



No. 25/1990:

PENSIONS ACT, 1990

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PENSIONS ACT, 1990

AN ACT TO REGULATE OCCUPATIONAL PENSION SCHEMES AND TO PROVIDE FOR EQUAL TREATMENT OF MEN AND WOMEN UNDER OCCUPATIONAL BENEFIT SCHEMES, FOR THOSE PURPOSES TO PROVIDE FOR THE ESTABLISHMENT OF A BODY (TO BE KNOWN AS AN BORD PINSEAN - THE PENSIONS BOARD) TO SUPERVISE SUCH SCHEMES AND THEIR OPERATION, TO DEFINE THE FUNCTIONS OF THAT BODY AND TO PROVIDE FOR CONNECTED MATTERS.

[24th July, 1990]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:
PART I PRELIMINARY AND GENERAL

Short title and commencement. 1.—(1) This Act may be cited as the Pensions Act, 1990 .

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

Interpretation. 2.—(1) In this Act, unless the context otherwise requires—
"actuarial value" means the equivalent cash value of a benefit (including, where appropriate, provision for any revaluation of such benefit) calculated by reference to appropriate financial assumptions and making due allowance for the probability of survival to normal pensionable age and thereafter in accordance with normal life expectancy on the assumption that the member of a scheme, at the effective date of calculation, is in a normal state of health having regard to his age;

"actuary", in relation to a scheme, means a person appointed in pursuance of this Act to act as actuary, for the purposes of this Act, of the scheme, and "actuarial" shall be construed accordingly;

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

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

"auditor", in relation to a scheme, means a person appointed in pursuance of this Act to act as auditor, for the purposes of this Act, of the scheme;

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

(a) benefit for the member of a scheme at normal pensionable age or in respect of earlier or later retirement, or on leaving the relevant employment, and

(b) benefit for the member's widow, widower, or dependants or others, on the death of the member;

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

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

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

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

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

provide—

(a) benefits, other than long service benefit, and

(b) long service benefit the rate or amount of which is in total directly determined by the part of the contributions aforesaid that is used for the provision of the long service benefit;

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

"functions" includes powers and duties;

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

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

"member", in relation to a scheme, means any person who, having been admitted to membership under the rules of the scheme, remains entitled to any benefit under the scheme;

"the Minister" means the Minister for Social Welfare;

"normal pensionable age" means the earliest age at which a member of a scheme is entitled to receive benefits under the rules of the scheme on retirement from relevant employment, disregarding any provisions under such rules for early retirement on grounds of ill health or otherwise;

"occupational pension scheme" means any scheme or arrangement—

(a) which is comprised in one or more instruments or agreements, and

(b) which provides or is capable of providing in relation to employees in any description of employment who reside within the State, benefits,

and

(c) (i) which has been approved of by the Revenue Commissioners for the purpose of Chapter II of Part I of the Finance Act, 1972 , or

(ii) the application for approval of which under Chapter II of Part I of the Finance Act, 1972 , is being considered, or

(iii) which is a statutory scheme to which section 17 of the Finance Act,

1972 , applies;

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

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

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

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

(a) the only benefit thereunder is in respect of death prior to normal pensionable age, or

(b) the member has been notified in writing by the trustees that such service does not entitle him to long service benefit;

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

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

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

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

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

"scheme" means an occupational pension scheme;

"trustees", in relation to a scheme, which is established under a trust, means the trustees of the scheme and, in relation to a scheme not so established, means the administrator of the scheme and, accordingly, references to trustees shall, except in sections 59, 62, 63 and 64, be construed as including references to administrators.

(2) In this Act—

(a) a reference to a Part is to a Part of this Act unless it is indicated that a reference to a Part of a Schedule to this Act or of some other enactment is intended,

(b) a reference to a section or a Schedule is a reference to a section of, or a Schedule to, this Act unless it is indicated that reference to some other enactment is intended,

(c) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

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

Offences. 3.—(1) (a) Where a trustee contravenes, in his capacity as trustee, a provision of this Act or a regulation thereunder, he shall be

guilty of an offence.

(b) Where an actuary or auditor of a scheme contravenes, in his capacity as such actuary or auditor, a provision of this Act or a regulation thereunder, he shall be guilty of an offence.

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

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

(3) A person guilty of an offence under subsection (1) or (2) shall be liable—

(a) on summary conviction to a fine not exceeding £1,000 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 2 years, or to both.

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

(5) Proceedings for a summary offence under this Act may be brought and prosecuted by the Board.

Exchange of information. 4.—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 II of Part I of the Finance Act, 1972 relating to occupational pension schemes may be transferred by the Revenue Commissioners to the Board.

Regulations generally. 5.—(1) The Minister may make regulations—

(a) for any purpose in relation to which regulations are provided for by any of the provisions of this Act, and

(b) for prescribing any matter or thing referred to in this Act as prescribed or to be prescribed.

(2) Except in so far as this Act otherwise provides, any power conferred thereby to make regulations may be exercised—

(a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case, and

(b) so as to make, as respects the cases in relation to which it is exercised—

(i) the full provision to which the power extends or any lesser provision

(whether by way of exception or otherwise),

(ii) the same provision for all cases in relation to which the power is exercised or different provision for different cases or classes of case, or different provision as respects the same case or class of case for different purposes of this Act,

(iii) any such provision either unconditionally or subject to any specified condition.

(3) Without prejudice to any specific provision of this Act, any regulations may contain such incidental or supplementary provisions as may appear to the Minister to be expedient for the purpose of the regulations.

Laying of regulations before Houses of Oireachtas. 6.—Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything done thereunder.

Expenses. 7.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

PART II ESTABLISHMENT OF PENSIONS BOARD

Establishment day. 8.—The Minister may by order appoint a day to be the establishment day for the purposes of this Part.

Establishment of Board. 9.—(1) On the establishment day there shall stand established a body to be known as An Bord Pinsean - The Pensions Board, and in this Act referred to as "the Board, to perform the functions conferred on it by this Act.

(2) The provisions of the First Schedule shall have effect with respect to the Board.

Functions of Board. 10.—(1) The functions of the Board shall be—

(a) to monitor and supervise the operation of this Act and pensions developments generally;

(b) to advise the Minister either at his request or on its own initiative on all matters relating to the functions assigned to the Board under this Act and on matters relating to pensions generally;

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

(d) to encourage the provision of appropriate training facilities for trustees of schemes;

(e) to advise the Minister on standards for trustees of schemes and on their implementation;

(f) to publish an annual report and such other reports as it may from time to time consider necessary;

(g) to perform such tasks as the Minister may from time to time request.

(2) The Board shall have such powers as are necessary for or incidental to the performance of its functions.

Conferral of additional functions on Board. 11.—(1) The Minister may, with

the consent of the Minister for Finance, by order—

(a) confer on the Board such additional functions connected with the functions for the time being of the Board as he considers appropriate, and
(b) make such provision as he considers necessary or expedient in relation to matters ancillary to or arising out of the conferral on the Board of functions so conferred.

(2) The Minister may by order amend or revoke an order under this section (including an order under this subsection).

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

Consultants and advisers. 12.—Subject to the prior approval of the Minister, the Board may from time to time engage such consultants or advisers as it may consider necessary for the performance of its functions, and any fees due to a consultant or adviser engaged under this section shall be paid by the Board out of moneys at its disposal.

Gifts. 13.—(1) The Board may accept gifts of money, land or other property upon such trusts or conditions (if any) as may be specified by the donor.

(2) The Board shall not accept a gift if the trusts or conditions attached to it would be inconsistent with its functions.

Committees of Board. 14.—(1) The Board may establish committees to assist and advise it in relation to the performance of any of its functions.

(2) The members of a committee established under this section shall be appointed by the Board.

(3) A committee established under this section may include persons who are not members of the Board.

(4) A member of a committee established under this section may be removed from office at any time by the Board.

(5) The Board may at any time dissolve a committee established under this section.

(6) The Board may appoint a person to be chairman of a committee established under this section.

(7) There may be paid out of the income of the Board to members of a committee established under this section such allowances for expenses incurred by them as the Board may, with the consent of the Minister and the Minister for Finance, determine.

Chief executive. 15.—(1) There shall be a chief officer of the Board who shall be known, and is referred to in this Act, as the chief executive.

(2) The chief executive shall be appointed, and may be removed from office at any time, by the Board with the consent of the Minister.

(3) The chief executive shall not be a member of the Board.

(4) The chief executive shall carry on and manage and control generally the administration and business of the Board and perform such other functions as may be determined by the Board.

(5) The chief executive shall devote the whole of his time to his duties as chief executive and shall not hold any other office or position without the consent of the Board.

(6) The chief executive shall hold office on and subject to such terms and conditions (including terms and conditions relating to remuneration) as may be approved of by the Minister with the consent of the Minister for Finance.

(7) The chief executive shall be paid, out of moneys at the disposal of the Board, such allowances for expenses incurred by him in the performance of his functions as may be determined by the Minister with the consent of the Minister for Finance.

(8) The chief executive may make proposals to the Board on any matter relating to its activities.

Staff of Board. 16.—(1) The Board may appoint such, and such number of, persons to be members of the staff of the Board as it may determine with the consent of the Minister and the Minister for Finance.

(2) (a) A member of the staff of the Board shall hold his office or employment on such terms and conditions (including terms and conditions relating to remuneration and superannuation) as the Board may, with the consent of the Minister and the Minister for Finance, determine.

(b) A member of the staff of the Board referred to in paragraph (a) shall be paid, out of the moneys at the disposal of the Board, such remuneration and allowances for expenses incurred by him as the Board may, with the consent of the Minister and the Minister for Finance, determine.

(c) The Board may, with the consent of the Minister, at any time remove any officer or servant of the Board from being its officer or servant.

(3) The grades of the staff of the Board, and the number of staff in each grade, shall be determined by the Board with the consent of the Minister and the Minister for Finance.

(4) The Board may perform any of its functions through or by the chief executive or any other member of its staff duly authorised by the Board in that behalf.

Superannuation of staff of Board. 17.—(1) The Board may, with the consent of the Minister and the Minister for Finance, make a scheme or schemes for the granting of superannuation benefits to or in respect of persons appointed to whole-time positions on the staff of the Board.

(2) A scheme under subsection (1) shall fix the time and conditions of retirement for all persons (including the chief executive) to or in respect of whom superannuation benefits are payable under the scheme or schemes and different times and conditions may be fixed in respect of different classes of persons.

(3) The Board may, with the consent of the Minister and the Minister for Finance, make a scheme amending or revoking a scheme under this section including a scheme under this subsection.

(4) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this section such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

(5) No superannuation benefits shall be granted by the Board on the resignation, retirement or death of a member of the staff of the Board (including the chief executive) otherwise than in accordance with a scheme or schemes under this section.

(6) A scheme under this section shall be laid before each House of the

Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 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.

Authorised persons. 18.—(1) The Board may authorise in writing a person who is an employee of the Board (in this section referred to as "an authorised person") to inspect or investigate the state and conduct of a scheme.

(2) The Board or an authorised person may, in relation to a scheme, require the employer concerned or the trustees of the scheme 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 as may be specified.

(3) An authorised person may, on production of his authorisation if so required--

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

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

(4) The duty to produce or provide any information, document, material or explanation shall extend to any person being an officer or employee of the employer or a trustee or agent, as the case may be, or appears to the Board or the authorised person to have that information, document, material or explanation in his possession or under his control.

(5) If any employer, officer or employee of the employer, trustee of a scheme or agent to the scheme—

(a) wilfully obstructs an authorised person in the exercise of his powers under this section, or

(b) refuses without reasonable excuse to produce to such person any information, document, material or explanation when required to do so under this section, or

(c) refuses without reasonable excuse to answer any questions put to him by the authorised person with respect to the affairs of the scheme, he shall be guilty of an offence under this section and shall be liable—

(i) on summary conviction to a fine not exceeding £1,000 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 2 years, or to both.

(6) In this section "agent", in relation to a scheme, includes the actuaries, auditors and other accountants and the financial and other advisers to the scheme.

(7) Any reference in this section to an officer, employee or agent of a scheme includes a reference to a person who has been, but no longer is, an officer, employee or agent (as the case may be) of the scheme.

Membership of either House of Oireachtas or of European Parliament by members or staff of Board. 19.—(1) Where a member of the Board is—

(a) nominated as a member of Seanad Éireann, or

(b) elected as a member of either House of the Oireachtas or as a

representative in the European Parliament, or

(c) regarded pursuant to section 15 (inserted by the European Assembly Elections Act, 1984) of the European Assembly Elections Act, 1977 , as having been elected to the European Parliament to fill a vacancy, he shall thereupon cease to be a member of the Board.

(2) Where a person who is a member of the staff of the Board is—

(a) nominated as a member of Seanad Éireann, or

(b) elected as a member of either House of the Oireachtas or as a representative in the European Parliament, or

(c) regarded pursuant to section 15 (inserted by the European Assembly Elections Act, 1984) of the European Assembly Elections Act, 1977 as having been elected to the European Parliament to fill a vacancy,

he shall thereupon stand seconded from employment by the Board and shall not be paid by, or be entitled to receive from, the Board any remuneration or allowances in respect of the period commencing on such nomination or election or when he is so regarded as having been elected, as the case may be, and ending when he ceases to be a member of either such House or a representative in such Parliament.

(3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or is a representative in the European Parliament shall, while he is so entitled or is such a representative, be disqualified from becoming a member of the Board or the staff of the Board.

(4) Without prejudice to the generality of subsection (2), that subsection shall be construed as prohibiting, inter alia, the reckoning of a period mentioned in that subsection as service with the Board for the purposes of any superannuation benefits.

Advances by Minister to board. 20.—The Minister may from time to time with the consent of the Minister for Finance, advance to the Board out of moneys provided by the Oireachtas, such sums as the Minister may determine for the purposes of expenditure by the Board in the performance of its functions.

Disclosure by member of Board of interest in proposed contract. 21.—A member of the Board who has—

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

(b) any material or financial interest in any contract which the Board proposes to make,

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

Accounts and audits of Board. 22.—(1) The Board 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 Board including an income and expenditure account and balance sheet and, in particular, shall keep all such special accounts as the Minister may from time to time direct.

(2) Accounts kept in pursuance of this section shall be submitted as soon as may be after the end of the financial year of the Board to which they

relate to the Comptroller and Auditor General for audit and a copy of the income and expenditure account and of the balance sheet and of such other (if any) of its accounts as the Minister may direct and a copy of the Comptroller and Auditor General's report on the account shall be presented to the Minister as soon as may be and the Minister shall cause copies of each of the documents aforesaid to be laid before each House of the Oireachtas.

Reports and information to Minister. 23.—(1) The Board shall furnish to the Minister such information regarding its income and expenditure as he may from time to time require.

(2) As soon as may be after the end of each financial year of the Board, but not later than 6 months thereafter, the Board shall make a report to the Minister of its activities during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

(3) Each report under subsection (2) shall include information in such form and regarding such matters as the Minister may direct.

(4) The Board shall, whenever so requested by the Minister, furnish to him information in relation to such matters as he may specify concerning or relating to the scope of its activities generally, or in respect of any account prepared by the Board or any report specified in subsection (2) or (4) or section 22 (2) or the policy and activities, other than day to day activities, of the Board.

Disclosure of information. 24.—(1) A person shall not, without the consent of the Board, disclose any information obtained by him while performing (or as a result of having performed) duties as a member, or member of the staff of, or an adviser or consultant to, the Board.

(2) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.

(3) Nothing in subsection (1) shall prevent the disclosure of information in a report made to the Board or by or on behalf of the Board to the Minister.

Fees payable to Board. 25.—The trustees of a scheme shall pay annually to the Board out of the resources of the scheme fees of such amount as may be prescribed with the consent of the Minister for Finance and different fees may be prescribed under this section in respect of different classes of schemes.

Provision in relation to determinations by Board under sections 38, 53, 58 and 75. 26.—(1) (a) A question falling to be determined by the Board under section 38, 53, 58 or 75 shall be determined by it either, in its absolute discretion, without or after an oral hearing by the Board (or such member or members of the Board or other person or persons as the Board may authorise for that purpose).

(b) Any person concerned may make representations to the Board in relation to such a question as aforesaid and in reaching its determination the Board shall take account of any such representations.

(2) Representations under subsection (1) shall be made in writing or, if an oral hearing is being held under subsection (1) in relation to the question concerned, at the hearing.

(3) The person or persons holding an oral hearing under this section shall have power to take evidence on oath and for that purpose any of the

persons aforesaid may administer oaths to persons attending as witnesses at the hearing.

(4) (a) The person or any of the persons holding an oral hearing under this section may, by giving notice in that behalf in writing to a person, require the person to attend on such day and at such time and place as is specified in the notice to give evidence at the hearing in relation to the question to be determined by the Board or to produce at the hearing any documents in his possession, custody or control relating to any such question.

(b) A notice under paragraph (a) may be given either by delivering it to the person to whom it relates or by sending it by post in a prepaid registered letter addressed to the person at the address at which he ordinarily resides.

(c) A person to whom a notice under paragraph (a) has been given and who refuses to give evidence or gives false evidence at an oral hearing under this section or refuses or wilfully fails to produce any document to which the notice relates at such a hearing shall be guilty of an offence and shall be liable—

(i) on summary conviction, to a fine not exceeding £1,000 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 2 years, or to both.

(5) The person or persons holding an oral hearing under this section may order a person concerned to pay to any other person concerned a reasonable sum in respect of expenses occasioned by the person in relation to the hearing and any such sum may be recovered by the person concerned from the other person concerned, as a simple contract debt in any court of competent jurisdiction.

(6) Subject to the provisions of this Act, the procedure at oral hearings under this section shall be such as may be prescribed and regulations for the purposes of this subsection may, without prejudice to the generality of the foregoing, make provision for the notification of persons concerned of the making of representations under this section, of the date, time and place of such hearings and of determinations of the Board under section 38, 53, 58 or 75, for the circumstances (if any) in which persons concerned may present their cases at such hearing through representatives (including legal representatives), for the making of a sufficient record of the proceedings at such hearings and for such other matters as the Minister considers necessary or expedient for the purposes of this section and for giving full effect to it.

PART III PRESERVATION OF BENEFITS

Interpretation (Part III). 27.—(1) In this Part and the Second Schedule, except where the context otherwise requires—

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

(a) the scheme,

(b) every other scheme relating to the same employment,

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

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

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

(2) Where the rate or amount of part of the long service benefit payable under a defined benefit scheme is directly determined by an amount of contribution paid by or in respect of the member, then, for the purposes of this Part and the Second Schedule, the scheme in so far as it relates to such part of the long service benefit shall be treated as a defined contribution scheme and, in so far as it relates to other benefits (including the remaining part of the long service benefit) shall be treated as a defined benefit scheme.

(3) References in this Part and the Second Schedule to a defined contribution scheme or a defined benefit scheme shall be construed as including references to a part of such scheme.

Entitlement to preserved benefit. 28.—(1) Subject to section 37, this Part and the Second Schedule shall apply to any member of a scheme who has service in relevant employment after the commencement of this Part.

(2) A member of a scheme whose service in relevant employment terminates otherwise than on death after the commencement of this Part but before normal pensionable age and who has completed at least 5 years' qualifying service of which at least 2 such years fall after the commencement of this Part, shall be entitled to a benefit (in this Act referred to as a "preserved benefit").

Preserved benefit — defined benefit scheme. 29.—(1) In this section—
"contingent pension" has the meaning assigned to it by subsection (5);
"scheme" means a defined benefit scheme.

(2) A preserved benefit shall be provided under a scheme only in respect of—

(a) a long service benefit, or

(b) where, by the exercise of an option under subsection (5), the trustees so determine, a contingent pension.

(3) A preserved benefit shall be calculated in accordance with Part A of the Second Schedule.

(4) Subject to subsection (5), on the death of a member of a scheme who is entitled to a preserved benefit under the scheme before such benefit commences to be payable, an amount shall be payable under the scheme to his personal representative in respect thereof equal to the actuarial value of the preserved benefit (including any preserved benefit under subsections (6) and (7)) immediately before the death of the member concerned.

(5) (a) Where a scheme provides for a pension payable to, or for, either or both the widowed spouse or any dependants of the member concerned in the event of that member's death while in relevant employment prior to his attaining normal pensionable age (in this section referred to as "a contingent pension") the trustees of the scheme may, in lieu of the benefit specified in subsection (4), provide under the scheme a contingent pension calculated in accordance with paragraph 1 of Part A of the Second

Schedule and such benefit shall be deemed to form part of that member's preserved benefit.

(b) For the purposes of paragraph (a), references in paragraph 1 of Part A of the Second Schedule to long service benefit shall be construed as references to a contingent pension within the meaning of this section.

(6) Where a member of a scheme is entitled to additional long service benefit under the scheme by virtue of the payment of additional voluntary contributions, a preserved benefit in respect of such benefit shall be calculated in accordance with paragraph 3 of Part A of the Second Schedule and shall be provided in addition to the preserved benefit under subsection (2):

Provided that if the member has received a refund of any such contributions paid by him during any period of reckonable service prior to the commencement of this Part, then, in calculating the amount of any preserved benefit under this subsection, any period of reckonable service prior to the commencement of this Part shall be disregarded.

(7) Where additional long service benefit has been granted under a scheme to a member in respect of a transfer of accrued rights from another scheme, that benefit shall be provided in addition to the preserved benefit under subsection (2):

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

Preserved benefit — defined contribution scheme. 30.—(1) In this section—
"appropriate contributions" shall be construed in accordance with subsections (4), (5) and (6);

"scheme" means a defined contribution scheme.

(2) A preserved benefit shall be provided under a scheme and it shall be such that its actuarial value at the date on which payment of it commences is equal to the accumulated value on that date of the appropriate contributions in respect of the member concerned under the scheme.

(3) On the death of a member of a scheme who is entitled to a preserved benefit before such benefit commences to be payable, an amount shall be payable under the scheme to his personal representative in respect thereof equal to the accumulated value of the appropriate contributions under the scheme in respect of the member immediately before his death.

(4) Subject to subsections (5) and (6), the appropriate contributions shall be the contributions paid by or in respect of the member concerned for the purposes of long service benefit from the commencement of this Part, or, if later, the date of the commencement of the relevant employment, but excluding additional voluntary contributions and any payment representing a transfer of accrued rights from another scheme.

(5) Where a member of a scheme is entitled to additional long service benefit under the scheme by virtue of the payment of additional voluntary contributions, the appropriate contributions shall be all such contributions:

Provided that if the member has received a refund of any such

contributions paid by him prior to the commencement of this Part, the appropriate contributions shall be the contributions paid by him from the commencement of this Part.

(6) Where additional long service benefit has been granted under a scheme to a member in respect of a transfer of accrued rights from another scheme, the appropriate contributions shall be the amount of the payment received by the trustees of the scheme in respect of such accrued rights: Provided that if the member has received a refund of contributions paid by him, prior to the commencement of this Part, under that scheme which were included in the rights transferred, the appropriate contributions shall be the portion of the payment received by the trustees which represented rights accrued after such commencement.

(7) Where benefits under a scheme are secured under one or more policies of assurance, the accumulated value, on the date on which payment of preserved benefit commences, of 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.

Payment of preserved benefit. 31.—(1) A preserved benefit shall be payable out of the resources of the scheme.

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

Non-entitlement to refund of contributions. 32.—A member of a scheme who is entitled to preserved benefit under the scheme in accordance with the provisions of this Part shall not be entitled to receive a refund of any contributions paid to that scheme after the commencement of this Part.

Revaluation of preserved benefit. 33.—(1) In this section and Part B of the Second Schedule "revaluation year" means a year beginning not less than 5 years after the commencement of this Part.

(2) Where in respect of any preserved benefit payable under a defined benefit scheme to or in respect of a member and calculated in accordance with paragraph 1 or 3 or both of Part A of the Second Schedule, there is a period of at least one year between—

(a) the commencement of the first revaluation year or the date of the termination of the member's relevant employment, whichever is the later, and

(b) the date on which he attains or would attain normal pensionable age or the date of his death, whichever is the earlier,

then, the preserved benefit shall be revalued annually as soon as may be after the end of each revaluation year in accordance with the provisions of Part B of that Schedule.

(3) A revaluation shall not be made under this section in respect of a member of a scheme after—

(a) the date of payment of preserved benefit to or in respect of him, or

(b) the date of his attainment of normal pensionable age, or

(c) the date of his death,

whichever is the earliest.

(4) The Minister, after consultation with the Minister for Finance, shall, in respect of each revaluation year, prescribe the percentage (in this Act

referred to as "the revaluation percentage") by which the preserved benefit is to be increased by the revaluation thereof under this section for that year.

(5) The percentage prescribed under subsection (4) in respect of a revaluation year shall be—

(a) the percentage that equals the increase in the general level of consumer prices during that year calculated by the Minister in such manner as he thinks appropriate, or

(b) 4 percent,

whichever is the lesser.

(6) The Minister may by regulations vary the percentage specified in subsection (5) (b), but any such variation shall not apply in the case of preserved benefit the entitlement to which arises before the date of the making of the regulations concerned.

(7) Where, in the opinion of the Minister, no increase in the general level of consumer prices occurred during a revaluation year, he shall not prescribe a percentage under subsection (4) in relation to that year and the revaluation of any preserved benefit that, but for this subsection, would fall to be made as soon as may be after the end of that year shall not be made.

Entitlement to transfer payment. 34.—(1) This section shall apply to a member of a funded scheme who is entitled to a preserved benefit under this Part.

(2) A member of a scheme to whom this section applies shall be entitled to the transfer of an amount of money from the scheme (in this Part referred to as a "transfer payment) in accordance with subsection (3) equal—

(a) in the case of a defined benefit scheme, to the actuarial value of the preserved benefit on the date on which the relevant application under subsection (3) is received by the trustees, and

(b) in the case of a defined contribution scheme, to the accumulated value on that date of the appropriate contributions under the scheme in respect of the member:

Provided that where benefits under such a scheme are secured under one or more policies of assurance, the accumulated value of the appropriate contributions shall be the proportion of the proceeds of every such policy applicable to those contributions.

(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 scheme, 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 .

(4) Where the trustees of a scheme receive an application under subsection (3), they shall apply the transfer payment concerned, within the period of 3 months following the date of the receipt of the application, in the manner directed by the application under subsection (3).

(5) Where—

(a) a person has exercised the entitlement conferred on him under subsection (2), and

(b) the trustees of the scheme from which the transfer payment is being made have complied with the provisions of subsection (4),
then, they shall be discharged from any obligation to provide benefits to which the transfer payment relates.

(6) Where a member of a scheme directs the application of a transfer payment in accordance with subsection (3) (a), the trustees of the scheme to which the transfer payment is being made shall accept such payment and shall provide benefits of an actuarial value that is equivalent to the amount of the transfer payment in such form as they may determine.

(7) A member of a scheme shall not be entitled to a transfer payment under this section if—

(a) payment of his preserved benefit has commenced, or

(b) he fails to exercise the entitlement within a period of 2 years (or such longer period as may be provided for by the scheme or determined by the trustees of the scheme) after the date of the termination of the relevant employment concerned.

Power of trustees to effect transfer payment. 35.—(1) Notwithstanding anything contained in section 34, the trustees of a scheme may, in such circumstances as may be prescribed, instead of providing a preserved benefit out of the resources of the scheme, effect, without the consent of the member concerned, a transfer payment from the scheme by making one or more payments referred to in section 34 (3) (b).

(2) Where the trustees of a scheme have effected a transfer payment in accordance with subsection (1) they shall be discharged from any obligation to provide benefits to which the transfer payment relates.

Provisions of schemes relating to forfeiture and lien to be disregarded .
36.—Any provision of a scheme—

(a) providing for the forfeiture of a preserved benefit, or

(b) enabling the employer of a member to exercise a lien on the member's preserved benefit,

shall be disregarded for the purpose of this Part.

Exclusion from and modification of Part III and Second Schedule. 37.—(1)

Where the Minister is of the opinion that the benefits provided under schemes or categories of schemes during a period that the Minister considers to be of reasonable length for the purposes of this subsection are no less favourable to the members concerned than those required by this Act to be provided under the schemes or categories of schemes, he may by regulations made with the consent of the Minister for Finance exclude those schemes or categories of schemes from the application of this Part and Second Schedule.

(2) Where the Minister considers that it would be unreasonable, having regard to their nature and character, and would be contrary to the interests of their members, to require specified schemes or categories of schemes to comply fully with specified provisions of this Part and the Second Schedule, he may by regulations made with the consent of the Minister for Finance provide that those provisions shall apply in relation to those schemes or categories of schemes with specified modifications,

being modifications that in the opinion of the Minister are reasonable and do not materially alter those provisions.

(3) Where the Minister so provides by regulations, then notwithstanding anything in this Part, in the cases specified in the regulations—

(a) a period of a person's reckonable service under a scheme in different employments may be treated for the purposes of this Part as a period of reckonable service under the scheme in such one or more of those employments as may be specified;

(b) a person's reckonable service in any employment may be treated in the case of interruption of such employment as terminated or not terminated.

(4) The Minister may by regulations specify the method of calculating preserved benefit payable under schemes and for such adjustments of the amounts of such benefit as may be necessary to facilitate its computation.

Conflict between Part III and schemes. 38.—(1). The provisions of this Part, of any regulations made there under and of the Second Schedule shall override any rule of a scheme to the extent that that rule conflicts with those provisions.

(2) Any question as to—

(a) whether any provision of this Part (including the application of any provisions as modified by regulations), any regulations made thereunder or the Second Schedule conflicts with any rule of a scheme, or

(b) whether a scheme is a defined benefit scheme or a defined contribution scheme for the purposes of this Part, shall be determined by the Board on application to it in writing in that behalf by a person specified in subsection (3).

(3) The following persons shall be entitled to make an application under subsection (2) in respect of a scheme:

(a) the trustees of the scheme;

(b) any person who is an employer of persons in relevant employment to which the scheme applies;

(c) any member or prospective member of the scheme;

(d) such other persons (if any) as may be prescribed, being persons who, in the opinion of the Minister, ought to be entitled to make such an application.

(4) An appeal to the High Court on a point of law from a determination of the Board under subsection (2) in relation to a scheme, may be brought by the person who made or a person who was entitled to make the application concerned under subsection (2).

Schemes may provide higher benefits. 39.—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, on a higher scale, or payable at any earlier 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 after the commencement of this Part.

PART IV FUNDING STANDARD

Interpretation (Part IV). 40.—In this Part and the Third Schedule, except where the context otherwise requires—

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

"the effective date" has the meaning assigned to it in section 42;

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

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

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

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

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

Application (Part IV). 41.—Subject to section 52, this Part shall apply to any scheme other than a defined contribution scheme.

Actuarial funding certificate. 42.—(1) The trustees of a relevant scheme shall, from time to time in accordance with section 43, submit to the Board a certificate, in this Part and the Third Schedule referred to as "an actuarial funding certificate".

(2) The trustees of a relevant scheme shall cause actuarial funding certificates to be prepared by an actuary who shall certify therein that as at the date, in this Part referred to as "the effective date", on which the liabilities and resources of the scheme are calculated for the purposes of section 44 either—

(a) the scheme satisfies the funding standard provided for in section 44, or

(b) the scheme does not satisfy the funding standard.

(3) In the case of a relevant scheme which commenced before the commencement of this Part, the first actuarial funding certificate submitted in accordance with section 43 shall also state the certified percentage in relation to the scheme.

(4) An actuarial funding certificate shall be in such form as may be prescribed.

Effective dates for actuarial funding certificates. 43.—(1) The first actuarial funding certificate shall have an effective date—

(a) in the case of a relevant scheme which commenced before the commencement of this Part, not later than 3 years after such commencement, and

(b) in the case of a relevant scheme which commenced on or after such commencement, not later than 3½ years after the commencement of the scheme,

and a subsequent actuarial funding certificate shall have an effective date not later than 3½ years after the effective date of the immediately preceding certificate.

(2) Unless otherwise prescribed, an actuarial funding certificate shall be submitted to the Board by the trustees of the scheme within 9 months of the effective date of the certificate.

Provisions relating to funding standard. 44.—Subject to the subsequent provisions of this Part, a relevant scheme shall be deemed to have satisfied the funding standard if, in the opinion of the actuary, the resources of the scheme at the effective date of the actuarial funding certificate would have been sufficient, if the scheme had been wound up on that date, to provide for—

(a) the liabilities of the scheme consisting of—

(i) benefits in the course of payment to which paragraph 1 of the Third Schedule relates,

(ii) benefits, other than those referred to in subparagraph (i) which consist of additional benefits secured or granted under the scheme on behalf of the member concerned by way of additional voluntary contributions or a transfer of rights from another scheme to which paragraph 2 of the Third Schedule relates,

(iii) benefits, other than those referred to in subparagraphs (i) and (ii), payable in respect of reckonable service completed after the commencement of this Part to which paragraph 3 of the Third Schedule relates, and

(iv) the percentage (in this Part referred to as the "specified percentage") of any benefits, other than those referred to in subparagraphs (i) and (ii), payable in respect of reckonable service completed prior to such commencement to which paragraph 4 of the Third Schedule relates, and

(b) the estimated expenses of administering the winding up of the scheme.

Provisions relating to schemes commencing before commencement of this Part. 45.—(1) This section applies to relevant schemes that came into operation before the commencement of this Part.

(2) The actuary shall determine the percentage, if any, of the benefits under a scheme to which paragraph 4 of the Third Schedule relates that, in his opinion, could have been provided at the effective date of the first actuarial funding certificate 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) and (iii), of subsection (a) of section 44, and

(ii) the estimated expenses of administering a winding up, had already been discharged from resources of the scheme.

(3) In determining the percentage referred to in subsection (2), the actuary shall have regard to the order of priority accorded to each category of membership in the rules of the scheme concerned respecting a winding up thereof but only in so far as they apply to the benefits to which the said paragraph 4 relates and the actuary may determine a different percentage for each such category of membership.

(4) The first actuarial funding certificate in relation to a scheme shall state a percentage for each category of membership to which, pursuant to

subsection (3), a different percentage applies (in this Part referred to as "the certified percentage"), being the lesser of—

(a) the percentage determined by the actuary pursuant to subsections (2) and (3), and

(b) 100 percent.

(5) For the purposes of this Part—

(a) where an actuarial funding certificate relates to an effective date not more than 10 years after the commencement of this Part, the specified percentage shall be the certified percentage,

(b) where an actuarial funding certificate relates to an effective date more than 10 years after such commencement and on such commencement the scheme concerned was a funded scheme, the specified percentage shall be 100 per cent.

Matters to which actuary is to have regard. 46.—(1) In completing an actuarial funding certificate, the actuary shall, in addition to complying with the other relevant provisions of this Part, have regard to such financial or other assumptions as he considers to be appropriate on the effective date of the certificate.

(2) In determining the benefits to be paid on the winding up of a relevant scheme, the actuary shall, in addition to complying with section 48, have regard to such financial or other assumptions as he considers to be appropriate.

Limitations on calculation of resources of relevant scheme. 47.—In respect of any calculation made for the purposes of this Part, the resources of a relevant scheme on any date to which such calculation relates shall exclude investments in excess of a prescribed percentage within a prescribed class or description of investments.

Priorities on winding up of relevant scheme. 48.—Notwithstanding anything contained in the rules of a relevant scheme that is being wound up, the resources of the scheme being wound up shall be applied on the winding up to secure—

(a) firstly, the continued payment of the benefits specified in paragraph 1 of the Third Schedule to or in respect of those persons who, at the date of the winding up, were in receipt of such benefits, and

(b) 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,

before discharging any other liabilities of the scheme:

Provided, however, that the expenses, fees and costs of the winding up of the scheme shall be payable in priority to any other claims on the scheme.

Funding proposal. 49.—(1) Where, in accordance with the provisions of section 43, the trustees of a scheme submit an actuarial funding certificate which certifies that at the effective date of the certificate the scheme does not satisfy the funding standard, they shall submit to the Board a proposal (in this Part referred to as a "funding proposal") in accordance with the provisions of this section.

(2) A funding proposal shall—

(a) contain a proposal designed to ensure that, in the opinion of the actuary, the scheme could reasonably be expected to satisfy the funding

standard at the effective date of the next actuarial funding certificate,
(b) be certified by the actuary as meeting the requirements of paragraph
(a),

(c) be signed by or on behalf of the employer signifying agreement to
the proposal, and

(d) such funding proposal shall be submitted by the trustees of the
scheme with the actuarial funding certificate to which it relates.

(3) The Board may, where it considers it necessary or appropriate in any
individual case, modify the requirements of subsection (2) in respect of
the scheme or schemes to which that case relates in such circumstances and
on such terms as it considers appropriate.

Direction by Board to trustees. 50.—(1) The Board may, by notice in
writing, direct the trustees of a scheme to 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 where—

(a) the trustees of the scheme fail to submit an actuarial funding
certificate within the period specified in section 43, or

(b) the actuarial funding certificate certifies that the scheme does not
satisfy the funding standard and the trustees of the scheme have not
submitted a funding proposal in accordance with section 49.

(2) The reduction in benefits under subsection (1) shall 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.

(3) Where the Board gives a direction under subsection (1), the trustees
of the scheme shall—

(a) 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,

(b) within a further period of one month, submit to the Board—

(i) details of the reduction in benefits including copies of the
notifications issued to members of the scheme, and

(ii) an actuarial funding certificate certifying that at the effective
date, being the date of the reduction in benefits, the scheme satisfies
the funding standard.

Qualification for appointment as actuary of scheme. 51.—(1) A person shall
not be qualified for appointment as actuary for the purposes of this Act
to a scheme—

(a) unless he possesses the prescribed qualifications, or

(b) if he is a member of a class of persons standing prescribed for the
time being for the purposes of this section.

(2) A person shall not act as actuary to a particular scheme at a time
when he is disqualified under this Act for appointment to that office and,
if an actuary of a scheme becomes so disqualified during his term of
office as such actuary, he shall thereupon vacate his office and give
notice in writing to the trustees of the scheme that he has vacated his
office by reason of such disqualification.

Exclusion from and modification of Part IV and Third Schedule. 52.—(1)
Where the Minister considers that some or all of the benefits under

specified schemes or categories of schemes are, or may be, paid in whole or in part out of moneys provided from the Central Fund or moneys provided by the Oireachtas, he may by regulations made with the consent of the Minister for Finance exclude those schemes or categories of schemes from the application of this Part and the Third Schedule.

(2) Where the Minister considers that—

(a) it would be unreasonable, having regard to their nature, character and resources and the methods by which benefits payable under them are funded, and

(b) it would be contrary to the interests of their members, to require specified schemes or categories of schemes to comply fully with specified provisions of this Part and the Third Schedule, he may by regulations made with the consent of the Minister for Finance provide that those provisions shall apply in relation to those schemes or categories of schemes with specified modifications, being modifications that, in the opinion of the Minister, are reasonable and do not materially alter those provisions.

Conflict between Part IV and schemes. 53.—(1) The provisions of this Part and of any regulations made thereunder shall override any rule of a scheme to the extent that that rule conflicts with those provisions.

(2) Any question as to—

(a) whether any provision of this Part (including any such provision as modified by regulations), any regulation made thereunder or the Third Schedule conflicts with any rule of a scheme, or

(b) whether a scheme is a defined benefit scheme or a defined contribution scheme for the purposes of this Part, shall be determined by the Board on application to it in writing in that behalf by a person who, in relation to the scheme, corresponds to a person mentioned in section 38 (3) in relation to a scheme mentioned therein.

(3) An appeal to the High Court on a point of law from a determination of the Board, under subsection (2) in relation to a scheme, may be brought by the person who made, or a person who was entitled to make, the application concerned under subsection (2).

PART V DISCLOSURE OF INFORMATION IN RELATION TO SCHEMES

Disclosure of information in relation to schemes. 54.—(1) It shall be the duty of the trustees of a scheme to furnish information to the persons specified in subsection (2) on the following, that is to say—

(a) the constitution of the scheme,

(b) the administration and finances of the scheme,

(c) the rights and obligations that arise or may arise under the scheme, and

(d) such other matters as appear to the Minister to be relevant to schemes in general or to schemes of a particular description to which the scheme belongs and are prescribed.

(2) The persons to whom subsection (1) relates are—

(a) the members and prospective members of the scheme,

(b) the spouses of members and prospective members of the scheme,

(c) persons within the application of the scheme and qualifying or

prospectively qualifying for its benefits,

(d) an authorised trade union representing the members concerned.

(3) Notwithstanding subsection (1), the Minister may by regulations provide that information in relation to such of the matters aforesaid as may be specified shall be furnished by the trustees of the scheme to such of the persons specified in subsection (2) as may be specified in the regulations only if so requested by those persons.

(4) (a) The trustees, the actuary or the auditor of a scheme may request an employer to whom the scheme relates to furnish them or him with such information as they or he may reasonably require for the purposes of their or his functions under this Act or regulations thereunder and the employer shall comply with any such request.

(b) The actuary or the auditor of a scheme 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.

(5) A person who contravenes subsection (1) or (4) or regulations under subsection (3) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.

(6) In this section "authorised trade union" means a body to whom a negotiation licence (within the meaning of Part II of the Trade Union Act, 1941) was issued under the said Part II.

Annual reports. 55.—(1) The trustees of a scheme shall prepare an annual report containing information in relation to such matters as may be prescribed with the consent of the Minister for Finance concerning the operation of the scheme during whichever of the following periods the trustees may select, that is to say:

(a) each year beginning on the date specified for the purpose of the scheme—

(i) in any document comprising the scheme or which is included among the documents comprising it, or

(ii) in the rules of the scheme,

(b) each year beginning on the 1st day of January, or

(c) each year beginning on such other day as may be agreed upon by the trustees and the Board.

(2) Subsection (1) of this section shall not apply to a scheme—

(a) the only benefit under which is in respect of death prior to normal pensionable age, and

(b) the members of which have been notified in writing by the trustees that service by a member in the relevant employment after the date of the notification does not entitle the member to long service benefit.

Audited accounts and actuarial valuations. 56.—(1) The trustees of a scheme shall cause the accounts of the scheme in respect of such periods as may be prescribed to be audited by the auditor of the scheme and shall 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, in respect of each such audit and valuation, shall cause to be prepared the documents to which this section applies.

(2) The documents to which this section applies are—

(a) the audited accounts of the scheme concerned,

(b) the auditor's report on the accounts specified in paragraph (a), and
(c) the actuary's report on his valuation of the assets and liabilities
of the scheme.

(3) A person shall not be qualified for appointment as auditor for the
purposes of this Act of a scheme—

(a) unless he is a member of a body of accountants, membership of which
is recognised by the Minister for Industry and Commerce under the
Companies Acts, 1963 to 1986, as qualifying a person to be an auditor of a
company, or is otherwise for the time being authorised by the said
Minister under the said Acts to be appointed auditor of a company, or
(b) if he is a member of a class of persons standing prescribed for the
time being for the purposes of this section.

(4) A person shall not act as auditor of a particular scheme at a time
when he is disqualified under this section, for appointment to that office
and, if an auditor of the scheme becomes so disqualified during his term
of office as such auditor, he shall thereupon vacate his office and give
notice in writing to the trustees of the scheme that he has vacated his
office by reason of such disqualification.

(5) The form and content of any document to which this section applies may
be prescribed with the consent of the Minister for Finance and those
documents shall comply with any regulation under this subsection.

(6) (a) Paragraphs (a) and (b) of subsection (2) shall not apply to
a scheme—

(i) that is not a funded scheme,

(ii) the only benefit under which is in respect of death prior to normal
pensionable age, and

(iii) the members of which have been notified in writing by the trustees
that service by a member in relevant employment after the date of the
notification does not entitle the member to long service benefit under the
scheme.

(b) Paragraph (c) of subsection (2) shall not apply to a scheme—

(i) that is a defined contribution scheme,

(ii) that is not a funded scheme,

(iii) the only benefit under which is in respect of death prior to normal
pensionable age, and

(iv) the members of which have been notified in writing by the trustees
that service by a member in relevant employment after the date of the
notification does not entitle the member to long service benefit under the
scheme.

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 and 56, he may by regulations made with
the consent of the Minister for Finance provide that those sections shall
apply in relation to those schemes or categories of schemes with specified
modifications, being modifications that, in the opinion of the Minister,
are reasonable and are not such to relieve the trustees of the obligation
to furnish such information under those sections as is appropriate in all
the circumstances.

Conflict between Part V and schemes. 58.—(1) The provisions of this Part

and of any regulations made thereunder shall override any rule of a scheme to the extent that that rule conflicts with those provisions.

(2) Any question as to—

(a) whether any provision of this Part (including the application of any provision as modified by regulations) or any regulation made thereunder conflicts with any rule of a scheme, or

(b) whether a scheme is a defined benefit scheme or a defined contribution scheme for the purposes of this Part,

shall be determined by the Board on application to it in writing in that behalf by a person who, in relation to the scheme, corresponds to a person mentioned in section 38 (3) in relation to the scheme mentioned therein.

(3) An appeal to the High Court on a point of law from a determination of the Board under subsection (2) in relation to a scheme, may be brought by the person who made, or a person who was entitled to make, the application concerned under subsection (2).

PART VI TRUSTEES OF SCHEMES

General duties of trustees of scheme. 59.—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;

(b) to provide for the proper investment of the resources of the scheme in accordance with the rules of the scheme;

(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;

(d) to ensure that proper membership and financial records are kept.

Duty to register scheme. 60.—(1) Subject to the following subsections, it shall be the duty of trustees of a scheme to ensure that the scheme is registered with the Board.

(2) A scheme shall be registered not later than—

(a) in case the scheme commenced before the commencement of this section, one year after such commencement,

(b) in any other case, one year after the commencement of the scheme.

(3) It shall be the duty of the trustees of a scheme to provide the Board, in such a manner as may be prescribed, with such information as may be prescribed for the purposes of this section.

Restriction of Perpetual Funds (Registration) Act 1933. 61.—Sections 7, 8, 10, 12 (2), and, in so far as it relates to those sections, section 14 of the Perpetual Funds (Registration) Act, 1933 shall not apply in the case of a scheme.

Selection by members of funded schemes of persons for appointment as trustees. 62.—(1) The Minister shall provide by regulations, in respect of schemes having not less than a specified number of members, that the members of any such scheme may, if a majority of the members decide to do so, select or, at the option of such majority, approve of the selection by the employer concerned of, a person or a specified number of persons who

shall be appointed to be trustees of the scheme and different numbers of persons (including one person) may be so specified for different schemes.

(2) Regulations under this section—

(a) shall specify the manner in which decisions of members of schemes, and the selection of persons for appointment as trustees of schemes by the members of schemes, for the purpose of subsection (1) shall be made,

(b) may make such other provision as the Minister considers necessary or expedient for the purpose of this section and for enabling it to have full effect.

Appointment and removal of trustees by High Court. 63.—(1) The High Court (in this Part referred to as "the court") may, on application to it by the Board by petition, make an order for the appointment of one or more new trustees of a scheme in substitution for the existing trustees of the scheme.

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

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

(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.

(3) (a) A petition under this section shall be served only on the existing trustees unless the court directs otherwise.

(b) Upon the hearing of a petition under this section, the Board, the existing trustees of the scheme concerned, the employer concerned and the members of the scheme shall be entitled to be heard unless the court directs otherwise.

(4) A trustee of a scheme appointed under this section shall, as well before as after the resources of the scheme become by law vested in him have the same powers, authorities and discretions and may in all respects act as if he had been originally appointed a trustee by the rules of the scheme.

(5) An order under this section 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 to the trustees appointed by the order in respect of fees, expenses or other matters relating to their duties as such trustees) as the court considers necessary or expedient.

(6) An order under this section shall not operate further or otherwise as a discharge to any former trustee of the scheme concerned than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

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

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

Appointment and removal of trustees by Board. 64.—(1) Where, in relation to a scheme, there are no trustees or the trustees cannot be found, the Board may, if it considers it necessary to do so, on application to it in that behalf by a person having an interest 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—

(a) not less than 14 days before the date on which it proposes to make an order under this section, publish a notice in a daily newspaper circulating throughout the State stating the proposal and giving particulars of the proposed order,

(b) within 10 days after the date of the making of the order, publish a notice in a daily newspaper circulating throughout the State stating the proposal and giving particulars of the proposed order.

(3) Every trustee of a scheme appointed under this section shall, as well before as after the resources of the scheme become by law vested in him, have the same powers, authorities and discretions and may in all respects act as if he had been originally appointed a trustee by the rules of the scheme.

(4) (a) A person having an interest may, within 21 days after the publication of a notice under subsection (2) (b) (or such longer period as the court may fix, being a period that, having regard to the circumstances of any particular case, the court considers to be reasonable), appeal to the court against the making of the order to which the notice relates.

(b) On an appeal under this subsection the court may make such order confirming, annulling or varying the order concerned and such order as to costs as it thinks fit, but if the court annuls or varies an order under this section that has come into operation, the annulment or variation shall be without prejudice to the validity of anything previously done thereunder.

(c) The Board, the trustees, the employer and the members of the scheme concerned shall be entitled to be represented and heard on any appeal under this subsection.

(d) An order under this section shall not come into operation—

(i) during the period of 21 days from the date of the publication of the notice under subsection (2) (b) in relation to the order, or

(ii) if an appeal against the order is brought during the period aforesaid, before the final determination of the appeal or any appeal from such determination the withdrawal of either such appeal.

(5) An order under this section may make provision for such ancillary and

consequential matters (including the vesting of the property of the scheme 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 to the trustees appointed by the order in respect of fees, expenses or other matters relating to their duties as such trustees) as the Board considers necessary or expedient.

(6) An order under this section shall not operate as a discharge of any liabilities of a former trustee of the scheme concerned to any greater or different extent than the appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(7) Where a body corporate is appointed under this section to be, or a body corporate appointed under this section becomes, sole trustee of a scheme the terms of which provide for or require the appointment of more than one trustee, then, during such time as the body corporate holds the office of trustee of the scheme and is the only such trustee—

(a) the rules of the scheme shall be deemed to provide for or require the appointment of one trustee only, and

(b) one trustee only shall be deemed to have been originally appointed under the terms of the scheme.

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

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

PART VII EQUAL TREATMENT FOR MEN AND WOMEN IN OCCUPATIONAL BENEFIT SCHEMES

Interpretation (Part VII). 65.—In this Part, unless the context otherwise requires—

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

"the Agency" means the Employment Equality Agency;

"the Court" means the Labour Court;

"employee" means a person who has entered into or works under (or, in the case of a contract which has been terminated, worked under) a contract of employment with an employer, whether the contract is (or was) for manual labour, clerical work or otherwise, is (or was) expressed or implied, oral or in writing, and whether it is (or was) a contract of service or apprenticeship or otherwise, and includes a civil servant of the State or of the Government and an officer or servant of a local authority within the meaning of the Local Government Act, 1941 , an officer or servant of a

harbour authority, health board or vocational education committee and any reference to employment shall be construed accordingly;

"employer", in relation to an employee, means the person by whom the employee is (or, in the case where the employment has ceased, was) employed under a contract of employment, and for the purposes of this definition a civil servant of the State or of the Government shall be deemed to be employed by the State or the Government (as the case may be) and an officer or servant of a local authority within the meaning of the Local Government Act, 1941, or of a harbour authority, health board or vocational education committee shall be deemed to be employed by the local authority, harbour authority, health board or vocational educational committee (as the case may be);

"member" means any person who, having been admitted to membership under the rules of an occupational benefit scheme remains entitled to the benefits of such scheme;

"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 to employed or self-employed persons 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;

"occupational benefits" means benefits, in the form of pensions or otherwise, payable in cash or in kind in respect of—

(a) termination of service,

(b) retirement, old age or death,

(c) interruptions of service by reason of sickness or invalidity,

(d) accidents, injuries or diseases arising out of or in the course of a person's employment,

(e) unemployment, or

(f) expenses incurred in connection with children or other dependants;

and, in the case of a member who is an employee, includes any other benefit corresponding to a benefit provided by virtue of the Social Welfare Acts, the Maternity (Protection of Employees) Act, 1981, or the Health Acts, 1970 to 1987, which is payable to or in respect of the member as a consequence of his employment;

"the Social Welfare Acts" means the Social Welfare (Consolidation) Act, 1981, and every enactment, whether passed before or after this Act, which is to be construed with it as one Act.

Schemes to comply with principle of equal treatment. 66.—Subject to sections 69 and 72, every occupational benefit scheme shall comply with the principle of equal treatment.

Principle of equal treatment. 67.—(1) The principle of equal treatment is that there shall be no discrimination on the basis of sex in respect of any matter relating, to an occupational benefit scheme.

(2) The principle of equal treatment shall apply in relation to members' dependants as it applies in relation to members.

(3) For the purposes of this section, discrimination on the basis of sex

shall be deemed to occur in respect of a matter relating to an occupational benefit scheme in but only in the following cases—

- (a) where because of a person's sex the person is treated less favourably than a person of the other sex,
- (b) where a person is treated, by reference to his marital or family status, less favourably than a person of the other sex with the same status,
- (c) where because of a person's sex the person is unable to comply with a requirement or condition—
 - (i) in respect of which the proportion of persons of the other sex able to comply with such requirement or condition is substantially higher than the proportion of persons of the first mentioned sex so able, and
 - (ii) which is not justifiable irrespective of the sex of the persons to whom it applies,
- (d) where because of a person's marital or family status the person is unable to comply with a requirement or condition—
 - (i) in respect of which the proportion of persons of the other sex with the same status able to comply with such requirement or condition is substantially higher than the proportion of persons of the first mentioned sex so able, and
 - (ii) which is not justifiable irrespective of the sex of the persons to whom it applies,
- (e) where a person is penalised for having in good faith—
 - (i) made a reference under section 75, 76 or 77,
 - (ii) given evidence in any proceedings under this Part, or
 - (iii) given notice of an intention to do anything referred to in subparagraphs (i) and (ii).

Onus of proof in certain cases. 68.—If any question arises as to whether a requirement or condition, falling within paragraphs (c) and (d) of subsection (3) of section 67 is justifiable irrespective of the sex of the persons to whom it applies, it shall be for those who assert such justification to prove it.

Supplementary provisions to section 66. 69.—(1) In determining whether a scheme complies with the principle of equal treatment under section 66, account shall not be taken of—

- (a) any difference, on the basis of the sex of members, in the levels of contributions which the employer makes, to the extent that the difference is for the purposes of removing or limiting differences, as between men and women in the amount or value of benefits provided under a defined contribution scheme,
- (b) any difference, on the basis of sex, in the amount or value of benefits provided under a defined contribution scheme to the extent that the difference is justifiable on actuarial grounds,
- (c) any special treatment for the benefit of women to whom section 72 (1) relates,
- (d) any difference of treatment in relation to benefits for a deceased member's surviving spouse or other dependants,
- (e) any difference of treatment in relation to any optional provisions available.

(2) In this section—

"defined contribution scheme" has the meaning assigned to it under section 2 but as if the reference therein to "benefits" were a reference to "occupational benefits";

"optional provisions available" means those provisions of a scheme—

(a) which apply only in the case of members who elect for them to do so, and

(b) whose purpose is to secure for those members—

(i) benefits in addition to those otherwise provided under the scheme, or

(ii) a choice with respect to the date on which benefits under the scheme are to commence, or

(iii) a choice between any two or more benefits.

(3) Subsection (1) (d) shall cease to have effect on such date as may be prescribed.

Equal treatment and access to schemes. 70.—An employer shall comply with the principle of equal treatment in relation to the manner in which he affords his employees access to an occupational benefit scheme.

Non-compliance, compulsory levelling up. 71.—(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 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.

(2) Where more favourable treatment is accorded to any persons under a scheme by virtue of subsection (1), the trustees of the scheme or (where appropriate) the employer shall take such measures as are necessary to give effect to that subsection.

(3) Where, on the commencement of this Part, any rule of a scheme is rendered null and void by subsection (1), then, during such period as may be prescribed, beginning on such commencement and not being longer than ten years, nothing in this Part shall affect any rights accrued or obligations incurred under the scheme before such commencement, and different periods may be prescribed under this subsection in relation to different classes of rights and different classes of obligations.

Maternity provisions. 72.—(1) Subject to the provisions of this section, nothing in this Part shall prevent a scheme from providing special treatment for women in connection with pregnancy or childbirth.

(2) Where an occupational benefit scheme contains a rule—

(a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid maternity absence in the case of a woman who—

(i) is, or

(ii) immediately before the commencement of such period, was, an employee and which treats that woman in a manner other than that in which she would be treated under the scheme if she was not absent from work and was in receipt of remuneration from her employer during that period, or

(b) which requires the amount of any benefit payable under the scheme to or in respect of any such woman, to the extent that it falls to be determined by reference to her earnings during a period which includes a period of paid maternity absence, to be determined other than it would so

be determined if she was not absent from work, and was in receipt of remuneration from her employer during that period, it shall be regarded to that extent as not complying with the principle of equal treatment.

(3) Where a scheme is regarded as not complying with the principle of equal treatment by virtue of subsection (2), the trustees of the scheme or (where appropriate) the employer concerned shall take such measures as are necessary to ensure that the treatment accorded to the woman concerned under the scheme is no less favourable than that which would be accorded to her thereunder throughout the period of maternity absence concerned if she were not absent from work and was in receipt of remuneration from her employer during that period.

(4) In this section "period of paid maternity absence" means any period—

(a) throughout which a woman is absent from work due to pregnancy or childbirth, and

(b) for which her employer, or (if she is no longer in his employment) her former employer, pays her any contractual remuneration.

Family leave provisions. 73.—(1) Where an occupational benefit scheme contains a rule—

(a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid family leave in the case of a member who is an employee and which treats the member in a manner other than that in which he would be treated under the scheme if he were not absent from work, and was in receipt of remuneration from his employer, during that period, or

(b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to his earnings during a period which includes a period of paid family leave, to be determined other than it would so be determined if he was not absent from work and was in receipt of remuneration from his employer during that period,

it shall be regarded to that extent as not complying with the principle of equal treatment.

(2) Where a scheme is regarded as not complying with the principle of equal treatment by virtue of subsection (1), the trustees of a scheme or (where appropriate) the employer concerned shall take such measures as are necessary to ensure that the treatment accorded to the member concerned under the scheme is no less favourable than that which would be accorded to him thereunder throughout the period of family leave concerned if he was not absent from work and was in receipt of remuneration from his employer during that period.

(3) In this section "period of paid family leave" means any period—

(a) throughout which a member is absent from work for family reasons, and

(b) during which the employer pays him any contractual remuneration.

Principle of equal treatment and collective agreements, etc. 74.—(1) (a) Where an agreement or order to which this section applies contains a rule which does not comply with the principle of equal treatment, the rule shall be null and void.

(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 a contract of employment contains a term (whether expressed or implied) which does not comply with the principle of equal treatment, the term shall be null and void.

Determination of disputes. 75.—(1) Any dispute as to—

(a) whether a scheme is a defined contribution scheme for the purposes of this Part,

(b) whether any rule of a scheme, which is also an occupational benefit scheme for the purposes of this Part, complies with the principle of equal treatment, or

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

shall be determined by the Board on application to it in writing in that behalf by a person who, in relation to the scheme, corresponds to a person mentioned in section 38 (3) in relation to the scheme mentioned therein.

(2) Where it appears to the Agency that the rules of a scheme referred to in subsection (1) fail to comply with the principle of equal treatment, the matter may be referred to the Board by the Agency and the reference shall be treated for the purpose of this Act as an application under subsection (1).

(3) An appeal to the High Court on a point of law from a determination of the Board under subsection (1), in relation to a scheme, may be brought by the person who made, or a person who was entitled to make, the application concerned under subsection (1).

Equality officers. 76.—(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, employment regulation order or contract of employment 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, or

(d) 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), or

(b) a term of a collective agreement, employment regulation order or contract of employment, insofar as it relates to occupational benefits provided under a scheme referred to in subsection (1) (a),

fails to comply with the principle of equal treatment or an employer is failing 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).

(3) Where a dispute is referred under this section to an equality officer, he shall investigate the dispute and issue a recommendation thereon.

(4) Any information obtained by an equality officer in the course of an investigation or appeal under this Part as to any trade union or person or as to the business carried on by any person which is not available otherwise shall not be included in any recommendation or determination without the consent of the trade union or person concerned, nor shall any person concerned in proceedings before an equality officer or the Court disclose any such information without such consent.

(5) A recommendation under this section shall be conveyed—

(a) to the Court and to the parties to the dispute, or

(b) in the case of a reference under subsection (2) to the Court, the Agency and to such person or persons as appear to the equality officer to be concerned.

(6) An equality officer may provide for the regulation of proceedings before him in relation to an investigation before him under this Act.

(7) (a) An equality officer may, for the purpose of obtaining any information which he may require for enabling him to exercise his functions under this Act, do any one or more of the following things:

(i) at all reasonable times enter premises,

(ii) require an employer or his representative to produce to him any records, books or documents that are in the employer's power or control and as respects which the officer has reasonable grounds for believing that they contain information of the kind so required and to give him such information as he may reasonably require in regard to any entries in any such records, books or documents,

(iii) inspect and take copies, or copies of extracts from, any such records, books or documents.

(b) Any person who obstructs or impedes an equality officer in the exercise of his powers under this subsection or does not comply with a requirement of an equality officer under this subsection shall be guilty of an offence and shall be liable—

(i) on summary conviction to a fine not exceeding £1,000 or imprisonment for a term not exceeding one year, or to both,

(ii) on conviction on indictment to a fine not exceeding £10,000 or imprisonment for a term not exceeding 2 years, or to both.

(8) An investigation by an equality officer under this Act shall be conducted in private.

Investigation of disputes by Court. 77.—(1) A person concerned or (in the case of a reference under section 76 (2)) the Agency may appeal to the Court—

(a) against a recommendation under section 76, or

(b) for a determination that such a recommendation has not been complied with.

(2) The Court shall hear and determine an appeal under this section and shall convey its determination—

(a) in the case of a reference under section 76 (1) to the parties to the dispute,

(b) in the case of a reference under section 76 (2) to the Agency and

such person or persons as appear to the Court to be concerned.

(3) (a) A hearing under this section shall be held in private, but the Court may, if requested to do so by a party to the dispute or a person referred to in section 76 (2), hold the hearing in public.

(b) Where a hearing under this section is being held in public the Court may, if it is satisfied that any part of the hearing concerns a matter that should, in the interests of any party to the dispute, or of a person referred to in section 76 (2) be treated as confidential, hold that part of the hearing in private.

(c) Sections 14 and 21 of the Act of 1946 shall apply to an appeal under this section.

(d) An appeal under this section shall be lodged in the Court not later than 42 days after the date of the equality officer's recommendation and the notice shall specify the grounds of the appeal.

(4) Any information obtained by the Court in the course of an investigation or appeal under this Part as to any trade union or person or as to the business carried on by any person which is not available otherwise shall not be included in any recommendation or determination without the consent of the trade union or person concerned, nor shall any person concerned in proceedings before an equality officer or the Court disclose any such information without such consent.

(5) A party to a dispute determined by the Court under subsection (1) or, in the case of a determination in a matter referred to under section 76 (2), the Agency or any other person concerned may appeal to the High Court on a point of law.

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 any such rule is rendered null and void by section 71,

(c) determine whether the terms of a collective agreement, employment regulation order or contract of employment specified in section 74, insofar as they relate to occupational benefits provided under a scheme referred to in section 76 (1) (a), complies with the principle of equal treatment,

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

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

Failure to implement determination of Court. 79.—(1) Where a person concerned or (in a case which relates to a reference under section 76 (2)) the Agency complains to the Court that a determination under paragraphs (a) to (e) of section 78 has not been implemented, the following provisions shall have effect:

(a) the Court shall consider the complaint and shall hear all persons appearing to the Court to be interested and desiring to be heard,

(b) if after such consideration the Court is satisfied that the complaint is well founded, the Court may by order direct the person failing to implement the determination to do such things as will, in the

opinion of the Court, result in the determination being implemented by that person.

(2) If, where an order is made by the Court under subsection (1), the direction contained in the order is not carried out within 2 months from the date of the making of the order (or, where there is an appeal under section 77 (5), within 2 months of the date of the order of the High Court on the appeal) the person to whom the direction is given shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000 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 2 years, or to both.

Offences relating to certain dismissals and effect, etc. 80.—(1) Where an employee is dismissed from an employment solely or mainly because, in good faith, the employee—

(a) made a reference under section 75, 76 or 77,

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

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

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

(i) on summary conviction, to a fine not exceeding £1,000 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 2 years, or to both.

(2) In a prosecution for an offence under this section the onus shall be on the employer to satisfy the court that the doing of anything referred to in subsection (1) was not the sole or principal reason for the dismissal.

(3) (a) On conviction of an employer for an offence under this section, the court may, if it thinks fit and the dismissed employee is present or represented in court and consents—

(i) order the re-instatement by the employer of the dismissed person in the position which that person held immediately before the dismissal on the terms and conditions on which that person was employed immediately before that dismissal, together with a term that the re-instatement shall be deemed to have commenced on the day of the dismissal,

(ii) order the re-engagement by the employer of the dismissed person either in the position which that person held immediately before the dismissal or in a different position which would be reasonably suitable for that person on such terms and conditions as are reasonable having regard to all the circumstances, or

(iii) impose on the employer, in addition to any fine imposed under subsection (1), a fine not exceeding the amount which, in the opinion of the court, the dismissed person would have received from the employer concerned by way of remuneration if the dismissal had not occurred: Provided that that amount shall not exceed—

(I) if the conviction was a summary conviction, an amount which together with the fine imposed under subsection (1) does not exceed £1,000,

(II) if the conviction was on indictment, an amount equal to 104 weeks' remuneration of the dismissed person.

(b) The amount of a fine imposed under paragraph (a) shall be paid to the employee concerned.

(c) Without prejudice to any right of appeal by any other person, the employee concerned may appeal against the amount of the fine under this subsection, either (as the case may be) to the High Court or to the judge of the Circuit Court in whose circuit the district (or any part thereof) of the justice of the District Court by whom the fine was imposed is situated, and the decision on such an appeal shall be final.

(d) Proof of the payment by an employer of a fine imposed under paragraph (a) shall be a defence to any civil action brought against him by the employee concerned in respect of the remuneration referred to in subparagraph (iii) of that paragraph.

Provisions supplemental to section 80. 81.—(1) Where a person, in respect of whose dismissal from employment a prosecution for an offence under section 80 has not been brought, complains to the Court that that dismissal was solely or mainly because the person did in good faith a thing specified in section 80 (1) the following provisions shall apply:

(a) the Court shall investigate the complaint, and shall hear all persons appearing to the Court to be interested and desiring to be heard;

(b) an investigation under this subsection shall be held in private, but the Court shall, if requested to do so by a party to the dispute, hold the investigation in public;

(c) where an investigation under this subsection is being held in public the Court may, if it is satisfied that any part of the investigation concerns a matter that should, in the interests of any party to the dispute, be treated as confidential, hold that part of the investigation in private;

(d) if after such investigation the Court is satisfied that the complaint is well founded, the Court may—

(i) order the re-instatement by the employer of the dismissed person in the position which that person held immediately before the dismissal on the terms and conditions on which that person was then employed and that the re-instatement shall be deemed to have commenced on the day of the dismissal,

(ii) order the re-engagement by the employer of the dismissed person either in the position which that person held immediately before the dismissal or in a different position which would be reasonably suitable for that person on such terms and conditions as are reasonable having regard to all the circumstances, or

(iii) order the payment by the employer to the dismissed person of such compensation as the Court considers reasonable in the circumstances not exceeding an amount equal to 104 weeks' remuneration of that person.

(2) Subject to subsection (5), if the employer concerned does not comply with an order under subsection (1) within 2 months of the date of its making, he shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000 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 2 years, or to both.

(3) (a) On conviction of a person for an offence under this section,

the court may, if it thinks fit and the dismissed person concerned is present or represented in court and consents—

(i) order the re-instatement by the employer of the dismissed person concerned in the position which that person held immediately before that dismissal on the terms and conditions on which that person was then employed and that the re-instatement shall be deemed to have commenced on the day of the dismissal,

(ii) order the re-engagement by the employer of the dismissed person either in the position which that person held immediately before the dismissal or in a different position which would be reasonably suitable for that person on such terms and conditions as are reasonable having regard to all the circumstances, or

(iii) impose on the employer, in addition to any fine imposed under subsection (2), a fine not exceeding the amount which, in the opinion of the court, the dismissed person would have received from the employer concerned by way of remuneration if the dismissal had not occurred: Provided that that amount shall not exceed—

(I) if the conviction was a summary conviction, an amount which together with the fine imposed under subsection (2) does not exceed £1,000,

(II) if the conviction was on indictment, an amount equal to 104 weeks' remuneration of the dismissed person.

(b) The amount of a fine imposed under paragraph (a) shall be paid to the employee concerned.

(c) Without prejudice to any right of appeal by any other person, the employee concerned may appeal against the amount of a fine imposed under this subsection, either (as the case may be) to the High Court or to the judge of the Circuit Court in whose circuit the district (or any part thereof) of the justice of the District Court by whom the fine was imposed is situated, and the decision on such an appeal shall be final.

(d) Proof of the payment by a convicted person of a fine imposed under paragraph (a) shall be a defence to any civil action brought against him by the employee concerned in respect of the remuneration referred to in subparagraph (iii) of that paragraph.

(4) A complaint under this section shall be made to the Court not later than 6 months from the date of the dismissal concerned or such longer period as the Court considers reasonable having regard to the circumstances.

(5) The employer concerned may, notwithstanding section 17 of the Act of 1946, appeal against an order under subsection (1) to the judge of the Circuit Court in whose circuit the person carries on business.

Section 9 (2).

FIRST SCHEDULE

AN BORD PINSEAN — THE PENSIONS BOARD

1. The Board shall be a body corporate with perpetual succession and an official seal and power to sue and be sued in its corporate name and, with the consent of the Minister, to acquire, hold and dispose of land or an interest in land or to acquire, hold and dispose of any other property.

2. The Board shall consist of a chairman, and 12 ordinary members, who shall be appointed to the Board by the Minister.

3. A person appointed to be the chairman of the Board may be referred to

(including in any document relating to appointment) by that designation or by such other designation as the Board considers with the concurrence of the Minister appropriate.

4. The chairman of the Board may at any time resign his office by letter addressed to the Minister.

5. Notwithstanding paragraph 10 (1) the Minister may at any time remove the chairman of the Board from office.

6. Subject to the provisions of this Schedule, the chairman of the Board shall hold office on such terms and conditions as the Minister may determine.

7. The chairman of the Board shall be paid, out of moneys at the disposal of the Board, such remuneration (if any) and allowances for expenses incurred by him (if any) as the Minister, with the consent of the Minister for Finance, may determine.

8. (1) Of the ordinary members of the Board—

(a) one shall be a trade union member,

(b) one shall be an employers' member,

(c) two shall be representative of occupational pension schemes,

(d) one shall be a representative of the actuarial profession,

(e) one shall be a representative of the accounting profession,

(f) one shall be a representative of the legal profession,

(g) one shall be a representative of the Minister for Finance, and

(h) one shall be a representative of the Minister.

(2) The trade union member of the Board shall be a person 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 employers' member of the Board shall be a person nominated for appointment thereto by such organisation as the Minister considers to be representative of employers as the Minister may determine.

(4) The members of the Board representing occupational pension schemes shall be persons nominated for appointment thereto by such organisation or organisations as the Minister considers to be representative of occupational pension schemes.

(5) The member of the Board representing the actuarial profession shall be a person nominated for appointment thereto by such organisation or organisations as the Minister considers to be representative of the actuarial profession.

(6) The member of the Board representing the accounting profession shall be a person nominated for appointment thereto by such organisation or organisations as the Minister considers to be representative of the accounting profession.

(7) The member of the Board representing the legal profession shall be a person nominated for appointment thereto by such organisation as the Minister considers to be representative of the legal profession.

(8) The member of the Board representing the Minister for Finance shall be such officer of the Minister for Finance as the Minister for Finance may determine.

(9) The member of the Board representing the Minister shall be such officer of the Minister as the Minister may determine.

9. Each ordinary member of the Board shall be a part-time member of the

Board and, subject to the provisions of this Schedule, shall hold office on such terms and conditions as the Minister may determine.

10. (1) The term of office of the chairman shall be 5 years.

(2) The term of office of an ordinary member of the Board shall be such period not exceeding 5 years as the Minister may, with the consent of the Minister for Finance, determine when appointing him and, subject to the provisions of this Schedule, shall be eligible for re-appointment as such member.

11. (1) If an ordinary member of the Board dies, resigns, becomes disqualified or is removed from office, the Minister may appoint a person to be a member of the Board to fill the casual vacancy so occasioned and the person so appointed shall be appointed in the same manner as the member of the Board who occasioned the casual vacancy.

(2) A person appointed to be a member of the Board by virtue of this subparagraph shall hold office for the remainder of the term of office of the member occasioning the vacancy he is appointed to fill and shall be eligible for re-appointment as a member of the Board.

12. A member of the Board whose term of office expires by effluxion of time shall be eligible for re-appointment as a member of the Board.

13. Notwithstanding paragraph 10 (2) the Minister may at any time remove an ordinary member of the Board from office.

14. An ordinary member of the Board may resign his office as a member by letter addressed to the Minister.

15. A member of the Board shall be disqualified from holding and shall cease to hold office if he is adjudged bankrupt or makes a composition or arrangement with creditors or is sentenced by a court of competent jurisdiction to a term of imprisonment or penal servitude.

16. Each ordinary member of the Board shall be paid, out of moneys at the disposal of the Board, such remuneration (if any) and allowances for expenses incurred by him (if any) as the Minister may, with the consent of the Minister for Finance, sanction.

17. The Board shall hold such and so many meetings as it considers appropriate for the performance of its functions.

18. The Minister may fix the date, time and place of the first meeting of the Board.

19. The quorum for a meeting of the Board shall be 5.

20. At a meeting of the Board—

(a) the chairman of the Board shall, if present, be the chairman of the meeting,

(b) if and so long as the chairman of the Board is not present or if the office of chairman is vacant, the members of the Board who are present shall choose one of their number to be chairman of the meeting.

21. The chairman of the Board, and each ordinary member of the Board, present at a meeting thereof shall have a vote.

22. Every question at a meeting of the Board shall be determined by a majority of the votes of the members present and voting on the question and, in the case of an equal division of votes, the chairman of the meeting shall have a second or casting vote.

23. The Board may act notwithstanding one or more than one vacancy among its members.

24. Subject to the provisions of this Schedule, the Board shall regulate, by standing orders or otherwise, the procedure and business of the Board.

25. The Board shall, as soon as may be after its establishment, provide itself with a seal.

26. The seal of the Board shall be authenticated by the signature of the chairman of the Board or some other member thereof authorised by the Board to act in that behalf and by the signature of an officer of the Board authorised by the Board to act in that behalf.

27. Judicial notice shall be taken of the seal of the Board and every document purporting to be an instrument made by the Board and to be sealed with the seal (purporting to be authenticated in accordance with paragraph 26) of the Board shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

28. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Board by any person generally or specially authorised by the Board in that behalf.

Section 29

SECOND SCHEDULE

PRESERVATION AND REVALUATION OF BENEFITS

PART A

PRESERVATION OF BENEFITS

Calculation of preserved benefit — defined benefit scheme

1. (1) In the case of a defined benefit scheme, where the basis of calculating long service benefit does not alter between the commencement of Part III or, if later, the date of commencement of the member's relevant employment and the date of termination of relevant employment the amount of preserved benefit shall be calculated in accordance with the formula—

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) calculated at the date of termination of the member's relevant employment,

B is the period of reckonable service completed after the commencement of Part III, 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 the commencement of Part III 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 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 the commencement of Part III or, if later, the date of commencement of the member's relevant employment, and

(b) an amount calculated in accordance with the formula—

where—

D 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 the commencement of Part III 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.

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.

Benefit provided by 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—

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.

PART B

REVALUATION OF PRESERVED BENEFITS

4. (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 revaluation year, such preserved benefit to include any previous revaluation.

(2) Except as provided for in paragraphs 5 and 6 below the appropriate amount shall be calculated in accordance with the formula—

where—

P is the amount of preserved benefit as at the last day of the previous revaluation year, and

R is the revaluation percentage.

5. (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 subparagraph (1) 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 4,

whichever the trustees of the scheme consider appropriate.

6. (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—

(a) during each revaluation year in any manner in which it could have been revalued during that year if the member had remained in the same reckonable service, or

(b) in accordance with paragraph 4,

whichever the trustees of the scheme consider appropriate.

7. 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 the commencement of Part III.

Section 44.

THIRD SCHEDULE

FUNDING STANDARD — BENEFITS

1. The benefits for the purposes of this paragraph shall be all future benefits payable under the rules of the scheme to or in respect of a person in receipt of such benefits as at the effective date of the certificate.

2. The benefits for the purposes of this paragraph shall apply to or in respect of a member of a scheme on whose behalf any additional benefit has been secured or granted under the scheme by way of additional voluntary

contributions or a transfer of rights from another scheme and such benefits shall be calculated as at the effective date of the certificate and shall be—

(a) where, at the effective date of the certificate, the member's service in relevant employment has terminated and a transfer payment has not been applied in accordance with section 34 or 35, preserved benefit payable in respect of such additional benefits calculated in accordance with Part III, and

(b) where, at the effective date of the certificate, the member is in relevant employment, preserved benefit in respect of such additional benefits calculated in accordance with Part III, as if the member's service in relevant employment had terminated on such date but disregarding any provision requiring the completion of a minimum period of qualifying service.

3. The benefits for the purposes of this paragraph shall be calculated as at the effective date of the certificate and shall be—

(a) in the case of a member of that scheme whose service in relevant employment terminated after the commencement of Part IV 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 (including future revaluations thereof and those benefits payable on the death of the member entitled to preserved benefit) calculated in accordance with Part III, and

(ii) the benefits payable under the rules of the scheme in respect of reckonable service completed after the commencement of Part IV, and

(b) in the case of a member of that scheme then in relevant employment, the greater of—

(i) preserved benefits (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, and

(ii) the benefits payable under the rules of the scheme in respect of reckonable service completed after the commencement of Part IV but prior to the effective date of the certificate,

calculated as if the member's service in relevant employment had terminated on the effective date of the certificate but disregarding any provision requiring the completion of a minimum period of qualifying service or any other provision which may prevent the member concerned from acquiring an entitlement to benefit on termination of such employment.

4. The benefits for the purposes of this paragraph shall be calculated as at the effective date of the certificate and shall be—

(a) any benefit payable under the rules of the scheme in respect of reckonable service completed prior to the commencement of Part IV to or in respect of a member of that scheme—

(i) whose service in relevant employment terminated prior to the effective date of the certificate, and

(ii) who has not exercised any right to a transfer payment to another scheme,

and

(b) a benefit payable to or in respect of a member then in relevant

employment whose reckonable service commenced before the commencement of Part IV being—

(i) subject to clause (iii), in the case of a defined benefit scheme, the greater of—

(I) the amount determined by the formula—

where—

L is the amount of long service benefit calculated as at the effective date of the certificate on the basis of the rules of the scheme in force on the commencement of Part IV,

M is the period of reckonable service completed prior to the commencement of Part IV, and

N is the period of reckonable service that would have been completed if the member had remained in relevant employment until normal pensionable age and such service had continued to qualify for long service benefit:

Provided that, where the rules of the scheme in force at the commencement of Part IV provided for benefits to be calculated in relation to a member's pensionable earnings at, or in a specified period prior to, his attaining normal pensionable age or in some other way relative to such earnings, the benefit under this clause may be calculated in a corresponding manner by reference to his earnings at, or in the same period before the effective date of the certificate, and

(II) the benefits payable under the rules of the scheme in respect of reckonable service completed prior to the commencement of Part IV 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,

(ii) in the case of a defined contribution scheme, a benefit whose actuarial value is equal to the then accumulated value of the contributions paid by or in respect of the member of the scheme for the purpose of long service benefit prior to the commencement of Part IV,

(iii) in the case of a defined benefit scheme where the rate or amount of part of the long service benefit payable thereunder is directly determined by an amount of contribution paid by or in respect of the member, in so far as it relates to such part of the long service benefit, a benefit calculated in accordance with clause (ii) and in so far as it relates to the remaining part of the long service benefit, a benefit calculated in accordance with clause (i).