



WILLIAM FRY



PENSIONS IN IRELAND



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PENSIONS IN IRELAND

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Introduction

THIS GUIDE PROVIDES AN OVERVIEW OF THE LEGISLATION AND RELATED RULES AND REGULATIONS WHICH GOVERN THE OPERATION OF PENSIONS IN THE REPUBLIC OF IRELAND.

IT IS ALSO AN INTRODUCTION TO THE WILLIAM FRY PENSIONS GROUP.

FOR FURTHER INFORMATION ON ANY OF THE TOPICS COVERED, PLEASE CONTACT THE PENSIONS GROUP. YOU WILL FIND CONTACT DETAILS ON PAGE 25.

WILLIAM FRY IS ONE OF IRELAND'S LONGEST ESTABLISHED AND LARGEST COMMERCIAL LAW FIRMS. THROUGH ITS ASSOCIATION WITH TUGHANS IN BELFAST, IT PROVIDES A FULL RANGE OF LEGAL SERVICES BOTH IN THE REPUBLIC OF IRELAND AND NORTHERN IRELAND TO DOMESTIC AND INTERNATIONAL CLIENTS.





01 Pension provision in Ireland

PENSION, OR RETIREMENT INCOME, PROVISION IN IRELAND CENTRES AROUND TWO MAIN SOURCES. FIRSTLY, THE IRISH GOVERNMENT PROVIDES A BASIC OLD AGE RETIREMENT PENSION THROUGH THE STATE SOCIAL WELFARE SYSTEM. SECONDLY, INDIVIDUALS CAN CHOOSE TO MAKE SUPPLEMENTARY PRIVATE PROVISION BY SAVING IN A PENSION SCHEME OR ANOTHER APPROVED PENSION ARRANGEMENT.

STATE PROVISION

State provision through the social welfare system provides a basic weekly income to those in retirement. In the absence of any other source of income, many elderly retired people can find themselves living solely on this relatively low income.

PRIVATE PENSION PROVISION

Numerous reports have indicated that Ireland, in common with many other countries, is undergoing a dramatic change in its population age profile which, over the coming years, will result in far fewer workers contributing to the support of pensioners. Setting this against a backdrop of longer life expectancy, it is clear that the provision of adequate income in retirement will be an increasing challenge to the State if individuals fail to take adequate action in time. Consequently, it is no surprise that the State encourages everyone to make supplementary private provision for their retirement income. Private pension provision by individuals falls into three main categories:

Occupational pension schemes

These are employer sponsored schemes for employees. They are usually funded schemes, which means that a fund of assets is set aside and invested for the purpose of paying members' benefits as they arise. Pension schemes are either contributory or non-contributory, meaning that the sponsoring employer will determine whether or not members must make contributions to the scheme. Such schemes will be either defined benefit, defined contribution or hybrid schemes. Briefly, the benefits provided by a defined benefit scheme are specific and set out in the scheme documentation, and the employer carries the funding or investment risk. Contributions, rather than the benefits, are specific and are set out in the scheme documentation of a defined contribution scheme, with the employee carrying the funding or investment risk. A hybrid scheme involves elements of both a defined benefit and a defined contribution scheme.



Personal pensions (Retirement Annuity Contracts)

Personal pensions may be established by self-employed individuals, by individuals who are employed but who are not members of an occupational pension scheme or by individuals who have a source of self-employed income. Personal pensions are officially known as Retirement Annuity Contracts (RACs) and essentially are a contract between an individual and the product provider (e.g. insurance company, bank etc). RACs can also be established under trust and are known as trust RACs. Trust RACs are personal pension schemes for more than one individual.

Personal Retirement Savings Accounts (PRSAs)

PRSAs are a type of portable pension product which are available to everyone whether employed, self-employed or unemployed. PRSAs are contracts between an individual and a PRSA provider (e.g. insurance company, bank etc). PRSAs can be divided into two categories: Standard PRSAs and Non-Standard PRSAs. Standard PRSAs have limited investment options and capped charges.

TAX INCENTIVES

There are a number of tax incentives in respect of pension schemes and other pension products which have been approved by the Revenue Commissioners. Employers and, depending on their age and earnings, individuals will get tax relief on contributions to such pension arrangements. The investment returns within such arrangements will accumulate tax free while those funds are invested, and individuals have the option to receive part of their pension entitlement in the form of a tax-free lump sum at retirement. These incentives are reasonably generous and are all aimed at encouraging individuals to make sufficient provision for retirement income. Certain Revenue limits apply to these tax incentives, which are subject to change from time to time.



02 Pensions legislation and pensions regulatory bodies

BRIEF DETAILS OF PENSIONS LEGISLATION IN IRELAND ARE SET OUT BELOW, ALONG WITH DETAILS OF IRELAND'S PENSIONS REGULATORY BODIES.

PENSIONS LEGISLATION

Pensions Act 1990

The main pensions legislation is the Pensions Act 1990 as amended. This is supplemented by a large volume of related regulations and decided case law. The Pensions Act regulates occupational pension schemes, PRSAs and trust RACs. Additionally, the Act provides for the operation of the Pensions Board and the Pensions Ombudsman, two of the pensions regulatory bodies.

Taxes Consolidation Act 1997

This consolidated legislation incorporates a number of provisions relating to pensions. The pension provisions of the Act set out the basis on which approval is granted to a number of pension arrangements, including occupational pension schemes and personal pension plans, and it provides for the regulation of other pension related products. The Taxes Consolidation Act 1997 is usually supplemented and amended each year by other legislation, including the annual Finance Act which implements the Government's annual budget provisions.

Family Law Acts

The Family Law Act 1995 and Family Law (Divorce) Act 1996 regulate the granting of Pension Adjustment Orders on judicial separation or divorce (see further on page 18).

PENSIONS REGULATORY BODIES

Pensions Board

The Pensions Board is responsible for the regulation of occupational pension schemes, PRSAs and certain aspects of trust RACs as part of its statutory role to

monitor and supervise the operation of the Pensions Act. The Pensions Board also advises the Minister for Social and Family Affairs on pension matters generally. The Board seeks to protect the interests of pension scheme members and to encourage supplementary pension provision.



An Bord Pinsean
The Pensions Board

Pensions Ombudsman

The role of the Pensions Ombudsman is to investigate complaints of financial loss due to maladministration and disputes of fact or law in relation to occupational pension schemes, PRSAs and trust RACs. The Ombudsman is completely independent in the performance of these duties and acts as an impartial adjudicator. The services provided by the Office of the Pensions Ombudsman are free of charge.



Fear an Phobail um Pinsin
Pensions Ombudsman

Revenue Commissioners

The Revenue Commissioners are responsible for, among other things, regulating the tax treatment of pension arrangements in Ireland. This includes granting/refusing exempt tax approval status to occupational pension schemes, approving PRSA products jointly with the Pensions Board and approving personal pension products. These pension arrangements cannot avail of relevant tax incentives unless they have been approved by the Revenue Commissioners.





03 Employers' obligations

EMPLOYERS IN IRELAND ARE CURRENTLY OBLIGED EITHER TO OFFER ACCESS TO AN OCCUPATIONAL PENSION SCHEME OR TO PROVIDE ACCESS TO AT LEAST ONE STANDARD PRSA.

EMPLOYER OBLIGATIONS IN RELATION TO OCCUPATIONAL PENSION SCHEMES

Where an employer establishes an occupational pension scheme, it has a number of obligations to ensure compliance with relevant legislation and regulations including, among other things, obligations in relation to:

- the eligibility of employees to join the scheme
- employer contributions and remittance of contributions
- the exercise of certain powers and discretions in accordance with the terms of the trust deed and rules.

The full extent of employer obligations in relation to pension schemes is outside the scope of this guide. However, suffice to say that an employer establishing such a scheme should obtain suitable advice in advance to ensure it establishes an arrangement which is suitable to its circumstances and that it is fully aware of its obligations in relation to the scheme.

EMPLOYER OBLIGATIONS IN RELATION TO PRSAS

An employer must provide access to at least one Standard PRSA in the following situations:

- where it does not operate an occupational pension scheme
- where it operates a pension scheme but limits eligibility for membership or imposes a waiting period for membership in excess of 6 months from the date on which employees commence employment
- where it operates an occupational pension scheme which does not allow members to make additional voluntary contributions.

An employer which is obliged to provide PRSA access in this way must fulfil a number of additional specified requirements, including certain remittance and disclosure obligations.



AN OCCUPATIONAL PENSION SCHEME MUST BE ESTABLISHED UNDER AN IRREVOCABLE TRUST TO ENJOY THE RELEVANT TAX BENEFITS. THIS ALSO MEANS THAT AN EMPLOYER CANNOT USE THE PROCEEDS OF CONTRIBUTIONS/ASSETS OF THE SCHEME FOR A DIFFERENT PURPOSE. AN EMPLOYER MAY, HOWEVER, WIND UP A PENSION SCHEME IN ACCORDANCE WITH THE TERMS OF THE GOVERNING SCHEME DOCUMENTATION.

A “trust” is a legal concept whereby property is held by one or more persons (trustees) for the benefit of another person or persons (beneficiaries). A trustee may also be a beneficiary.

In practice, most Irish pension schemes are established by an employer under documentation known as a trust deed and rules. The assets in a pension trust are legally separate from those of the related employer, thereby affording greater security to employees and members of the scheme. The trust deed normally provides for

the appointment of trustees and for their subsequent replacement.

Trustees are responsible for the administration and management of the trust. Their duties and obligations are many and varied. Very briefly, trustees must carry out the terms of the trust in accordance with law and terms of the trust deed and rules. They must also act in the best interests of the beneficiaries. Due to the nature of trustees' duties and obligations, it is a legal requirement that trustees receive adequate and appropriate trustee training.





UNDER THE PENSIONS ACT THE TRUSTEES OF A PENSION SCHEME ARE RESPONSIBLE FOR THE PROPER INVESTMENT OF THE SCHEME'S FUNDS. THE TRUST DEED WILL USUALLY SET OUT EXPRESS AND WIDE POWERS OF INVESTMENT.

Trustees must comply with the provisions of an investment clause. In the absence of an investment clause in the trust deed, the forms of investment available to the trustees are restricted by statute to certain authorised securities. An unrestricted investment provision in the trust deed does not however mean that the trustees can invest in any way they wish. Trustees are required to invest in the best interests of the scheme members and any other beneficiaries of the fund.

Investments are also subject to specific statutory investment regulations and must be made within a specified timeframe. Trustees are only permitted to borrow for temporary liquidity purposes.

Pension scheme rules may allow scheme members to select an investment fund or funds for the investment of their contributions. Typically a choice would be offered from among a range of investment options designated by the trustees. Provided that certain conditions are met, the trustees will not incur any liability for the consequences of a member's investment decision.

Trustees of pension schemes with 100 or more members must prepare and maintain a statement of investment policy principles (SIPP) for the scheme. Legislation prescribes what must be addressed in a SIPP. A SIPP must be reviewed at least every 3 years and must be revised at any time following a change in investment policy which is inconsistent with the SIPP.

Other statutory regulations provide that trustees (or at least one of them) must either possess certain qualifications and experience in relation to investments, or else appoint an investment manager to satisfy the necessary requirements. Given this requirement and the complex nature of many investments, it is common for trustees to appoint an external investment manager provided that the trust deed permits such appointment.

It is essential that pension scheme documentation is well drafted with due consideration given to the powers of investment and to the protections afforded to trustees in exercising their investment powers. Trustees require good knowledge and awareness of investment rules and restrictions, and it is important that they receive adequate training about this.





06 What happens at retirement?

WHERE AN INDIVIDUAL HAS SAVED IN A PRIVATE PENSION ARRANGEMENT, HE WILL RECEIVE RETIREMENT BENEFITS UNDER THAT ARRANGEMENT WHEN HE RETIRES.

Normal retirement age under many pension arrangements in Ireland is 65. This is also the age at which pensions are currently paid under the State social welfare system. Very often pension scheme benefits are designed to take account of social welfare retirement payments (a system known as “integration”). Retirement benefits include retirement pensions and may include, where a person so chooses, a lump sum payment on retirement.

Retirement benefits may be payable on normal, early (including ill-health) or late retirement. Benefits must be dealt with in accordance with the terms of the relevant trust deed and rules or policy document and in compliance with the requirements of the Revenue Commissioners. Pensions payable to individuals are normally paid monthly.

ANNUITIES

An annuity is a product which is purchased from an insurance company to provide a pensioner with regular income payments until death. Annuity payments may be guaranteed for a minimum period (up to 10 years is permitted). This means that in the event of the pensioner’s death within a chosen guarantee period, his full rate of pension will continue to be paid to his dependants or legal representatives for the remainder of the guaranteed period. Pension payments are taxed under the PAYE (pay as you earn) system just like salary.

TAX FREE LUMP SUMS

A person may choose to receive part of his retirement benefits in the form of a cash lump sum at retirement.

A lump sum is paid in exchange for a portion of the individual’s pension entitlement (a process known as “commutation”). The rules of a pension scheme will normally specify the conditions under which part of a pension may be exchanged for a lump sum, and whether the consent of the employer and/or trustees is required for the payment of benefits in this manner. Currently, lump sums are paid free of income tax within specified Revenue limits.

APPROVED RETIREMENT FUNDS (ARFS)

In addition to annuities and lump sums, further pension options are available to individuals who make additional voluntary contributions (AVCs) to their pension scheme, to individuals who save in a PRSA and (subject to certain conditions) to proprietary directors.

Subject to meeting certain specified minimum income requirements and after taking any tax free lump sum, such individuals may opt to transfer their accumulated AVC or pension fund entitlement to an ARF. ARFs are provided by qualifying fund managers as defined in legislation. ARFs are an alternative to purchasing an annuity on retirement and enable pensioners to hold their pension fund assets in a tax efficient manner after retirement. Funds in an ARF accumulate on a tax free basis, and withdrawals are subject to tax in the normal way. Where no withdrawals have been made from an ARF during a given tax year, withdrawals on a specified percentage scale are deemed to have been made and tax will be payable on same accordingly. When a pensioner who holds an ARF dies, the balance held in the ARF may be passed on to his dependants under favourable tax rules.

WHEN LEAVING A JOB, THE BENEFITS TO WHICH A PENSION SCHEME MEMBER IS ENTITLED WILL DEPEND ON THE RULES OF THE RELATED SCHEME EXCEPT INSOFAR AS THE MEMBER MAY HAVE ANY ENTITLEMENT TO A PRESERVED (OR VESTED) BENEFIT UNDER THE PENSIONS ACT.

Under the Act a member of a pension scheme will be entitled to a preserved benefit if:

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

Qualifying service is 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.

A member would normally be given the option of leaving his preserved benefit in the scheme as a deferred benefit until retirement or transferring it to another pension arrangement approved by the Revenue Commissioners. If a member of a defined benefit scheme has a preserved benefit and chooses to retain it in the scheme, the value of that benefit must be revalued annually in line with predetermined indices as a means of inflation-proofing the deferred pension.

If there is an entitlement to a preserved benefit, the scheme rules may provide a greater benefit on leaving service. If there is no entitlement to a preserved benefit (e.g. where a scheme member leaves service with less than 2 years qualifying service), the scheme rules may grant a vested right to a benefit on leaving service or some other benefit (e.g. the option of receiving a refund of his own contributions instead of leaving them as a deferred benefit within the scheme until retirement).



08 **Anti-discrimination/equality requirements**

THE PENSIONS ACT PROVIDES THAT, SUBJECT TO SOME EXCEPTIONS, PENSION SCHEMES AND TRUST RACS MUST ENSURE THAT THEY COMPLY WITH THE PRINCIPLE OF EQUAL TREATMENT AS SET OUT IN THE ACT. THIS REQUIREMENT GIVES EFFECT TO EU LAW IN THIS AREA.



In general, the principle of equal treatment is that there shall be no discrimination between persons on any of the following grounds:

- gender
- marital status
- family status
- sexual orientation
- religion
- age
- disability
- race
- membership of the Traveller community.

Discrimination occurs where a person is treated less favourably than another person is, has been or would be treated in a comparable situation and such less favourable treatment is due to a discriminatory ground which may exist in the present, past, future or may otherwise be imputed.

Discrimination may occur in relation to such matters as:

- access to a pension scheme
- retirement ages
- contribution arrangements
- entitlements to and calculation of benefits
- survivors' benefits.

It does not, however, constitute a breach of the age ground if, among other things, a scheme fixes the age for admission or entitlement to benefits under the scheme provided that this does not result in discrimination on the gender ground.

The Act also prohibits indirect discrimination. Typically this might involve provisions which appear to be neutral in effect but which in fact impact more heavily on one category of persons than another. Any such discrimination is prohibited unless it can be objectively justified by a legitimate aim. Justifiable factors must have no relation to the discriminatory ground which is alleged to be infringed. They may, for example, relate to a genuine economic need of

the business, although the means used for attaining that aim must be necessary and appropriate. The party asserting an objective justification must prove that justification.

The Pensions Act prohibits victimisation as a result of involvement in matters related to discrimination or alleged discrimination.

It is essential that the rules of a pension scheme are drafted so as to comply with the principle of equal treatment. If such provisions breach the equal pension treatment principle, the offending provision will be rendered null and void and the scheme will be obliged to provide the more favourable treatment to a person who did not previously benefit from that more favourable treatment (“levelling-up”) until a formal change is made. When the change is made, it is possible to equalise future treatment of both persons at the less favourable level (“levelling down”). It is also an offence for a person to act (or seek to have another person act) in breach of the principle of equal pension treatment.

A person claiming a breach of the equal pension treatment principle or to be the subject of victimisation may seek redress by referring the matter to the Director of the Equality Tribunal.



09 Pension benefits on separation or divorce

ON SEPARATION OR DIVORCE, THE COURTS ARE REQUIRED TO TAKE ACCOUNT OF PENSION ENTITLEMENTS WHERE A PARTY TO THE MARRIAGE, OR A PERSON ON BEHALF OF A DEPENDENT MEMBER OF THE FAMILY, APPLIES TO THE COURT FOR ONE OF A NUMBER OF ALTERNATIVE FINANCIAL ADJUSTMENT ORDERS AVAILABLE FOR THE PURPOSE OF MAKING FINANCIAL PROVISION FOR BOTH PARTIES AND DEPENDANTS.

The Family Law Act 1995 deals with pension benefits in the context of judicial separation (and foreign divorces which are recognised in Ireland). The Family Law (Divorce) Act 1996 sets out similar provisions in relation to Irish divorces. A Court has two options:

- to make a Pension Adjustment Order in respect of the pension scheme of which either spouse is a member, requiring the scheme trustees to pay a percentage of the pension benefits to the other spouse or for the benefit of a dependent child, or
- to take account of pension benefits when making any other type of order under the relevant Act (e.g. by making an appropriate adjustment when awarding non-pension matrimonial assets such as the family home).

When the Court makes a Pension Adjustment Order, it may make an order in respect of retirement benefits and/or contingent benefits payable under the pension scheme. Retirement benefits include benefits payable to the scheme member or his dependants at or after the time of retirement or earlier withdrawal from service (e.g. retirement pension and lump sums). Contingent benefits are benefits payable under the scheme rules in the event of the death of the scheme member while in employment (generally referred to as “death in service” benefits). Separate orders must be made if the Court wants to make an order in respect of both retirement and contingent benefits.

Pension Adjustment Orders are served upon the scheme trustees and will, where relevant, override the scheme rules. Specific requirements apply to the administration of such orders.

THE EU DIRECTIVE ON THE ACTIVITIES OF INSTITUTIONS FOR OCCUPATIONAL RETIREMENT PROVISION PERMITS THE OPERATION OF CROSS-BORDER PENSION SCHEMES IN THE EU.

Subject to certain authorisation and notification requirements, the Directive requires EU Member States to allow pension schemes in their territories to accept sponsorship from employers in other EU Member States, and to allow employers in their territories to sponsor pension schemes in other EU Member States. Such activity constitutes cross-border activity under the Directive.

The operation of cross-border pension schemes is of particular relevance to multinational companies with subsidiaries and employees located in more than one EU Member State.

Before the trustees of an Irish pension scheme can accept contributions from an employer on a cross-border basis, they must first obtain prior authorisation from the Pensions Board to conduct cross-border activity, and must notify and receive approval from the Board in relation to accepting contributions from a specific sponsoring employer. Applications to the Pensions Board for authorisation must be in writing in a prescribed format, with details of information required about the pension scheme. The Board may grant authorisation if it is satisfied that the following conditions of authorisation are met:

- the pension scheme and its trustees comply with the provisions of the Pensions Act as applicable to them

- if the scheme is a defined benefit scheme, it satisfies the funding standard as prescribed under the Pensions Act
- the trustees of the scheme comply with certain other requirements.

Once authorisation has been obtained to operate on a cross-border basis the trustees must notify, and be approved by, the Pensions Board in the prescribed manner before accepting contributions to the scheme from a particular employer in a specific EU Member State.

Provided that the Pensions Board has no reason to doubt the compatibility of the proposed arrangement as between the employer and employees and the scheme, it will notify the relevant supervisory authority (known as the “competent authority”) of the host Member State (i.e. the State in which the other employees are located) of any relevant information. The Board will also notify the trustees within this timeframe that approval has been granted in relation to the employer concerned. If approval is not granted, the Pensions Board will inform the trustees and, where appropriate, the competent authority of the proposed host Member State.

If approval is granted, the Pensions Board will provide the Irish scheme trustees with information received



10 Cross-border (EU) pension schemes (continued)

from the host Member State's competent authority regarding the following:

- the social and labour law relating to pension schemes under which the scheme must operate in the host Member State
- any special rules relating to investment that are applicable to the scheme's assets attributable to activities to be carried out in the host Member State
- any additional information requirements to be met by the scheme in relation to disclosure of information to members and beneficiaries.

The Pensions Board will continue to monitor compliance with the relevant statutory requirements. The Board may revoke an authorisation where it is satisfied that the conditions of authorisation are not being complied with. Equally, if it comes to the attention of the Pensions Board that the scheme is

not complying with the requirements of the host Member State, it may, subject to due process, direct the Irish scheme trustees to act in accordance with the Directive or to cease accepting contributions from the relevant employer.

Where an Irish employer contributes to a pension scheme in another EU Member State in respect of its employees, the Pensions Board is the designated host competent authority in respect of those Irish members and the above provisions will apply in similar fashion to the overseas scheme.

The Irish legal framework and regulatory environment for cross-border pension schemes is practical and balanced at the right level. This, together with Ireland's enabling tax regime, are just some of the attractions which make Ireland a preferred location and domicile of choice for cross-border schemes and pension planning by multinationals.



AS IN OTHER AREAS OF LIFE, COMPLAINTS AND DISPUTES CAN AND DO ARISE IN RELATION TO PENSION ARRANGEMENTS.

Consequently, the Pensions Act requires the trustees of every pension scheme and all PRSA providers to establish an internal dispute resolution (IDR) procedure. Regulations set out certain steps which must be included in the IDR procedure and those matters which, as a minimum, must be addressed by that procedure. The trustees are otherwise free to establish the IDR procedure most suitable for their scheme.

The IDR procedure may be used to deal with all types of complaints and disputes which arise in relation to a pension scheme or PRSA. Complaints which must be dealt with under the IDR procedure are:

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

An actual or potential beneficiary includes a scheme member, anyone who has been a scheme member, any surviving dependant of a deceased member, a person claiming to be a member or a surviving

dependant of a deceased member or a surviving spouse of a deceased member.

Upon receipt of the complaint, the trustees should check to ensure that the complainant has a right to complain and that the complaint or dispute falls to be considered within the IDR procedure. The trustees may take advice if they deem it appropriate or helpful.

When the complaint or dispute has been examined and considered, the trustees will determine how the issue should be resolved. Their decision must be given to the complainant in writing in a notice of determination within 3 months of the date on which all required information and documentation has been provided to the trustees. The determination of the trustees is binding on those parties to the complaint or dispute who accept it. In the event that a complainant is unhappy with the outcome of the IDR procedure, he may then take the complaint to the Pensions Ombudsman for consideration and resolution.

The Pensions Ombudsman may award financial compensation where he concludes that a complainant has incurred a financial loss due to the maladministration of the pension scheme or PRSA. Compensation is however limited to the amount of any actual loss, and no award may be made for any suffering, general inconvenience or costs. Decisions of the Ombudsman are binding, subject to a right of appeal to the High Court.



12 Glossary of pension terms

ADDITIONAL VOLUNTARY CONTRIBUTIONS (AVCS): contributions made by a pension scheme member, in addition to any ordinary member contributions which a member is required to make, in order to secure additional benefits on retirement.

ANNUITY: a product which is usually purchased from an insurance company with (in the case of a defined benefit scheme) funds from the scheme and (in the case of a defined contribution scheme) with the proceeds of a person's individual retirement fund to provide a pensioner with regular income payments until death.

APPROVED RETIREMENT FUND (ARF): a fund managed by a qualifying fund manager in which certain individuals can invest the proceeds of their retirement fund on retirement. The purchase of an ARF is currently limited to the self-employed, holders of PRSAs and proprietary directors with retirement savings in Revenue approved pension arrangements. Pension scheme members who have made AVCs can also invest the proceeds of their AVCs in an ARF.

DEFINED BENEFIT SCHEME: a scheme in which the retirement benefits which will be paid to the scheme members are specified and set out in the scheme documentation.

DEFINED CONTRIBUTION SCHEME: a scheme in which an individual's retirement benefits will be determined solely by the contributions paid into the scheme by or on his behalf, the investment return earned thereon and the cost of purchasing an annuity at retirement.

EMPLOYER: in respect of a pension scheme, the entity with which a scheme member has a contract of employment relevant to the scheme.

EXEMPT APPROVED SCHEME: an approved scheme which is established under an irrevocable trust and enjoys the benefit of certain tax reliefs under the Taxes Consolidation Act 1997.

HYBRID PENSION SCHEME: a scheme which combines features of more than one type of pension design (e.g. a defined benefit scheme combined with defined contribution scheme features).

PENSION ADJUSTMENT ORDER: a Court order made in relation to judicial separation or divorce proceedings and served on the trustees of a pension arrangement, under which the trustees must pay a specified part of a member's benefit to the member's spouse, ex-spouse or dependant.

PENSIONS BOARD: a statutory body established under the Pensions Act with responsibility for the supervision and monitoring of compliance with the provisions of the Pensions Act, advising the relevant Government minister on pensions related matters and which, along with the Revenue Commissioners, jointly approves all PRSA products submitted to it.

PENSIONS OMBUDSMAN: an officer appointed under the terms of the Pensions Act with responsibility for the investigation and determination of complaints and disputes involving pension schemes, trust RACs and PRSAs.

PERSONAL RETIREMENT SAVINGS

ACCOUNT (PRSA): a financial product approved by the Pensions Board and the Revenue Commissioners in which savings are made for the provision of a retirement income. It is a contract between an individual and a PRSA provider.

PROPRIETARY DIRECTOR: a person who, within 3 years of retirement, death or leaving service, held more than 5% of the voting shares in the employer or its parent company. Shares held by a spouse, minor children and shares held by a trust to which the director had transferred shares are also counted. Proprietary directors are permitted to invest in ARFs on retirement.

QUALIFYING FUND MANAGER (QFM): an authorised financial institution which operates an ARF



and has notified the Revenue Commissioners that it operates as a QFM.

RETIREMENT ANNUITY CONTRACT (RAC):

often referred to as a personal pension, a contract for the provision of retirement benefits between a financial institution and a self-employed person or an employed person with no right of access to a pension scheme for full retirement benefits.

REVENUE COMMISSIONERS: the Irish tax authority responsible for the collection of taxes, a division of which grants exempt tax approval and monitors the operation of pension schemes and also approves certain other pension products.

TRUST: a legal concept under 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 entity establishing the trust and set out in the trust documentation. A trustee may also be a beneficiary.

TRUST DEED AND RULES: a trust deed which governs a pension scheme and sets out various provisions, including the trustees' powers. It is normally accompanied by a set of rules which detail the retirement and related benefits to be paid to scheme members.

TRUST RAC: a personal pension scheme for more than one individual.

TRUSTEES: an individual and/or company who alone, or jointly with others, is appointed as the legal owner of property to be held by them for the benefit of others (the beneficiaries) under and in accordance with the Trust Deed and Rules.



WILLIAM FRY IS AN ADVISER TO PROMINENT IRISH AND INTERNATIONAL PENSION OPERATORS ACROSS THE MAJOR SECTORS OF THE IRISH ECONOMY.

Our Pensions Group operates within the Employment & Pensions Department. We are a full service pensions practice of specialist pensions lawyers (rated Tier 1 by Legal 500 EMEA, 2010 and Band 1 by Chambers Europe, 2010).

We are trusted legal advisers with long experience and a proven track record.

WHAT WE DO

We provide both general and project specific pensions advice.

We represent clients in all sectors – sponsoring employers (Irish and multinational plcs/private companies), scheme trustees and members/individuals.

We have excellent working relationships with the Pensions Board, the Revenue Commissioners and the Pensions Ombudsman.

OUR CORE VALUES

We get to know each client's business and focus on their needs so that we have a clear understanding of their requirements.

We are commercial, pragmatic, innovative and results focused. We are also tough, assertive and hard working on behalf of our clients.

We have a strong commitment to service and excellence in everything we do.

OUR SERVICES

The scope of our services includes:

- **Pension scheme design and planning** (eg. defined benefit and defined contribution schemes, PRSAs)
- **Documentation** (eg. drafting, amending and reviewing trust deeds, explanatory booklets)
- **Revenue Commissioners and Pensions Board approvals** (eg. registering schemes, obtaining tax clearance, consents, dealing with regulator's queries)
- **Trustees duties and obligations** (eg. what trustees should do, member trustees, scope of obligations)
- **Trusteeship** (eg. trustee training, compliance with pensions legislation, attendance at trustees meetings)
- **Disputes and complaints** (eg. dealing with complaints to the Pensions Ombudsman, Pensions Board investigations, pensions litigation in the Courts)
- **Changes to schemes including restructuring/derisking** (eg. moving from defined benefit to defined contribution or hybrid arrangements, closing schemes to new members, benefit structure changes, altering contribution levels, freezing schemes, new pension arrangements for future services, winding up and creating new schemes, issues for trustees)
- **Investment management/custodianship** (eg. preparing agreements, reviewing reports)
- **Equality issues** (eg. equal treatment between men and women, ageism)
- **Scheme mergers and winding up** (eg. priority of payments, dealing with surplus)

- Company M&As and outsourcings (eg. pensions due diligence, warranties, transfer arrangements in both Irish and multi-jurisdiction transactions)
- Pensions aspects of insolvency (eg. advising liquidators/administrators of insolvent companies on pensions)
- Retirement planning (eg. tax aspects, Approved Retirement Funds (ARFs), annuities)
- Pension products (eg. sales and related documentation)
- EU cross-border pension schemes (eg. Irish and non Irish cross-border schemes, social and labour laws, interaction issues)

OUR ADDED VALUE OFFERINGS

We provide a range of publications on pensions, including “Pensions in Ireland” and “ARIA/Pensions Health Check” and news updates in our pensions e-zines and client bulletins. We also host regular pensions briefings, seminars and roundtable discussions for clients and pensions industry groups.

OUR COMMITMENT TO THE PENSIONS INDUSTRY

We are actively involved in the pensions industry and participate at committee level in the Irish Association of Pensions Funds, the Association of Pension Lawyers in Ireland and other Irish/international pensions interest groups.

For further information, please visit us at www.williamfry.ie



Michael Wolfe
Partner

T. +353 1 639 5204
E. michael.wolfe@williamfry.ie



Jane McKeever
Associate

T. +353 1 489 6525
E. jane.mckeever@williamfry.ie



14 Useful contact details

PENSIONS BOARD

www.pensionsboard.ie

Verschoyle House, 28/30 Lower Mount Street, Dublin 2

T. +353 -1- 613 1900

PENSIONS OMBUDSMAN

www.pensionsombudsman.ie

36, Upper Mount Street, Dublin 2

T. +353 -1- 647 1650

IRISH ASSOCIATION OF PENSION FUNDS

www.iapf.ie

Slane House, 25, Lower Mount Street, Dublin 2

T. +353 -1- 661 2427

REVENUE COMMISSIONERS

www.revenue.ie

Large Cases Division, Financial Services (Pensions),
4th Floor, Grattan House, Lower Mount Street, Dublin 4

T. +353 -1- 647 4022



WILLIAM FRY

Fitzwilton House, Wilton Place, Dublin 2, Ireland. DX23 Dublin.

TEL. +353 1 639 5000 **FAX.** +353 1 639 5333 **EMAIL.** info@williamfry.ie **WEB.** www.williamfry.ie

Also at 100 Park Avenue, Suite 1600, New York, NY 10017. In association with Tughans, Northern Ireland.