



Pensions (Amendment) Act, 1996
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No. 18/1996:
PENSIONS (AMENDMENT) ACT, 1996

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AN ACT TO AMEND AND EXTEND THE PENSIONS ACT, 1990 .
[2nd July, 1996]
BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Definition. 1.—In this Act "the Principal Act" means the Pensions Act, 1990 .

Amendment of section 2 of Principal Act. 2.—Section 2 of the Principal Act is hereby amended by—

(a) the insertion after the definition of "auditor" of the following definition:

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

(b) the substitution in the definition of "early retirement rule" (inserted by section 42 (b) of the Social Welfare Act, 1993) for paragraph (ii) of the following paragraph:

"(ii) the calculation of the member's immediate retirement benefit involves or may involve an actuarial reduction which exceeds 0.25 per cent., or such other percentage as may be prescribed, multiplied by the number of completed months by which the member's age at retirement is less than a stated age;"

(c) the substitution in the definition of "normal pensionable age" (inserted by section 42 (d) of the Social Welfare Act, 1993) for paragraph (a) of the following paragraph:

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

(d) the substitution in the definition of "reckonable service" (inserted by section 42 (f) of the Social Welfare Act, 1993) for paragraph (a) of the following paragraph:

"(a) the only benefit under the scheme in respect of such service is in respect of death prior to normal pensionable age, or".

Amendment of section 3 of Principal Act. 3.—Section 3 of the Principal Act is hereby amended by—

(a) the substitution of the following paragraph for paragraph (c) of subsection (1):

"(c) In a prosecution for an offence under paragraph (a), (b) or (bb) it shall be a defence for the accused person to prove that the contravention to which the offence relates was attributable to:

(i) a contravention by one or more other persons of a provision of this Act or a regulation thereunder and that he took such reasonable steps (if any) in the circumstances as were open to him to secure the compliance of the person or persons aforesaid with the provision concerned, or

(ii) a failure by an actuary, auditor or other person to prepare a document which the accused person had instructed the actuary, auditor or other person to prepare and that the accused person took such reasonable steps (if any) in the circumstances as were open to him to secure the preparation of the said document by the actuary, auditor or other person aforesaid."

(b) the insertion after subsection (5) of the following subsection:

"(6) Notwithstanding the provisions of section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be commenced—

(a) at any time within 2 years from the date on which the offence was committed, or

(b) at any time within 6 months from the date on which evidence sufficient in the opinion of the Board to justify initiating the proceedings, comes to the Board's knowledge, not being later than 5 years from the date on which the offence concerned was committed."

Amendment of section 5 of Principal Act. 4.—Section 5 of the Principal Act is hereby amended by the insertion of the following subsection after subsection (3):

"(4) (a) The Minister may, with the consent of the Minister for Equality and Law Reform, make regulations specifying guidelines for the purposes of section 12 and the reference in subsection (1) of the said section 12 to any relevant guidelines for the time being in force under section 10 (1) (c) shall be construed as a reference to any relevant guidelines specified as aforesaid and for the time being in force.

(b) Without prejudice to the generality of paragraph (a), guidelines specified by regulations under that paragraph may—

(i) make provision in relation to the manner in which a contingent benefit, a designated benefit, a residual benefit or a transfer amount payable under a scheme, the actuarial value referred to in subsection (10) of section 12 or the value and the amounts referred to in subsection (25) of section 12 should be calculated and, in particular, but without prejudice to the generality of the foregoing, provide that, in making such a calculation, regard should be had to one or more of the following:

(I) whether the scheme concerned is a defined contribution scheme or not,

(II) the amount of retirement benefit payable (or which, but for the making of the relevant order for the decree of judicial separation, would have been payable) under the scheme concerned to or in respect of the member spouse concerned,

(III) the period of reckonable service of the member spouse for the purposes of such retirement benefit,

(IV) the period concerned and the percentage concerned specified in the order concerned under subsection (2) of section 12 pursuant to paragraphs (i) and (ii) respectively, of that subsection,

(V) the value, the actuarial value or the accumulated value, as may be appropriate, of the whole or the appropriate part of such retirement benefit as aforesaid,

(VI) whether, at the date of the making of the relevant order under subsection (2) of section 12, the member spouse was an active member of the scheme concerned or was being paid retirement benefit, or was entitled to any other benefit payment of which is deferred, under the scheme concerned,

(VII) the amount of contingent benefit payable (or which, but for the making of the relevant order for the decree of judicial separation, would have been payable) under the scheme concerned on the death of the member spouse concerned,

(VIII) the percentage concerned specified in the order concerned under subsection (3) of section 12,

(i) specify the manner in which a transfer amount should be applied under section 12,

(ii) specify the manner and the circumstances in which a contingent benefit, a designated benefit, a residual benefit or a transfer amount should be paid or applied pursuant to section 12 (including the period, and the manner of its ascertainment, during which such a payment should be made) and, in particular, but without prejudice to the generality of the foregoing, where—

(I) the member spouse concerned retires upon or before or after attaining normal pensionable age,

(II) the member spouse dies before payment of the designated benefit has commenced,

(III) the member spouse dies after payment of the designated benefit has commenced,

(IV) the member spouse ceases to be an active member of the scheme concerned,

(V) the person in whose favour the relevant order under subsection (2) of section 12 is made dies before payment of the designated benefit has commenced,

(VI) the person in whose favour the order aforesaid is made dies after payment of the designated benefit has commenced,

(VII) the person in whose favour the said order is made ceases to be a dependent member of the family as defined in section 2 of the Family Law Act, 1995 ,

(VIII) in the circumstances specified in subsection (5) of section 12, a spouse makes an application under that subsection,

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

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

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

(d) In this subsection—

'accumulated value' means—

(i) the realisable value of the units, shares or securities at a particular date, or averaged over a particular period before that date in which, pursuant to the rules of the scheme, the contributions for retirement benefit paid by or in respect of a member spouse under the scheme are invested, or

(ii) the realisable value of the contributions for retirement benefit paid by or in respect of a member spouse under a defined contribution scheme, together with the notional rate of interest or other investment return prescribed under the rules of the scheme, or

(iii) the amount of the proceeds of any insurance policies in which, pursuant to the rules of the scheme, the contributions for retirement benefit paid by or in respect of a member spouse under the scheme are invested,

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

'active member', 'actuarial value', 'contingent benefit', 'defined contribution scheme', 'designated benefit', 'retirement benefit', 'scheme' and 'transfer amount' have the meanings assigned to them by section 12; 'residual benefit' means the amount of retirement benefit remaining in respect of the member spouse concerned after deduction therefrom of the relevant designated benefit or the amount of contingent benefit in respect of the member spouse concerned remaining after deduction therefrom of the amount of contingent benefit payable pursuant to an order under subsection (3) of section 12 or the amount of payment made under subsection (7) of section 12;

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

Amendment of section 10 of Principal Act. 5.—Section 10 (1) of the Principal Act is hereby amended by the substitution for paragraph (c) of the following paragraphs:

"(c) to issue guidelines or guidance notes on the duties and responsibilities of trustees of schemes and codes of practice on specific aspects of their responsibilities;

(cc) to issue guidelines or guidance notes generally on the operation of this Act and on the provisions of the Family Law Act, 1995 , relating to pension schemes (within the meaning of section 2 of the Family Law Act, 1995);".

Amendment of section 18 of Principal Act. 6.—(1) Section 18 of the Principal Act is hereby amended by—

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

"(1) The Board may authorise in writing such and so many persons as it considers necessary to be authorised persons to inspect or investigate on its behalf the state and conduct of a scheme.",

(b) the substitution for subsection (3) of the following subsections:

"(3) An authorised person shall be furnished with a certificate of his appointment as an authorised person and when exercising any power conferred on him by this section as an authorised person shall, if requested by a person affected, produce the certificate or a copy thereof to the person.

(3A) An authorised person, for the purpose of obtaining any information which may be required by the Board in relation to a scheme, may—

(a) at all reasonable times enter the premises of any employer, trustee or agent, as the case may be,

(b) make such examination or inquiry as may be necessary to determine whether the provisions of this Act are being or have been complied with,

(c) inspect and take copies of or extracts from any records (including in the case of information in a non-legible form a copy of an extract from such information in permanent legible form) relating to the scheme,

(d) remove and retain any books of account and other documents and other records in relation to the scheme for a reasonable period for their further examination or for the purpose of any legal proceedings, and

(e) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford him all reasonable assistance in relation thereto.",

(c) the insertion after subsection (4) of the following subsections:

"(4A) An authorised person shall not, other than with the consent of the occupier, enter a private dwelling unless he has obtained a warrant from the District Court under subsection (4D) authorising such entry.

(4B) Where an authorised person in the exercise of his powers under this section is prevented from entering any premises an application may be made under subsection (4D) authorising such entry.

(4C) An authorised person, where he considers it necessary, may be accompanied by a member of the Garda Síochána when performing any powers conferred on an authorised person by this Act.

(4D) If a judge of the District Court is satisfied on the sworn information of an authorised person that there are reasonable grounds for suspecting that there is information required by an authorised person under this section held on any premises or any part of any premises, the judge may issue a warrant authorising an authorised person, accompanied by other authorised persons, at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter the premises and exercise all or any of the powers conferred on an authorised person under this section.", and

(d) the insertion after subsection (7) of the following subsections:

"(8) The Board may prepare or cause to have prepared one or more reports on any investigation carried out under this section and may make a copy of any such report available to any person whom the Board considers appropriate.

(9) For the purposes of the law of defamation, the publication by the Board of any report prepared under this section shall be absolutely privileged."

(2) An authorised person authorised under section 18 (1) of the Principal Act and holding office immediately before the passing of this Act shall continue in office as if authorised under the said subsection (1) inserted by this section.

Amendment of section 24 of Principal Act. 7.—Section 24 (1) of the Principal Act is hereby amended by the insertion after "or member of the staff of," of "or member of a committee of,".

Amendment of section 26 of Principal Act. 8.—Section 26 of the Principal Act is hereby amended by—

(a) the insertion after subsection (2) of the following proviso:

"Provided that representations at an oral hearing shall be made in accordance with any procedure prescribed under subsection (6).",

(b) the insertion in subsection (4) (a) after "to any such question" of "or to do both", and

(c) the insertion in subsection (6) after "58" of ", 64A".

Amendment of section 30 of Principal Act. 9.—Section 30 of the Principal Act is hereby amended by—

(a) the insertion in subsection (1) of the following definition before the definition of "appropriate contributions":

" 'accumulated value' of any appropriate contributions means the amount which the trustees determine to be equal to—

(a) the realisable value of the resources of the scheme, in accordance with the rules of the scheme, which represent those contributions, less

(b) the amount of any of the expenses of the scheme which, under the rules of the scheme, are to be discharged out of those resources;"

and

(b) the substitution for subsection (7) of the following subsection:

"(7) Where benefits under a scheme are secured under one or more policies of assurance, the realisable value, on the date on which payment of preserved benefit commences, of the resources of the scheme which represent the appropriate contributions paid by or on behalf of a member shall, for the purposes of this Part, be the proportion of the proceeds of every such policy applicable to those contributions."

Amendment of section 32 of Principal Act. 10.—Section 32 of the Principal Act is hereby amended by the insertion of the following subsection:

"(2) 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 after the 1st day of January, 1991."

Amendment of section 33 of Principal Act. 11.—Section 33 of the Principal Act is hereby amended by the insertion in subsection (4) after "(in this Act referred to as 'the revaluation percentage')" of "which shall determine the amount".

Amendment of section 34 of Principal Act. 12.—Section 34 of the Principal Act is hereby amended by—

(a) the insertion in paragraph (a) of subsection (2) after "preserved

benefit" of ", and of any amount payable under section 29 (4),"

(b) the deletion in subsection (2) of the proviso, and

(c) the substitution for subsection (3) of the following subsection:

"(3) A member of a scheme who is entitled to a transfer payment under subsection (2) may exercise such right by making an application in writing to the trustees of the scheme providing them with such information as they may reasonably require and directing them to apply the transfer payment—

(a) in the making of a payment to another funded scheme which provides or is capable of providing long service benefit and of which he is a member or a prospective member, or

(b) in the making of one or more payments falling to be made under policies or contracts of assurance that are effected on behalf of the member with one or more undertakings (within the meaning of the Insurance Act, 1989) and that are approved of by the Revenue Commissioners under Chapter II of Part I of the Finance Act, 1972 , which policies or contracts of assurance shall not be deemed to be an occupational pension scheme for the purposes of this Act."

Amendment of section 36 of Principal Act. 13.—The Principal Act is hereby amended by the insertion in section 36 of the following subsection:

"(2) Notwithstanding paragraph (a) of subsection (1) where a member of a scheme or such other person who is entitled to preserved benefit is or becomes bankrupt (within the meaning of the Bankruptcy Act, 1988), or assigns or charges or attempts to assign or charge the benefit, the trustees of the scheme may, at their discretion, apply any provision of the scheme, under which a benefit may be forfeited and paid, to the member or such other person specified in the provision."

Amendment of section of 37 of Principal Act. . 14.—Section 37 (4A)

(inserted by section 45 of the Social Welfare Act, 1993) of the Principal Act is hereby amended by the insertion after "same employment" of "or in a defined benefit scheme and a defined contribution scheme which are both part of the one scheme".

Amendment of section 39 of Principal Act. 15.—Section 39 of the Principal Act is hereby amended by the insertion after "or payable at any earlier" of ", or, at the request of the member of the scheme at any later,".

Amendment of section 42 of Principal Act. 16.—Section 42 of the Principal Act is hereby amended by the insertion after subsection (4) of the following subsection:

"(5) The Board, where it considers that it is necessary or appropriate and would not be contrary to the interests of the members of a scheme, may modify the requirements of subsections (1) and (2) in respect of such scheme in such circumstances and on such terms as it considers appropriate."

Priorities on winding up of relevant scheme. 17.—The Principal Act is hereby amended by the substitution for section 48 (inserted by section 57 of the Social Welfare Act, 1992) of the following section:

"Priorities on winding up of relevant scheme

48—(1) In applying the resources of a relevant scheme which has been wound up after the 1st day of January, 1997—

(a) the trustees shall discharge the liabilities of the scheme for the following benefits in the following order—

(i) firstly, the benefits specified in paragraph 1 of the Third Schedule to or in respect of those persons, who, at the date of the winding up, were within the categories referred to in that paragraph, to the extent that they are not already discharged, and

(ii) secondly, the benefits specified in paragraphs 2 and 3 of the Third Schedule to or in respect of those members of the scheme who, at the date of the winding up, were within the categories referred to in those paragraphs, to the extent that they are not already discharged, before discharging the liabilities of the scheme for other benefits, and

(b) 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—

(i) 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

(ii) making 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 of by the Revenue Commissioners under Chapter II of Part I of the Finance Act, 1972 , which policies or contracts of assurance shall not be deemed to be an occupational pension scheme for the purposes of this Act, 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 paragraph (a).

(2) 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 of Principal Act. 18.—Section 49 of the Principal Act is hereby amended by—

(a) the substitution, in subsection (2), for paragraphs (c) and (d) of the following paragraphs:

"(c) be signed by or on behalf of the employer and by or on behalf of the trustees of the scheme, in each case signifying agreement to the proposal, and

(d) be submitted by the trustees of the scheme with the actuarial funding certificate to which it relates.",

and

(b) the insertion after subsection (3) of the following subsection:

"(4) In this section 'employer' means the employer who undertakes the role of principal employer for the purposes of such scheme's approval by the Revenue Commissioners under Chapter II of Part I of the Finance Act, 1972 ."

Amendment of section 50 of Principal Act. 19.—Section 50 of the Principal Act is hereby amended by—

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

"(2) The reduction in benefits under subsection (1) shall—

(a) to the extent specified, override the provisions of subparagraph 1 (2) of the Second Schedule and subparagraph 4 (b) (i) (1) of the Third Schedule, and

(b) be such that the scheme would in the opinion of the actuary concerned satisfy the funding standard in accordance with section 44 immediately following the reduction.",

and

(b) the substitution for paragraph (a) of subsection (3) of the following paragraph:

"(a) (i) take such measures as may be necessary to reduce, in respect of members of the scheme then in relevant employment, the benefits which would be payable to or in respect of them from the scheme such that the scheme would, in the opinion of the actuary concerned, satisfy the funding standard in accordance with section 44 immediately following the reduction, and

(ii) notify the members of the scheme of the reduction in benefits within a period of 2 months, or such longer period as the Board considers appropriate,".

Amendment of section 54 of Principal Act. 20.—Section 54 of the Principal Act is hereby amended by the insertion in subsection (2) after paragraph (d) of the following paragraph:

"(e) the Board in any case in which the Board so requests the trustees by notice in writing."

Amendment of section 55 of Principal Act. 21.—Section 55 of the Principal Act is hereby amended by—

(a) the substitution for the proviso (inserted by section 58 of the Social Welfare Act, 1992) to subsection (1) of the following proviso:

"Provided that—

(i) where the period selected by the trustees is altered, a report prepared for a period other than a year, such period not to exceed 23 months, shall, with the approval of the Board, be regarded as an annual report for the purposes of this section, and

(ii) where the scheme is in operation for part only of the year selected, a report prepared for a period including that part of the year and not exceeding 23 months shall be regarded as an annual report for the purposes of this section."

and

(b) the substitution for paragraph (b) of subsection (2) (inserted by section 62 of the Social Welfare Act, 1991) of the following paragraph:

"(b) a scheme under which service in the relevant employment after the 1st day of January, 1997, does not entitle the members of the scheme to long service benefit and, where any long service benefit is determined by reference to a member's earnings, such earnings in the case of all members relate to a date or a period before the 1st day of January, 1997."

Amendment of section 56 of Principal Act. 22.—Section 56 of the Principal Act is hereby amended by—

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

"(1) The trustees of a scheme shall—

(a) cause the accounts of the scheme in respect of such periods as may be prescribed to be audited by the auditor of the scheme,

(b) cause the resources and liabilities of the scheme to be valued by the actuary of the scheme at such times as may be prescribed, and

(c) in respect of each such audit and valuation, cause to be prepared

the documents to which this section applies.",

(b) the deletion in paragraph (a) of subsection (2) of "audited",

(c) the insertion in subsection (6) (b) before "Paragraph (c)" of "Paragraph (b) of subsection (1) and",

(d) the substitution for subparagraph (iii) of paragraph (a) of subsection (6) of the following subparagraph:

"(iii) a scheme under which service in the relevant employment after the 1st day of January, 1997, does not entitle the members to long service benefit and, where any long service benefit is determined by reference to a member's earnings, such earnings in the case of all members relate to a date or a period before the 1st day of January, 1997.",

and

(e) the substitution for subparagraph (iv) of paragraph (b) of subsection (6) of the following subparagraph:

"(iv) a scheme under which service in the relevant employment after the 1st day of January, 1997, does not entitle the members to long service benefit and, where any long service benefit is determined by reference to a member's earnings, such earnings in the case of all members relate to a date or a period before the 1st day of January, 1997."

Costs of trustee training. 23.—The Principal Act is hereby amended by the insertion after section 59 of the following section:

"Costs of trustee training

59A.—Notwithstanding anything in the rules of a scheme, the trustees of a scheme may meet reasonable costs and expenses incurred in receiving appropriate training on their duties and responsibilities as such trustees from the resources of the scheme."

Amendment of section 61 of Principal Act. 24.—Section 61 of the Principal Act is hereby amended by the insertion of the following subsection:

"(2) The validity or effect of any alteration in the rules of a scheme shall not be affected by the failure to register such alteration in the Register of Perpetual Funds notwithstanding any provision in the rules of the scheme requiring such registration."

Rule against perpetuities. 25.—The Principal Act is hereby amended by the insertion after section 61 of the following section:

"Rule against perpetuities

61A.—(1) The rules of law and equity relating to perpetuities, inalienability and accumulations and the provisions of the Accumulations Act, 1892, shall not apply and shall be deemed never to have applied to any trust to which this section applies.

(2) Subject to subsection (3), this section shall apply to—

(a) any trust which as created had or subsequently has as its main purpose the provision of relevant benefits within the meaning of section 13 (1) of the Finance Act, 1972 , and which is capable of receiving approval under Chapter II of Part I of that Act, and

(b) any trust which is also an occupational pension scheme notwithstanding that it may cease to be an occupational pension scheme.

(3) This section shall not apply to any trust the resources of which have, whether in whole or in part, been returned before the passing of the Pensions (Amendment) Act, 1996 , by reason of the rules or provisions referred to in subsection (1).

(4) The persons (if any) having the power to amend a trust to which this section applies may amend the said trust so as to dispense with any limitations on the duration of the said trust the purpose of which is to ensure compliance with the rules or provisions referred to in subsection (1), notwithstanding any provision of the said trust to the contrary."

Amendment of section 63 of Principal Act. 26.—Section 63 of the Principal Act is hereby amended by—

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

"(2) The Court may make an order under subsection (1) in relation to the trustees of a scheme, if it considers—

(a) that any of the trustees have failed to carry out any of the duties imposed on them by law (including this Act), or

(b) that the scheme is being or has been administered in such a manner as to jeopardise the rights and interests thereunder of the members of the scheme.",

and

(b) the insertion in subsection (5) after "resources of the scheme" of "or from the employer."

Suspension of trustees and offence. 27.—The Principal Act is hereby amended by the insertion after section 63 of the following sections:

"Suspension of trustees.

63A—(1) The Court may, on application to it by the Board, make an order on such terms and subject to such directions as to notification of relevant parties as it may think suspending a trustee of a scheme from being a trustee of the scheme to which the application relates—

(a) pending completion of an investigation by or on behalf of the Board into the state and conduct of the scheme,

(b) where proceedings have been instituted against him for an offence involving dishonesty or deception and have not been concluded,

(c) where a petition has been presented to the Court for an order adjudging him bankrupt and proceedings on the petition have not been concluded,

(d) where the trustee is a company, if a petition for the winding up of the company has been presented to the Court and proceedings on the petition have not been concluded,

(e) where an application has been made to the Court for a disqualification order against him under Part VII of the Companies Act, 1990 , and proceedings on the application have not been concluded, or

(f) where the trustee is a company and, if any director were a trustee, the Court would have power to suspend him under paragraph (b), (c) or (e).

(2) An order under subsection (1) may apply to a particular scheme, a particular class of schemes or schemes in general.

(3) An order under subsection (1) (a) shall be in force for a period not exceeding 12 months: However, on application to it by the Board, the Court may by order extend that period for a further period not exceeding 12 months.

(4) An order made under subsection (1) (other than under paragraph (a)) shall be in force until the proceedings to which the order relates are determined.

(5) Where an order is made under subsection (1) the person suspended by

the order from acting as a trustee shall not, while the order is in force, exercise any functions as a trustee of a scheme to which the order applies.

(6) An order under subsection (1) may be made on any of the grounds in paragraphs (b) to (e) of that subsection whether or not the proceedings were instituted, petition presented or application made (as the case may be) before or after the passing of the Pensions (Amendment) Act, 1996 .

(7) The Court may, on the application of any person suspended under subsection (1), by order revoke the order, either generally or in relation to a particular scheme or a particular class of schemes, but a revocation made at any time cannot affect anything done before that time.

(8) An order under this section may make provision as respects the period of the trustee's suspension for matters arising out of it and in particular for enabling any person to execute any instrument in his name or otherwise act for him and for adjusting any provisions of the scheme governing the proceedings of the trustees to take account of the reduction in the number capable of acting.

(9) Where the Court makes an order under subsection (1) it may by that order or by a further order appoint any person to be a trustee in place of, and for such period as the Court may direct not exceeding the period of suspension of, the person suspended from acting as a trustee.

(10) An order referred to in subsection (9) may make provision for such ancillary and consequential matters (including the vesting of the property of the scheme concerned in the trustees appointed by the order and (notwithstanding anything contained in the rules of the scheme) the making of payments from the resources of the scheme or from the employer to the trustees appointed by the order in respect of fees, expenses or other matters relating to their duties as such trustees) as the Court considers necessary or expedient.

(11) Where an order referred to in subsection (9) ceases to have an effect, the Court may by a further order make provision for the vesting of the property of the scheme concerned in the persons who are the trustees of the said scheme.

(12) Where any land of which the ownership is registered under the Registration of Title Act, 1964 , becomes vested, by order under this section in any person or persons, the registering authority under that Act shall, upon production of the relevant order under this section, and upon payment of the appropriate fee, register that person or those persons in the appropriate register maintained under that Act as owner (within the meaning of that Act) of the land.

(13) Where an order is made under this section, any assets vested by the order that immediately before the commencement of the order were standing registered in the books of any bank, corporation or company or were entered in any register kept in pursuance of any enactment in the names of the former trustees of the scheme concerned shall, upon such commencement, be transferred into the names of the new trustees of the scheme.

Offence

63B—A person who purports to act as trustee of a scheme while removed from being a trustee of a scheme under section 63 or suspended from being a trustee of a scheme under section 63A shall be guilty of an offence and

shall be liable—

- (a) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding one year, or to both,
- (b) on conviction on indictment to a fine not exceeding £10,000 or to imprisonment for a term not exceeding two years, or to both."

Amendment of section 64 of Principal Act. 28.—Section 64 of the Principal Act is hereby amended by—

- (a) the substitution for subsections (1) and (2) of the following subsections:

"(1) Where in relation to a scheme, there are no trustees or the trustees cannot be found, the Board may, if it considers it desirable to do so, by order under its seal—

- (a) appoint a new trustee or new trustees of the scheme in substitution, where appropriate, for any existing trustee or trustees; and
- (b) vest, subject where necessary to transfer in the books of any bank, corporation or company, the assets of the scheme in the persons appointed trustees of the scheme by the order.

(2) The Board shall, not later than 21 days after the date of an order under this section, publish a notice in a daily newspaper published in and circulating throughout the State giving particulars of the order."

- (b) the substitution in paragraph (a) of subsection (4) of "subsection (2)" for "subsection (2) (b)",
- (c) the substitution in paragraph (d) of subsection (4) of "subsection (2)" for "subsection (2) (b)",
- (d) the insertion in paragraph (d) (ii) of subsection (4) after "from such determination" of "or", and
- (e) the insertion in subsection (5) after "resources of the scheme" of "or from the employer".

Amendment of section 65 of Principal Act. 29.—Section 65 of the Principal Act is hereby amended by—

- (a) the substitution for the definition of "member" of the following definition:

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

- (b) the substitution for the definition of "occupational benefit scheme" of the following definition:

" 'occupational benefit scheme' means any scheme or arrangement which is comprised in one or more instruments or agreements and which provides, or is capable of providing, occupational benefits in relation to employed or self-employed persons in any description of employment or self-employment within the State, but does not include—

- (a) any individual contract made by or on behalf of an employed or a self-employed person, or
 - (b) any scheme which has only one member, or
 - (c) any scheme for the benefit of employees under which the benefits are provided in full by contributions paid by the employees;"
- and

- (c) the deletion of the definition of "the Social Welfare Acts".

Amendment of section 67 of Principal Act. 30.—Section 67 of the Principal Act is hereby amended by—

(a) the insertion in subsection (3) (c) (ii) before "justifiable" of "objectively",

(b) the insertion in subsection (3) (d) (ii) before "justifiable" of "objectively".

Amendment of section 71 of Principal Act. 31.—Section 71 of the Principal Act is hereby amended by—

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

"(1) Where a rule of an occupational benefit scheme does not comply with the principle of equal treatment it shall, to the extent that it does not so comply, be rendered null and void by the provisions of this Part with effect from the 17th day of May, 1990, in the case of a rule relating to employed persons and with effect from the 1st day of January, 1993, in the case of a rule relating to self-employed persons and the more favourable treatment accorded to it by persons of the one sex shall be accorded by it to members of the other sex in respect of periods of membership in that scheme up to the date on which the rule is amended to comply with the principle of equal treatment.",

(b) the substitution for subsection (3) (inserted by section 62 of the Social Welfare Act, 1992) of the following subsections:

"(3) Where any rule of an occupational benefit scheme relating to employed persons is rendered null and void by subsection (1), nothing in this Part shall preclude any rights or obligations, relating to a period of membership in that scheme before the 17th day of May, 1990, from remaining subject to the provisions of the scheme in force during that period of membership—

(a) during the period beginning on the 17th day of May, 1990, and ending on the 31st day of December, 1998, or, in the case of retirement ages, the 31st day of December, 2017, or

(b) in respect of members who cease to be in relevant employment to which that scheme applies before or during the period referred to in paragraph (a).

(4) Where any rule of an occupational benefit scheme relating to self-employed persons is rendered null and void by subsection (1), nothing in this Part shall preclude any rights or obligations, relating to a period of membership in that scheme before the 1st day of January, 1993, from remaining subject to the provisions of the scheme in force during that period of membership."

Principle of equal treatment and collective agreements, etc. 32.—The Principal Act is hereby amended by the substitution for section 74 of the following section:

" Principle of equal treatment and collective agreements, etc.

74—(1) (a) Where a rule or term of an agreement or order to which this section applies does not comply with the principle of equal treatment, it shall, to the extent that it does not so comply, be rendered null and void with effect from the 17th day of May, 1990, and the more favourable treatment accorded by it to persons of the one sex shall be accorded by it to persons of the other sex in respect of periods of employment to which that rule or term applies up to the date on which the rule or term is

amended to comply with the principle of equal treatment.

(b) This section applies to—

- (i) a collective agreement,
- (ii) an employment regulation order within the meaning of Part IV of the Act of 1946, and
- (iii) a registered employment agreement within the meaning of Part III of the Act of 1946 registered in the register of Employment Agreements.

(2) Where more favourable treatment is accorded to any persons under an agreement or order by virtue of subsection (1) the employer shall take such measures as are necessary to give effect to that subsection.

(3) Where any rule or term of an agreement or order is rendered null and void by subsection (1), nothing in this Part shall affect any rights accrued or obligations incurred under that rule or term relating to a period before the 17th day of May, 1990—

(a) during the period beginning on the 17th day of May, 1990, and ending on the 31st day of December, 1998, or, in the case of retirement ages, the 31st day of December, 2017, or

(b) in respect of members who cease to be in employment to which that rule or term applies before or during the period referred to in paragraph (a)."

Equal treatment: contract of employment. 33.—The Principal Act is hereby amended by the insertion after section 74 of the following section:

"Equal treatment: contract of employment.

74A—(1) Where a contract of employment contains a term (whether expressed or implied) which does not comply with the principle of equal treatment, the term shall, to the extent that it does not so comply, be rendered null and void with effect from the 17th day of May, 1990, and the more favourable treatment accorded by it to persons of the one sex shall be accorded by it to persons of the other sex in respect of periods of employment to which that term applies up to the date on which the term is amended to comply with the principle of equal treatment.

(2) Where more favourable treatment is accorded to any persons under a term (whether expressed or implied) of a contract of employment by virtue of subsection (1), the employer shall take such measures as are necessary to give effect to that subsection.

(3) Where any term (whether expressed or implied) of a contract of employment is rendered null and void by subsection (1), nothing in this Part shall affect any rights accrued or obligations incurred under that term relating to a period before the 17th day of May, 1990—

(a) during the period beginning on the 17th day of May, 1990, and ending on the 31st day of December, 1998, or, in the case of retirement ages, the 31st day of December, 2017, or

(b) in respect of members who cease to be in employment to which that term applies before or during the period referred to in paragraph (a)."

Amendment of section 76 of Principal Act. 34.—Section 76 of the Principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

"(1) Any dispute as to—

(a) whether any rule of an occupational benefit scheme, other than an occupational pension scheme, complies with the principle of equal

treatment,

(b) whether and to what extent any such rule is rendered null and void by section 71,

(c) whether any term of a collective agreement or employment regulation order specified in section 74, insofar as it relates to occupational benefits provided under a scheme referred to in paragraph (a), complies with the principle of equal treatment,

(d) whether and to what extent any such rule or term is rendered null and void by section 74,

(e) whether any term of a contract of employment (whether expressed or implied), insofar as it relates to occupational benefits provided under a scheme referred to in paragraph (a), complies with the principle of equal treatment,

(f) whether and to what extent any such term is rendered null and void by section 74A, or

(g) whether an employer complies with the provisions of section 70, shall be referred by any person concerned to an equality officer for investigation and recommendation.

(2) Where it appears to the Agency that—

(a) a rule of an occupational benefit scheme referred to in subsection (1),

(b) a rule or term of a collective agreement or employment regulation order referred to in subsection (1) (c), or

(c) a term of a contract of employment referred to in subsection (1)

(e),

does not comply with the principle of equal treatment or an employer fails to comply with the provisions of section 70, the matter may be referred to an equality officer by the Agency and the reference shall be treated for the purpose of this Act as a reference under subsection (1)."

Powers of Court under section 77. 35.—The Principal Act is hereby amended by the substitution for section 78 of the following section:

"Powers of Court under section 77.

78.—The Court may, in pursuance of a determination of the Court, under section 77 as may be appropriate—

(a) determine whether a rule of a scheme referred to in section 76 (1)

(a) complies with the principle of equal treatment,

(b) determine whether and to what extent any such rule is rendered null and void by section 71,

(c) determine whether any term of a collective agreement or employment regulation order specified in section 74, insofar as it relates to occupational benefits provided under a scheme referred to in section 76

(1) (a), complies with the principle of equal treatment,

(d) determine whether and to what extent any such rule or term is rendered null and void by section 74,

(e) determine whether any term of a contract of employment (whether expressed or implied), insofar as it relates to occupational benefits provided under a scheme referred to in section 76 (1) (a), complies with the principle of equal treatment,

(f) determine whether and to what extent any such term is rendered null and void by section 74A,

(g) determine whether the employer concerned has complied with the provisions of section 70,

(h) recommend to a person or persons concerned a specific course of action."

Amendment of section 79 of Principal Act. 36.—Section 79 of the Principal Act is hereby amended by the deletion in subsection (1) of "paragraphs (a) to (e) of".

Amendment of section 80 of Principal Act. 37.—Section 80 of the Principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Where an employee is dismissed from an employment solely or mainly because, in good faith, the employee—

(a) notified the Board of an alleged breach of this Act,

(b) made to the Board a report under section 83 or a voluntary report of any matter concerning the state and conduct of a scheme,

(c) made a reference under section 38, 53, 58, 64A, 75, 76 or 77,

(d) gave evidence in any proceedings under this Act, or

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

the employer shall be guilty of an offence and shall be liable—

(i) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding one year, or to both,

(ii) on conviction on indictment, to a fine not exceeding £10,000 or to imprisonment for a term not exceeding two years, or to both."

Compulsory and voluntary reporting to Board, etc. 38.—The Principal Act is hereby amended by the insertion after section 81 of the following Part:

"PART VIII

COMPULSORY AND VOLUNTARY REPORTING TO THE BOARD

Definition (Part VIII).

82—In this Part 'relevant person' means, in relation to a scheme, a person who—

(a) is an auditor of the scheme, or

(b) is an actuary of the scheme, or

(c) is a trustee of the scheme, or

(d) is an insurance intermediary (within the meaning of section 2 of the Insurance Act, 1989), in relation to the scheme, or

(e) is an investment business firm (within the meaning of section 2, of the Investment Intermediaries Act, 1995), and—

(i) has advised on the scheme, or

(ii) has received any payment in relation to the investment of any of the resources of the scheme, or

(f) has been instructed to prepare, or who has prepared, an annual report of the scheme in accordance with section 55, or

(g) has been appointed by the trustees of the scheme to carry out, or who is carrying out, any of the duties of the trustees of the scheme under section 59.

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

83—(1) Subject to subsection (2), where a relevant person has reasonable cause to believe that a material misappropriation or a fraudulent

conversion of the resources of a scheme to which he is a relevant person has occurred, is occurring or is to be attempted, that person shall, as soon as practicable, give to the Board a report in writing of the particulars of the misappropriation or conversion, as the case may be.

(2) Subsection (1) does not apply to any belief formed as a result of information obtained before the passing of the Pensions (Amendment) Act, 1996 .

(3) A relevant person shall be guilty of an offence if the person—

(a) fails to comply with subsection (1), or

(b) knowingly or wilfully makes a report under subsection (1) which is incorrect.

(4) Where a relevant person is found guilty of an offence under this section the person shall be liable—

(a) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding one year, or to both,

(b) on conviction on indictment to a fine not exceeding £10,000 or to imprisonment for a term not exceeding two years, or to both.

(5) In a prosecution for an offence under subsection (3) it shall be a defence for the accused to show that the contravention to which the offence relates was attributable to another person failing to comply with subsection (1) and that the accused took such reasonable steps in the circumstances as were open to him to secure the compliance of that other person with that subsection.

(6) In a prosecution for an offence under subsection (3) in relation to a failure to comply with subsection (1) it shall be a defence for the accused to show that he was, in the ordinary scope of professional engagement as a barrister or solicitor, assisting or advising in the preparation of legal proceedings and would not have had reasonable cause to believe that a material misappropriation or a fraudulent conversion of the resources of the scheme had taken place if he had not been so assisting or advising.

Protection of person making report to Board.

84.—Where a person makes a report, whether in writing or otherwise, in good faith to the Board of any matter concerning the state and conduct of a scheme, whether or not that person is a relevant person and whether or not the report is required to be made under section 83(1), no duty to which the person may be subject shall be regarded as contravened and no liability or action shall lie against the person in any court for so doing.

Privilege for Board publishing reports made to it under section 83, etc

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

(a) under section 83(1), or

(b) otherwise of any matter concerning the state and conduct of a scheme,

shall be absolutely privileged."

Applications to High Court. 39.—The Principal Act is hereby amended by the insertion after section 85 (inserted by section 38 of this Act) of the following Part:

"PART IX

MISCELLANEOUS APPLICATIONS TO THE HIGH COURT

Definition.

86—In this Part 'the Court' means the High Court.

Court may order employer to pay arrears of contributions.

87—(1) Subject to subsection (2), the Court may, on application to it by the Board, make an order directing an employer to pay arrears of contributions to a scheme.

(2) The Court may make an order under subsection (1) if it is satisfied—

(a) that any contributions payable to the scheme by that employer on his own account have become due and remain unpaid, or

(b) that any contributions payable to the scheme by a member of the scheme have been deducted by that employer from the pay of the member but have not been paid to the scheme.

Court may order restoration of resources of scheme.

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

Court may order disposal of investment.

89—(1) Subject to this section, the Court may, on application to it by the Board, make an order directing the trustees of a scheme to dispose of any investment held for the purposes of the scheme.

(2) The Court may make an order under subsection (1) when it is satisfied that the retention of the investment is likely to jeopardise the rights and interests under the scheme of the members of the scheme.

(3) Subject to subsection (4), where the Court makes an order under subsection (1) it may by that order, or by a further order, direct the trustees, and any other person who the Court is satisfied was knowingly concerned in the investment, to take such steps as the Court may direct for restoring the resources of the scheme to the level at which they would have been if the investment had not been made.

(4) An order under subsection (3) shall not be made unless the Court is satisfied that the investment was not made bona fide in the interests of the members of the scheme and that the person against whom the order is to be made was aware of this or ought reasonably to have been aware of this.

Injunctions.

90—(1) If, on application to it by the Board, the Court is satisfied that there is a reasonable likelihood that a particular person will do any act which constitutes a misuse or misappropriation of any of the resources of a scheme and that such misuse or misappropriation is likely to jeopardise the rights and interests under the scheme, of the members of the scheme, the Court may grant an injunction restraining him from doing so.

(2) If, on application to it by the Board, the Court is satisfied that there is a reasonable likelihood that any of the resources of the scheme will be invested in a manner which is likely to jeopardise the rights and

interests under the scheme, of the members of the scheme, the Court may grant an injunction prohibiting such investment.

(3) If, on application to it by the Board, the Court is satisfied that the state and conduct of a scheme are being investigated by or on behalf of the Board and that the order hereinafter mentioned is desirable to ensure that the rights and interests under the scheme, of the members of the scheme, are not jeopardised pending the outcome of such investigation, the Court may grant an injunction prohibiting any person from disposing of, selling, pledging, charging or otherwise dealing with any of the resources of the scheme."

Amendment of First Schedule to Principal Act. 40.—The First Schedule to the Principal Act is hereby amended by—

(a) the substitution in paragraph 2 of "14" for "12",

(b) the insertion after paragraph 5 of the following paragraph:

"5A. If the chairman of the Board dies, resigns, becomes disqualified or is removed from office the Minister shall appoint a person to be chairman of the Board and the person so appointed shall hold office for the remainder of the term of office of the chairman occasioning the vacancy and shall be eligible for reappointment as chairman of the Board.",

(c) the substitution for paragraphs 8 (1) (a) and (b) of the following:

"(a) two shall be representative of trade union members of whom one shall be a trustee of an occupational pension scheme,

(b) two shall be representative of employers' members of whom one shall be a trustee of an occupational pension scheme,",

(d) the substitution for paragraphs 8 (2) and (3) of the following:

"(2) The members of the Board representing trade union members shall be persons nominated for appointment thereto by such organisation as the Minister considers to be representative of trade unions of workers as the Minister may determine.

(3) The members of the Board representing employers' members shall be persons nominated for appointment thereto by such organisation as the Minister considers to be representative of employers as the Minister may determine."

(e) the insertion in paragraph 11 (1) after "removed from office" of "or is appointed chairman of the Board under paragraph 5A", and

(f) the insertion in paragraph 14 after "may" of "at any time".

Amendment of Part B of Second Schedule to Principal Act. 41.—Part B of the Second Schedule to the Principal Act is hereby amended by—

(a) in subparagraph (1) of paragraph 4, the substitution for "the previous revaluation year" 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)",

(b) in subparagraph (2) of paragraph 4, the substitution for "the previous revaluation year" 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)",

(c) the insertion after subparagraph (2) of paragraph 4 of the following proviso:

"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.",

(d) the substitution for subparagraph (2) of paragraph 6 of the following subparagraph:

"(2) Any preserved benefit provided under a scheme to which subparagraph (1) applies shall be revalued in accordance with paragraph 4 provided that, where the trustees of the scheme consider that by revaluing a preserved benefit in such a manner a member whose service in relevant employment has terminated would be treated more favourably than a member who remains in reckonable service in relation to the period of reckonable service to which the preserved benefit applies, they may revalue the preserved benefit on such other basis and such other dates as they consider just and equitable."

Amendment of Third Schedule to Principal Act. 42.—The Third Schedule to the Principal Act is hereby amended by—

(a) the insertion in subparagraph (b) of paragraph 2 after "on such date but" of ", other than for the purposes of section 48,"

(b) the insertion in subparagraph (b) (ii) of paragraph 3 after "prior to the effective date of the certificate" of the following:

"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,"

(c) the insertion in subparagraph (b) of paragraph 3 after "has terminated on the effective date of the certificate but" of ", other than for the purposes of section 48," and

(d) the substitution for subparagraph (b) (i) (II) of paragraph 4 of the following subparagraph:

"(II) the long service benefits payable under the rules of the scheme in respect of reckonable service completed before the 1st day of January, 1991, together with any other benefits payable on the death of the member entitled to long service benefit in respect of such period of reckonable service calculated as if the member's service in relevant employment had terminated on the effective date of the certificate but disregarding any provision which may prevent the member concerned from acquiring an entitlement to benefit on termination of relevant employment, less, where under paragraph 3 the amount of benefits calculated in accordance with subparagraph (b) (i) of that paragraph exceeds the amount calculated in accordance with subparagraph (b) (ii) of that paragraph, the difference between these two amounts."

Increase of fines. 43.—Each provision of the Principal Act referred to in the Table to this section is hereby amended by the substitution for "£1,000" of "£1,500".

TABLE

Sections 3 (3) (a), 18 (5) (c) (i), 24 (2), 26 (4) (c) (i), 54 (5), 76 (7) (b) (i), 79 (2) (a), 80 (1) (i), 80 (3) (a) (iii) (I), 81 (2) (a) and 81 (3) (a) (iii) (I).

Continuing offences. 44.—The Principal Act is hereby amended by the

insertion after section 3 of the following section:

"Continuing offences.

3A.—Where a person, after conviction for an offence under this Act, continues to contravene the provision concerned, he shall be guilty of an offence on every day on which the contravention continues and for each such offence he shall be liable to a fine—

(a) on summary conviction, not exceeding £250, or

(b) on conviction on indictment, not exceeding £5,000."

Saving of instruments. 45.—An instrument that is made under a provision of The Principal Act that is amended by this Act and is in force immediately before the passing of this Act shall continue in force as if made under the provision so amended.

Short title. 46.—This Act may be cited as the Pensions (Amendment) Act, 1996 .

ACTS REFERRED TO

Accumulations Act, 18921892, c. 58

Bankruptcy Act, 19881988, No. 27

Companies Act, 19901990, No. 33

Family Law Act, 19951995, No. 26

Finance Act, 19721972, No. 19

Insurance Act, 19891989, No. 3

Investment Intermediaries Act, 19951995, No. 11

Pensions Act, 19901990, No. 25

Petty Sessions (Ireland) Act, 18511851, c. 93

Registration of Title Act, 19641964, No. 16

Social Welfare Act, 19911991, No. 7

Social Welfare Act, 19921992, No. 5

Social Welfare Act, 19931993, No. 2