Projection.

116.—(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

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obtaining appropriate financial advice in that regard. Pr.2 S.3

(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.

Functions of Board
in relation to
PRSAs.

117.—(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—

(i) ‘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

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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 Finance.

(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.

Functions of the auditor.

118.—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.

Functions of the PRSA actuary.

119.—(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—

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- (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) preparing a certificate under this section, or
- (b) 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 the regulations.

Functions of the administrator.

120.—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.

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

121.—(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.

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(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—

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- (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 in respect of a particular deduction if the particulars of the deduction are, in accordance with section 9 of the Payment of Wages Act, 1991, included in the statement given to the employee concerned under that section.

(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.'

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(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.

Replacement of buy-out bonds.

122.—(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.

Additional voluntary contribution arrangements.

123.—(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

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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.

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Transfers to defined benefit schemes and defined contribution schemes.

124.—(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.

Retirement annuity contracts and defined contribution schemes.

125.—(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.”.

4.—(1) The Taxes Consolidation Act, 1997, is amended—

Amendment of Taxes Consolidation Act, 1997.

(a) by the substitution of the following for subsection (5) of section 118:

“(5) Subsection (1) shall not apply to expense incurred by the body corporate in or in connection with the provision for a director or employee, or for the director’s or employee’s spouse, children or dependants, of any pension, annuity, lump sum, gratuity or other like benefit to be given on the death or retirement of the director or employee, other than an expense incurred by way of contribution by the body corporate to a PRSA (within the meaning of Chapter 2A of Part 30).”.

(b) in Part 26—

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(i) by the insertion in section 706(3) of the following paragraph after paragraph (c):

“(d) any contract with a PRSA provider (within the meaning of Chapter 2A of Part 30) being a contract which was entered into for the purposes only of the PRSA concerned;”,

and

(ii) in paragraph (b) of subsection (2) (inserted by the Finance Act, 2001) of section 730D—

(I) by the deletion in subparagraph (ii) of “or”,

(II) by the substitution in subparagraph (iii) of “207(1)(b), or” for “207(1)(b),”, and

(III) by the insertion of the following after subparagraph (iii):

“(iv) a PRSA provider (within the meaning of Chapter 2A of Part 30) where the policy is held by the PRSA provider in the course of the business of PRSA provider;”,

(iii) in subsection (3) (inserted by the Finance Act, 2001) of section 730E:

(I) in paragraph (e)—

(A) by the deletion in subparagraph (ii) of “or, as the case may be;”,

(B) by the insertion in subparagraph (iii) after “section 207(1)(b),” of “or, as the case may be;”, and

(C) by the insertion of the following subparagraph after subparagraph (iii):

“(iv) a PRSA provider (within the meaning of Chapter 2A of Part 30),”, and

(II) by the substitution of the following paragraph for paragraph (f):

“(f) contains an undertaking that should the policy holder cease to be a person referred to in subparagraph (i), (ii), (iii), or as the case may be, (iv) of paragraph (e), the assurance company will be advised accordingly, and”,

(c) in subsection (6) of section 739D (inserted by the Finance Act, 2000)—

(i) by the substitution in subparagraph (g) of “Schedule 2B,” for “Schedule 2B, or”,

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(ii) by the substitution in subparagraph (h) of Pr.2 S.4 “Schedule 2B, or,” for “Schedule 2B,”, and

(iii) by the insertion of the following after subparagraph (h):

“(i) is a person who is entitled to exemption from income tax and capital gains tax by virtue of section 787I (as inserted by section 4 of the *Pensions (Amendment) Act, 2002*) and the units held are assets of a PRSA (within the meaning of Chapter 2A of Part 30) and the PRSA administrator (within the meaning of that Chapter 2A) has made a declaration to the investment undertaking in accordance with paragraph 9A of Schedule 2B,”,

(d) in Part 30—

(i) by the insertion in section 770(1) of the following after the definition of “proprietary director”:

“ ‘Personal Retirement Savings Account’ or ‘PRSA’ has the same meaning as in Chapter 2A of this Part;”,

(ii) by the insertion in section 772 of the following after subsection (3C):

“(3D) A retirement benefits scheme shall not cease to be an approved scheme because of any provision in the rules of the scheme whereby, either or both—

(a) a member’s entitlements under the scheme, other than an amount referred to in paragraph (b), may, either on the member’s changing employment or on the scheme being wound up, be transferred to one or more than one PRSA to which that member is the contributor if the following conditions are satisfied, that is to say—

(i) benefits have not become payable to the member under the scheme, and

(ii) the period or the aggregate of the periods for which the individual has been a member of the scheme or of any other scheme related to that individual’s employment with, or with any person connected with, the employer immediately before the said transfer is 15 years or less,

(b) an amount equal to the accumulated value of a member’s contributions to the scheme, which consist of additional voluntary contributions made by the member, may be transferred to one or more

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than one PRSA to which that member is the contributor.”,

- (iii) by the insertion in section 780 of the following after subsection (2):

“(2A) This section shall not apply to the extent that any repayment of contributions is transferred by the administrator of the scheme to the administrator of a PRSA, by way of contribution to a PRSA to which the employee is the contributor.”,

- (iv) by the insertion in section 784 of the following after subsection (2B) (inserted by the Finance Act, 2000):

“(2C) Notwithstanding anything contained in this Part, a retirement annuity contract shall not cease to be an approved contract because of any provision in law, whether or not contained in the contract, whereby the parties to the contract may cancel the contract and effect a transfer of assets into one or more than one PRSA of which the individual who is a party to that approved contract is the contributor.”,

and

- (v) by the insertion of the following after Chapter 2—

“CHAPTER 2A

Personal Retirement Savings Accounts

Interpretation and supplemental.

787A.—(1) In this Chapter, unless the context otherwise requires—

‘additional voluntary PRSA contributions’ means contributions made to a PRSA by an employee, who is a member of an approved scheme or of a statutory scheme, which are—

- (i) contributions made under a rule or part of a rule, as the case may be, of a retirement benefits scheme (in this definition referred to as the ‘main scheme’) which provides specifically for the payment of voluntary contributions to a PRSA by members of the main scheme, or
- (ii) contributions made under a separately arranged scheme approved by the Revenue Commissioners which is associated with the main scheme and which provides for voluntary contributions to a PRSA by members of the main scheme;

‘approved scheme’ has the same meaning as in Chapter 1 of this Part; Pr.2 S.4

‘approved retirement fund’ has the meaning assigned to it by section 784A;

‘approved minimum retirement fund’ has the meaning assigned to it by section 784C;

‘contract of employment’ 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 service for a third person (whether or not the third person is party to the contract),

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

‘contributor’ means an individual who enters into a PRSA contract with a PRSA provider and an individual shall be regarded as a contributor to a PRSA notwithstanding that all contributions are made by that individual’s employer;

‘director’, in relation to a company includes—

(a) in the case of a company the affairs of which are managed by a board of directors or similar body, a member of that board or body,

(b) in the case of a company the affairs of which are managed by a single director or similar person, that director or person,

(c) in the case of a company the affairs of which are managed by the members themselves, a member of that company,

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and includes a person who is to be or has been a director;

‘distribution’ has the same meaning as in the Corporation Tax Acts;

‘employee’—

(a) 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 Chapter, 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, 2001, or of a harbour authority, health board or vocational education committee shall be deemed to be an employee employed by the authority, board or committee, as the case may be), and

(b) in relation to a company, includes a director or other officer of the company and any other person taking part in the management of the affairs of the company;

‘employer’ 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, 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; Pr.2 S.4

'market value' shall be construed in accordance with section 548;

'PPS Number', in relation to an individual, means that individual's Personal Public Service Number within the meaning of section 223 of the Social Welfare (Consolidation) Act, 1993;

'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 and the expression 'PRSA' shall be construed accordingly;

'PRSA administrator' means the PRSA provider or a person to whom a PRSA provider delegates in pursuance of Part X of the Pensions Act, 1990, its administrative functions in relation to a PRSA, including a person appointed by the PRSA provider in accordance with section 787G(5);

'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;

'PRSA contract' means a contract entered into between a PRSA provider and a contributor in respect of a PRSA product;

'PRSA contribution' means a contribution within the meaning of Part X of the Pensions Act, 1990;

'PRSA product' means a PRSA product (within the meaning of Part X of the Pensions Act, 1990) that for the time being stands approved under section 94 of that Act;

'PRSA provider' has the same meaning as in Part X of the Pensions Act, 1990;

'relevant payment' in relation to a PRSA means any payment, including a distribution, made by reason of rights arising as a result of a PRSA contract and includes any annuity payable by reason of such rights;

'retirement annuity contract' means a contract approved by the Revenue

Commissioners in accordance with Chapter 2 of this Part;

‘retirement benefits scheme’ has the same meaning as in Chapter 1 of this Part;

‘specified individual’, in relation to a year of assessment, means an individual whose relevant earnings for the year of assessment were derived wholly or mainly from an occupation or profession specified in Schedule 23A;

‘statutory scheme’ has the same meaning as in Chapter 1 of this Part.

(2) Subject to subsection (1), a word or expression that is used in this Chapter and is also used in Part X of the Pensions Act, 1990 has, except where the context otherwise requires, the same meaning in this Chapter as it has in that Part.

Relevant earnings and net relevant earnings.

787B.—(1) For the purposes of this Chapter but subject to subsection (2), ‘relevant earnings’, in relation to an individual, means any income of the individual chargeable to tax for the year of assessment in question, being any of the following—

- (a) income arising in respect of remuneration from an office or employment of profit held by the individual,
- (b) income from any property which is attached to or forms part of the emoluments of any such office or employment of profit held by the individual, or
- (c) income which is chargeable under Schedule D and is immediately derived by the individual from the carrying on or exercise by the individual of his or her trade or profession either as an individual or, in the case of a partnership, as a partner personally acting in the partnership;

but does not include any remuneration from an investment company of which the individual is a proprietary director or a proprietary employee.

(2) For the purposes of this Chapter, Pr.2 S.4 the relevant earnings of an individual shall not be treated as the relevant earnings of his or her spouse, notwithstanding that the individual's income chargeable to tax is treated as his or her spouse's income.

(3) For the purposes of relief under this Chapter, an individual's relevant earnings shall be those earnings before giving effect to any deduction to be made from those earnings in respect of a loss or in respect of a capital allowance (within the meaning of section 2), and references to income in this Chapter (other than references to total income) shall be construed similarly.

(4) For the purposes of this Chapter, 'net relevant earnings', in relation to an individual and subject to subsections (5) to (7), means the amount of the individual's relevant earnings for the year of assessment in question less the amount of any deductions to be made from the relevant earnings in computing the individual's total income for that year, being either—

- (a) deductions in respect of payments made by the individual, or
- (b) deductions in respect of losses or of such allowances mentioned in subsection (3), being losses or allowances arising from activities, profits or gains of which would be included in computing relevant earnings of the individual or of the individual's spouse for the year of assessment.

(5) Where in any year of assessment for which an individual claims and is allowed relief under this Chapter there is to be made in computing the total income of the individual or of the individual's spouse a deduction in respect of any such loss or allowance of the individual referred to in subsection (4)(b), and the deduction or part of it is to be so made from income other than relevant earnings, then, the amount of the deduction made from that other income shall be treated as reducing the individual's net relevant earnings for subsequent years of assessment and shall be deducted as far as may be from those of the following year, whether or not

the individual claims or is entitled to claim relief under this Chapter for that year, and in so far as it cannot be so deducted, then from those of the next year, and so on.

(6) Where an individual's income for any year of assessment consists partly of relevant earnings and partly of other income, then, as far as may be, any deductions to be made in computing the individual's total income, and which may be treated in whole or in part either as made from relevant earnings or as made from other income, shall be treated for the purposes of this section as being made from those relevant earnings in so far as they are deductions in respect of any such loss referred to in subsection (4)(b) and otherwise as being made from that other income.

(7) An individual's net relevant earnings for any year of assessment shall be computed without regard to any relief to be given for that year under this Chapter either to the individual or to the individual's spouse.

(8) Notwithstanding anything in this section, for the purposes of relief under this Chapter an individual's net relevant earnings shall not exceed €254,000 but this subsection shall not apply as regards relief for additional voluntary PRSA contributions.

PRSAs —
method of
granting
relief for
PRSA
contributions.

787C.—(1) Subject to the provisions of this Chapter, relief from income tax shall be given in respect of contributions to a PRSA by an individual chargeable to tax in respect of relevant earnings from any trade, profession, office or employment carried on or held by that individual.

(2) Where relief is to be given under this Chapter in respect of any contribution made by an individual, the amount of that contribution shall, subject to this section, be deducted from or set off against the individual's relevant earnings for the year of assessment in which the contribution is paid.

(3) Where in relation to a year of assessment a contribution to a PRSA is made after the end of the year of assessment but on or before the specified return date for the chargeable period (within the meaning of Part 41) the payment may, if the individual so elects on or before that date, be treated for

the purposes of this section as paid in the earlier year (and not in the year in which it is paid); but where—

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- (a) the amount of that contribution, together with any contributions made by the individual in the year to which the assessment relates (or treated as so paid by virtue of any previous election under this subsection), exceeds the maximum amount of the reduction which may be made under this Chapter in the individual's relevant earnings for that year, or
- (b) the amount of that PRSA contribution itself exceeds the increase in that maximum amount which is due to taking into account the income on which the assessment is made,

the election shall have no effect as respects the excess.

(4) Where in any year of assessment a reduction or a greater reduction would be made under this section in the relevant earnings of an individual but for an insufficiency of net relevant earnings, the amount of the reduction which would be made but for that reason, less the amount of any reduction which is made in that year, shall be carried forward to the next year of assessment, and shall be treated for the purposes of relief under this Chapter as the amount of a qualifying contribution paid in that next year of assessment.

(5) If and in so far as an amount once carried forward under subsection (4) (and treated as the amount of a qualifying payment made in the next year of assessment) is not deducted from or set off against the individual's net relevant earnings for that year of assessment, it shall be carried forward again to the following year of assessment (and treated as the amount of a qualifying payment made in that year of assessment), and so on for succeeding years.

(6) Where relief under this Chapter for any year of assessment is claimed and allowed (whether or not relief is

then to be given for that year), and afterwards there is made any additional assessment, alteration of an assessment, or other adjustment of the claimant's liability to tax, there shall be made also such adjustments, if any, as are consequential thereon in the relief allowed or given under this Chapter for that or any subsequent year of assessment.

(7) Where relief under this Chapter is claimed and allowed for any year of assessment in respect of any contribution, relief shall not be given in respect of that contribution under any other provision of the Income Tax Acts for the same or a later year of assessment.

Claims to relief.

787D.—(1) Relief shall not be given under this Chapter in respect of a contribution to a PRSA except on a claim made to and allowed by the inspector, but any person aggrieved by any decision of the inspector on any such claim may, on giving notice in writing to the inspector within 21 days after the notification to that person of the decision, appeal to the Appeal Commissioners.

(2) The Appeal Commissioners shall hear and determine an appeal to them under subsection (1) as if it were an appeal to them against an assessment to income tax, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall, with the necessary modifications, apply accordingly.

Extent of relief.

787E.—(1) Subject to this section, the amount which may be deducted or set off in any year in respect of contributions made by, or deemed in accordance with subsection (2) to have been made by, an individual to one or more PRSA products, hereafter in this section referred to as the maximum allowable contribution, shall not be more than—

(a) in the case of an individual who at any time during the year of assessment was of the age of 30 years or over but had not attained the age of 40, 25 per cent,

(b) in the case of an individual who at any time during the

year of assessment was of Pr.2 S.4
the age of 40 years or over
or who for the year of
assessment was a specified
individual, 30 per cent,

(c) in any other case, 15 per cent,

of the individual's net relevant earnings
for that year of assessment.

(2) Where for a year of assessment a
sum is chargeable to tax in accordance
with section 118(5) in respect of a con-
tribution by an employer to a PRSA,
the employee shall, in addition to any
contributions actually made by the
employee, be deemed, for the purposes
of this section, to have made contri-
butions to the said PRSA in that year
of assessment equal to such sum.

(3) Where during a year of assess-
ment an individual is a member either
of an approved scheme or of a statutory
scheme (hereafter in this subsection
referred to as a 'scheme') in relation to
an office or employment, the following
provisions shall apply, that is to say—

(a) relief shall be allowed under
this Chapter as regards rel-
evant earnings from that
office or employment only
in respect of contributions
that are additional volun-
tary PRSA contributions,

(b) notwithstanding subsection
(1), the amount which may
be deducted or set off in
that year of assessment in
respect of such contri-
butions against the individ-
ual's net relevant earnings
from that office or employ-
ment shall not be more
than—

(i) in the case of an individ-
ual who at any time
during the year of
assessment was of the
age of 30 years or over
but had not attained
the age of 40 years, 20
per cent,

(ii) in the case of an individ-
ual who at any time
during the year of
assessment was of the
age of 40 years or over

but had not attained the age of 50 years, 25 per cent,

(iii) in the case of an individual who at any time during the year of assessment was of the age of 50 years or over, 30 per cent, and

(iv) in any other case, 15 per cent,

of the remuneration for that year of the office or employment in respect of which the contributions are made, reduced by the amount of any contributions of the individual in the year to any scheme related to the office or employment of which he or she is a member,

(c) the amount of the net relevant earnings of the individual in respect of which any other PRSA contributions are to be deducted or set off shall be reduced by the amount of the remuneration from such office or employment, and

(d) notwithstanding sections 787K and 787L, the aggregate benefits under—

(i) all schemes, of which the individual is a member, related to the office or employment, and

(ii) all Personal Retirement Savings Accounts to which the individual is the contributor of additional voluntary PRSA contributions,

shall not exceed the maximum benefits that could be provided for the individual by reference to section 772.

(4) Notwithstanding subsection (1), where the maximum allowable contribution would but for this subsection be less than €1,525, subsection (1) shall apply as if the said maximum allowable contribution were €1,525.

(5) Where an individual is entitled to relief for a year of assessment under Chapter 2 of this Part in respect of a qualifying premium, the maximum allowable contribution for that year of assessment, other than additional voluntary PRSA contributions, shall be reduced by the amount of such relief.

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Transfers to PRSAs.

787F.—To the extent that any contribution to one or more than one PRSA is made from—

- (a) the value of accrued rights under a retirement annuity contract,
- (b) the value of accrued rights under an approved scheme or a statutory scheme, or
- (c) a repayment of contributions to which section 780(2) would, but for subsection (2A) (inserted by the *Pensions (Amendment) Act, 2002*) of that section, otherwise apply,

it shall not be taken into account for the purposes of section 787E and no relief shall be allowed under this Chapter in respect of such a contribution.

Taxation of payments from a PRSA.

787G.—(1) Subject to subsections (2), (3) and (4)—

- (a) the amount or value of any assets that a PRSA administrator makes available to, or pays to, a PRSA contributor or to any other person, including any annuity where the whole or part of the consideration for the grant of the annuity consisted of assets which, at the time of application of the said assets for the purchase of the annuity, were PRSA assets, shall be treated as a payment to the PRSA contributor of emoluments to which Schedule E applies and, accordingly, the provisions of Chapter 4 of Part 42 shall apply to any such payment or amount treated as a payment, and
- (b) the PRSA administrator shall deduct tax from the assets

at the higher rate for the year of assessment in which the assets are made available unless the PRSA administrator has received from the Revenue Commissioners a certificate of tax credits and standard rate cut-off point or a tax deduction card for that year in respect of the PRSA contributor.

(2) A PRSA administrator shall be liable to pay to the Collector-General the income tax which the PRSA administrator is required to deduct from any assets of a PRSA by virtue of this section and the individual beneficially entitled to assets held in a PRSA, including the personal representatives of a deceased individual who was so entitled prior to that individual's death, shall allow such deduction; but where there are no funds or insufficient funds available out of which the PRSA administrator may satisfy the tax required to be deducted, the amount of such tax for which there are insufficient funds available shall be a debt due to the PRSA administrator from the individual beneficially entitled to the assets in the PRSA or from the estate of the deceased individual, as the case may be.

(3) Subsection (1) shall not apply where the assets made available from a PRSA are—

(a) an amount made available, at the time assets of the PRSA are first made available to the PRSA contributor, by way of lump sum not exceeding 25 per cent of the value of the assets in the PRSA at that time or, in the case of a PRSA to which additional voluntary PRSA contributions were made, an amount not exceeding the amount that may be paid by way of lump sum in accordance with section 772(3)(f) in conjunction with the rules of the scheme,

(b) an amount transferred to an approved retirement fund or to an approved minimum

retirement fund in accordance with section 787H, Pr.2 S.4

(c) an amount made available to the personal representatives of the PRSA contributor in accordance with section 787K(1)(c)(iii),

(d) a transfer of assets from a PRSA to another PRSA, an approved scheme or a statutory scheme where—

(i) in relation to that other PRSA, approved scheme or statutory scheme the contributor to the first-mentioned PRSA is either a contributor or a member as the case may be, and

(ii) the first-mentioned PRSA is not a PRSA in respect of which a lump sum to which paragraph (a) applies has been paid or made available.

(4) For the purposes of this Chapter, the circumstances in which a PRSA administrator shall be treated as making assets of a PRSA available to an individual shall include—

(a) the making of a relevant payment by the PRSA administrator,

(b) any circumstances whereby assets cease to be assets of the PRSA, and

(c) any circumstances whereby assets cease to be beneficially owned by the contributor to the PRSA.

(5) At any time when a PRSA administrator or a PRSA provider, as the case may be—

(a) is not resident in the State, or

(b) is not trading in the State through a fixed place of business,

the PRSA provider shall ensure that there is a person resident in the State and appointed by the PRSA provider

to be responsible for the discharge of all duties and obligations relating to Personal Retirement Savings Accounts which are imposed on the PRSA administrator or the PRSA provider by virtue of this Chapter and shall notify the Revenue Commissioners of the identity of that person and the fact of that person's appointment.

(6) Notwithstanding subsection (1), where assets of a PRSA are treated under subsection (4) as having been made available to an individual, the provisions of section 784A(4) shall apply as if assets of that PRSA at the time of death of that individual were assets of an approved retirement fund.

Approved Retirement Fund option.

787H.—(1) At any time assets of a PRSA are allowed to be made available to a beneficiary in accordance with section 787K, that individual may opt to have those assets transferred to an approved retirement fund and the PRSA administrator shall make that transfer.

(2) The assets that a PRSA administrator shall transfer to an approved retirement fund in accordance with subsection (1) shall be the assets available in the PRSA at the time the election under that subsection is made less—

(a) any lump sum the PRSA administrator is permitted to pay without deduction of tax in accordance with section 787G(3)(a), and

(b) any amount the PRSA administrator is required to transfer to an approved minimum retirement fund in accordance with section 784C, by virtue of subsection (3).

(3) Where an individual opts in accordance with subsection (1), sections 784A to 784D shall apply as if that option were an option in accordance with section 784(2A).

Exemption of PRSA.

787I.—(1) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of income derived from investments or deposits of a PRSA if, or to such extent as the Revenue Commissioners are satisfied that, it is income from investments or

deposits held for the purposes of the Pr.2 S.4 PRSA.

(2) (a) In this subsection, ‘financial futures’ and ‘traded options’ mean respectively financial futures and traded options for the time being dealt in or quoted on any futures exchange or any stock exchange, whether or not that exchange is situated in the State.

(b) For the purposes of subsection (1), a contract entered into in the course of dealing in financial futures or traded options shall be regarded as an investment.

(3) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of underwriting commissions if, or to such extent as the Revenue Commissioners are satisfied that, the underwriting commissions are applied for the purposes of the PRSA, and in respect of which the administrator of the PRSA would, but for this subsection, be chargeable to tax under Case IV of Schedule D.

Allowance to employer.

787J.—(1) For the purposes of this section—

(a) a reference to a ‘chargeable period’ shall be construed as a reference to a ‘chargeable period or its basis period’ (within the meaning of section 321), and

(b) in relation to an employer whose chargeable period is a year of assessment, ‘basis period’ means the period on the profits or gains of which income tax for that year of assessment is to be finally computed for the purposes of Case I or II of Schedule D in respect of the trade, profession or vocation of the employer.

(2) Subject to subsection (3), any sum paid by an employer by way of contribution under a PRSA contract of an employee shall for the purposes of Case I or II of Schedule D and of sections 83 and 707(4) be allowed to be

deducted as an expense, or expense of management, incurred in the chargeable period in which the sum is paid but no other sum shall for those purposes be allowed to be deducted as an expense, or expense of management, in respect of the making, or any provision for the making, of any contributions under the PRSA contract.

(3) The amount of an employer's contributions which may be deducted under subsection (2) shall not exceed the amount contributed by that employer to Personal Retirement Savings Accounts in respect of employees in a trade or undertaking in respect of the profits of which the employer is assessable to income tax or corporation tax, as the case may be.

Revenue approval of PRSA products.

787K.—(1) Subject to subsection (2) and to sections 787H and 787L, the Revenue Commissioners shall not approve, for the purposes of section 94(3) of the Pensions Act, 1990, a PRSA product (within the meaning of Part X of that Act) unless it appears to them to satisfy the following conditions—

- (a) that the arrangements in respect of that product will be entered into by an individual with a person lawfully carrying on in the State the business of a PRSA provider,
- (b) that it includes provision securing that no annuity payable under it shall be capable in whole or in part of surrender, commutation or assignment, and
- (c) that it does not—
 - (i) provide for the payment of any sum or the making available of PRSA assets, by that person during the life of the individual of any sum except—
 - (I) sums payable by means of annuity to the individual,
 - (II) a sum payable without deduction of tax by way of lump

sum, in accordance with section 787G(3)(a), Pr.2 S.4

- (III) assets transferred to an approved retirement fund or to an approved minimum retirement fund, in accordance with section 787H(1), or
- (IV) assets made available to the PRSA contributor by the PRSA administrator, where the PRSA administrator retains such assets as would be required to be transferred to an approved minimum retirement fund if the PRSA contributor opted in accordance with section 787H(1),
- (ii) provide for the annuity or other sums payable to the individual to commence or for assets to be made available to the individual before the individual attains the age of 60 years or after he or she attains the age of 75 years,
- (iii) provide for the payment by that person of any other sums except sums payable by means of annuity to the individual's widow or widower and any sums which, in the event of no annuity or other benefits becoming payable either to the individual or to a widow or widower, are payable to the individual's personal representatives by way of transfer of the PRSA assets to the estate of the PRSA contributor,

- (iv) provide for the annuity, if any, payable to a widow or widower of the individual to be of a greater annual amount than that paid or payable to the individual, or
- (v) provide for the payment of any annuity otherwise than for the life of the annuitant.

(2) The Revenue Commissioners may, if they think fit and subject to any conditions they think proper to attach to the approval under section 94 of the Pensions Act, 1990, approve, for the purposes of section 94(3) of that Act, a product otherwise satisfying the conditions referred to in subsection (1), notwithstanding that the product provides for one or more of the following matters—

- (a) the payment to the individual of an annuity or other sums or the making available of assets of the PRSA to the individual commencing before he or she attains the age of 60 years, where the annuity or other sums are payable on the individual becoming permanently incapable through infirmity of mind or body of carrying on his or her own occupation or any occupation of a similar nature for which he or she is trained or fitted,
- (b) in the case of an individual being an employee, the payment to the individual of an annuity or other sums or the making available of assets of the PRSA to the individual commencing on retirement at age 50 or over,
- (c) where the individual's occupation is one in which persons customarily retire before attaining the age of 60 years, the payment of the annuity or other sums to commence or the making available of assets of the PRSA to commence before the individual attains that

age (but not before he or she attains the age of 50 years),

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(d) the annuity payable to any person to continue for a term certain (not exceeding 10 years) notwithstanding his or her death within that term, or the annuity payable to any person to terminate, or be suspended, on marriage (or remarriage) or in other circumstances,

(e) in the case of an annuity which is to continue for a term certain, the annuity to be assignable by will and, in the event of any person dying entitled to the annuity, the annuity to be assignable by his or her personal representatives in the distribution of the estate so as to give effect to a testamentary disposition, or to the rights of those entitled on intestacy or to an appropriation of the annuity to a legacy or to a share or interest in the estate.

(3) Where, having regard to the provisions of this Chapter, the Revenue Commissioners are, at any time, of the opinion that approval of a product under section 94 of the Pensions Act, 1990, ought to be withdrawn they shall give notice in writing to the Pensions Board of that opinion and such a notice shall specify the grounds on which they formed that opinion.

(4) Where approval of a product is withdrawn pursuant to section 97 of the Pensions Act, 1990, there shall be made such assessments or amendment of assessments as may be appropriate for the purpose of withdrawing any relief given under this Chapter consequent on the grant of the approval.

Transfers to
and from
PRSA.

787L.—(1) In addition to the requirements imposed by section 787K for the granting of such approval, the Revenue Commissioners shall not approve, for the purposes of section 94(3) of the Pensions Act, 1990, a PRSA product (within the meaning of Part X of that Act) unless the product provides that the individual who has

entered into the arrangements in respect of it may require a sum representing the value of his or her accrued rights under the product—

(a) to be paid by the person with whom the individual has entered into such arrangements to such other person as the individual may specify, and

(b) to be applied by such other person in payment either of a contribution under a PRSA contract made between the individual and that other person or a contribution under an approved scheme of which the individual is a member.

(2) Without prejudice to subsection (1), the Revenue Commissioners shall not approve, for the purposes of section 94(3) of the Pensions Act, 1990, a PRSA product (within the meaning of Part X of that Act) unless the product provides that the PRSA provider may receive contributions from—

(a) another PRSA in respect of which the contributor to the first-mentioned PRSA is the contributor,

(b) either an approved scheme or a statutory scheme in respect of which the contributor to the first-mentioned PRSA is a member, or

(c) a contract approved by the Revenue Commissioners in accordance with Chapter 2 of this Part to which the contributor to the first-mentioned PRSA is a party.

(3) References in subsection (1) to the individual by whom a contract is made include references to any widow, widower or dependant having accrued rights under the contract.”,

(vi) in section 788(2)—

(I) by the substitution in paragraph (e) of “capital,” for “capital), or”,

(II) by the substitution in paragraph (f) of “784C, or” for “784C.”, and

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(III) by the insertion of the following paragraph after Pr.2 S.4 paragraph (f):

“(g) any annuity where the whole or part of the consideration for the grant of the annuity consisted of assets which, at the time of the application of the said assets for the purchase of the annuity, were PRSA assets, within the meaning of Chapter 2A of this Part.”,

(e) in part 42, by the substitution, in subparagraph (ii) of paragraph (g) (inserted by the Finance Act, 2001) of section 986(1) of “Chapter 1 or Chapter 2A of Part 30” for “Chapter 1 of Part 30”, and

(f) in Schedule 2B, by the insertion of the following after paragraph 9:

“Declaration of PRSA Administrator

9A. The declaration referred to in section 739D(6)(i) is a declaration in writing to the investment undertaking which—

- (a) is made by a PRSA administrator (in this paragraph referred to as the ‘declarer’) in respect of units which are assets in a PRSA,
- (b) is signed by the declarer,
- (c) is made in such form as may be prescribed or authorised by the Revenue Commissioners,
- (d) declares that, at the time when the declaration is made, the units in respect of which the declaration is made—
 - (i) are assets of a PRSA, and
 - (ii) are managed by the declarer for the individual who is beneficially entitled to the units,
- (e) contains the name, address and tax reference number of the individual referred to in subparagraph (d),
- (f) contains an undertaking by the declarer that if the units cease to be assets of the PRSA, including a case where the units are transferred to another PRSA, the declarer will notify the investment undertaking accordingly, and
- (g) contains such other information as the Revenue Commissioners may reasonably require for the purposes of Chapter 1A of Part 27.”.

PART 3

PENSIONS OMBUDSMAN

5.—The Principal Act is amended by the insertion of the following Part after Part X (inserted by this Act):

Insertion of Part XI
in Principal Act.

“PART XI

PENSIONS OMBUDSMAN

Interpretation (Part XI).

126.—(1) In this Part—

‘actual or potential beneficiary’ means a member, an external member, any person who has been a member, any surviving dependant of a deceased member, any person claiming to be a member or a surviving dependant of a deceased member, a contributor to a PRSA, a personal representative of a deceased member or deceased contributor or a widow or widower of a deceased member or deceased contributor;

‘civil servant’ has the meaning assigned to it by the Civil Service Regulation Act, 1956;

‘dependant’ means a dependant within the meaning of the rules of the scheme in question;

‘establishment day’ means the day on which *section 5* of the *Pensions (Amendment) Act, 2002*, commences;

‘party’ in relation to a complaint or reference under this Part, means—

- (a) a person by whom, or on whose behalf, the complaint or reference was made,
- (b) a person responsible for the management of the scheme or PRSA to which the complaint or reference relates;

‘superannuation benefit’ means a pension, gratuity or other allowance payable on resignation, retirement or death.

(2) In this Part, references to an act include references to an omission and references to the doing of an act include references to the making of an omission.

(3) For the purposes of this Part, the following persons shall be deemed to be responsible for the management of an occupational pension scheme:

- (a) any trustee of the scheme;
- (b) any former trustee of the scheme;
- (c) any employer to whom the scheme relates;
- (d) any former employer to whom the scheme relates; or
- (e) such other person or category of persons as may be prescribed.

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(4) For the purposes of this Part, the following persons shall be deemed to be responsible for the management of a PRSA: Pr.3 S.5

- (a) any provider;
- (b) any former provider;
- (c) any employer;
- (d) any former employer; or
- (e) such other person or category of persons as may be prescribed.

Establishment of Pensions Ombudsman.

127.—On the establishment day there shall stand established the office of Pensions Ombudsman and the holder of the office shall be known as the Pensions Ombudsman.

Appointment of Pensions Ombudsman.

128.—(1) The Pensions Ombudsman shall be appointed by the Minister and, subject to the provisions of this Act, he shall hold office on such terms and conditions as the Minister may, with the consent of the Minister for Finance, determine.

(2) A person appointed to be the Pensions Ombudsman whose term of office expires by effluxion of time shall be eligible for reappointment as the Pensions Ombudsman.

Term of office of Pensions Ombudsman.

129.—(1) Subject to the provisions of this section, a person appointed to be the Pensions Ombudsman shall hold office for a term of 6 years.

(2) (a) The Minister may at any time remove the Pensions Ombudsman from office if, in the Minister's opinion, the Pensions Ombudsman has become incapable through ill-health of performing his functions, or has committed stated misbehaviour, or his removal appears to the Minister to be necessary for the effective performance of the functions of the office.

(b) If the Pensions Ombudsman is removed from office under this subsection, the Minister shall cause to be laid before each House of the Oireachtas a statement of the reasons for the removal.

(3) The Pensions Ombudsman may at any time resign his office by letter addressed to the Minister.

(4) A person appointed to be the Pensions Ombudsman shall in any case vacate the office on attaining the age of 67 years.

(5) (a) Where a person who holds the office of Pensions Ombudsman is—

- (i) nominated as a member of Seanad Éireann,
- (ii) nominated as a candidate for election to either House of the Oireachtas, the European Parliament or a local authority,
- (iii) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament, or
- (iv) co-opted to fill a casual vacancy in the membership of a local authority,

he shall cease to hold the office of Pensions Ombudsman.

(b) A person who is for the time being entitled—

- (i) under the standing orders of either House of the Oireachtas to sit therein,
- (ii) under the rules of procedure of the European Parliament to sit therein, or
- (iii) under the standing orders of a local authority to sit as a member thereof,

shall, while so entitled, be disqualified from holding the office of Pensions Ombudsman.

(6) A person who holds the office of Pensions Ombudsman shall not hold any other office or employment in respect of which emoluments are payable.

Salary and superannuation.

130.—(1) There shall be paid to the holder of the office of Pensions Ombudsman such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.

(2) The Minister shall, with the consent of the Minister for Finance, make and carry out such scheme or schemes for the granting of superannuation benefits to or in respect of the Pensions Ombudsman as he may think fit.

(3) Every such scheme shall fix the conditions for eligibility for payment of superannuation

benefits under it and different conditions may be fixed by reference to the different circumstances pertaining to the particular officeholder concerned or his dependants at or before the time the question of eligibility for such payment falls to be considered. Pr.3 S.5

(4) The Minister may at any time, with the consent of the Minister for Finance, make and carry out a scheme or schemes amending or revoking a scheme under this section.

(5) No superannuation benefit shall be granted by the Minister nor shall any other arrangement be entered into by the Minister for the provision of such a benefit to or in respect of the Pensions Ombudsman otherwise than in accordance with a scheme under this section or, if the Minister, with the consent of the Minister for Finance, sanctions the granting of such a benefit, in accordance with that sanction.

(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 twenty-one 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.

(7) 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.

Functions of
Pensions
Ombudsman.

131.—(1) The Pensions Ombudsman shall be independent in the performance of his functions.

(2) The Pensions Ombudsman may investigate and determine the following complaints and disputes—

(a) a complaint made to him by or on behalf of an actual or potential beneficiary of an occupational pension scheme or PRSA, who alleges that he has sustained financial loss occasioned by an act of maladministration done by or on behalf of a person responsible for the management of that scheme or, as appropriate, PRSA;

(b) any dispute of fact or law that arises in relation to an act done by or on behalf of a person responsible for the management of the scheme or, as appropriate, PRSA, and that is referred to

him by or on behalf of the actual or potential beneficiary; and

- (c) any other complaint or dispute falling within a category of complaint or dispute prescribed by regulations made by the Minister, with the consent of the Minister for Finance, as a category of complaint or dispute to which this subsection shall apply.

(3) A complaint or reference under this section shall be made to the Pensions Ombudsman in writing in such form as may from time to time be prescribed by regulations made by the Minister, after consultation with the Minister for Finance.

(4) A complaint or reference under this section shall be made to the Pensions Ombudsman—

- (a) within whichever of the following periods is the last to expire—

- (i) 6 years from the date of the act giving rise to the complaint or reference, or

- (ii) 3 years from the earlier of the following 2 dates, namely, the date on which the person making the complaint or reference first became aware of the said act and the date on which that person ought to have become aware of that act, or

- (b) within such longer period as the Pensions Ombudsman may allow if it appears to him that there are reasonable grounds for requiring a longer period and that it would be just and reasonable so to extend the period.

(5) References in this section to a complaint or dispute shall be construed as including references to a complaint or dispute the act giving rise to which was done prior to the establishment day if, but only if, that act was done within the period of 6 years prior to the passing of the *Pensions (Amendment) Act, 2002* or between that passing and the establishment day, as the case may be.

(6) The Pensions Ombudsman shall not investigate or determine a complaint or dispute unless the procedures referred to in section 132 have been resorted to and exhausted in accordance with their terms.

(7) The Pensions Ombudsman shall not investigate or determine a complaint or dispute—

- (a) if, at the time of the making of the complaint or the reference of the dispute, there are proceedings before any court in respect of any matter which would be the subject of the investigation;
- (b) if the scheme or PRSA is of a description that is excluded from the jurisdiction of the Pensions Ombudsman by regulations made by the Minister under this subsection; or
- (c) if and to the extent that the complaint or dispute, or any matter arising in connection with the complaint or dispute, is of a description that is excluded from the jurisdiction of the Pensions Ombudsman by regulations made by the Minister under this subsection.

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(8) Where a question arises as to whether the Pensions Ombudsman has jurisdiction under this Part to investigate a complaint or dispute, such question shall be determined by the Pensions Ombudsman, whose decision shall be final.

(9) The Pensions Ombudsman shall have such powers as are necessary for or incidental to the performance of his functions.

(10) The Pensions Ombudsman may perform any of his functions, other than the powers conferred on the Pensions Ombudsman by section 139, through any member of his staff duly authorised by the Pensions Ombudsman in that behalf.

Procedures for internal resolution of disputes.

132.—(1) The Minister, with the consent of the Minister for Finance, may by regulations require—

- (a) the trustees of a scheme, and
(b) a PRSA provider,

to establish procedures for dealing with complaints made by, and resolving disputes arising between, prescribed persons in relation to prescribed matters concerning the scheme or a PRSA provided by such a provider, as the case may be.

(2) Without prejudice to the generality of subsection (1), regulations under this section may—

- (a) require procedures as aforesaid to comprise specified steps (including, as the Minister considers appropriate, the making of an application for a determination to be made in relation to the complaint or dispute, the conducting of a hearing in relation to the matter

concerned and the making of a determination in relation to the matter),

- (b) require one or more of the said steps to be taken or completed within a specified period,
- (c) require the provision of information in relation to the existence of those procedures and how they may be availed of, and
- (d) prescribe such other requirements as the Minister considers necessary or expedient for the purpose of enabling complaints or disputes referred to in subsection (1) to be dealt with or resolved.

(3) Without prejudice to section 5(2), regulations under subsection (1) may, as respects schemes, specify different requirements by reference to the class of scheme concerned (being a class defined in the regulations by reference to the number of members of the scheme or such other matters as the Minister considers appropriate).

(4) A determination made pursuant to procedures prescribed under this section shall not be binding on any person unless, upon or after the making of the determination, he assents, in writing, to be bound by it.

Consultants and advisers.

133.—Subject to the prior approval of the Minister, the Pensions Ombudsman may from time to time engage such consultants or advisers as he may consider necessary for the performance of his function, other than the powers conferred on the Pensions Ombudsman by section 139, and any fees due to a consultant or adviser engaged under this section shall be paid by the Pensions Ombudsman out of moneys at his disposal.

Exchange of information.

134.—Notwithstanding anything contained in any enactment, information held by the Pensions Ombudsman for the purposes of this Part may be transferred by the Pensions Ombudsman to the Board and information held by the Board for the purposes of this Act may be transferred by the Board to the Pensions Ombudsman.

Death or disability of actual or potential beneficiary.

135.—(1) Where an actual or potential beneficiary dies or is a minor or is otherwise unable to act for himself, then—

- (a) any complaint or dispute (whenever arising but subject to subsections (4) and (5) of section 131) which the actual or potential beneficiary might otherwise have made or referred under this Part

may be made or referred by the appropriate person, and

- (b) anything in the process of being done by or in relation to the actual or potential beneficiary under or by virtue of this Part may be continued by or in relation to the appropriate person,

and any reference in this Part, except this section, to an actual or potential beneficiary shall be construed as including a reference to the appropriate person.

(2) For the purposes of subsection (1) 'the appropriate person' means—

- (a) where the actual or potential beneficiary has died, his personal representative; or
- (b) in any other case, a member of his family, or some other person who is considered by the Pensions Ombudsman to be a suitable person to represent him.

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

136.—Where—

- (a) a complaint has been made or a dispute referred to the Pensions Ombudsman; and
- (b) any party to the complaint or reference subsequently commences proceedings in any court against any other party to the complaint or reference in respect of any of the matters which are the subject of the complaint or reference,

then, any party to the proceedings may at any time after an appearance has been entered, and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings and the court, if it is satisfied that—

- (i) there is no sufficient reason why the matter in respect of which the said proceedings have been commenced should not be investigated by the Pensions Ombudsman; and
- (ii) the applicant was at the time when the proceedings were commenced and still remains ready and willing to do all things necessary for the proper conduct of the investigation,

shall make an order staying the proceedings.

Powers of Pensions Ombudsman in respect of investigations.

137.—(1) The Pensions Ombudsman may, for the purposes of an investigation by him under this Part, require any person who, in the opinion of

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the Pensions Ombudsman, is in possession of information, or has a document or thing in his power or control, that is relevant to the investigation to furnish that information, document or thing to the Pensions Ombudsman and, where appropriate, may require the person to attend before him for that purpose and the person shall comply with such a requirement.

(2) The Pensions Ombudsman shall, for the purposes of an investigation by him under this Part, have all the powers, rights and privileges vested in the High Court or a judge thereof on the hearing of an action in respect of the examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad).

(3) Subject to the provisions of this Part, a person to whom a requirement is addressed under this section shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

(4) A person shall not by act or omission obstruct or hinder the Pensions Ombudsman in the performance of his functions or do any other thing which would, if the Ombudsman were a court having power to commit for contempt of court, be contempt of such court.

(5) If it appears to the Pensions Ombudsman that a person has failed to comply with a requirement made of him pursuant to the exercise by the Ombudsman of his powers under subsection (1) or (2), the Pensions Ombudsman may apply to the Circuit Court for an order under subsection (6).

(6) Subject to subsection (7), if, on an application under subsection (5), the Circuit Court is satisfied as to the failure of the person concerned to comply with the requirement in question, the Circuit Court may make an order requiring that person to comply with the requirement.

(7) If, on an application under subsection (5), the Circuit Court is of opinion that the requirement in question purports to require the person concerned—

(a) to produce any documents or thing, or

(b) to furnish information,

for which that person is entitled to claim legal professional privilege, the Circuit Court shall set aside the requirement.

(8) The Pensions Ombudsman may, if he thinks fit, pay to the person affected by an action in respect of which an investigation is held by the Pensions Ombudsman under this Part and to any

other person who attends or furnishes information for the purposes of the investigation— Pr.3 S.5

- (a) sums in respect of travelling and subsistence expenses properly incurred by them, and
- (b) allowances by way of compensation for loss of their time,

of such amount as may be prescribed by the Minister, after consultation with the Minister for Finance.

(9) A statement or admission made by a person in an investigation under this Part by the Pensions Ombudsman shall not be admissible as evidence against that person in any criminal proceedings.

(10) The Pensions Ombudsman may, of his own volition or at the request of a party to a complaint or reference, state a case to the High Court on a point of law.

Conduct of investigations.

138.—(1) The Minister may, with the consent of the Minister for Finance, make regulations with respect to the procedure that is to be adopted in connection with the making of complaints, the reference of disputes, and the conduct of investigations under this Part.

(2) Subject to the provisions of this Part and regulations thereunder, the procedure for the making of complaints, the reference of disputes, and the conduct of investigations under this Part shall be such as the Pensions Ombudsman considers appropriate in all the circumstances of the case, and he may, in particular, obtain information from such persons and in such manner, and make such enquiries, as he thinks fit.

(3) Where the Pensions Ombudsman proposes to conduct an investigation into a complaint made or dispute referred under this Part, he shall give—

- (a) any person (other than the person by whom or on whose behalf the complaint or reference was made) responsible for the management of the scheme or PRSA to which the complaint or reference relates,
- (b) any other person against whom allegations are made in the complaint or reference, and
- (c) any other person whose interests, in the opinion of the Pensions Ombudsman, might be adversely affected by any eventual determination he makes in relation to the complaint or dispute,

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an opportunity to comment on any allegations contained in the complaint or reference.

Determinations of Pensions Ombudsman.

139.—(1) On the investigation of a complaint or reference under this Part, the Pensions Ombudsman shall make a determination in relation to the complaint or dispute, and may in the determination give to the parties concerned such directions as the Pensions Ombudsman considers necessary or expedient for the satisfaction of the complaint or the resolution of the dispute.

(2) A direction under subsection (1) shall not require either—

(a) an amendment of the rules of a scheme or the conditions of a PRSA contract, or

(b) the substitution of the decision of the Pensions Ombudsman for that of the trustees of a scheme in relation to the exercise by the trustees of a discretionary power under the rules of the scheme.

(3) Subject to subsection (4), the Pensions Ombudsman may under subsection (1) order such redress, including financial redress, for the party concerned as he considers appropriate, having regard to all the circumstances and to the provisions of this Part, and specifies.

(4) Any financial redress under subsection (3) shall be of such amount as the Pensions Ombudsman deems just and equitable having regard to all the circumstances but shall not exceed any actual loss of benefit under the scheme or PRSA.

(5) The determination of the Pensions Ombudsman shall be in writing and shall be communicated to the parties by the Pensions Ombudsman.

(6) If the Pensions Ombudsman considers it appropriate to do so in any particular case, he may publish, in such form and manner as he thinks fit, a report in relation to any investigation under this Part and of the result of that investigation.

(7) For the purpose of the law of defamation, the publication by the Pensions Ombudsman of any report under subsection (6) shall be absolutely privileged.

Appeal to High Court from determinations of Pensions Ombudsman.

140.—(1) A party to an investigation before the Pensions Ombudsman under this Part may appeal to the High Court from a determination of the Pensions Ombudsman within 21 days from the date of the determination.

(2) The High Court, on the hearing of an

appeal under this section, may, as it thinks fit, Pr.3 S.5
annul the determination concerned, confirm the
determination or confirm the determination sub-
ject to such modifications as it considers
appropriate.

Enforcement of
determinations of
Pensions
Ombudsman.

141.—(1) (a) If a party fails or refuses to comply with a determination of the Pensions Ombudsman under this Part ('a determination'), the Circuit Court shall, on application to it in that behalf by—

(i) the other party concerned,
or

(ii) the Minister, if he is of opinion that it is appropriate to do so having regard to all the circumstances,

make an order directing that party to carry out the determination in accordance with its terms.

(b) In paragraph (a), the reference to a determination is a reference to such a determination in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought or, if such an appeal has been brought, it has been abandoned.

(2) Notwithstanding subsection (1), where, in proceedings under that subsection, the Circuit Court is satisfied that, owing to lapse of time, it would not be possible to comply with an order under that subsection, that Court shall make an order providing for such redress as it considers appropriate having regard to the provisions of this Part and all the circumstances.

(3) In an order under this section providing for the payment of financial redress by any person, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the person concerned to pay to the actual or potential beneficiary concerned interest on the payment at the rate referred to in section 22 of the Courts Act, 1981, in respect of the whole or any part of the period beginning 4 weeks after the date on which the determination concerned is communicated to the parties and ending on the date of the order.

(4) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the relevant member or, as appropriate, contributor ordinarily resides.

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Notices.

142.—Subsections (2), (3) and (4) of section 91 shall apply with respect to the mode in which a notice, direction or other document under this Part or regulations thereunder may be addressed to a person and served on or given to him in the same manner as they apply with respect to the mode in which those things may be done in relation to a notice, direction or other document under Part X or regulations thereunder.

Accounts and audits of Pensions Ombudsman.

143.—(1) The Pensions Ombudsman shall keep in such form as may be approved of by the Minister with the concurrence of the Minister for Finance all proper and usual accounts of all moneys received or expended by the Pensions Ombudsman, 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, not later than such day after the end of the financial year of the Pensions Ombudsman to which they relate as the Minister may specify, 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 accounts shall be presented to the Minister as soon as may be after the completion of the said audit and the Minister shall cause copies of each of the documents aforesaid to be laid before each House of the Oireachtas.

Reports and information to Minister.

144.—(1) The Pensions Ombudsman shall furnish to the Minister such information regarding his 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 Pensions Ombudsman, but not later than 6 months thereafter, the Pensions Ombudsman shall make a report to the Minister of his activities during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

(3) (a) Before the expiry of 12 months from the establishment day, the Pensions Ombudsman shall, with respect to his activities in the period referred to in paragraph (b), adopt a statement of strategy (which shall include a plan with respect to the manner in which he proposes to carry on those activities) and submit the statement to the Minister.

(b) The period mentioned in paragraph (a) is the period ending on the day on

which the statement of strategy under subsection (4)(a) is submitted to the Minister. Pr.3 S.5

(4) (a) Before the—

- (i) expiry of 3 years from the submission to the Minister of the statement of strategy referred to in subsection (3), and
- (ii) the expiry of each successive period of 3 years thereafter,

the Pensions Ombudsman shall, with respect to his activities in the period referred to in paragraph (b), adopt a statement of strategy (which shall include a plan with respect to the manner in which he proposes to carry on those activities) and submit the statement to the Minister.

(b) The period mentioned in paragraph (a) is the period ending on the day on which the next subsequent statement of strategy under this subsection is submitted to the Minister.

(5) (a) The Pensions Ombudsman shall publish, as soon as practicable after its adoption, each statement of strategy under subsections (3) and (4).

(b) As soon as practicable after the receipt by him of a statement of strategy under subsection (3) or (4), the Minister shall cause copies of it to be laid before each House of the Oireachtas.

(6) Each report under subsection (2) and each statement of strategy under subsections (3) and (4) shall include information in such form and regarding such matters as the Minister may direct.

(7) The Pensions Ombudsman 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 his activities generally, or in respect of any account prepared by the Pensions Ombudsman or activities, other than day to day activities, of the Pensions Ombudsman.

Disclosure of Information.

145.—(1) A person shall not, without the consent of the Pensions Ombudsman, disclose any information obtained by him while performing (or as a result of having performed) duties as a member of the staff of, or an adviser or consultant to, the Pensions Ombudsman.

(2) Nothing in subsection (1) shall prevent the disclosure of information in a report made to the Pensions Ombudsman or by or on behalf of the Pensions Ombudsman to the Minister or by or on behalf of the Pensions Ombudsman under section 139(6).

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(3) Notwithstanding subsection (1), the Pensions Ombudsman or a member of his staff may disclose to a member of the Garda Síochána information which, in the opinion of the Pensions Ombudsman or the member of his staff, may relate to the commission of an offence (whether an offence under this Act or not).

Staff of Pensions Ombudsman.

146.—(1) (a) There shall be employed in the office of the Pensions Ombudsman so many officers and servants as the Minister, with the consent of the Minister for Finance, shall from time to time determine.

(b) The power of appointing a person to be an officer or servant of the Pensions Ombudsman shall be vested in the Minister.

(2) Members of staff of the Pensions Ombudsman shall be civil servants in the Civil Service of the State.

(3) The Minister may delegate to the Pensions Ombudsman the powers exercisable by him under the Civil Service Commissioners Act, 1956, and the Civil Service Regulation Acts, 1956 and 1958, as the appropriate authority in relation to members of the staff of the office of the Pensions Ombudsman and, if he does so, then so long as the delegation remains in force—

(a) those powers shall, in lieu of being exercisable by the Minister, be exercisable by the Pensions Ombudsman, and

(b) the Pensions Ombudsman shall, in lieu of the Minister, be for the purposes of this Act the appropriate authority in relation to members of the staff of the office of the Pensions Ombudsman.

Expenses of Pensions Ombudsman.

147.—The expenses incurred by the Pensions Ombudsman in the administration of this Part shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.”.

PART 4

AMENDMENTS OF EXISTING PROVISIONS OF PRINCIPAL ACT

CHAPTER 1

Amendments to Part I of Principal Act

6.—Section 2(1) of the Principal Act is amended—

(a) by the substitution of the following definition for the definition of “auditor”:

“ ‘auditor’, in relation to a scheme or the business of a PRSA provider, means a person appointed in pursuance

Amendment of section 2(1) of Principal Act.

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of this Act to act as auditor, for the purpose of this Act, Pt.4 S.6 of the scheme or the business of a PRSA provider, as the case may be;”,

- (b) by the insertion after the definition of “the chief executive” of the following definition:

“ ‘contract of employment’ means—

(a) a contract of service or apprenticeship, and

(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;”,

- (c) by the insertion after the definition of “early Retirement Rule” of the following definitions:

“ ‘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 vocational education committee shall be deemed to be an employee employed by the authority, board or committee, as the case may be;

‘employer’ in relation to an employee, means (except in section 49 and in Part VII) 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;”,

- (d) by the insertion after the definition of “prospective member” of the following definitions:

“ ‘PRSA’ has the meaning assigned to it by section 91;

‘PRSA provider’ has the meaning assigned to it by section 91;”,

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(e) by the insertion after the definition of “member” of the following definition:

“ ‘Member State’ means a Member State of the European Communities;”.

(f) by the insertion after the definition of “the Minister” of the following definition:

“ ‘multi-employer scheme’ means a scheme which applies to persons employed by more than one employer;”.

and

(g) by the insertion after the definition of “scheme” of the following definitions:

“ ‘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.”.

Amendment of section 3(1) of Principal Act.

7.—Section 3(1) of the Principal Act is amended—

(a) by the substitution for paragraphs (a), (b) and (bb) of the following paragraphs:

“(a) Where—

(i) a trustee in his capacity as trustee,

(ii) an employer,

(iii) a PRSA provider,

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- (iv) an actuary or auditor of a scheme or a PRSA in his capacity as such actuary or auditor, Pr.4 S.7
- (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, or
- (vi) 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 Pensions Ombudsman under subsection (1) or (2) of section 137 fails to comply with that requirement, he shall be guilty of an offence.”;

and

(b) by the substitution in paragraph (c) for “(a), (b) or (bb)” of “(a)”.

8.—(1) The following subsection is substituted for subsection (5) of section 3 of the Principal Act: Further amendment of section 3 of Principal Act.

“(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 Pensions Ombudsman.”.

(2) Subsection (6) of section 3 of the Principal Act is amended—

- (a) by the substitution for “Board” of “Board or Pensions Ombudsman, as the case may be,”, and
- (b) by the substitution for “Board’s” of “Board’s or Pensions Ombudsman’s”.

9.—The following section is substituted for section 4 of the Principal Act: Amendment of section 4 of Principal Act.

“Exchange of Information.

4.—(1) Notwithstanding anything contained in any enactment, information held by the Board for the purposes of this Act may be transferred by the Board to the Revenue Commissioners and information held by the Revenue Commissioners for the purposes of Chapter 1 of Part 30 of the Taxes Consolidation Act, 1997, relating to occupational pension schemes and Personal Retirement Savings Accounts may be transferred by the Revenue Commissioners to the Board.

(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.

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(3) The Board may disclose information relating to occupational pension schemes 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.”.

Amendment of section 5(3) of Principal Act.

10.—Section 5 of the Principal Act is amended—

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

“(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.”.

and

(b) by the insertion after subsection (4) of the following subsection:

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

Amendment of section 5B of Principal Act.

11.—Section 5B of the Principal Act is amended by the insertion after “certain categories of external schemes” of “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”.

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12.—The following section is inserted after section 7 of the Principal Act:

“Professional Guidance of the Society of Actuaries in Ireland.

7A.—So long as any professional guidance issued by the Society of Actuaries in Ireland is for the time being specified by regulations made under this Act for any purpose of this Act, the said Society shall not alter or withdraw such professional guidance without the prior consent of the Minister.”.

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Provision in relation to professional guidance issued by Society of Actuaries in Ireland.

CHAPTER 2

Amendments to Part II of Principal Act

13.—Section 10(1) of the Principal Act is amended—

Amendment of section 10(1) of Principal Act.

(a) by the substitution for paragraph (a) of the following paragraph:

“(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) by the substitution for paragraph (c) of the following paragraph:

“(c) to—

(i) issue guidelines or guidance notes on the duties and responsibilities of trustees of schemes 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;”.

and

(c) by the substitution for paragraph (e) of the following paragraph:

“(e) to advise the Minister on all matters arising in relation to this Act and, in particular, on standards for trustees of schemes and on their implementation;”.

14.—Section 18 of the Principal Act is amended—

Amendment of section 18 of Principal Act.

(a) by the insertion after “a scheme” in subsection (1) of “or the state of a PRSA product”;

(b) by the insertion after “a scheme” in subsection (3A) of “or a PRSA product”;

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- (c) by the insertion after “a scheme” in subsections (6) and (7) of “or a PRSA provider”;
- (d) by the insertion after “the scheme” in subsection (3A)(c) of “or the PRSA product”;
- (e) by the insertion after “the scheme” in subsections (3A)(d) and (5)(c) of “or the activities of the PRSA provider as such a provider”;
- (f) by the insertion after “the scheme” in subsections (6) and (7) of “or the PRSA provider”;
- (g) by the substitution for subsection (2) of the following subsection:

“(2) The Board or an authorised officer may in relation to—

- (a) a scheme, require the employer concerned or the trustees of the scheme,
- (b) a PRSA provider, require the officers and employees of the PRSA provider in respect of its PRSA activities, and
- (c) an employer, require him in relation to his obligations under section 121,

to furnish it within such reasonable period as may be specified with such information and explanations and such books of account and other documents in relation to the scheme or, as the case may be, PRSA products provided by the PRSA provider as may be specified.”;

- (h) by the insertion after “trustee” in subsection (3A)(a) of “, PRSA provider”;
- (i) by the insertion after “the employer” in subsection (4) of “or the PRSA provider in relation to its activities as such a provider”; and
- (j) by the insertion after “the employer” in subsection (5) of “or the PRSA provider”.

CHAPTER 3

Amendments to Part III of Principal Act

Amendment of Part III (title thereof) of Principal Act.

15.—Part III of the Principal Act is amended by the substitution for the title to that Part of the following title:

PRESERVATION OF BENEFITS AND MINIMUM VALUE OF CONTRIBUTORY RETIREMENT BENEFITS”.

16.—Section 27(1) of the Principal Act is amended by the insertion of the following definitions: Amendment of section 27(1) of Principal Act.

“‘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;

‘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;”.

17.—Section 28 of the Principal Act is amended— Amendment of section 28 of Principal Act.

(a) by the substitution in subsection (1) for “the commencement of this Part” of “1 January 1991”, and

(b) by the substitution for subsection (2) of the following subsection—

“(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.”.

18.—Section 29 of the Principal Act is amended— Amendment of section 29 of Principal Act.

(a) by the insertion in paragraph (a) of subsection (5) after “paragraph 1” of “and, where appropriate, paragraph 4”;

(b) by the substitution in paragraph (b) of subsection (5) for “paragraph 1” of “paragraphs 1 and 4”;

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- (c) by the deletion in subsection (6) of “and shall be provided in addition to the preserved benefit under subsection (2)”;
- (d) by the substitution in the proviso to subsection (6) for “the commencement of this Part”, in each place where those words occur, of “1 January 1991”;
- (e) by the substitution in subsection (7)—
 - (i) for “another scheme” of “another occupational pension scheme”;
 - (ii) for “that scheme” of “that occupational pension scheme”; and
 - (iii) for “in addition to” of “as part of”;and
- (f) by the substitution in the proviso to subsection (7)—
 - (i) for “other scheme”, in each place where those words occur, of “other occupational pension scheme”; and
 - (ii) for “the commencement of this Part”, in each place where those words occur, of “1 January 1991”.

Amendment of section 30 of Principal Act.

19.—Section 30 of the Principal Act is amended—

- (a) by the substitution for subsection (4) of the following subsection:
 - “(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.”;
- (b) by the substitution in the proviso to subsection (5) for “the commencement of this Part”, in each place where those words occur, of “1 January 1991”;
- (c) by the substitution in subsection (6)—
 - (i) for “another scheme” of “another occupational pension scheme”; and
 - (ii) for “that scheme” of “that occupational pension scheme”;

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and

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- (d) by the substitution in the proviso to subsection (6)—
- (i) for “that scheme” of “that occupational pension scheme”;
 - (ii) for “the commencement of this Part” of “1 January 1991”; and
 - (iii) for “such commencement” of “that date”.

20.—Section 32 of the Principal Act is amended—

Amendment of
section 32 of
Principal Act.

- (a) in subsection (1)—
- (i) by the substitution for “in accordance with the provisions of this Part” of “in accordance with section 28(2)(a)”; and
 - (ii) by the substitution for “the commencement of this Part” of “1 January 1991”;
- (b) by the substitution for subsection (2) of the following subsection:

“(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.”;

and

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

“(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.”.

21.—Section 33 of the Principal Act is amended—

Amendment of
section 33 of
Principal Act.

- (a) by the substitution for subsection (1) of the following subsection:

“(1) In this section and Part B of the Second Schedule ‘revaluation year’ means a year beginning on or after 1 January 1996.”.

and

- (b) in subsection (2) by the substitution for “paragraph 1 or 3 or both” of “any or all of paragraphs 2, 3 and 4”.

22.—Section 34 of the Principal Act is amended—

Amendment of
section 34 of
Principal Act.

- (a) by the substitution for subsection (2) of the following:

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“(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 applicable guidance issued by any other person (including 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 in respect of that scheme, and
- (ii) in the case of a relevant scheme, if there is contained in the most recent actuarial funding certificate provided under section 42 in respect of the scheme a statement to the effect that the scheme does not satisfy the funding standard, the transfer payment may be reduced by the trustees on the advice of the actuary, having regard to the provisions of section 48.”;

(b) in subsection (3)—

- (i) in paragraph (b) by the substitution for “for the purposes of this Act.” of “for the purposes of this Act, or”; and
- (ii) by the insertion of the following paragraphs after paragraph (b):
 - “(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,

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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.”;

and

(c) by the insertion in subsection (6) after “subsection (3)(a)” of “or (c)”.

23.—The following section is inserted after section 35 of the Principal Act:

“Minimum Value of Contributory Retirement Benefit.

35A.—(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.”.

Contributory retirement benefit for persons leaving schemes after 1 June 2002.

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Amendment of
section 36 of
Principal Act.

24.—Section 36 of the Principal Act is amended—

(a) in subsection (1)—

- (i) by the insertion in paragraph (a) after “benefit” of “or of a minimum contributory retirement benefit”; and
- (ii) by the insertion in paragraph (b) after “benefit” of “or a member’s minimum contributory retirement benefit”;

and

(b) by the insertion in subsection (2) after “preserved benefit” of “or a contributory retirement benefit”.

Amendment of
section 37 of
Principal Act.

25.—Section 37 of the Principal Act is amended—

(a) by the insertion in subsection (4) after “preserved benefit” of “and the minimum value of contributory retirement benefit under section 35A”; and

(b) by the insertion in subsection (4A) after “preserved benefit” of “and the minimum value of contributory retirement benefit under section 35A”.

Amendment of
section 39 of
Principal Act.

26.—The following section is substituted for section 39 of the Principal Act:

“Schemes may
provide higher
benefits.

39.—(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

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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.

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(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.”.

CHAPTER 4

Amendments to Part IV of Principal Act

27.—Section 41 of the Principal Act is amended:

Amendment of section 41 of Principal Act.

(a) by the substitution in paragraph (b) of subsection (1) of “1993, or” for “1993.”;

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

“(c) to such extent as may be prescribed, a scheme the winding up of which has commenced.”; and

(c) by the substitution for subsection (2) of the following subsection:

“(2) Notwithstanding subsection (1)—

(a) subsections (1) and (2) of section 48 shall apply to any scheme other than a defined contribution scheme, and

(b) subsections (3) and (4) of section 48 shall apply to every scheme.”.

28.—Section 42 of the Principal Act is amended—

Amendment of section 42 of Principal Act.

(a) in subsection (3)—

(i) by the substitution for “the commencement of this Part” of “1 June 2002”; and

(ii) by the insertion after “section 43” of “having an effective date after 1 June 2002”;

and

(b) by the substitution for subsection (4) of the following subsection:

“(4) Regulations under this section may—

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- (a) prescribe the form and content of an actuarial funding certificate, and
- (b) require the actuary, in completing an actuarial funding 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 Minister) and specified in the regulations.”.

Amendment of section 43 of Principal Act.

29.—Section 43 of the Principal Act is amended—

- (a) in subsection (1) by—
 - (i) the substitution for paragraph (a) of the following paragraph:

“(a) in the case of a relevant scheme which commenced before 1 January 1991, not later than 1 January 1994, and”;
 - and
 - (ii) the substitution in paragraph (b) for “such commencement” of “1 January 1991”;
- (b) by the insertion in subsection (2) after “prescribed” of “and except in the case provided for in subsection (3)”;
- (c) by the insertion after subsection (2) of the following—

“(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, or
 - (b) contains the statement by an actuary required under that subsection (3) but the actuary does not state therein that he is reasonably satisfied that, if he were to prepare under section 42 an actuarial funding certificate having an effective date of the last day of the period to which the annual report relates, he would certify that the scheme satisfies the funding standard provided for in section 44, or
 - (c) contains the statement by an actuary required under that subsection (4) but the actuary does not state therein that he is reasonably satisfied that the scheme will satisfy the funding standard at the effective date of the next actuarial funding certificate,

then, in each case, the trustees of the scheme shall submit an actuarial funding certificate to the Board within twelve months of the last day of the period to which the annual report relates and such a certificate shall have an effective

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date not earlier than the last day of the period to which the annual report relates.”. Pr.4 S.29

30.—Section 44 of the Principal Act is amended in paragraph (a) by the substitution for subparagraphs (i) to (iv) of the following subparagraphs: Amendment of section 44 of Principal Act.

- “(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.”.

31.—The following section is substituted for section 45 of the Principal Act: Amendment of section 45 of Principal Act.

“Provisions relating to schemes commencing before 1 June 2002.

45.—(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, and
- (ii) the estimated expenses of administering a winding up,

had already been discharged from resources of the scheme.

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(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.”.

Amendment of section 46(1) of Principal Act.

32.—Section 46(1) of the Principal Act is amended in paragraph (b)—

(a) by the substitution in subparagraph (ii) for “Chapter II of Part I of the Finance Act, 1972” of “Chapter 1 of Part 30 of the Taxes Consolidation Act, 1997”;

(b) by the substitution for “(i), (ii) and (iii)” of “(i), (ii), (iii) and (iv)”; and

(c) by the substitution for “44(a)(iv)” of “44(a)(v)”.

Amendment of section 48 of Principal Act.

33.—The following section is substituted for section 48 of the Principal Act:

“Priorities on winding up of relevant scheme.

48.—(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

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- (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.

(2) If, after discharging the liabilities of a scheme to which subsection (1)(b) applies for the benefits specified in that subsection 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

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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) and that are approved by the Revenue Commissioners under Chapter 1 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) 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) and (2).

(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.”.

Amendment of section 49(4) of Principal Act.

34.—Section 49(4) of the Principal Act is amended by the substitution for “Chapter II of Part I of the Finance Act, 1972” of “Chapter 1 of Part 30 of the Taxes Consolidation Act, 1997”.

Amendments to Part V of Principal Act

35.—Part V of the Principal Act is amended by the substitution for the title to that Part of the following title: Amendment of Part V (title thereof) of Principal Act.

“PART V

DISCLOSURE OF INFORMATION IN RELATION TO SCHEME AND
REMITTANCE OF CONTRIBUTIONS BY EMPLOYERS”.

36.—Section 54 of the Principal Act is amended— Amendment of section 54 of Principal Act.

(a) in subsection (1)—

- (i) by the insertion after “trustees of a scheme” of “or any employer to whom a scheme relates”; and
- (ii) by the insertion in paragraph (b) after “scheme” of “, including any commission, charge, expense or remuneration paid or received in connection with the scheme”;

(b) in subsection (4)—

- (i) by the substitution of the following paragraph for paragraph (a):

“(a) The trustees 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.”;

- (ii) by the insertion after paragraph (a) of the following paragraph:

“(aa) Any employer to whom a scheme relates may request the trustees 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 shall comply with any such request.”;

- (iii) by the insertion in paragraph (b) after “trustees of the scheme” of “or any employer to whom the scheme relates”; and

- (iv) by the insertion in paragraph (b) after “trustees” of “or the employer”.

37.—Section 55 of the Principal Act is amended— Amendment of section 55 of Principal Act.

(a) by the substitution in paragraph (b) of subsection (2) of “1997, or” for “1997.”;

(b) by the insertion after paragraph (b) of subsection (2) of the following paragraph:

“(c) to such extent as may be prescribed, a scheme the winding up of which has commenced.”; and

(c) by the insertion after subsection (2) of the following subsections—

“(3) Where an actuarial funding certificate having an effective date after 1 January 2001 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 that actuarial funding 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 is reasonably satisfied that, if he were to prepare under section 42 an actuarial funding certificate having an effective date of the last day of the period to which the annual report relates, he would certify that the scheme satisfies the funding standard provided for in section 44.

(4) Where in the most recent actuarial funding certificate prepared under section 42 in relation to a scheme the actuary certifies that at the effective date of that certificate the scheme does not satisfy the funding standard, 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 that actuarial funding certificate shall include a statement by an actuary in such form as may be prescribed as to whether he is reasonably satisfied at the last day of the period to which the annual report relates that the scheme will satisfy the funding standard at the effective date of the next actuarial funding certificate.

(5) Where an annual report prepared under subsection (1)—

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

(b) contains the statement by an actuary required under subsection (3) but the actuary does not state therein that he is reasonably satisfied that, if he were to prepare under section 42 an actuarial funding certificate having an effective date of the last day of the period to which the annual report relates, he would certify that the scheme satisfies the funding standard provided for in section 44, or

(c) contains the statement by an actuary required under subsection (4) but the actuary does not state therein that he is reasonably satisfied that the scheme will satisfy the funding standard at the effective date of the next actuarial funding certificate,

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.

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(6) Regulations may prescribe that an actuary, in making the statement 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 and specified in the regulations.”. Pr.4 S.37

38.—Section 56 of the Principal Act is amended—

Amendment of section 56 of Principal Act.

(a) by the insertion in subsection (3) after “scheme” of “or the business of a PRSA provider”;

(b) by the insertion in subsection (4)—

(i) after “of a particular scheme” of “or of the business of a particular PRSA provider”; and

(ii) after “trustees of the scheme” of “or to the PRSA provider”; and

(c) in subsection (6)—

(i) by the substitution in paragraph (a)(iii) of “1997, or” for “1997.”;

(ii) by the insertion after paragraph (a)(iii) of the following:

“(iv) to such extent as may be prescribed, a scheme the winding up of which has commenced.”;

(iii) by the substitution in paragraph (b)(iv) of “1997, or” for “1997.”; and

(iv) by the insertion after paragraph (b)(iv) of the following:

“(v) to such extent as may be prescribed, a scheme the winding up of which has commenced.”.

39.—The following section is inserted after section 56 of the Principal Act:

Indexation of pensions under certain schemes to be considered by trustees.

“Indexation of pensions when in payment.

56A.—(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 $3\frac{1}{2}$ 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.

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(7) Regulations may provide for— Pr.4 S.39

- (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.”.

40.—The following section is substituted for section 57 of the Principal Act: Amendment of section 57 of Principal Act.

“Modification of Part V.

57.—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 categories of schemes to comply fully with sections 54, 55, 56 and 56A, he may by regulations made with the consent of the Minister for Finance provide that, in relation to those schemes, one or more or all of those sections shall not apply, or shall apply with specified modifications, being modifications 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.”.

41.—The following section is inserted after section 58 of the Principal Act: Obligation of employer to remit contributions under scheme.

“58A.—(1) An employer who deducts any sum from the wages or salary of an employee for remittance to the trustees of a scheme 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 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 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 to another person on their behalf, or
- (b) is obliged (whether under a contract of employment, the terms of a scheme 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) The requirements of subsection (3) relating to an employee shall be regarded as having been satisfied in respect of a particular deduction if the particulars of the deduction are, in accordance with section 9 of the Payment of Wages Act, 1991, included in the statement given to the employee concerned under that section.”.

CHAPTER 6

Amendments to Part VI of Principal Act

Amendment of section 59 of Principal Act.

42.—The following section is substituted for section 59 of the Principal Act:

“General duties of trustees of schemes.

59.—(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 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;

- (b) subject to subsection (2), to provide for the proper investment of the resources of the scheme in accordance with the rules of the scheme; Pr.4 S.42
- (c) where appropriate, to make arrangements for the payment of the benefits as provided for under the rules of the scheme 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;
- (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.

(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.”.

Certain duties of trustees with respect to windings-up and bulk transfers and invalidity of certain acts.

43.—The following sections are inserted after section 59C of the Principal Act:

“Duties of trustees on winding-up of scheme.

59D.—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.

Duties of trustees in connection with bulk transfer.

59E.—(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 Pr.4 S.43
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.

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

59F.—(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

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would cause the scheme or any part of it to become a defined contribution scheme,

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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.”.

44.—Section 62 of the Principal Act is amended by the insertion of the following subsection after subsection (2):

Amendment of section 62 of Principal Act.

“(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.”.

Amendment to Part VII of Principal Act

Amendment of section 80 of Principal Act.

45.—Section 80(1)(b) of the Principal Act is amended by the insertion after “scheme” of “or PRSA”.

Amendments to Part VIII of Principal Act

Amendment of section 82 of Principal Act.

46.—Section 82 of the Principal Act is amended—

(a) by the insertion after “means, in relation to a scheme” of “or a PRSA”;

(b) by the insertion after paragraph (c) of the following paragraph:

“(cc) is an administrator, investment manager or custodian of the PRSA, or”;

(c) by the substitution in paragraph (d) for “the Insurance Act, 1989” of “the Investment Intermediaries Act, 1995”;

(d) by the insertion in paragraph (e) after “the scheme” in each place where those words occur of “or PRSA”;

(e) by the substitution in paragraph (g) for “scheme under section 59.” of “scheme under section 59, or”; and

(f) by the insertion after paragraph (g) of the following paragraphs:

“(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.”.

Amendment of section 83 of Principal Act.

47.—Section 83 of the Principal Act is amended—

(a) by the insertion in subsection (1) after “a scheme” of “or PRSA”, and

(b) by the insertion after subsection (2) of the following subsections:

“(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)—

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(a) has reason to believe that a PRSA provider has not operated a custodian account in accordance with the requirements of Part X; or

(b) is unable to express an opinion on a PRSA provider's accounts within 75 days after the end of the financial year in relation to that PRSA provider,

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.”;

(c) by the substitution in paragraphs (a) and (b) of subsection (3) of “subsection (1), (2A), (2B), (2C), (2D) or (2F)” for “subsection (1)”; and

(d) by the insertion in subsection (6) after “the scheme” of “or PRSA”.

48.—Section 84 of the Principal Act is amended by—

(a) the insertion after “conduct of a scheme” of “or the state of a PRSA”; and

(b) the substitution of “section 83” for “section 83(1)”.

Amendment of section 84 of Principal Act.

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Amendment of
section 85 of
Principal Act.

49.—Section 85 of the Principal Act is amended by—

- (a) the substitution of “section 83” for “section 83(1)”; and
- (b) the insertion after “conduct of scheme” of “or the state of a PRSA”.

CHAPTER 9

Amendments to Schedules to Principal Act

Amendment of
First Schedule to
Principal Act.

50.—The First Schedule to the Principal Act is amended by—

- (a) the substitution in paragraph 2 of “16” for “14”;
 - (b) the substitution for clauses (g) and (h) of paragraph 8(1) of the following:
 - “(g) one shall be a representative of consumer interests,
 - (h) one shall be a representative of pensioner interests,
 - (i) one shall be a representative of the Minister for Finance, and
 - (j) one shall be a representative of the Minister.”;
- and

- (c) the insertion after subparagraph (7) of paragraph 8 of the following:

“(7A) The member of the Board representing consumer interests shall be a person nominated for appointment thereto by the Minister or such organisation or organisations as the Minister considers to be representative of consumer organisations.

(7B) The member of the Board representing pensioner interests shall be a person nominated for appointment thereto by the Minister or such organisation or organisations as the Minister considers to be representative of pensioner organisations.”.

Amendment of
Second Schedule
(title thereof) to
Principal Act.

51.—The Second Schedule to the Principal Act is amended by the substitution for the title to that Schedule of the following title:

“Preservation and Revaluation of Benefits and Minimum Value of Contributory Retirement Benefit”.

Amendment of Part
A of Second
Schedule to
Principal Act.

52.—The Second Schedule to the Principal Act is amended by the substitution for Part A of the following Part:

“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—

$$D \times \frac{E}{F}$$

where—

- 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—

$$X \times \frac{Y}{Z}$$

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—

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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 and C have the values ascribed to them in paragraph 2(1), and

B₂ is the period of reckonable service completed up to 1 January 1991.”.

Amendment of Part B of Second Schedule to Principal Act.

53.—The Second Schedule to the Principal Act is further amended by the substitution for Part B of the following Part:

“PART B

Revaluation of Preserved Benefits

5. (1) Any preserved benefit payable under a defined benefit scheme shall be revalued annually at the end of each revaluation year, by adding the appropriate amount to the amount of preserved benefit as at the last day of the previous calendar year (or as at 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), such preserved benefit to include any previous revaluation.

(2) Except as provided for in paragraphs 6 and 7 the appropriate amount shall be calculated in accordance with the formula—

$$\frac{P \times R}{100}$$

where—

P is the amount of preserved benefit as at the last day of the previous calendar year (or as at the date of termination of relevant employment in any case where a member's relevant employment

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has terminated since the last day of the previous calendar year), and Pr.4 S.53

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

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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.”.

Insertion of Part C in Second Schedule to Principal Act.

54.—The Second Schedule to the Principal Act is further amended by the insertion after Part B (inserted by *section 53*) of the following Part:

“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.”.

Amendment of Third Schedule to Principal Act.

55.—The Third Schedule to the Principal Act is amended—

(a) by the substitution for “the commencement of Part IV”, in each place where those words occur, of “1 January 1991”;

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- (b) by the insertion in paragraph 3(a)(i) after “preserved benefits” of “to which the member is entitled under section 28(2)(a)”; Pr.4 S.55
- (c) by the insertion in paragraph 3(b)(i) after “preserved benefits” of “to which the member would be entitled under section 28(2)(a)”;
- (d) by the substitution in paragraph 4(b)(i)(II) for “the 1st day of” of “1”; and
- (e) by the insertion of the following paragraph after paragraph 4:

“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) all preserved benefits to which the member is entitled under section 28(2)(b) (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) preserved benefits to which the member would be entitled under section 28(2)(b) (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

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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.”.

PART 5

AMENDMENTS OF MISCELLANEOUS OTHER ENACTMENTS AND SAVING

Amendment of Social Welfare (Consolidation) Act, 1993.

56.—The definition of “specified body” in section 223(1) (as amended by section 32 of the Social Welfare Act, 2000) of the Social Welfare (Consolidation) Act, 1993, is amended by—

- (a) the deletion of “or” after paragraph (m), and
- (b) the substitution for paragraph (n) of the following paragraphs:
 - “(n) the Pensions Board, or
 - (o) such other persons as may be prescribed;”.

Pension adjustment orders.

57.—(1) The definition of “pension scheme” in section 2(1) of the Family Law Act, 1995, is amended by the insertion after paragraph (b) of the following:

“(bb) a PRSA contract within the meaning of Part X of the Pensions Act, 1990, or”.

(2) The definition of “pension scheme” in section 2(1) of the Family Law (Divorce) Act, 1996, is amended by the insertion after paragraph (b) of the following:

“(bb) a PRSA contract within the meaning of Part X of the Pensions Act, 1990, or”.

Non-application of Ombudsman Act, 1980, in relation to matters cognisable under Part XI of Principal Act.

58.—(1) Section 5(1) of the Ombudsman Act, 1980, is amended by—

- (a) the deletion of “or” after paragraph (f),
- (b) the substitution in paragraph (g) for “this Act;” of “this Act, or”, and
- (c) the insertion of the following paragraph after paragraph (g):

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“(gg) if the action falls within a category of complaint or dispute to which paragraph (a), (b) or (c) of subsection (2) of section 131 of the Pensions Act, 1990, applies (and is not excluded from the jurisdiction of the Pensions Ombudsman by virtue of regulations under paragraph (b) or (c) of subsection (6) of the said section 131), being an action that could otherwise be investigated by the Ombudsman under this Act;”.

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(2) Notwithstanding the amendment effected by *subsection (1)* of this section, anything commenced but not completed before the commencement of this section by the Ombudsman under the Ombudsman Act, 1980, may be carried on and completed after such commencement by the Ombudsman as if this section had not been enacted.

59.—Any instrument or document that is made or issued under a provision of the Principal Act that is amended by this Act and which is in force immediately before the commencement of the amendment shall, save to the extent that it is inconsistent with the provision as so amended, continue in force as if made or issued under the said provision.

Saving.