



An Bord Pinsean -  
**The Pensions Board**

Authority for Pensions

# **TRUSTEE HANDBOOK**

3rd Edition

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**The Pensions Board**

Authority for Pensions

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ISBN: 0 9533171 0 2

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## INTRODUCTION

Trustees have the main responsibility for the administration of funded occupational pension schemes and compliance with the requirements that apply to these schemes.

The Pensions Board was established by the Minister for Social Welfare under the terms of the Pensions Act, 1990. The main functions of the Pensions Board as set out in the Pensions Act, 1990 as amended (“the Pensions Act”) are:

- to monitor and supervise the operation of the Pensions Act and pension developments generally, including the activities of PRSA (Personal Retirement Savings Account) providers, the provision of PRSA products and the operation of PRSAs
- to issue guidelines or Guidance Notes on the duties and responsibilities of trustees of schemes and trust retirement annuity contracts (“Trust RACs”) and Codes of Practice on specific aspects of their responsibilities
- to advise the Minister either at his/her request or on its own initiative on all matters relating to the functions assigned to the Board under this Act and on matters relating to pensions generally
- to issue guidelines or Guidance Notes on the duties and responsibilities of PRSA providers in relation to PRSA products
- to issue Guidance Notes generally on the operation of the Pensions Act and specifically on the provisions of the Family Law Act, 1995, and the Family Law (Divorce) Act, 1996, relating to pension schemes (within the meaning of section 2 of the Family Law Act, 1995 and section 2 of the Family Law (Divorce) Act, 1996
- to encourage the provision of appropriate training for trustees of schemes and Trust RACs, and to advise the Minister on standards for trustees and on their implementation
- to advise the Minister on all matters in relation to the Pensions Act and on pension matters generally
- to publish an annual report and such other reports as it may from time to time consider necessary
- to perform functions conferred on the Pensions Board by the Pensions Act
- to perform such tasks as the Minister may from time to time require.

The provision made for these Pensions Board functions is a clear recognition of the central role which trustees have in ensuring that occupational pension schemes and Trust RACs are properly administered, that scheme members’ pension rights are fully safeguarded and that they and their dependants ultimately receive the pensions which they have earned. It is also a recognition that the legislation is mainly designed to provide a statutory framework within which trustees discharge their normal duties and responsibilities in relation to pension scheme and Trust RAC administration with minimal reference to the Pensions Board.

### TRUSTEE HANDBOOK – MAIN OBJECTIVES

A key objective of the Board in promoting the security of occupational pensions and Trust RACs, as referred to in its mission statement (see Chapter 8), is to provide authoritative guidance on how to achieve voluntary compliance with the Pensions Act and other relevant legislation and good practice generally in relation to scheme and Trust RAC administration. It is intended that this trustee handbook will make a major contribution to achieving this objective.

Firstly, the handbook is intended to assist trustees by providing more detailed guidance on trustees’ duties under Section 59 of the Pensions Act (see Chapters 3 and 6), under the other sections of the Pensions Act and other relevant legislation (see Chapter 4) and under trust law generally. The Board has the duty under Section 10 of the Pensions Act to monitor and supervise the operation of the Act, and also has the power under Section 3 of the Act to bring proceedings for summary offences under the Act, or to impose on-the-spot fines. It is essential therefore that trustees should be aware of their duties under the Act and of the standards which the

Board would expect from trustees in its role of monitoring and supervising the operation of the Act and pensions developments generally. Accordingly, where in guidance given it is stated that a particular course of action must be taken, trustees in failing to take such action will be in breach of the Pensions Act, trust law or other relevant legislation.

Secondly, it is hoped that the handbook may be of assistance to trustees in outlining good practice. This should be aimed at even where it is not mandatory. Where in the guidance it is stated that action should be taken, this refers to recommended good practice.

A handbook of this kind cannot be fully comprehensive. No doubt there are some aspects of good practice for trustees which are not covered at present but may be incorporated in future updates of the handbook.

## HOW TO USE THE HANDBOOK

There are three main sections to the handbook. If you are looking for specific guidance in relation to the discharge of your duties and responsibilities, you should consult Section I which contains codes of practice on various aspects of trustee responsibilities. These codes of practice, which are repeated within the various chapters to which they relate, are cross-referenced to the relevant paragraphs of each chapter.

If you wish to obtain more detailed guidance on your duties and responsibilities you should consult Section II which is divided into 8 chapters as follows:

Chapter 1 provides an overview of pensions in Ireland. You may wish to read this chapter through to obtain a clear understanding of pensions generally and the role, nature and characteristics of occupational pension schemes and Trust RACs.

Chapter 2 deals with trusts and trusteeship and, in particular, sets down the principles which should govern how trustees discharge their duties and responsibilities. It is important to read this chapter carefully. You should be familiar with its contents and you may consider it necessary to refer to it on an ongoing basis.

Chapters 3 and 6 deal with the main duties and responsibilities of trustees as set out in Section 59 of the Pensions Act. Chapter 3 deals with ongoing trustee duties and responsibilities and together with Chapter 5 which deals with pension scheme administration is likely to be a regular source of reference. More specific duties imposed on trustees by the Pensions Act are dealt with in detail in Chapter 4, together with trustee duties in relation to the pension provisions of the Family Law Acts and other legislation pertaining to pensions. You may never have to deal with the winding-up of your scheme or the implications for your scheme of the merger or acquisition of the company sponsoring your scheme, but if any of these developments should arise Chapter 6 will be an important source of guidance on how to deal with them.

Chapter 7 outlines the role of the Pensions Ombudsman and details the requirement on trustees to establish internal dispute resolution procedures within their scheme.

Chapter 8 outlines the main role of the Pensions Board, the services it provides and how, in particular, it discharges its functions to monitor and supervise the administration of occupational pension schemes, and, where necessary, enforces compliance with the Pensions Act through the imposition of fines or through the courts.

Chapter 9 provides a brief overview of some of the main duties imposed on Trustees of Trust RACs under the Pensions Act.

Section III contains the appendices, the purposes of which are explained, as appropriate, in the main chapters in Section II. At the end of the appendices is a glossary. If you are unfamiliar with a term, word or concept you should consult the glossary.

If you are looking for a specific piece of information, you should consult the index. If you wish to obtain information on particular duties and responsibilities, you should go to the table of contents.

### **PROFESSIONAL ADVICE/TRAINING**

Trustees are generally drawn from company managers and other employees. This handbook is written as far as possible in non-technical language with such trustees in mind, so that it is clearly understandable to persons who are not pensions experts. This guide is not a definitive statement of the law. Reference is made regularly throughout the course of the handbook to matters where professional advice must or should be obtained. As trustees you appoint professional advisers, but it is important that you understand the nature of your relationship with these advisers and be prepared to question them critically. Guidance on this important aspect of your responsibilities is also provided in the handbook.

The importance of obtaining training in trusteeship is also emphasised. One of the Board's functions is to encourage trustee training. We hope that this handbook will serve as an important resource for such training.

Under the provisions of Section 59AA of the Pensions Act as inserted by Section 28 of the Social Welfare and Pensions Act 2008, which has yet to come into force, employers will be obliged to arrange training for trustees of schemes and Trust RACs.

A list of trustee courses approved by the Pensions Board is provided in the handbook and if further information on the availability of training is required, trustees should contact the Board.

Finally, the Pensions Board hopes by means of this handbook to forge a more direct relationship with trustees in working together for our common purpose of promoting the security of occupational pensions and efficient and cost-effective scheme administration.

# SECTION 1

## CODES OF PRACTICE

### BRIEF BACKGROUND TO PENSION SCHEMES

#### (CHAPTER 1)

1. For the purposes of the Pensions Act, there are two basic types of occupational pension schemes – defined benefit schemes and defined contribution schemes. There is also a third type of pension trust governed by the Pensions Act, a Trust RAC. Its main features are summarised at 1.6.4. Trust RACs were brought within the ambit of the Pensions Act under Part 3 of the Social Welfare and Pension Act, 2007. It is essential that scheme trustees know which type of scheme they have responsibility for, as there are different requirements under legislation in respect of each type of scheme. If trustees and their advisers are unsure as to the type of scheme for the purposes of the Pensions Act, they can write to the Pensions Board (see par. 8.6) for a determination on the matter (par. 1.6).

### TAX TREATMENT OF OCCUPATIONAL PENSION SCHEMES

#### (CHAPTER 1)

2. The trustees should ensure that the scheme is approved for tax purposes and that it continues to qualify for approval by ensuring that the scheme is being administered in accordance with Revenue requirements and, in particular, that the contributions payable and benefits provided are within Revenue limits (par. 1.9).

### TRUSTS AND TRUSTEESHIPS

#### (CHAPTER 2)

3. Trustees should be aware of the up-to-date position in respect of the documentation governing the scheme and should ensure the announcements made to members reflect this position (par. 2.1).

### SELECTION AND APPOINTMENT OF TRUSTEES

#### (CHAPTER 2)

4. It is essential to be clear at all times who has trustee duties and responsibilities in relation to the scheme and the nature and scope of these duties and responsibilities. It should generally be clear from the trust deed and rules of the scheme, who has the responsibility for exercising the trustee duties and powers. Clarification may be needed, however, in the case of an arrangement involving a management committee and, if necessary, such clarification should be obtained from the scheme's legal adviser (par. 2.5).
5. Trustees should be fully aware of the provisions made in the trust deed and rules (and, under the Pensions Act and its regulations, as appropriate) for their appointment, resignation/retirement, filling of casual vacancies and replacements. This will ensure that it is clear at all times who has the trustee duties and responsibilities for the scheme, and in whom the trust property is vested (pars. 2.6 and 2.7).

## TRUSTEES DUTIES AND RESPONSIBILITIES – GENERAL PRINCIPLES

### (CHAPTER 2)

6. It is very important that trustees act in the best interests of beneficiaries. In this context the phrase “best interests” is usually taken to mean best financial interests (par. 2.9).
7. Persons acting in their capacity as trustees should be aware that they are not to act as a representative of the group or interest from which they are drawn, but must serve all classes of beneficiaries impartially (par. 2.9).
8. Acting prudently in the context of trusteeship means that trustees should take the same care as ordinary prudent persons would take in managing the affairs of other people for whom they feel morally bound to provide (par. 2.9).
9. Trustees should seek and obtain advice on technical matters and any other matters which they do not understand (par. 2.9).
10. Trustees should maintain confidentially any information which they have acquired in their capacity as trustees and should not disclose any matters relating to the business and affairs of the employers and members of which they become aware by reason of their position as trustees. Trustees should also bear in mind that information they receive which includes details of the personal, family or financial circumstances of individuals or groups of scheme members and/or their dependants is available to them only to enable them perform their duties as trustees effectively (par. 2.9).
11. Trustees who acquire confidential information should not use it for any purpose other than the purposes of the scheme. Trustees should also ensure that any commercially sensitive information they gain about the employer, and those providing services to them, is also only used in connection with the proper administration of the scheme. A trustee will generally have a fiduciary duty to disclose information received in another capacity to his fellow trustees, if it is necessary to enable them to perform their duties as trustees effectively. Should trustees have any doubt regarding their disclosure obligations in such circumstances, they should seek appropriate legal advice (par. 2.9).
12. Trustees should ensure that sensitive information is held securely with levels of access appropriately limited to avoid misuse. Trustees should also establish a policy identifying what aspect of trustee business may be disclosed (freely or on confidential terms) and to whom. Such a policy will ensure uniformity in approach (par. 2.9).
13. Section 59 of the Pensions Act lays down in broad terms the general duties of trustees of schemes and Trust RACs as follows:
  - to ensure that contributions are received
  - to invest the funds
  - to make arrangements for paying the benefits
  - to ensure that records are kept
  - to undertake trustee training (statutory obligation yet to come into force)
  - to ensure that a registered administrator is appointed.

## TRUSTEES AND CONFLICTS OF INTEREST

### (CHAPTER 2)

14. Many persons appointed as trustees could be in a position where there may be a conflict between their duty as a trustee and their other interests. Their duty as a trustee must prevail when taking decisions (par. 2.10).

## TRUSTEE TRAINING

### (CHAPTER 2)

15. Trustees should take steps to ensure that they are sufficiently informed to discharge their duties and responsibilities as trustees. Once the relevant legislation comes into force, trustees will be obliged to undertake trustee training every two years. They will be required to undertake the initial trustee training within six months of their appointment, or within two years if they are already a trustee. Section 59AA of the Pensions Act, which will bring these provisions into force, has yet to be commenced. Trustees should ensure that they keep up-to-date with changes in legislation which affect pension schemes and about pension issues in general. In the meantime trustees who have not attended a trustee training course and/or consider that the training they have received is not adequate to enable them to properly discharge their duties and responsibilities, should contact the Pensions Board (see Appendix 2), who will provide advice on how such training can be obtained (para. 2.16).

## TRUSTEE RESPONSIBILITIES – PAYMENT OF CONTRIBUTIONS

### (CHAPTER 3)

16. The trustees must ensure that the contributions of the employer (and the member, if applicable) are actually paid into the scheme. The Pensions Act says that this duty must be carried out “in so far as is reasonable”. One way of doing this would be to agree with the employer a set of procedures and a schedule of dates on which the contributions will be paid. The dates upon which contributions are due to be paid may be specified in the scheme rules or (if the scheme is a defined benefit scheme) the actuary’s valuation report. If so these dates should be used. If nothing is specified annual contributions should, as a general rule, be requested on a monthly or quarterly basis.  
  
The Pensions Act requires the employer to remit the contributions detailed in Section 58A within the specified time limits. These requirements override anything stated in the rules but do not apply to the employer contributions in respect of a defined benefit scheme.(pars. 3.4 and 3.5).
17. Members’ contributions are usually deducted by the employer’s payroll department and added to the employer’s contribution, the combined total being remitted in part to the insurers to pay for risk benefit being insured and the balance to the investment managers (par. 3.5).
18. Trustees should satisfy themselves that arrangements for transmission of contributions to the ultimate recipient (e.g. investment manager or insurance company) are the most efficient, suitable and secure in the circumstances of their schemes and comply with the investment requirements and time limits laid down in the Pensions Act (par. 3.5).
19. Where the employer fails to pay the full contribution requested on (or shortly after) the due date, the trustees should decide on an appropriate course of action and their decision should always be dictated by what they believe will best serve the interests of members (par. 3.5).

20. Where, under a defined contribution scheme, the employer fails to pay the full contribution requested, the trustees should take immediate steps to ensure that this is done. If these steps fail to secure the payment of the contributions due, the trustees should obtain legal advice on an appropriate course of action, including possible legal action (par. 3.5).
- Where, in the case of a defined benefit scheme, the employer fails to pay the contribution recommended by the actuary, the trustees' ability to pay the benefits due to members and other beneficiaries may not be affected provided the employer is prepared to increase the future contributions payable to the scheme.
21. The trustees should, therefore, initially enquire from the actuary (i) whether the reduced (or nil) contribution would still enable them to discharge the liabilities of the scheme were the scheme to wind-up in the short term, and (ii) what increased contribution would be needed in the future from the employer to compensate for the shortfall in the current contributions. Provided the actuary confirms (i) and the trustees receive an undertaking from the employer to pay the increased contribution rate in (ii) in the future, no further action may be needed.
- If, however, the employer fails to pay the recommended rate and the trustees have been unable to obtain satisfactory assurances from the employer that it will pay the required contributions in the future, the trustees should obtain legal advice on an appropriate course of action including possible legal action. At the same time the trustees should seek the actuary's advice on an equitable reduction in the benefit scales. If it becomes necessary to reduce the benefits, the trustees must advise the members that benefits are being reduced until the shortfall in contributions has been received and satisfactory arrangements made for the payment of future contributions (par. 3.5).
22. Failure to comply with the payment deadlines will not require automatic reporting to the Pensions Board. However, where trustees have reasonable cause to believe that fraud or material misappropriation has occurred, is occurring or is to be attempted, they must make a report to the Pensions Board under Section 83 of the Pensions Act immediately. Chapter 8 deals with mandatory reporting in more detail (par. 3.5).
23. Non remittance of contributions may indicate that there is a fraudulent conversion or a material misappropriation of the resources of the scheme which should be reported to the Board. This will depend on the particular facts. Following any non remittance of contributions specified in Section 58A within the 21 day period, trustees should investigate the circumstances to ascertain the facts. Trustees should determine whether there is in fact non remittance. Where there has been non remittance, trustees must decide if there is reasonable cause to believe that a fraudulent conversion or a material misappropriation has occurred, is occurring or is to be attempted. Trustees should not allow contributions to remain outstanding for long beyond the 21 day period before initiating an investigation. Issues in respect of non remittance are more easily dealt with if they are tackled as soon as possible (par. 3.5).
24. Trustees faced with an issue in relation to the non remittance of contributions within the statutory time limits should refer to the Pensions Board's Remittance of Contributions FAQs which are available online from the Pensions Board website (par. 3.5).
25. In an extreme situation where an employer notifies the trustees of its intention to terminate its contributions to the scheme then, subject to the provisions of the trust deed, it may become necessary for the trustees to wind up the scheme. Before formally deciding to wind up the scheme, the trustees should obtain legal and actuarial advice as appropriate and consult with the scheme's professional advisers on the consequences of a wind-up and whether any action can usefully be taken before the formal wind-up to protect the interests of the members. Trustees should note that their powers will usually be much more circumscribed once the scheme has gone into wind up (par. 3.5).

## TRUSTEE RESPONSIBILITIES – INVESTING THE ASSETS

### (CHAPTER 3)

26. Trustees must invest the contributions required to be remitted by the employer within the specified time limits (par. 3.6).
27. Trustees faced with an issue in relation to the investment or remittance of contributions within the statutory time limits should refer to the Pension Board’s Remittance of Contributions FAQs which are available online from the Pensions Board website (par. 3.6).
28. Where the rules of the scheme permit members to select investments, trustees must comply with the requirements under the Pensions Act and relevant regulations in order to avail of the statutory exemption from liability (par. 3.7).
29. Trustees should aim for a range of investment options which will not overwhelm members. Trustees should not give members advice which they are not qualified to give. However, sufficient information should be given to allow an appropriate choice to be made (par. 3.7).
30. Trustees must check the relevant clause in their trust deed to ensure that any investment which might be planned is permissible. They must also ensure that they comply with the provisions of the Occupational Pension Scheme (Investment) Regulations 2006 to 2007 (S.I Nos. 294 of 2006 and 188 of 2007) (the “Investment Regulations”) and tailor their investments accordingly. Trustees of Trust RACs must comply with their own set of investment regulations, the Trust RAC (Investment) Regulations 2007 (S.I. No. 185 of 2007). These regulations are similar to the Investment Regulations for Occupational Pension Schemes (par. 3.8).
31. An unrestricted investment clause does not mean trustees can invest however and wherever they wish. In relation to the investments of the fund, trustees must invest with the care which an ordinary prudent person would take in investing for the benefit of other people for whom he/she felt morally bound to provide. As the purpose of the scheme is the provision of benefits for members and other beneficiaries, trustees must invest solely in their best interests. In this context “best interests” should be taken to mean best financial interests. Trustees must also invest the assets of the scheme in a manner appropriate to the circumstances of the scheme, i.e. they must review the general circumstances, such as the age profile, of the members of the scheme and invest the assets appropriately (par. 3.8).
32. The trustees of a defined contribution (or AVC money purchase) scheme may wish to consult with the members and seek their input into the investment strategy to be pursued in relation to their individual account. Investment decisions may be delegated only where permitted under the trust deed and rules. Trustees may rely on the statutory exemption from liability for the consequences of the members’ investment decisions where the rules of the scheme provide for the trustees to invest the resources of the scheme as directed by the members and the trustees have complied with the list of requirements set down in Section 59(2) of the Pensions Act and Article 18 of the Occupational Pension Schemes (Disclosure of Information) Regulations, 2006 to 2008 (S.I. Nos. 301 of 2006, 582 of 2006, 842 of 2007 and 531 of 2008) (the “Disclosure of Information Regulations”). Trustees should act prudently in selecting investment options which are to be made available to scheme members. Trustees should not give members advice which they are not qualified to give (par. 3.7 and 3.8).
33. Trustees should exercise great care, and as necessary seek advice, in choosing the life assurance company with which to invest the assets of an insured scheme (and possibly insure the death benefits) (par. 3.9).

34. Where trustees themselves do not possess the qualifications and experience appropriate and relevant to the investment of the scheme resources they must appoint an investment manager to invest the scheme's assets. Alternatively the trustees can employ an advisor whose investment qualifications and experience have been approved by the Pensions Board. In either case, trustees must take great care in making such appointments. Trustees should ensure that they have adequate information and have regard to their own investment policy before making their decision. In particular the trustees should endeavour to identify the qualities likely to be associated with successful investment management and assess the extent to which these qualities are present in any candidate being considered. An investment management agreement should be signed between the trustees and the investment manager or other adviser (par. 3.10).
35. When they appoint an investment manager the trustees should decide who is authorised to give instructions to the manager on behalf of the trustees particularly in relation to the payment of cash out of the fund (par. 3.10).
36. Where the trustees appoint an investment manager they must make sure that the investment manager is aware of the extent of limitations of the investment powers so that he/she may carry out his/her delegated responsibilities properly (par. 3.10).
37. Trustees should agree an appropriate investment policy and where required (i.e. where their scheme has 100 or more active and deferred members or, in the case of a Trust RAC, 100 or more members) they should also prepare and maintain a written Statement of Investment Policy Principles ("SIPP") for the fund and where relevant place limits on the fund's investments in specific sectors, markets, currencies, shares, and other securities. In the case of a defined benefit scheme the employer must be consulted on investment policy if the trust deed so provides (par. 3.10).
38. Trustees must comply with the Investment Regulations made under the Pensions Act which stipulate that scheme assets must be invested predominantly on regulated markets; investment in assets which are not admitted to trading on a regulated market must also be kept to a prudent level. Trustees should also diversify the investment of the scheme assets so as to minimise the risk of large losses due to excessive risk concentration. Trustees of a Trust RAC must comply with their own set of investment regulations, the Trust RAC (Investment) Regulations 2007. These regulations are similar to the investment regulations for occupational pension schemes. The trustees of a defined benefit scheme must have regard to the need to satisfy at regular intervals the minimum funding standard set down in the Pensions Act (par. 3.10).
39. Following the appointment of an investment manager the trustees should meet with the manager as required, but at least once a year. The manager's performance should be monitored on an ongoing basis having regard to the objectives set. Such monitoring should include, not only the actual investment return achieved by the manager, but also the investment strategy which was pursued on behalf of the scheme. The trustees should ask the manager to explain any aspect of the scheme investments which they do not understand (par. 3.10).
40. The trustees should satisfy themselves that the investment management agreement is consistent with the trust deed and rules. If the trustees are required to prepare and maintain a SIPP, or the trustees have documented an investment policy and objectives, this should be appended to the formal management agreement and referred to therein as appropriate (par. 3.10).
41. Trustees should be aware of the main issues to be considered by them in assessing the security of their pension fund assets and the legal relationship with their custodian (par. 3.10).

## TRUSTEE RESPONSIBILITIES – PAYMENT OF BENEFITS

### (CHAPTER 3)

42. Whether the trustees are making arrangements for the payment of benefits themselves or through the use of one or more agents, procedures should be put into place to ensure that the handling of benefit payments is properly dealt with. Procedures should be set down by the trustees and agreed by the scheme administrator which will ensure that benefits are properly paid and that members receive the information to which they are entitled, and in the form prescribed by the Disclosure of Information Regulations. Such procedures should also ensure that members are given reasonable time in which to exercise any options which may be available to them, and that any items which are required to be referred to the trustees are so referred. A scheme administrator should report at least annually to the trustees. The administrator's report should be tabled for discussion at a trustee meeting (pars. 3.12 and 3.13).
43. Members should be notified of the procedures they should adopt in dealing with income tax documentation, so that the transition from payment of salary to payment of pension can be made as quickly and as easily as possible. Procedures for payment of tax and for the deduction of statutory levies should be explained to members by the scheme administrator (par. 3.14).
44. Members must be given details of the options available and the choices which are open to them in deciding upon their benefits. The exercise of options by the member – or the decision not to exercise them – should be clearly and unambiguously recorded. Confirmation in writing of the choice of option and the implementation of options is desirable (par. 3.14).
45. In a defined contribution scheme, the proceeds of the scheme will almost invariably be applied by the trustees in the purchase of a life annuity from an insurance company. Scheme members who have paid AVCs or who are directors holding shares of 5% or more of the voting shares in the sponsoring employer may be able to invest in an ARF or AMRF instead. Whilst the actual purchase of the annuity may be performed by a scheme administrator on behalf of the trustees, arrangements should be in place to ensure that issues such as value, security and general suitability to meet the members' needs have been considered and evaluated in making the decision on the insurance company from which to purchase the annuity. Trustees should encourage members to seek advice when considering their retirement options, especially in relation to investing in an ARF or AMRF (par. 3.14).
46. Trustees should ensure that arrangements are in place for obtaining periodic evidence of continued existence for pensioners (par. 3.14).
47. Trustees should carefully exercise any discretionary power connected with the payment of death benefits when the occasion arises. Trustees who have to exercise a discretionary power should be fully aware of the options open to them on the payment of death benefits and on the persons or categories of persons covered by definitions such as "dependants", "beneficiaries", etc. Trustees should ensure that enquiries are made by them, or on their behalf, which will ascertain enough detail relating to beneficiaries to enable the discretionary power to be exercised (par. 3.15).
48. Trustees should check on the death of a member as to whether a "wishes letter" has been completed (par. 3.15).
49. If payments are to be made to the estate or the legal personal representatives of a deceased member, trustees should ensure that the appropriate grant of probate or letters of administration intestate is secured before making any payment. That is not to say that trustees should never make part or interim payments before a grant issues if such payments are made in order to relieve hardship (par. 3.15).

50. Trustees should be satisfied as to the dependency relationship of potential dependants to the deceased member where pensions are to be paid. They should ensure that arrangements are in place to ascertain the details of the dependants and obtain any necessary evidence of age, etc. which might be required especially if pensions are to be secured by the purchase of an annuity from an insurance company. Where children are involved, trustees should obtain details of educational activity and intentions in this area when relevant (par. 3.15).
51. Whenever augmentation of benefits or an increase in the liabilities of the scheme is proposed, whether for an individual, for a group of members or for the whole scheme, trustees must satisfy themselves as to who precisely has the power to augment benefits. If the power of augmentation is vested in the employer, it may be subject to the consent of the trustees. If the power is vested in the trustees, it may be exercisable only at the request of the employer. Any actuarial advice which may be specified in the trust deed must be obtained by the trustees and any consents or advices which might be required should be fully documented. The decision to grant the augmentation should be fully and carefully documented as far as the trustees, the employer and any members affected are concerned (par. 3.16).
52. If Section 56A of the Pensions Act is brought into operation the trustees of a defined benefit scheme which does not provide for indexation to pensions in payment would be obliged to require the possibility of indexation to be examined and considered at intervals not exceeding 3 years (par. 3.17).
53. Trustees should ensure that appropriate tax is deducted from benefit payments and remitted to the Revenue Commissioners (par. 3.18).
54. Trustees should ensure that they put in place arrangements to satisfy themselves that there is no potential capital acquisitions tax liability before finalising payments to beneficiaries or to a member's estate (par. 3.18).
55. Trustees must ensure that satisfactory arrangements exist to notify members of their benefit entitlements on leaving the service of the employer (par. 3.19).
56. Trustees must ensure that proper arrangements exist for the transfer of benefits from the scheme to another approved funded scheme, to an approved policy or contract with an insurance company, to an approved unfunded scheme, to a Personal Retirement Savings Account (PRSA) (subject to the conditions specified in the Taxes Consolidation Act 1997, the Pensions Act and regulations made thereunder), and to pension arrangements outside the State (subject to conditions specified in regulations under the Pensions Act), if so requested by members, and for acceptance of any transfers made into the scheme from other pension schemes or from PRSAs. Where a scheme does not satisfy the funding standard, the amount of the transfer payment may be reduced by the trustees on the advice of the actuary (par. 3.19).
57. Trustees must ensure that they do not reduce an annual pension after it has commenced payment unless such reduction is permitted under Section 59B of the Pensions Act (par. 3.21).
58. Trustees must comply with the provisions of Section 59C of the Pensions Act when calculating a pension increase involving a State pension offset (par. 3.22).

## TRUSTEE RESPONSIBILITIES – KEEPING OF RECORDS

### (CHAPTER 3)

59. Trustees must ensure that there are proper procedures and monitoring controls in place to enable accurate and complete membership and financial records to be kept by them, or on their behalf (pars. 3.24 and 3.25).
60. Trustees should ensure that membership data is provided by the employer (to the scheme administrator, if relevant) on a timely basis. Trustees should ensure consistency regarding membership records, pensionable salary details and so forth between:
  - the records of the sponsoring employer;
  - the annual report (amounts and disclosures);
  - the data provided periodically to the scheme actuary and advisers (where applicable) (par. 3.26).
61. Trustees should ensure that arrangements are in place for all membership records (current employees, pensioners, deferred pensioners) to be kept in a manner which is complete and up-to-date and that the records contain all information to enable benefits to be calculated having regard to the scheme structure and the nature and types of benefit provided. Most of this information will already be held by the registered administrator, where so appointed, in order for them to compile the trustee annual report and annual benefit statements. Trustees of schemes are required to appoint registered administrators to carry out such functions with effect from 1 November 2008, unless they appoint themselves as registered administrators for this purpose (For more information on registered administrators see par. 3.25 and par. 3.26).
62. Trustees should ensure that a record of benefit calculations with appropriate authorities or consents be maintained and that a copy of options offered to and chosen by a member be retained (par. 3.26).
63. Trustees should perform ongoing monitoring of monthly deductions paid by members to the scheme. Procedures would include, at a minimum, a periodic check to ensure deductions paid by members are made in accordance with the scheme rules and (where applicable) in accordance with the recommendations of the actuary (par. 3.26).
64. Trustees should ensure that Data Protection legislation is complied with and that all records are kept secure from unauthorised access (par. 3.27).
65. Trustees of all schemes should establish and maintain a trustee bank account for the scheme for the purposes of receiving contributions, paying insurance premiums, passing monies to the investment manager, paying benefits and fund expenses, etc. Trustees should always be able to easily identify scheme funds. These should be kept separate from those of the sponsoring employer (par. 3.28).
66. Trustees of all schemes must ensure that an accurate account of the income and expenditure of the scheme is kept and that written details of all financial transactions are retained. Where required under the terms of the Pensions Act or by the rules of the scheme, the trustees must have the accounts audited. Even where not so required the trustees may wish to consider whether the circumstances of the scheme justify having the accounts of the scheme audited (par. 3.28).
67. Trustees should satisfy themselves as to the quality of any financial reports being kept on their behalf by third parties (e.g. an investment manager). As part of the process of recording the financial transactions of the scheme, trustees should ensure that arrangements are in place to provide them with reports from the investment manager and any other party involved with the financial transactions of the scheme. As far as possible, they should satisfy themselves that such reports are complete and accurate and that values are reconciled (par. 3.28).

## **TRUSTEE RESPONSIBILITIES – REGISTRATION OF SCHEMES**

### **(CHAPTER 4)**

68. Trustees must ensure that their scheme is registered with the Pensions Board. Trustees could confirm that their scheme is registered by obtaining the PB No. from those who administer the scheme on their behalf or, if necessary, directly from the Board (pars. 4.3 and 4.4).
69. Changes to scheme information on the Pension Board’s register must be notified to the Board. Trustees should check at least once a year, for example when the scheme’s annual report is being approved, that any such changes have been notified to the Board (par. 4.4).

## **TRUSTEE RESPONSIBILITIES – PAYMENT OF FEES**

### **(CHAPTER 4)**

70. Trustees must ensure that those arranging on their behalf for payment of the annual fee to the Pensions Board calculate the amount due and pay the fee within the statutory deadline (pars. 4.5 and 4.6).
71. Calculation and payment of the fee should be a standard item for a trustee meeting at the appropriate time each year (par. 4.6).

## **TRUSTEE RESPONSIBILITIES – PRESERVATION AND TRANSFER OF BENEFITS**

### **(CHAPTER 4)**

72. Trustees must ensure that appropriate arrangements are in place to comply with the requirements of the Pensions Act in relation to the entitlement of early leavers to preserved benefits or transfer payments. Trustees must, on request from the members, provide to the members or a PRSA provider a statement of benefits which may accrue to the members from the scheme (pars. 4.8 and 4.9).
73. Trustees should familiarise themselves with the preservation and transfer of benefit requirements by means of the Pensions Board’s information booklet entitled “What happens to my Pension if I Leave?” and the Pension Board’s Guidance Notes which are available online from the Pensions Board website (par. 4.10).

## **TRUSTEE RESPONSIBILITIES – MINIMUM FUNDING STANDARD**

### **(CHAPTER 4)**

74. Trustees of a defined benefit scheme should
  - be aware of the effective date for the next actuarial valuation for the purposes of the funding standard
  - ensure that comprehensive data is submitted to the actuary within six months after the effective date of the valuation
  - advise the actuary that they expect the final valuation report to be delivered to them within three months of receipt of comprehensive data in order that they are in a position to meet the statutory requirement to forward to the Pensions Board the actuarial funding certificate signed by the actuary and, if appropriate, a funding proposal, within 9 months after the effective date of the actuarial valuation (pars. 4.11, 4.12, 4.13 and 4.14).

75. Trustees of a defined benefit scheme must ensure intervaluation reviews are carried out to determine whether the scheme continues to satisfy the funding standard and corrective measures undertaken if a negative assessment arises. Trustees must notify the Pensions Board if the actuary states in the annual report that the scheme would not satisfy the funding standard or where no statement is made. In such circumstances trustees must have a full actuarial funding certificate prepared (and where relevant a funding proposal) which must be submitted to the Pensions Board within 12 months of the last day of the period to which the annual report relates (par. 4.14).
76. If the actuary certifies that the scheme has insufficient assets to satisfy the funding standard, the trustees must ensure that a funding proposal is forwarded to the Pensions Board with the actuarial funding certificate. Where this involves any reduction in benefits in order to comply with the funding standard, the trustees, in consultation with the employer, must ensure that the scheme members are fully informed (par. 4.15).
77. Should the trustees fail to forward an actuarial funding certificate and/or a funding proposal to the Pensions Board by the statutory deadline and, as a result, a direction to reduce benefits is issued by the Board, the trustees must ensure that all the requirements of the direction are met by the relevant statutory deadlines. The Board may also direct that benefits be reduced where the trustees have forwarded both an actuarial funding certificate and a funding proposal, but the actuarial funding certificate certifies that the scheme does not meet the funding standard (par. 4.16).
78. Where an application is to be made to the Pensions Board for an extension of the time required to meet the funding standard, the trustees themselves should make the application. It should be made within such reasonable time so as to ensure that the time limits, for submission of an actuarial funding certificate and a funding proposal, specified in the Pensions Act can be met. It should propose a later date than the effective date of the next actuarial funding certificate, giving reasons as to why the later date is necessary and not contrary to the members' interests. The application by the trustees must also enclose the certificate of the actuary (par. 4.17).
79. Trustees must ensure members are informed of the funding position (par. 4.17).
80. Where the Pensions Board specifies a later date, the trustees should submit the funding certificate and funding proposal to the Pensions Board in accordance with the Pensions Act requirements (par. 4.17).
81. Trustees should refer to the Pensions Board's Guidelines in respect of Section 49(3) where they are making an application for an extension of the time to meet the funding standard (par. 4.17).

## **TRUSTEE RESPONSIBILITIES – DISCLOSURE OF INFORMATION**

### **(CHAPTER 4)**

82. Trustees must ensure that at a minimum the information to be disclosed on their pension scheme, its administration and finances, and on individual members' entitlements is in accordance with the Disclosure of Information Regulations under the Pensions Act. This information should be readily available and provided within the statutory deadlines. Trustees of Trust RACs must comply with their own set of disclosure regulations, the Trust RAC (Disclosure of Information) Regulations 2007 and 2008 (S.I. Nos. 182 of 2007 and 531 of 2008). These regulations are similar to the occupational pension scheme regulations. Trustees should endeavour to provide information in a manner that is easy to understand and assimilate (pars. 4.18 and 4.19).

83. Trustees must give a copy of the annual report for their scheme automatically to any authorised trade union which represents the members of the scheme not later than 9 months after the end of the scheme year. The trustees must inform members of the availability of the annual report not later than 4 weeks after the time specified above and might consider circulating copies to them, although not required to do so automatically (par. 4.19).
84. Trustees should be familiar with the Disclosure of Information Regulations, using either the Pensions Board Guidance Notes on Disclosure of Information or the Pensions Board information booklet “What Do You Know About Your Pension Scheme?”, which are available online from the Pensions Board website, as a checklist to monitor that the requirements are being complied with, with particular reference to the statutory timescales for the provision of the information. Trustees could be liable to be fined by the Pensions Board for failure to comply with these requirements. The Pensions Board “Trustee and Employer Checklists On-the-spot fines”, which is also available online from the Pensions Board website ([www.pensionsboard.ie](http://www.pensionsboard.ie)), is a useful way of ensuring that trustees do not contravene legislative requirements subject to the fines regime. For more information on on-the-spot fines see Chapter 8 (par. 4.20).

## **TRUSTEE RESPONSIBILITIES – EQUAL PENSION TREATMENT**

### **(CHAPTER 4)**

85. If certain scheme rules are found to be discriminatory they must be changed in order to comply with statutory requirements. Trustees should discuss with the employer the possible implications for the funding of the scheme in having to apply the more favourable treatment to all scheme members (pars. 4.21 and 4.22).
86. Trustees must ensure that in applying the rules of their scheme there is full compliance with the principle of equal pension treatment. If necessary they should refer to the Guidance Notes on “Equal Pension Treatment in Occupational Pension Schemes” and information booklet, “A Brief Guide to Equal Pension Treatment”, which are available online from the Pensions Board website, to assist in this regard (par. 4.24).

## **PERSONAL RETIREMENT SAVINGS ACCOUNTS – PENSION PROVISIONS**

### **(CHAPTER 4)**

87. Where additional voluntary contributions are to be made to a PRSA under the scheme rules, trustees must ensure that any such contributions are limited to the amount required to provide the maximum benefits permitted in line with Revenue limits. The aggregate of benefits to be provided cannot exceed the maximum benefits that could be provided by the pension scheme (par. 4.27).
88. Where additional voluntary contributions are paid via a PRSA that is established as a separate arrangement which is not linked to the main scheme, it is not expected that the trustees of the main scheme have a legal responsibility to monitor on an ongoing basis the contribution and benefit limits of the members of their scheme. However, the trustees of the scheme are legally obliged to comply with the requirements of the Disclosure of Information Regulations in respect of the members’ entitlement to information (par. 4.27).

## FAMILY LAW ACTS – PENSION PROVISIONS

### (CHAPTER 4)

89. Where the court directs trustees to provide more specific information in respect of the member spouse's scheme benefits, the trustees of the scheme concerned must provide the information within the period specified by the court. With the consent of the member spouse, the trustees should provide the information voluntarily to avoid putting the parties to the expense of obtaining a court order (par. 4.34).
90. The trustees should co-operate with the parties in endeavouring to facilitate the making of a pension adjustment order by the court on a consensual basis in order to minimise the necessity of court appearances on behalf of the trustees, with the resultant costs to the parties (par. 4.35).
91. Where the dependent spouse requests that an independent benefit be established on his/her behalf, the trustees should advise him/her of the options available regarding any transfer amount that may be available in lieu of retaining the designated benefit (par. 4.37).
92. If the independent benefit is being established in the same scheme of which the member spouse is a member, the trustees of the scheme must ensure that the alternative benefit meets with the requirements of the Revenue Commissioners and that its actuarial value is equivalent to the transfer amount. They must also inform the dependent spouse of the nature and amount of the alternative benefit as soon as is practicable after the transfer has taken place (par. 4.37).
93. If the transfer amount representing the value of the designated benefit is being paid into a scheme of which the dependent spouse is a member, then the trustees of the receiving scheme must ensure that the alternative benefit complies with Revenue requirements and is of the same actuarial value as the transfer amount. They must also inform the dependent spouse of the nature and amount of the alternative benefits as soon as is practicable after the transfer has taken place (par. 4.37).
94. If the dependent spouse requests the trustees of the pension scheme of which the member spouse is a member to pay the transfer amount to an approved insurance policy, the trustees must comply with that request and pay the transfer amount directly to the insurance company in question (par. 4.37).
95. Trustees should familiarise themselves with the pension requirements of the Family Law Acts and the Pension Schemes (Family Law) Regulations, 1997 (S.I. No. 107 of 1997). The Pensions Board information booklet entitled "A Brief Guide to the Pension Provisions of the Family Law Acts" provides useful guidance for trustees on this aspect of pensions legislation. This booklet is available online from the Board's website (par. 4.42).

## PART-TIME WORK ACT – PENSION PROVISIONS

### (CHAPTER 4)

96. Where the employer wishes to amend the rules of the scheme in order to admit part-time employees, the trustees should discuss with the employer the possible implications for the scheme, and in particular, where it is a defined benefit scheme, the funding of the scheme (par. 4.43 – 4.46).
97. Trustees may consider it necessary to seek actuarial and legal advice in relation to any scheme amendments for which their consent is required and in relation to any backdating of membership (par. 4.43 – 4.46).

## **FIXED-TERM WORK ACT – PENSION PROVISIONS**

### **(CHAPTER 4)**

98. Where the employer wishes to amend the rules of the scheme in order to admit fixed-term employees, the trustees should discuss with the employer possible implications for the scheme, and in particular, where it is a defined benefit scheme, the funding of the scheme (par. 4.47 – 4.49).
99. Trustees may consider it necessary to seek actuarial and legal advice in relation to any scheme amendments for which their consent is required and in relation to any backdating of membership (par. 4.47 – 4.49).

## **GENERAL SCHEME ADMINISTRATION**

### **(CHAPTER 5)**

100. The trustees should ensure that the scheme has been fully approved by the Large Cases Division of the Revenue Commissioners and should be aware of the Revenue reference number allocated to the scheme (par. 5.3).
101. The trustees should seek an assurance from the administrator that checks are in place to ensure that all contributions paid and benefits payable are within the limits as set down in the Revenue Pensions Manual (par. 5.3).
102. The trustees should ensure that arrangements are in place for the payment of any tax payable from the scheme to the Revenue Commissioners (par. 5.3).

## **TRUSTEE DECISION-MAKING**

### **(CHAPTER 5)**

103. Trustees should exercise their own judgement and not automatically act in accordance with the wishes of the employer or of any group of members, or even of all the members. That is not to say that trustees should ignore the views of the employer or the members; they should listen to them carefully, but in the end they should make up their own minds as to what will best serve the interests of the beneficiaries (pars. 5.4 and 5.6).

## **DELEGATION OF TRUSTEE POWERS AND DUTIES**

### **(CHAPTER 5)**

104. Trustees may delegate only to the extent that they are empowered to do so by the trust deed (pars. 5.7).
105. Trustees should take great care in selecting the person or organisation to whom they delegate a specific function and should monitor and review the actions of that person or organisation at regular intervals. Trustees should put a service level agreement in place when delegating any of their functions to any person or organisation (par. 5.7).

## TRUSTEE MEETINGS

### (CHAPTER 5)

106. As an absolute minimum trustees should meet once a year, as soon after the scheme year end as is feasible, to consider and approve the scheme's annual report and any other issues then arising (par. 5.10).
107. The notice of a meeting, agenda and full supporting paperwork should be distributed by the secretary ideally at least seven days before each meeting but in any event in time to allow the trustees to prepare themselves for the meeting (par. 5.11).
108. The trustees should allow an appropriate amount of time at their meetings for discussion and should ensure that professional advisers attend meetings as required. The trustees should also ensure that all decisions are minuted (par. 5.11).

## ROLE OF ADVISERS TO TRUSTEES

### (CHAPTER 5)

109. In the case of the appointment of an actuary/auditor to a defined benefit scheme, the trustees must ensure that the person appointed meets the professional qualifications laid down in the Pensions Act (par. 5.14).
110. Where monies are passed to a consultant, there should be a clear written agreement specifying on whose behalf the consultant handles the money. The agreement should encompass all the relevant parties to the arrangements including the life office. Such agreements could include a provision to the effect that monies payable by the employer will not be regarded as received by the scheme until received by the trustees or a specified person (e.g. investment manager) who has been appointed by them (pars. 5.15 and 5.16).
111. In cases where a consultant acts on behalf of the trustees or where a consultant handles contributions where he or she is or might be the agent of the trustees, the trustees should satisfy themselves with the help, where appropriate, of their auditors (or other advisers) that proper protections are in place (pars. 5.15 and 5.16).
112. The appointment of all advisers should be made in writing and the written document should cover full details of the advisers' responsibilities (pars. 5.14, 5.15 and 5.16).
113. Trustees should ensure that all reports from advisers are received and carefully considered (par. 5.17).
114. Trustees of defined benefit schemes and defined contribution schemes which pay pensions from their own resources must have an actuarial valuation prepared by the scheme actuary at intervals not greater than 3 years, unless a shorter interval is specified in the trust deed. During the 3 year interval actuarial reviews must be undertaken to establish whether the schemes continue to satisfy the minimum funding standard and corrective measures must be taken where a negative assessment arises (see par. 4.14.1). They should ensure that comprehensive data is submitted to the actuary as soon as possible but at least within six months after the effective date of the valuation and they should advise the actuary that they expect the final valuation report to be delivered to them within three months of receipt of comprehensive data. Under the Disclosure of Information Regulations the latest valuation report must be available for inspection by members and others on request not later than nine months after its effective date. Trustees must provide the report not later than four weeks after any request is made (par. 5.21).

115. The trustees should immediately consult the actuary and seek his/her advice where, between valuations, any of the following occurs or is proposed:
- a change in the scheme's benefit provisions or eligibility requirements, whether it affects all members, a category of members or an individual member
  - payment of a benefit or benefits in excess of entitlement as set down in the rules
  - failure of employer to pay the recommended contribution rate (par. 5.21).
116. The trustees should be mindful of the impact which unfavourable experience between valuations may have on the scheme's finances, more particularly where the previous valuation report disclosed only a modest excess of assets over liabilities on discontinuance. The following would fall into this category:
- salary increases in excess of the assumed rate, particularly where they apply to members close to their retirement age
  - investment returns less than assumed in the valuation
  - high incidence of early retirements, particularly where a nil or modest actuarial reduction is applied to the members' earned benefits.

In these circumstances the advice of the actuary should be sought (par. 5.21).

## OTHER ISSUES

### (CHAPTER 6)

117. Trustees should obtain advice. Trustees who act in certain areas without obtaining expert independent advice could betray the interest of the beneficiaries and leave themselves open to action for a breach of trust (pars. 6.1, 6.2 and 6.3).

## SCHEME WIND-UPS

### (CHAPTER 6)

118. A trust deed and rules governing a pension scheme will invariably contain provisions relating to the winding-up of the scheme or Trust RAC. The trust deed may give the trustees the option of continuing the scheme or Trust RAC for a period, or indefinitely. Where the trust deed gives the trustees the option of continuing the scheme or Trust RAC, before doing so, they should take legal and actuarial advice and satisfy themselves that the security of benefits would not be jeopardised by continuing the scheme or Trust RAC (pars. 6.4 and 6.5).
119. Where the trust deed does not give the trustees the option of continuing the scheme or Trust RAC, or where they decide to exercise their discretion and wind up the scheme or Trust RAC, they must notify the Pensions Board, all members and the authorised trade unions (only in the case of a pension scheme) of their decision as soon as possible but in any event not later than 12 weeks after the decision is made. They should also inform the Revenue Commissioners of the impending wind-up of the scheme or Trust RAC. They must then proceed to apply the assets of the scheme in discharging its liabilities without undue delay. Trustees of a small scheme must send the Pensions Board a wind up report containing certain prescribed information within three months of the effective date of the wind up (par. 6.5).

120. Immediately following commencement of winding-up, the trustees should request payment into the scheme or Trust RAC of all contributions and other monies due but not paid at the commencement of winding-up. However, in advance of putting the scheme or Trust RAC into wind up, trustees should seek advice to confirm that their power to seek payment of outstanding contributions will not be extinguished by putting the scheme or Trust RAC in wind up. Where the employer is in receivership or is being liquidated they should lodge a claim with the receiver/liquidator for any employer contributions due, as well as any member contributions deducted but not remitted to the trustees. In the event that the trustees are unable to recover the contributions from the employer/receiver/liquidator and where the employer is insolvent, the trustees may, on behalf of the fund, make a claim for a payment of unpaid “relevant contributions” out of the Social Insurance Fund. Relevant contributions are defined under the Protection of Employees (Employers’ Insolvency) Act 1984 (par. 6.7).
121. The trustees of a defined benefit scheme should also, as soon as possible after winding-up has commenced, seek the advice of the scheme actuary and, in particular, ask him/her to establish whether the scheme has sufficient assets to meet its liabilities and to advise whether the investment profile of the fund should be altered in advance of the wind-up (par. 6.7).
122. Before deciding whether to apply the resources of the scheme or Trust RAC in wind-up to secure a member’s benefits in accordance with the provisions of the trust deed and (in the case of a defined benefit scheme) Section 48 of the Pensions Act, the trustees should seek the advice of the actuary. Where relevant, they should ask the actuary to calculate the actuarial value of each member’s benefits. If annuities are being purchased the trustees should ensure that competitive quotations have been obtained and that the annuities purchased match as far as possible the benefits to which members were entitled under the scheme or Trust RAC. A decision as to whether to secure benefits by applying the actuarial value of benefits in accordance with the Pensions Act or by purchasing annuities if so provided in the trust deed and rules must be dictated by consideration of the members’ interests (par. 6.7).
123. Under the Occupational Pension Schemes (Disclosure of Information) Regulations, 2006 to 2007:
- the trustees must notify prescribed persons of the scheme wind up
  - the trustees must, in the course of applying the resources of the scheme in consequence of the wind-up, provide prescribed information to prescribed persons and
  - neither the trustees nor the employer may exercise any discretion as to the payment of any resources of the scheme to the employer, or as to the abatement of benefits in the case of a deficit, until the members have been given an opportunity to make observations to the trustees or the employer, as appropriate, and the trustees or the employer have given due consideration to those observations (par. 6.7).
- If the scheme is a scheme with less than 100 active and deferred members, the trustees must send the Pensions Board a wind up report containing certain prescribed information, set out in Article 16 and Schedule G of the Disclosure of Information Regulations, within three months of the effective date of the wind up (par. 6.4).
124. As soon as practicable after the assets of the scheme have been applied, the trustees must furnish the following information to each member:
- information relating to benefit entitlements including the amount and any options available to him/her and the procedure for availing of such options
  - an explanation of the manner in which any surplus or deficit in the scheme has been dealt with, and
  - information as to who will be liable to pay his/her benefits after the scheme is wound up and the address to which enquiries about entitlements should be sent (par 6.7).

125. The trustees should ensure that in winding up the scheme only such expenses as are necessary to enable them to properly carry out their obligations to the scheme's beneficiaries are incurred and met from the fund (par. 6.7).
126. The trustees must follow the procedure set down in the rules. Where the rules require that the trustees "consult with" the employer they must do this and weigh up carefully the merit of any arguments put forward by the employer in favour of, for example, refunding the surplus to the employer rather than using it to augment members' benefits. Ultimately the trustees must make their own decision (par. 6.7).
127. Where the rules require that the trustees obtain the agreement of the employer before applying any part of a surplus on wind-up to augment members' benefits then it is clear that they are prohibited from making a unilateral determination of the matter. If, however, they believe that there is a case for using all or part of the surplus to augment members' benefits they can, and should, present to the employer the merit of their case. Where a surplus on a wind-up is being disposed of the employer may also be a beneficiary of the scheme and as such the trustees should take its interests into account. Where surplus assets remain following the discharge of the liabilities of the scheme in accordance with the priorities specified within the Pensions Act, and the scheme rules, and before any of the surplus is paid to the employer, the trustees must, to the extent they have not already done so, provide for revaluation of benefits in respect of pre-1991 service (par. 6.7).

## MERGERS AND ACQUISITIONS

### (CHAPTER 6)

128. Whereas the trustees should not obstruct the employer in achieving its objectives, in any merger/ acquisition, they must at all times act in accordance with the trust deed and rules (even if the terms of the sale and purchase agreement differ from these). The trustees must also remember that their primary duty is to the beneficiaries of the scheme and in that regard they must act fairly as between those employees who are already in the scheme and those who are coming in (or as between those who are remaining in the scheme and those who are leaving) (pars. 6.9 and 6.10).
129. Where members' pension rights are about to change as a result of a transfer, or where the agreement between employers provides for the transfer of an amount less than the full assets of the scheme, the trustees must satisfy themselves that what is proposed is in accordance with the scheme rules and that the interests of members and other beneficiaries are being adequately protected. The funding status of the receiving scheme may also be relevant (par. 6.11).
130. Where an employer or employers participating in the scheme have been acquired and it is proposed to transfer members and all/part of the assets of the scheme to the scheme of the acquiring employer, the trustees should seek legal/actuarial advice before agreeing to the transfer (par. 6.11).
131. Where, following an acquisition, members are being transferred into the scheme of the acquiring employer, trustees of the receiving scheme must ensure that the rights of the existing members are not being jeopardised, before agreeing to accept the transfer (par. 6.11).
132. Where a bulk transfer (as defined in Section 59E) is to take place the trustees of both the transferring and receiving schemes are required in accordance with regulations, to provide certain information to the transferring member or authorised trade union (if any) at least 2 months before the date of the proposed bulk transfer (par. 6.13).

133. Where the consent of the members to be transferred will not be obtained, the transferring member or authorised trade union must be afforded an opportunity to make observations to the trustees of the transferring scheme or to the employer, and they must give due consideration to such observations. The transferring member or authorised trade union has 1 month from the date of notification to make written observations on the proposed bulk transfer. The transferring trustees or the employer must confirm in writing, before the bulk transfer is effected, that they gave due consideration to any observations made within the specified time limits (par. 6.13).

## SCHEME AMENDMENTS

### (CHAPTER 6)

134. The trustees must ensure that any amendment is in accordance with the scheme documentation and that, where relevant, the consent/approval of the party specified is obtained in writing (par. 6.14).
135. If a scheme amendment is proposed the trustees should carefully consider the interests of the different classes of beneficiary before agreeing to the change. As the issues could be many and complex the trustees should seek legal/actuarial advice (par. 6.15).
136. A scheme amendment that detrimentally affects the accrued rights of members should only be agreed by trustees in very exceptional circumstances (par. 6.15).
137. Where a material alteration is made in the provisions of the scheme the trustees must notify the members of the scheme within four weeks of making the alteration. The scheme's annual report must also include details of any changes in the scheme since the previous scheme year (par. 6.15).
138. The trustees should request the employer to have a document amending the trust deed and rules prepared for execution as soon as practicable after the change has been agreed. The amendment is typically not effective until the deed of amendment has been executed, and trustees should be cautious about implementing an intended amendment until the deed has been executed. In addition, many schemes require the approval of the Revenue Commissioners before an amendment becomes effective (par. 6.15).
139. In order to avoid the invalidity of any rule amendment or exercise of a discretionary power which materially affects the balance of interests under the scheme, trustees, in accordance with regulations to be made under the Pensions Act, must ensure that the conditions specified in Section 59F and any regulations which may be made thereunder are complied with. No regulations have as yet been made under Section 59F (par. 6.16 and 6.17).

## ROLE AND FUNCTION OF THE PENSIONS OMBUDSMAN AND THE INTERNAL DISPUTE RESOLUTION PROCEDURE

### (CHAPTER 7)

140. Where the trustees are parties to a complaint which the Pensions Ombudsman has decided to investigate they should ensure it is one within his jurisdiction and within the specified time limits. The trustees should provide the Pensions Ombudsman with whatever relevant information he requests on a timely basis. The trustees may consider it necessary to seek advice from their legal advisers in respect of such an investigation. The trustees must comply with the time requirements in submitting their responses (pars. 7.2 and 7.3).

141. In preparation for dealing with the Pensions Ombudsman and to assist in settling applications under the internal dispute resolution procedure, trustees should ensure that they have an up-to-date set of pension scheme documentation. This may include all trust deeds and rules, deeds of amendment, explanatory booklets and any other announcements made to members, members' statements and certificates, annual statements, accounts, and where it is a defined benefit scheme, actuarial valuations (par. 7.3).
142. Trustees should inform the members of the IDR procedure and furnish them with the name and address of the person to contact. Trustees may consider including a section in the explanatory booklet of the scheme detailing how the procedure works. Trustees may use the IDR procedure to deal with any disputes and must use it in respect of the disputes specified in the regulations, unless the Ombudsman decides it is appropriate in the circumstances to waive the IDR procedure (par. 7.7).
143. Trustees may require further details to enable them to have a clear picture of the dispute at issue and to enable its resolution. It may be helpful to explain the procedure to the person making the complaint. A specific form could be produced for the complainant to fill in, which may help focus on the relevant facts and important details. However, the trustees cannot insist that the complainant use such a form (par. 7.8).
144. Upon receipt of the application the trustees should check it to ensure that the person making it has a right to do so and that the dispute or complaint falls within the IDR procedure. Where the person is not entitled to make an application or where it falls outside the ambit of the procedure, he or she should be informed of this fact and given an explanation why the complaint cannot be dealt with (par. 7.8).
145. Trustees need to consider the application carefully. They must arrive at their own decision. The trustees must give their notice of determination within the required time limits and in the prescribed format (par. 7.9).
146. Trustees should keep records of all applications they receive, when all the information is received and the decisions given, in respect of specific cases. All decisions should be kept confidential and should only be discussed with the relevant parties involved. It may be beneficial for the trustees to review all applications made to see if improvements can be made to the way the scheme is run.  
Trustees should review the IDR procedure on a regular basis to ensure it is being applied correctly and is functioning properly (par. 7.9).
147. Trustees should aim to ensure that scheme members are fully aware of their rights under the Pensions Act, the scheme documentation and the IDR procedure as well as the services provided by the Office of the Pensions Ombudsman and the Pensions Board who assist in safeguarding these rights (par. 7.9).

## **ROLE AND FUNCTIONS OF THE PENSIONS BOARD – AUTHORITATIVE GUIDANCE**

### **(CHAPTER 8)**

148. Trustees should ensure that they keep up-to-date with changes in legislation which affect pension schemes (par. 8.2).
149. Trustees should ensure that scheme administrators and the scheme's professional advisers have access to the full range of Guidance Notes available on the Pensions Act and its regulations and on other legislation which applies to occupational pension schemes. For details see Appendix 3 (par. 8.4).

## **INFORMATION FOR SCHEME MEMBERS AND OTHER INTERESTED PARTIES**

### **(CHAPTER 8)**

150. Trustees should aim to ensure that scheme members are fully aware of their rights under the Pensions Act, the IDR procedure and the scheme's trust deed and rules and of the services provided by the Pensions Board and the Pensions Ombudsman which assist in safeguarding these rights (par. 8.11).

## **MONITORING COMPLIANCE**

### **(CHAPTER 8)**

151. Trustees should ensure that scheme administrators furnish to the Pensions Board, within the timescales specified, the documentation and information sought by the Board's staff for the purposes of compliance audits (pars. 8.12 and 8.13).
152. Trustees should ensure that they co-operate with the Pensions Board and that any information or documentation is furnished to the Board in a prompt manner (par. 8.15.1).
153. Trustees must ensure that information and/or documentation sought by persons authorised under Section 18 of the Pensions Act to carry out an investigation into the state and conduct of a scheme, is furnished in full to the authorised persons, within the timescales specified (pars. 8.15 and 8.16).

## **MANDATORY REPORTING TO BOARD**

### **(CHAPTER 8)**

154. Trustees should ensure that they are fully aware of the legal requirements on compulsory and voluntary reporting to the Pensions Board (pars. 8.18 and 8.19).
155. Trustees must ensure that written reports are submitted to the Pensions Board without delay where there is reason to believe that material misappropriation or fraudulent conversion of a scheme's resources has occurred, is occurring or is to be attempted (par. 8.19).

## **LEGAL SANCTIONS FOR NON-COMPLIANCE**

### **(CHAPTER 8)**

156. When delegating tasks for which they have responsibility under the Pensions Act, trustees should ensure that clear requests are made or instructions given, as appropriate, and that specific deadlines for completion of the tasks are set. Such requests or instructions should normally be in writing and appropriate acknowledgements sought (pars. 8.20 and 8.23).

# CHAPTER 1

## PENSION SCHEMES

### BRIEF BACKGROUND TO PENSION SCHEMES

#### 1.1 PURPOSE

Pension schemes are established to provide those covered by the schemes with a regular income to replace earnings in the event of their retirement, or perhaps early retirement through ill health. Such schemes will often additionally provide a lump sum benefit for surviving dependants in the event of the death of a person covered, and may also provide an income for those dependants.

#### 1.2 SOCIAL INSURANCE

The majority of employees are covered for pensions under State social insurance schemes which are administered by the Department of Social and Family Affairs. Cover under social insurance is compulsory for the vast majority of employees between the ages of sixteen and sixty-six. Social insurance benefits, including pensions, are financed mainly by income from pay-related social insurance (PRSI) contributions by employees and their employer.

##### 1.2.1 PENSION PAYMENTS

The payment structure is made up of:

- a weekly flat-rate payment in respect of the claimant.
- additional weekly allowances in respect of a qualifying adult (usually the spouse) and child dependants.

##### 1.2.2 FURTHER INFORMATION

A guide to Social Welfare Services is available free of charge from the Department of Social and Family Affairs. For details see Appendix 3.

#### 1.3 NEED FOR OCCUPATIONAL PENSION SCHEMES

The need for supplementary pension cover arises mainly in the case of employees with annual earnings above the level of earnings for which social insurance pensions would maintain established standards of living. Occupational pension schemes are designed to supplement social insurance pension cover. They are called occupational pension schemes because they are established by employers and normally membership is confined to persons in the employment(s) to which the scheme applies.

Up to 900,000 persons are currently in employments to which occupational pension schemes apply.

#### 1.4 FINANCING – PRE-FUNDED SCHEMES

Occupational pension schemes set up by most employers and by commercial semi-state bodies are usually financed by setting aside the contributions received each year in a trust fund to finance the build up of scheme members' pension entitlements. Schemes financed in this way are referred to as pre-funded schemes.

The main reason for separating the scheme's assets from the employer's business is to ensure that these assets will be available to pay members' pensions whether or not the employer stays in business. Funding the pension entitlements as they build up also helps to spread the cost of providing pensions over the working life of the scheme members.

#### 1.4.1 CONTRIBUTORY/NON-CONTRIBUTORY SCHEMES

A scheme is normally classified as “contributory” when the direct financing of the scheme is shared by the employer and the employees. Contributions by employees are made by way of regular deductions from their earnings. A scheme is classified as non-contributory when the financing of the scheme is fully borne by the employer.

One of the key duties of trustees is to ensure that the contributions due to the scheme are paid and received in good time. Further details on this trustee duty are given in paragraphs 3.4 and 3.5.

#### 1.4.2 ADDITIONAL VOLUNTARY CONTRIBUTIONS

Occupational pension schemes may also allow scheme members to increase their pension benefits by making Additional Voluntary Contributions (AVCs).

AVCs may be invested in the main scheme or in a separate scheme. AVCs usually operate on a defined contribution basis which means that the extra benefits payable will depend on the overall amount of the contributions paid, the returns from investment of these contributions and, normally, if a pension has to be secured, annuity rates prevailing at time of retirement.

### 1.5 FINANCING – “PAY AS YOU GO” SCHEMES

Schemes in the non-commercial public sector, such as the Civil Service, Local Government, Education, Gardaí, Prison Services and Health Services are financed on a “pay as you go” basis. This means that the cost of pensions is met from current exchequer expenditure in much the same way as the salaries and wages of employees.

### 1.6 TYPES OF SCHEMES

For the purposes of the Pensions Act, there are two basic types of occupational pension schemes – defined benefit schemes and defined contribution schemes. There is also a third type of pension trust governed by the Pensions Act, a trust retirement annuity contract (“Trust RAC”). Its main features are summarised at 1.6.4. Trust RACs were brought within the ambit of the Pensions Act under Part 3 of the Social Welfare and Pension Act, 2007.

#### 1.6.1 DEFINED BENEFIT

Under these schemes the pension and other benefits which will be paid to the member and/or the member’s dependants are clearly stated. Normally the pension to be paid represents a fraction of final salary for each year of service. A common pension benefit under these schemes is 1/60th of final salary for each year of service. If employees work for the company for 40 years, they receive 40/60ths i.e. 2/3rds of final salary.

In many such schemes, however, account is taken of the fact that a member will also be entitled to a pension under social insurance. If this applied in the case of the example given above, a member with 40 years service would receive a pension amount representing 2/3rds of his/her final salary made up of the personal rate of social insurance pension and a supplementary pension under the occupational scheme.

As well as defining benefits, these schemes usually define the amount of the contribution (if any) the members will pay. What is not defined is the final cost to the employer. This will depend on a great many things which are subject to change – the future behaviour of salaries, investment returns and survival and mortality patterns among members.

### 1.6.2 DEFINED CONTRIBUTION

Under these schemes, the contributions to be paid by the employer and, if it is a contributory scheme, the member, in respect of retirement benefits, are clearly defined. The amount of the retirement benefit to be received, however, is not defined, but will be such as can be purchased by the accumulated value of the contributions paid in respect of the scheme member during his/her working life and the returns these contributions have earned from investment. This accumulated amount is invariably used to purchase an annuity (or pension) from a life assurance office. Where a defined contribution scheme provides additional benefits on the death of a member before retirement, these additional benefits are likely to be defined (e.g. a lump sum of a multiple of annual salary).

Such a scheme is nonetheless deemed to be a defined contribution scheme for the purposes of the Pensions Act.

### 1.6.3 IMPORTANCE OF KNOWING TYPE OF SCHEME

Pre-funded schemes can be either defined benefit or defined contribution. There may be other types of scheme e.g. “hybrid” schemes containing some defined contribution and defined benefit features or schemes which although defined contribution may target benefits. For the purposes of the Pension Act, however, these schemes will be either defined benefit or defined contribution depending on the rules of the scheme.

All schemes in the public sector which are financed on a “pay as you go” basis operate on a defined benefit basis.

### 1.6.4 TRUST RACS

A Trust RAC is a scheme established under trust and approved by the Revenue Commissioners under Section 784(4) or Section 785(5), Chapter 2, Part 30 of the Tax Consolidated Act, 1997. A Retirement Annuity Contract (“RAC”) is the formal name for what is normally called a personal pension.

Most RACs are set up under individual contracts with an insurer and governed by life insurance legislation. However, the one exception is a scheme for a group of individuals established under trust and approved by the Revenue Commissioners. Examples of Trust RACs are those operated by the Institute of Chartered Accountants, the Bar Council of Ireland and the Law Society of Ireland.

The following people may be eligible to participate in a Trust RAC depending on the eligibility rules of the scheme concerned:

- a self employed person;
- a salaried employee whose earnings are non pensionable; or
- a person who has more than one source of earnings and one of those sources is non pensionable.

Trust RACs are established on a defined contribution basis. This means that the value of the ultimate benefits payable from the contract depends on the level of contributions paid, the investment return achieved and the cost of buying the benefit. Trustees of Trust RACs should note that since their schemes are established on a defined contribution basis, the provisions of the Handbook that relate to defined benefit schemes will not apply to them.

Also, the provisions of the Handbook relating to employers (such as the remittance of employer contributions) will also not apply to them as employers do not contribute to Trust RACs.

In addition, some of the provisions of the Pensions Act do not apply to Trust RACs, or only apply to them on a limited basis.

### 1.6.5 CODES OF PRACTICE

It is essential that scheme trustees know which type of scheme they have responsibility for, as there are different requirements under legislation in respect of each type of scheme. If trustees and their advisers are unsure as to the type of scheme for the purposes of the Pensions Act, they can write to the Pensions Board (see par. 8.6) for a determination on the matter.

## MAIN BENEFIT PROVISIONS OF OCCUPATIONAL PENSION SCHEMES

### 1.7 RANGE OF BENEFITS

An occupational pension scheme may provide benefits in some or all of the following circumstances:

- retirement at normal pensionable age
- retirement before normal pensionable age
- retirement due to ill health
- death before retirement
- death after retirement
- leaving service

Where the benefit is in pension form the scheme may also provide for increases to the pension after it becomes payable.

Details with regard to trustee responsibilities for payment of benefits are given in paragraphs 3.12 – 3.19.

#### 1.7.5 FURTHER INFORMATION

An information leaflet entitled “What are my Pension Options?” is available from the Pensions Board’s website. For details see Appendix 3.

## PENSION SCHEMES

### TAX TREATMENT OF OCCUPATIONAL PENSION SCHEMES

#### 1.8 TAX TREATMENT

Contributions made to occupational pension schemes and the returns received from the investment of these contributions are, in effect, treated for tax purposes as deferred earnings, in the case of schemes which meet certain criteria. Accordingly, these “earnings” are exempt from tax until they are paid to individual scheme members in the form of regular pension payments. The pension payments are subject to income tax, with one important exception – lump sums on retirement/death up to Revenue limits are exempt from income tax.

#### 1.9 REVENUE REQUIREMENTS

To qualify for the tax treatment afforded to occupational pension schemes, approval for the scheme must be obtained from the Large Cases Division of the Revenue Commissioners, previously known as the Retirement Benefits District. The requirements for approval are governed by the Taxes Consolidation Act 1997 and the Revenue Pensions Manual issued by the Large Cases Division. To obtain approval, the trust documents governing the scheme must be submitted to the Large Cases Division, together with any announcement letters and explanatory literature issued to members. Approval for tax purposes will normally be granted, if the Large Cases Division is

satisfied that the scheme is properly administered as a trust, contributions and benefits thereunder are within the limits set down in the Taxes Consolidation Act, and the scheme is to be administered in accordance with the Revenue Pensions Manual, as appropriate. More details on the conditions for obtaining Revenue approval and on continuing to satisfy these conditions are given in Appendix 1. The summary of the tax treatment of Trust RACs can be found at Chapter 21 of the Revenue Pensions Manual, which can be downloaded from the Revenue's website ([www.revenue.ie](http://www.revenue.ie)).

#### **1.9.1 CODES OF PRACTICE**

The trustees should ensure that the scheme is approved for tax purposes and it continues to qualify for approval by ensuring that the scheme is being administered in accordance with Revenue requirements and, in particular, that the contributions payable and benefits provided are within Revenue limits.

#### **1.9.2 SCHEMES ESTABLISHED UNDER TRUST**

As indicated above one of the main conditions for Revenue approval in the case of pre-funded schemes is that the scheme must normally be set up as an irrevocable trust. This ensures that the scheme's assets are held in a trust fund, separate from the employer's assets. Details on the establishment of occupational pension schemes as trusts and on their operation are given in Chapter 2. Schemes which have obtained Revenue approval or have applied for such approval are subject to the Pensions Act. An outline of the main requirements of the Pensions Act is given in Chapter 4.

## CHAPTER 2 TRUSTS AND TRUSTEESHIP

### INTRODUCTION TO TRUSTS AND TRUST LAW

#### 2.1 TRUSTS

Schemes in the private sector and commercial public sector are usually financed on a pre-funded basis (see par. 1.4). To qualify for full tax approval pre-funded schemes must normally be set up as irrevocable trusts.

A trust is an arrangement under which a person or group of people hold and look after property on behalf of others. The persons who hold and look after the property are called trustees, the property is called a trust fund and the people on whose behalf the trust fund is held are called beneficiaries.

In the case of occupational pension schemes set up as trusts, the trustees hold and look after the assets for the benefit of members and their dependants. The terms of the trust under which a pension scheme is set up are detailed in a legal document called the trust deed and rules. Pension schemes can also be established by means of a declaration of trust or a simple letter of exchange to which rules are attached, or by Board resolution. For further details on these types of arrangements, see Appendix 4.

##### 2.1.1 WHY TRUSTS ARE USED FOR OCCUPATIONAL PENSION SCHEMES

There are four essential features of trusts that are of particular importance in relation to the protection of pension rights:

- The trust fund must be separate from the employer's business and its assets not available to the employer's creditors should the business have financial difficulties and/or have to be put into liquidation.
- The trust deed and rules, with which trustees must comply (except in certain areas where legislation such as the Pensions Act overrides the trust deed and rules), set down how the scheme is to be administered and members' entitlements calculated.
- Trustees have a duty to act in the best interests of the beneficiaries, the active members (current employees), the deferred members (early leavers), current pensioners, those categories of dependants for whom provision is made under the trust deed and rules, and, in certain instances, the employer(s) sponsoring the scheme.
- The beneficiaries can enforce a trust even though they are not parties to the creation of the trust.

##### 2.1.2 TRUST DEED AND RULES

Under trust law, the document which primarily governs the action of pension scheme trustees is the trust deed and rules of the scheme. The person who creates a trust is known as the settlor of the trust and in the case of most occupational pension schemes, this will be the employer. Where time is of the essence in respect of establishing the trust the basic trust document may provide for the establishment of the trust, the appointment of the first pension scheme trustees and the powers they need to operate the scheme. This document is usually called the interim trust deed, and the use of such deeds is subject to Revenue approval. As the interim deed does not contain detailed rules the trustees will need to take into account in this initial period the announcement made to the members regarding the benefits and contributions.

The trustees should make every effort to ensure that the employer takes steps to replace the interim deed with the definitive trust deed and rules, as soon as possible. This document should set down clearly and give full effect to the promise made by the employer(s) in relation to the benefits to be provided in respect of the employees to whom the scheme applies and the legal and administrative arrangements to be put in place for the provision of those benefits. Where the employer is not under time pressure the scheme may be established under such a definitive trust deed and rules.

At some stage following the introduction of the definitive trust deed and rules, announcements may be made to members about changes in the benefits or contributions. Trustees should ensure that amendments are formally documented as soon as possible.

Over time the definitive trust deed and rules may become outdated. It is normal practice to amend these lengthy documents using deeds of amendment. Where there have been a number of such deeds, the up-to-date position may be difficult to discern. Trustees should consider consolidating such changes in a new definitive trust deed and rules, perhaps every five years, or where there have been many extensive amendments, more frequently. It is also advisable to amend the announcements and other information given to members to ensure they coincide with the governing trust deed and rules.

### 2.1.3 CODES OF PRACTICE

Trustees should be aware of the up-to-date position in respect of the documentation governing the scheme and should ensure announcements made to members reflect this position.

## 2.2 TRUST LAW

Trust law has evolved primarily in relation to family and charitable settlements and is not always easy to apply to the different circumstances of pension schemes. Much of it is embodied in the Trustee Act, 1893 and in law which has arisen over many hundreds of years in cases decided in the courts. This case law is often known as equity, broadly meaning that which is fair and naturally just.

The Trustee Act, 1893, however, was not passed with pension schemes in mind. It deals, in particular, with the appointment and removal of trustees, and gives them certain powers required to administer a trust. The Trustee (Authorised Investments) Act, 1958, subsequent statutory instruments issued under that Act, give trustees certain limited powers of investment.

The trustees' actions are governed by these Acts, but normally only insofar as they are not inconsistent with the trust documents, or with overriding legislation such as the Pensions Act (see par. 2.3 below). The rules regarding authorised investments, for example, are almost invariably overridden by trust deeds in which trustees are given much wider powers of investment, including, generally, power to invest the assets of the trust, as if they were beneficially entitled to them.

## 2.3 OVERRIDING LEGISLATION – THE PENSIONS ACT

The Pensions Act is overriding, i.e. it applies even if the trust deed and rules do not contain a corresponding provision or provide for something different.

## SELECTION AND APPOINTMENT OF TRUSTEES

### 2.4 WHO MAY ACT

Other than certain persons listed below who are prohibited by law from acting as trustees, any individual or any incorporated body, provided its constitution authorises it so to act, may act as a pension scheme trustee. Persons who declare a trust are themselves the trustees unless some other persons agree at the outset to act as trustees, or are subsequently appointed to do so.

The following persons are prohibited from acting as trustees:

- an undischarged bankrupt;
- persons who have undischarged obligations under compositions or arrangements made with their creditors;
- persons convicted of an offence involving fraud or dishonesty;
- a person who is subject to a declaration under section 150 of the Companies Act 1990 or a person who is subject to restrictions imposed under section 150 of the Companies Act 1990; and
- a company any of whose directors would be prohibited from acting as trustees based on the provisions referred to above.

### 2.5 TRUSTEE ARRANGEMENTS

Trustee arrangements can vary from scheme to scheme but generally come under the category of either individual trusteeship, corporate trusteeship or a combination of individual and corporate trustees acting together.

#### 2.5.1 INDIVIDUAL TRUSTEESHIP

This includes trustees selected and appointed directly by the employer from the company's management, outside professionals (such as solicitors, accountants, actuaries) and those selected for appointment by scheme members or after consultation with scheme members (could include current employees, retired employees and/or trade union officials).

#### 2.5.2 CORPORATE TRUSTEESHIP

This means that a company acts as the trustee and could include the following:

- (i) where the employer as a corporate body acts as trustee (this is fairly common in small schemes, i.e. a scheme with less than 100 active and deferred members)
- (ii) where a corporate body other than an employer acts as trustee (e.g. a specialist firm providing trusteeship services)
- (iii) where a separate trustee company is set up in lieu of individual trustees, the directors of which could include those selected by the employer and by the scheme members.

#### 2.5.3 COMBINATION OF INDIVIDUAL AND CORPORATE TRUSTEES

This would usually involve a combination of individual and corporate trustees (usually those described under (ii) above) acting together.

#### 2.5.4 MANAGEMENT COMMITTEE/COMMITTEE OF MANAGEMENT

The trust deed and rules may specify that some of the functions of the trustees of the scheme, such as payment of benefits, are to be exercised by another body called, for example, the management committee. In relation to such functions that body could be a trustee for the purposes of the scheme and the Pensions Act.

### **2.5.5 CODES OF PRACTICE**

It is essential to be clear at all times who has trustee duties and responsibilities in relation to the scheme and the nature and scope of these duties and responsibilities. It should generally be clear from the trust deed and rules of the scheme, who has the responsibility for exercising the trustee duties and powers. Clarification may be needed, however, in the case of an arrangement involving a management committee and, if necessary, such clarification should be obtained from the scheme's legal adviser.

## **2.6 PROCEDURES FOR APPOINTING TRUSTEES**

Procedures for appointing trustees during the lifetime of the scheme are usually set out in the trust deed and rules. This normally provides for the employer to appoint trustees, but it may specify also that on the death or retirement of trustees, their successors may be appointed by the remaining trustees.

### **2.6.1 APPOINTMENT OF TRUSTEES**

Any change in the trustees must be notified to the Pensions Board. New trustees are usually formally appointed by means of a legal document known as a deed of appointment. This document should vest the trust property in the trustees i.e. the persons appointed in the case of individual trustees or, in the case of corporate trustees, the corporate entity. In the case of a corporate trustee the method of appointment of the directors depends on the corporate trustee's articles of association.

### **2.6.2 REPLACEMENT**

Provisions for the resignation, removal and replacement of trustees are normally included in the trust deed and rules. It would be usual to use a deed of removal (and appointment where necessary) which divests the retiring trustee of the trust property and vests it in the continuing trustees and new trustee(s) (if any).

## **2.7 TRUSTEES SELECTED FOR APPOINTMENT BY MEMBERS**

The Pensions Act (Section 62) provides for member participation in the selection of persons for appointment as trustees and effect is given to these members' rights in detailed regulations (S. I. No. 376 of 1996). This legislation, where necessary, overrides the provisions in the trust deed and rules for the selection and appointment of trustees. The provisions of Section 62 do not apply to Trust RACs.

### **2.7.1 APPOINTMENT OF MEMBER TRUSTEES**

Where persons are selected for appointment in accordance with the member trustee regulations their appointment must take effect sixty days after selection. It is essential that the deed of appointment is executed within that period. If a deed of appointment is not executed within the sixty days, then appointment will automatically take effect on the expiry of the said sixty days as provided for in the regulations. Such persons, who are appointed automatically under the regulations, will not have had the trust property vested in them by means of a deed of appointment. They should therefore, in these circumstances, contact the existing trustees of the scheme who should transfer the legal ownership of the trust property into the name of the member trustees and continuing trustees.

If this fails to occur, then any member trustee could apply to the Pensions Board for a vesting order placing legal ownership of the trust property in the names of all of the trustees of the scheme.

### 2.7.2 DURATION OF APPOINTMENT OF MEMBER TRUSTEES

The term of office of persons selected for appointment under the regulations is six years. Specific provision is also made in the member trustee regulations for the filling of casual vacancies which occur before the end of the member trustees' term of office and for the arrangements for selecting their replacements when their full term of office expires.

### 2.7.3 CODES OF PRACTICE

Trustees should be fully aware of the provisions made in the trust deed and rules (and, under the Pensions Act and its regulations, as appropriate) for their appointment, resignation/retirement, filling of casual vacancies and replacements. This will ensure that it is clear at all times who has the trustee duties and responsibilities for the scheme, and in whom the trust property is vested.

### 2.7.4 FURTHER INFORMATION

An information booklet entitled “Selecting Member Trustees”, which is available online from the Pensions Board website, gives an overview of the whole process. Detailed Guidance Notes entitled “Member Participation in the Selection of Trustees” are also available online from the Board’s website, and these contain a special section for existing trustees, setting out their duties and responsibilities under the legislation in relation to the process. For details see Appendix 3.

## 2.8 MEMBER PARTICIPATION OUTSIDE REGULATIONS

It should also be noted that there is a further alternative to the appointment of member representatives. This is where an employer decides, following consultation with the members, that it would suit the particular circumstances of that employment to introduce an arrangement for member participation other than on the basis provided for in the regulations.

## TRUSTEE DUTIES AND RESPONSIBILITIES – GENERAL PRINCIPLES

### 2.9 PRINCIPLES OF TRUSTEE DECISION-MAKING

There are many instances where the trust deed and rules and/or the legislation governing the operation of occupational pension schemes require the trustees to make decisions. Trustees cannot delegate the duty to take decisions required of them without express power in the trust deed and rules. They should, however, be conscious of and observe the following principles in their decision-making.

#### 2.9.1 EXECUTE THE TRUST

Trustees have a basic obligation to carry out the trust, firstly, in accordance with the law and the terms of the trust deed and rules and, secondly, in the interests of the beneficiaries. Many of the provisions of the trust deed and rules will lay down clearly the action the trustees must take. Whether they have carried out the action, and thereby fulfilled their duties or not, will be quite clear.

#### 2.9.2 ACT IN THE INTEREST OF BENEFICIARIES

The trustees have a duty to act in the best interests of the beneficiaries but this duty is subordinate to their primary duty of executing the trust in accordance with its terms. As the fundamental purpose of the trust is to provide retirement benefits, the interests of the beneficiaries will nearly always mean their financial interests, and especially their interests in receiving secure retirement benefits. All other considerations must be dismissed.

### 2.9.3 CODES OF PRACTICE

It is very important that trustees act in the best interests of beneficiaries. In this context the phrase ‘best interests’ is usually taken to mean best financial interests.

### 2.9.4 ACT FAIRLY BETWEEN BENEFICIARIES

It is not enough for trustees to consider the interests of some of the beneficiaries and not those of others. The interest of all the beneficiaries must be taken into account. However the duty to act fairly between beneficiaries is not a duty to treat all the beneficiaries equally. It is a duty to attach equal weight to the interests of each beneficiary or group of beneficiaries, and to take everyone’s interest into account.

The principal beneficiaries of the scheme are:

- individuals receiving benefits from the scheme
- current employees, early leavers, and dependants of members who will or may receive benefits from the scheme in the future.

The employer(s) sponsoring the scheme could also be a beneficiary, particularly where the scheme is defined benefit and is funded on the ‘balance of cost’ basis. The principal circumstances under which this could arise are dealt with in more detail in paragraphs 5.21.3 and 6.7.9.

### 2.9.5 CODES OF PRACTICE

Persons acting in their capacity as trustees should be aware that they are not to act as a representative of the group or interest from which they are drawn, but must serve all classes of beneficiaries impartially.

### 2.9.6 ACT PRUDENTLY

The exercise of prudence arises particularly in relation to the trustees’ duty to invest the assets of the scheme. This is dealt with in Chapter 3 in which reference is made to the various considerations trustees should apply to decisions on investment.

### 2.9.7 CODES OF PRACTICE

Acting prudently in the context of trusteeship means that trustees should take the same care as ordinary prudent persons would take in managing the affairs of other people for whom they feel morally bound to provide.

### 2.9.8 SEEK ADVICE

There are many instances where advice should be sought before decisions are made. These include matters relating to the administration of the scheme and its financing. Investment of the scheme assets would be one obvious example. The documentation governing the operation of schemes is unavoidably written in legal language, and trustees who do not have a legal training may find the task of understanding the documentation difficult. If this is the case trustees should arrange, as a priority, to have advisers to the scheme bring them through the documentation and explain the legal requirements. Specific reference will be made throughout this handbook to instances where it is considered advice should be sought.

**2.9.9 CODES OF PRACTICE**

Trustees should seek and obtain advice on technical matters and any other matters which they do not understand.

**2.9.10 MAINTAIN CONFIDENTIALITY**

Quite apart from their powers and duties under general trust law and the Pensions Act, the trustees' duty to deal with the trust property in accordance with the terms of their trust gives rise to a duty of confidentiality. This means that trustees have a fundamental duty of confidentiality in relation to information which is acquired in the course of performing their duties as trustees.

This applies, in particular, to personal details on scheme members and to confidential details on salary/wage levels, state of health etc. which may have to be made available to trustees for the purposes of discharging their duties.

**2.9.11 CODES OF PRACTICE**

Trustees should maintain confidentially any information which they have acquired in their capacity as trustees and should not disclose any matters relating to the business and affairs of the employers and members of which they become aware by reason of their position as trustees.

Trustees should also bear in mind that information they receive which includes details of the personal, family or financial circumstances of individuals or groups of scheme members and/or their dependants is available to them only to enable them perform their duties as trustees effectively.

**2.9.12**

Trustees who acquire confidential information should not use it for any purpose other than the purposes of the scheme. Trustees should also ensure that any commercially sensitive information they gain about the employer, and those providing services to them, is also only used in connection with the proper administration of the scheme. A trustee will generally have a fiduciary duty to disclose information received in another capacity to his fellow trustees, if it is necessary to enable them to perform their duties as trustees effectively. Should trustees have any doubt regarding their disclosure obligations in such circumstances, they should seek appropriate legal advice.

**2.9.13**

Trustees should ensure that sensitive information is held securely with levels of access appropriately limited to avoid misuse. Trustees should also establish a policy identifying what aspects of trustee business may be disclosed (freely or on confidential terms) and to whom. Such a policy will ensure uniformity in approach.

**TRUSTEES AND CONFLICTS OF INTEREST****2.10 BE AWARE OF POSSIBLE CONFLICTS OF INTEREST**

Trustees appointed directly by the employer may include members of the board of the company or senior executives. Such persons may experience a conflict of interest between their duties to the company and their duty as trustees towards the scheme members – current employees, early leavers and pensioners. This could arise, for example, in situations where the company is experiencing financial difficulties and where consideration is being given to a proposal of a loan to the company or the action to be taken in relation to contributions owed to the scheme by the company.

Conflicts of interest may also arise in the case of trade union officials acting as trustees, where they could believe they are appointed to represent a particular faction or group. Professional pension consultants acting as trustees may experience a conflict of interest if remunerated by the employer.

Trustees may also include members of the scheme. Such persons may experience conflicts of interest in relation to the payment of benefits where the trustees have discretion in these matters under the trust deed and rules of the scheme.

### **2.10.1 TAKE ADVICE**

Conflicts of interest should not necessarily prevent trustees acting in good faith. In situations where trustees are conscious of a possible conflict of interest it may be necessary, before a decision is taken, to obtain legal, actuarial or other professional advice, as appropriate.

### **2.10.2 CODES OF PRACTICE**

Many persons appointed as trustees could be in a position where there may be a conflict between their duty as a trustee and their other interests. Their duty as a trustee must prevail when taking decisions.

### **2.10.3 NOT PROFIT FROM TRUST**

A clear conflict of interest would arise, however, if a trustee were in a position to profit from the assets of the trust. Accordingly, in such circumstances, trustees may not buy assets from, or sell assets to, the trust. In fact trustees should not make a profit from their trust, whether directly through being paid for their work, or indirectly through using

information gained as trustees for their own ends. The only and important exception to this requirement is where the trust deed and rules specifically provide that the trustees may be beneficiaries of the scheme or may be paid for carrying out their duties; the latter provision might be included if, for example, the trustees were professional trustees and it were intended that the trustees should be paid for work done.

## **TRUSTEE LIABILITIES AND PROTECTION**

### **2.11 BREACH OF TRUST**

If trustees act in a way not authorised by the terms of the trust deed and rules or trust law, or if they fail to do something which should have been done under the same provisions, this is called a breach of trust. All the trustees are individually and collectively liable for any breach of trust. Even if a trustee was not directly responsible for a breach of trust, he or she could be sued. If it is found that the trustees have committed a breach of trust which results in a loss of scheme assets, they will be personally liable to restore the loss. However, a mere error of judgement is not in itself a breach of trust and trustees are presumed to have acted honestly and properly until the contrary is shown.

### **2.12 PROTECTION FOR TRUSTEES**

If a breach of trust does in fact result in a loss to the trust fund then the trustees may rely on the protection afforded by any relevant statutory provisions or by an exclusion clause or indemnity clause contained in the trust deed.

### 2.12.1 STATUTORY PROTECTION FOR TRUSTEES

The main statutory provision of relevance (which provides a limited indemnity for trustees) is contained in Section 24 of the Trustee Act, 1893. This provides that, subject to any provision to the contrary in the trust deed, a trustee is answerable and accountable only for his/her own acts, neglects or defaults and not for those of any other trustee, nor for any banker, broker or other person with whom any trust monies or securities may be deposited, nor for any other loss unless the same happens through his/her own wilful default. A trustee may however still be personally liable if his/her own neglect or default has given rise to the situation whereby the actions of another trustee or agent have led to a breach of trust.

### 2.12.2 PROTECTION IN SCHEME DOCUMENTS

It is common practice to provide, in trust deeds, some additional protection for trustees in the form of an exclusion clause or an indemnity clause or both.

### 2.12.3 EXCLUSION CLAUSE

An exclusion clause (also known as an exemption or exoneration clause) would normally state that a trustee is not to be liable for any loss of any kind accruing to the trust property for any reason whatsoever except fraud or negligence so gross as to be incompatible with good faith. Essentially an exclusion clause aims to exempt trustees from liability unless they have actually committed fraud or gross negligence.

### 2.12.4 INDEMNITY CLAUSES

As an alternative, many scheme documents contain an indemnity clause rather than an exclusion clause. The use of an indemnity clause means that the beneficiaries under the trust deed have a claim against the trustees for breach of trust but the trustees are entitled to reimbursement from the employer. Sometimes the deed will provide that the indemnity is to come in the first instance from the employer but that to the extent that the employer fails to indemnify the trustees they should be indemnified out of the fund. An indemnity clause would normally contain the same restrictions as an exclusion clause and would provide that the employer, or fund, would not be obliged to make good any amount which trustees were required to pay to the trust fund as a result of their own fraud or wilful default or possible gross negligence.

## 2.13 TRUSTEE LIABILITY INSURANCE

Some schemes now take out insurance against trustees' liabilities. It is essential to take advice however, from a specialist who understands this type of insurance. It should be noted that though a trustee may be legally removed, he or she remains liable for any decisions they took when acting as trustee. It is therefore important, from the trustee's perspective, that any indemnity insurance will cover them for a suitable period after they have ceased to be a trustee.

## 2.14 PENSIONS ACT REQUIREMENTS

Trustees may also be liable to prosecution under the Pensions Act for failure to comply with its provisions. Breaches of the Pensions Act may constitute either a summary or indictable offences. Summary offences could result in a maximum fine of €5,000 or one years imprisonment, or both. Indictable offences could result in fines of up to €25,000 or two years imprisonment, or both.

Under the on-the-spot fines regime, the Pensions Board can also notify scheme trustees, of an alleged contravention of a specified section of the Pensions Act. Trustees will be given the chance to pay a fine of €2,000 per trustee and remedy the breach within 21 days. In default of paying this fine and remedying the breach within 21 days, the Board may then initiate a prosecution.

Any fines paid by trustees cannot come from the scheme resources.

There are a wide range of offences which are subject to on-the-spot fines, examples include the failure to:

- comply with the Occupational Pension Schemes (Disclosure of Information) Regulations, 2006 to 2008 (S.I. Nos. 301 of 2006, 582 of 2006, 842 of 2007 and 531 of 2008) (the “Disclosure of Information Regulations”); or
- comply with a request by the Board for information.

The Pensions Board “Trustee and Employer Checklists On-the-spot fines” which is available online from the Pensions Board website is a useful way of ensuring that trustees do not contravene legislative requirements subject to the fines regime.

## TRUSTEE QUALIFICATIONS, EXPERIENCE AND TRAINING

### 2.15 TRUSTEE QUALIFICATIONS AND EXPERIENCE

As stated in the Introduction, trustees are generally drawn from company managers and other employees. Trustees may not possess the necessary expertise to carry out all of their specified duties without the assistance of qualified advisers. A particular example is the investment of scheme resources. Trustees of a scheme and Trust RACs are required to possess, or employ or enter into arrangements with advisers who possess, qualifications and experience appropriate and relevant to the investment of the scheme resources. Trustees are regarded as discharging this obligation by appointing an investment manager to manage the investment of those resources.

Where a scheme or Trust RAC has not appointed an investment manager, the trustees of the scheme or Trust RAC must demonstrate to the Pensions Board that that they possess among their membership the appropriate qualifications and experience to assess and advise on investment options and execute the investment decisions in relation to the scheme or Trust RAC’s resources. In such circumstances, the Board’s approval of the trustee’s qualifications and experience must be obtained in advance of the scheme’s resources being invested. The requirement is an ongoing one, so should a trustee whose qualifications and experience have been approved by the Board resign, or otherwise cease to be a trustee, any new trustee appointed to fulfil the investment role will need to have their qualifications and experience approved by the Board.

Alternatively the trustees can employ an advisor with such qualifications and experience subject to the Board’s approval. An application for approval should be made to the Board by either the trustee(s) or the proposed advisor as the case may be, on the application form which is available on the Pensions Board website. The Board’s approval of the trustees or advisors’ qualifications and experience must be obtained in advance of the schemes resources being invested.

### 2.16 TRAINING FOR TRUSTEES

Pensions are a difficult and complex area. Trustees should ask questions of their fellow trustees and their advisers where they are unsure of any issue. A most important and most effective way to ensure successful trusteeship is through suitable trustee training. The responsibilities of trustees, the implications of the scheme’s trust deed and rules, and a basic understanding of the scheme’s finances should be covered in such training. This in turn will make trustees aware of the background law, and give them a good knowledge of a typical trust deed and rules to enable them carry out their duties in an efficient manner without unnecessary worry. It should also help to minimise the trustee’s exposure to legal liability.

### 2.16.1 STATUTORY REQUIREMENTS

Section 59AA of the Pensions Act requires sponsoring employers to arrange for scheme trustees to receive appropriate training relating to:

- (i) the Pensions Act, regulations made under it and other laws applicable to the operation of the scheme (such as trust law or employment law);
- (ii) the duties and responsibilities of scheme trustees; and
- (iii) such other matters relevant to the management of the scheme as are prescribed.

For persons who are trustees of schemes when these provisions commence, employers will have 2 years after the commencement of this provision to arrange for such training. For trustees appointed after these provisions come into force, employers must arrange appropriate training within 6 months of their appointment. There will be an ongoing requirement that trustees re-train every two years. Employers will not be required to arrange training for professional trustees or Revenue approved pensioner trustees.

A statutory instrument bringing these provisions into operation has not yet been made.

### 2.16.2 TRAINING COURSES

One of the statutory functions of the Pensions Board is to encourage trustee training. A list of training courses for trustees has been compiled by the Board and is available to all enquirers on request (see Appendix 2). Only course providers who have satisfied the Board on the content of their training courses are included on this list.

An e-learning tool for trustees will be made available on the Pensions Board website in the near future.

### 2.16.3 AVAILABILITY OF TRAINING

In the past, the Pensions Board carried out regular surveys of trustees with a view to establishing whether and to what extent trustees had received appropriate training. When Section 59AA of the Pensions Act is commenced, compliance with its requirements will be monitored by the Pensions Board.

Once Section 59AA comes into force, trustees will also be required to confirm in the scheme's annual report that they have received trustee training as required by Section 59AA. Trustees are required to confirm in the annual report that they have access to the latest edition of the Board's trustee training handbook and the Pensions Board Guidance notes.

### 2.16.4 COSTS OF TRAINING

Trustees should be aware that reasonable costs and expenses incurred in receiving appropriate training on their duties and responsibilities as trustees can be met from the resources of the scheme.

### 2.16.5 CODES OF PRACTICE

Trustees should take steps to ensure that they are sufficiently informed to discharge their duties and responsibilities as trustees. Once the relevant legislation comes into force, trustees will be obliged to undertake trustee training every two years. They will be required to undertake the initial trustee training within six months of their appointment, or within two years if they are already a trustee. Section 59AA of the Pensions Act, which will bring these provisions into force, has yet to be commenced. Trustees should ensure that they keep up-to-date with changes in legislation which affect pension schemes and about pension issues in general. In the meantime trustees who have not attended a trustee training course and/or consider that the training they have received is not adequate to enable them to properly discharge their duties and responsibilities, should contact the Pensions Board (see Appendix 2), who will provide advice on how such training can be obtained.

## **2.17 TRUSTEE CERTIFICATE**

The Irish Institute of Pensions Managers (IIPM) has introduced an examination for trustees entitled The Trustee Certificate of Essential Pensions Knowledge which gives formal recognition of an individual trustee's relevant pensions knowledge of his/her duties and responsibilities as a trustee. The syllabus for the certificate is very wide and the examinations are run on a multiple-choice basis. The examination is now completed online. Enquiries about examinations should be directed to the IIPM (see Appendix 5).

### **2.17.1 ENDORSEMENT OF THE PENSIONS BOARD**

The Pensions Board has welcomed and formally endorsed The Trustee Certificate of Essential Pensions Knowledge as providing trustees who undergo training and trustees generally with an objective means of testing the level and the accuracy of their understanding of the information they have obtained on pensions, and on the duties and responsibilities of trustees.

## **2.18 IAPF TRUSTEE FORUM**

The Trustee Forum is established under the auspices of the Irish Association of Pension Funds (IAPF) with the support of Irish Business and Employers Confederation (IBEC) and Irish Congress of Trade Unions (ICTU) and the Pensions Board and embraces all trustees irrespective of how they are appointed. The aims of the Forum include providing information specific to the role of trustees and educational support. Enquiries about the Forum should be directed to IAPF (See Appendix 5).

# CHAPTER 3

## MAIN DUTIES AND RESPONSIBILITIES OF TRUSTEES UNDER SECTION 59 OF THE PENSIONS ACT, 1990

### INTRODUCTION TO SECTION 59 DUTIES

#### 3.1 BACKGROUND

The Pensions Act, 1990 brought together and set down clearly the duties and responsibilities of pension scheme trustees. There is a high degree of overlap between trustees' duties under the general principles of trust law, and their duties as prescribed in the Pensions Act, especially in relation to Section 59. The Pensions Act effectively complements and reaffirms existing trust law and together these provide the foundation for the regulation of occupational pension schemes in Ireland.

#### 3.2 DUTIES UNDER SECTION 59

Section 59 of the Pensions Act lays down in broad terms the general duties of trustees of schemes and Trust RACs as follows:

- to ensure that contributions are received
- to invest the funds
- to make arrangements for paying the benefits
- to ensure that records are kept
- to undertake trustee training (statutory obligation yet to come into force)
- to ensure that a registered administrator is appointed.

The remaining part of this Chapter sets out these duties in greater detail and, in addition to explaining some necessary background, outlines Codes of Practice in relation to each duty. These duties in most cases are also duplicated by the terms of the trust deed and rules. Section 59 also imposes a duty on trustees to apply the resources of the scheme or Trust RAC without delay when a decision has been taken to wind up the scheme. This duty is dealt with in Chapter 6.

#### 3.3 OTHER SPECIFIC DUTIES

The more specific duties imposed on trustees by other sections of the Pensions Act, e.g. the duty to register the scheme, are dealt with in detail in Chapter 4.

### TRUSTEES RESPONSIBILITIES – PAYMENT OF CONTRIBUTIONS

#### 3.4 TRUSTEE DUTY

The Pensions Act specifies that the trustees shall ensure, in so far as is reasonable, that the contributions payable by the employer and members of the scheme are received.

### 3.5 CONTRIBUTION BASIS

Pension schemes vary in the way in which they provide for contributions to be made. Some schemes are non-contributory (i.e. members are not required to contribute) so that the only contributions generally payable are those payable by the employer. Other schemes are contributory (i.e. both members and employer are required to contribute).

In both types of scheme (non-contributory and contributory) there may be a facility whereby members may make additional voluntary contributions (AVCs) to improve their benefits. Alternatively AVCs may be paid to a totally separate scheme to which an employer makes no contribution (other than perhaps in respect of administration costs) or may be paid to a PRSA.

#### 3.5.1 DEFINED CONTRIBUTION SCHEMES

Under a defined contribution scheme (see par. 1.6.2) contributions payable by the employer and, if contributory, the member, are defined in the scheme rules (or separate notification to each member). Hence the contributions in the case of a defined contribution scheme should be a fairly straightforward matter.

#### 3.5.2 DEFINED BENEFIT SCHEMES

In contrast under a defined benefit scheme (see par. 1.6.1) the member's benefits and (if contributory) the contributions payable by the member are defined. The contributions to be paid by the employer in most cases are not defined in the rules. The trustees must have a valuation of the scheme's assets and liabilities carried out by the scheme's actuary. The actuary's valuation report will incorporate a recommended contribution rate to be paid by the employer (see par. 5.20.3).

#### 3.5.3 PROCEDURES TO FOLLOW

The trust deed and rules will, however, usually specify a procedure which must be followed in order to establish which contributions the employer is legally bound to pay. The fact of the actuary having recommended that the employer pay certain contributions may or may not be sufficient to create a legal obligation. Therefore trustees ought to ensure that the steps required by the trust deed and rules to determine the contributions payable are followed properly.

#### 3.5.4

Section 58A of the Pensions Act places an obligation on employers to remit all employer contributions payable in respect of a defined contribution scheme or Trust RAC, and expressed as a cash amount or a percentage or proportion of an employee's wages or salary and payable in respect of that employee, within 21 days from the end of each month to the trustees of the scheme or Trust RAC or another person on their behalf. Member's contributions deducted from their wages or salary, in respect of a defined contribution scheme, defined benefit scheme or Trust RAC must be remitted by the employer to the trustees of that scheme or Trust RAC or another person on their behalf, within 21 days from the end of the month in which the deduction was made. The employer is obliged to give to the employee and to the trustees or administrator a statement not less frequently than once a month specifying the amount of employee's contributions and the total amount of additional contributions paid to the scheme or Trust RAC.

#### 3.5.5 FURTHER INFORMATION

The Pensions Board has produced a detailed Frequently Asked Questions document in relation to the Remittance of Contributions which is available online from the Board's website.

### 3.5.6 CODES OF PRACTICE

The trustees must ensure that the contributions of the employer (and the member, if applicable) are actually paid into the scheme. The Pensions Act says that this duty must be carried out “in so far as is reasonable”. One way of doing this would be to agree with the employer a set of procedures and a schedule of dates on which the contributions will be paid. The dates upon which contributions are due to be paid may be specified in the scheme rules or (if the scheme is a defined benefit scheme) the actuary’s valuation report. If so these dates should be used. If nothing is specified annual contributions should, as a general rule, be requested on a monthly or quarterly basis. The Pensions Act requires the employer to remit the contributions detailed in Section 58A within the specified time limits. These requirements override anything stated in the rules but do not apply to employer contributions in respect of a defined benefit scheme.

### 3.5.7

Members’ contributions are usually deducted by the employer’s payroll department and added to the employer’s contribution, the combined total being remitted in part to the insurers to pay for risk benefits being insured and the balance to the investment managers.

### 3.5.8

Trustees should satisfy themselves that arrangements for transmission of contributions to the ultimate recipient (e.g. investment manager or insurance company) are the most efficient, suitable and secure in the circumstances of their schemes and comply with the investment requirements of and time limits laid down in the Pensions Act. (see par. 5.17.5).

### 3.5.9

Where the employer fails to pay the full contribution requested on (or shortly after) the due date, the trustees should decide on an appropriate course of action and their decision should always be dictated by what they believe will best serve the interest of members.

### 3.5.10

Where, under a defined contribution scheme, the employer fails to pay the full contribution requested, the trustees should take immediate steps to ensure that this is done. If these steps fail to secure the payment of the contribution due, the trustees should obtain legal advice on an appropriate course of action, including possible legal action.

### 3.5.11

Where, in the case of a defined benefit scheme, the employer fails to pay the contribution recommended by the actuary, the trustees’ ability to pay the benefits due to members and other beneficiaries may not be affected provided the employer is prepared to increase the future contributions payable to the scheme.

The trustees should, therefore, initially enquire from the actuary

- (i) whether the reduced (or nil) contribution would still enable them to discharge the liabilities of the scheme were the scheme to wind up in the short term, and
- (ii) what increased contribution would be needed in the future from the employer to compensate for the shortfall in the current contributions.

Provided the actuary confirms (i) and the trustees receive an undertaking from the employer to pay the increased contribution rate in (ii) in the future, no further action may be needed. If, however, the employer fails to pay the recommended rate and the trustees have been unable to obtain satisfactory assurances from the employer that it will pay the required contributions in the future, the trustees should obtain legal advice on an appropriate course of action, including legal action. At the same time the trustees should seek the actuary's advice on an equitable reduction in the benefit scales. If it becomes necessary to reduce the benefits in accordance with a Pension's Board direction, the trustees must advise the members that benefits are being reduced until the shortfall in contributions has been received and satisfactory arrangements made for the payment of future contributions.

#### 3.5.12

Failure to comply with the payment deadlines will not require automatic reporting to the Pensions Board. However, where trustees have reasonable cause to believe that fraud or material misappropriation has occurred, is occurring or is to be attempted, they must make a report to the Pensions Board under Section 83 of the Pensions Act immediately.

Chapter 8 deals with mandatory reporting in more detail.

#### 3.5.13

Non-remittance of contributions may indicate that there is a fraudulent conversion or a material misappropriation of the resources of the scheme which should be reported to the Board. This will depend on the particular facts. Following any non-remittance of contributions specified in Section 58A within the 21 day period, trustees should investigate the circumstances to ascertain the facts. Trustees should determine whether there is in fact non-remittance. Where there has been non-remittance, trustees must decide if there is reasonable cause to believe that a fraudulent conversion or a material misappropriation has occurred, is occurring or is to be attempted. Trustees should not allow contributions to remain outstanding for long beyond the 21 day period before initiating an investigation. Issues in respect of non-remittance are more easily dealt with if they are tackled as soon as possible.

#### 3.5.14

Trustees faced with an issue in relation to the remittance of contributions within the statutory time limits should refer to the Pensions Board's Remittance of Contributions FAQs which are available online from the Pensions Board website.

#### 3.5.15

In an extreme situation where an employer notifies the trustees of its intention to terminate its contributions to the scheme then, subject to the provisions of the trust deed, it may become necessary for the trustees to wind up the scheme. Before formally deciding to wind up the scheme, the trustees should obtain legal and actuarial advice as appropriate and consult with the scheme's professional advisers on the consequences of a wind-up and whether any action can usefully be taken before the formal wind-up to protect the interests of the members. Trustees should note that their powers will usually be much more circumscribed once the scheme has gone into wind up.

## TRUSTEE RESPONSIBILITIES – INVESTING THE ASSETS

### 3.6 TRUSTEE DUTY

The Pensions Act specifies that the trustees shall provide for the proper investment of the resources of the scheme in accordance with the Occupational Pension Scheme (Investment) Regulation 2006 to 2007 (S.I No. 294 of 2006 and S.I. No. 188 of 2007) (the “Investment Regulations”) and, subject to those regulations, the rules of the scheme. Section 59 also requires the trustees to invest the contributions required to be remitted by the employer (under Section 58A) within 10 days of the latest date on which they should have been remitted or paid by the employer.

#### 3.6.1

Failure to remit or to comply with the investment requirement will not require automatic reporting to the Pensions Board. However, a relevant person (as defined in the Pensions Act) must make a report where he or she has reasonable cause to believe that a fraudulent conversion or material misappropriation has occurred, is occurring or is to be attempted. (See pars. 8.17 – 8.18)

#### 3.6.2 CODES OF PRACTICE

Trustees must invest the contributions required to be remitted by the employer within the specified time limits.

#### 3.6.3 FURTHER INFORMATION

The Pensions Board has produced a detailed Frequently Asked Questions document in relation to provisions of the Pensions Act dealing with the Remittance of Contributions which is available online from the Pensions Board website. For details see Appendix 3.

#### 3.6.4 CODES OF PRACTICE

Trustees faced with an issue in relation to the investment or remittance of contributions within the statutory time limits should refer to the Pensions Board’s Remittance of Contributions FAQs which are available online from the Pensions Board website.

### 3.7 CHOICE OF INVESTMENT BY MEMBERS

Section 59(2) of the Pensions Act provides that where and to the extent that the rules of the scheme provide for the trustees to invest the resources of the scheme as directed by the members, and the trustees comply with the requirements below they will be exempt from any liability for the consequences of the members’ investment decision.

Trustees must

- (a) determine, in accordance with the rules, what investment alternatives are to be open to the members
- (b) determine, in accordance with the rules, how the resources of the scheme are to be invested in circumstances where members give no directions
- (c) give the members prescribed information in relation to the investment alternatives open to them under (a) and in relation to the determination made by them under (b)
- (d) take reasonable steps to ensure that members have any further information necessary to enable them to make informed decisions with regard to investment alternatives open under the rules.

Regulations have been made under Section 59(2) which set out the information to be provided to members who may direct the trustees as to the investment of their benefits. This information is set out in Paragraph 77 of the Pensions Board’s Guidance Note on the “Disclosure of Information by Occupational Pension Schemes”.

### 3.7.1 CODES OF PRACTICE

Where the rules of the scheme permit members to select investments, the trustees must comply with the requirements under the Pensions Act and relevant regulations in order to avail of the statutory exemption from liability.

### 3.7.2

Trustees should aim for a range of investment options which will not overwhelm members and should act prudently in selecting investment options which are to be made available to scheme members. Trustees should not give members advice which they are not qualified to give. However, sufficient information should be given to allow an appropriate choice to be made.

## 3.8 POWERS OF INVESTMENT

If the trust deed governing the scheme does not contain a specific clause outlining the investment powers, the trustees must invest the fund in accordance with the Trustee (Authorised Investments) Act 1958. As this limits the investments which may be undertaken by the fund, nowadays virtually all deeds creating pension funds contain a clause outlining the trustees’ powers of investment.

The likelihood is that this clause will contain few, if any, restrictions on the type of investments which may be held. This must not be assumed and before undertaking an investment on behalf of the fund it is vital that the trustees make themselves aware of the extent of the investment powers available to them under the trust deed.

Trustees should also be aware that they must comply with the provisions of the Investment Regulations. A summary of these provisions is provided in the Pensions Board’s FAQs on Investment Regulations which are available online from the Pensions Board website. The basic requirements are that:

- the assets of the scheme must be invested in a manner designed to ensure the security, quality, liquidity and profitability of the portfolio as a whole so far as is appropriate having regard to the nature and duration of the expected liabilities of the scheme
- the trustees must invest the assets of the scheme predominantly in regulated markets and investments in assets not admitted to trading on a regulated market must be kept to a prudent level (as well as being an overall scheme requirement, this applies to the investments held on behalf of each individual scheme member)
- trustees of a scheme or Trust RAC are prohibited from borrowing for investment purposes except in certain prescribed circumstances
- the trustees of a one member arrangement may borrow money
- the assets of the scheme must be properly diversified in order to avoid excessive reliance on any particular asset, issuer or group of undertakings (as well as being an overall scheme requirement, this applies to the investments held on behalf of each individual scheme member)
- the trustees may invest in derivatives only in so far as they contribute to a reduction of investment risks or facilitate efficient portfolio management
- all schemes with 100 or more active and deferred members (or, in the case of Trust RAC, 100 or more members) must produce a Statement of Investment Policy Principles (“SIPP”)

### 3.8.1 CODES OF PRACTICE

Trustees should agree an appropriate investment policy for the fund and where relevant place limits on the fund's investments in specific sectors, markets, currencies, shares, and other securities. In the case of a defined benefit scheme the employer must be consulted on investment policy if the trust deed so provides. They must also ensure that they comply with the provisions of the Investment Regulations, and tailor their investments accordingly. Trustees of Trust RACs must comply with their own set of investment regulations, the Trust RAC (Investment) Regulations 2007 (S.I. No. 185 of 2007). These regulations are similar to the Investment Regulations for Occupational Pension Schemes.

### 3.8.2

An unrestricted investment clause does not mean trustees can invest however and wherever they wish. In relation to the investments of the fund, trustees must invest with the care which an ordinary prudent person would take in investing for the benefit of other people for whom he/she felt morally bound to provide. As the purpose of the scheme is the provision of benefits for members and other beneficiaries trustees must invest solely in their best interests. In this context "best interests" should be taken to mean best financial interests. Trustees must also invest the assets of the scheme in a manner appropriate to the circumstances of the scheme, i.e. they must review the general circumstances, such as the age profile of the members of the scheme and invest the assets appropriately.

### 3.8.3

The trustees of a defined contribution (or AVC money purchase) scheme may wish to consult with the members and seek their input into the investment strategy to be pursued in relation to their individual account. Investment decisions may be delegated only where permitted under the trust deed and rules. Trustees may rely on the statutory exemption from liability for the consequences of the member's investment decisions where the rules of the scheme provide for the trustees to invest the resources of the scheme as directed by the members and the trustees have complied with the list of requirements set down in Section 59(2) of the Pensions Act and Article 18 of the Disclosure of Information Regulations. Trustees should act prudently in selecting investment options which are to be made available to scheme members. Trustees should not give members advice which they are not qualified to give.

## 3.9 INSURED SCHEMES

Many smaller schemes are insured schemes which means that the life assurance company provides an overall service to the trustees. In such instances the scheme's assets are the proceeds of the insurance policy issued by the life assurance company and the investment strategy in relation to the assets underlying the insurance policy is invariably the responsibility of the insurer.

The trustees will likely have little opportunity to influence this strategy and the only course of action open to them if they are dissatisfied with the investment performance of the insurer may be to switch to another insurance policy, operated by the same or a different insurance company. Before making such a decision the trustees should take full account of the costs associated with the switch.

Investments in insurance policies are also governed by the Investment Regulations. There are different rules for unit-linked and non-linked insurance policies.

For unit linked policies, compliance will depend on the underlying assets of the funds to which the policy proceeds are linked. So long as the assets underlying these funds comply with the diversification and regulated market requirements, the investment in the insurance policy will be deemed to satisfy those same requirements. Thus, for instance, a policy linked to a typical insured managed fund which is well diversified and primarily invested in equities and bonds would satisfy the regulations. On the other hand, were a policy wholly linked to a fund invested in unregulated shares, or in a single property, this investment would not satisfy the Investment Regulations unless it comprised only a reasonable proportion of the schemes investments.

For non-linked policies, including with profit policies, the investment in the insurance policy will be deemed to satisfy the regulated market and diversification obligations if the policy proceeds are guaranteed at maturity to be at least equal to the sum of all the premiums invested by the trustees.

Any annuity policies held by a scheme will be deemed to satisfy the Investment Regulations.

Although insured schemes have many unique features, the general principles of trusteeship apply to such schemes as do the requirements of the Pensions Act. Nonetheless, the issues covered in paragraph 3.10 are unlikely to be relevant to insured schemes.

### 3.9.1 CODES OF PRACTICE

Trustees should exercise great care, and as necessary seek advice, in choosing the life assurance company with which to invest the assets of an insured scheme (and possibly insure the death benefits).

## 3.10 SCHEMES OTHER THAN INSURED SCHEMES

The trustees of such schemes have a number of choices open to them in relation to the investment of the fund's assets:

- They can decide to manage the assets themselves where they possess the qualifications and experience appropriate and relevant to the investment of the scheme resources or, where the trust deed so provides, use in-house staff of the employer to manage the assets on their behalf. This option is only likely to be considered by a very large pension fund and then only if the trustees have the necessary expertise, or have such expertise available to them on an in-house basis. The Occupational Pension Schemes (Trustees) Regulations, 2006, S.I. 293 of 2006 requires in such circumstances, the Pensions Board's approval of the qualifications and experience of the trustees or such in-house staff must be obtained in advance of the scheme's resources being invested (See par 2.15).
- The trustees, where the trust deed so provides, can delegate the investment management of the assets to one or more professional investment managers (e.g. a life assurance company, a bank or a similar institution). The delegation can take two forms or can be a mixture of both. One form is where the investment manager(s) invest the assets on behalf of the trustees and in this circumstance the trustees directly own the relevant stocks and shares and other assets. In the other form, the trustees participate in one or more funds offered by an investment manager which consist of a pooling of assets from a number of separate pension plans. This latter form is known as a managed fund and is commonly used by medium and some large pension funds.

In considering the selection of an investment manager, the trustees may wish to consider taking advice from their pension consultant, actuary or other adviser.

### 3.10.1 CODES OF PRACTICE

Where trustees themselves do not possess the qualifications and experience appropriate and relevant to the investment of the scheme resources they must appoint an investment manager to invest the scheme's assets. Alternatively the trustees can employ an advisor whose investment qualifications and experience have been approved by the Pensions Board. In either case, trustees must take great care in making such appointments. Trustees should ensure that they have adequate information and have regard to their own investment policy before making their decision. In particular the trustees should endeavour to identify the qualities likely to be associated with successful investment management and assess the extent to which these qualities are present in any candidate being considered. An investment management agreement should be signed between the trustees and the investment manager or other adviser (see par 2.15).

### 3.10.2

When they appoint an investment manager the trustees should decide who is authorised to give instructions to the manager on behalf of the trustees, particularly in relation to the payment of cash out of the fund.

### 3.10.3

Where the trustees appoint an investment manager they must make sure that the investment manager is aware of the extent of limitations of the investment powers so that he/she may carry out his/her delegated responsibilities properly.

### 3.10.4 STATEMENT OF INVESTMENT POLICY PRINCIPLES (“SIPP”)

Even where the trustees appoint an investment manager they remain responsible to the beneficiaries for the investment of the assets of the fund. Under the provisions of the Investment Regulations trustees of schemes with 100 or more active and deferred members must complete a SIPP. Trustees of Trust RACs with 100 or more active and deferred members must also complete a SIPP. However, it should be noted that trustees of small schemes (ie. schemes with less than 100 active and deferred members) or small Trust RACs (ie. Trust RACs with less than 100 active and deferred members) are not subject to such requirements. That said, it would be prudent for trustees of such schemes to complete an investment review along the lines of a SIPP in any case.

The SIPP requirements do not impose any specific investment practices on pension schemes: the SIPP is intended to be a description of the investment policies of the trustees. There is no minimum (or maximum) length of SIPP required. The information provided should be stated clearly and unambiguously, but it may be possible for an SIPP to be no more than a page or two long.

The likelihood is that the trustees will need the advice of their pension consultant, actuary and/or investment manager in considering what is appropriate and, in the case of a defined benefit scheme, they must also consult with the employer if the trust deed so provides.

The Pensions Board has produced a document entitled “FAQs on Investment Regulations” which is available online from the Pensions Board website and it details the elements that the SIPP should contain:

- Investment objectives: For defined benefit and defined contribution schemes where no member investment choice is available, the Board would expect this to include the objectives of meeting the liabilities and the attitude to risk. For other defined contribution schemes, the Board would expect it to include a description of the rationale for the investment choice made available to members.
- Investment risk measurement methods: The Board would expect that this would identify the investment risks faced by the scheme and how these risks are measured. Different schemes use differing approaches toward measuring risk, and no one approach is prescribed. Defined contribution schemes may choose to provide a separate response for each investment fund.

- Risk management processes to be used: The Board would expect this section to describe how the scheme trustees manage ongoing investment risk. There are many possible approaches, but for example, the SIPP may include the guidelines provided to the investment managers, and a policy statement relating to periodic review of investment performance and risk. Again, defined contribution schemes may provide a separate description for each fund.
- Strategic asset allocation with respect to the nature and duration of the pension liabilities: For defined benefit schemes the Board would expect a statement of the asset allocation strategy and how the nature of the liabilities of the scheme have been taken into account in setting it. For defined contribution schemes, the Board would expect this section to include a description of the investment funds made available, along with any restriction on member investment choice.

### 3.10.5 CODES OF PRACTICE

Trustees should agree an appropriate investment policy and where required (i.e. their scheme has 100 or more active and deferred members or, in the case of a Trust RAC, 100 or more members) they should also prepare and maintain a written SIPP for the fund and where relevant place limits on the fund's investments in specific sectors, markets, currencies, shares, and other securities. In the case of a defined benefit scheme the employer must be consulted on investment policy if the trust deed so provides.

### 3.10.6

Trustees must comply with the Investment Regulations made under the Pensions Act which stipulate that scheme assets must be invested predominantly on regulated markets; investment in assets which are not admitted to trading on a regulated market must also be kept to a prudent level. Trustees should also diversify the investment of the scheme assets so as to minimise the risk of large losses due to excessive risk concentration. Trustees of a Trust RACs must comply with their own set of investment regulations, the Trust RAC (Investment) Regulations 2007 (S.I. No. 185 of 2007). These regulations are similar to the Investment Regulations. The trustees of a defined benefit scheme must have regard to the need to satisfy at regular intervals the minimum funding standard set down in the Pensions Act.

### 3.10.7 MONITORING INVESTMENT

The trustees should monitor the performance of their appointed investment manager or of their fund where they are managing the assets performance themselves. Even if members' contributions and benefit levels are defined, and the employer has consistently met the contribution rates recommended by the actuary, overall investment return is still relevant to the members of a defined benefit scheme. There can be little doubt that good investment performance enhances the security of pension promises, while bad performance weakens that security. Under a defined contribution scheme overall investment return is even more relevant since a member's benefits will be directly determined by the returns earned on the contributions paid.

It is, therefore, vitally important that trustees know that their fund is maximising its investment return within the objectives set. The normal measure of the investment performance of a fund is a comparison with other pension funds of a broadly similar nature and this is usually done through participation in a performance measurement service.

Participation in a performance measurement service may not provide trustees of funds invested through an insurance contract or managed fund with meaningful comparisons or information. Trustees of these funds should, with the help of their advisers, seek relevant comparisons of the performance of the manager relative to that of other managers operating similar funds.

**3.10.8 CODES OF PRACTICE**

Following the appointment of an investment manager the trustees should meet with the manager as required, but at least once a year. The manager's performance should be monitored on an ongoing basis having regard to the objectives set. Such monitoring should include, not only the actual investment return achieved by the manager, but also the investment strategy which was pursued on behalf of the scheme. The trustees should ask the manager to explain any aspect of the scheme investments which they do not understand.

**3.10.9 INVESTMENT MANAGEMENT AGREEMENT**

An investment management agreement formalises the relationship between trustees and their investment manager and clearly complies with agreement the general requirement of prudence.

An investment management agreement also regulates the liability of the investment manager to the scheme and therefore any exemption clause contained in the agreement should be considered by the trustees with particular care.

**3.10.10 CODES OF PRACTICE**

The trustees should satisfy themselves that the investment management agreement is consistent with the trust deed and rules and the SIPP (where required). If the trustees are required to prepare and maintain a SIPP, or the trustees have documented an investment policy and objectives, this should be appended to the formal management agreement and referred to therein as appropriate.

**3.10.11 CUSTODIANSHIP OF ASSETS**

Trustees carry responsibilities and obligations to scheme members and other beneficiaries in relation to the safe-keeping (or custody) of fund assets. They usually delegate this function to a professional custodian either directly or indirectly through their investment manager.

**3.10.12 FUNCTION OF CUSTODIAN**

A custodian is a person whose responsibility it is to keep custody of cash, securities and other documents of title to assets belonging to others. Where the assets are held in overseas markets and the custodian does not have a presence in that country it may appoint a sub-custodian in the country concerned.

**3.10.13 PROVIDERS OF CUSTODIAN SERVICES**

A custodian is usually a bank and, in an integrated financial group, it may be a sister company of the institution responsible for managing the scheme's investments.

**3.10.14 CODES OF PRACTICE**

Trustees should be aware of the main issues to be considered by them in assessing the security of their pension fund assets and the legal relationship with their custodian (see par. 3.10.17 below).

### 3.11 FURTHER INFORMATION

The IAPF has produced a set of three investment handbooks

- Part One: The Purposeful Investor  
This provides a basic level of understanding of investment principles and introduces the main types of assets and their characteristics;
- Part Two: The Pension Fund Investor  
This is an introduction to the legal and regulatory framework for pension funds and their trustees. It outlines the investment requirements of pension funds, sets out the development and implementation of investment strategy
- Part Three: Pension Fund Investment Management  
This covers the investment management process, how investment managers choose individual asset portfolios, appointing investment managers, setting benchmarks and monitoring performance.

The IAPF has also issued two booklets, *Trustee Governance: Guidance for Irish Pension Schemes* and *Asset Governance: Guidance for Irish Pension Schemes*. The *Trustee Governance* booklet sets out a number of the principal governance issues that relate to the management of schemes. The *Asset Governance* booklet develops a more detailed framework to assist trustees in the task of asset governance. Copies of these publications and others produced by the IAPF are available to order from the IAPF. For contact details see Appendix 5.

## TRUSTEE RESPONSIBILITIES – PAYMENT OF BENEFITS

### 3.12 TRUSTEE DUTY

The Pensions Act specifies that the trustees shall make arrangements for the payment of the benefits as provided for under the rules of the scheme as they become due. This may be in the State or in any other Member State and should be net of any applicable taxes and transaction charges.

### 3.13 BACKGROUND

Pension scheme trustees must ensure that satisfactory arrangements are in place to provide for the payment of the correct benefits to eligible members and other beneficiaries at the time they are due to be paid. The task of paying the benefits will frequently be delegated by the trustees to a scheme administrator, the written terms of whose appointment should show clearly what functions are to be exercised by the scheme administrator and should set out any limitations on the scheme administrator's powers. Matters requiring referral to the trustees should be specified as well as arrangements for periodic reports to be made to the trustees on how the arrangements for payment of benefits are conducted on their behalf. The scheme administrator's report should be reviewed at least once a year by the trustees at a trustee meeting. As far as the actual payment of benefits is concerned, paying agents could include the scheme administrator, the employer, one or more insurance companies or any combination of these. The appointment of a paying agent is necessary to ensure that PAYE is operated on pension benefits. Trustees of insured schemes should check that they have appropriate arrangements with the insurance company for payment of benefits. See paragraph 3.25 on the duty to appoint registered administrators.

### 3.13.1 CODES OF PRACTICE

Whether the trustees are making arrangements for the payment of benefit themselves or through the use of one or more agents, procedures should be put into place to ensure that the handling of benefit payments is properly dealt with. Procedures should be set down by the trustees and agreed by the scheme administrator which will ensure that benefits are properly paid and that members receive the information to which they are entitled, and in the form prescribed by the Disclosure of Information Regulations. Such procedures should also ensure that members are given reasonable time in which to exercise any options which may be available to them, and that any items which are required to be referred to the trustees are so referred. A scheme administrator should report at least annually to the trustees. The administrator's report should be tabled for discussion at a trustee meeting.

## 3.14 RETIREMENT BENEFITS

These include retirement pensions and/or lump sums payable to members. The benefits arising under a pension scheme will be set out in its trust deed and rules. Retirement benefits may be payable on normal, early (including ill-health) or late retirement and must be dealt with in accordance with the scheme's rules and in compliance with the conditions laid down by the Revenue Commissioners (see Appendix 1).

When benefits become payable, the Disclosure of Information Regulations under the Pensions Act require that detailed information on benefits and options be given to members and these should be advised in time to allow members to consider them and make whichever choices are available to them.

### 3.14.1 PENSIONS

Pensions payable to members under schemes will most often be paid monthly (in advance or in arrears), although payment at less frequent intervals is also possible. Often, the member's pension will be guaranteed payable for a minimum period (commonly 5 years, but up to 10 years is permitted), i.e. if the member does not survive for the minimum period specified his/her full rate of pension will continue to be paid to his/her legal personal representatives or dependants as specified in the rules, for the balance of the minimum period.

### 3.14.2 RESTRICTIONS ON EARLY RETIREMENT

Scheme members should be notified of the procedures to be adopted in dealing with income tax documentation. This is done in order that the transition from payment of salary to payment of pension can be made as quickly and as easily as possible. The scheme administrator should explain the procedures for payment of tax on pensions and for the deduction of statutory levies.

### 3.14.3 CODES OF PRACTICE

Members should be notified of the procedures they should adopt in dealing with income tax documentation, so that the transition from payment of salary to payment of pension can be made as quickly and as easily as possible. Procedures for payment of tax on pensions and for the deduction of statutory levies should be explained to members by the scheme administrator.

#### 3.14.4 LUMP SUMS

Lump sum benefits payable at retirement are usually paid in commutation of pension – that is, in exchange for a portion of the member’s pension entitlement. In public sector schemes, however, they are constituted as a separate scheme benefit. Under current legislation, lump sums within the limits specified by the Revenue Commissioners are paid free of income tax. The rules of the scheme will outline the conditions under which a pension may be exchanged for a lump sum and will also specify any consents (for example, from the employer and/or the trustees) which may be needed for payment of benefits in this manner.

#### 3.14.5 OPTIONS ON RETIREMENT

In defined benefit schemes, it is customary that the options available to members will be clearly set out in the rules. In some cases, the benefit structure may be inflexible, leaving the member little or no choice as to the form which his/her benefits will take. A common option is the “commutation option” i.e., the right of a member to choose to convert part of his/her pension into a lump sum as explained in the previous paragraph. The member may also have the opportunity of foregoing part of his/her personal pension in exchange for a pension payable to a dependant on death after retirement.

In defined contribution schemes, however, the situation is very different. The benefits will emerge to the trustees as a capital sum which must be used in compliance with the terms of the scheme rules and within the limits imposed by the Revenue Commissioners to produce benefits as a combination of pensions, lump sum and possibly dependants’ pensions. For many members, the priority is to take the maximum tax-free lump sum permitted under the scheme rules. After deciding on the lump sum, but always subject to the scheme rules and to the Revenue limits, the member can decide on the balance between personal pension, dependants’ pensions payable on the death of the member after retirement, cost of living increases on pensions whilst in payment, etc. which are appropriate to his/her personal needs.

In December 2008, the Minister for Finance announced that defined contribution scheme members are to be given the option on retirement of deferring the purchase of an annuity. This measure was introduced in recognition of the difficulties facing scheme members who were due to retire where their pension funds had been badly affected by the turmoil in the financial markets during 2008.

Under this measure, defined contribution scheme members retiring between 4 December 2008 and 31 December 2010 will have the option of taking their tax-free lump sum and purchasing a retirement annuity immediately on retirement or to take the lump sum and defer the purchase of an annuity up to and including 31 December 2010. The deferment option will be subject to the agreement of scheme trustees.

The Pensions Board have issued Guidance Notes entitled “Guidance on Deferral of Annuity Purchase” which are available online from the Pensions Board website. Trustees will need to ensure that they comply with these Guidance Notes in providing scheme members with this deferral option.

Trustees should be aware of further pension options which apply to those who pay AVCs under the scheme and proprietary directors (subject to certain conditions). Subject to meeting certain minimum income requirements (detailed below), and after taking any tax free cash sum to which they are entitled, such persons can opt for a transfer to themselves or to an approved retirement fund (“ARF”) in respect of their AVCs or the balance of their pension fund (in the case of proprietary directors).

ARFs are provided by qualifying fund managers (as defined in the legislation). ARFs provide an alternative option to purchasing an annuity on retirement and enable pensioners to hold their pension fund assets in a tax-free fund post retirement. They may thus avoid potentially unattractive annuity rates. Funds in an ARF accumulate on a tax free basis but withdrawals are subject to tax in the normal way.

Section 14 of the Finance Act 2006, introduced an imputed 3% distribution on the market value of ARF assets on 31 December each year. The 3% rate was being phased in with 1% applying in 2007, 2% in 2008 and 3% in 2009 and following years. This new regime only applies where the ARF owner is 60 years of age or over for the whole of the tax year and where an ARF is set up after 6 April 2000. It does not apply to Approved Minimum Retirement Funds (“AMRFs”). The imputed distribution is calculated as a percentage of the market value of assets in an ARF on 31 December each year. Actual distributions made during the year, from an ARF or AMRF set up after 6 April 2000, normally may be deducted from the “imputed distribution” to arrive at a “net” imputed distribution (if any).

In order to introduce an element of security in old age, minimum retirement income requirements exist for those who chose an ARF. When an ARF is chosen and the pensioner is under 75, they are required to demonstrate a guaranteed income of €12,700 per annum. This amount can include state pensions. If the pensioner is unable to meet this minimum, they must either transfer €63,500 of their pension fund to an AMRF, or purchase an annuity which will bring up the level of guaranteed income to €12,700 per annum.

Assets in an AMRF may not be removed until the pensioner reaches 75. However, investment gains or income earned on the AMRF may be withdrawn prior to the pensioner reaching 75. When the pensioner reaches 75 the AMRF will be converted to an ARF and withdrawals of capital may then be made. Unlike an annuity, where early death may result in the value of the annuity paid being less than its purchase price, where a pensioner holding an ARF dies the balance held in the ARF will pass into their estate.

### 3.14.6 FURTHER INFORMATION

The Revenue Commissioners have produced a Revenue Pensions Manual (see Chapter 23 of their manual). This may be obtained directly from the Revenue or their website. For contact details see Appendix 5.

### 3.14.7 CODES OF PRACTICE

Members must be given details of the options available and the choices which are open to them in deciding upon their benefits. The exercise of options by the member – or the decision not to exercise them – should be clearly and unambiguously recorded. Confirmation in writing of the choice of option and the implementation of options is desirable.

### 3.14.8

In a defined contribution scheme, the proceeds of the scheme will almost invariably be applied by the trustees in the purchase of a life annuity from an insurance company. Scheme members who have paid AVCs or who are directors holding shares of 5% or more of the voting shares in the sponsoring employer may be able to invest in an ARF or AMRF instead. Whilst the actual purchase of the annuity may be performed by a scheme administrator on behalf of the trustees, arrangements should be in place to ensure that issues such as value, security and general suitability to meet the members’ needs have been considered and evaluated in making the decision on the insurance company from which to purchase the annuity. Trustees should encourage members to seek advice when considering their retirement options, especially in relation to investing in an ARF or AMRF.

### 3.14.9 PENSIONERS

Ongoing pension payments are usually for the lifetime of the pensioner and trustees should, as a matter of ordinary prudence, regularly review the listing of pensioners in order to ensure that all payments are valid. The conventional approach is to seek a “certificate of existence” from pensioners on a regular basis. Where the employer and/or the trustees maintain reasonably close contact with their pensioners it can be sufficient that existence is certified by these sources and a formal certificate sought only in order to remove any remaining question marks. Where an annuity has been purchased the insurance company will do this.

#### 3.14.10 CODES OF PRACTICE

Trustees should ensure that arrangements are in place for obtaining periodic evidence of continued existence of pensioners.

### 3.15 DEATH BENEFITS

Benefits are generally payable by pension schemes on the death of a member in service. Many schemes also provide a benefit on the death of a pensioner after retirement, and generally also on the death before retirement of a member who has left the service of the employer with an entitlement to deferred benefits. The benefits payable will be set out in the trust deed and rules and the form and amounts of the death benefits which may be paid in the different circumstances are also limited by the Revenue Commissioners. Death in service benefits in most schemes take the form of a lump sum but many schemes in addition also pay pension benefits to dependants and other beneficiaries. The benefits payable on the death of a pensioner in retirement will generally be in the form of a pension or pensions to surviving dependants. Payment of the member's pension for the balance of the guaranteed period may also arise (see par. 3.14.1). It is a requirement of the Pensions Act that a benefit must be payable where a member who has left with an entitlement to a preserved benefit dies before that preserved benefit becomes payable.

#### 3.15.1 LUMP SUM DEATH BENEFITS

When lump sum death benefits are payable, there is usually a discretionary power given to the trustees (or possibly the employer) to decide on the destination of these benefits. The discretionary power may be very wide indeed and may empower the trustees (or the employer) to decide on payment to any one or more of a very wide category of potential dependants or beneficiaries. Once the discretionary power is exercised, provided that it is exercised in good faith and that the trustees have done everything practicable to ascertain the facts and circumstances of potential claimants, the decision, if challenged, is unlikely to be overturned.

#### 3.15.2 “WISHES LETTERS”

Before paying out lump sum death benefits, trustees should also ascertain whether the deceased member completed a form of nomination of dependants, often known as a “wishes letter” or “expression of wishes”. Such a letter or expression of wishes cannot bind the trustees but they would normally try to give effect to the deceased member's wishes. They must not do so, where the member's wishes are in conflict with the provisions of the trust deed and rules.

#### 3.15.3 CODES OF PRACTICE

Trustees should carefully exercise any discretionary power connected with the payment of death benefits when the occasion arises. Trustees who have to exercise a discretionary power should be fully aware of the options open to them on the payment of death benefits and on the persons or categories of persons covered by definitions such as “dependants”, “beneficiaries”, etc. Trustees should ensure that enquiries are made by them, or on their behalf, which will ascertain enough detail relating to beneficiaries to enable the discretionary power to be exercised.

#### 3.15.4

Trustees should check on the death of a member as to whether a “wishes letter” has been completed.

### 3.15.5 DEPENDANTS

The scheme rules will generally define what is meant by “dependants”. The definition would generally include the spouse of the member and anyone dependent on the member for the ordinary necessities of life. Trustees may need to exercise some element of judgement in this regard in ensuring that benefits are paid in a form and in shares which reflect the needs of the dependants. Most pension schemes provide for payment of lump sum death benefits to be made directly to dependants (or other beneficiaries) rather than to the estate. Some schemes may give the option of either direct payment to the dependants/beneficiaries or payment to the estate. Direct payment to individuals rather than to the member’s estate allows benefits to be administered quickly after the death of the member, as the trustees do not have to await administration of the estate before making payment.

Where payments are being made to the estate it will be necessary to ensure that the appropriate grant of probate or letters of administration intestate have issued before such payments are made. That is not to say that trustees should never make part or interim payments before a grant issues, if such payments are made in order to relieve hardship. Trustees should, however, take legal advice before paying without a grant. This is to protect themselves in a situation where the person to whom they pay never ultimately extracts a grant, or defaults either in relation to the obligation to pay the ultimate beneficiaries under the will or in relation to tax liabilities.

### 3.15.6 CODES OF PRACTICE

If payments are to be made to the estate or the legal personal representatives of a deceased member, trustees should ensure that the appropriate grant of probate or letters of administration intestate is secured before making any payment. That is not to say that trustees should never make part or interim payments before a grant issues, if such payments are made in order to relieve hardship.

### 3.15.7 DEPENDANTS’ PENSIONS

Long-term provision for dependants under a pension scheme usually takes the form of spouses’ or other dependants’ pensions, which may be payable on the death of a member in service or on the death of a pensioner after retirement. These are frequently defined as a percentage of the member’s actual or prospective pension as the case may be. In defined contribution schemes, there may be no specific entitlement to a spouse’s pension on death after retirement but the question of providing one may be left to the member when he or she is deciding on the deployment of the capital sum available at the time of retirement in order to purchase pension benefits (see par. 3.14.4).

### 3.15.8 PAYMENT OF DEPENDANTS’ PENSIONS

In most cases, trustees can effect swift and smooth payment of dependants’ pensions to the relevant individuals. However, where the benefit is described in the rules as payable to the spouse, such benefits may be paid only to the lawful spouse of the member. Sometimes, scheme rules may give the trustees some leeway by specifying that a pension is payable to “dependants” rather than to a spouse. Trustees should remember that they may pay benefits only as provided for by the rules of the scheme. The scheme rules may also specify that additional pensions are payable to dependent children. Usually, an upper age limit is placed by the rules on children, so that their pensions must cease by the time they reach that age. The most common age of cessation of payment is eighteen but rules may provide for continued payment to a higher age if the child is in full-time education or for an unlimited period where the child is mentally or physically handicapped.

### 3.15.9 CODES OF PRACTICE

Trustees should be satisfied as to the dependency relationship of potential dependants to the deceased member where pensions are to be paid. They should ensure that arrangements are in place to ascertain the details of the dependants and obtain any necessary evidence of age, etc. which might be required especially if pensions are to be secured by the purchase of an annuity from an insurance company. Where children are involved, trustees should obtain details of educational activity and intentions in this area when relevant.

## 3.16 AUGMENTATION OF BENEFITS

Augmentation means a discretionary increase in benefits over and above the level defined in the scheme rules. Augmentation may also involve changes in benefit structures or in definitions (e.g. pensionable earnings) and may apply to an individual member, whole categories, groups of members or for the scheme as a whole. Augmentation may take place at the point of the member's joining the scheme or at any time thereafter.

The scheme rules will specify if augmentation is allowed and, if so, the conditions attaching to it. It will usually specify that the power of augmentation rests with the employer but the trustees' consent is normally required. If trustees are asked to give consent to augmentation, they must ensure that proper financial provision has been or is being made to give effect to the augmentation and that they have obtained any actuarial advice that may be appropriate. It could be a breach of trust for a trustee to agree to the augmentation of the benefits of one or more members, if this resulted in a diminution in the rights of other members of the scheme.

### 3.16.1 CODES OF PRACTICE

Whenever augmentation of benefits or an increase in the liabilities of the scheme is proposed, whether for an individual, for a group of members or for the whole scheme, trustees must satisfy themselves as to who precisely has the power to augment benefits. If the power of augmentation is vested in the employer, it may be subject to the consent of the trustees. If the power is vested in the trustees, it may be exercisable only at the request of the employer. Any actuarial advice which may be specified in the trust deed must be obtained by the trustees and any consents or advices which might be required should be fully documented. The decision to grant the augmentation should be fully and carefully documented as far as the trustees, the employer and any members affected are concerned.

## 3.17 INDEXATION OF PENSIONS WHEN IN PAYMENT

Section 56A of the Pensions Act, if commenced, would provide that trustees of defined benefit schemes which are required to produce an actuarial valuation and the rules of which do not require annual increases of pensions in payment at least equal to either

- 4% or the percentage increase in the Consumer Price Index (CPI), if less, or
- 3%

to require the scheme actuary, at least every 3 1/2 years, to report on the additional liability which would be imposed on the scheme and the resulting requirement for contributions if indexation of pensions in payment at the specified rate (annual increases of 4% or CPI if less) were provided for

- pensions then in payment and
- pensions not then in payment whose payment is anticipated.

Following receipt of each actuarial valuation report, the trustees must consider the possibility of providing indexation in respect of current and future pensioners. Where the scheme rules require the consent of the employer, the trustees' consideration of the possibility of effecting indexation must be presented to the employer and the employer must respond to the trustees.

A statutory instrument bringing Section 56A into operation has not yet been made.

### 3.17.1 CODES OF PRACTICE

If Section 56A of the Pensions Act is brought into operation the trustees of a defined benefit scheme which does not provide for indexation to pensions in payment would be obliged to require the possibility of indexation to be examined and considered at intervals not exceeding 3 years.

## 3.18 TAX/PRSI ON BENEFITS

Members', spouses' and dependants' pensions are payable subject to PAYE in the course of payment. Refunds of contributions, where permitted, are subject to the standard rate of tax at the time of payment. There may also be a tax charge on the commutation of a trivial pension, or on the full commutation of an ill-health pension. All benefits emerging from a pension fund on the death of a member are assessable on the recipients for the purposes of capital acquisitions tax (CAT). Under current legislation, spouses including divorced spouses pay no CAT.

Payments to children and other beneficiaries are subject to the thresholds which apply to those categories of beneficiary under the law. Although the liability for CAT falls upon the person receiving the benefit, the trustees have a secondary liability and can be charged in the event that the Revenue Commissioners fail to collect tax from the beneficiary.

Because of this, trustees may withhold an appropriate part of the benefit pending receipt of a certificate of exemption from CAT from the Revenue Commissioners or evidence of payment of the tax. On occasion, a beneficiary may request the trustees to deduct the tax payment from the benefit and pass it to the Revenue authorities on his or her behalf.

Benefits payable in pension form do not attract full PRSI contributions, but only the health contribution.

### 3.18.1 CODES OF PRACTICE

Trustees should ensure that appropriate tax is deducted from benefit payments and remitted to the Revenue Commissioners.

### 3.18.2

Trustees should ensure that they put in place arrangements to satisfy themselves that there is no potential capital acquisitions tax liability before finalising payments to beneficiaries or to a member's estate.

## 3.19 LEAVING SERVICE

The benefit to be conferred by a pension fund will depend entirely on its rules, except insofar as a preserved benefit entitlement is conferred by the requirements of the Pensions Act. If there is an entitlement to a preserved benefit the rules of the scheme may still give a right to a greater or additional benefit on leaving service. If there is no entitlement to a preserved benefit (e.g. in the case of a member who, on leaving, had completed less than '2 years qualifying service') the rules of the scheme may give a "vested right" to a benefit on leaving service.

Where preservation does not apply a member of a contributory scheme will usually have the option of receiving a refund of the member's contributions in lieu of any other entitlement. This option does not extend to any period in respect of which benefits must be preserved under the Pensions Act but it is possible for a person who left before 2 June 2002 to receive a refund of pre-1991 member contributions and still be entitled to a preserved benefit in respect of service after 1 January 1991.

### 3.19.1 PRESERVED ENTITLEMENTS

A member qualifies for preserved benefit if

- he left service before 2 June 2002 and he has at least 5 years qualifying service of which at least 2 years fall after 1 January 1991 or
- he leaves service on or after 2 June 2002 and he has at least 2 years qualifying service which fall after 1 January 1991.

Qualifying service is defined as service in

- the current pension scheme
- any other scheme of the same employer
- any scheme of a previous employer from which benefits have been transferred to the current scheme.

### 3.19.2 TRANSFERS

Schemes must permit a member who so wishes to transfer his/her preserved benefit entitlement to another approved funded scheme, to a suitable approved policy or contract with an insurance company, to an approved unfunded scheme and (under certain conditions) to a PRSA or an overseas pension arrangement. Similarly, scheme trustees must accept any offered transfer value representing a preserved entitlement from a scheme of a member's former employer. Transfers are dealt with in more detail in Chapter 4.

There is no statutory requirement to transfer a member's non preserved deferred benefit (e.g. in respect of pre-1991 pensionable service of a member who left before 2 June 2002). If the scheme rules permit it would be normal, however, for trustees to agree to transfer a member's full entitlement, where the member elects to transfer his/her preserved entitlement.

In certain limited circumstances trustees, instead of preserving a deferred benefit for an early leaver, may opt to buy out their liability by the purchase of an approved insurance policy or contract in the member's own name.

### 3.19.3 CODES OF PRACTICE

Trustees must ensure that satisfactory arrangements exist to notify members of their benefit entitlements on leaving the service of the employer.

### 3.19.4

Trustees must ensure that proper arrangements exist for the transfer of benefits from the scheme to another approved funded scheme, to an approved policy or contract with an insurance company, to an approved unfunded scheme, to a Personal Retirement Savings Account (PRSA) (subject to the conditions specified in the Taxes Consolidation Act 1997, the Pensions Act and regulations made thereunder), and to pension arrangements outside the State (subject to conditions specified in regulations under the Pensions Act), if so requested by members, and for acceptance of any transfers made into the scheme from other pension schemes or from PRSAs. Where a scheme would not satisfy the funding standard, the amount of the transfer payment may be reduced by the trustees on the advice of the actuary.

### 3.20 REDUCTION OF BENEFIT

Section 59B of the Pension Act provides that, notwithstanding anything in the rules of a scheme, where a benefit is payable in the form of an annual pension and the benefit has commenced, the trustees of the scheme must not reduce the amount of the benefit in any subsequent year below the amount payable in the preceding year.

### 3.21 EXCEPTION

The trustees may reduce the amount of a benefit which a person is receiving where

- the benefit has been determined without taking into account a State pension payable to the person and the rules of the scheme permit the subsequent reduction of the benefit by taking into account the State pension at or after the date at which it commences to be payable; or
- the benefit has been determined taking into account a State pension payable to the person where it is less than the full rate of old age (contributory) pension then payable and the rules of the scheme permit the subsequent reduction of the benefit by taking into account the full rate of old age (contributory) pension or retirement pension at or after the date at which it commences to be payable, and where the rules of the scheme permit
- commutation
- surrender of part of the benefit in return for a dependant's pension
- forfeiture of the benefit
- reduction as a result of the end of dependency
- a reduction or cessation of the benefit prior to normal pensionable age where the member recovers having previously retired early due to ill health.

The benefit may also be reduced by the trustees where the reduction is necessary to comply with the provisions of the Pensions Act or in accordance with regulations made by the Minister.

#### 3.21.1 CODES OF PRACTICE

Trustees must ensure that they do not reduce an annual pension after it has commenced payment unless such reduction is permitted under Section 59B of the Pensions Act.

### 3.22 INCREASES TO PENSIONS IN PAYMENT

Section 59C of the Pensions Act provides that where trustees increase an integrated pension at any time after it has commenced, notwithstanding the rules of the scheme they shall not calculate the increase by reference to an updated State pension offset.

Where the trustees of a scheme would calculate an increase to an integrated pension by reference to an updated State pension offset, notwithstanding the rules of the scheme they shall instead calculate the increase by

- calculating the amount of the scheme pension notionally payable immediately before the increase if the amount of State pension offset had at all times been nil
- calculating the percentage by which the scheme pension would be increased if the amount of State pension offset continued to be nil and
- increasing the scheme pension actually in payment by that percentage.

### 3.22.1 CODES OF PRACTICE

Trustees must comply with the provisions of Section 59C of the Pensions Act when calculating a pension increase involving a State pension offset.

## 3.23 MINIMUM VALUE OF CONTRIBUTORY RETIREMENT BENEFIT

Where a member of a contributory scheme retires after 1 June 2002 at or after normal pensionable age or within five years before normal pensionable age, the amount of the member's contributory retirement benefit is required to be increased if necessary so that its actuarial value is not less than the minimum value of contributory retirement benefit specified in Section 35A of the Pensions Act (generally, an amount equal to between 100% and 120% of the member's contributions (excluding AVCs) plus interest).

## TRUSTEE RESPONSIBILITIES – KEEPING OF RECORDS

### 3.24 TRUSTEE DUTY

The Pensions Act specifies that the trustees shall ensure that proper membership and financial records of the scheme are kept.

### 3.25 BACKGROUND

Trustees frequently delegate the administration of the scheme (including collection of contributions) to third parties or the employer and the professional investment managers. With the exception of trustees of small Trust RACs (i.e. a Trust RACs with less than 100 active and deferred members), all trustees are now obliged under Section 59 of the Pensions Act to appoint a registered administrator to undertake specified core administration functions, unless they appoint themselves as registered administrators for this purpose. This obligation came into force on 1 November 2008. The core administration functions which must be carried out by a registered administrator are:

- the preparation of annual reports
- the preparation of annual benefit statements
- the maintenance of sufficient records to provide such services.

Further details on registered administrators are contained in Chapter 5. Trustees should always keep in mind that the overall responsibility of stewardship of the scheme's assets, transactions and record keeping rests with the trustees. To become a registered administrator an entity must lodge an application with the Pensions Board certifying its competence and capability to provide the core administration functions. A list of registered administrators is available to the public on the Pensions Board website.

A registered administrator will be required to apply to the Pensions Board annually to renew its registration. Trustees can also apply to be registered as a registered administrator, but should only do so if they have the competence to undertake the core administration functions and have the necessary systems and procedures in place to do so.

### 3.25.1 CODES OF PRACTICE

Trustees must ensure that there are proper procedures and monitoring controls in place to enable accurate and complete membership and financial records to be kept by them, or on their behalf.

## 3.26 MEMBERSHIP RECORDS

Membership records will frequently be held on behalf of the Trustee by a scheme administrator and will include details of dependants and other beneficiaries as well as of the members. In practice, member details will usually be obtained directly by the scheme administrator from the employer, and updated periodically as required. As well as records of the members, records of pensioners and of early leavers with an entitlement to deferred benefits (deferred pensioners) must also be kept.

A reconciliation should be performed on a regular basis, as appropriate to the size of the scheme, between membership records held by the administrator and the employer (see also par. 3.26.4).

### 3.26.1 CURRENT MEMBERS

Typically, member records will include the member's name, gender, date of birth, date of joining service and the date of joining the scheme, marital status, details of dependants and other beneficiaries, current and historic annual salary details, transfer values received and benefits granted, member contributions and additional voluntary contributions. Trustees may also find it useful to keep details of PPS numbers. The precise nature and amount of information which must be kept will depend upon the nature of the scheme and the types of benefit provided.

### 3.26.2 ADDITIONAL MEMBER RECORDS

In any case where a member's benefit is augmented, further details may be needed in respect of benefits from previous pensionable employment, as these may need to be taken into account in calculating the maximum benefits permissible under Revenue practice. In certain circumstances, benefits accrued during previous periods of self-employment might also have to be taken into account.

### 3.26.3 PENSIONERS AND DEFERRED PENSIONERS

In addition to keeping records relating to the current membership of the scheme, it is also necessary to keep records of pensioners including name, gender, date of birth, amount of pension and, if applicable, details of their dependants or other beneficiaries. To enable payments to be made a record of home address and, if relevant, bank/building society account number must also be maintained. Records must also be kept of members who have left the employment of the sponsoring employer but retain a right to a deferred benefit under the rules of the scheme.

### 3.26.4 CODES OF PRACTICE

Trustees should ensure that membership data is provided by the employer (to the scheme administrator, if relevant) on a timely basis. Trustees should ensure consistency regarding membership records, pensionable salary details and so forth between:

- the records of the sponsoring employer;
- the annual report (amounts and disclosures) and;
- the data provided periodically to the scheme actuary and advisers (where applicable).

#### 3.26.5

Trustees should ensure that arrangements are in place for all membership records (current employees, pensioners, deferred pensioners) to be kept in a manner which is complete and up-to-date and that the records contain all information to enable benefits to be calculated having regard to the scheme structure and the nature and types of benefit provided. Most of this information will already be held by the registered administrator, where so appointed, in order for them to compile the trustee annual report and annual benefit statements. Trustees of schemes are required to appoint registered administrators to carry out such functions with effect from 1 November 2008, unless they appoint themselves as registered administrators for this purpose.

#### 3.26.6

Trustees should ensure that a record of benefit calculations with appropriate authorities or consents be maintained and that a copy of options offered to and chosen by a member be retained.

#### 3.26.7

Trustees should perform ongoing monitoring of monthly deductions paid by members to the scheme. Procedures would include, at a minimum, a periodic check to ensure deductions paid by members are made in accordance with the scheme rules and (where applicable) in accordance with the recommendations of the actuary.

### 3.27 DATA PROTECTION ACT

The Data Protection Act requires that, where personal information is kept about individuals and stored electronically, or stored manually as part of a filing system structured in such a way that specific information relating to a particular individual is readily accessible, the individual concerned must have access to it and may ask for it to be altered if it is not accurate. Those who hold it face criminal sanctions if they disclose it to persons who are not entitled to the information. The operation of the Data Protection Act is supervised by the Data Protection Commissioner. (See Appendix 5 for address of Data Protection Commissioner if further information is required).

#### 3.27.1 CODES OF PRACTICE

Trustees should ensure that Data Protection legislation is complied with and that all records are kept secure from unauthorised access.

### 3.28 FINANCIAL RECORDS

The financial records of the scheme are frequently kept on behalf of the trustees by a scheme administrator, who may also prepare the accounts for audit. With effect from 1 November 2008, a registered administrator must be appointed by the trustees to carry out certain core administration functions unless they themselves become registered administrators. This obligation does not apply to trustees of small Trust RACs.

Registered administrators must keep accurate and sufficient records of members and of their entitlements to enable them carry out such core administration functions. Trustees should ensure that they are familiar with the accounting basis on which their accounts are prepared and this is a matter which they should discuss with their administrators or auditors. In addition, registered administrators are required to provide statistical information as required by Eurostat to the Pensions Board in respect of each scheme and Trust RAC for which they act as registered administrator. This information must be provided annually in respect of scheme years commencing on or after 1 January 2008.

### 3.28.1 CODES OF PRACTICE

Trustees of all schemes should establish and maintain a trustee bank account for the scheme for the purposes of receiving contributions, paying insurance premiums, passing monies to the investment manager, paying benefits and fund expenses etc. Trustees should always be able to easily identify scheme funds. These should be kept separate from those of the sponsoring employer.

### 3.28.2

Trustees of all schemes must ensure that an accurate account of the income and expenditure of the scheme is kept and that written details of all financial transactions are retained. Where required under the terms of the Pensions Act or by the rules of the scheme, the trustees must have the accounts audited. Even where not so required the trustees may wish to consider whether the circumstances of the scheme justify having the accounts of the scheme audited.

### 3.28.3

Trustees should satisfy themselves as to the quality of any financial reports being kept on their behalf by third parties (e.g. investment manager). As part of the process of recording the financial transactions of the scheme, trustees should ensure that arrangements are in place to provide them with reports from the investment manager and any other party involved with the financial transactions of the scheme. As far as possible, they should satisfy themselves that such reports are complete and accurate and that values are reconciled.

## 3.29 CONTROLS

Trustees are required to ensure they have taken all reasonable steps for the prevention and detection of fraud and other irregularities. They should also ensure that reports received from third parties are transparent so that a clear trail exists for all transactions. For example, all schemes, even those with a small number of members, should consider the need for an audit of the financial transactions of the scheme.

### 3.29.1

Likewise, trustees should satisfy themselves that there is a robust control environment in place at the provider of any outsourced services, including administrators, investment managers and custodians.

## 3.30 SERVICE LEVEL AGREEMENTS

The terms of service level agreements with third party service providers should be reviewed regularly by the trustees to ensure that the roles and responsibilities of each party are clear and penalties for non-performance are appropriate. The service level agreement should detail minimum levels of controls and reporting in areas such as accounting, banking, investment management and custodian services. Trustees should implement, monitor and receive reports on procedures to enable performance to be measured against the level set in the service agreement.

## 3.31 COMMUNICATION PLAN

Trustees should ensure that an up-to-date membership booklet is available to members at all times. This should be reviewed on an ongoing basis to ensure consistency with the rules of the scheme, the disclosure of information obligations and the actuary's recommendations (where applicable).

### 3.31.1

Annual reports and other information required to be made available to members should be made available as early as is practicable and in all instances within the time limits set down within the legislation.

## **CHAPTER 4**

# **COMPLIANCE WITH REQUIREMENTS OF PENSIONS ACT AND OTHER LEGISLATION**

### **STATUTORY REQUIREMENTS UNDER PENSIONS ACT**

#### **4.1 PENSIONS ACT**

The Pensions Act provides for the protection of the pension rights under occupational pension schemes of scheme members and, where appropriate, their dependants. Chapter 3 deals with the main duties and responsibilities of trustees as set down in Section 59 of the Pensions Act. The trustees, however, also have a duty to ensure that the other requirements of the Pensions Act are fully complied with. As explained above these requirements are overriding i.e. they apply even if the trust deed and rules do not contain a corresponding provision or provide for something different. The duties and responsibilities of trustees, therefore, include ensuring that there is full compliance with the specific Pensions Act requirements dealt with in this Chapter, insofar as they apply to their scheme.

#### **4.2 FURTHER INFORMATION**

The Pensions Board provide guidance notes, guidelines and FAQs which are available from the Pensions Board website.

### **TRUSTEE RESPONSIBILITIES – REGISTRATION OF SCHEMES**

#### **4.3 TRUSTEE DUTY**

The Pensions Act specifies that trustees of an occupational pension scheme must ensure that their scheme is registered with the Pensions Board.

#### **4.4 REGISTRATION REQUIREMENTS**

Schemes must be registered not later than one year after the commencement of the scheme. Registration involves completing a joint Revenue Approval/Pensions Board Registration Form and sending it to the Large Cases Division of the Revenue Commissioners, who forward a copy to the Pensions Board. A reference number (PB No.) is then allocated to the scheme by the Board and a letter issued by the Board confirming registration of the scheme and the PB No. allocated.

Note: The PB No. could be inserted here for reference purposes:

Scheme PB No: \_\_\_\_\_

The PB No. should be quoted in all correspondence to the Pensions Board in relation to the scheme.

Changes to the information provided for the purposes of registration, including any changes in trustee details, must be notified to the Board. A special form (PB3) is available for that purpose.

#### 4.4.1 CODES OF PRACTICE

Trustees must ensure that their scheme is registered with the Pensions Board. Trustees could confirm that their scheme is registered by obtaining the PB No. from those who administer the scheme on their behalf or, if necessary, directly from the Board.

#### 4.4.2

Changes to scheme information on the Pension Board's register must be notified to the Board. Trustees should check at least once a year, for example when the scheme's annual report is being approved, that any such changes have been notified to the Board.

#### 4.4.3 ACCURATE AND UP-TO-DATE INFORMATION

It is essential that accurate and up-to-date information is held in respect of schemes on the Board's register. This information is required by the staff of the Board for

- monitoring compliance with the Pensions Act requirements
- carrying out investigations into the state and conduct of schemes
- arranging for payment of fees to the Pensions Board (see par. 4.6).

## TRUSTEE RESPONSIBILITIES – PAYMENT OF FEES

### 4.5 TRUSTEE DUTY

The Pensions Act specifies that trustees of most occupational pension schemes must pay an annual fee to the Pensions Board from the resources of the scheme.

### 4.6 FEE PAYMENT REQUIREMENTS

The basis for calculation of fees is prescribed in regulations. Fees are payable in respect of each year of account, which is the same as a calendar year. Fees are normally payable not later than 31 March each year. The fee due is normally based on the number of active members in the scheme at the scheme year commencement date preceding the relevant calendar year. For example, where the scheme year commences on 1 October, the fee for 2009 is based on the number of active members as at 1 October 2008.

Where the total number of active members is 500 or less the fee is currently €9.50 for each member. Where the total number of active members is between 500 and 1,000 it is €4,750 and where there are more than 1,000, €4.75 multiplied by the number of active members.

#### 4.6.1 FEE INVOICES

Fee invoices are issued by the Pensions Board. These must be completed and returned with the fee payment to the Pensions Board as soon as possible, but not later than 31 March in the relevant year of account.

#### 4.6.2 CODES OF PRACTICE

Trustees must ensure that those arranging on their behalf for payment of the annual fee to the Pensions Board calculate the amount due and pay the fee within the statutory deadline.

#### 4.6.3

Calculation and payment of the fee should be a standard item for a Trustee meeting at the appropriate time each year.

## 4.7 PENSIONS BOARD GUIDANCE

The Pensions Board provides Guidance Notes on the calculation of the fee amount due, together with guidance on how to complete the fee invoice.

## TRUSTEE RESPONSIBILITIES – PRESERVATION AND TRANSFER OF BENEFITS

### 4.8 TRUSTEE DUTY

The Pensions Act specifies that trustees must ensure that the necessary arrangements are made in the case of early leavers for

- the preservation or transfer of benefits in accordance with the provisions of Part III of the Act and the regulations thereunder
- the provision of information to members on their rights and options on leaving relevant employment in accordance with Part V of the Act and the regulations thereunder.

If an early leaver wishes to transfer his/her preserved benefit entitlement to his or her new scheme, the trustees of that scheme must accept the offered transfer value representing the preserved entitlement.

### 4.9 EARLY LEAVERS' BENEFIT ENTITLEMENT

Early leavers who have completed a minimum of 2 years qualifying service (5 years qualifying service if they left before 2 June 2002) are entitled to have their benefits either

- preserved in the scheme they are leaving and, in the case of a defined benefit scheme, re-valued at the end of every year starting with the calendar year 1996 or, if later, the year in which the member's employment terminated and ceasing with the calendar year before the benefits become payable, or
- transferred to another funded scheme of which they are, or are becoming, members, or
- transferred to a Personal Retirement Savings Account (PRSA) provided they have not been a member of the transferring scheme or of another scheme of the employer or of any associated employer for in total more than 15 years, or
- transferred to an approved insurance policy or contract, or
- transferred to an unfunded (i.e. public sector) scheme of which they are, or are becoming members provided that the trustees of the relevant scheme are willing to accept the transfer or
- transferred to an overseas pension arrangement, subject to conditions specified in regulations.

#### 4.9.1 ACCEPTANCE OF TRANSFER PAYMENTS

If, in relation to a preserved benefit, an early leaver opts for a transfer payment to his or her new scheme, the trustees of that scheme must accept such payment if the scheme is funded and may accept such payment if the scheme is unfunded. They must provide benefits equal in value to the amount of the transfer payment but they may provide such benefits in whatever form they consider appropriate.

#### 4.9.2 PROVISION OF INFORMATION

Members of schemes covered by the Pensions Act must receive full information on their rights and options on leaving relevant employment. This information must be provided to members on request while they are in relevant employment (e.g. if they want to know the position on their pension rights should they wish to change jobs) and must be provided automatically when their relevant employment terminates.

### 4.9.3

Trustees must, on request from the member, provide to the member or the PRSA provider a statement of benefits which may accrue to the member from the scheme. A PRSA provider may not accept a transfer of funds from a scheme unless the transferring member has been given by or on behalf of the PRSA provider

- a Certificate of Benefits Comparison which sets out a comparison of the benefits which may accrue from the scheme and may accrue from the PRSA
- a written statement as to why a transfer is or is not in the interest of the scheme member making the transfer.

However, a Certificate of Benefits Comparison and a written statement of why the transfer is or is not in the member's interest will not be required where the transfer value is from a scheme the winding-up of which has been notified to the Pensions Board or where the transfer value from the scheme is less than €10,000 or represents a refund of contributions, or the value of accrued benefits, to a member whose employment related to the scheme is less than 2 years and who has no preserved benefit.

### 4.9.4 CODES OF PRACTICE

Trustees must ensure that appropriate arrangements are in place to comply with the requirements of the Pensions Act in relation to the entitlement of early leavers to preserved benefits or transfer payments. Trustees must, on request from the member, provide to the member or a PRSA provider a statement of benefits which may accrue to the member from the scheme.

### 4.10 FURTHER INFORMATION

The provisions on preservation and the transfer of benefits are among the more detailed in the Pensions Act and its regulations and, therefore, it is not possible in this handbook to provide a full explanation of how they operate. Trustees, however, should have a general understanding of all aspects of these provisions, in order to be in a position to ensure that arrangements are in place for full compliance. This understanding can be obtained from the information booklet available online from the Pensions Board website and entitled "What happens to my Pension if I leave?" It also contains a useful summary on members' rights to information on leaving relevant employment.

The Pensions Board has issued detailed technical Guidance Notes for scheme administrators on the preservation of benefits requirements which are also available online from the Pensions Board website. For details see Appendix 3.

#### 4.10.1 CODES OF PRACTICE

Trustees should familiarise themselves with the preservation and transfer of benefit requirements by means of the Pensions Board's information booklet entitled "What happens to my Pension if I leave?" and the Pensions Board's Guidance Notes which are available online from the Pensions Board website.

## TRUSTEE RESPONSIBILITIES – MINIMUM FUNDING STANDARD

### 4.11 TRUSTEE DUTY

The Pensions Act specifies that trustees of a defined benefit scheme, and a defined contributions scheme which pays pensions from its own resources, must ensure that their scheme complies with the minimum funding standard requirements of the Act.

## 4.12 BACKGROUND

The objective of the funding standard is to ensure that, at a minimum, a defined benefit scheme, and a defined contribution scheme that pays pensions from its own resources, has sufficient funds to secure the pension rights members have built up should the scheme have to be wound up at any stage. Schemes are usually wound up when the employer goes out of business or if one employer purchases another employer and decides not to operate the previous employer's pension scheme.

## 4.13 LIABILITIES TO BE MET

To comply with the minimum funding standard, schemes must be able to meet the following liabilities, as set out in Section 44 of the Act:

- (a) the benefit rights of members acquired by payment of additional voluntary contributions or by transfer from another scheme to the extent that the rights to which the transfer relates were originally secured by way of additional voluntary contributions
- (b) the future pensions, including guaranteed increases, of those already receiving pensions (and those still in service and past their normal pensionable age and not receiving pensions) as well as any dependants' pensions payable following the death of the pensioner
- (c) benefit rights relating to transfers (other than additional voluntary contribution transfers) from another scheme
- (d) for those not already receiving pensions (i.e current employees and former employees who have deferred entitlements under the scheme), other benefit rights earned in respect of service before or after 1 January 1991 but excluding revaluation of preserved benefits in respect of service before 1 January 1991
- (e) a specified percentage of any other benefits payable from the scheme including revaluation of preserved benefits in respect of service before 1 January 1991
- (f) the estimated expenses of administering the winding up of the scheme.

The specified percentage referred to in (e) above can be less than 100 percent in the period up to 1 June 2012 – but must at least be maintained at the level initially certified in the first actuarial funding certificate (see below) with an effective date after 1 June 2002. Compliance with the funding standard after 1 June 2012 requires that the specified percentage be 100 per cent.

### 4.13.1 ASSETS TO MEET LIABILITIES

The calculation of the scheme's assets for the purposes of meeting the funding standard must exclude self-investment or a concentration of investment in excess of a prescribed percentage of the scheme's assets. The amounts to be excluded for schemes (other than small member controlled schemes) are as follows:

- after 31 December 2003, any self investment
- after 31 December 2003, concentration of investment in excess of 10 per cent.

Trustees should be aware of these limits in deciding on the scheme's investment objectives (see pars. 3.6 – 3.10).

Trustees should also be aware that under Article 18 of the EU Pensions Directive (2003/41/EC) investment by a pension scheme in the sponsoring employer cannot exceed 5% of the total scheme assets or where there is investment in more than one group company, 10% of the scheme assets. It is expected that regulations bringing this requirement into force will be made in September 2010.

#### 4.13.2 ACTUARIAL VALUATION

Trustees must arrange for an actuary to carry out a valuation of the scheme's liabilities and assets at regular intervals. The effective date of actuarial valuations must be not later than 3 years after the previous effective date. The trustees of schemes established after 1 January 1991 must ensure that the effective date of the initial actuarial valuation is not later than 3 years after the date of commencement of the scheme and the effective date of subsequent actuarial valuations is not more than 3 years after the previous effective date.

#### 4.13.3 ACTUARIAL FUNDING CERTIFICATES

The trustees must arrange for the actuary to complete and sign an actuarial funding certificate and submit the certificate to the Pensions Board within 9 months of the effective date of the valuation. The actuary thus certifies whether the scheme satisfies or does not satisfy the funding standard, having regard to the liabilities and assets of the scheme, as outlined above. In preparing the certificate, actuaries must have regard to such financial and other assumptions as they consider to be appropriate on the effective date of the certificate.

#### 4.14 INTERVALUATION REVIEW

Defined benefit schemes (and defined contribution schemes which pay pensions from their own resources) are subject to an intervaluation review. During the 3 year interval, in connection with the preparation of each trustee annual report of a scheme, actuarial reviews must be undertaken to establish whether the scheme continues to satisfy the minimum funding standard and corrective measures must be taken where a negative assessment arises.

##### 4.14.1 STATEMENT BY ACTUARY

Where the period to which the annual report relates ends on a day which is after the effective date of the last actuarial funding certificate, the annual report must include a statement by an actuary as to whether he is reasonably satisfied that

- if he were to prepare an actuarial funding certificate having an effective date of the last day of the period to which the annual report relates, he would certify that the scheme satisfies the funding standard, or
- where a funding proposal had been submitted with the last actuarial funding certificate because the scheme did not meet the funding standard, at the last day of the period to which the annual report relates that the scheme will satisfy the funding standard at the effective date of the next actuarial funding certificate.

When a positive statement is included in the annual report, no further action is required. Where no statement is made or a negative statement is included in the annual report the trustees must notify the Pensions Board. The trustees must also have a full actuarial funding certificate prepared (and, if relevant, a funding proposal) with an effective date not earlier than the last day of the period to which the annual report relates and submit that actuarial funding certificate to the Pensions Board within 12 months of the last day of the period to which the annual report relates.

##### 4.14.2 CODES OF PRACTICE

The trustees of a defined benefit scheme (and, if applicable, a defined contribution scheme) should

- be aware of the effective date for the next actuarial valuation for the purposes of the funding standard
- ensure that comprehensive data is submitted to the actuary within six months after the effective date of the valuation
- advise the actuary that they expect the final valuation report to be delivered to them within three months of receipt of comprehensive data in order that they are in a position to meet the statutory requirement to forward to the Pensions Board the actuarial funding certificate signed by the actuary and, if appropriate, a funding proposal, within nine months after the effective date of the actuarial valuation.

#### 4.14.3

Trustees of a defined benefit scheme (and, if applicable a defined contribution scheme) must ensure intervaluation reviews are carried out to determine whether the scheme continues to satisfy the funding standard and corrective measures undertaken if a negative assessment arises. Trustees must notify the Pensions Board if the actuary states in the annual report that the scheme would not satisfy the funding standard or where no statement is made. In such circumstances the trustees must have a full actuarial funding certificate prepared (and where relevant a funding proposal) which must be submitted to the Pensions Board within 12 months of the last day of the period to which the annual report relates.

### 4.15 FUNDING PROPOSAL

If the actuary certifies that the scheme has insufficient assets to satisfy the funding standard the trustees must ensure that a funding proposal is forwarded to the Pensions Board with the actuarial funding certificate. The funding proposal must be designed to ensure that the scheme could reasonably be expected to satisfy the funding standard at the effective date of the next actuarial funding certificate. The trustees should instruct the actuary to bring forward proposals for the range of measures that could reasonably be expected to meet such requirements. These could include:

- (a) an increase in the level of contributions to be paid by the employer and/or the scheme members
- (b) a reduction in the benefits which would be payable to or in respect of members
- (c) changes to the investment strategy in relation to the scheme's assets (see par. 4.13.1 above)
- (d) a combination of any of the measures (a) to (c) set out above.

#### 4.15.1 AGREEMENT TO FUNDING PROPOSAL

The employer should be notified by the trustees of the measures proposed. If such measures involve increased contributions and/or a reduction in benefits, it will mainly be a matter for the employer as to which of the measures proposed should be adopted.

If a funding proposal is agreed, the actuary must certify that it will meet the requirements described above. It must also be signed by or on behalf of the employer and the trustees, signifying agreement to the proposal.

#### 4.15.2 FAILURE TO AGREE FUNDING PROPOSAL

If the measures proposed require an increase in the contributions to the scheme and the trustees are unable to obtain the agreement of the employer to provide for this, the trustees should consider and seek advice on the course of action which is likely to be in the members' best interest.

#### 4.15.3 CODES OF PRACTICE

If the actuary certifies that the scheme has insufficient assets to satisfy the funding standard, the trustees must ensure that a funding proposal is forwarded to the Pensions Board with the actuarial funding certificate. Where this involves any reduction in benefits in order to comply with the funding standard, the trustees, in consultation with the employer, must ensure that the scheme members are fully informed.

### 4.16 PENSIONS BOARD DIRECTION

If trustees:

- a) fail to submit an actuarial funding certificate before the end of the statutory deadline, or

- b) submit an actuarial funding certificate which certifies that the scheme does not satisfy the minimum funding standard and fail to submit a funding proposal at the same time, or
- c) if the actuarial funding certificate certifies that the scheme does not satisfy the funding standard and the trustees of the scheme have submitted a funding proposal,

the Pensions Board may direct the trustees to take such measures as may be necessary, to reduce, in respect of members of the scheme then in relevant employment, the benefits which would be payable to or in respect of them from the scheme. The reduction in benefits must be such that the scheme would, in the opinion of the actuary, satisfy the funding standard immediately following the reduction, or in the case of a scheme referred at c) above, the scheme could reasonably be expected to satisfy the funding standard at the effective date of the next actuarial funding certificate, or a later date if allowed by the Board on application to it under Section 49(3) of the Pensions Act.

#### 4.16.1 TRUSTEE RESPONSE TO DIRECTION

Where the trustees receive a direction from the Pensions Board for the purposes of the funding standard, they must reduce the benefits as directed and notify the members of the scheme of the reduction in benefits within a period of two months or such longer period as the Board considers appropriate.

Within a further period of one month, the trustees must submit to the Board

- (a) details of the reduction in benefits, including copies of the notifications issued to members of the scheme
- (b) an actuarial funding certificate in which the actuary certifies that:
  - i) at the effective date, i.e. date of the reduction in benefits, the scheme satisfies the funding standard, or
  - ii) in the case of a scheme subject to a funding proposal that at the effective date of the next actuarial funding certificate or where applicable, any later date specified by the Board, the scheme could reasonably be expected to satisfy the funding standard.

#### 4.16.2 CODES OF PRACTICE

Should the trustees fail to forward an actuarial funding certificate and/or a funding proposal to the Pensions Board by the statutory deadline and, as a result, a direction to reduce benefits is issued by the Board, the trustees must ensure that all the requirements of the direction are met by the relevant statutory deadlines. The Board may also direct that benefits be reduced where the trustees have forwarded both an actuarial funding certificate and a funding proposal, but the actuarial funding certificate certifies that the scheme does not meet the funding standard.

#### 4.17 APPLICATION BY TRUSTEES FOR EXTENSION OF TIME TO MEET FUNDING STANDARD

The Pensions Board may, on application to it by the trustees, specify a date (as proposed by the trustees) later than the effective date of the next actuarial funding certificate as the date at which the funding proposal will be designed to ensure that the scheme can reasonably be expected to satisfy the funding standard where certain specified conditions are met and in the circumstances and on the terms that the Pensions Board considers appropriate.

##### 4.17.1

In making such an application the trustees should give their reasons as to why the later date is necessary or appropriate and not contrary to the interests of the members of the scheme. The trustees should also confirm to the Pensions Board that the members will be made fully aware of the funding position of the scheme on a discontinuance basis by category of beneficiary.

#### 4.17.2 CERTIFICATE BY ACTUARY

The application by the trustees for specification of a later date must enclose a statement whereby the actuary for the scheme certifies that the failure of the scheme to satisfy the funding standard relates wholly or mainly to the performance of relevant markets in relation to investments made with the resources of the scheme and that the performance of those markets in relation to those investments is not inconsistent with the performance generally of relevant markets for investment in the same period.

The application may in addition or alternatively specify that the liabilities of the scheme are greater than expected due to factors to be specified in regulations. [The Occupational Pension Schemes (Funding Standard) (Amendment) Regulations, 2006 (S.I. No. 295 of 2006) specify the following factors for these purposes:

- adverse experience relating to price inflation or rates of interest underlying the actuarial values over the relevant period,
- adverse experience relating to increases in pensionable earnings, or
- adverse experience relating to the payment of benefit other than long service benefits.

#### 4.17.3 PENSIONS BOARD'S DECISION

The Pensions Board may specify a date later than the effective date of the next actuarial funding certificate if, having received the certificate of the actuary, the Board considers in the context of the performance generally of relevant markets for investment, a later date is necessary or appropriate and not contrary to the interests of the members of the scheme.

The Board may specify a later date in the circumstances and on the terms it considers appropriate. Such circumstances or terms will be specified with the Board's decision. Once the Pensions Board has specified a later date the trustees should submit the actuarial funding certificate and funding proposal to the Board in accordance with the legislative requirements.

The general policy of the Board has been to consider specifying an effective date no later than ten years after the effective date of the actuarial funding certificate giving rise to the necessity for a funding proposal, apart from exceptional cases where the Board may, at its discretion, consider a later date.

The Board has now adopted a policy under which it will consider granting an effective date more than ten years after the effective date of the relevant actuarial funding certificate, in appropriate circumstances.

In considering applications for terms of more than ten years, the Board will have particular regard to the following:

- (a) the extent to which a longer term reduces the contribution rate below that required to fund a 10-year proposal;
  - (b) the existence and quality of any enforceable guarantees provided by the employer;
  - (c) the proposed investment strategy of the fund, and the extent to which the fund will be exposed to investment risk over the course of the funding period; and
  - (d) any exceptional circumstances which differentiate the scheme from other underfunded schemes.
- It should be noted that inability to pay, on its own, is not considered by the Board to constitute exceptional circumstances.

#### 4.17.4 FURTHER INFORMATION

The Pensions Board has issued detailed technical Guidelines for trustees on Section 49(3) and Section 50/50A which are available online from the Pensions Board website. For details see Appendix 3. These guidelines are being kept under review by the Pensions Board.

**4.17.5 CODES OF PRACTICE**

Where an application is to be made to the Pensions Board for an extension of the time required to meet the funding standard the trustees themselves should make the application. It should be made within such reasonable time so as to ensure that the time limits, for submission of an actuarial funding certificate and a funding proposal, specified in the Pensions Act can be met. It should propose a later date than the effective date of the next actuarial funding certificate, giving reasons as to why the later date is necessary and not contrary to the members' interests. The application by the trustees must also enclose the certificate of the actuary.

**4.17.6**

Trustees must ensure members are informed of the funding position.

**4.17.7**

Where the Pensions Board specifies a later date the trustees should submit the funding certificate and funding proposal to the Pensions Board in accordance with the Pensions Act requirements.

**4.17.8**

Trustees should refer to the Pension Board's Guidelines in respect of Section 49(3) where they are making an application for an extension of the time to meet the funding standard.

**TRUSTEE RESPONSIBILITIES – DISCLOSURE OF INFORMATION****4.18 TRUSTEE DUTY**

The Pensions Act specifies that trustees must account for how the pension scheme is run by ensuring that specified documents and information on the scheme and its operation are made available to scheme members and other specified persons.

**4.19 INFORMATION TO BE PROVIDED**

Part V of the Pensions Act and regulations made under the Act require trustees to ensure that the necessary arrangements are in place for the disclosure to members, prospective members, their spouses, other scheme beneficiaries and authorised trade unions which represent members, of –

- details about the constitution and rules of the scheme
- certain basic information about the scheme, and details of an individual's benefit entitlements under the scheme.
- information to be provided to members in certain situations, such as in the event of a wind up of the scheme.

**4.19.1 ADDITIONAL INFORMATION**

Trustees must also arrange for

- actuarial valuations (if a defined benefit scheme)
- valuation of liabilities of scheme (if a defined contribution scheme and if required)
- annual audited accounts (if a requirement), and
- annual reports
- annual benefit statements

to be prepared and made available, subject to certain exceptions and alternatives.

#### 4.19.2 MINIMUM REQUIREMENTS

The Act and its regulations set down minimum requirements. This should not prevent trustees from providing more information or from making such information more readily available.

#### 4.19.3 STATUTORY TIMESCALES

Trustees must ensure that the information to be disclosed is provided within the timescales laid down in the legislation. Trustees should, in particular, know and note when the

- annual report
- audited accounts (if a requirement), and
- actuarial valuations (if a defined benefit scheme)
- annual benefit statements

should be made available in accordance with the legislation and ensure that the necessary arrangements are made in good time by the scheme administrators to meet these deadlines.

New legislation regarding registered administrators, which came into effect from 1 November 2008 prescribes that registered administrators where appointed to carry out the preparation of annual reports and/or benefit statement must:

- prepare the annual report for signature by the trustees and deliver it to the trustees within 8 months of the scheme year end; and
- prepare the annual member benefit statements and deliver them to the trustees at least one month prior to the date by which the trustees are required to issue them to members (it should be noted that a statement of reasonable projection which will form part of the annual member benefit statement for defined contribution schemes and Trust RACs will be required for the scheme years commencing on and after 1 July 2009).

#### 4.19.4 CODES OF PRACTICE

Trustees must ensure that at a minimum the information to be disclosed on their pension scheme, its administration and finances, and on individual members' entitlements is in accordance with the Disclosure of Information Regulations under the Pensions Act. This information should be readily available and provided within the statutory deadlines. Trustees of Trust RACs must comply with their own set of disclosure regulations, the Trust RAC (Disclosure of Information) Regulations 2007 and 2008 (S.I. Nos. 182 of 2007 and 531 of 2008). These regulations are similar to the Disclosure of Information Regulations. Trustees should endeavour to provide information in a manner that is easy to understand and assimilate.

#### 4.19.5

Trustees must give a copy of the annual report for their scheme automatically to any authorised trade union which represents the members of the scheme not later than nine months after the end of the scheme year. The trustees must inform members of the availability of the annual report not later than four weeks after the time specified above and might consider circulating copies to them, although not required to do so automatically.

## 4.20 FURTHER INFORMATION

The Pensions Board information booklet “What Do You Know About Your Pension Scheme?” which is available online from the Pensions Board website provides an overview of the information which trustees of an occupational pension scheme must provide, the statutory timescales within, and the manner in which such information should be provided. More detailed guidance on these requirements is provided in Guidance Notes, which are available online from the Pensions Board website. For details see Appendix 3.

### 4.20.1 CODES OF PRACTICE

Trustees should be familiar with the Disclosure of Information Regulations, using either the Pensions Board Guidance Notes on Disclosure of Information or the Pensions Board information booklet “What Do You Know About Your Pension Scheme?”, which are available online from the Pensions Board website, as a checklist to monitor that the requirements are being complied with, with particular reference to the statutory timescales for the provision of the information. Trustees could be liable to be fined by the Pensions Board for failure to comply with these requirements. The Pensions Board “Trustee and Employer Checklists On-the-spot fines”, which is also available online from the Pensions Board website, is a useful way of ensuring that trustees do not contravene legislative requirements subject to the fines regime. For more information on on-the-spot fines see Chapter 8.

## TRUSTEE RESPONSIBILITIES – EQUAL PENSION TREATMENT IN OCCUPATIONAL PENSION SCHEMES

### 4.21 TRUSTEE DUTY

The Pensions Act specifies that trustees of occupational pension schemes, with certain exceptions, must ensure that their scheme complies with the principle of equal pension treatment, as set out in Part VII of the Pensions Act, which gives effect to EU Law in this regard.

### 4.22 EQUAL PENSION TREATMENT

Originally Part VII applied only to equal treatment for men and women and prohibited discrimination only on the ground of gender. However, the Social Welfare (Miscellaneous Provisions) Act 2004 has substituted a new Part VII which provides for equal pension treatment and prohibits discrimination on any of the following discriminatory grounds:

- Gender
- Marital status
- Family status
- Sexual orientation
- Religion
- Age
- Disability
- Race
- Membership of the Traveller community.

## 4.23 EQUAL PENSION TREATMENT REQUIREMENTS

The principle of equal pension treatment is that there shall be no discrimination on any of the discriminatory grounds in respect of any rule of a scheme. It applies in relation to the rules governing such matters as

- (a) access to the scheme
- (b) contribution arrangements
- (c) entitlements to and calculation of benefits
- (d) retirement ages
- (e) survivors' benefits.

However, it does not constitute a breach of equal pension treatment on the ground of age for schemes to fix ages for admission to the scheme or for entitlement to benefits under the scheme, including fixing different ages for employees or groups or categories of employees, provided this does not result in discrimination on the gender ground.

A person who claims not to be receiving equal pension treatment may seek redress by referring the case to the Director of Equality Investigations.

### 4.23.1 RULE CHANGES

Trustees should have their scheme rules examined with a view to identifying rules which may result in differences in treatment for members and which are contrary to the principle of equal pension treatment.

If the scheme rules discriminate between men and women, the more favourable treatment must be applied to members of both genders in respect of pensionable service from 17 May 1990 until the rules are amended to comply with the principle of equal pension treatment.

Trustees should inform the employer(s) sponsoring the scheme of the position and, in particular, of any funding implications resulting from the additional liabilities which would arise from extending the more favourable treatment to scheme members of both genders. Any changes to the rules to provide for equal treatment that would have the effect of reducing existing entitlements (e.g. raising the retirement age to 65, where previously the retirement age had been 60 for women and 65 for men), can only apply to future service from the date such changes come into force and this should also be made clear to the sponsoring employer(s).

Schemes are permitted under the Pensions Act to maintain acquired entitlements relating to pensionable service prior to 17 May 1990, for specified periods, without extending similar treatment to persons of the other gender. In the case of retirement ages, these entitlements can be maintained for up to twenty five years from 1 January 1993 i.e. up to 31 December 2017, and in every other case up to six years i.e. up to 31 December 1998.

Where a scheme rule discriminates on the ground of race, the more favourable treatment must be applied to all members in respect of service from 19 July 2003 until the rule is amended to comply with equal pension treatment on the ground of race. Where a scheme rule discriminates on any of the discriminatory grounds other than gender or race, the more favourable treatment must be applied to all members in respect of service from 2 December 2003 until the rule is amended to comply with equal pension treatment.

### 4.23.2 CODES OF PRACTICE

If certain scheme rules are found to be discriminatory, they must be changed in order to comply with statutory requirements. Trustees should discuss with the employer the possible implications for the funding of the scheme in having to apply the more favourable treatment to all scheme members.

## 4.24 FURTHER INFORMATION

The Pensions Board information booklet “A Brief Guide to Equal Pension Treatment”, which is available online from Pensions Board website, provides an overview of the discriminatory grounds prohibited by the legislation, the savings and exceptions in relation to the discriminatory grounds as applicable, and how complainants can enforce their rights where they feel a breach has occurred.

Guidance notes entitled “Equal Pension Treatment in Occupational Pension Schemes” on the application of the principle of equal pension treatment are also available online from the Pensions Board website to assist trustees and scheme administrators in determining whether the scheme rules comply with the principle of equal pension treatment. For details see Appendix 3.

### 4.24.1 CODES OF PRACTICE

Trustees must ensure that in applying the rules of their scheme there is full compliance with the principle of equal pension treatment. If necessary they should refer to the Guidance Notes on “Equal Pension Treatment in Occupational Pension Schemes” and information booklet, “A Brief Guide to Equal Pension Treatment”, which are available online from the Pensions Board website, to assist in this regard.

## STATUTORY REQUIREMENTS IN RESPECT OF PERSONAL RETIREMENT SAVINGS ACCOUNTS

### 4.25 INTRODUCTION

Personal Retirement Savings Accounts (PRSAs) are a pensions vehicle introduced by the Pensions (Amendment) Act 2002. PRSAs are designed for employees, self employed, homemakers, carers, unemployed, or any other category of person. They are a contract between an individual and an authorised PRSA provider in the form of an investment account.

### 4.26 PRSA TYPES

There are two types of PRSA, Standard PRSAs and non-Standard PRSAs. Standard PRSAs have a maximum charge of 5% of contributions paid and 1% per annum of the PRSA assets. Standard PRSAs are only permitted to invest, apart from temporary cash holdings, in pooled funds. Standard PRSAs may not be marketed or sold if their purchase is dependent on the purchase of any other product. A non-standard PRSA will not have the above mentioned maximum limits on charges and investment in funds other than pooled funds is permitted.

### 4.27 EMPLOYER’S ACCESS OBLIGATION

The Pensions Act provides that an employer who is not operating an occupational pension scheme or who is operating an occupational pension scheme which provides only death in service benefits or who is operating an occupational pension scheme which limits eligibility for membership or imposes a waiting period for membership which is greater than six months from the date of commencement of employment will have to enter into a contractual arrangement with a PRSA provider for the benefit of its excluded employees to enable those employees to participate in a Standard PRSA. Where there is no provision in the employer’s occupational pension scheme for Additional Voluntary Contributions (AVCs), a Standard PRSA must be offered for AVC purposes. This may require an amendment to the scheme rules, which should be effected as soon as possible by the trustees if such circumstances still exist.

#### 4.27.1 CODES OF PRACTICE

Where additional voluntary contributions are to be made to a PRSA under the scheme rules the trustees must ensure that any such contributions are limited to the amount required to provide the maximum benefits permitted in line with Revenue limits. The aggregate of benefits Compliance with requirements of Pensions Act and other legislation to be provided cannot exceed the maximum benefits that could be provided by the pension scheme.

#### 4.27.2

Where additional voluntary contributions are paid via a PRSA that is established as a separate arrangement which is not linked to the main scheme, it is not expected that the trustees of the main scheme have a legal responsibility to monitor on an ongoing basis the contribution and benefit limits of the members of their scheme. However, the trustees of the scheme are legally obliged to comply with the requirements of the Disclosure of Information Regulations in respect of the members' entitlement to information.

### 4.28 TRANSFERS FROM A SCHEME TO A PRSA

Subject to the rules of the scheme a member's entitlement under an occupational pension scheme may be transferred to a PRSA where benefits have not become payable to the member under the scheme, the member has been a member of the scheme for less than 15 years and either

- the scheme is being wound up, or
- the member is changing employment.

#### 4.28.1 CERTIFICATE OF BENEFITS COMPARISON

A transfer value from an occupational pension scheme cannot be and accepted by a PRSA provider unless the member has first been provided written statement by or on behalf of the PRSA provider with a certificate comparing potential benefits from the scheme and the PRSA and a written statement as to why a transfer to a PRSA would or would not be in the member's interests.

A Certificate of Benefits Comparison is not required where a transfer value from the occupational pension scheme:

- is less than €10,000, or
- represents a refund of contributions, or the value of accrued benefits, to a member whose employment related to the occupational pension scheme is less than 2 years and who has no preserved benefit.

The requirement for a Certificate of Benefits Comparison does not apply also to a scheme the winding up of which has been notified to the Pensions Board in accordance with Disclosure of Information Regulations.

#### 4.28.2 TRANSFER OF AVCS

Subject to the rules of the scheme the value of AVC contributions to an to a PRSA occupational pension scheme may be transferred at any time to a PRSA.

#### 4.28.3 TRANSFER OF PRSA TO A SCHEME

Subject to the rules of the scheme and the acceptance by the trustees of the transfer, the value of a PRSA may be transferred to an occupational pension scheme.

## 4.29 IMPLICATIONS FOR TRUSTEES

Trustees should note that the legislation places the obligation to comply with the PRSA access requirements on the employer. The obligation for trustees in relation to PRSAs is to monitor contribution and benefit levels where additional voluntary contributions are made via a PRSA under the scheme rules.

### 4.29.1 FURTHER INFORMATION

The Pensions Board has produced the following booklets in relation to PRSAs

- Personal Retirement Savings Accounts (PRSAs) Employer’s Obligations
- Personal Retirement Savings Accounts (PRSAs) A Consumer Guide.

For details see Appendix 3.

## STATUTORY REQUIREMENTS UNDER FAMILY LAW ACTS

### 4.30 FAMILY LAW ACTS

The Family Law Act, 1995 addresses the issue of pension benefits in the context of judicial separations (and foreign divorces which are recognised in this country). Similar legislation relating to Irish divorces is laid down in the Family Law (Divorce) Act, 1996. In effect, these two pieces of legislation require that pension rights must be taken into account by the court where, following a judicial separation or divorce, the parties to the marriage apply to the court for one or more of the various types of order prescribed under the Acts for the purposes of financial settlement. The legislation only applies where the decree is granted, or the marriage dissolved, after the relevant Act was brought into operation i.e. 1 August, 1996 (judicial separations and foreign divorces) or 27 February, 1997 (Irish divorces). The legislation does not apply to separation agreements not involving the court.

### 4.31 PENSION BENEFITS

For the purposes of the legislation, “pension benefits” refers to rights earned from any type of scheme or arrangement. This would include benefits arising from membership of a company pension scheme (including additional benefits acquired due to payment of AVCs) or payment of contributions to a retirement annuity policy for the self-employed.

Pension benefits arising from participation in an overseas pension arrangement fall within the scope of the legislation. For the purposes of the legislation, pension benefits must fall under one of two headings: Retirement benefits, Contingent benefits.

#### 4.31.1 RETIREMENT BENEFITS

This refers to all benefits payable to the member of the pension scheme, or to others, at or following retirement or earlier withdrawal from service. The benefits could include retirement pensions; retirement lump sums or gratuities; benefits (such as dependants’ pensions) payable following the member’s death in retirement and guaranteed increases to pensions whilst in payment. The definition of retirement benefits includes benefits arising from a previous employment which have not yet commenced, retirement pensions which are in course of payment and prospective benefits arising from a current employment.

#### 4.31.2 CONTINGENT BENEFITS

This refers to benefits which are payable under the rules of the pension scheme in the event of the death of the member during the period of employment (or self-employment) to which the scheme relates. (In a company pension scheme, contingent benefits are generally referred to as ‘death in service’ benefits.) The definition includes lump sum benefits and pensions payable to dependants.

## 4.32 TYPES OF COURT ORDER

The court, in recognising the value of pension benefits, may take two broad approaches:

- (1) The court may serve an order (known as a ‘pension adjustment order’) on the pension scheme of which either spouse is a member, requiring the trustees of that scheme to pay a proportion of the pension benefits to the other spouse or for the benefit of a dependent member of the family.
- (2) The court may take account of pension benefits by means of any other type of order under the Act (e.g. by making an adjustment to the allocation of non-pension matrimonial assets such as the family home).

### 4.32.1 PENSION ADJUSTMENT ORDER

Where the court decides to make a pension adjustment order, the legislation empowers it to make either or both of the following two types of order:

- Pension adjustment order – retirement benefits  
An order in relation to retirement benefits may be made in favour of either the dependent spouse or a person (e.g. a grandparent) for the benefit of a dependent child. The order is served on the trustees of the pension scheme and requires that they pay a specified part of the retirement benefits earned by the member in question to the person named in the order.
- Pension adjustment order – contingent benefits  
An order in relation to contingent benefits may be made in favour of the dependent spouse and/or a person for the benefit of the dependent child. The order is served on the trustees of the pension scheme and requires that a specified part of the contingent benefits must be paid by them to the person(s) named in the order.

## TRUSTEE RESPONSIBILITIES – COMPLIANCE WITH PENSION PROVISIONS OF FAMILY LAW ACTS

### 4.33 TRUSTEE DUTY

Section 12 of the Family Law Act, 1995 and Section 17 of the Family Law (Divorce) Act, 1996 require trustees to ensure that the necessary arrangements are in place for the purposes of complying with the pensions provisions of these two pieces of legislation, following the grant of a decree of judicial separation or divorce.

### 4.34 PROVISION OF INFORMATION

Under Section 54 of the Pensions Act (disclosure of information), the spouse of a member of a company pension scheme is entitled, on request, to receive specified basic information in relation to that scheme (including legal documentation and annual reports and where these are produced, copies of audited accounts and actuarial valuations). The provisions of the Disclosure of Information Regulations will apply if proceedings for the granting of a decree have been instituted and will continue to apply following the granting of a decree.

The court may also direct the trustees to provide more specific information in respect of the member spouse’s scheme benefits and such information must be provided within the period specified by the court.

#### 4.34.1 CODES OF PRACTICE

Where the court directs trustees to provide more specific information in respect of the member spouse’s scheme benefits, the trustees of the scheme concerned must provide the information within the period specified by the court. With the consent of the member spouse, the trustees should provide the information voluntarily to avoid putting the parties to the expense of obtaining a court order.

## 4.35 NOTICE OF APPLICATION

A person who applies for an order under the legislation must give notice thereof to the trustees of each scheme involved. The trustees may wish to make representations to the court in relation to the application and the court must have regard to any such representations in deciding whether or not to make an order and in determining the provisions of the order.

### 4.35.1 CODES OF PRACTICE

The trustees should co-operate with the parties in endeavouring to facilitate the making of a pension adjustment order by the court on a consensual basis in order to minimise the necessity of court appearances on behalf of the trustees, with the resultant costs to the parties.

## 4.36 CALCULATION OF BENEFITS – RETIREMENT BENEFITS

Where the court decides to make a pension adjustment order in relation to retirement benefits, part of the member spouse's benefit is designated for payment to the other spouse (or to a person representing a dependent child). This part is called the designated benefit.

### 4.36.1 ROLE OF COURT

The court will rule on the two key factors which will determine the amount of the designated benefit. These are:

- the relevant period (i.e. the period over which retirement benefits were earned which is to be taken into account)
- the relevant percentage (i.e. the proportion of the retirement benefits earned during the relevant period which is to be allocated to the person specified in the order).

### 4.36.2 ROLE OF TRUSTEES

The trustees will then calculate the designated benefit, following the procedures set out in the legislation and in detailed Guidance Notes which have been issued by the Pensions Board. The calculation depends on whether the retirement benefits are determined on a defined benefit or a defined contribution basis.

## 4.37 PAYMENT OF BENEFITS – RETIREMENT BENEFITS

Payment of the designated benefit would generally commence when the remainder of the retirement benefit starts to be paid to the member spouse. Alternatively, if the pension adjustment order is made in favour of the dependent spouse (rather than for the benefit of a dependent child) he/she may elect to establish an independent benefit in lieu of retaining the designated benefit in its original form.

### 4.37.1 ESTABLISHMENT OF INDEPENDENT BENEFIT

If the pension adjustment order is made in favour of the dependent spouse then he/she may request that an independent benefit be established in lieu of retaining the designated benefit. To facilitate the establishment of independent benefits, a "transfer amount" is calculated which represents the value of the designated benefit which might otherwise be payable. The transfer amount is then applied (in either the same scheme or another pension arrangement) to provide independent benefits for the dependent spouse. The independent benefits must be of the same value as the transfer amount. The agreement of the trustees is required before the independent benefit can be established in the same scheme or in another occupational pension scheme of which the dependent spouse is a member. No agreement is required where it has been established under an approved insurance policy.

#### 4.37.2 CODES OF PRACTICE

Where the dependent spouse requests that an independent benefit be established on his/her behalf the trustees should advise him/her of the options available regarding any transfer amount that may be available in lieu of retaining the designated benefit.

#### 4.37.3

If the independent benefit is being established in the same scheme of which the member spouse is a member, the trustees of the scheme must ensure that the alternative benefit meets with the requirements of the Revenue Commissioners and that its actuarial value is equivalent to the transfer amount. They must also inform the dependent spouse of the nature and amount of the alternative benefit as soon as is practicable after the transfer has taken place.

#### 4.37.4

If the transfer amount representing the value of the designated benefit is being paid into a scheme of which the dependent spouse is a member then the trustees of the receiving scheme must ensure that the alternative benefit complies with Revenue requirements and is of the same actuarial value as the transfer amount. They must also inform the dependent spouse of the nature and amount of the alternative benefits as soon as is practicable after the transfer has taken place.

#### 4.37.5

If the dependent spouse requests the trustees of the pension scheme of which the member spouse is a member to pay the transfer amount to an approved insurance policy, the trustees must comply with that request and pay the transfer amount directly to the insurance company in question.

### 4.38 CALCULATION OF BENEFITS – CONTINGENT BENEFITS

The court will determine whether a pension adjustment order should be made in relation to the contingent benefits and the provisions of the order. Specifically the order will detail the person or persons in whose favour it is made (this may be the dependent spouse and/or a person representing the children) and the percentage of each element of the contingent benefits that is to be payable to such person(s).

### 4.39 PAYMENT OF BENEFITS – CONTINGENT BENEFITS

On the death of the member spouse during the period of employment (or self-employment) to which the pension scheme relates, the percentage of contingent benefits as specified in the order must be paid to the appropriate person(s). The contingent benefits in question are those applying based on the rules of the scheme at the date of the judicial separation or divorce (i.e. subsequent improvements or reductions in contingent benefits are ignored) and, if relevant, the member spouse's salary (or pensionable salary) at date of death.

### 4.40 TRUSTEE COSTS

The legislation provides that costs incurred by the trustees in complying with a pension adjustment order, or a direction of the court, shall be borne by the member spouse and the other person concerned in such proportions as the court may determine. Similarly, costs incurred by the trustees where they choose to make representations to the court, following notice of an application for an order, shall be borne by the parties to the proceedings, as the court may determine.

#### 4.41 FOLLOWING PENSION ADJUSTMENT ORDER

If a pension adjustment order is made the registrar or clerk of the court will serve a copy of the order on the trustees of each scheme involved. Following the receipt of a pension adjustment order(s), the trustees should notify the person(s) in whose favour the order is made of the amount and nature of the benefits which have been designated under the order(s).

#### 4.42 PENSIONS BOARD GUIDANCE

The pension provisions of the Family Law Act, 1995 and the Family Law (Divorce) Act, 1996 (the ‘Family Law Acts’) and the Pension Schemes (Family Law) Regulations, 1997 (S.I. No. 107 of 1997) like those on preservation (see par. 4.9), are among the more detailed statutory requirements with which trustees have to comply and, therefore, it has only been possible in this handbook to provide a brief overview of the main provisions and requirements. Trustees, however, should have a general understanding of all aspects of these provisions, in order to ensure that the necessary arrangements are in place for full compliance. This understanding can be obtained from the information booklet entitled “A Brief Guide to the Pension Provisions of the Family Law Acts” which is available online from the Pensions Board website. For details see Appendix 3.

##### 4.42.1 CODES OF PRACTICE

Trustees should familiarise themselves with the pension requirements of the Family Law Acts and the Pension Schemes (Family Law) Regulations, 1997 (S.I. No. 107 of 1997). The Pensions Board information booklet entitled “A Brief Guide to the Pension Provisions of the Family Law Acts” provides useful guidance for trustees on this aspect of pensions legislation. This booklet is available online from the Board’s website.

### STATUTORY REQUIREMENTS UNDER THE PART-TIME WORK ACT

#### 4.43 PART TIME WORK ACT

The Protection of Employees (Part-Time Work) Act, 2001 implements Directive 97/81/EC of 15 December 1997 and came into force on 20 December 2001. It affords part-time employees, (i.e. those persons whose normal hours of work are less than the normal hours of work of full time employees), the right not be treated less favourably than comparable full time employees (as defined in the Part-Time Work Act). An exemption exists where there is an objective justification for the less favourable treatment and, in relation to pensions only, where the part-time employee works less than 20% of the normal hours of work of the comparable full-time employee. The Part-Time Work Act covers conditions of employment which, in relation to a pension scheme or arrangement, includes conditions for membership of the scheme, entitlements to rights under the scheme and conditions relating to the making of contributions to the scheme. A pro-rata principle applies to the amount or scope of benefits under conditions of employment.

#### 4.44 IMPLICATIONS FOR TRUSTEES

Trustees should note that the Part-Time Work Act places the obligation on employers not to treat part-time employees less favourably than a comparable full time employee. However, trustees should be aware of the requirements of the Part-Time Work Act, the implications for the sponsoring employer and how the employer’s compliance with the Part-Time Work Act may impact on the scheme.

#### 4.45 IMPLICATIONS FOR THE SCHEME

Where an employee switches from full-time work to part-time work his/her membership of the scheme must continue as long as his/her work is comparable to that of a full-time employee. The maximum benefits permitted by the Revenue Commissioners will take into account the periods of full-time and part-time service. Trustees should note that the effect on such a member's benefit will depend on whether he or she is a member of a defined benefit or defined contribution scheme. Their benefits in respect of their full-time service must be protected. The retirement benefits accrued up to the date of decreasing their working hours may not be reduced. However, the benefits from that date onwards will probably be reduced in proportion to the number of hours worked. This should be detailed in the rules of the scheme.

Where they are a member of a defined contribution scheme their entitlement to the fund accumulated to date remains. However, future contributions will probably be based on their reduced salary.

##### 4.45.1

Trustees may wish to inform the sponsoring employer(s) whether part-time employees are eligible for membership under the rules of the scheme or not.

##### 4.45.2

Where the employer proposes to admit part-time employees, who had previously been excluded from membership, the trustees should be aware of any funding implications resulting from the admittance of part time employees.

##### 4.45.3 CODES OF PRACTICE

Where the employer wishes to amend the rules of the scheme in order to admit part-time employees, the trustees should discuss with the employer the possible implications for the scheme, and in particular, where it is a defined benefit scheme, the funding of the scheme.

##### 4.45.4

Trustees may consider it necessary to seek actuarial and legal advice in relation to any scheme amendments for which their consent is required and in relation to any backdating of membership.

#### 4.46 FURTHER INFORMATION

The Pensions Board has produced FAQs on Part-Time Work and Pensions which are available online from the Pensions Board website. For details see Appendix 3.

### STATUTORY REQUIRMENTS UNDER THE FIXED-TERM WORK ACT

#### 4.47 FIXED TERM WORK ACT

The Protection of Employees (Fixed-Term Work) Act 2003 implements the EU Fixed-Term Work Directive (1999/70/EC) in Ireland and came into force on 14 July 2003. It affords fixed-term employees (i.e. those persons whose contracts of employment are due to end when a specified date is reached, a specified event occurs or a specified task has been completed), the right not to be treated less favourably than their comparable permanent employee (as defined in the Act). An exemption exists where there is an objective justification for the less favourable treatment and, in relation to pensions only, where the fixed-term employee works less than 20% of the normal

hours of work of the comparable permanent employee. The Fixed-Term Work Act covers conditions of employment which, in relation to a pension scheme or arrangement, include conditions for membership of the scheme, entitlements to rights under the scheme and conditions relating to the making of contributions to the scheme.

A pro rata principle applies to the amount or scope of benefits under conditions of employment. In determining whether there is less favourable treatment there is the possibility of taking the employee's conditions of employment as a total package as opposed to comparing individual terms only.

#### **4.48 IMPLICATIONS FOR TRUSTEES**

Trustees should note that the Act places the obligation on employers not to treat fixed-term employees less favourably than a comparable permanent employee. However, trustees should be aware of the Fixed-Term Work Act and its implications for the sponsoring employer and how the employer's compliance with the Fixed-Term Work Act may impact on the scheme.

#### **4.49 IMPLICATIONS FOR THE SCHEME**

Trustees may wish to inform the sponsoring employers whether fixed-term employees are eligible for membership under the rules of the scheme.

##### **4.49.1**

Where the employer proposes to admit fixed-term employees, who had previously been excluded from membership, the trustees should be aware of any funding implications resulting from the admittance of fixed term employees.

##### **4.49.2 CODES OF PRACTICE**

Where the employer wishes to amend the rules of the scheme in order to admit fixed-term employees, the trustees should discuss with the employer possible implications for the scheme, and in particular, where it is a defined benefit scheme, the funding of the scheme.

##### **4.49.3**

Trustees may consider it necessary to seek actuarial and legal advice in relation to any scheme amendments for which their consent is required and in relation to any backdating of membership.

## CHAPTER 5

# OTHER ADMINISTRATIVE RESPONSIBILITIES

### INTRODUCTION TO PENSION SCHEME ADMINISTRATION

#### 5.1 TRUSTEE RESPONSIBILITIES

Trustees have responsibility for the administration of their scheme, even though the practical day-to-day functions will generally be delegated, perhaps to a professional administrator or to a section of the employer's staff. In fact, with the exception of trustees of small Trust RACs, all trustees are now obliged under Section 59 of the Pensions Act to appoint a registered administrator to undertake specified core administration functions, unless they appoint themselves as registered administrators for this purpose. This obligation came into force on 1 November 2008 (for more information on registered administrators see Paragraph 3.25). However, even if such functions are carried out by a separate registered administrator, it still remains the ultimate responsibility of trustees to ensure that the day-to-day care of the scheme is carried out properly and efficiently and that the benefits are administered in accordance with the rules of the scheme.

##### 5.1.1 SERVICE LEVEL AGREEMENTS (“SLA”)

Although written agreements between trustees and a third party administration services provider are not compulsory, they are recommended as best practice by the Pensions Board. An SLA should contain the following provisions:

- the start date and term of the agreement
- what duties, powers and functions of the trustees are to be delegated to the administrator
- measurable standards of the care, skill and diligence that should be applied to each of the functions carried out by the administrator
- the timelines under which the administrator is to carry out each of their functions
- frequency of compliance reports to be given by the administrator to the trustees
- liability of both parties for any loss incurred
- resolutions of disputes, and
- provisions dealing with confidentiality of information, data protection and protection of computer records should also be included.

#### 5.2 PROCEDURES

In carrying out their duties in relation to administering the scheme, trustees must follow any procedures laid down in the trust deed and rules. New trustees in particular should discover what procedures the existing trustees have established for the conduct of their duties, or what practical arrangements exist where these duties are delegated. The matters referred to in the following paragraphs should serve as a form of checklist.

##### 5.2.1 DOCUMENTS AGREED

These may be the scheme rules themselves or a set of procedures governing in accordance with the scheme rules and recorded in, for example, minutes of a trustee meeting.

### 5.2.2 ADVISERS TO SCHEME

Establish who these are, and their respective fields of operation.

### 5.2.3 METHOD OF ADMINISTRATION

Whilst the methods of payment of benefits and collection of contributions will become clear in practice, a new trustee in particular should seek an explanation of the general procedures being followed.

### 5.2.4 DUTIES DELEGATED

New trustees should ascertain whether certain trustees, or committees of the trustees, have had certain duties delegated to them (for example the operation of the trustee bank account or exercising discretions as to payment of lump sum death benefits); and which duties are delegated outside the trustee body altogether (for example the actual payment of benefits). Delegation is generally effected by resolution of the trustees and appropriately recorded in the minutes of their meetings. Trustees must be clear on their powers of delegation before attempting to pass on duties to other parties.

### 5.2.5 INVESTMENT

An investment committee may have been appointed and new trustees should ascertain any guidelines under which this operates. The new trustee should see any investment management agreement and any documents or letters which accompany it.

### 5.2.6 COMMUNICATION CHANNELS

New trustees should establish who is available to assist them, and on what basis. They should also establish what information about the scheme they are required or expected to communicate to members. Communication with members will be done in the name of all the trustees and not by an individual trustee (unless delegated to do so). In practice, much member communication is carried out for the trustees by the scheme administrator.

## GENERAL SCHEME ADMINISTRATION

### 5.3 TRUSTEE FUNCTIONS

Pensions administration involves a wide variety of activity, including:

- contact with the employer
- contact with external authorities e.g. the Revenue Commissioners and the Pensions Board
- contact with members
- paying benefits
- record keeping
- financial management
- scheme accounts
- decision-taking
- delegation of trustee powers and duties
- trustee meetings
- providing information to advisers and insurers where appropriate
- dealing with reports received from advisers
- providing documents to others.

In practice, many of the foregoing functions are undertaken on behalf of the trustees by the scheme administrator (which could be the employer, a pensions consultant or professional administrator or a life assurance company). The trustees should note that, with the exception of trustees of small Trust RACs, all trustees are now obliged under Section 59 of the Pensions Act to appoint a registered administrator to undertake specified core administration functions, unless they appoint themselves as registered administrators for this purpose. This obligation came into force on 1 November 2008 (for more information on registered administrators see Paragraph 3.25).

The following paragraphs will assume that most functions have been delegated to a third party administrator, except in the obvious areas such as trustee meetings, or the exercise of trustee discretions which cannot be delegated.

### 5.3.1 CONTACT WITH EMPLOYER

There will be contact with the employer in relation to the normal operation of the scheme. The following are the principal areas in which this is required:

- agreement and procedures for the collection, along with the payment to the trustees (or direct to the investment manager) of employer and employee contributions.
- arrangements for the collection of relevant personal data relating to members of the scheme and other beneficiaries.
- transmission to members of documents and information relating to the scheme.

If a conflict were ever to arise between the trustees and the employer, the duty of the trustees is to give effect to the provisions of the trust deed and rules and to their duties under trust law and the Pensions Act for the benefit of the beneficiaries.

### 5.3.2 CONTACT WITH REVENUE COMMISSIONERS

There will be contact with the Revenue Commissioners in relation to the approval of the scheme and the giving of certain undertakings to the Revenue in order to obtain tax approval. In order to qualify for tax approval the benefits of the scheme must be maintained and administered within the limitations laid down by the Revenue Commissioners. There is also the requirement to account for taxation e.g. tax on pension payments, refunds of contributions and, in certain cases, lump sums.

### 5.3.3 CODES OF PRACTICE

The trustees should ensure that the scheme has been fully approved by the Large Cases Division of the Revenue Commissioners and should be aware of the Revenue reference number allocated to the scheme.

### 5.3.4

The trustees should seek an assurance from the administrator that checks are in place to ensure that all contributions paid and benefits payable are within the limits as set down in the Revenue Pensions Manual.

### 5.3.5

The trustees should ensure that arrangements are in place for the payment of any tax payable from the scheme to the Revenue Commissioners.

### 5.3.6 CONTACT WITH PENSIONS BOARD

The pension scheme must be registered with the Pensions Board and arrangements made for the payment of fees to the Pensions Board. Trustees must also ensure that the information maintained by the Board is up-to-date and, in the case of defined benefit schemes, that the actuarial funding certificate for the scheme is submitted to the Board. The duties and codes of practice in these areas are set out in paragraphs 4.4, 4.6 and 4.13.

### 5.3.7 CONTACT WITH MEMBERS

There will be contact with the members principally in relation to:

- provision of information to new entrants
- producing benefit statements for members as provided for in the Disclosure of Information Regulations made under the Pensions Act
- issuing information to members relating to their entitlements and options at retirement or on leaving service and dealing with general enquiries regarding the scheme
- obtaining evidence of age for members and other beneficiaries
- explaining options available to members e.g. options to provide additional dependants' pensions, the facility to make additional voluntary contributions (AVCs) etc
- providing information to enable members to consider the transfer of benefits secured under previous pension arrangements
- the completion of “wishes letters” by members indicating their preferences as to the manner of payment and destination of payment of death in service benefits
- ensuring that members fulfil any medical or attendance at work requirements of insurers in appropriate cases
- notifying members of the availability of the annual report of the Scheme
- providing, on request, to members copies of the scheme's annual report, audited accounts, actuarial valuation, etc., as provided for in the Disclosure of Information Regulations.

### 5.3.8 PAYING BENEFITS

The duties and codes of practice in relation to payment of benefits are set out in paragraphs 3.12 – 3.19.

### 5.3.9 RECORD KEEPING

The duties and codes of practice in relation to record keeping are set out in paragraphs 3.24 – 3.28.

### 5.3.10 FINANCIAL MANAGEMENT

The management of the fund of money which is there to finance the benefit promise under the scheme will, in most cases, be delegated by the trustees to a professional investment manager. Trustees of insured schemes will almost certainly rely on the insurance office concerned to provide all the general administrative services needed in running the scheme. Nevertheless, the trustees and the administrators, acting on the trustees' behalf, have roles to play in the overall management of the scheme finances on a day-to-day basis. These duties and codes of practice are set out in detail in paragraphs 3.4 – 3.5, 3.6 – 3.10 and 3.24 – 3.28.

### 5.3.11 SCHEME ACCOUNTS

The keeping of accounts is fundamental to the proper conduct of every pension scheme. The requirements of the Disclosure of Information Regulations in relation to accounts are set out in Guidance Notes issued by the Pensions Board which are available online from the Board's website. For details see Appendix 3. Even where not required by the Pensions Act, the trust deed and rules may specify that the scheme accounts must be audited.

## TRUSTEE DECISION-MAKING

### 5.4 PRACTICALITIES

The general principles of trustee decision-making are set out in paragraph 2.9. In practice, trustees are expected to make prudent decisions in relation to the management of the scheme and in particular must give express effect to the provisions of the trust deed and rules. Trustees will also need to be conscious of areas where decisions to be taken are at the discretion of the trustees solely, or require input from another party, such as the employer. Certain of the areas where decisions are required will need the consent of the employer or where specified in their Pensions Manual, the Revenue Commissioners. It is also possible that the trust deed and rules may specify a requirement for consultation with a third party before making a decision. Sometimes the views of the members and employer may be very relevant to the matter in hand e.g. securing benefits on wind-up which would affect members, or making a decision to change the investment manager which would affect employers. Such factors should be taken into account by the trustees when reaching a decision.

#### 5.4.1 CODES OF PRACTICE

Trustees should exercise their own judgement and not automatically act in accordance with the wishes of the employer or of any group of members, or even of all the members. That is not to say that trustees should ignore the views of the employer or the members; they should listen to them carefully, but in the end they should make up their own minds as to what will best serve the interests of the beneficiaries.

### 5.5 SEEK CONSENSUS

Trustees should act collectively, and it is the duty of each trustee to take account of the views of others and to seek a consensus.

### 5.6 MAJORITY OR UNANIMOUS DECISION

In general trust law the decisions of trustees must be unanimous in order to be effective. This will always be so if the trust instrument is silent on the decision-making process. The trust deed and rules, however, may provide that, in making decisions, the view of the majority will prevail over that of the minority.

## DELEGATION OF TRUSTEE POWERS AND DUTIES

### 5.7 GENERAL PRINCIPLE

It is a general principle of trust law that trustees cannot delegate their powers and duties unless they have authority to do so. Since it will be apparent that no pension scheme trustee can carry out all of the functions and day-to-day administration tasks, most trust deeds give trustees wide powers of delegation.

Even where trustees are authorised to delegate their functions they remain responsible for the exercise of proper care in the administration of the trust. They must therefore take great care in selecting the person or organisation to whom they delegate a specific function and, furthermore, must monitor and review the actions of that person or organisation.

Depending on the nature and circumstances of the scheme, typically the other functions delegated to a third party administrator would include the following (this list should not be taken as exhaustive):

- registration of scheme with Pensions Board and payment of fees
- collection and payment of contributions to the appropriate party
- investment and custodianship of scheme's assets

- where applicable, preparation and maintenance of a written statement of investment policy principles
- payment of benefits
- furnishing of information to actuary/auditor in connection with actuarial valuation, and audit of accounts
- deduction/payment of tax on benefits to Revenue
- seeking advice of actuary where required under rules (e.g. in the case of early retirement, calculation of transfer values, payment of AVCs, etc)
- obtaining consent of employer etc. where required for payment of benefit
- requesting forms, evidence of age, other information from members to enable benefits to be paid or underwritten.

### 5.7.1 CODES OF PRACTICE

Trustees may delegate only to the extent that they are empowered to do so by the trust deed.

### 5.7.2

Trustees should take great care in selecting the person or organisation to whom they delegate a specific function and should monitor and review the actions of that person or organisation at regular intervals. Trustees should put a service level agreement in place when delegating any of their functions to any person or organisation.

## REGISTERED ADMINISTRATORS

### 5.8 APPOINTMENT OF REGISTERED ADMINISTRATORS AND REGISTERED ADMINISTRATOR FUNCTIONS

#### 5.8.1

As mentioned in paragraph 5.1 above, with the exception of trustees of small Trust RACs, all trustees are now obliged under Section 59 of the Pensions Act to appoint a registered administrator to undertake specified core administration functions, unless they appoint themselves as registered administrators for this purpose. This obligation came into force on 1 November 2008.

To become a registered administrator an application must be made to the Pensions Board whereby the applicant certifies their competence and capability to provide the core administration functions. Trustees themselves can apply to become registered administrators where they are satisfied that they have such competence and capabilities. A registered administrator will be required to apply to the Pensions Board annually to renew its registration. A list of registered administrators is available on the Board's website. More details on registered administrators are contained in paragraph 3.25 above.

#### 5.8.2

The specific functions which must be carried out for trustees by registered administrators are:

- the preparation of annual reports
- the preparation of annual benefit statements and
- the maintenance of sufficient records to provide such services.

Registered administrators are also required under the Disclosure of Information Regulations to submit to the Pensions Board annually certain prescribed information concerning schemes and Trust RACs on whose behalf they provide core administration functions.

Further information on registered administrators is available from the Pensions Board “FAQs on Registered Administrators” which is available online from the Pensions Board website.

## TRUSTEE MEETINGS

### 5.9 PURPOSE

The trustee meeting is one of the most important methods by which trustees discharge their functions. Trustees need to hold regular meetings to review the operation of the scheme and supervise the actions of the administrators and advisers to whom they have delegated many of their functions. The trustee meeting also serves as the main forum for trustees to exercise their discretionary powers where the trust deed is not specific about the course of action trustees should take in reaching a particular decision.

### 5.10 FREQUENCY AND TIMING

The trust deed may specify how often trustees must hold trustee meetings; if not, it is a matter to be decided by the trustees, having regard to the circumstances. It is essential for the trustees of all schemes to meet some time after the scheme year end to consider such items as the trustee annual report, the scheme accounts and perhaps auditors’ report, report from investment manager, etc. Other items such as the need to exercise a discretionary power following the death of a member could clearly require a meeting at any time of the year. The size and complexity of the scheme may also be factors in deciding how often trustees need to meet.

#### 5.10.1 CODES OF PRACTICE

As an absolute minimum trustees should meet once a year, as soon after the scheme year end as is feasible, to consider and approve the scheme’s annual report and any other issues then arising.

### 5.11 MEETINGS

The agenda for the trustee meeting will contain a summary of the main points for discussion at the meeting which will be dictated by the needs of the scheme. The agenda will usually be prepared by the secretary to the trustees. A typical agenda might look something like this:

#### AGENDA

1. Minutes of previous meeting – for approval
2. Matters arising from previous meeting
3. Actuarial Valuation Report
4. Administrator’s Report
5. Investment Manager’s Report
6. Meeting with Investment Manager
7. Approval of Financial Statements
8. Trustee Report for Members
9. Discretionary matters
  - Death benefit – Mr. Browne
  - Proposal to increase pensions in payment
10. Any Other Business
11. Date of next meeting

### 5.11.1 RECORDING DECISIONS

Any decision at a meeting requires a quorum to be present and the trust deed and rules should specify how many trustees have to be present to form a quorum.

### 5.11.2 CODES OF PRACTICE

The notice of the meeting, agenda and full supporting paperwork should be distributed by the secretary ideally at least seven days before each meeting but in any event in time to allow the trustees to prepare themselves for the meeting.

### 5.11.3

The trustees should allow an appropriate amount of time at their meetings for discussion and should ensure that professional advisers attend meetings as required. The trustees should also ensure that all decisions are minuted.

## 5.12 CHAIRPERSON

The trust deed and rules may specify who chairs the meeting or may simply provide that the trustees shall decide at each meeting who will carry out that role. Alternatively, where trustees have been selected by members in accordance with Pensions Act regulations (see par. 2.7) the chairperson will be the person selected or nominated in accordance with those regulations. One of the chairperson's functions is to ensure that the business stated on the agenda is completed. If the deed provides for majority voting, the chairperson will usually be given a casting vote if the votes are tied.

## ROLE OF ADVISERS TO TRUSTEES

### 5.13 NEED FOR ADVICE

All pension schemes will need the services of professional advisers, in particular to meet various statutory requirements such as the need to have accounts audited and actuarial valuations carried out. In insured schemes these services are usually part of the overall service provided by the insurance company.

It is recognised that no pension scheme trustee is likely to be able to deal with every question that arises without obtaining advice. Hence virtually every trust deed and rules will permit trustees to seek advice to enable them to deal with an issue that has arisen. Additionally the Pensions Act requires the trustees to appoint specified professional advisers to carry out certain tasks as laid down in the legislation. For example all defined benefit schemes must have periodic valuation of their assets and liabilities carried out by an actuary, and both defined benefit and defined contribution schemes with more than one hundred active and deferred members must have their accounts audited by an auditor. Also, all pension scheme trustees must appoint a registered administrator to carry out specified core administration functions, unless they appoint themselves as registered administrators for this purpose.

In addition, trustees of a scheme and Trust RACs are required to possess, or employ or enter into arrangements with advisers who possess, qualifications and experience appropriate and relevant to the investment of the scheme resources. Trustees are regarded as discharging this obligation by appointing an investment manager to manage the investment of those resources. Where a scheme or Trust RAC has not appointed an investment manager, the trustees of the scheme or Trust RAC must demonstrate to the Pensions Board that they possess among their membership the appropriate qualifications and experience to assess and advise on investment options and execute the investment decisions in relation to the scheme or Trust RAC's resources. Alternatively, the trustees can employ an advisor with such qualifications and experience subject to the Board's approval (see par. 2.15).

## 5.14 ADVISERS

In practice trustees may need to employ one, or more, of the advisers referred to in the following paragraphs, on an occasional or regular basis.

### 5.14.1 ACTUARY

The role of the actuary is explained in detail at the end of this section. Trustees of a defined contribution scheme would not normally need to seek the advice of an actuary.

### 5.14.2 AUDITOR

The requirement to have the accounts audited and to obtain the auditors' report on the accounts is explained in paragraph 4.19.

### 5.14.3 INVESTMENT MANAGER

Paragraphs 3.6 – 3.10. deal with investing the assets of a pension scheme and the role of the investment manager is fully explained therein. Trustees' obligations regarding the appointment of an investment manager or adviser are explained in paragraph 2.15.

### 5.14.4 LEGAL ADVISERS

Advice may be required from time to time on legal issues such as:

- the interpretation and application of the trust deed and rules and amendments thereto
- a proposal to augment benefits
- issues in relation to payment of death benefits
- the interpretation of legislation affecting the scheme
- a sale/acquisition which has implications for the scheme
- bulk transfers
- the disposal of a surplus whether in the event of wind-up or partial wind-up or otherwise.

A legal adviser may also be involved in the preparation/vetting of the scheme trust deed and rules or other documentation but the responsibility for having the documents drawn up invariably rests with the employer. Legal advisers will advise generally on the exercise of trustee functions, and in particular will advise trustees who find themselves in sensitive situations about acting properly.

### 5.14.5 CODES OF PRACTICE

In the case of the appointment of actuary/auditor to a defined benefit scheme, the trustees must ensure that the person appointed meets the professional qualifications laid down in the Pensions Act.

## 5.15 PENSIONS CONSULTANT/BROKER

Many pension schemes engage the services of professional advisers to act as consultants/brokers to their schemes.

### 5.15.1 SERVICES OFFERED BY PENSION CONSULTANTS/BROKERS

Most firms of pension consultants offer some or all of the following services:

- actuarial services
- administrative services
- benefit design
- member communications
- advice on investment of funds
- legal and documentation services
- Revenue negotiations
- trusteeship
- placing of insurance
- trustee training services

### 5.15.2 CODES OF PRACTICE

Where monies are passed to a consultant, there should be a clear written agreement specifying on whose behalf the consultant handles the money. The agreement should encompass all the relevant parties to the arrangement, including the life office. Such agreements could include a provision to the effect that monies payable by the employer will not be regarded as received by the scheme until received by the trustees or a specified person (e.g. investment manager) who has been appointed by them.

### 5.15.3

In cases where a consultant acts on behalf of the trustees or where a consultant handles contributions where he or she is or might be the agent of the trustees, the trustees should satisfy themselves with the help, where appropriate, of their auditors (or other advisers) that proper protections are in place.

## 5.16 LIFE ASSURANCE COMPANY

A life assurance company may have a number of different roles depending on the circumstances.

### 5.16.1 INSURANCE OF DEATH BENEFITS

Virtually all pension schemes provide a benefit or benefits payable on the death of a member whilst in the service of the employer. The trustees of a small/medium size scheme will generally fully insure this benefit with a life assurance company so that in the event of the death of a member the trustees will receive from the life assurance company a payment which precisely matches their liability. On the other hand a larger pension scheme may insure none, or only a part, of the death benefit and instead pay the full/remaining part of the death benefit from the assets of the scheme.

### 5.16.2 ANNUITY PURCHASE

In certain circumstances, the trustees of a pension scheme may be required under the rules of the scheme or may wish to purchase an annuity in respect of a pension payable from the scheme (e.g. on a member's retirement). It is normally secured by the payment of a single premium, from the assets of the scheme to a life assurance company.

### 5.16.3 INVESTMENT MANAGEMENT

A life assurance company may also act as investment manager and manage the scheme's investments on behalf of trustees.

### 5.16.4 ADVISORY SERVICES

A life assurance company may offer some or all of the services listed in paragraph 5.15.1 above.

### 5.16.5 OVERALL SERVICE FOR SMALL SCHEMES

Finally for many small schemes a life assurance company provides an overall service where, in addition to insuring the death benefit and investing the assets, the life assurance company undertakes all of the other tasks involved in the running of a pension scheme.

### 5.16.6 CODES OF PRACTICE

The appointment of all advisers should be made in writing and the written document should cover full details of the advisers' responsibilities.

## 5.17 DEALING WITH ADVISERS' REPORTS

Trustees would normally expect to receive the reports referred to in the paragraphs below.

### 5.17.1 ACTUARIAL VALUATION

This report will set out the results of the actuarial valuation of the scheme and contain the actuary's recommendation of the contribution rate to be paid by the employer. The actuarial funding certificate (see par. 4.13.3) will normally be prepared by the actuary on the basis of the regular valuation.

### 5.17.2 FUND ACCOUNTS

As previously explained, formal audited accounts are required for both defined benefit and defined contribution schemes with more than 100 active and deferred members or if specified in the trust deed and rules. The fund accounts trace the movement of money in the fund and will state the accounting policies being followed. They will contain a statement of income and expenditure, a balance sheet, the source and application of funds and a series of notes on the accounts. They will also include the auditor's report on the accounts. The trustees are required to examine and approve the accounts of the scheme.

### 5.17.3 ADMINISTRATOR'S REPORT

This should be provided by the administrator ideally to each trustee meeting, but at least once a year, and will contain a full report by the administrator of the way in which the day-to-day administration of the scheme has been conducted on behalf of the trustees. Where compliance with the Pensions Act has been delegated to the administrator, the Report should contain confirmation that all requirements of the Act have been fully complied with (including updating of registration details and payment of fees).

### 5.17.4 CONSULTANTS' REPORT

This should be provided by consultants, again ideally to each trustee meeting but at least once a year, and will contain a review of major events affecting the scheme together with any recommendations and proposals. Relevant external developments such as legislative changes etc., would also be included in the report.

### 5.17.5 INVESTMENT REPORTS

These will generally be prepared by the investment manager and will usually include a statement of the policy objectives, a note on the economic background to the investment performance, the performance statistics themselves and a summary of assets held by the fund and their valuation.

### 5.17.6 CODES OF PRACTICE

Trustees should ensure that all reports from advisers are received and carefully considered.

## 5.18 VALUATION REPORTS

There is an obligation on trustees of defined benefit schemes and defined contribution schemes, which pay pensions from their own resources to obtain an actuarial valuation report. The trust deed may specify the interval between such reports, and if so, the trustees would operate in accordance with the trust deed, provided that it does not conflict with the Pensions Act. The Pensions Act provides that the trustees must obtain a valuation report at intervals not greater than 3 years.

## 5.19 ROLE OF ACTUARY – VALUATION REPORTS

The role of the actuary in carrying out a valuation of a defined benefit scheme is an important one. Essentially the actuarial valuation sets out to answer three principal questions:

- Would the scheme's assets have been sufficient to cover the scheme's liabilities had the scheme discontinued on the valuation date?
- At what rate should the employer contribute in the future (or at least to the next valuation date) in order that the trustees will be able to meet the future liabilities of the scheme as they fall due?
- How does the value of the scheme's assets compare with the value of the benefits which have been earned by members to the valuation date allowing for the impact of anticipated future pay increases on earned benefits?

The task of the actuary is to use his/her expertise, perhaps in consultation with the employer on issues such as likely earnings growth, to estimate both the amount of benefit which will become payable and when the need to pay the benefit will arise. These estimates are based on actuarial assumptions which fall into two main groups, economic and demographic.

### 5.19.1 ECONOMIC ASSUMPTIONS

The economic assumptions are concerned with estimating the amount of benefits and contributions, the value of the assets, or the income arising from the assets. They include (i) the rate of future earnings growth, since under a defined benefit scheme it is the earnings at the time of leaving or retirement rather than the current earnings which determines the scheme's liability, and (ii) the rate of return on the scheme's investments. The relationship between these assumptions will often be more important than the level of the individual assumptions. The outcome of the valuation will be particularly sensitive to the value of these assumptions.

### 5.19.2 DEMOGRAPHIC ASSUMPTIONS

The demographic assumptions are concerned with estimating when the need to pay a benefit will arise, and for how long the benefit will be payable. The key variables here are:

- withdrawal rates, or the proportion of members who will leave the scheme before normal retirement age
- incidence of retirement, i.e. the extent to which the number of members will retire at their normal retirement age or beforehand or for other reasons including ill-health
- mortality rates, i.e. how long a pension will be paid to a member and then perhaps to the member's spouse, and also how many members will survive to pensionable age, and how many will receive death in service benefits.

## 5.20 SCHEMES' FUNDING OBJECTIVE

The pre-funding of a pension scheme requires that assets are accumulated from ongoing contributions to meet the scheme's benefits (or liabilities) as they fall due. Hence having estimated the amount of all benefits and when they will become payable, the question of the pace at which funds should be accumulated to meet these benefits remains to be determined before the actuary can calculate a contribution rate. This is normally referred to as the scheme's funding objective and will vary from scheme to scheme depending on a number of factors. The actuary will normally consult with the employer before recommending an appropriate funding objective.

### 5.20.1 MINIMUM OBJECTIVE

The scheme must have as a minimum objective sufficient assets at all times to discharge the liabilities as set down in Section 44 of the Pensions Act in the event of the scheme winding up (e.g. if the employer's business closes). Failure to meet this objective at the effective date of an actuarial funding certificate will mean that the scheme is unable to satisfy the statutory minimum funding standard (see par. 4.12).

### 5.20.2 REALISTIC OBJECTIVE

It would be rare for a scheme to set the minimum objective above as its principal funding objective. Given that the vast majority of schemes are not discontinuing, a more realistic funding objective would be the accumulation of funds from each year's contribution sufficient to meet the portion of each member's ultimate benefit which will accrue or be earned in respect of that year. In estimating the ultimate benefit the actuary would have regard to the impact of future increases in earnings and other eventualities on benefits earned in each year. If this is set as the scheme's funding objective, and if the assumptions made by the actuary materialise in practice, a scheme's accrued liabilities will always be 100 per cent funded.

It is, of course, inevitable that future experience will not precisely match the actuary's assumptions. As a consequence the contribution rate intended to fund a scheme's liabilities to the 100 per cent level may prove to have done so to a lesser (or greater) level, leaving the scheme underfunded (or over funded) to this extent. Where this happens the actuary will re-assess the scheme's contribution rate and, as necessary, recommend a change to ensure that the scheme's assets and liabilities do not diverge excessively. Under funding based on this objective need not be of concern to trustees provided the actuary confirms that the scheme's finances remain sound.

Another acceptable funding objective which is regularly set in lieu of, or in addition to, the objective described in the previous paragraph, is a level of employer contribution which as a percentage of pensionable earnings is as smooth and predictable as possible, thereby enabling the employer to have reasonably stable outgoings.

### 5.20.3 RECOMMENDED CONTRIBUTION RATE

Having estimated the amount and timing of a benefit payment and having set an appropriate funding objective, the actuary is in a position to recommend a contribution rate sufficient to fund the scheme's liabilities. The actuary, in fact, might recommend a range of contribution rates, – e.g. a high short-term rate to finance significant deficit with a lower rate after a period of years, or a low initial rate followed by a higher rate if there is a surplus.

## 5.21 SURPLUS/DEFICIENCY

It is important to understand the meaning of the terms "surplus" or "deficiency" as used in an actuarial valuation.

### 5.21.1 SURPLUS/DEFICIENCY ON DISCONTINUANCE

If, in a “discontinuance” valuation there is a surplus or deficiency it simply means that had the scheme discontinued on the valuation date the realisable value of the assets held would have been greater or less than the cost of securing

- pension entitlements for those then in receipt of pensions
- deferred benefit entitlements for those who had previously left service with such entitlements
- the deferred benefits to which current employees would be entitled if the scheme had wound up on the date of the valuation (these are generally the same benefits they would have been entitled to on leaving service) together with associated expenses.

In a final salary scheme, entitlements for current employees would be based on current salary but would make allowance for revaluation as required under the rules of the scheme or under the Pensions Act (see par. 4.9).

The existence of a surplus means that had the scheme wound up there would have been surplus cash available to the trustees and depending on the scheme’s wind-up rule this would have been either used to increase entitlements or refunded to the employer or a combination of both. Of course, since the valuation date has passed a discontinuance valuation is addressing a hypothetical question and the existence of a surplus is doing little more than providing a measure of comfort to the trustees and members. It does not mean that there is excess cash available which could be used to increase benefits etc. Where, on the other hand, a discontinuance valuation reveals a deficiency the trustees must take urgent action notwithstanding the hypothetical nature of the valuation (see par. 4.12).

### 5.21.2 SURPLUS/DEFICIENCY ONGOING SCHEME

Where in an “ongoing” valuation there is a surplus or deficiency, it generally means that the value placed on the assets by the actuary exceeds the present value of the benefits which have accrued (or been earned) to the valuation date. In calculating these values the actuary has to employ a wide range of actuarial assumptions.

These include financial assumptions as to earnings increases, investment returns (which were dealt with in par. 5.19.1 above) and demographic assumptions as to mortality rates, rates of withdrawal from service and early retirement rates. It follows that a surplus or deficit in an “ongoing” valuation is merely an actuarial estimate which could be falsified by events. Furthermore, by adjusting the actuarial assumptions a surplus could be converted into a deficiency and vice versa.

Given the nature of actuarial assumptions it is highly unlikely that in an “ongoing” valuation assets will exactly match liabilities at any particular point in time even where this is the funding objective (see par. 5.20 above). A surplus or a deficit on this basis need not be of concern to trustees unless, in the case of a surplus, it is at a level which could prejudice Revenue approval of the scheme or, in the case of a deficit, it is a sign that the scheme may also be moving towards a deficit on a “discontinuance” basis. The likelihood is that the actuary will recommend a change in the scheme’s contribution rate to ensure that the scheme’s assets and liabilities are brought back into balance on a gradual basis.

### 5.21.3 CONTRIBUTION HOLIDAY

In an extreme situation the actuary may recommend an employer (or employer and member) contribution holiday as a means of reducing a significant surplus. The term “contribution holiday” is used to describe a situation where, for a period, no contributions are payable to the scheme. Where recommended by the actuary and permitted under the trust deed and rules an employer contribution holiday is an acceptable mechanism for removing a surplus in a “balance of cost” defined benefit scheme. A “balance of cost” defined benefit scheme is one under which the employer undertakes to pay whatever rate of future contribution is needed

from time to time to keep the scheme in long-term financial balance, after allowing for existing assets and any future contributions payable by the members. Under this arrangement if the scheme's investments perform poorly there may be a need for increased future contributions by the employer. If, on the other hand, they perform well then, subject to the trust deed and rules, it is reasonable that the employer should be entitled to use the excess for a reduction or temporary suspension of future contributions.

#### 5.21.4 CODES OF PRACTICE

Trustees of defined benefit schemes and defined contribution schemes which pay pensions from their own resources must have an actuarial valuation prepared by the scheme actuary at intervals not greater than 3 years, unless a shorter interval is specified in the trust deed. During the 3 year interval actuarial reviews must be undertaken to establish whether the schemes continue to satisfy the minimum funding standard and corrective measures must be taken where a negative assessment arises (see par. 4.14.1). They should ensure that comprehensive data is submitted to the actuary as soon as possible but at least within six months after the effective date of the valuation and they should advise the actuary that they expect the final valuation report to be delivered to them within three months of receipt of comprehensive data. Under the Disclosure of Information Regulations the latest valuation report must be made available for inspection without cost, or provided on payment of a reasonable charge, on request to members, prospective members, their spouses, other scheme beneficiaries and any authorised trade union not later than four weeks after any request is made and not later than 9 months after its effective date.

#### 5.21.5

The trustees should immediately consult the actuary and seek his/her advice where, between valuations, any of the following occurs or is proposed:

- a change in the scheme's benefit provisions or eligibility requirements whether it affects all members, a category of members or an individual member
- payment of a benefit or benefits in excess of entitlement as set down in the rules
- failure of employer to pay the recommended contribution rate (see par. 5.21.3).

#### 5.21.6

The trustees should be mindful of the impact which unfavourable experience between valuations may have on the scheme's finances, more particularly where the previous valuation report disclosed only a modest excess of assets over liabilities on discontinuance. The following would fall into this category:

- salary increases in excess of the assumed rate particularly where they apply to members close to their retirement age
- investment returns less than assumed in the valuation
- high incidence of early retirements particularly where a nil or modest actuarial reduction is applied to the members' earned benefits.

In these circumstances the advice of the actuary should be sought.

## CHAPTER 6

# OTHER ISSUES

### TAKING ADVICE

#### 6.1 EXPERT ADVICE

Whatever the background of trustees, whether they are drawn from senior management or the employees generally, it is not expected that they will bring with them an expert knowledge of trust law, pensions administration, actuarial matters, pensions accountancy and institutional investment. All trustees will need to take expert advice.

#### 6.2 APPOINTMENT OF ADVISERS

In many cases the advisers are chosen by the employer and will already be advising the employer on other matters. There is nothing wrong with the same advisers being used by the trustees. Indeed there may be benefits in that the advisers will be aware of the particular nature of the business.

#### 6.3 INDEPENDENT ADVICE

There is scope for potential conflicts of interest; that is, the interests of the beneficiaries might not be adequately represented by advisers who have a separate duty and loyalty to the employer. Trustees, therefore, may need sometimes to engage a separate adviser for the scheme i.e. where the existing adviser to the employer finds itself unable to continue to act. Trustees will need to review continually their relationship with all the advisers.

##### 6.3.1 CODES OF PRACTICE

Trustees should obtain advice. Trustees who act in certain areas without obtaining expert, independent advice could betray the interest of the beneficiaries and leave themselves open to action for a breach of trust.

### SCHEME WIND-UPS

#### 6.4 BACKGROUND

Although most trustees will never be faced with the winding-up of the scheme or Trust RAC, if it does arise, it will likely present trustees with some of the most difficult issues they will have to face as trustees. A trust deed and rules governing a pension scheme or Trust RAC will invariably contain provisions relating to the winding-up of the scheme or Trust RAC. These provisions will include the circumstances under which the scheme or Trust RAC may (i.e. at the trustees' discretion) or shall (i.e. where the trustees have no discretion) be wound up and how, and to whom, the trustees should apply the assets of the scheme or Trust RAC on wind-up.

When the winding-up of a scheme or Trust RAC commences trustees must notify the Pensions Board of the change in the scheme or Trust RAC registration details from a current scheme or Trust RAC to a frozen scheme or Trust RAC. If the scheme is a scheme with less than 100 active and deferred members, the trustees must send the Pensions Board a wind up report containing certain prescribed information, set out in Article 16 and Schedule G of the Disclosure of Information Regulations, within three months of the effective date of the wind up.

## 6.5 CIRCUMSTANCES OF WINDING-UP

The trust deed and rules will set down the circumstances in which a pension scheme may be wound up. Typically these would include

- the employer notifying the trustees of its intention to cease its contributions to the scheme
- the employer failing to make the contributions due to the scheme within a specified period
- the liquidation of the employer
- the cessation or acquisition of the employer's business, and any new employer not being prepared to take on the responsibilities of employer under the scheme.

Even where these events arise the trust deed may give the trustees the option of continuing the scheme for a period, or indefinitely.

### 6.5.1 CODES OF PRACTICE

A trust deed and rules governing a pension scheme or Trust RAC will invariably contain provisions relating to the winding-up of the scheme or Trust RAC. The trust deed may give the trustees the option of continuing the scheme or Trust RAC for a period or indefinitely. Where the trust deed gives the trustees the option of continuing the scheme or Trust RAC, before doing so they should take legal and actuarial advice and satisfy themselves that the security of benefits would not be jeopardised by continuing the scheme or Trust RAC.

### 6.5.2

Where the trust deed does not give the trustees the option of continuing the scheme or Trust RAC, or where they decide to exercise their discretion and wind up the scheme or Trust RAC, they must notify the Pensions Board, all members and the authorised trade unions (only in the case of a pension scheme) of their decision as soon as possible but in any event not later than twelve weeks after the decision is made. They should also inform the Revenue Commissioners of the impending windup of the scheme or Trust RAC. They must then proceed to apply the assets of the scheme in discharging its liabilities without undue delay. Trustees of a scheme with less than 100 active and deferred members must send the Pensions Board a wind up report containing certain prescribed information within three months of the effective date of the wind up.

## 6.6 PENSIONS ACT PROVISIONS

In the case of a defined benefit scheme the Pensions Act (Section 48) sets down the order of priority in which benefits for specified categories of beneficiary must be secured and if this conflicts with the corresponding provisions of the trust deed and rules the trustees must follow the Pensions Act. Section 59 of the Pensions Act also places an obligation on the trustees of a scheme which is being wound up to apply the resources of the scheme in discharging its liabilities without undue delay in accordance with the rules of the scheme and, where applicable, with Section 48 of the Pensions Act. Finally the Pensions Act Disclosure of Information Regulations set down the information which must be given to members by the trustees where a decision has been made to wind up the scheme.

## 6.7 APPLYING THE ASSETS

The trust deed and rules will generally specify the order in which assets are to be applied to secure the entitlements of the different categories of beneficiary so that if insufficient assets are available those whose benefits are lowest in the order of priority will not receive their full entitlement and, depending on the amounts involved, could receive no benefit. In the case of a defined benefit scheme which is wound up after 29th April 2009 the Pensions Act provides that specified liabilities be discharged in the following order:

1. Benefits secured by way of AVCs, including AVCs transferred in from another scheme
2. Future pension entitlements, excluding future pension increases, of those already receiving pensions (and those still in service and past their normal pensionable age and not receiving pensions) as well as any dependants' pension payable following the death of the pensioner.
3. For those not yet in receipt of pensions who have not attained normal pensionable age, the greater of preserved benefits (see par. 4) but
  - (a) excluding revaluation of preserved benefits for pre-1991 service or the benefits payable under the rules of the scheme, to the extent not already discharged, and
  - (b) excluding future pension increases.
4. Future increases on benefits.

The Pensions Act is overriding so that the provisions of the trust deed and rules relating to the order in which liabilities are to be dealt with on winding-up would only apply after the liabilities in 1. to 4. above have been discharged. The one exception relates to the expenses and costs associated with the winding-up where the Pensions Act permits such expenses etc. to be met before discharging the liabilities in 1. to 4. above, if so provided in the trust deed and rules.

If any resources remain after discharging the specified liabilities and any other benefits under the scheme rules, then before returning any part of the resources to the employer the trustees must, to the extent that they have not already done so, provide for revaluation of benefits in respect of pre-1991 service.

### TREATMENT OF DB PENSION SCHEMES (CONTAINING A DC ELEMENT) ON WIND-UP

Some occupational pension schemes have both a Defined Benefit element and a Defined Contribution element (i.e. the scheme is set up with Defined Benefit and Defined Contribution benefits being held under the one trust). Trustees of such schemes should be aware that in the event of a shortfall on scheme wind-up, the Defined Contribution benefits for active members are not ring-fenced and may be reduced to satisfy higher priority liabilities on wind-up. This is because under the Pensions Act all of the scheme assets including the Defined Contribution portion are treated as being available to meet the liabilities on wind-up.

#### 6.7.1 SECURING THE BENEFITS

The trust deed and rules may specify that, in the event of winding-up, the trustees should secure the entitlements by purchasing immediate annuities (in the case of pensioners) and deferred annuities (in the case of those not yet in receipt of pensions) equal to the amounts of these entitlements.

Even where the trust deed and rules specify that annuities must be purchased, the trustees of any scheme are empowered under Section 48 of the Pensions Act (without seeking the consent of the member concerned) to

- make a transfer payment on behalf of the member to a scheme of any new employer, or
- purchase an approved policy of assurance on behalf of the member with a life assurance company or
- make a transfer payment on behalf of the member to a PRSA (subject to the payment not exposing the scheme to a risk of ceasing to be an approved scheme under the Taxes Consolidation Act).

The amount applied on behalf of the member must be not less than the actuarial value of the benefits to which the member was entitled on winding-up, unless the member opts for benefits of lesser value, (e.g. a refund of contributions if permitted).

#### 6.7.2 CODES OF PRACTICE

Immediately following commencement of winding-up, the trustees should request payment into the scheme or Trust RAC of all contributions and other monies due but not paid at the commencement of winding-up. However, in advance of putting the scheme or Trust RAC into wind up, trustees should seek advice to confirm that their power to seek payment of outstanding contributions will not be extinguished by putting the scheme or Trust RAC in wind up. Where the employer is in receivership or is being liquidated they should lodge a claim with the receiver/liquidator for any employer contributions due, as well as any member contributions deducted but not remitted to the trustees. In the event that the trustees are unable to recover the contributions from the employer/receiver/liquidator and where the employer is insolvent, the trustees may, on behalf of the fund, make a claim for a payment of unpaid “relevant contributions” out of the Social Insurance Fund. Relevant contributions are defined under the Protection of Employees (Employers’ Insolvency) Act 1984.

#### 6.7.3

The trustees of a defined benefit scheme should also, as soon as possible after winding-up has commenced, seek the advice of the scheme actuary and, in particular, ask him/her to establish whether the scheme has sufficient assets to meet its liabilities and to advise whether the investment profile of the fund should be altered in advance of the wind-up.

#### 6.7.4

Before deciding whether to apply the resources of the scheme or Trust RAC in windup to secure a member’s benefits in accordance with the provisions of the trust deed and (in the case of a defined benefit scheme) Section 48 of the Pensions Act, the trustees should seek the advice of the actuary. Where relevant, they should ask the actuary to calculate the actuarial value of each member’s benefits. If annuities are being purchased the trustees should ensure that competitive quotations have been obtained and that the annuities purchased match as far as possible the benefits to which members were entitled under the scheme or Trust RAC. A decision as to whether to secure benefits by applying the actuarial value of benefits in accordance with the Pensions Act or by purchasing annuities if so provided in the trust deed and rules must be dictated by consideration of the members’ interests.

#### 6.7.5

Under the Occupational Pension Schemes (Disclosure of Information) Regulations, 2006 to 2007:

- the trustees must notify prescribed persons of the scheme wind-up
- the trustees must, in the course of applying the resources of the scheme in consequence of the wind up, provide prescribed information to prescribed persons and
- neither the trustees nor the employer may exercise any discretion as to the payment of any resources of the scheme to the employer, or as to the abatement of benefits in the case of a deficit, until the members have been given an opportunity to make observations to the trustees or the employer, as appropriate, and the trustees or the employer have given due consideration to those observations.

### 6.7.6 DISCRETION ON PAYING THE BENEFITS

The Regulations prescribe the steps to be taken by the trustees (or employer) where they propose to exercise a discretion as to the payment of any resources of the scheme to the employer, or as to an abatement of benefits in the case of a deficit.

These steps must be complied with by the trustees or employer, as may be appropriate, before the trustee (or employer) exercise such a discretion;

- they must notify the scheme’s active and deferred members and pensioners of the nature of the discretion proposed to be exercised and the persons who hold that discretion,
- details of how it is proposed to exercise that discretion and the reasons behind the proposal,
- a statement that any observations made by the members on the proposal must be submitted for consideration by the trustees or employer within one month of the date of the notification, and the name and address of the person to whom observations should be sent.

In practice, trustees of a defined benefit scheme will not have any discretion regarding the abatement of benefits where a scheme winds up in deficit. Instead, trustees will be obliged to apply the scheme resources in accordance with the priority order specified in Section 48 of the Pensions Act.

### 6.7.7 CODES OF PRACTICE

As soon as is practicable after the assets of the scheme have been applied the trustees must furnish the following information to each member

- information relating to his/her benefit entitlements including the amount and any options available to him/her and the procedure for availing of such options
- an explanation of the manner in which any surplus or deficit in the scheme has been dealt with
- information as to who will be liable to pay his/her benefits after the scheme is wound up and the address to which enquiries about his entitlements should be sent.

### 6.7.8

The trustees should ensure that in winding up the scheme only such expenses as are necessary to enable them to properly carry out their obligations to the scheme’s beneficiaries are incurred and met from the fund.

### 6.7.9 DISTRIBUTION OF SURPLUS

If the assets of the scheme are more than sufficient to meet members’ benefit entitlements on wind-up, the scheme rules will specify how the surplus is to be applied by the trustees. It is an area that is fraught with difficulties and potential conflicts of interest since many schemes give trustees a discretion to use a surplus to augment members’ benefits above strict entitlements but very often “in consultation with” or “with the agreement of” the employer. Furthermore, the likelihood is that the scheme rules will specify that any balance of surplus must be refunded to the employer. Clearly, therefore, both members and employer could have a legitimate interest in the same surplus.

### 6.7.10 CODES OF PRACTICE

The trustees must follow the procedure set down in the rules. Where the rules require that the trustees “consult with” the employer they must do this and weigh up carefully the merit of any arguments put forward by the employer in favour of, for example, refunding the surplus to the employer rather than using it to augment members’ benefits. Ultimately the trustees must make their own decision.

#### 6.7.11

Where the rules require that the trustees obtain the agreement of the employer before applying any part of a surplus on wind-up to augment members' benefits then it is clear that they are prohibited from making a unilateral determination of the matter. If, however, they believe that there is a case for using all or part of the surplus to augment members' benefits they can, and should, present to the employer the merit of their case.

Where a surplus on a wind-up is being disposed of, the employer may also be a beneficiary of the scheme and as such the trustees should take its interests into account. Where surplus assets remain following the discharge of the liabilities of the scheme in accordance with the priorities specified in the Pensions Act, and the scheme rules, and before any of the surplus is paid to the employer, the trustees must, to the extent that they have not already done so provide for revaluation of benefits in respect of pre-1991 service.

### 6.8 FURTHER INFORMATION

An information leaflet entitled "Pension Scheme Funding and Restructuring" is available online from the Pensions Board website. For details see Appendix 3.

## MERGERS AND ACQUISITIONS

### 6.9 BACKGROUND

Although not normally directly involved in the negotiation process, increasingly trustees are faced with issues which arise when the employer (or one of the employers) sponsoring the fund is taken over by, merges with, or acquires another employer. The likelihood is that the two employers involved will have entered into an agreement which will cover the pension terms of the transferring employees and the associated financial arrangements. The trustees of the pension schemes concerned will not normally be parties to the agreement and indeed the trustees of the affected schemes may not have been consulted fully, if at all.

### 6.10 PROTECTING BENEFICIARIES' INTERESTS

In any merger/acquisition the objective of the employer will probably be very clear and almost certainly the position of the pension scheme (i.e. whether over funded or underfunded) will have been taken into account in determining the purchase price.

#### 6.10.1 CODES OF PRACTICE

Whereas the trustees should not obstruct the employer in achieving its objectives, in any merger/acquisition, they must at all times act in accordance with the trust deed and rules (even if the terms of the sale and purchase agreement differ from these). The trustees must also remember that their primary duty is to the beneficiaries of the scheme and in that regard they must act fairly as between those employees who are already in the scheme and those who are coming in (or as between those who are remaining in the scheme and those who are leaving).

### 6.11 PRACTICAL ISSUES

Although it is possible that following the acquisition of the employer the only alteration in the pension scheme will be a replacement of the principal employer, the more likely scenario is that members will be transferring to another pension scheme (i.e. that of the acquiring employer). Among the issues the trustees will then face are those set out below.

### 6.11.1 ONE SCHEME/ACQUISITION OF SOME EMPLOYERS PARTICIPATING BUT NOT ALL EMPLOYERS

If more than one employer is participating in the scheme and not all have been acquired, what is the appropriate portion of the of total fund to be transferred? The trust deed and rules may have a clause which specifies the portion to be transferred in these circumstances and, if the scheme is a defined benefit scheme, it would be necessary for the trustees to arrange to have the scheme actuary make the necessary calculations.

### 6.11.2 ONE SCHEME/ACQUISITION OF ALL EMPLOYERS

If all the employers participating in the scheme have been acquired and members are being guaranteed equivalent pension rights in the participating scheme to which they are transferring then, subject to the rules of the scheme, it would be normal for the trustees to transfer the entire assets under their control to the trustees of the scheme of the acquiring employer.

### 6.11.3 CODES OF PRACTICE

Where members' pension rights are about to change as a result of a transfer, or where the agreement between employers provides for the transfer of an amount less than the full assets of the scheme, the trustees must satisfy themselves that what is proposed is in accordance with the scheme rules and that the interests of members and other beneficiaries are being adequately protected. The funding status of the receiving scheme may also be relevant.

### 6.11.4

Where an employer or employers participating in the scheme have been acquired and it is proposed to transfer members and all/part of the assets of the scheme to the scheme of the acquiring employer the trustees should seek legal/actuarial advice before agreeing to the transfer.

### 6.11.5

Where, following an acquisition, members are being transferred into the scheme of the acquiring employer, trustees of the receiving scheme must ensure that the rights of the existing members are not being jeopardised, before agreeing to accept the transfer.

## 6.12 BULK TRANSFERS

Section 59E of the Pensions Act states that before a “bulk transfer” is effected the trustees of both the transferring and receiving schemes must provide information to transferring members or authorised trade unions (if any) in the circumstances outlined in Regulation.

Where the consent of the members in respect of whom the transfer is to be effected will not be obtained, the transferring member or an authorised trade union must be afforded an opportunity to make observations to the trustees of the transferring scheme or to the employer. The trustees or the employer must give due consideration to such observations. The trustees of the transferring scheme must ensure that such other conditions as may be prescribed in the Regulations (Occupational Pension Schemes (Duties of Trustees in Connection with Bulk Transfer) Regulations 2009) have been satisfied.

## 6.13 BACKGROUND

A “bulk transfer” is defined in Section 59E as a transfer of money or other resources from the scheme to provide benefits in respect of a group of members either

- (a) to the trustees of another scheme or schemes where either –
  - (i) the employment is with the same employer or

- (ii) the employment is with different employers, and the transfer is as a consequence of a financial transaction between the employers or one of the employers is a subsidiary of the other or both are subsidiaries of the same company
- (b) to Personal Retirement Savings Accounts where either-
  - (i) the employer under the transferring scheme will contribute to the PRSAs or
  - (ii) a different employer will contribute to the PRSAs, and the transfer is as a consequence of a financial transaction between the employers or one of the employers is a subsidiary of the other or both are subsidiaries of the same company.

#### **6.13.1 CODES OF PRACTICE**

Where a bulk transfer (as defined in Section 59E) is to take place the trustees of both the transferring and receiving schemes are required in accordance with the Regulations, to provide certain information to the transferring member or authorised trade union (if any) at least 2 months before the date of the proposed bulk transfer.

#### **6.13.2**

Where the consent of the members to be transferred will not be obtained, the transferring member or authorised trade union must be afforded an opportunity to make observations to the trustees of the transferring scheme or to the employer, and they must give due consideration to such observations. The transferring member or authorised trade union has 1 month from the date of notification to make written observations on the proposed bulk transfer. The transferring trustees or the employer must confirm in writing, before the bulk transfer is effected, that they gave due consideration to any observations made within the specified time limits.

## **SCHEME AMENDMENTS**

### **6.14 BACKGROUND**

The trust deed and rules of a pension scheme usually contain a clause or a rule allowing the provisions of the scheme to be amended. It will set down the circumstances under which an amendment may be made, whose consent/approval is necessary, and any restrictions that apply.

#### **6.14.1 CODES OF PRACTICE**

The trustees must ensure that any amendment is in accordance with the scheme documentation and that, where relevant, the consent/approval of the party specified is obtained in writing.

### **6.15 CONSIDERATION OF BENEFICIARIES' INTEREST**

Scheme amendments which alter the eligibility for, or conditions attaching to, the payment or the amount of a benefit payable from the scheme may adversely affect the interest of some members. For example, if an improvement in the pension formula applies to pensionable service before the date of the change and the additional liability for past service benefits is being funded in the future, a member who retires shortly after the change could, in the event of a scheme wind-up, benefit fully even though the additional liability had not been fully funded. As a consequence some other member (e.g. one who had not retired) may find that, not alone does he/she receive no benefit improvement, but the benefits that applied to him/her prior to the change are reduced because insufficient funds are available.

### 6.15.1 CODES OF PRACTICE

If a scheme amendment is proposed the trustees should carefully consider the interests of the different classes of beneficiary before agreeing to the change. As the issues could be many and complex the trustees should seek legal/actuarial advice.

### 6.15.2

A scheme amendment that detrimentally affects the accrued rights of members should only be agreed by trustees in very exceptional circumstances.

### 6.15.3

Where a material alteration is made in the provisions of the scheme the trustees must notify the members of the scheme within four weeks of making the alteration. The scheme's annual report must also include details of any changes in the scheme since the previous scheme year.

### 6.15.4

The trustees should request the employer to have a document amending the trust deed and rules prepared for execution as soon as is practicable after the change has been agreed. The amendment is typically not effective until the deed of amendment has been executed, and trustees should be cautious about implementing an intended amendment until the deed has been executed. In addition, many schemes require the approval of the Revenue Commissioners before an amendment becomes effective.

## 6.16 SECTION 59F

Section 59F of the Pensions Act applies to any amendment to the rules of a scheme, and any exercise of a discretionary power under a scheme, which has the effect of augmenting the benefit of any member or members so as materially to alter the balance of interests between the members, or between the members and the employer, and which is made or done within twelve months before or six months after certain events as set down in the Act, including a bulk transfer, an agreement or arrangement relating to or connected with the sale of all or part of the business or interests of the employer, a switch to a defined contribution scheme or a wind-up of the scheme. The "six months after" limitation does not apply on wind-ups i.e. there is no time limit after a wind-up has taken place.

The Minister is given the power to make regulations providing that any amendment of the rules or exercise of a discretionary power to which Section 59F applies shall be invalid unless

- the members affected by the amendment have consented in writing to it, or
- the actuary has certified to the trustees in such terms as may be prescribed, or
- the trustees are satisfied that the change was not made with a view to altering materially the balance of interests under the scheme between members or groups of members, or between members and the employer, by reason only of the specified event, or
- such other conditions as may be prescribed are satisfied.

A statutory instrument bringing Section 59F into operation has been made but as yet no regulations have been made under it.

## 6.17

No proceedings may be taken against a person who relies in good faith on such an amendment or discretion which is rendered invalid. Where such a person receives money in reliance on such amendment or discretion, they will not be required to repay it.

### 6.17.1 CODES OF PRACTICE

In order to avoid the invalidity of any rule amendment or exercise of a discretionary power which materially affects the balance of interests under the scheme, trustees, in accordance with regulations to be made under the Pensions Act, must ensure that the conditions specified in Section 59F and any regulations which may be made thereunder are complied with. No regulations have as yet been made under Section 59F.

## 6.18 CROSS BORDER SCHEMES

Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (“IORPs Directive”) requires that schemes registered or established in one EC member state will be entitled to carry on business and accept contributions from employers based in other EC member states. Section 37 of the Social Welfare and Pensions Act 2005 introduced a new Part XII into the Pensions Act, 1990 which implemented the IORPs Directive into Irish law, thereby enabling Irish schemes and Trust RACs to engage in cross-border activity.

Under Part XII of the Pensions Act, 1990 (as amended), the trustees of an Irish pension scheme or Trust RAC cannot accept contributions from an employer located in another EC member state without first being authorised to do so by the Pensions Board.

Once authorised, such a scheme or Trust RAC must notify the Board when it intends to begin accepting contributions from that overseas employer. The Board will then notify the pensions regulator in that overseas employer’s jurisdiction of this proposal. In accordance with its obligations under the IORPs Directive, that regulator should then notify the Board of the social and labour laws relevant to the field of occupational pension schemes in its jurisdiction. The Board will have a role in monitoring compliance with those laws.

The other type of cross border activity dealt with in Part XII of the Pensions Act involves a situation where an Irish employer proposes to pay contributions to a pension scheme in another EC member state.

In those circumstances, the pensions regulator in that other member state will notify the Board of the proposed cross border activity. The Board is then obliged to notify the pensions regulator in that other member state of the “relevant statutory requirements”.

The Occupational Pension Schemes (Cross Border) Regulations 2006 (S.I. No. 292 of 2006) prescribe what are considered relevant statutory requirements for the purposes of Part XII. These include the Pensions Act provisions relating to preservation of benefits, disclosure of information, prohibition on reduction of pensions in payment and prohibition on updating State pension offset in calculating increases to pensions in payment. The Board will have a role in monitoring compliance with these relevant statutory requirements applicable to those Irish employees.

If a pension schemes wishes to engage in cross-border activity the authorisation and approval forms may be downloaded from the Pensions Board’s website. The Pensions Board’s “Guidelines for cross border schemes” may also be downloaded from the Pensions Board’s website.

# CHAPTER 7

## THE ROLE AND FUNCTIONS OF THE PENSIONS OMBUDSMAN AND THE INTERNAL DISPUTE RESOLUTION PROCEDURE

### 7.1 THE PENSIONS OMBUDSMAN

The office of Pensions Ombudsman was established by the Minister for Social and Family Affairs under the Pensions (Amendment) Act 2002. Further details have been provided by the Pensions Ombudsman Regulations. The Ombudsman's jurisdiction encompasses defined benefit and defined contribution schemes, PRSAs and Trust RACs.

### 7.2 POWERS AND JURISDICTION

The Pensions Ombudsman may investigate and determine complaints made in writing by or on behalf of an actual or potential beneficiary of an occupational pension scheme, PRSA or Trust RAC who alleges that he or she has suffered financial loss as a result of maladministration on the part of those responsible for the management of the scheme, Trust RAC or PRSA. The Pensions Ombudsman is also empowered to investigate and decide any dispute of fact or law which arises in respect of an act or omission by those responsible for the management of a scheme, PRSA or Trust RAC and which is referred to him by or on behalf of an actual or potential beneficiary. The Pensions Ombudsman may decide which cases should be investigated by him.

#### 7.2.1 ACTUAL OR POTENTIAL BENEFICIARY

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

#### 7.2.2 PERSONS RESPONSIBLE FOR MANAGEMENT

In relation to a scheme, Trust RAC or PRSA, the persons responsible for the management of the scheme include any trustee or former trustee, any employer or former scheme employer and any administrator of the scheme.

#### 7.2.3 DISPUTES EXCLUDED FROM THE PENSIONS OMBUDSMAN'S JURISDICTION

Various types of disputes are excluded from the Pensions Ombudsman's jurisdiction. These include disputes between employers and trustees and between two sets of trustees, disputes outside certain time limits, disputes which are the subject of court proceedings, disputes which do not relate to law or fact or do not involve maladministration, disputes which relate to equal treatment, disputes which relate to trustee compliance with the Pensions Act or to conflicts between the Pensions Act and scheme rules, and disputes which have not first gone through the Internal Dispute Resolution (IDR) procedure. However, the Pensions Ombudsman can waive the IDR procedure if he is satisfied that an IDR procedure would be inappropriate in the circumstances. The Pensions Ombudsman Regulations detail the categories of dispute of fact or law excluded from the Pensions Ombudsman's jurisdiction.

#### 7.2.4 TIME LIMITS

The time limits within which a complaint or dispute must be brought to the Pensions Ombudsman are

- 6 years from the date of the act giving rise to the complaint or dispute, or
- 3 years from the date on which the person became aware or ought to have become aware of the act giving rise to the complaint or dispute, whichever is the earlier, or
- such longer period as the Pensions Ombudsman may allow if it appears to him that there are reasonable grounds for extending the period and it would be just and reasonable to do so.

If the act or omission giving rise to the complaint took place before 28 April 2003, the Pensions Ombudsman may investigate, provided it occurred on or after 13 April 1996.

### 7.3 INVESTIGATIONS

When the Pensions Ombudsman receives a written application he has to decide whether he has jurisdiction to investigate the complaint/dispute or not and will advise the complainant accordingly. Subject to regulations in this respect, the procedure for the making of complaints, the reference of disputes and the conduct of investigations will be such as the Pensions Ombudsman considers appropriate.

#### 7.3.1 INFORMATION AND EVIDENCE

The Pension Ombudsman has the power to obtain information from such persons and in such manner and make such enquiries as he thinks fit. This may include the exercise of his power to discover evidence and to compel witnesses to appear and may include oral hearings.

#### 7.3.2 PARTIES TO THE INVESTIGATIONS

Where the Pensions Ombudsman proposes to conduct an investigation, any person responsible for the management of the scheme to which the complaint/dispute relates, any other person against whom allegations are made in the complaint or reference and any person whose interests might be adversely affected by the determination must be given an opportunity to comment on any allegations contained in the complaint or reference. When notified of an investigation, the respondent will have 21 days within which either to submit a written response setting out his case or to request further clarification. If clarification is requested, a response must be submitted within 14 days of receipt of particulars.

#### 7.3.3 CODES OF PRACTICE

Where the trustees are parties to a complaint which the Pensions Ombudsman has decided to investigate they should ensure it is one within his jurisdiction and within the specified time limits. The trustees should provide the Pensions Ombudsman with whatever relevant information he requests on a timely basis. The trustees may consider it necessary to seek advice from their legal advisers in respect of such an investigation. The trustees must comply with the time requirements in submitting their responses.

#### 7.3.4 PRELIMINARY VIEW AND FINAL RULING

Towards the end of his investigation the Pensions Ombudsman may issue a “Preliminary View”. The parties may provide any further evidence or information that they feel is relevant to the investigation. The Pensions Ombudsman will then make his “Final Ruling”. The Pensions Ombudsman may make a ruling even where the complaint is withdrawn during the investigation.

### 7.3.5 REDRESS

The Pensions Ombudsman is empowered to give directions and to order redress including financial redress. However, the financial redress cannot exceed the actual loss of benefit. The Pensions Ombudsman may not require the amendment of a scheme's rules or substitute his decision for that of the trustees where they have exercised their discretionary powers. Decisions of the Pensions Ombudsman will be binding on the parties involved, with a right to appeal to the High Court. The Pensions Ombudsman's Final Ruling will be enforceable unless it is appealed within 21 days. Where such a ruling is not appealed, an application may be made to the Circuit Court to enforce a decision of the Pensions Ombudsman.

### 7.3.6 CODES OF PRACTICE

In preparation for dealing with the Pensions Ombudsman and to assist in settling any applications under the Internal Dispute Resolution procedure the Trustees should ensure they have an up-to-date set of pension scheme documentation. This may include all trust deeds and rules, deeds of amendment, explanatory booklets and any other announcements made to members, member's statements and certificates, annual statements, accounts, and where it is a defined benefit scheme, actuarial valuations.

## 7.4 FURTHER INFORMATION

An information leaflet entitled What can the Pensions Ombudsman do for you? is available free of charge from the Pensions Ombudsman. For details see Appendix 5.

## 7.5 INTERNAL DISPUTE RESOLUTION PROCEDURES

Complaints and misunderstandings may arise in any scheme. For this reason the Pensions Ombudsman Regulations provide that the trustees of every occupational pension scheme, Trust RAC and all PRSA providers must establish an Internal Dispute Resolution (IDR) procedure. The regulations set out certain steps which must be included in those procedures and prescribe the matters which are to be covered by the procedures. It is important to note that it is the trustees who are responsible for establishing the procedures in respect of occupational pension schemes.

## 7.6 BENEFITS

The procedure should be straight forward to put in place and should not be a financial burden on the scheme. The procedure is an opportunity to resolve disputes before they reach the Pensions Ombudsman. Having an effective IDR procedure demonstrates that complaints are taken seriously and dealt with properly. It is an important part of the framework within which trustees can carry out their role of running the scheme.

## 7.7 COMPLAINTS AND DISPUTES

The IDR procedure may be utilised voluntarily to deal with all types of complaints and disputes which arise in relation to the scheme. The complaints which must be dealt with under the IDR procedure are

- complaints made to the trustees by or on behalf of an actual or potential beneficiary who alleges that he has suffered financial loss occasioned by an act of maladministration done by or on behalf of a person responsible for the management of that scheme
- any dispute of fact or law that arises in relation to an act done by or on behalf of a person responsible for the management of the scheme and is referred to the trustees by an actual or potential beneficiary.

### 7.7.1 CODES OF PRACTICE

Trustees should inform the members of the IDR procedure and furnish them with the name and address of the person to contact. Trustees may consider including a section in the explanatory booklet of the scheme detailing how the procedure works. Trustees may use the IDR procedure to deal with any disputes and must use it in respect of the disputes specified in the regulations, unless the Ombudsman decides it is appropriate in the circumstances to waive the IDR procedure.

## 7.8 APPLICATIONS

While the regulations do specify some requirements which must be complied with, the trustees are mostly free to establish the IDR procedure most suitable for their scheme.

The IDR procedure must allow applications to be made by or on behalf of the actual or potential beneficiary. The minimum information which such applications must contain is as follows and must be in writing

- details of the complaint or dispute
- details of the name, address and date of birth of the beneficiary
- a correspondence address
- a clear statement of the reasons why the person bringing the complaint is aggrieved.

The application must be in writing and be signed by or on behalf of the actual or potential beneficiary.

### 7.8.1 CODES OF PRACTICE

Trustees may require further details to enable them to have a clear picture of the dispute at issue and to enable its resolution. It may be helpful to explain the procedure to the person making the complaint. A specific form could be produced for the complainant to fill in, which may help focus on the relevant facts and important details. However, the trustees cannot insist that the complainant use such a form.

### 7.8.2

Upon receipt of the application the trustees should check it to ensure that the person making it has a right to do so and that the dispute or complaint falls within the IDR procedure. Where the person is not entitled to make an application or where it falls outside the ambit of the procedure he or she should be informed of this fact and given an explanation why the complaint cannot be dealt with.

### 7.8.3 INDEPENDENT PERSON

The trustees may consider it beneficial to have an independent person investigate the complaint or dispute. This could be an expert in the relevant area such as a lawyer, actuary, pension consultant or accountant who is not involved in the matter at issue. It is important that anyone making an application will have confidence that the person dealing with the case will do so fairly and properly. It may be beneficial for meetings to be held between the trustees and/or the independent person and/or the independent person and the parties. This may assist in bringing to light further information not contained in the written particulars. When all the information has been examined the independent person or the trustees may give an opinion as to whether the applicant's case has merit. The trustees or independent person may then make recommendations as to the steps that can be taken to resolve the issue.

## 7.9 NOTICE OF DETERMINATION

The trustee's decision should be in the form of a "notice of determination". The "notice of determination" must be given in writing to the complainant within 3 months from the date all particulars required under the procedure have been furnished. The form and content of the notice is detailed in the regulations. The notice is only binding upon those who have agreed in writing, after it has been made, to be bound by it. The notice of determination must include

- a statement of the determination
- a reference to any legislation, legal precedent, ruling of the Pensions Board, ruling or practice of the Revenue Commissioners or other material relied upon
- a reference to such parts of any rules of the scheme relied upon and, where a discretion has been exercised, a reference to such parts of the rules of the scheme by which such discretion is conferred
- a statement that the determination is not binding upon any person unless, upon or after the making of the determination, the person assents in writing to be bound by it
- a statement that the complainant should check whether the complaint or dispute is one in respect of which the Pensions Ombudsman has jurisdiction to investigate and that further information can be found in an information booklet available from the Office of the Pensions Ombudsman (the address of which should be given).

### 7.9.1 CODES OF PRACTICE

Trustees need to consider the application carefully. They must arrive at their own decision. The trustees must give their notice of determination within the required time limits and in the prescribed format.

### 7.9.2

Trustees should keep records of all applications they receive, when all the information is received, and the decisions given, in respect of specific cases. All decisions should be kept confidential and should only be discussed with the relevant parties involved. It may be beneficial for the trustees to review all applications made to see if improvements can be made to the way the scheme is run. Trustees should review the IDR procedure on a regular basis to ensure it is being applied correctly and is functioning properly.

### 7.9.3

Trustees should aim to ensure that scheme members are fully aware of their rights under the Pensions Act, the scheme documentation and the IDR procedure as well as the services provided by the Office of the Pensions Ombudsman and the Pensions Board who assist in safeguarding their rights.

## CHAPTER 8

# THE ROLE AND FUNCTIONS OF THE PENSIONS BOARD

### INTRODUCTION

#### 8.1 THE PENSIONS BOARD

The Pensions Board was established by the Minister for Social Welfare under the Pensions Act, 1990. The Pensions Board's role and functions are best summarised in its mission statement, which is as follows:

##### MISSION OF THE PENSIONS BOARD

- to promote the security and protection of members of occupational pension schemes and contributors to Personal Retirement Savings Accounts and Trust RACs, in accordance with the Pensions Act, 1990 as amended;
- to promote the development of efficient national pension structures;
- to promote a level of participation in the national pension system which enables all citizens to acquire an adequate retirement income; and
- to provide information and authoritative guidance to relevant parties in support of pension security, structures and participation.

The Pensions Board includes representatives of trade unions, employers, Government, pension scheme trustees, the pensions industry, consumer interests, pensioner interests and various professional groups involved with occupational pension schemes, PRSAs and Trust RACs.

##### 8.1.1 FURTHER INFORMATION

An information leaflet entitled “The Pensions Board” is available online from the Pensions Board website. For details see Appendix 3.

### AUTHORITATIVE GUIDANCE

#### 8.2 LEGISLATION SERVICE

As the Pensions Act and its regulations override scheme rules, where necessary, it is important that trustees, scheme administrators and their professional advisers ensure that the legislation they refer to is fully up-to-date. The Pensions Board has appointed Better Regulation (an online published or consolidated legislation) to provide a legislation service, which is available by subscription in an online format, through the Better Regulation website ([www.betterregulation.com](http://www.betterregulation.com)). The Pensions Act and the regulations introduced under it are consolidated on the website, and include all amendments made to date.

##### 8.2.1 CODES OF PRACTICE

Trustees should ensure that they keep up-to-date with changes in legislation which affect pension schemes.

## 8.3 GUIDANCE ON PENSIONS ACT

The Pensions Board makes available detailed Guidance Notes and FAQs on the various parts of the Pensions Act and its regulations, especially in those areas which override the trust deed and rules of the scheme. The Guidance Notes are available online from the Pensions Board website. Detailed Guidance Notes are currently available on the following (relevant Parts or Sections of the Pensions Act are referred to in brackets):

- Preservation of Benefits and Minimum Value of Contributory Retirement Benefits (Part III)
- Disclosure of Information (Part V)
- Disclosure of Information by Trust RACs (Part V)
- Member Participation in the Selection of Trustees (Part VI)
- Appointment and Removal of Trustees by the Pensions Board (Part VI)
- Equal Pensions Treatment (Part VII)
- Compulsory and Voluntary Reporting to the Pensions Board (Part VIII)
- Determinations by the Pensions Board (under Sections 38, 53, 58, 64(A) and 81G of the Pensions Act, 1990)

In addition, the Pensions Board has produced guidelines on the following topics:

- Guidelines for cross-border schemes
- Contingent asset guidelines
- Guidance on Deferral of Annuity Purchase
- Intervaluation Guidelines
- Section 49(3) Guidelines
- Section 50/50A Guidelines
- Consultation Guidelines

The Pensions Board also provide a number of “Frequently Asked Questions” notes. These notes cover the following topics:

- FAQs on Registered Administrators
- FAQs on Remittance of contributions
- FAQs on Investment Regulations
- FAQs on Trust Based RACs
- FAQs on Women & Pensions
- FAQs on Occupational Pensions
- FAQs on Part-Time Work & Pensions
- FAQs on PRSAs

## 8.4 GUIDANCE ON OTHER LEGISLATION AFFECTING PENSIONS

The Revenue Commissioners, have made available a comprehensive Revenue Pensions Manual, which provides scheme administrators with detailed guidance on the tax treatment of occupational pension schemes.

### 8.4.1 AVAILABILITY OF GUIDANCE

Guidance Notes, guidelines and FAQs are made available online from the Pensions Board’s website and are updated frequently.

#### **8.4.2 CODES OF PRACTICE**

Trustee should ensure that scheme administrators and the scheme’s professional advisers have access to the full range of guidance material available on the Pensions Act and its regulations and on other legislation which applies to occupational pension schemes. For details see Appendix 3.

### **8.5 TECHNICAL GUIDANCE ENQUIRY SERVICE**

The Pensions Board provides an enquiry service in relation to the technical guidance given, including the information and guidance contained in this handbook. More straightforward queries can be dealt with by telephone. In cases where guidance on more complex and detailed issues is required it should be sought in writing, setting out clearly the issues involved and specifying the questions on which guidance is required.

Responses to some queries can only be provided by a scheme’s professional advisers, i.e. the actuary, auditor, investment manager or legal adviser. In such cases, trustees will be referred to their scheme’s advisers, as guidance provided by the Board’s staff cannot be a substitute for specific professional advice in relation to a scheme, where this is required.

### **8.6 DETERMINATIONS**

Provision is made in Section 26 of the Pensions Act for the Pensions Board to issue formal determinations on certain questions regarding the application of the Act, such as whether it overrides scheme rules, or whether a scheme is defined benefit or defined contribution for the purposes of the Act.

#### **8.6.1 APPLICATIONS FOR DETERMINATIONS**

The following persons are entitled to apply for a determination in respect of the application of the Act to a scheme:

- the trustees of the scheme
- any person who is an employer of persons to which the scheme applies
- any member or prospective member of the scheme
- such other persons (if any) as may be prescribed
- the agent to the scheme
- an authorised trade union representing a member or prospective member of the scheme.

### **8.7 TRUSTEE HANDBOOK**

This handbook is designed to contribute to the discharge of the Board’s statutory functions in relation to trustees. It is intended for the guidance of trustees in the discharge of their duties and responsibilities.

### **8.8 TRUSTEE TRAINING**

The Pensions Board also has a statutory function under Section 10(1) of the Pensions Act to encourage the provision of appropriate training facilities for trustees of schemes. Full details of how the Board discharges its function in this regard are given in paragraph 2.16. Trustees should note that employers will be obliged to organise trustee training for them under Section 59AA of the Pensions Act, once this section of the Pensions Act comes into force.

An e-learning tool for trustees will be made available on the Pensions Board website in the near future.

## INFORMATION FOR SCHEME MEMBERS AND OTHER INTERESTED PARTIES

### 8.9 INTRODUCTION

The effectiveness of the Pensions Act in safeguarding the pension rights of scheme members depends to a significant extent on members using the rights they have under the Act to monitor the administration and financial soundness of their scheme and to obtain information on their own personal pension entitlements.

### 8.10 INFORMATION BOOKLETS

There is a comprehensive range of information booklets available free of charge from the Pensions Board. These provide information on the Pensions Act, the Pensions Board, members' rights generally under the Act and under other relevant pensions legislation and in respect of PRSAs and Trust RACs. For details see Appendix 3. They are relevant for members, members' dependants, trustees, employers and employees with personnel, industrial relations and/or pay functions.

A distribution service has been developed to ensure that the Board's information booklets are available to as wide as possible number of persons involved with occupational pensions. They are also available to download from the Pensions Board's website.

### 8.11 ENQUIRY SERVICE

The Board's information and enquiry service deals with enquiries received from all the categories of enquirer listed above. As in the case of other enquiries, those that are straightforward are dealt with by telephone or, if such enquiry is written, by the issue of a standard response and/or the issue of an appropriate information booklet. Where scheme members report problems in relation to the administration of their scheme, their own personal pension entitlements and/or difficulties in obtaining information requested from their scheme, the Board's staff in the first instance would normally advise them of their rights and direct them to a contact person in their scheme. The Board's policy is that as many queries and complaints as possible should be directed to pension schemes, and resolved without the direct involvement of the Board.

If the member reports to the Board that he/she has received no response or an inadequate response, the matter is generally then pursued by the Board's staff through direct contact with the trustees, scheme administrator or professional advisers or where required, the member will be directed to the Pensions Ombudsman.

#### 8.11.1 CODES OF PRACTICE

Trustees should aim to ensure that scheme members are fully aware of their rights under the Pensions Act, the IDR procedure and the scheme's trust deed and rules and of the services provided by the Pensions Board and the Pensions Ombudsman which assist in safeguarding these rights.

## MONITORING COMPLIANCE

### 8.12 INTRODUCTION

Occupational pension schemes and Trust RACs must have direct contact with the Pensions Board in relation to

- scheme registration and updating registration details (see par. 4.4)
- payment of fees, which finance the Board's operations (see par. 4.6)

- the submission of actuarial funding certificates and, if necessary, funding proposals for the purposes of compliance with the funding standard in the case of pre-funded defined benefit schemes (see par. 4.12).

Given that records of all these transactions and, as a result, of compliance with these requirements is maintained by the Pensions Board, it is a straightforward task to establish if there is full compliance in these areas.

## 8.13 COMPLIANCE WITH DISCLOSURE OF INFORMATION REQUIREMENTS

The requirements to disclose information on the administration and financial position of the scheme and on the entitlements of scheme members under the scheme are among the more significant protections for members' pension rights provided for in the Pensions Act. Trustees are not directly required to certify to the Pensions Board that they have complied with the Disclosure of Information Regulations, as in the case of registration, fee payments and the funding standard.

### 8.13.1 COMPLIANCE AUDITS

The Pensions Board, however, monitors compliance in this area by arranging for a series of 'compliance audits' to be carried out on an ongoing basis in relation to a selection of schemes. Schemes in respect of which a relatively high number of complaints have been received and/or which have not met statutory deadlines in previous years for the issue of the annual reports/audited accounts, actuarial funding certificates, updating of registration details and fee payments, are likely to be included in the list of schemes for compliance audits. Schemes are also randomly selected for compliance audits.

### 8.13.2 COMPLIANCE AUDIT PROCESS

A letter is issued to the trustees of a scheme requesting that they furnish to the Board specific documentation within a specified timeframe. It is likely that the documentation requested would include

- (a) copies of the annual trustee report and, where applicable, the audited accounts in respect of the previous scheme year
- (b) details of the notifications to members that the annual report and audited accounts are available for inspection
- (c) the document providing basic information on the scheme to members and prospective members (usually provided by means of a scheme booklet).

On receipt of the documentation and information requested, compliance is checked regarding the content of (a) to (c) above with reference to the relevant legal requirements under the Act and its regulations, and on whether the documents under (a) and (b) have been made available within the statutory deadlines (see par. 4.19).

The compliance audit also involves checking that the registration details on the scheme held on the Board's scheme register are up-to-date (see par. 4.4) and that any fee payments due in respect of the scheme have been made (see par. 4.6).

Sanctions for non-compliance with the legal requirements are outlined in paragraph 8.19.

### 8.13.3 CODES OF PRACTICE

Trustees should ensure that scheme administrators furnish to the Board, within the timescales specified, the documentation and information sought by the Board's staff for the purposes of compliance audits.

## 8.14 ON THE SPOT FINES

Section 3A of the Pensions Act provides for an alternative to prosecution of specified offences under the Pensions Act through the courts. The Pensions Board may instead notify a person in writing that it is alleged that a summary offence has been committed and that if, within 21 days of the notice, the person has remedied the offence to the satisfaction of the Board and paid the appropriate fine, the prosecution will not proceed. These are called “on the spot fines”.

On-the-spot fines apply to a range of offences under the Pensions Act, including but not limited to:

- Failure to register a scheme with the Board or pay the annual registration fee
- Failure to comply with the Disclosure of Information Regulations
- Failure to respond to requests for information from the Pensions Board
- Employers not advising employees of salary deductions made for pension or PRSA purposes

The Board has published an information booklet entitled “Trustee and Employer Checklists – On-the-spot fines” to help trustees and employers ensure that they do not contravene any of the specified provisions subject to the on the spot fines regime. The booklet is available online from the Pensions Board website. The Pensions Board has been encouraging trustees and employers to use the Checklist as a way of ensuring that they are fulfilling their obligations. If they have any queries or concerns they should bring these to the attention of their schemes’ administrator or financial advisor, as the case may be, in order to ensure full compliance.

The Pensions Board pro-actively monitors compliance with all provisions of the Act, including the specified provisions subject to the on the spot fines regime. More serious breaches of the Act will continue to be dealt with by prosecution through the courts.

## FORMAL INVESTIGATIONS

### 8.15 INTRODUCTION

The Pensions Board has wide powers under Section 18 of the Pensions Act to carry out investigations into the state and conduct of schemes. Investigations are normally initiated when complaints are received regarding the administration and/or the financial soundness of a scheme or if scheme members report that they have been unable to obtain satisfactory responses to queries made about the scheme and/or their own personal entitlements. The Board also has the power to monitor compliance with the Pensions Act and will do so without necessarily authorising a formal investigation under Section 18.

#### 8.15.1 CODES OF PRACTICE

Trustees should ensure that they co-operate with the Pensions Board and that any information or documentation is furnished to the Board in a prompt manner.

### 8.16 BOARD’S POWERS TO INVESTIGATE

The Pensions Board also has extensive powers to authorise staff members or professional advisers to the Board, to obtain information or documentation needed for the purposes of an investigation, where this is not being readily made available by the trustees, employer or other interested parties.

#### 8.16.1 CODES OF PRACTICE

Trustees must ensure that information and/or documentation sought by persons authorised under Section 18 of the Pensions Act to carry out an investigation into the state and conduct of a scheme, is furnished in full to the authorised persons, within the timescale specified.

### 8.17 REPORTS ON INVESTIGATIONS

The Pensions Board may prepare or have prepared one or more reports on any investigation carried out under the Pensions Act. Copies of such reports may be made available at the Board's discretion. If the investigation has been carried out in response to a complaint received from a scheme member and/or their trade union, copies of the report on the investigation would, in the normal course, be made available to the complainants and to the scheme trustees. The report in draft form may be made available to the trustees for comment before it is finalised, with a view to correcting inaccuracies in the information provided or misrepresentations of the trustees' position on any matter dealt with in the report.

#### 8.17.1 REPORTS – PRIVILEGED

The publication by the Pensions Board of any report or reports of an investigation carried out under Section 18 of the Pensions Act is privileged, which means that no defamation proceedings can be taken against the Board in relation to the contents of such reports.

## MANDATORY REPORTING TO PENSIONS BOARD

### 8.18 WHISTLE BLOWING

Where a relevant person (see below) has reason to believe that material misappropriation or fraudulent conversion of a scheme's resources

- has occurred
- is occurring, or
- is to be attempted

that person is required under Section 83 of the Pensions Act to give a report in writing to the Pensions Board of the particulars of the misappropriation or conversion, as the case may be.

#### 8.18.1 RELEVANT PERSON

Relevant person (in relation to an occupational pension scheme) includes any of the following, who have an involvement with the scheme:

- an auditor
- an actuary
- a trustee
- an insurance company
- an investment business firm
- a registered administrator
- a person who has been appointed by the trustees of the scheme to carry out, or who is carrying out, any of the duties of the trustees of the scheme under Section 59 of the Pensions Act.

### 8.18.2 LEGAL PROTECTION FOR THOSE MAKING REPORTS

Provision is also made in Section 84 of the Pensions Act for the legal protection of persons making reports in good faith to the Board, concerning the state and conduct of a scheme. This applies not only in the case of mandatory reports made in accordance with Section 83 of the Pensions Act (see par. 8.17 above), but also in the case of any reports made to the Pensions Board voluntarily, in relation to any matter concerning a scheme. The protection provided means that no duty to which the person making the report may be subject, for example, a duty of confidentiality, shall be regarded as contravened. It further provides that no liability or action shall lie against the person in any court for making the report. Publication of any such reports is privileged, which means that no defamation proceedings can be brought against any person for making a report, if it is made in good faith.

### 8.18.3 PROTECTION AGAINST UNFAIR DISMISSAL

Specific provision affording employees protection against unfair dismissal is made in Section 3 of the Pensions Act, in situations where an employee is dismissed from an employment solely or mainly because, in good faith, the employee

- (a) notified the Pensions Board of an alleged breach of the Pensions Act
- (b) made a report to the Board of any matter concerning the state and conduct of a scheme
- (c) applied for a determination (see par. 8.6.1),
- (d) gave evidence in any proceedings under the Pensions Act
- (e) gave notice to his/her employer of his/her intention to do anything referred to in (a) to (d) above.

## 8.19 PENSIONS BOARD GUIDANCE

Guidance Notes on the reporting requirements in relation to material misappropriation or fraudulent conversion of a scheme's resources are available from the Pensions Board. For details see Appendix 3. Trustees should study these carefully to ensure that they are fully aware of the legal requirements in this regard.

### 8.19.1 CODES OF PRACTICE

Trustees should ensure that they are fully aware of the legal requirements on compulsory and voluntary reporting to the Pensions Board.

### 8.19.2

Trustees must ensure that written reports are submitted to the Pensions Board without delay where there is reason to believe that material misappropriation or fraudulent conversion of a scheme's resources has occurred, is occurring or is to be attempted.

## LEGAL SANCTIONS FOR NON-COMPLIANCE

### 8.20 INTRODUCTION

Court proceedings may be taken against trustees, employers, PRSA providers, an actuary, an auditor and certain other persons for non-compliance with the Pensions Act. The Pensions Board may bring and prosecute summary proceedings in the District Court or, depending on the seriousness of the alleged offence, may refer the file to the Director of Public Prosecutions who may bring and prosecute proceedings on indictment.

Persons found guilty of an offence under the Pensions Act are normally liable

- on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding one year, or to both
- on conviction on indictment to a fine not exceeding €25,000 or to imprisonment for a term not exceeding two years, or to both.

## 8.21 REMOVAL/SUSPENSION OF TRUSTEES

The Pensions Board has the power under Section 63 to apply to the High Court for the removal of trustees in cases where

- the trustees have failed to comply with the duties imposed on them by law
- where the scheme is being or has been administered in such manner as to jeopardise the rights and interests thereunder of the members of the scheme.

The Board also has the power under Section 63A to apply to the High Court for the suspension of trustees in specified circumstances.

## 8.22 APPLICATIONS TO THE HIGH COURT

Situations may arise where direct intervention in the administration of a scheme is warranted to safeguard the pension rights of scheme members.

Accordingly, provision is made in the Pensions Act whereby, on application by the Pensions Board, the High Court may

- order an employer to pay arrears of contributions
- order restoration of the resources of the scheme, where these have been wrongfully paid or transferred to another person
- order disposal of an investment where its retention is likely to jeopardise the rights and interests under the scheme of the members of the scheme
- grant an injunction restraining a person from doing any act which constitutes a misuse or misappropriation of any of the resources of the scheme, likely to jeopardise the rights and interests of members under the scheme.

## 8.23 DEFENCE FOR ACCUSED PERSONS

Provision is made in the Pensions Act (Section 3(i)(c)) that it shall be a defence for an accused person to prove that the contravention to which the offence relates was attributable to

- a contravention by one or more other persons of a provision of the Pensions Act or its regulations and that he or she took such reasonable steps (if any) in the circumstances as were open to him/her to secure the compliance of such person or persons with the provision concerned, or
- a failure by an actuary, auditor or other person to prepare a document which the accused person had instructed the actuary, auditor or other person to prepare and that the accused person took such reasonable steps (if any) in the circumstances, as were open to him/her to secure the preparation of the said document by the actuary, auditor or other such person.

The Pensions Act provides (Section 3(1)(d)) that the defences described above shall not be available to registered administrators.

In the normal course ‘reasonable steps’ to secure compliance with a provision of the Pensions Act or the preparation of a document should include:

- written requests or instructions specifying clearly what is required, the deadline for completion of the tasks and a request for an immediate written acknowledgement confirming that the tasks will be undertaken as requested/instructed and will be completed by the deadline
- the issuing of such requests or instructions in sufficient time to allow for a reasonable period to complete the tasks
- the issuing of written reminders, if the agreed deadline is not being met.

#### **8.23.1 CODES OF PRACTICE**

When delegating tasks for which they have responsibility under the Pensions Act, trustees should ensure that clear requests are made or instructions given, as appropriate, and that specific deadlines for completion of the tasks are set. Such requests or instructions should normally be in writing and appropriate acknowledgements sought.

## CHAPTER 9 TRUST RACS

### 9.1 OVERVIEW

#### 9.1.1 TRUST RACS

A Trust RAC is a scheme established under trust and approved by the Revenue Commissioners under Section 784(4) or Section 785(5), Chapter 2, Part 30 of the Tax Consolidated Act, 1997. A Retirement Annuity Contract (“RAC”) is the formal name for what is normally called a personal pension.

Most RACs are set up under individual contracts with an insurer and governed by life insurance legislation. However, the one exception is a scheme for a group of individuals established under trust and approved by the Revenue Commissioners. Examples of trust RACs are those operated by the Institute of Chartered Accountants, the Bar Council of Ireland and the Law Society of Ireland.

The following people may be eligible to participate in a Trust RAC depending on the eligibility rules of the scheme concerned:

- a self employed person;
- a salaried employee whose earnings are non pensionable;
- a person who has more than one source of earnings and one of those sources is non pensionable.

#### 9.1.2 SMALL TRUST RACS

A small Trust RAC is a Trust RAC with less than 100 members (i.e. with less than 100 active and deferred members). A distinction is made between a Trust RAC and a small trust RAC so as to exempt small Trust RACs from certain regulatory requirements (see par. 9.2.17).

### 9.2 DUTIES OF TRUST RAC TRUSTEES

The duties imposed on scheme trustees under trust law will apply equally to trustees of Trust RACs. In addition, many of the duties of scheme trustees under the Pensions Act also apply to trustees of Trust RACs. There are also certain regulations made under the Pensions Act which apply to Trust RACs.

Section 59 of the Pensions Act lays down in broad terms the general duties of trustees of schemes and Trust RACs as follows:

- to ensure that contributions are received
- to invest the funds
- to make arrangements for paying the benefits
- to ensure that records are kept
- to undertake trustee training (statutory obligation yet to come into force)
- to ensure that a registered administrator is appointed.

Chapter 3 sets out these duties in greater detail and, in addition to explaining some necessary background, outlines Codes of Practice in relation to each duty. The purpose of this Chapter is to provide a brief overview of some of the main duties imposed on trustees of Trust RACs under the Pensions Act.

### 9.2.1 REGISTRATION OF TRUST RACS WITH THE PENSIONS BOARD

Trustees of Trust RACs are required to register their schemes with the Pensions Board. A Pensions Board registration form with details of the required information required by the Board for registration purposes is available online from the Pensions Board website.

For Trust RACs established before 27 April 2007, the trustees were required to register it with the Board by 27 April 2008. If a Trust RAC is established after 27 April 2007, the trustees must register it with the Board within one year of the Trust RAC's commencement. Changes to Trust RAC information on the Pensions Board's register must be notified to the Board.

### 9.2.2 PAYMENT OF PENSIONS BOARD FEES

Since 1 January 2008, trustees of Trust RACs have been required to pay fees to the Pensions Board.

Fees payable to the Pensions Board are based on the number of members in respect of whom the Trust RAC has received contributions during the previous year as follows:

- 500 or less members – €9.50 per member
- 500 to 1,000 members – €4,750
- 1,000 or more members – €4.75 per member

Fees are normally payable not later than 31 March each year. There is an exemption from fees for Trust RACs in wind up.

### 9.2.3 REMITTANCE OF CONTRIBUTIONS TO TRUST RACS

The Pensions Act specifies that the trustees shall ensure, in so far as is reasonable, that the contributions payable by the employer and members of the Trust RAC are received. All employee contributions to Trust RACs deducted from an employee's wages/salary must be remitted to the trustees or another person on their behalf within 21 days from the end of the month in which the deduction was made.

The Pensions Board has produced a detailed Frequently Asked Questions document in relation to the Remittance of Contributions which is available online from the Board's website, which applies likewise to Trust RACs.

### 9.2.4 INVESTMENT OF CONTRIBUTIONS REMITTED TO TRUST RACS

Trustees of Trust RACs are required to ensure contributions are invested within 10 days of the end of the calendar month in which they are received.

Trustees of Trust RACs, other than small Trust RACs, must also prepare a Statement of Investment Policy Principles (SIPP). The investment obligations of trustees of Trust RACs are the same as those for the trustees of occupational pension schemes. These obligations are well summarised in the Pensions Board's FAQ on the Investment Regulations which is available online from the Board's website. These investment rules apply equally to Trust RACs with the exception of a Trust RAC with only one member (which may include persons under a pension adjustment order).

### 9.2.5 PROHIBITION ON BORROWING

The trustees of a Trust RAC may borrow money but only for liquidity purposes and only on a temporary basis. Trustees of a Trust RAC with only one member (which may include persons under a pension adjustment order) may borrow money.

### 9.2.6 PAYMENT OF BENEFITS

Trustees of Trust RACs shall make arrangements for the payment of the benefits as provided for under the rules of the Trust RAC as they become due. This may be in the State or in any other Member State and should be net of any applicable taxes and transaction charges.

### 9.2.7 KEEPING OF RECORDS

The Pensions Act specifies that the trustees of a Trust RAC shall ensure that proper membership and financial records of the Trust RAC are kept.

### 9.2.8 APPOINTMENT OF REGISTERED ADMINISTRATOR

With the exception of trustees of small Trust RACs (i.e. a Trust RACs with less than 100 active and deferred members), trustees of Trust RACs are obliged under Section 59 of the Pensions Act to appoint a registered administrator to undertake specified core administration functions, unless they appoint themselves as registered administrators for this purpose. This obligation came into force on 1 November 2008. The core administration functions which must be carried out by a registered administrator are:

- the preparation of annual reports
- the preparation of annual benefit statements
- the maintenance of sufficient records to provide such services.

Further details on registered administrators are contained in Chapter 5.

### 9.2.9 TRUSTEE QUALIFICATIONS AND EXPERIENCE

Trustees of Trust RACs are required to possess, or employ or enter into arrangements with advisers who possess, qualifications and experience appropriate and relevant to the investment of the scheme resources. Trustees are regarded as discharging this obligation by appointing an investment manager to manage the investment of those resources.

Where the trustees of a Trust RAC have not appointed an investment manager, they must demonstrate to the Pensions Board that they possess among their membership the appropriate qualifications and experience to assess and advise on investment options and execute the investment decisions in relation to the Trust RAC's resources. In such circumstances, the Board's approval of the trustee's qualifications and experience must be obtained in advance of the Trust RAC's resources being invested. The requirement is an ongoing one, so should a trustee whose qualifications and experience have been approved by the Board resign, or otherwise cease to be a trustee, any new trustee appointed to fulfil the investment role will need to have their qualifications and experience approved by the Board.

Alternatively the trustees can employ an advisor with such qualifications and experience subject to the Board's approval. An application for approval should be made to the Board by either the trustee(s) or the proposed advisor as the case may be, on the application form which is available online from the Pensions Board website. The Board's approval of the trustees or advisors' qualifications and experience must be obtained in advance of the Trust RAC's resources being invested.

For information on who is prohibited from acting as a trustee of a Trust RAC refer to the Pensions Board's information booklet "So you're a pension scheme trustee?" which is available online at from the Pensions Board website.

The appointment and removal of trustees will be regulated by the trust deed governing the Trust RAC. The member trustee regulations under the Pension Act do not apply to Trust RACs.

### 9.2.10 TRAINING FOR TRUSTEES

Section 59AA of the Pensions Act requires sponsoring employers to arrange for trustees of Trust RACs to receive appropriate training relating to:

- (i) the Pensions Act, regulations made under it and other laws applicable to the operation of the Trust RAC (such as trust law or employment law);
- (ii) the duties and responsibilities of trustees generally; and
- (iii) such other matters relevant to the management of the Trust RAC as are prescribed.

For persons who are trustees of Trust RACs when these provisions commence, employers will have 2 years after the commencement of this provision to arrange for such training. For trustees appointed after these provisions come into force, employers must arrange appropriate training within 6 months of their appointment. There will be an ongoing requirement that trustees re-train every two years. Employers will not be required to arrange training for professional trustees or Revenue approved pensioner trustees.

A statutory instrument bringing these provisions into operation has not yet been made.

### 9.2.11 DISCLOSURE REQUIREMENTS FOR TRUST RACS

Trustees of a Trust RACs (other than small Trust RACs) must comply with the Trust RAC (Disclosure of Information) Regulations 2007 (S.I. No. 182 of 2007). These regulations are similar to the Disclosure of Information Regulations.

The statutory disclosures apply in relation to audited accounts, valuation reports, full annual reports, the constitution of the Trust RAC, basic information, members not receiving benefits, members terminating contributions, retirement, death, wind up, pension adjustment orders and investments.

The Pensions Board has published detailed Guidance Notes on the disclosure requirements for Trust RACs. These Guidance Notes entitled “Disclosure of Information by Trust RACs” are available online from the Pensions Board website.

### 9.2.12 CROSS-BORDER REQUIREMENTS FOR TRUST RACS

The trustees of Irish based Trust RACs must apply to the Pensions Board for authorisation before accepting any cross border contributions (i.e. contributions paid into the Trust RAC by an employer in another EU Member State). Once authorised, the trustees must then notify the Board and provide it with the information prescribed in The Trust RACs (Cross-Border) Regulations, 2007 (S.I. No. 184 of 2007) before accepting contributions from an overseas employer.

If a Trust RAC wishes to engage in cross-border activity the authorisation and approval forms may be downloaded from the Pensions Board’s website. The Pensions Board’s “Guidelines for cross border schemes” may also be downloaded from the Pensions Board’s website.

### 9.2.13 COMPULSORY AND VOLUNTARY REPORTING TO THE BOARD

There is legal requirement on a range of specified persons involved in the operation of Trust RACs to report suspected fraud or material misappropriation to the Pensions Board.

Specified persons include auditors, actuaries, trustees, insurance intermediaries, investment advisers and other persons who have been involved in assisting the trustees of a Trust RAC.

There is also a provision to make a voluntary report on any matter concerning the state and conduct of a Trust RAC and legal protection for persons making such reports.

#### **9.2.14 THE PENSION BOARD'S POWERS IN RELATION TO TRUST RACS**

A summary of the main powers the Board has in relation Trust RACs follows below:

- Power to issue guidelines or guidance notes on the duties and responsibilities of trustees of Trust RACs.
- Investigation powers.
- Power to request information.
- Power to prosecute trustees for failure to comply with any obligations imposed by the Pensions Act.
- Power to make a determination on request or on its own initiative as to whether a person is prohibited from acting as a trustee.
- Power to apply to the High Court to remove, appoint or suspend trustees.
- Power to apply to the High Court for other orders.

#### **9.2.15 MEMBERS RIGHTS OF REDRESS IN RELATION TO TRUST RACS**

For members of Trust RACs, the main rights of redress they enjoy include the ability to:

- Complain to the Pensions Board if they believe the trustees are in breach of their obligations under the Pensions Act.
- Complain to the Pensions Ombudsman.
- Complain to the Financial Services Ombudsman in the case of an insured Trust RAC.

#### **9.2.16 TRUST RACS AND EQUAL PENSION TREATMENT**

Equal Pension treatment provisions under the Pensions Act will not apply where the Trust RAC is financed by contributions paid by members on a voluntary basis.

#### **9.2.17 SUMMARY OF STATUTORY PROVISIONS WHICH DO NOT APPLY TO SMALL TRUST RACS**

The provisions of the Pensions Act dealing with disclosure of information and statement of investment policy principles (SIPPs) do not apply to small Trust RACs.

#### **9.2.18 SUMMARY OF STATUTORY PROVISIONS WHICH DO NOT APPLY TO ONE MEMBER TRUST RACS**

The provisions of the Pensions Act dealing with investment rules under the Pensions Act and the prohibition on borrowing do not apply to small Trust RACs.

# APPENDICES

## APPENDIX 1

Exempt Approved Occupational Pension Schemes  
Note of the Main Revenue Practice and Requirements

## APPENDIX 2

Pensions Board Training Courses For Trustees of Occupational Pension Schemes

## APPENDIX 3

Further Information

## APPENDIX 4

Glossary of Pension Terms

## APPENDIX 5

Useful Addresses

## APPENDIX 1

### EXEMPT APPROVED OCCUPATIONAL PENSION SCHEMES

The following is a note of the main Revenue Practice requirements which, if adhered to, should mean that a scheme would normally be acceptable for approval under the Taxes Consolidation Act 1997. This note should not be used as a substitute for the Revenue Pensions Manual issued by the Retirement Benefits District of the Revenue Commissioners which is the main document outlining Revenue practice and which must be consulted in any case of doubt.

The Scheme must be established under trust.

#### EMPLOYEES' CONTRIBUTIONS

Voluntary contributions are permitted on condition that they do not result in the maximum benefit which the Revenue would approve, based on the salary and service of the member, being exceeded.

Employees may contribute on an age related scale.

Employees may make annual contributions to the scheme, including voluntary and compulsory contributions, as follows:

##### AGE LIMIT

Up to 30 years of age 15% of remuneration  
30 up to 39 years of age 20% of remuneration  
40 up to 49 years of age 25% of remuneration  
Over 50 years of age 30% of remuneration  
Over 55 years of age 35% of remuneration  
Over 60 years of age 40% of remuneration

The aggregate amount of the individual's remuneration to which the relevant percentage limit applies is restricted to an overall amount of €150,000 for 2009. This limit is normally updated on an annual basis.

Special once-off contributions are allowed for tax purposes in the year of payment, if the above contribution limits and the Revenue maximum benefit are not exceeded. Where the contribution limit is exceeded relief on the balance would be spread forward or, if that is not appropriate or possible, back to previous tax years. If a contribution is paid after the end of the year, but before the following 31 October, relief may be allowed in the earlier year provided an election to do so is made by the individual on or before the 31 October.

#### EMPLOYERS' CONTRIBUTIONS

The employer's ordinary annual contributions are allowed as an expense and are not taxable as a benefit in kind to the employee. The employer must make "meaningful" contributions in the context of the establishment and operation of and the provision of benefits under a scheme. Meaningful would include the employer paying contributions of not less than 10% of the total ordinary annual contributions (exclusive of employee voluntary contributions) or paying the administration costs and the cost of insuring death in service benefits. A special contribution by the employer would be allowed as an expense in the year of payment, to a maximum of (a) €6,350 or (b) the amount of the employer's ordinary annual contribution for pension benefits under all schemes of the employer.

Where these limits are exceeded, relief will be spread forward, usually by reference to the amount of the normal or annual contribution each year.

## NORMAL RETIREMENT AGE

Members included in a scheme must have a normal retirement age. Generally any age between sixty and seventy is acceptable.

## PENSIONABLE AND FINAL PENSIONABLE SALARY

These are regulated by the rules of each scheme, but the maximum benefits permitted by the Revenue Commissioners are expressed in terms of final remuneration.

## FINAL REMUNERATION

All Schedule E income may be pensioned, but items which fluctuate from year to year (bonuses are a good example) must be averaged over three years or other suitable period. Final remuneration on which maximum approvable benefits can be based may be any one of the following:

- (a) Salary in any one of the last five years before retirement, plus fluctuating emoluments averaged over the preceding three years or more.
- (b) The member's total pay averaged over three consecutive years ending not earlier than ten years prior to retirement date.
- (c) The rate of pay at retirement or any point in the final year, plus the average of any fluctuating emoluments as calculated in (a) above.  
However, this may be restricted in cases where special increases or promotions applied in the three years before retirement.
- (d) If final remuneration is based on anything other than (c), the income may be 'dynamised', i.e. increased by reference to changes in the Consumer Price Index between the dates on which such remuneration applied and the point of retirement. This can be useful where a person's actual income has not kept pace with increases in cost of living (20 per cent directors may be restricted).

## PENSION BENEFITS AT NORMAL RETIREMENT AGE

A pension of two-thirds of final remuneration can be provided at normal retirement age for a member who has completed ten or more years service with the employer. If the member has less than ten years service the following scale applies:

Years of <i>service</i> to normal retirement age	Expressed as a fraction of maximum approvable pension for a full career	Expressed as a fraction of final remuneration
1	1/10th	4/60ths
2	2/10ths	8/60ths
3	3/10ths	12/60ths
4	4/10ths	16/60ths
5	5/10ths	20/60ths
6	6/10ths	24/60ths
7	7/10ths	28/60ths
8	8/10ths	32/60ths
9	9/10ths	36/60ths
10 or more		40/60ths

Fractions of a year can be taken into account by interpolation. If a lump sum is paid at retirement the maximum approvable pension is reduced by the pension equivalent of that lump sum.

The maximum member's pension calculated in accordance with the above is inclusive of the following:

- Pension equivalent of any lump sum benefit at normal retirement age which is in addition to the member's pension
- Any pension derived from voluntary contributions paid by the member
- Deferred or current pensions from previous employment
- Retirement annuities in respect of any period of self-employment or non-pensionable employment, with certain exceptions
- Pension equivalent of refunds of contributions from membership of a previous scheme.

### **LUMP SUM BENEFITS AT NORMAL RETIREMENT AGE**

A basic cash amount of 3/80ths of final remuneration for each year of service can be provided. The maximum 120/80ths or 1.5 times final remuneration may be provided for any member with at least 20 years service with that employer at normal retirement age.

As in the case of a member's pension, the maximum lump sum may have to be reduced in certain cases, e.g. where a member has a deferred lump sum from a previous employment. Where service is eight years or less, a strict basis of 3/80ths of pay per year of service applies. For more than eight years service, a sliding scale goes from 3/80ths per year for nine years, to 120/80ths for 20 years. A trivial pension (less than €330 per annum) may always be cashed, but its cash value will, in certain circumstances, be subject to a small tax charge.

### **BENEFITS ON RETIREMENT BEFORE NORMAL RETIREMENT AGE**

On early retirement after age 50 or due to ill health a maximum pension and lump sum benefit may be paid. This would usually be equal to those which could have been provided had the member continued in the service until normal retirement age, based on final remuneration at date of retirement multiplied by  $N/NS$  where  $N$  is service to date of retirement and  $NS$  is potential service up to normal retirement age. Where early retirement is due to ill health the  $N/NS$  multiplier is not applied.

### **BENEFITS ON RETIREMENT AFTER NORMAL RETIREMENT AGE**

If a member remains in service after normal retirement age and total service at that date is, or exceeds, forty years, additional benefits may be provided in respect of the service completed after normal retirement age, subject to an overall maximum of 45/60ths. Lump sums can be similarly increased. Alternatively, regardless of service completed, there can be an actuarial increase in the benefits, to take account of the deferment of payment. Certain restrictions apply to a 20 per cent director who retires late.

Benefits can be paid at normal retirement age, or on actual retirement. A member deferring retirement until after normal retirement age may elect to take his or her lump sum benefit at normal retirement age and defer the pension. If the member elects to take a pension at normal retirement age, the cash payment must be made simultaneously.

## BENEFITS ON DEATH IN SERVICE

On death during employment a lump sum may be paid of up the greater of €6,350 or four times annual remuneration, together with a return of the member's own contributions with or without interest. A spouse's or dependant's pension, not exceeding 100% of the member's maximum aggregate pension that could have been approved for the employee if he had retired on ill-health grounds on the date of his death, may also be provided. Where there is more than one dependant a pension can be provided for each dependant, subject to the aggregate dependants' pensions not exceeding the member's maximum aggregate pension that could have been approved for the employee if he had retired on ill-health grounds as set out above.

## BENEFITS ON DEATH AFTER RETIREMENT

Payment of the member's pension can be guaranteed to continue after the death of the member up to a maximum of ten years after retirement. Where the guaranteed period does not exceed five years, the outstanding instalments at death may be paid in a tax-free lump sum. No other lump sum may be provided on death after retirement.

A spouse's or dependant's pension may be granted on the death of a pensioner of up to 100% of the maximum pension which could have been approved for the deceased member. If there is more than one dependant, aggregate dependants' pensions not exceeding the member's maximum pension may be provided.

## DEPENDENT CHILDREN'S ALLOWANCES

On death during employment or after retirement, allowances may be paid to dependent children up to the age of eighteen or until they cease to receive full-time educational or vocational training, if later. The total benefit that may be paid to children plus the spouse or other dependants must not exceed the maximum pension that could have been provided to the member.

## COST-OF-LIVING INCREASES

Increases in pensions after they start to be paid are permitted, provided the increased pension does not exceed the maximum pension that could have been paid at retirement (or death) and increased in line with either the cost of living or revisions in the pensioner's former earnings scale. Alternatively, a scheme may guarantee to increase pensions whilst in payment at a fixed rate, not exceeding 3 per cent per annum.

## BENEFITS ON LEAVING SERVICE

In a contributory scheme, a member can elect to take a refund of contributions on withdrawal, subject to the preservation provisions of the Pensions Act. This refund is subject to a tax liability of the standard rate of tax which may be deducted, if the rules permit, from the amount payable to the member. Where a refund of contributions is not possible, elected deferred benefits may be provided. The maximum is usually equal to those which could have been provided had the member continued in the service to normal retirement age, based on final remuneration at date of leaving multiplied by  $N/NS$ , where  $N$  is service to date of leaving and  $NS$  is potential service to normal retirement age. These deferred benefits may be revalued up-to-date of payment in line with increases in the Consumer Price Index.

## MEMBERSHIP OF PENSION SCHEMES

A scheme can be set up for an individual employee or a group of employees selected on a defined or discretionary basis. Part-time and temporary employees can normally be included. Directors who own or control more than 20 per cent of the shares carrying voting rights can also be included in respect of earnings assessed under Schedule E. However, certain restrictions apply to 20 per cent directors notably with regard to the definition of final remuneration and to the late retirement provision as set out above.

## **APPENDIX 2**

### **PENSIONS BOARD TRAINING**

#### **COURSES FOR TRUSTEES OF OCCUPATIONAL PENSION SCHEMES**

A list of trustee training courses has been compiled by the Pensions Board and is available on the Board's website. Only course providers who have satisfied the Board on the content of their training courses are included in this list. It is intended as a guide only for trustees of occupational pension schemes who are interested in training. For further information on the courses please contact the person named on the list provided on our website.

## APPENDIX 3

### FURTHER INFORMATION

The following booklets are also available free of charge from The Pensions Board and may be downloaded from the Board's web site.

- **Women and Pensions**

This booklet describes the ways in which women can provide financial security for themselves and their dependants in retirement. It addresses issues of particular interest to women such as maternity leave, career breaks and re-entering the workforce.

- **What are my Pension Options?**

This booklet provides information on the types of pension plans you can use to save for retirement, i.e. company pensions, personal pensions, PRSAs and state retirement pensions.

- **What happens to my Pension if I Leave?**

This booklet provides a guide to preservation and transfer of benefits and is intended for people who are thinking of changing jobs or have already done so.

- **Pensions Checklist**

This checklist provides information and a questionnaire to help you inform yourself about how to provide for your retirement.

- **PRSAs – Employers' Obligations**

This booklet describes employers' legal obligations with regard to Personal Retirement Savings Accounts (PRSAs).

- **PRSAs – A Consumer Guide**

This booklet shows you how to approach, search, apply for, and monitor your PRSA. It contains Frequently Asked Questions on PRSAs and is jointly produced by the Consumer's Association of Ireland and The Pensions Board.

- **What Do You Know About Your Pension Scheme?**

This booklet provides an overview of the information which trustees and employers must provide in relation to occupational pension schemes.

- **A Guide to your scheme's annual report**

This booklet is intended to help you to understand what is required of scheme trustees in relation to annual reports and audited accounts (where applicable), your rights to see and receive copies and what these should contain and to explain in brief the significance of the information you will find there.

- **So You're a Pension Scheme Trustee?**

This booklet gives concise guidance on trustees' duties and responsibilities and includes helpful definitions.

- **Pension Scheme Funding and Restructuring**

This booklet has been prepared to assist trustees and scheme members who may be involved in pension scheme funding or restructuring.

### ■ **Selecting Member Trustees**

This booklet provides a brief guide to how and why occupational pension schemes are set up as trusts, the role of trustees, eligibility to participate in their selection, the options for members and employers and the procedures involved.

### ■ **Trustee and Employer Checklists – On-the-spot fines**

These checklists help trustees and employers to be aware of the legislative breaches that incur on-the-spot fines.

### ■ **Annuities – A Brief Guide**

The booklet includes information on what annuities are, how they work and what annuity options are available.

### ■ **Integration – A Brief Guide**

This booklet provides guidance on the integration of occupational pension scheme benefits with the benefits payable under the social welfare system.

### ■ **A Brief Guide to Equal Pension Treatment**

This booklet provides guidance on the principle of equal pension treatment, discrimination and victimisation in relation to occupational pension schemes.

### ■ **A Brief Guide to the Pension Provisions of the Family Law Acts**

This booklet provides information to a person who is seeking, or has obtained, a pension adjustment order following a divorce or judicial separation.

### ■ **A Guide to Hybrid Pension Schemes**

This booklet is intended to help employers, employees, union representatives and other involved with pensions to understand the different types of pension scheme designs. This is with a view to helping them to reach agreement about the most suitable type of pension scheme in a particular situation.

## **LEGISLATION SERVICE**

The Pensions Board Legislation Service is now provided in an online format. The Board appointed Better Regulation Ltd (an online publisher of consolidated legislation) to provide the service with effect from 1 January 2007. An online version of the service called “Irish Pensions Online” is provided by Better Regulation Ltd.

For further information regarding Better Regulation Ltd.’s “Irish Pensions Online” service, please contact:

### **Better Regulation Ltd**

Fitzwilliam Hall

Fitzwilliam Place

Dublin 2

Ireland

T: +353 (0)1 669 8591

F: +353 (0)1 669 8592

Email: [info@betterregulation.com](mailto:info@betterregulation.com)

Website: [www.betterregulation.com](http://www.betterregulation.com)

## GUIDANCE

### GUIDANCE NOTES

A series of technical guidance notes on the Pensions Act and its Regulations, designed mainly for pension practitioners, have been prepared by the Board. The Board's guidance notes are available free of charge on the Board's website in pdf format.

The Board has prepared Guidance Notes on the requirements in relation to:

- Disclosure of Information by occupational pension schemes
- Preservation of Benefits and Minimum Value of Contributory Retirement Benefits
- Compulsory and Voluntary Reporting to The Pensions Board
- Member Participation in the Selection of Trustees
- Equal Pension Treatment in occupational pension schemes
- Disclosure of information by Trust RACs
- Appointment and Removal of Trustees by The Pensions Board
- Determinations by The Pensions Board

### FREQUENTLY ASKED QUESTIONS (FAQS) AND GUIDELINES

The Board has prepared FAQs and Guidelines on the following topics and which are available free of charge on the Board's website.

- FAQs on Registered Administrators
- FAQs on Remittance of Contributions
- FAQs on Investment Regulations
- FAQs on Trust Based RACs
- Cross-border Guidelines
- Contingent Asset Guidelines
- Defferal of Annuity Purchase Guidelines
- Section 49(3) Guidelines
- Section 50/50A Guidelines

## FORMS

### ■ Group Scheme Revenue Approval/Pensions Board Registration Form

This form is an application for Revenue approval under Chapter 1 of Part 30 of the Taxes Consolidation Act, 1997 and the corresponding application for Pensions Board registration under Section 60 of the Pensions Act for group schemes, i.e., schemes open to more than one member.

### ■ One Member Only Scheme Revenue Approval/Pensions Board Registration Form

This form is an application for Revenue approval under Chapter 1 of Part 30 of the Taxes Consolidation Act, 1997 and the corresponding application for Pensions Board registration under Section 60 of the Pensions Act for one member only schemes.

### ■ Guide to Fee Calculation

These are guides to the calculation of fees payable under Section 25 of the Pensions Act.

■ **Update of Scheme Registration Details – PB3**

The trustees of occupational pension schemes must notify the Pensions Board of any change in registration details provided to the Board in accordance with the Regulations, S.I. No. 325 of 1991. This form has been designed to facilitate compliance with these requirements.

■ **First Actuarial Funding Certificate after 1 June 2002 (Schedule BA)**

This certificate applies only to a defined benefit scheme which commenced prior to 1 June 2002 and which is submitting its first certificate having an effective date after 1 June 2002. It is for the purpose of stating the certified percentage under Section 45 of the Pensions Act and of certifying whether the scheme satisfies the funding standard under Part IV of the Pensions Act.

■ **Actuarial Funding Certificate (Schedule BB and Schedule BC)**

These certificates are for the purpose of certifying whether a defined benefit scheme continues to satisfy the funding standard under Part IV of the Pensions Act and must have an effective date of not more than 3\* years after the effective date of the previous certificate.

Where the effective date of the certificate is on or before 22 September 2005 a Schedule BB certificate should be used.

Where the effective date of the certificate is after 22 September 2005 a Schedule BC certificate should be used.

## ORDER FORMS

An order form is available on the Board's website to facilitate ordering publications from The Pensions Board.

For further information on The Pensions Board publications please contact:

Information Services  
The Pensions Board  
Verschoyle House  
28/30 Lr Mount St  
Dublin 2  
Tel: (01) 613 1900  
Fax: (01) 631 8602  
Email: [info@pensionsboard.ie](mailto:info@pensionsboard.ie)  
Web: [www.pensionsboard.ie](http://www.pensionsboard.ie)

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\* Where this is the first certificate to be prepared after the scheme's inception, or where the effective date of the previous certificate was prior to 23 September 2005, the next certificate must have an effective date of not more than 3½ years after the effective date of the previous certificate.

## INFORMATION ON SOCIAL INSURANCE

A guide to the Social Welfare Services (ref. SW4), including guidance on social insurance pension schemes and other allowances for pensioners, is available free of charge from the Information Service, Social Welfare Services, College Road, Sligo, Tel: 1890 66 22 44, or the Social Welfare Office. The services dealt with in the guide are covered in greater detail in leaflets which are also available free of charge from the same offices. The information leaflets available and the addresses and phone numbers of all the offices of the Department are listed in Appendices to SW4 guide. The SW4 Guide to Social Welfare Services, as well as all Social Welfare publications, are available on the Department's website [www.welfare.ie](http://www.welfare.ie) listed under publications.

It should also be noted that up-to-date information on rates of payment and rates of PRSI contributions is given in a booklet entitled Social Welfare Rates of Payment (ref. SW 19) which is published every year by the Information Service of the Department of Social and Family Affairs.

## APPENDIX 4

### GLOSSARY OF PENSION TERMS

The following is a list of the more common technical terms which the trustee is likely to encounter in practice.

#### ACCRUAL RATE

The rate at which pension benefit is earned in a defined benefit scheme, e.g. 1/60th of final pensionable salary for each year of service.

#### ACCRUED BENEFITS

The benefits earned in respect of service up to a particular point in time, whether vested or not. These benefits may be calculated in relation to current earnings or projected earnings and allowance might also be made for increases provided for by the scheme rules or by legislation.

#### ACCRUED RIGHTS

A term sometimes used to describe accrued benefits.

#### ACTIVE MEMBER

A member of a pension scheme who is in 'reckonable service', i.e. currently in the employment to which the scheme relates, and who is included in the scheme for a pension benefit.

#### ACTUARIAL ASSUMPTIONS

In a defined benefit scheme the set of assumptions made by the actuary as to rates of investment return, inflation, increase in earnings, mortality, etc. which form the basis of an actuarial valuation or other actuarial calculation

#### ACTUARIAL DEFICIENCY/SURPLUS

The difference between the value of the assets and the value of the liabilities under the particular valuation method and assumptions being used.

#### ACTUARIAL FUNDING CERTIFICATE

A certificate issued by the actuary under the minimum funding standard provisions of the Pensions Act.

#### ACTUARIAL VALUATION

An investigation by the actuary into the ability of a pension scheme to meet its benefit promise. This has two purposes. Firstly, the actuary will calculate a recommended contribution rate which will allow the scheme to meet its future liabilities. It is also needed so that the actuary can establish the ability of the existing assets of the fund to meet its accrued benefits and complete an actuarial funding certificate.

**ACTUARY**

An adviser on financial matters involving the probabilities relating to mortality and other contingencies affecting pension scheme financing.

**ADDED YEARS**

This means the provision of extra benefit by adding a period of pensionable service to a member's actual pensionable service in a defined benefit scheme. This may arise from the payment into scheme of a transfer value, the payment of additional voluntary contributions, or by way of augmentation.

**ADDITIONAL VOLUNTARY CONTRIBUTIONS (AVCS)**

Contributions which a member elects to pay over and above his/her normal contributions in order to secure additional benefits.

**ADMINISTRATOR**

A person regarded by the Revenue Commissioners as responsible for the management of a pension scheme. In a less formal sense, it means the person or body which manages the day-to-day administration of the scheme.

**ANNUAL REPORT**

The Pensions Act requires the trustees of a pension scheme to communicate information about the Scheme, its administration and its financial position on a regular basis. The content of the annual report is specified in the Disclosure of Information Regulations. A shorter annual report may be issued for defined benefit schemes with fewer than fifty active members and for all defined contribution Schemes.

**ANNUITY**

A series of payments made at stated intervals until a particular event – usually the death of the person receiving the annuity – occurs. It is normally secured by the payment of a single premium to an insurance company.

**APPROVED MINIMUM RETIREMENT FUND (AMRF)**

Similar to an ARF, except that the original investment may not be withdrawn until age 75. Only the investment income and gains may be withdrawn prior to that age.

**APPROVED RETIREMENT FUND (ARF)**

An ARF is an investment contract which enables members at retirement to invest their AVCs or, in the case of a 5% Director, to invest the value of his accrued rights under the pension scheme (exclusive of any benefit taken as a lump sum) with a Qualifying Fund Manager and which will accumulate tax-free until withdrawal. Income tax is payable on any money withdrawn from the ARF.

**APPROVED SCHEME**

An occupational pension scheme which is approved by the Revenue Commissioners under Chapter I of Part 30 of the Taxes Consolidation Act, 1997 (previously Chapter II, Part I of the Finance Act, 1972). See also Exempt Approved Scheme.

## **ASSETS**

The property, investments, cash and other items of which the trustees of a pension scheme are the legal owners.

## **AUGMENTATION**

The term used to describe the provision of additional benefits over and above normal scheme entitlements for or in respect of particular members (where the cost of this provision is borne by the pension scheme itself and/or by the employer).

## **BENEFICIARY**

A person entitled to benefits under a pension scheme or who will become entitled on the happening of a specified event (e.g. on the death of a member).

## **BENEFIT STATEMENT**

A statement of the benefits payable in respect of an individual on the occurrence of specified events, e.g. death, retirement etc.

## **BOARD RESOLUTION**

The directors or partners of the sponsoring employer can meet and pass a special Board resolution to establish a pension scheme under trust. The resolution must be minuted and the overall content of the eventual trust deed and rules must also be recorded.

## **BUY-OUT BOND**

The purchase by the trustees of a pension scheme of an insurance policy or bond in the name of a member or other beneficiaries following termination of service, retirement, or on winding-up of a scheme. The bond is bought in substitution of the member's rights under the pension scheme. Under the Pensions Act, purchase of such a bond on leaving service may be at the option of the member or, in certain circumstances, at the option of the trustees.

## **CASH OPTION**

An alternative term for commutation.

## **COMMUTATION**

The replacement of a series of future pension payments by an immediate lump sum. The exchange of pension for immediate cash is regulated by the Revenue Commissioners.

## **CONCENTRATION OF INVESTMENT**

The placing of a significant portion of the assets of a pension scheme in any single investment or category of investment. This is subject to disclosure under the Pensions Act and may also impact the scheme's ability to meet the minimum funding standard under the Act.

## CONTINUATION OPTION

A facility offered by an insurance company which insures a scheme's death benefits, whereby a member who is leaving the scheme can effect a life assurance policy without evidence of health.

## CONTRIBUTORY EARNINGS

The earnings on which contributions are calculated. See also Pensionable Earnings.

## CONTRIBUTION HOLIDAY

A term used to describe a period under which employer's and/or member's contributions are suspended. This usually happens when the fund is in surplus.

## CONTRIBUTORY SCHEME

A pension scheme which requires contributions from active members.

## CONTROLLING DIRECTOR

A Director who, together with his associates, owns or controls 20% or more of the ordinary shares of the employing company. Special restrictions apply to controlling directors who are members of approved schemes. See the Revenue Pensions Manual.

## CORPORATE TRUSTEE

A company which acts as a trustee.

## CROSS BORDER SCHEMES

A scheme established in one EU Member State, which is authorised an employer to operate as a cross-border scheme and to accept members and contributions from an employer located in another EU State. This term is used in the Pensions Act to describe a scheme established in Ireland.

## CUSTODIAN TRUSTEE

A trustee responsible for holding the assets of a trust, other trustees being responsible for the management of the trust including the investment decisions.

## DECLARATION OF TRUST

The type of trust document used when the employer is also intending to act as sole trustee but the actual content is comparable with the trust deed and rules. This type of document is commonly used when the assets of the pension scheme are totally invested and administered by an insurance company.

## DEED OF ADHERENCE

An additional trust document enabling a new employer to enter a scheme.

## DEED OF APPOINTMENT

A trust document by which a trustee is appointed.

### **DEFERRED ANNUITY**

An annuity which commences from a future date.

### **DEFERRED BENEFIT**

Any benefit, payment of which is delayed, e.g. until a person reaches normal pensionable age. Most often used to refer to benefits which accrue to a scheme member on leaving service.

### **DEFERRED MEMBER**

A person entitled to a pension payment at a future date. Normally this would be an early leaver but the term is sometimes used to describe someone whose retirement is being postponed.

### **DEFINED BENEFIT SCHEME**

A scheme where the pension and other benefits which will be paid to the member and/or the member's dependants are clearly stated in the Rules of the Scheme. Where the benefits are based on a future salary, e.g. at retirement, it is known as a Final Salary Scheme.

### **DEFINED CONTRIBUTION SCHEME**

Also known as a Money Purchase Scheme – a scheme where the rate of contribution (employer and, if contributory, member) is defined and where the individual member's pension is determined solely by reference to the contributions paid into the scheme by or on behalf of that member and the investment return earned on those contributions.

### **DEFINITIVE TRUST DEED**

The detailed trust deed governing a pension scheme which contains details of all the trustees' powers. It is usually accompanied by the rules of the scheme.

### **DEPENDANT**

A person who is financially dependent on a member or pensioner or was so at the time of death or retirement of the member or pensioner. For Revenue purposes, a child of the member or pensioner may always be regarded as dependent until he or she reaches the age of eighteen or ceases to receive full-time education or vocational training, if later.

### **DISABILITY BENEFIT**

A benefit payable to an employee who is unable to work for medical reasons. This may be paid from a pension scheme as an ill-health early retirement benefit or it may be payable by the employer either directly or under the terms of an insurance policy or income continuance plan (which are not part of the pension scheme). A disability benefit can also arise under a voluntary disability insurance scheme, paid for in full by its members. Not to be confused with Social Welfare Disability Benefit.

### **DIRECTLY INVESTED SCHEME**

A scheme which has assets other than the following: insurance policies, contracts of insurance, managed funds, unit trusts and cash deposits.

## DISCLOSURE OF INFORMATION REGULATIONS

Regulations issued under the Pensions Act requiring the disclosure of specified information about pension schemes and their benefits to interested parties. The relevant statutory instrument references are SI 301 of 2006, SI 582 of 2006, SI 842 of 2007 and S.I 531 of 2008.

## EARLY LEAVER

A person who ceases to be an active member of a pension scheme, other than on death, without becoming entitled to an immediate retirement benefit.

## EARLY RETIREMENT

The retirement of a member, with immediate retirement benefit, before normal pensionable age. The benefit may be reduced because of early payment. See also ill-health early retirement.

## ELIGIBILITY

The conditions which must be met for a person to be a member of a scheme or to receive a particular benefit. These may for example relate to age, service, status and type of employment.

## EMPLOYER

The person or body with whom the member of a pension scheme has a contract of employment relevant to that scheme. This term is to be preferred to 'company' as having more general application in the context of a pension scheme.

## ESCALATION

A system whereby pensions in payment and/or preserved benefits are increased regularly at a fixed or variable percentage rate. The percentage increase applied may be limited to the increase in a specified index. Escalation may be promised and paid for in advance of, or may be granted on a discretionary basis after the pension has commenced.

## EX-GRATIA BENEFIT

A benefit provided by the employer which it is not legally required to provide. Payment of such a benefit cannot be enforced by the member.

## EXEMPT APPROVED SCHEME

An approved scheme which is normally established under an irrevocable trust thus giving rise to the tax reliefs specified in the Finance Acts.

## FINAL PENSIONABLE EARNINGS/FINAL PENSIONABLE SALARY

The pensionable earnings, at or near retirement or leaving service, on which the pension is calculated. This may be fixed at a particular date or may be based on the average of a number of years.

## **FINAL REMUNERATION**

The term used by the Revenue Commissioners for the maximum amount of earnings which it will permit to be used for the purpose of calculating maximum approvable benefits. The permissible alternatives are set out fully in the Pensions Manual issued by the Retirement Benefits District of the Revenue Commissioners.

## **FINANCIAL SERVICES PENSIONS**

The unit of the Revenue Commissioners which supervises the benefit and contribution structure of pension schemes granted approval under the Taxes Consolidation Act, 1997 (previously the 1972 Finance Act).

## **FREE COVER**

The maximum amount of death benefit which an insurance company covering a group of members for death benefits is prepared to insure for each individual, without production of evidence of health.

## **FROZEN BENEFIT**

A deferred benefit which is not subject to revaluation.

## **FROZEN SCHEME**

A closed scheme where no further contributions are payable and members are entitled to deferred benefits.

## **FUNDING**

The provision in advance for future benefit liabilities by setting aside money in a trust, which is separate from the employer's business, to finance the payment of benefits when they arise.

## **FUNDING RATE**

The rate of which contributions are payable to support the liability for benefits. Often used as shorthand for Recommended Contribution Rate.

## **FUNDING STANDARD**

Provisions under the Pensions Act, by which defined benefit schemes are obliged to submit an actuarial funding certificate which confirms that the scheme complies with what is termed the minimum funding standard. This is designed to ensure that, at a minimum, the scheme has sufficient funds to secure specified pension rights which members have built up, if the scheme should have to be wound up at any stage. Schemes are usually wound up when the employer company goes out of business.

## **GUARANTEED PAYMENT PERIOD**

A period, normally five years, for which payment of a pension would be guaranteed by the scheme rules, whether the pensioner lives or dies.

## **ILL-HEALTH EARLY RETIREMENT**

Retirement on medical grounds before normal pensionable age. The benefit payable in these circumstances may be greater than that paid to a member retiring early in normal health.

## **IMMEDIATE ANNUITY**

An annuity which commences immediately or shortly after its purchase.

## **INCOME CONTINUANCE PLAN**

One of the terms used to describe a prolonged disability insurance scheme.

## **INDEXATION**

A system whereby pensions in payment and/or preserved benefits are increased automatically at regular intervals by reference to a specified index of prices or earnings.

## **INDIVIDUAL ARRANGEMENT**

A pension scheme with only one member whose documents relate only to that member.

## **INSURED SCHEME**

A pension scheme where the sole long-term investment medium used by the trustees is an insurance policy. All of the benefits are provided by an insurance company with whom the trustees have taken out a contract to pay regular premiums.

## **INTEGRATION**

The system of designing scheme benefits to take into account all or part of the benefits payable by the state under the social welfare arrangements.

## **INTERNAL DISPUTE RESOLUTION (IDR) PROCEDURE**

A formal arrangement for resolving disputes between members, beneficiaries and trustees.

## **INVESTMENT MANAGER**

A person or body to which the investment of the whole or part of the assets is delegated by the trustees in accordance with the provisions of the trust document.

## **INVESTMENT REGULATIONS**

Regulations issued under the Pensions Act setting out certain investment rules that trustees must comply with when investing the assets of a pension scheme. The relevant statutory instrument references are S.I Nos. 294 of 2006 and 188 of 2007.

## **INVESTMENT PERFORMANCE MEASUREMENT**

The comparison of the rate of return of a given pension fund with the notional return of a hypothetical fund, or the actual rates of return of other funds, over the same period.

## **IRREVOCABLE TRUST**

A trust which cannot be revoked or taken back by the employer who establishes it. Such trusts are normally required by the Revenue Commissioners in order to give tax-free build up to the assets of the pension scheme. The trust has the effect of separating scheme assets from the assets of the employer.

### **INTERIM TRUST DEED**

The form of trust deed commonly used to establish a pension scheme on broadly stated terms leaving the detailed provisions and rules to be provided later by a definitive trust deed.

### **LATE RETIREMENT**

The retirement of a member, with immediate retirement benefit, after normal retirement age. The benefit may be increased because of later payment.

### **LETTERS OF EXCHANGE**

A method of setting up a pension scheme for a single employee. The letter itself must include all the rules and powers usually contained in a trust deed and rules and must make reference to the irrevocable nature of the pension scheme in order to receive Revenue approval.

### **LIABILITIES**

Amounts due to be paid by a pension scheme now or in the future as a result of obligations it has undertaken. The amounts may not be immediately ascertainable and some liabilities may be contingent on the happening of future events.

### **LIFE ASSURANCE SCHEME**

A scheme which provides only a benefit payable on the death of a member whilst in service.

### **LONG SERVICE BENEFIT**

A term used under the Pensions Act to describe the benefit which will be payable under a scheme to or in respect of the members on the assumption that the member remains in employment until he/she reaches normal pensionable age.

### **MANAGEMENT COMMITTEE OR COMMITTEE OF MANAGEMENT**

These terms tend to be used in a variety of senses. A management committee may provide a local forum for active members especially in a large pension scheme where the active members are spread over a large number of sites. As such it serves as a pensions consultative committee. Similarly, some employers will negotiate with trade unions and employee representatives on pensions. This may be through the usual negotiation machinery or through special pension negotiation committees and the term management committee might be used in this context. Sometimes the term Management Committee is reserved for another central body operating alongside the main trustee body, the trustee board itself. The standard division of labour might give the trustee board responsibility for investment matters, for holding the scheme assets, strategic issues such as powers of amendment to the trust deed and powers exercisable when the occupational pension scheme is wound up while a management committee oversees day-to-day administration.

### **MANAGED FUND**

An investment contract under which an insurance company or other institution offers participation in one or more funds consisting of a collection of pooled assets.

## MAXIMUM APPROVABLE BENEFITS

The maximum benefit which the Revenue Commissioners will permit to be paid under an approved scheme to an individual, taking account of factors such as remuneration and service completed.

## MEMBER

A person who has been admitted to membership of a pension scheme and who is entitled to benefits under the scheme. This will include active members, pensioners and deferred pensioners.

## MEMBER TRUSTEES

Trustees who are appointed by members or whose appointment by the employer has been approved by the scheme members in accordance with the regulations made under the Pensions Act.

## MINIMUM FUNDING STANDARD

See Funding Standard.

## MINIMUM RETIREMENT AGE

The earliest age at which the pension scheme allows a member to retire with an immediate pension other than on the grounds of incapacity.

## MONEY PURCHASE SCHEME

Another name for a Defined Contribution Scheme.

## NATIONAL PENSIONS BOARD

A Board established by the then Minister for Social Welfare in 1986 to advise the Minister on pension matters. Not to be confused with the Pensions Board.

## NOMINATION

The naming by a member of a person or persons to whom he or she wishes any death benefit to be paid in the event of his/her death. This will usually not be binding on the trustees. Also called a Wishes Letter and Expression of Wish.

## NON-CONTRIBUTORY SCHEME

A pension scheme which does not require contributions from active members, i.e. the employer is liable for all contributions needed to support the scheme.

## NORMAL PENSIONABLE AGE/NORMAL RETIREMENT AGE

The age by reference to which the normal retirement date is determined.

## NORMAL PENSION DATE/NORMAL RETIREMENT DATE

The date on which a member of a pension scheme normally becomes entitled to receive retirement benefits. This date is the benchmark which determines early retirement and late retirement.

## **OCCUPATIONAL PENSION SCHEME**

This is formally defined in the Pensions Act as a scheme which is approved under the 1972 Finance Act or the 1967 Income Tax Act (now the Taxes Consolidation Act, 1997) or whose approval has been applied for to the Revenue Commissioners. The term occupational pension scheme is generally used to distinguish job-related pension schemes from State Social Welfare schemes.

## **ONE MEMBER MANAGEMENT**

A scheme which is established for one person only and that one person will always be the only member, and that member has discretion as to how the resources of the Scheme are invested unless the Scheme is subject to a pensions adjustment order, in which case it may also include the person(s) referred to in that order.

## **ON-THE-SPOT FINES**

Instead of prosecuting a breach of certain specified offences of the Pensions Act through the courts, the Pensions Board may instead notify a person in writing that it is alleged that a summary offence has been committed and that if, within 21 days of the notice, the person has remedied the offence to the satisfaction of the Board and paid the appropriate fine, the prosecution will not proceed. These are called “on the spot fines”.

## **PAID UP BENEFIT**

A benefit secured for an individual member under a contract of insurance whose premiums have ceased to be payable in respect of that member. One form of deferred benefit.

## **PAST SERVICE**

Service before a given date (e.g. the date of an actuarial valuation), frequently used to indicate service with the employer before the member’s entry into the pension scheme.

## **PAST SERVICE BENEFIT**

The benefit granted in respect of past service.

## **PENSION FUND**

This is the assets of the pension scheme, but the term is very often used for the scheme itself.

## **PENSION SCHEME**

An arrangement, other than accident insurance, to provide pension and/or other benefits for members on leaving service or retirement and for the member’s dependants in the event of death.

## **PENSION PLAN**

Another term for Pension Scheme.

## **PENSIONABLE EARNINGS/PENSIONABLE SALARY**

The earnings on which benefits and/or contributions are calculated.

## **PENSIONABLE SERVICE**

The period of service which is taken into account in calculating the pension benefit.

## **PENSIONER**

A person who is currently receiving payment of a pension from a pension scheme.

## **PENSIONER TRUSTEE**

An individual or body corporate involved with pension schemes and accepted under Revenue requirements as a trustee of a small self-administered or small member controlled scheme.

## **PENSIONS ACT**

An Act of 1990 for the regulation of pension schemes, which provides for preservation of benefits, a minimum funding standard in the case of defined benefit schemes, disclosure of information, equal treatment, defines the duties and responsibilities of trustees and establishes a Pensions Board to supervise the operation of the Act. The Act has been considerably amended and extended.

## **THE PENSIONS BOARD**

The statutory body set up under the Pensions Act to monitor and supervise the operation of the Pensions Act and pension developments generally.

## **PERMANENT HEALTH INSURANCE**

One of the terms for prolonged disability insurance.

## **PERSONAL RETIREMENT SAVINGS ACCOUNTS (PRSAS)**

A new pensions vehicle introduced by the Pensions (Amendment) Act 2002. A contract between an individual and an authorised PRSA provider in the form of an investment account that can be used to save for retirement.

## **PRESERVATION**

The granting by a scheme of preserved benefits, in particular in accordance with minimum requirements specified by the Pensions Act.

## **PRESERVED BENEFITS**

This term is often used to describe any benefit emerging on termination of employment or of membership of a pension scheme, which is payable at a later date. Under the Pensions Act it has the specific meaning of that part of the benefits which must be preserved as a result of the operation of the Act.

## **PRIVATELY INVESTED SCHEME**

A description often applied to a self-administered scheme.

## **PROLONGED DISABILITY INSURANCE**

An insurance contract taken out by an employer and/or by an employee, designed to pay an income in the event of an employee becoming disabled on a long-term basis.

### **PRSA PROVIDER**

An authorised investment firm, life assurance undertaking or credit institution which produces, markets or sells PRSA products.

### **QUALIFYING SERVICE**

A term defined in the Pensions Act as the service which a pension scheme member must complete before becoming entitled to a preserved benefit on leaving service. Currently, it is two years service including any period in a previous scheme from which a transfer value was received.

### **RECOMMENDED CONTRIBUTION RATE**

The contribution rate recommended by the actuary as being necessary to support the benefit promises made under the scheme.

### **RECKONABLE SERVICE**

A term defined in the Pensions Act. It is the period of a person's scheme membership, not necessarily the whole period of employment, and excluding any time when covered for death benefits only.

### **REGISTERED ADMINISTRATOR**

A registered administrator is a person who is registered with The Pensions Board to provide specified core administration functions for trustees.

### **RELEVANT EMPLOYMENT**

A term defined in the Pensions Act whereby a member is regarded as being in relevant employment if he/she is in any employment to which a scheme applies. A scheme is regarded as applying to an employment where an employee is, or is capable of becoming, a member of that scheme.

### **RETAINED BENEFITS**

A term used by the Revenue Commissioners to denote retirement or death benefits in respect of an employee's earlier service with a former employer or an earlier period of self-employment. These may have to be taken into account in computing maximum approvable benefits.

### **RETIREMENT ANNUITY**

A contract effected with an insurance company under Sections 784/785 of the Taxes Consolidation Act, 1997 (previously Sections 235/235A of the Income Tax Act, 1967). Applicable to the self-employed and to persons in non-pensionable employment. Sometimes called a Personal Pension.

### **RETIREMENT BENEFITS DISTRICT**

See Financial Services (Pensions) Business Unit.

### **REVALUATION**

The application to preserved benefits of compulsory increases in their value prior to the date of payment. Provided for under the Pensions Act. This term is also used to describe any similar noncompulsory increases.

## REVENUE COMMISSIONERS

The organisation charged by government with the collection of tax revenues and which, through the Retirement Benefits District, monitors the operation of pension schemes which are granted tax approval.

## RULES

The detailed provisions of a pension scheme, normally set out in a formal way and usually given authority by a trust deed.

## SELF-ADMINISTERED SCHEME

A pension scheme where the assets are directly invested in stock markets, etc. They may be managed by an in-house manager or an external investment manager. The term is not used to indicate the method by which benefits and contributions are administered, but is now almost exclusively used to refer to the way in which the investments are managed.

## SELF-INVESTMENT

The investment of the scheme's assets in the business of the employer, or that of an associated employer, or loans made to such bodies out of the pension scheme's assets. Regulated under both disclosure and minimum funding standard provisions of the Pensions Act.

## SMALL SELF-ADMINISTERED SCHEME

A scheme with not more than twelve members will generally be regarded as 'small'. Special conditions attach to the approval of these schemes as set out in Chapter 19 of the Revenue Pensions Manual.

## STATE PENSIONABLE AGE

The age from which pensions are normally payable by the Social Welfare scheme, currently, sixty-five (retirement pension) or sixty-six (old age pension) for both men and women.

## STATEMENT OF INVESTMENT POLICY PRINCIPLES (SIPPS)

All schemes except small schemes (i.e. those with less than 100 active and deferred members) must prepare a Statement of Investment Policy Principles (SIPP). The SIPP requirements do not impose any specific investment practices on pension schemes: the SIPP is intended to be a description of the investment policies of the trustees.

## SURPLUS

In a defined benefit scheme, any excess of the value of a scheme's assets over the value of its liabilities as calculated by the actuary of the scheme.

## TRANSFER PAYMENT

A payment from one pension scheme to another, or to an insurance company to purchase a buy-out bond, in lieu of the benefits which have accrued to the member under the scheme. In this form, it specifically refers to transfers made under the preservation requirements of the Pensions Act.

## **TRANSFER VALUE**

See Transfer Payment.

## **TRIVIAL PENSION**

A pension which is so small that it can be subject to full commutation without prejudicing the approval of the scheme by the Revenue Commissioners. The present triviality limit is €330 per annum.

## **TRUST**

The legal concept by which property is held by one or more persons (the trustees) for the benefit of other persons (the beneficiaries) for the purposes specified by the person setting up the trust. The trustees may be beneficiaries.

## **TRUST DEED**

The legal document, executed in the form of a deed, which establishes, regulates or amends a trust. See Definitive Trust Deed.

## **TRUST FUND**

This is generally defined as the monies and assets for the time being held by the trustees subject to the trusts of the scheme. It is held under the legal control of the trustees and when there is a change of trustees the deed appointing a new trustee or trustees will transfer the trust property into the name of the newly appointed trustee to hold jointly with the remaining trustees.

## **TRUST RAC**

A Trust RAC is a scheme established under trust and approved by the Revenue Commissioners under Section 784(4) or Section 785(5), Chapter 2, Part 30 of the Tax Consolidated Act, 1997.

## **TRUSTEE**

An individual or a company which alone or jointly becomes the legal owner of property to be administered for the benefit of someone else (the beneficiaries), in accordance with the provisions of the document creating the trust and the provisions of trust law generally and the Pensions Act.

## **TRUSTEE CERTIFICATE OF ESSENTIAL PENSIONS KNOWLEDGE**

An examination given by the Irish Institute of Pensions Managers which confers formal recognition of the individual trustee's relevant pensions knowledge. The certificate also provides an appropriate test for others involved in the administration and management of occupational pension schemes.

## **UNFUNDED SCHEME**

A scheme under which advance financial provision for the payment of benefits is not normally made. Instead the cost of pensions is met from the employer's current income in the same way as the salaries and wages of employees. The term may also be used to describe a scheme where funds are set aside to provide for benefit payments only at the time of a person's retirement.

## VALUATION BASIS

A term commonly used by actuaries to mean the method used by them to value the assets and liabilities of the scheme and the actuarial assumptions which they use in this valuation.

## VESTED RIGHTS

This has different meanings for different people.

- (a) For active members, benefits to which they would unconditionally be entitled on leaving service, which may or may not include statutory rights to preserved benefit
- (b) For deferred pensioners who have already left the employment, their deferred/preserved benefit.
- (c) For pensioners, the pension which they are receiving, including, where appropriate, the related benefits for spouses and other beneficiaries.

## WISHES LETTER

See Nomination.

## WHISTLE BLOW

To report a breach of the law to the relevant authorities, for example, to make a compulsory report to the Pensions Board of a material misappropriation or a fraudulent conversion of the resources of a pension scheme or a voluntary report on the state and conduct of a scheme.

## WINDING-UP

The process of terminating a pension scheme, usually by applying the assets to the purchase of immediate and deferred annuities for the beneficiaries in accordance with the trust document or the Pensions Act.

## APPENDIX 5

### USEFUL ADDRESSES

Some useful addresses and phone numbers are set out below:

#### **The Pensions Board**

Verschoyle House, 28/30 Lower Mount St, Dublin 2

Tel: (01) 613 1900

Fax: (01) 631 8602

Web: [www.pensionsboard.ie](http://www.pensionsboard.ie)

Email: [info@pensionsboard.ie](mailto:info@pensionsboard.ie)

#### **Office of the Revenue Commissioners**

Financial Services Pensions, Large Cases Division, Revenue, 2nd Floor, Setanta Centre, Nassau Street, Dublin 2

Tel: (01) 6470710

Web: [www.revenue.ie](http://www.revenue.ie)

#### **Office of the Pensions Ombudsman**

36 Upper Mount Street, Dublin 2

Tel: (01) 647 1650

Fax: (01) 676 9572

Web: [www.pensionsombudsman.ie](http://www.pensionsombudsman.ie)

#### **Irish Association of Pension Funds (IAPF)**

Slane House, Suite 2, 25 Lower Mount St, Dublin 2

Tel: (01) 661 2427

Fax: (01) 662 1196

#### **Irish Institute of Pensions Managers (IIPM)**

39 Molesworth St, Dublin 2

Tel: (01) 662 0320

Fax: (01) 677 2621

#### **The Association of Pension Lawyers in Ireland (APLI)**

c/o Kirstie Flynn (Coyle Hamilton Willis Ltd) Arthur Cox, Earlsfort Terrace, Dublin 2

Tel: (01) 618 0000

Fax: (01) 618 0618

#### **Irish Association of Investment Managers (IAIM)**

35 Fitzwilliam Place, Dublin 2

Tel: (01) 676 1919

Fax: (01) 676 1954

#### **The Society of Actuaries in Ireland**

102 Pembroke Road, Dublin 4

Tel: (01) 660 3064

Fax: (01) 660 3074

#### **The Irish Brokers Association (IBA)**

87 Merrion Square, Dublin 2

Tel: (01) 661 3061

Fax: (01) 661 9955

**Irish Insurance Federation (IIF)**

Insurance House, 39 Molesworth Street, Dublin 2

Tel: (01) 676 1820

Fax: (01) 6761943

**The Congress of Trade Unions (ICTU)**

31/32 Parnell Square, Dublin 1

Tel: (01) 889 7777

Fax: (01) 887 2012

**Irish Business and Employers Confederation (IBEC)**

84/86 Baggot Street Lower, Dublin 2

Tel: (01) 605 1500

**Department of Social and Family Affairs**

Pension Services Office, College Road, Sligo

Tel: (071) 9157100

Locall: 1890 500 000

Web: [www.welfare.ie](http://www.welfare.ie)

**The Consultative Committee of Accountancy Bodies in Ireland (CCABI)**

c/o The Institute of Chartered Accountants in Ireland, Burlington House, Burlington Road, Dublin 4

Tel: (01) 637 7200

Fax: (01) 668 0842

**The Ombudsman's Office**

18 Lr Leeson Street, Dublin 2

Tel: (01) 639 5600

Fax: (01) 639 5674

Locall: 1890 22 30 30

Web: [www.ombudsman.ie](http://www.ombudsman.ie)

Email: [ombudsman@ombudsman.gov.ie](mailto:ombudsman@ombudsman.gov.ie)

**Financial Services Ombudsman**

3rd Floor, Lincoln House, Lincoln Place, Dublin 2

Locall: 1890 88 20 90

Web: [www.financialombudsman.ie](http://www.financialombudsman.ie)

Email: [enquiries@financialombudsman.ie](mailto:enquiries@financialombudsman.ie)

**Financial Regulator**

PO Box 9138, College Green, Dublin 2

Locall: 1890 777 777

Web: [www.financialregulator.ie](http://www.financialregulator.ie)

Email: [consumerinfo@FinancialRegulator.ie](mailto:consumerinfo@FinancialRegulator.ie)

**Professional Insurance Brokers Association Ltd (PIBA)**

Unit 14B, Cashel Business Centre, Cashel Road, Crumlin, Dublin

Tel: (0)1 492 2202

Web: [www.piba.ie](http://www.piba.ie)

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