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**BILLE NA bPINSEAN (LEASÚ), 2001  
PENSIONS (AMENDMENT) BILL, 2001**

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**EXPLANATORY MEMORANDUM**

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*Introduction*

The Bill provides for the introduction of a framework for Personal Retirement Savings Accounts (PRSAs); the establishment of a Pensions Ombudsman and other amendments following consideration of reports from the Pensions Board in the context of the National Pensions Policy Initiative and given its statutory role to advise the Minister.

The Bill contains five Parts.

*Part 1 (Sections 1 and 2)* contains the usual provisions for short title, construction and definitions.

*Part 2 (Section 3)* provides for the insertion of Part X in the Pensions Act, 1990 which sets out the framework for Personal Retirement Savings Accounts (PRSAs).

*Part 3 (Section 4)* provides for the insertion of Part XI in the Pensions Act, 1990 which relates to the establishment of a Pensions Ombudsman.

*Part 4 (Sections 5 to 52)* provides for amendments to the existing provisions of the Pensions Act, 1990.

*Part 5 (Sections 53 to 56)* provides for amendments of miscellaneous other enactments and continuance of instruments.

**PART 2**

**PERSONAL RETIREMENT SAVINGS ACCOUNTS (PRSAs)**

*Section 3* provides a framework for PRSAs, which will be a long term personal retirement account designed to meet the requirements of current and future employment patterns and to encourage pension provision by enabling people to save for retirement in a flexible manner. A PRSA will be a contract based product between an individual and a PRSA provider; it will be in the form of an investment account.

The framework provides that PRSAs will be regulated by the Pensions Board who will licence the PRSA provider which is required to be a private company registered in the State. PRSA products will be approved by the Pensions Board and the Revenue Commissioners. A PRSA provider will be required to have a default

investment strategy for each of its products which will be linked to good practice for investment for retirement. A provider will require to be certified by the PRSA actuary as regards compliance with statutory requirements.

Charges made under a PRSA contract cannot be expressed in cash terms and must be expressed as a percentage of each contribution or a percentage of the value of the assets or a percentage of both. The framework includes provision for Standard PRSAs which will be “off the shelf” products with charges capped at 5% of contributions and 1% per annum of the assets.

Any person will be able to make contributions to a PRSA irrespective of employment status. Contributors to a PRSA will be able to suspend/reactivate premium payments without penalty. Contributors will be able to transfer between PRSA providers without a charge being imposed. Employees can take PRSAs with them when changing jobs. Contributors will be able to take benefits from a PRSA from age 60.

The framework also sets out disclosure requirements on PRSA providers as follows:

- preliminary disclosures to prospective contributors specifying, on a generic basis, a level of benefits which could reasonably be expected;
- statements of reasonable projection to signed-up contributors showing, at various intervals/times, on an individualised basis, the level of benefit which can reasonably be expected;
- regular statements of individual and employer contributions, including transfer value;
- disclosure of commissions/charges with varying requirements in relation to Standard and non-Standard PRSAs; and
- certain disclosure before a transfer from an occupational pension scheme to a PRSA.

The functions of the Pensions Board are set out in relation to its regulatory role as regards licensing and approval of providers and products as well as their ongoing supervision. *Inter alia*, these functions will also include recording and maintaining a database of statistics related to PRSA contributors and the business of PRSA providers. The Board will conduct reviews of charges made to PRSA contracts and will monitor promotional and other material. The Pensions Board shall be the competent authority in the State for PRSA providers for the purpose of Council Directive 93/22/EEC of 10 May 1993, which relates to the provision of investment services.

The framework provides that the PRSA provider enters into a contract with, *inter alia*, an auditor, PRSA actuary and investment manager and sets out their functions in relation to PRSAs.

Employers, who do not provide an occupational pension scheme for their employees, will be obliged to provide access to at least one Standard PRSA.

The framework provides that new buy-out bonds and new sole member additional voluntary contribution (AVC) arrangements will be void following commencement of the relevant provisions.

## PART 3

### PENSIONS OMBUDSMAN

*Section 4* provides for the establishment of a Pensions Ombudsman who will be appointed by the Minister for Social, Community and Family Affairs.

The Ombudsman will have power to investigate and determine

- (a) a complaint made by or on behalf of an actual or potential beneficiary of an occupational pension scheme or a PRSA who alleges that he has sustained financial loss occasioned by an act of maladministration by or on behalf of a person responsible for the management of the scheme or a PRSA, and
- (b) any dispute of fact or law that arises in relation to an act done by a person responsible for the management of a scheme or PRSA and that is referred to the Ombudsman by or on behalf of an actual or potential beneficiary.

In relation to a scheme, an actual or potential beneficiary includes a member, an external member, any person who has been a member, any surviving dependant of a deceased member, any person claiming to be either a member or a surviving dependant of a deceased member, a personal representative of a deceased member or a widow or widower of a deceased member. In relation to a PRSA, this includes a contributor, a personal representative of a deceased contributor or a widow or widower of a deceased contributor.

In relation to a scheme, a person responsible for the management of a scheme is a trustee or former trustee or an employer or former employer. In relation to a PRSA, this is a provider or former provider or an employer or former employer.

The Ombudsman will be able to give such directions, as he considers necessary or expedient for the satisfaction of the complaint/resolution of the dispute. This can include financial redress. However, any financial redress cannot exceed the actual loss of benefit under the occupational pension scheme or PRSA.

It is expressly provided that the Ombudsman cannot give a direction requiring either (a) an amendment of the rules of the scheme or the conditions of a PRSA contract, or (b) the substitution of the decision of the Ombudsman for that of the trustees in relation to the exercise by the trustees of a discretionary power under the scheme rules. In relation to (a), the intention is to ensure that the Ombudsman's decision cannot require the amendment of the rules of the scheme or the conditions of a PRSA contract. In relation to (b), while it is intended that the Ombudsman should have the power to investigate the process by which the trustees come to a decision in the exercise of discretionary powers, the actual decision must be one for the trustees alone.

The time limit for bringing complaints or disputes to the Ombudsman will be

- 3 years from the act giving rise to the complaint/dispute,
- longer than that if the Ombudsman decides that there are reasonable grounds and it would be just and reasonable to extend the period,

— however, for complaints or disputes arising prior to the establishment of the Ombudsman, an absolute limit of 3 years applies.

Provision is made for the Minister to take powers to provide that trustees and PRSA providers establish procedures for internal resolution of disputes. The intention is that any complaint or dispute to the Ombudsman will have to exhaust such procedures first.

The decisions of the Ombudsman will be binding subject to a right of appeal to the High Court.

The procedure for the making of complaints, the reference of disputes and the conduct of investigations will be such as the Ombudsman considers appropriate subject to any regulations introduced by the Minister for Social, Community and Family Affairs. In particular, the Ombudsman will have power to obtain information from such persons and in such manner and make such enquiries as he thinks fit. While the Ombudsman will not be required to do so, he will have power to hold oral hearings.

If a person fails or refuses to comply with a determination of the Ombudsman, application can be made to the Circuit Court by the other party concerned or by the Minister for an order of the Circuit Court directing that party to carry out the determination in accordance with its terms. The Circuit Court may also order the payment of interest in respect of any amount due under a determination of the Ombudsman.

The Ombudsman will have power to pay sums in respect of travelling and subsistence expenses and allowances by way of compensation for loss of their time of such amount, as may be prescribed, to persons affected by an action in respect of which an investigation is held and to a person who attends or gives information in connection with the investigation.

The Office of the Ombudsman will be financed by moneys provided by the Oireachtas.

#### PART 4

#### AMENDMENTS TO THE EXISTING PROVISIONS OF THE PENSIONS ACT, 1990

*Section 5* inserts new definitions in connection with the new provisions of the Bill.

*Section 6* extends and consolidates the provision concerning offences to include, in particular, PRSA providers, employers and other persons.

*Section 7* extends the exchange of information provisions to include PRSAs and to allow exchange of information with supervisory authorities inside and outside the State.

*Section 8* allows the regulation of sectionalised schemes, and allows such schemes to be regulated either as single schemes or as groups of schemes.

*Section 9* allows the professional guidance of the Society of Actuaries in Ireland to be underpinned by regulations.

*Section 10* extends the current monitoring and advisory role of the Pensions Board to include PRSAs.

*Section 11* extends the provisions covering investigations by authorised persons to cover PRSAs.

*Section 12* inserts new title to Part III in connection with the new requirement for schemes to provide a minimum value of contributory retirement benefit to mitigate the effect of the integration of occupational and social welfare pensions on low income earners at retirement.

*Section 13* inserts new definitions in connection with the requirement for minimum value of contributory retirement benefit.

*Section 14* reduces the qualifying period for preserved benefit from 5 to 2 years to apply to those leaving service after 1 January 2002.

*Section 15* provides in relation to defined benefit schemes for the extension of the preservation requirements to include pre 1991 service where the member leaves service after 1 January 2002 with an entitlement to a preserved benefit within the new vesting rule.

*Section 16* provides in relation to a defined contribution scheme for the extension of preservation requirements to include pre 1991 service where the member leaves service after 1 January 2002 with an entitlement to preserved benefit within the new vesting rule.

*Section 17* extends the prohibition of refunds to cover pre-1 January 1991 contributions in the case of scheme members leaving after 1 January 2002 who qualify for a preserved benefit.

*Section 18* provides for the application of different revaluation requirements to elements of preserved benefit in respect of pre and post 1991 service.

*Section 19* makes a number of changes to the legislation governing transfer payments. It gives a member of an occupational pensions scheme who is entitled to a preserved benefit the right to direct the trustees of the scheme to make a transfer payment in respect of his preserved benefit to a PRSA or an unfunded scheme (as well as to a funded scheme). It also allows for regulations permitting the transfer payments to pension arrangements outside the State. It allows for transfer values to be adjusted to reflect the funding condition of the scheme making the transfer, to ensure that those taking transfers are not advantaged over those remaining within the scheme, and provides for adherence to the Society of Actuaries in Ireland guidance notes or other guidance specified in regulations in the calculation of transfer values.

*Section 20* provides for a minimum value of contributory retirement benefit for members of contributory defined benefit schemes retiring after 1 January 2002.

*Section 21* ensures that any provisions of an occupational pension scheme relating to forfeiture and lien are disregarded for the purposes of minimum contributory retirement benefit, as well as preserved benefit.

*Section 22* allows the Minister, as respects particular schemes or classes of scheme, to exclude or modify the provisions of the Act relating to the minimum value of contributory retirement benefit, as well as the provisions relating to preservation.

*Section 23* allows schemes to provide benefits more valuable than the minimum contributory retirement benefit.

*Section 24* provides for benefits from defined contribution schemes, as well as defined benefit schemes, to be secured following wind-up of the schemes by transfer payments, regardless of the terms of the scheme concerned.

*Section 25* provides for a new certified percentage to apply to actuarial funding certificates (AFCs), having an effective date after 1 January 2002, and allows for regulations to prescribe the content as well as the form of AFCs.

*Section 26* provides a mechanism to identify schemes whose funding is likely to fall below the Minimum Funding Standard in the three and a half year interval between AFCs and also provides for corrective action in such cases.

*Section 27* amends the list of liabilities which must be funded for a scheme to comply with the Minimum Funding Standard, to reflect mainly the extension of the preservation/ revaluation provisions.

*Section 28* creates a new specified percentage regime for actuarial funding certificates in respect of the new preserved benefits, which will run from 1 January 2002 to 1 January 2012.

*Section 29* updates a reference to the Taxes Consolidation Act, 1997 and reflects the revised “specified percentage” requirement for actuarial funding certificates.

*Section 30* preserves the existing order of priorities for schemes which wind up on or before 1 January 2002, introduces a revised order of priorities for schemes which wind up after 1 January 2002 to provide benefits secured by Additional Voluntary Contributions (AVCs) rank first in the new order of priority and to take account of the new preservation and funding requirements, and amends a subsection dealing with transfer payments on wind up; and provides for the treatment of surplus where a scheme is wound up after 1 January 2002.

*Section 31* updates a reference to the Taxes Consolidation Act, 1997 in the section dealing with Funding Proposals.

*Section 32* inserts a new title to Part V in connection with the remittance of contributions by employers.

*Section 33* provides for the extension of the Minister’s power to require disclosure. The amendment will, in particular, facilitate the making of regulations to prescribe the information to be furnished by employers in cases where there is a change in terms of employment which may lead to a reduction in pension entitlement. This is to ensure that the relevant information is supplied to each person affected. It will also facilitate the making of regulations requiring the disclosure of commissions, charges, etc. in connection with the scheme.

*Section 34* requires additional information in the annual report from the actuary regarding the funding position of a scheme.

*Section 35* extends the conditions for appointment as auditor to cover PRSAs.

*Section 36* provides for reviews of occupational pension rates payable in defined benefit schemes by the trustees of the scheme, for the purpose of considering index-linked increases in rates.

*Section 37* extends the provision facilitating the modification of Part V in respect of specified schemes or categories of schemes.

*Section 38* places a statutory requirement on employers to remit employee pension contributions within a specific time period (within 15 days of the end of the month in which the deductions were made where employee contributions are concerned), and to give a monthly statement of the deductions to the employee and the trustees.

*Section 39* amends the provision concerning trustee investment responsibility by limiting trustees liability where investment is made at the member's direction.

*Section 40* provides for

- additional requirement for disclosure and consultation prior to finalisation of a scheme wind-up, where a scheme winds-up on or after 1 January 2002,
- actuarial certification of funding levels and disclosure to members prior to bulk transfer,
- changes in scheme rules and exercise of discretionary power to augment members' benefits to be null and void in certain circumstances.

*Section 41* allows regulations to exclude multi-employer schemes from the provisions of the Act relating to the selection of trustees.

*Section 42* extends the offences provisions in relation to employers to include voluntary reporting to the Pensions Board in relation to PRSAs.

*Sections 43, 44, 45 and 46* provide for the amendment of the compulsory and voluntary reporting requirements ("whistleblowing") on foot of the introduction of PRSAs.

*Section 47* increases the size of the Pensions Board from 14 to 15 persons by the addition of a representative of consumer interests.

*Section 48* inserts a new title to the Second Schedule in connection with the minimum value of contributory retirement benefit.

*Section 49* sets out the distinct elements of preserved benefit to be calculated in the case of a defined benefit scheme and the formulae to be used to calculate preserved benefit in respect of both pre-1991 and post-1991 service.

*Section 50* confines the anti-franking provision to persons who leave service before 1 January 2002. (Such persons cannot have their revalued preserved benefit funded by a reduction in unpreserved benefit). For persons leaving service after 1 January 2002, all benefits will be preserved and cannot be reduced.

*Section 51* sets out the formula to be used in calculating the minimum value of contributory retirement benefit.

*Section 52* reflects the changes to treatment of pre-1991 service and provides for the funding of the new preserved benefits.

## PART 5

### AMENDMENTS OF MISCELLANEOUS OTHER ENACTMENTS AND SAVING

*Section 53* amends the Social Welfare (Consolidation) Act, 1993 to define the Pensions Board as a specified body for the purposes of the administration of Public Service Data.

*Section 54* extends the scope of pension adjustment orders in the Family Law Act, 1995 and the Family Law (Divorce) Act, 1996 to include PRSAs.

*Section 55* provides for the non-application of the Ombudsman Act, 1980 in relation to matters covered by the Pensions Ombudsman.

*Section 56* provides for the continuance of instruments.

*An Roinn Gnóthaí Sóisialacha, Pobail agus Teaghlaigh,  
Iúil, 2001.*