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AN BILLE UM CHÚLCHISTE NÁISIÚNTA PINSEAN, 2000
NATIONAL PENSIONS RESERVE FUND BILL, 2000

Mar a tionscnaíodh
As initiated

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AN BILLE UM CHÚLCHISTE NÁISIÚNTA PINSEAN, 2000
NATIONAL PENSIONS RESERVE FUND BILL, 2000

BILL

entitled

5 AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A
FUND TO BE KNOWN AS THE NATIONAL PENSIONS
RESERVE FUND AND A BODY TO BE KNOWN AS THE
NATIONAL PENSIONS RESERVE FUND COMMISSION
10 TO CONTROL AND MANAGE THE FUND, TO DIS-
SOLVE THE TEMPORARY HOLDING FUND FOR
SUPERANNUATION LIABILITIES, TO AMEND THE
TAXES CONSOLIDATION ACT, 1997, AND TO PROVIDE
FOR CONNECTED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

15

PART I

Preliminary

1.—This Act may be cited as the National Pensions Reserve Fund Short title.
Act, 2000.

2.—(1) In this Act—

Interpretation.

20 “Agency” means National Treasury Management Agency;

“beneficiary” in respect of a social welfare pension, means a person
entitled to or in receipt of such pension;

“Commission” means National Pensions Reserve Fund Commission
established under *section 5*;

25 “committee” means a committee established under *section 14*;

“company” means—

(a) a company within the meaning of the Companies Acts, 1963
to 1999, or

30 (b) a body established under the laws of a state other than the
State and corresponding to a body referred to in *para-*
graph (a);

“custodian” means a person appointed as a custodian under *section 22(3)*;

“establishment day” means the day appointed by the Minister under *section 3* to be the establishment day;

“functions” includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and the performance of the duties; 5

“Fund” means National Pensions Reserve Fund established under *section 18*; 10

“Fund investment policy” shall be construed in accordance with *section 19*;

“Gross National Product” means the estimate for the year in which payments to the Fund are made under *section 18*, as published with the Budget for that year, of gross domestic product, at market prices, as measured and defined by the European System of National and Regional Accounts in the European Community pursuant to Council Regulation (EC) No. 2223/96 of 25 June 1996¹, or subsequent revisions and amendments thereto, plus net receipts, property income and compensation of employees from outside the State; 15 20

“investment manager” means a person appointed as an investment manager under *section 22(1)*;

“Manager” means the person appointed as manager of the Fund under *section 21*;

“Minister” means Minister for Finance; 25

“public service pensions” means occupational pensions, gratuities and other allowances payable to or in respect of persons on resignation, retirement or death which are wholly or partly funded from moneys provided by the Oireachtas or from the Central Fund or the growing produce thereof; 30

“social welfare pensions” means any pension referred to in section 30, or section 118, of the Social Welfare (Consolidation) Act, 1993, in so far as it is payable to or in respect of a beneficiary;

“Temporary Fund” means Temporary Holding Fund for Superannuation Liabilities. 35

(2) In this Act—

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

(b) 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, and 40

¹O.J. No. L310, 30.11.96, p1

(c) a reference to an enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act.

5 **3.**—The Minister shall by order appoint a day to be the establishment day for the purposes of this Act. Establishment day.

4.—The expenses incurred by the Minister in the administration of this Act shall be paid out of moneys provided by the Oireachtas. Expenses of Minister.

PART 2

National Pensions Reserve Fund Commission

10 **5.**—(1) There shall stand established, on the establishment day, a body to be known as the National Pensions Reserve Fund Commission, and in this Act referred to as the “Commission”, to perform the functions assigned to it by this Act. Establishment of National Pensions Reserve Fund Commission.

15 (2) The Commission shall be a body corporate with perpetual succession and a common seal and power to sue and be sued in its corporate name and to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property.

6.—(1) The functions of the Commission shall be— Functions of Commission.

20 (a) to control, manage and invest the assets of the Fund in accordance with the Fund investment policy,

(b) to authorise payments from the Fund to the Exchequer and such other payments from the Fund as may be required for the purposes of this Act,

25 (c) from time to time to determine the investment strategy for the Fund in accordance with the Fund investment policy, which shall include appropriate benchmarks, against which the investment return of the Fund can be assessed, and the classes of assets in which the Fund may be invested, including, without limiting the generality of the foregoing, such derivative or other financial instruments as the Commission may deem appropriate, but not including Irish Government securities,

30 (d) to monitor and review implementation of the investment strategy including performance against the benchmarks set therein,

(e) to appoint investment managers to invest and manage portions of the Fund,

(f) to appoint custodians for the assets of the Fund,

35 (g) to determine an annual budget for the administration costs to be charged to the Fund,

(h) to commission, from time to time, independent valuations of the assets of the Fund, and, after consultation with—

- (i) the Minister, assessments of the projected profile of Exchequer outlays on public service pensions, and
- (ii) the Minister and the Minister for Social, Community and Family Affairs, assessments of the projected profile of Exchequer outlays on social welfare pensions, 5
- (j) to commission, from time to time, independent assessments of the investment performance of the Fund,
- (k) to submit annual reports to the Minister,
- (l) to keep proper books of account and to prepare and submit to the Minister annual accounts of the Fund. 10
- (2) The Commission may also—
 - (a) contract options and other derivative financial instruments for the Fund,
 - (b) open and maintain bank accounts for the Fund, including accounts in currencies other than the currency of the State, 15
 - (c) borrow or lend securities, including but not limited to equity and debt instruments,
 - (d) accept bequests and donations for the benefit of the Fund, provided that any conditions attaching to such bequests or donations are not inconsistent with this Act or otherwise contrary to law, 20
 - (e) engage, from time to time, consultants and advisers and other service providers as are necessary or expedient for the performance of its functions. 25
- (3) The Commission shall have all such other powers as are necessary or expedient for the performance of its functions.
- (4) The Commission shall at all times exercise due care, skill, prudence and diligence, acting in the utmost good faith, in the discharge of its functions under this Act. 30
- (5) The Commission shall perform all its functions through the Manager, except the appointment of the Manager under *section 21* and the engagement of auditors to audit the Manager under *section 22(6)*.
- (6) Without prejudice to the responsibility of the Commission for the functions conferred on it under this Act, the Commission may delegate to the Manager any of its functions as it considers appropriate or expedient for the purposes of this Act. 35

Membership of Commission and terms of office of members.

7.—(1) The Commission shall consist of a chairperson and 6 ordinary members. 40

(2) Each member of the Commission shall be known as a commissioner of the National Pensions Reserve Fund, and is in this Act referred to as a “commissioner”.

(3) The commissioners shall be appointed by the Minister.

(4) The Minister shall only appoint persons to be commissioners who have, in his or her opinion, acquired substantial expertise and experience at a senior level in any of the following areas:

- (a) investment or international business management,
- 5 (b) finance or economics,
- (c) the law,
- (d) actuarial practice,
- (e) accountancy and auditing,
- 10 (f) the Civil Service of the Government or the Civil Service of the State,
- (g) trade union representation,
- (h) the pensions industry.

(5) The Minister shall designate one commissioner, other than the chief executive officer of the Manager, as chairperson of the
15 Commission.

(6) The chief executive officer of the Manager shall be an ordinary member of the Commission.

(7) Subject to *subsection (8)*, the term of office of an ordinary member of the Commission shall be 5 years, or in the case of the
20 chief executive officer of the Manager, the period during which he or she is such officer.

(8) The term of office of 5 of the first ordinary members of the Commission, other than the chief executive officer of the Manager, shall be—

- 25 (a) 3 years in respect of 2 such members, and
- (b) 4 years in respect of 3 such members,

determined by the Minister.

(9) A commissioner, other than the chief executive officer of the Manager, shall not serve for more than 2 consecutive terms of office.

30 (10) There shall be paid to the commissioners such remuneration (if any) and such allowances for expenses incurred by them as the Minister may from time to time determine.

(11) Each commissioner shall hold office on such terms (other than the payment of remuneration and allowances for expenses) as
35 the Minister determines at the time of his or her appointment.

(12) A commissioner shall be disqualified from being a member of the Commission where he or she—

- (a) is adjudged bankrupt,
- (b) makes a composition or arrangement with creditors,
- 40 (c) is convicted of an indictable offence in relation to a company,

(d) is convicted of an offence involving fraud or dishonesty, or

(e) is disqualified or restricted from being a director of any company.

(13) A commissioner may at any time resign his or her membership by letter addressed to the Minister and the resignation shall take effect from the date specified therein or upon receipt of the letter by the Minister, whichever is the later. 5

(14) A commissioner may at any time for stated reasons be removed from membership of the Commission by the Minister if, in the Minister's opinion, the member has become incapable through ill-health of performing his or her functions, or has committed stated misbehaviour, or his or her removal appears to the Minister to be necessary for the effective performance by the Commission of its functions. 10

(15) If a commissioner dies, resigns, retires, becomes disqualified or is removed from office, the Minister may appoint a person to be a commissioner to fill the casual vacancy so occasioned and the person so appointed shall be appointed in the same manner as, and for the remainder of the term of office of, the commissioner who occasioned the casual vacancy. 15 20

(16) A commissioner whose period of membership expires by the effluxion of time shall be eligible for re-appointment as a commissioner.

(17) The Minister shall, in so far as is practicable and having regard to relevant experience, ensure an equitable balance between men and women in the composition of the Commission. 25

Chairperson of Commission.

8—(1) The term of office of the chairperson of the Commission shall be 5 years.

(2) Where the chairperson of the Commission ceases to be a commissioner, he or she shall also thereupon cease to be chairperson of the Commission. 30

(3) The chairperson of the Commission may at any time resign his or her office as chairperson by letter addressed to the Minister and the resignation shall take effect from the date specified therein or upon receipt of the letter by the Minister, whichever is the later. 35

(4) The chairperson of the Commission shall, unless he or she dies or otherwise ceases to be chairperson by virtue of *subsection (2) or (3)*, hold office until the expiration of his or her period of membership of the Commission and, if he or she is re-appointed as a member of the Commission, he or she shall be eligible for re-appointment as chairperson of the Commission. 40

Meetings of Commission.

9—(1) The Commission shall hold such and as many meetings as may be necessary for the performance of its functions.

(2) The first meeting of the Commission shall be on the establishment day. 45

(3) The quorum for a meeting of the Commission shall be 4, or, where there exists a vacancy in the Commission, 3 for such time as the vacancy exists.

(4) At a meeting of the Commission—

(a) the chairperson of the Commission shall, if present, be the chairperson of the meeting, and

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

10 (5) At a meeting of the Commission each commissioner present, including the chairperson, shall have a vote and any question on which a vote is required in order to establish the Commission's view on the matter shall be determined by a majority of votes of the commissioners present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a
15 second and casting vote.

(6) The Commission may act notwithstanding one or more vacancies among its members.

(7) Subject to this Act, the Commission shall regulate, by standing orders or otherwise, the procedure and business of the Commission.

20 **10.—**(1) The Commission shall, as soon as may be after the establishment day, provide itself with a seal.

Seal of
Commission.

(2) The seal of the Commission shall be authenticated by the signature of—

25 (a) the chairperson of the Commission and one other commissioner, or

(b) (i) 2 commissioners, or

(ii) a commissioner and a member of the staff of the Manager, or

(iii) 2 members of the staff of the Manager,

30 authorised by the Commission to act in that behalf.

35 (3) Judicial notice shall be taken of the seal of the Commission and every document purporting to be an instrument made by and to be sealed with the seal of the Commission (purporting to be authenticated in accordance with this section) shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

(4) Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into and executed by—

40 (a) (i) the chairperson of the Commission and one other commissioner, or

(ii) 2 commissioners authorised by the Commission for that purpose,

or

- (b) (i) a commissioner and a member of the staff of the Manager, or
 - (ii) 2 members of the staff of the Manager,
- authorised by the Commission or the Manager for that purpose. 5

Membership of either House of Oireachtas, European Parliament or local authority, etc.

11.—(1) Where a commissioner—

- (a) is nominated as a member of Seanad Éireann,
- (b) is elected as a member of either House of the Oireachtas or as a representative in the European Parliament,
- (c) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament to fill a vacancy, or 10
- (d) becomes a member of a local authority, the board of a health board or the Eastern Regional Health Authority, 15

he or she shall thereupon cease to be a commissioner.

(2) A person, who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a representative in the European Parliament, shall, while he or she is so entitled or is such a representative, be disqualified from becoming a commissioner. 20

(3) A person, who is a member of a local authority or the board of a health board or the Eastern Regional Health Authority, shall be disqualified from becoming a commissioner.

Disclosure of interests.

12.—(1) Where a commissioner or a member of the staff of the Manager has a pecuniary interest or other beneficial interest in, and material to, any matter which falls to be considered by the Commission, the Manager or a committee, he or she shall— 25

- (a) disclose to the Commission or, as the case may be, the Manager or the committee the nature of his or her interest in advance of any consideration of the matter, 30
- (b) neither influence nor seek to influence a decision to be made in relation to the matter,
- (c) take no part in any consideration of the matter, and

where relevant— 35

- (d) absent himself or herself from the meeting or that part of the meeting during which the matter is discussed, and
- (e) not vote on a decision relating to the matter.

(2) Where an interest is disclosed pursuant to this section, the disclosure shall, where relevant, be recorded in the minutes of the meeting of the Commission or the committee concerned, or otherwise duly recorded. 40

5 (3) Where at a meeting of the Commission or a committee a question arises as to whether or not a course of conduct, if pursued by a person, would constitute a failure by him or her to comply with the requirements of *subsection (1)*, the question may be determined by the chairperson of the meeting, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

10 (4) Where the Minister is satisfied, on being informed by the Commission, that a commissioner has contravened *subsection (1)*, the Minister may, if he or she thinks fit, remove that commissioner from office.

(5) Where the Manager is satisfied that a member of the staff of the Manager has contravened *subsection (1)*, the Manager shall decide the appropriate action (including dismissal) to be taken.

15 (6) The Commission shall issue and publish guidelines as to that which constitutes an interest for the purpose of this section.

20 **13.—**(1) Save as otherwise provided by law, a person shall not disclose confidential information obtained by him or her while performing duties as a commissioner or member of the staff of the Manager or a member of a committee or an investment manager or a custodian or a consultant or an adviser engaged by the Commission, unless he or she is duly authorised by the Commission to do so.

Prohibition of unauthorised disclosure of confidential information.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable—

25 (a) on summary conviction to a fine not exceeding £1,500, or

(b) on conviction on indictment to a fine not exceeding £20,000.

(3) Nothing in *subsection (1)* shall prevent disclosure of information—

(a) to the Commission, the Manager or the Minister, or

30 (b) obtained in the course of the performance of functions under this Act to the Revenue Commissioners or the Garda Síochána where there are reasonable grounds to suspect malpractice, fraud, tax evasion or other irregularity,

35 or prevent appropriate use of such information by the person concerned in performance of functions under this Act or any other enactment.

(4) In this section “confidential information” includes—

40 (a) information that is expressed by the Commission to be confidential either as regards particular information or as regards information of a particular class or description, and

45 (b) proposals of a commercial nature or tenders submitted to the Commission by contractors, consultants or any other person.

Committees.

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

(2) The Commission shall decide the terms of reference for any committee and may regulate the procedure of any such committee.

(3) The members of a committee shall be appointed by the Commission. 5

(4) A committee shall consist of such number of members as the Commission thinks proper.

(5) A committee may include persons who are not members of the Commission or staff of the Manager. 10

(6) A member of a committee who fails to perform his or her functions may be removed from it at any time for stated reasons by the Commission.

(7) The Commission may at any time dissolve a committee.

(8) The Commission may appoint a person to be chairperson of a committee. 15

(9) There shall be paid out of the income of the Fund such allowances for expenses incurred by the members of a committee in the discharge of their functions as the Commission may determine with the consent of the Minister. 20

Commission shall not control company.

15.—(1) The Commission shall not control any company or hold such percentage of the voting rights in any company that would require it to seek control of that company.

(2) In *subsection (1)* “control” in relation to a company, means the power of a person to secure by means of the holding of shares or the possession of voting rights in or in relation to the company or any other company, that the affairs of the first-mentioned company are conducted in accordance with the wishes of that person. 25

Commission chairperson to be consulted in appointment of Chief Executive of Agency.

16.—(1) Subject to *subsection (2)*, the Minister when appointing the Chief Executive of the Agency under section 6(6) of the National Treasury Management Agency Act, 1990, shall consult with the chairperson of the Commission. 30

(2) *Subsection (1)* does not apply where the Chief Executive of the Agency is being re-appointed under the said section 6(6).

Expenses of Commission.

17.—(1) The expenses incurred by the Commission in the performance of its functions under this Act shall be charged on and paid out of the Fund. 35

(2) In this section “expenses” includes any fee payable to a commissioner, any investment manager, or custodian appointed, or any consultant or adviser or other service provider engaged, by the Commission under this Act. 40

PART 3

National Pensions Reserve Fund

5 **18.**—(1) There shall stand established, on the establishment day, a fund to be known as the National Pensions Reserve Fund, and in this Act referred to as the “Fund”, for the purpose of meeting as much as possible of the cost to the Exchequer of social welfare pensions and public service pensions to be paid from the year 2025 until the year 2055, or such other subsequent years as may be specified in an order under *section 20(3)*. Establishment of National Pensions Reserve Fund.

10 (2) Subject to *subsection (3)*, in each year, commencing in the year 2001 and continuing until the year 2055, there shall be paid by the Minister into the Fund from the Central Fund or the growing produce thereof, in equal quarterly instalments, a sum equivalent to one per cent. of Gross National Product.

15 (3) The Minister may, after consultation with the Minister for Social, Community and Family Affairs, at any time, by order extend beyond the year 2055, the period for payment into the Fund referred to in *subsection (2)*.

20 (4) The Minister may by order provide that, where the period for payment into the Fund has been extended under *subsection (3)*, payment into the Fund in the period extended may, in any year, be less than one per cent. of Gross National Product.

25 (5) The Minister shall pay into the Fund from the Central Fund or the growing produce thereof such sums, additional to the sum referred to in *subsection (2)*, as may be approved, from time to time, by resolution of Dáil Éireann.

(6) The Fund shall be controlled and managed by the Commission acting through the Manager.

(7) Ownership of the Fund shall vest in the Minister.

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

35 **19.**—(1) Moneys standing to the credit of the Fund shall, from time, to time be held or invested for the benefit of the Fund by the Commission, in or outside the State, so as to secure the optimal total financial return, as to both capital and income, having regard to— Investment policy for Fund.

(a) the purpose of the Fund as set out in *section 18(1)*, and

(b) the payment requirements of the Fund as provided for under *section 20*,

40 provided the level of risk to the moneys held or invested is acceptable to the Commission.

(2) Any income, capital or other benefit received in respect of moneys held or invested by the Commission shall be paid into the Fund and held or invested for the benefit of the Fund in accordance with *subsection (1)*.

45 **20.**—(1) The Commission shall not make any payment from the Fund to the Exchequer before the year 2025. Payments from Fund to Exchequer.

(2) Subject to this section, in each year, commencing in the year 2025 and continuing until the year 2055, the Commission shall make payments from the Fund to the Exchequer, upon the request of the Minister, in respect of social welfare pensions and public service pensions. 5

(3) The Minister may, after consultation with the Minister for Social, Community and Family Affairs, at any time, by order extend beyond the year 2055, the period for payment from the Fund referred to in *subsection (2)*.

(4) The Minister shall, following consultation with the Commission and the Minister for Social, Community and Family Affairs, make rules under which payments from the Fund under *subsection (2)* shall be calculated during the relevant period. 10

(5) Without prejudice to the generality of *subsection (4)*, rules under that subsection shall provide that payments from the Fund shall be calculated— 15

(a) by reference to the projected increase in the number of persons in the State who should have attained the age of 65 years, during the relevant period, as estimated by the Minister following consultation with the Central Statistics Office, and 20

(b) with a view to avoiding undue variations from year to year in the net Exchequer position arising from payments to and receipts from the Fund.

(6) Payment from the Fund to the Exchequer in any year shall not exceed the total Exchequer outlay on social welfare pensions and public service pensions in that year. 25

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

(8) In this section “relevant period” means from the year 2025 until the year 2055 or such further period as extended by order made under *subsection (3)*. 30

Manager of Fund.

21.—(1) The Commission shall appoint a manager of the Fund, in this Act referred to as the “Manager”, to act as its agent in the performance of its functions under the Act. 35

(2) On the establishment day, the Commission shall appoint the Agency to be the Manager for a period of 10 years.

(3) After the period referred to in *subsection (2)* and after each period of 5 years thereafter, the Commission, acting in consultation with the Minister and with his or her consent, may appoint the Agency, or such other person as it considers to be best qualified, to be the Manager for a period of 5 years. 40

(4) The Manager shall supply the Commission with such information regarding the activities of the Manager as the Commission may, from time to time, require. 45

(5) The Manager shall have all such powers as are necessary or expedient for the performance of its functions under this Act.

(6) Subject to *section 26(2)*, a function of the Agency under this Act shall not be considered as a function of the Agency under the National Treasury Management Agency Act, 1990.

5 (7) Where a person ceases to be the Manager, the person shall, immediately upon so ceasing, surrender to the Commission all books, documents and records (including any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in legible form) and anything else used in the administration of the Fund which is not the
10 property of the person.

15 **22.—**(1) The Commission may, from time to time, appoint such persons (“investment managers”) to invest and manage such portions of the Fund as the Commission deems appropriate on such terms and conditions as the Commission deems appropriate, including the following: Appointment of
Investment
Managers and
Custodians.

(a) the investment mandate to be given to the investment manager, including discretionary powers for the investment manager,

20 (b) an indemnity to the investment manager with respect to any depreciation or loss in assets under his control save for wilful default, fraud or negligence by the investment manager,

25 (c) the appointment by the investment manager of agents to act for it in the performance of its duties and functions, subject to the consent of the Commission in the case of investment decisions,

(d) the exercise of voting rights by the investment manager on behalf of the Fund,

(e) general reporting arrangements, and

30 (f) management fee, commission and other expenses payable to the investment manager.

(2) Notwithstanding *subsection (1)*, the Manager may be appointed by the Commission to invest and manage such portions of the Fund and on such terms and conditions as deemed appropriate by the
35 Commission within the context of the investment strategy adopted by the Commission.

(3) The Commission may, from time to time, appoint persons (“custodians”) to act as custodians for the assets, or portions of the assets, of the Fund on such terms and conditions as the Commission
40 deems appropriate.

(4) In evaluating prospective investment managers or custodians for the purpose of this section, the Commission shall, *inter alia*, have due regard to their—

(a) investment or custodianship expertise, as appropriate,

45 (b) risk management systems and other information systems and technology, as appropriate,

(c) corporate structure,

- (d) reporting capabilities,
- (e) financial strength,
- (f) internal ethical and compliance guidelines,
- (g) external regulatory obligations, and
- (h) management fee, commission and other expenses. 5

(5) The Commission shall seek to ensure in the contracts for the appointment of investment managers or custodians that they—

- (a) operate to the highest standards acting honestly and fairly, and with due skill, care, prudence and diligence, in conducting their business activities under the mandate given to them so as to promote the best interests of the Fund, 10
- (b) employ effectively the resources and procedures that are necessary for the proper performance of such business activities,
- (c) make every effort to avoid conflicts of interest, and 15
- (d) are subject to an appropriate regulatory regime.

(6) In appointing an investment manager, a custodian or the Manager for the purposes of this section the Commission may include a provision in the relevant contract, or letter of appointment in the case of the Manager, enabling it to engage auditors, from time to time, to carry out an audit of the books, accounts and other financial statements of the investment manager, custodian or Manager, as the case may be, insofar as they relate to activities of the investment manager, custodian or Manager under this section. The investment manager, custodian or Manager, as the case may be, shall afford access to the auditors to all records, documents and accounts relevant to assets of the Fund under his or her control. 20 25

Expenses of Agency.

23.—The expenses of the Agency in the performance of its functions as Manager shall be charged on and paid out of the Central Fund or the growing produce thereof. 30

Laying of draft orders, regulations and rules under Part.

24.—A draft of every order, regulation or rule proposed to be made under this Part shall be laid before Dáil Éireann and the order, regulation or rule shall not be made until a resolution approving the draft has been passed by Dáil Éireann.

PART 4 35

Accountability and Reporting

Chairperson of Commission to appear before Committee of Public Accounts.

25.—(1) The chairperson of the Commission shall appear before, and give evidence to, the Committee of Public Accounts at such times as the Committee may reasonably request.

(2) Any evidence given under *subsection (1)* shall, subject to preserving confidentiality in relation to such commercially sensitive information, as determined by the Commission, relate to the policies of the Commission in relation to the Fund. 40

26.—(1) The Commission shall keep in such form as may be approved of by the Minister all proper and usual accounts of all moneys and other assets appropriate to the Fund. The accounts shall include a separate account of the administration fees and expenses incurred by the Commission in the operation of the Fund.

Accounts and audits.

(2) The audited accounts prepared under section 12 of the National Treasury Management Agency Act, 1990, shall note a record of expenses incurred by the Agency as the Manager.

(3) Accounts kept in pursuance of this section, signed by the chief executive officer of the Manager and by a commissioner authorised for that purpose, shall be formally adopted by the Commission and shall be submitted as soon as may be, but not later than 4 months, after the end of the financial year to which they relate by the Commission to the Comptroller and Auditor General for audit. A copy of the accounts as so audited shall be presented to the Minister as soon as may be and the Minister shall cause a copy of the accounts as so audited to be laid before each House of the Oireachtas.

(4) The chief executive officer of the Manager shall be the officer accountable for the accounts under *subsection (3)* for the purposes of the Exchequer and Audit Departments Acts, 1866 and 1921.

27.—(1) As soon as may be, but not later than 6 months, after the end of each financial year the Commission 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.

Reports and information to Minister.

(2) Each report under *subsection (1)* shall, having regard to the need for open and transparent reporting on the operation of the Fund, but subject to preserving confidentiality in regard to commercially sensitive information, include the following for the year under review:

(a) information on the investment strategy followed;

(b) a report on the investment return achieved by the Fund;

(c) a valuation of the net assets of the Fund and a detailed list of the assets of the Fund at the year end;

(d) information about the investment management and custodianship arrangements in relation to the Fund; and

(e) information on fees, commission and other expenses incurred by the Commission and by the Manager in the operation of the Fund.

(3) Each report under *subsection (1)* shall include information in such form and regarding such matters as the Minister may direct.

(4) The Minister may from time to time appoint a person to carry out an examination of any or all aspects of the operation of the Fund and the Commission and the Manager shall be required to assist this examination in every respect and to afford the person appointed by the Minister access to all records, books and accounts for this purpose.

PART 5

Dissolution of Temporary Holding Fund for Superannuation Liabilities

Transfer of moneys from Temporary Fund to Fund, dissolution of Temporary Fund and final accounts.

28.—(1) As soon as may be after the establishment day, all moneys in the Temporary Fund shall be transferred by the Agency to the Fund. 5

(2) When all moneys have been transferred under *subsection (1)*, the Minister shall by order dissolve the Temporary Fund.

(3) Final accounts of the Temporary Fund shall be drawn up by the Agency, in such form as may be required by the Minister, as soon as may be after the dissolution of the Temporary Fund under *subsection (2)*. 10

(4) Accounts prepared pursuant to *subsection (3)* shall be submitted as soon as may be by the Agency to the Comptroller and Auditor General for audit, and promptly after the audit, a copy of such accounts and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas. 15

Repeal.

29.—On the dissolution of the Temporary Fund under *section 28(2)*, the Temporary Holding Fund for Superannuation Liabilities Act, 1999, shall be repealed. 20

PART 6

Amendment of Taxes Consolidation Act, 1997

Taxation.

30.—The Taxes Consolidation Act, 1997, is amended—

(a) in section 172A(1)(a), by the substitution of the following for paragraph (i) of the definition of “relevant distribution”: 25

“(i) a distribution within the meaning of paragraph 1 of Schedule F in section 20(1), other than such a distribution made to— 30

(I) a Minister of the Government in his or her capacity as such Minister, or

(II) the National Pensions Reserve Fund Commission,

and”, 35

(b) by the insertion, after section 230, of the following section:

“National Pensions Reserve Fund Commission. 230A.—Notwithstanding any provision of the Corporation Tax Acts, profits arising to the National Pensions Reserve Fund Commission shall be exempt from corporation tax.”, 40

(c) in section 256(1), in paragraph (a) of the definition of “relevant deposit”, by the insertion, after subparagraph (iii), of the following:

“(iii*a*) the National Pensions Reserve Fund Commission, 45

“(iii*b*) the State acting through the National Pensions Reserve Fund Commission.”,

(d) in Schedule 13, by the insertion, after paragraph 103, of the following:

“104. The National Pensions Reserve Fund Commission.”,

and

5 (e) in Schedule 15, in Part 1, by the insertion, after paragraph 33, of the following:

“34. The National Pensions Reserve Fund Commission.”.



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AN BILLE UM CHÚLCHISTE NÁISIÚNTA PINSEAN, 2000
NATIONAL PENSIONS RESERVE FUND BILL, 2000

EXPLANATORY MEMORANDUM

Background

Last year the Government took the decision to partially pre-fund the Exchequer cost of social welfare and public service pensions over the long term by setting aside 1 per cent of Gross National Product (GNP) each year from the annual Budget, currently about £600 million, and by allocating part of the Telecom Éireann flotation proceeds for this purpose. Interim legislation was passed in December 1999 establishing a Temporary Holding Fund for Superannuation Liabilities and a sum of £3,015 million was paid into the Fund before the year end. Further sums of up to £1,850 million are being allocated to the Temporary Holding Fund in the year 2000. This will bring the total amount set aside for pension pre-funding in 1999 and 2000 to over £4.8 billion — with nearly £3.6 billion deriving from the Telecom sale proceeds and over £1.2 billion being the 1 per cent GNP allocations for the two years. Moneys held in the Temporary Holding Fund are being managed in short-term deposits and financial instruments by the National Treasury Management Agency, pending the enactment of this Bill and the establishment of the National Pensions Reserve Fund.

This Bill provides for the establishment, financing, investment and management of a Reserve Fund aimed at meeting part of the escalating Exchequer cost of social welfare and public service pensions from 2025 onwards, when, according to demographic projections, the proportion of people over 65 in the population will rise significantly. In summary, the Bill provides for:

- the establishment of a National Pensions Reserve Fund, to provide towards the Exchequer cost of social welfare and public service pensions from 2025 onwards;
- a statutory obligation to pay a sum equivalent to 1 per cent of GNP from the Exchequer into the Fund each year until at least 2055, with provision to enable additional sums to be paid into the Fund from time to time by resolution of Dáil Éireann;
- the establishment of an independent Commission, the National Pensions Reserve Fund Commission, to control and manage the Fund, with discretionary authority to determine and implement an investment strategy for the Fund, based on commercial principles;
- a strictly commercial investment mandate for the Fund with the objective of securing the optimal return over the long-term subject to prudent risk management;

- a prohibition on drawdowns from the Fund prior to 2025, with drawdowns thereafter to be determined under ministerial rules by reference to projected increases in the number of persons over 65 in the population at that time and with a view to avoiding undue fluctuations in the net Exchequer balance from year to year;
- the appointment of the National Treasury Management Agency as Manager of the Fund to act as agent of the Commission and to carry out such functions as are delegated to it for this purpose by the Commission — the appointment of the Agency will be for a period of 10 years, following which there will be the option, at five yearly intervals, to extend this further or to appoint an alternative Manager;
- the appointment by the Commission of (i) investment managers to invest and manage portions of the Fund and (ii) custodians to ensure the safekeeping and security of the assets of the Fund;
- accountability of the Commission to the Minister for Finance (hereafter “the Minister”) and to the Dáil, including provision for detailed annual reports and for appearance of the Commission chairperson before the Committee of Public Accounts;
- annual audit of the Fund by the Comptroller and Auditor General;
- the transfer of moneys from the Temporary Holding Fund to the Reserve Fund and the winding up of the Temporary Holding Fund.

Provisions of Bill

The Bill is divided into six Parts. *Part 1* provides the short title of the Act (*section 1*), as well as various interpretations and definitions used in the Act (*section 2*). It also enables the Minister to set by order an establishment day for the Act (*section 3*) and provides for any expenses incurred by the Minister in administering the Act to be paid out of moneys provided by the Oireachtas (*section 4*).

Part 2 deals with the National Pensions Reserve Fund Commission which will control and manage the Fund.

Section 5 provides for the establishment of the Commission which will be a body corporate with a common seal and power to acquire and dispose of property.

Section 6 outlines the general functions of the Commission and grants it various other powers and responsibilities. The primary function of the Commission will be to control, manage and invest the Fund and to determine an investment strategy for this purpose — *sections 6(1)(a)* and *(c)* refer. The investment strategy will be subject to the Fund’s strictly commercial investment policy as defined in *section 19*. It will include decisions in relation to asset allocation and will set appropriate benchmarks in regard to the overall performance of the Fund and to the performance of particular asset classes in which the Fund is to be invested. *Section 6(1)(c)* also provides that the Fund will not be allowed to invest in Irish Government securities. This restriction is to ensure that the Fund may not be used at some future date to artificially support Government borrowing.

The Commission will be required to monitor and review implementation of the investment strategy — *section 6(1)(d)* — and to commission, from time to time, independent assessments of the

investment performance of the Fund — *section 6(1)(i)*. It will also have to decide, in the context of the investment strategy, the extent to which investment management will be outsourced to investment managers. *Section 6(1)(e)* provides for the function of appointing investment managers to invest and manage portions of the Fund, while *section 6(1)(f)* provides for the function of appointing custodians to safeguard the assets of the Fund. The detailed arrangements for appointing investment managers and custodians are set out in *section 22*.

Other functions of the Commission provided for under *section 6* are:

- To authorise payments from the Fund — *section 6(1)(b)*,
- To determine an annual administration budget — *section 6(1)(g)*,
- To commission independent valuations of the assets of the Fund and assessments of projected Exchequer outlays on social welfare pensions and public service pensions — *section 6(1)(h)*,
- To submit annual reports to the Minister — *section 6(1)(j)*, and
- To maintain accounts and submit annual accounts to the Minister — *section 6(1)(k)*.

Section 6(2) provides the Commission with other powers, including:

- Contracting options and other derivative financial instruments — *section 6(2)(a)*,
- Opening and maintaining bank accounts — *section 6(2)(b)*,
- Borrowing or lending securities (e.g. to enhance returns on fixed income securities) — *section 6(2)(c)*,
- Accepting bequests and donations — *section 6(2)(d)*, and
- Engaging consultants, advisers and other service providers — *section 6(2)(e)*.

Section 6(3) will ensure that the Commission will have all other necessary powers for the performance of its functions.

Section 6(4) places on the Commission the responsibility to act with due care, skill, prudence and diligence in performing its functions under the Act.

Section 6(5) provides that the Commission will perform its functions through the Manager — in other words, the Manager will act as the Commission's executive. The only exceptions are the appointment of a Manager under *section 21* and the appointment of auditors to audit the Manager under *section 22(6)*.

Section 6(6) provides that the Commission may delegate to the Manager such functions as it considers appropriate for the purposes of the Act. Such delegation of functions will be without prejudice to the responsibility of the Commission for those functions.

Section 7 deals with the appointment and terms of office of members of the Commission, who shall be called commissioners. The Commission will consist of a chairperson and 6 ordinary members who will be appointed by the Minister. Persons appointed to the

Commission will be required to have substantial expertise and experience in any of a number of specified areas listed in *section 7(4)*. *Section 7(5)* provides for the appointment of a chairperson while *section 7(6)* provides that the chief executive of the Manager will be an ordinary member of the Commission. Apart from the initial appointments designed to ensure appropriate rotation of the Commission, the term of office for ordinary members of the Commission other than the chief executive of the Manager will be 5 years — see *sections 7(7)* and *7(8)*. *Section 7(9)* provides that a commissioner shall not serve more than two consecutive terms of office. Remuneration and terms of appointment of the commissioners will be determined by the Minister under *sections 7(10)* and *7(11)*. *Section 7(12)*, *(13)* and *(14)* deal respectively with disqualification, resignation and removal from office of a commissioner. *Section 7(15)* provides for the filling of casual vacancies while *section 7(16)* deals with eligibility of commissioners for re-appointment. Finally, *section 7(17)* is aimed at achieving, as far as practicable, an appropriate gender balance in the appointment of commissioners.

Section 8 deals with the conditions of appointment of the chairperson of the Commission, whose term of office shall be five years with provision for a further term.

Section 9 deals with the arrangements for meetings of the Commission, including the quorum, voting procedures and selection of chairperson for such meetings.

Section 10 requires the Commission to provide itself with a seal. It also contains provisions relating to the authentication of the seal, its judicial status and the execution of contracts or instruments without a seal.

Section 11 provides that members of either House of the Oireachtas, the European Parliament, a local authority, a health board or the Eastern Regional Health Authority may not be commissioners.

Section 12 imposes certain obligations on members of the Commission and the staff of the Manager in relation to the disclosure of interests and involvement in the consideration of matters where possible conflict of interest arises. It also provides for sanctions, including removal from office, in the case of failure to disclose interests. The Commission will be required to draw up and publish guidelines as to what constitutes a material interest for the purposes of this section. This section will not apply to investment managers and custodians appointed under *section 22*, as it is envisaged that appropriate provisions in relation to conflict of interest will be included in the relevant contracts concluded by the Commission with investment managers and custodians.

Section 13 restricts a person from divulging confidential information in relation to the Fund unless authorised by the Commission and provides for sanctions for breach of this provision.

Section 14 enables the Commission to establish committees to assist and advise it in the performance of any of its functions. Committee members may include persons who are not members of the Commission or of the staff of the Manager. The Commission shall determine the terms of reference and procedures of any committee. Remuneration of committee members shall be determined by the Commission with the consent of the Minister.

Section 15 is designed to ensure that the Fund does not acquire a controlling interest in any company.

Section 16 requires the Minister to consult with the chairperson of the Commission on any appointment of a new chief executive of the National Treasury Management Agency.

Section 17 provides that expenses of the Commission in the performance of its functions under the Act, including fees payable to commissioners, investment managers, custodians, consultants and advisers, shall be charged to and paid from the Fund.

Part 3 deals with the National Pensions Reserve Fund. It provides, inter alia, for the establishment, financing and subsequent drawdown of the Fund, for the investment policy of the Fund and for the appointment of a Manager of the Fund. It also contains provisions relating to the appointment of investment managers and custodians to assist the Commission in the investment and management of the Fund.

Section 18 provides for the establishment of the National Pensions Reserve Fund, the purpose of which is defined in *section 18(1)* as meeting as much as possible of the Exchequer cost of social welfare and public service pensions from 2025 onwards. *Section 18(2)* requires the Minister to pay into the Fund from the Central Fund an annual sum equivalent to 1 per cent of GNP in each year from 2001 to 2055. Such payments are to be made in equal quarterly instalments based on the Budget estimate for GNP for the relevant year in which payments are made. Provision is also being made, in *section 18(3)*, to extend beyond the year 2055 the period for making the 1 per cent of GNP payment to the Fund and, in *section 18(4)*, for such payment to be tapered out after the year 2055. Such provisions shall be effected by order of the Minister. *Section 18(5)* will enable the Minister to pay additional sums to the Fund as may be approved from time to time by resolution of Dáil Éireann. *Section 18(6)* vests control and management of the Fund in the Commission, which will act through the Manager. *Section 18(7)* vests ownership of the Fund in the Minister. *Section 18(8)* enables the Minister to revoke or amend any order made under this section.

Section 19 defines the high-level investment policy for the Fund based on commercial principles. The objective will be to get the best return from the Fund consistent with prudent risk management. *Section 19(2)* ensures that any income, capital or other benefits received from investments will accrue to the Fund.

Section 20 provides for the drawdown of the Fund over a period commencing in 2025 when the cost of social welfare and public service pensions is expected to rise significantly in line with the progressive ageing of the population. The Bill contains two important safeguards to ensure that, short of amending legislation, the Fund may not be used for purposes other than meeting the cost of pension provision arising from such ageing. Firstly, there will be a legal prohibition on drawdowns from the Fund up to 2025. This key provision, contained in *section 20(1)*, will enable the Fund to accumulate and grow to a substantial sum over a 25 year period. Secondly, *section 20(5)* provides that drawdowns from the Fund from 2025 onwards will be determined, under ministerial rules, by reference to the projected increase in the number of persons over 65 years of age in the population during the relevant period, subject to avoiding undue variations in the net Exchequer cash flow from year to year. The relevant period during which drawdowns are to be made from the Fund shall be at least thirty years from 2025 as determined and, if

necessary, extended by the Minister from time to time, following consultation with the Minister for Social, Community and Family Affairs. The precise arrangements governing drawdowns from the Fund during the relevant period will be determined in rules to be made, under *section 20(4)*, by the Minister following consultation with the Commission and the Minister for Social, Community and Family Affairs. Such rules, which may be amended from time to time, will, under *section 24*, require Dáil approval before coming into effect. *Section 20(6)* will ensure that payments from the Fund to the Exchequer in any year may not exceed the total Exchequer outlay on social welfare and public service pensions in that year. *Section 20(7)* enables the Minister to revoke or amend any order made under this section.

Section 21 provides for the appointment by the Commission of a Manager of the Fund. The Manager will act as the Commission's agent in the performance of its functions under the Act. *Section 21(2)* provides that for the first 10 years the Manager appointed by the Commission will be the National Treasury Management Agency. At 5 yearly intervals thereafter, the Commission may, under *section 21(3)*, appoint the Agency or an alternative body to act as Manager of the Fund. *Section 21(4)* requires the Manager to provide information regarding its activities to the Commission. *Section 21(5)* ensures the Manager has such powers as are necessary or expedient for the performance of its functions. For the avoidance of doubt, *section 21(6)* provides that the functions of the National Treasury Management Agency acting as Manager of the Fund under this Act are separate from its functions under the National Treasury Management Agency Act, 1990. *Section 21(7)* provides that all documents, records etc. used in the administration of the Fund must be surrendered to the Commission by the outgoing Manager on the cessation of its appointment as Manager.

Section 22 deals with the appointment of investment managers and custodians by the Commission. It also provides for the appointment of the Manager to invest and manage portions of the Fund. It will be a matter for the Commission to decide on the extent to which the Fund is to be invested and managed in-house by the Manager and how much is to be outsourced to investment managers.

Section 22(1) enables the Commission to appoint investment managers to invest and manage portions of the Fund on such terms and conditions as it sees fit. Investment managers will be engaged by contract and *section 22(1)* outlines some of the key issues that will be covered in such contracts. For example, the investment manager will be given an investment mandate by the Commission, under *section 22(1)(a)*, which will set target investment returns for the manager to achieve within specified risk parameters. It is also normal practice to give the investment manager an indemnity against any loss or depreciation in assets under his control (e.g. arising from market changes), except in the case of wilful default, fraud or negligence on the part of the investment manager — this is catered for in *section 22(1)(b)*. *Section 22(1)(c)* caters for the use of agents by the investment manager and *section 22(1)(d)* for the exercise of voting rights by the investment manager in respect of company shareholdings held on behalf of the Fund. *Section 22(1)(e)* and *(f)* refer respectively to reporting arrangements and management fees.

Section 22(2) enables the Commission to appoint the Manager to invest and manage portions of the Fund within the context of the investment strategy adopted by the Commission.

Section 22(3) provides for the appointment of custodians to ensure

proper safekeeping of the assets of the Fund. It is normal practice for large funds to engage a custodian and the main duties of a custodian are the safekeeping of the Fund's assets, the settlement of transactions, the collection of dividends and income on securities and, where applicable, the recovery of withholding tax on dividends and interest.

Section 22(4) lists some of the factors to be taken into account by the Commission in the selection process for investment managers and custodians.

Section 22(5) imposes a requirement on the Commission to seek to ensure that investment managers and custodians engaged by them under contract operate to the highest standards so as to promote the best interests of the Fund, that they employ adequate resources for this purpose, that they make every effort to avoid conflict of interest and that they are subject to appropriate regulatory supervision.

Finally, *section 22(6)* will allow the Commission to include in the relevant contract or terms of appointment, a provision enabling it to engage auditors to carry out an audit of the books and accounts of the investment manager, custodian or the Manager insofar as they relate to their activities on behalf of the Fund.

Section 23 provides that the expenses incurred by the National Treasury Management Agency in the performance of its functions as Manager shall be charged to and paid from the Central Fund. This is in line with the practice adopted in respect of the Agency's functions under other statutes.

Section 24 provides that any order, regulation or rule made under *Part 3* must be approved by Dáil Éireann.

Part 4 deals with accounting and reporting requirements in relation to the Fund.

Section 25 requires the chairperson of the Commission to appear before the Committee of Public Accounts at such times as the Committee may reasonably request. Evidence given by the chairperson to the Committee shall, subject to protecting commercially sensitive information, relate to the policies being pursued by the Commission in relation to the Fund.

Section 26 deals with the accounting arrangements for the Fund. *Section 26(1)* provides for the maintenance of proper accounts of the Fund by the Commission, including an account of administration costs incurred by the Commission in the operation of the Fund. As the expenses incurred by the National Treasury Management Agency as Manager of the Fund will be charged to the Central Fund, *section 26(2)* requires a record of such expenses to be noted in the audited accounts of the Agency. *Section 26(3)* provides for the preparation of annual accounts, for the audit of the accounts by the Comptroller and Auditor General and for the laying of such audited accounts by the Minister before each House of the Oireachtas. *Section 26(4)* designates the chief executive officer of the Manager as the accounting officer for the Fund.

Section 27 provides for the submission of an annual report by the Commission to the Minister and for such report to be laid before each House of the Oireachtas. To ensure open and transparent reporting on the operation of the Fund, the report shall include information on the investment strategy pursued by the Commission in relation to the Fund, a report on investment returns, a valuation of

the net assets of the Fund, a detailed list of the asset holdings of the Fund, information on investment management and custodianship arrangements and on fees and expenses incurred in the administration of the Fund. *Section 27(3)* enables the Minister to specify additional matters to be included in the Commission's annual report. *Section 27(4)* will enable the Minister, from time to time, to have an examination carried out into various aspects of the operation of the Fund should such an examination be deemed necessary.

Part 5 deals with the winding up of the Temporary Holding Fund for Superannuation Liabilities. *Section 28* provides for the transfer of all moneys from the Temporary Fund to the National Pensions Reserve Fund and for the subsequent dissolution of the Temporary Fund. It also requires final accounts of the Temporary Fund to be prepared by the National Treasury Management Agency, which controls and manages this Fund. These accounts must be audited by the Comptroller and Auditor General, presented to the Minister and laid before each House of the Oireachtas. *Section 29* provides for the repeal of the Temporary Holding Fund for Superannuation Liabilities Act, 1999 on dissolution of the Temporary Fund.

Part 6 contains one section, *section 30*, which exempts the Commission from dividend withholding tax in *paragraph (a)*, from corporation tax in *paragraph (b)*, from DIRT in *paragraph (c)*, and from capital gains tax in *paragraph (e)*. It also makes the Commission an accountable person for professional services withholding tax in *paragraph (d)*.

*An Roinn Airgeadais,
Meitheamh, 2000.*