



**Bille na bPinsean (Déileáil Chomhionann i dtaca le
Pinsin i Scéim Sochair Ceirde) (Leasú), 2016
Pensions (Equal Pension Treatment in Occupational
Benefit Scheme) (Amendment) Bill 2016**

*Meabhrán Mínitheach
Explanatory Memorandum*



**BILLE NA bPINSEAN (DÉILEÁIL CHOMHIONANN I DTACA LE
PINSIN I SCÉIM SOCHAIR CEIRDE) (LEASÚ), 2016
PENSIONS (EQUAL PENSION TREATMENT IN
OCCUPATIONAL BENEFIT SCHEME) (AMENDMENT) BILL
2016**

EXPLANATORY MEMORANDUM

Purpose of Bill

The case of *Parris v TCD* (Case C-443/15, 24th November 2016) highlighted an anomaly in Irish pensions law. Mr David Parris had been living for over 30 years in a stable relationship with his same-sex partner. His employer's pension scheme provided for the payment of a survivor's pension to the spouse or, since the 1st January 2011, the civil partner of a member. However, the survivor's pension was payable only if the member had married or entered into a civil partnership before reaching the age of 60.

In December 2005, it became possible to enter into a civil partnership in the United Kingdom and Mr Parris did so in April 2009, when he was aged 63. At that time Irish law did not recognise such a UK civil partnership.

In July 2010 the Civil Partnership Act was enacted and it entered into force the following January. On the 12th January 2011 Mr Parris's UK civil partnership was recognised in Irish law.

In January 2010 Mr Parris obtained an option allowing him to take cost-neutral early retirement from the end of that year. He made a request to TCD that, on his death, his civil partner should receive a survivor's pension. The request was rejected in November 2010.

Mr Parris's appeal to the Labour Court was referred to the Court of Justice of the European Union, but no breach of EU law was found. It is an issue of purely national law that the application of ostensibly non-discriminatory pension scheme rules, in this and other cases, in practice impose requirements on scheme beneficiaries which cannot be complied with by same-sex couples.

Provisions of Bill

The Bill is by its long title called an Act to amend the provisions of the Pension Act 1990 relative to equal pension treatment in occupational benefit schemes in order to provide for cases where employees who were unable to marry persons of the same sex may be deprived of certain pension benefits, and to provide for related matters.

Section 1 provides that PART VII ("Equal Pension Treatment in Occupational Benefit Schemes") of the Pensions Act 1990, as substituted by section 22 of the Social Welfare (Miscellaneous Provisions) Act 2004, is amended in section 72 by the insertion of a new subsection (5).

The new subsection provides that, in stated circumstances, it constitutes a breach of the principle of equal pension treatment on the sexual orientation ground for a scheme to fix, as a condition for entitlement to benefits in favour of the employee's spouse or civil partner, a requirement that employee must have married or entered into the civil partnership before the employee attained a certain age.

The stated circumstances are where –

- on or before the date which the employee attained the age fixed for pension purposes he or she could not have married the beneficiary by reason of both parties being of the same sex or, because the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 was not in operation, he or she could not have entered into a civil partnership with the beneficiary and a foreign civil partnership would not have been recognised, and
- after the employee attained the age so fixed, he or she married or entered into a civil partnership with the beneficiary within 36 months of it being lawfully possible to do so, or his or her foreign civil partnership became recognised in Irish law.

Section 2 provides in standard form for the short title and the collective citation and construction of the Bill.

*Senators Ivana Bacik, Kevin Humphreys, Ged Nash, Aodhan Ó Riordáin
December, 2016.*