



**AN BILLE UM POLASAITHE ÁRACHAIS SAOIL
NEAMHÉILITHE, 2002
UNCLAIMED LIFE ASSURANCE POLICIES BILL, 2002**

EXPLANATORY MEMORANDUM

[This Memorandum is not part of the Bill and does not purport to be a legal interpretation.]

General

The purpose of this Bill is to provide for a legislative framework whereby all life assurance undertakings doing business in the State will be obliged to notify holders of unclaimed policies, the proceeds of which are payable in the State, of the existence of those policies. If the policy holder cannot be traced, the net encashment value of the policy is to be transferred to the Dormant Accounts Fund (“the Fund”) established under the Dormant Accounts Act, 2001. The rights of policy holders will not be affected by this transfer. The framework extends to all policies of life assurance which have been taken out by Irish residents, other than occupational pensions schemes, group health insurance/disability benefit schemes and sponsored superannuation schemes.

The Bill further provides for certain amendments to the Dormant Accounts Act, 2001, to enable the moneys payable by the life assurance undertakings, to the Fund, to be managed and invested by the National Treasury Management Agency (“the NTMA”), and any surplus to be disbursed by the Dormant Accounts Fund Disbursements Board, in accordance with that Act.

Provisions

Section 1 provides for the short title and provides for the Minister for Community, Rural and Gaeltacht Affairs (“the Minister”) setting the date for commencement of the Act. This section also contains citation provisions in relation to the Dormant Accounts Act, 2001.

Section 2 is an interpretation section which defines certain terms used in the Bill. For the purposes of the Bill, “a policy holder” may be the person who proposes for the policy, or other person, e.g. heirs, beneficiaries, assignees etc. with a legal right to be paid under the policy and “communication” means any electronic or written communication from the policyholder, to the undertaking, including payment of premiums under, or partial encashment of the policy.

Section 3 deals with the making of Regulations and Orders by the Minister in relation to matters covered by the Bill. It specifically provides that any such Regulation may apply to a particular class of life assurance policy, or insurance undertaking.

Section 4 is a standard provision concerning expenses incurred in administration.

Section 5 sets out the levels of fines to be applied for summary and indictable offences, and provides that the regulatory authority may bring summary proceedings in respect of offences under the Act. It further provides that a person convicted of an offence under the Act shall meet any costs and expenses incurred by the Regulatory Authority in the course of the proceedings.

Section 6 provides for the application of the provisions of the Bill to unclaimed life assurance policies which are payable in the State in respect of a policy holder with an address in the State. It also sets out the types of insurance policy which fall outside the scope of the legislation, i.e. occupational pension schemes, group health insurance/disability benefit schemes and sponsored superannuation schemes. Where the policy has a “specified term” or is a Revenue-approved type policy, it will be deemed unclaimed where there has been no communication from the policy holder, in respect of the policy, for at least 5 years from the later of the end of the specified term or the date of the last communication. Where the policy does not have a specified term, it will be deemed unclaimed where there has been no communication from the policy holder, in respect of the policy, for at least 15 years.

Section 7 provides that the Minister, following consultation with the Regulatory Authority and with the permission of the Minister for Finance, may make Regulations to extend the scope of the Scheme to other classes of insurance policy, policy holder and/or institution. It further provides that the Minister may also, by Regulation, modify a number of provisions in the Act.

Section 8 provides that insurance undertakings are obliged to personally notify holders of unclaimed policies, in the year that the policy is deemed “unclaimed” as per the terms of this legislation, where the value of that person’s policy is over €500. The notification under this section is to be by post, to the last known address that the undertaking has for the policy holder.

Section 9 provides that where an insurance undertaking has policies valued at less than €500, policies which are deemed “non-correspondence” or policies in respect of which the insurance undertaking has previously tried, but failed, to contact the policy holder, the undertaking will be obliged to publish a notice, in a prescribed form, to the effect that it has such policies on its books. This notice is to be published in two or more national daily newspapers and in *Iris Oifigiúil*. The undertaking will also have to place copies of the notice in a prominent position in each of its premises in the State and in any relevant publicity material in respect of unclaimed policies. The first such notice is to be published on 17 January, 2003 and thereafter, on the first weekday in October, commencing 2003.

Section 10 provides that where there has been no communication from the policy holder, in respect of the policy, in the given time-frame, the undertaking shall transfer the net encashment value (which is exclusive of any moneys held back by the undertaking, where applicable, to provide ongoing insurance cover to which the policy holder is entitled under the policy) of that policy to the Dormant Accounts Fund not later than 30 April each year, commencing 2004. It further provides that each undertaking shall make a statement to the NTMA of the total amounts it transfers and how many of the different types of policies are involved in the transfer; nil returns will also be required from the undertakings, where applicable. Where an undertaking fails to transfer moneys due, these shall form a simple contract debt owing to the Fund and recoverable by the Minister.

Section 11 provides that where an undertaking has its authorisation revoked, withdrawn or suspended, or it is in liquidation, receivership or subject to examinership, or has received certain directions from the regulatory authority, no further moneys shall be transferred from that undertaking, to the Dormant Accounts Fund, until such time as the undertaking is entitled to do so again.

Section 12 provides that each undertaking shall keep a “Register of Unclaimed Policies”, containing the particulars of the holders of those policies and the date on which the moneys payable under the policies were transferred to the Fund.

Section 13 provides that the Minister may, at a future date, make Regulations allowing for disclosure of certain information (other than personal information) in relation to unclaimed policies, for statistical purposes.

Section 14 provides that the rights of policy holders are unaffected by the transfer of moneys payable under their policies, to the Fund.

Section 15 sets out the procedure for the policy holder making a claim on foot of moneys which have been transferred to the Fund and how long the policy holder can expect to wait to obtain his/her moneys.

Section 16 provides that where an undertaking has been wound up, the regulatory authority shall take control of that undertaking’s Register of Unclaimed Policies and process any claims on foot thereof.

Section 17 provides that each undertaking shall furnish an annual “Certificate of Compliance”, signed by a duly authorised officer of the undertaking, to the regulatory authority. This certificate will be in a prescribed form.

Section 18 is a standard interpretation clause for Chapter 2 of Part 2 of the Bill, which defines certain terms used in *sections 18* to *25* of the Bill.

Section 19 provides that the regulatory authority may authorise one or more persons to be “Inspectors” for the purposes of checking compliance by the undertaking, with the provisions of this Act.

Section 20 provides that an Inspector has the power to inspect and make inquiries about records relating to unclaimed policies held by an undertaking. The section gives the Inspector certain standard powers in relation to entering premises and requesting the help of anyone holding such records, for the purposes of the inspection.

Section 21 provides the Inspectors with powers of inspection in relation to insurance undertakings whose head offices are outside the State but who are entitled to carry on business here by way of branch establishment or by way of services into the State. The section provides that these companies must comply with any requests made of them by the Inspectors, in relation to the scheme provided for generally in this Act.

Section 22 provides that where an Inspector encounters non-compliance on the part of any of the undertakings, or a breach of any of the provisions of the Act, he/she shall submit a report of his/her findings to the regulatory authority. The report shall not identify any of the policyholders, except where the Inspector encounters fraud or under/non-payment of relevant moneys to the Fund.

Section 23 provides that any statement by an Inspector, in relation to his/her functions under the Act, if made in good faith, shall be privileged.

Section 24 provides an indemnity for the undertakings in so much as they must disclose certain information to an Inspector, where that disclosure is done in good faith.

Section 25 provides that, on foot of an Inspector's report, the regulatory authority may issue directions in writing to an undertaking, compelling it to comply with the provisions of the Act and/or to rectify a material defect with that undertaking's systems regarding unclaimed policies. An undertaking which fails to comply with these directions will be guilty of an offence.

Section 26 provides that where an undertaking transfers moneys to the Fund, or notifies the NTMA of a claim for repayment, the undertaking shall not identify the policyholder.

Section 27 provides that the Dormant Accounts Act, 2001 is to be amended to the extent set out in *Schedule 2* of this Bill.

Schedule 1 sets out, for ease of reference, the classes of life assurance which will be captured by this legislation. The table in *Schedule 1* has been taken from Part A of Annex I to the European Communities (Life Assurance) Regulations 1994 (S.I. No. 360 of 1994).

Schedule 2 sets out the amendments to be carried out to the Dormant Accounts Act, 2001. Most of these amendments ensure that the NTMA is entitled, under the same conditions as provided for in the Dormant Accounts Act, 2001 to invest and manage the moneys realised from unclaimed life assurance policies. The amendments also ensure that the moneys realised from the unclaimed policies will be transferred to the Dormant Accounts Fund and that any surplus moneys realised in this way can be disbursed by the Dormant Accounts Fund Disbursements Board.

*An Roinn Airgeadais,
Deireadh Fómhair, 2002.*