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**UNCLAIMED LIFE ASSURANCE POLICIES ACT 2003**

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European Communities (Amendment) Act 1993	1993, No. 25
European Communities Act 1972	1972, No. 27
Insurance Act 1989	1989, No. 3
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Organisation of Working Time Act 1997	1997, No. 20
Pensions (Amendment) Act 2002	2002, No. 18
Petty Sessions (Ireland) Act 1851	14 & 15 Vict., c. 93
Powers of Attorney Act 1996	1996, No. 12
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**UNCLAIMED LIFE ASSURANCE POLICIES ACT 2003**

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AN ACT TO PROVIDE FOR THE TRANSFER OF MONEYS PAYABLE UNDER UNCLAIMED LIFE ASSURANCE POLICIES TO THE DORMANT ACCOUNTS FUND ESTABLISHED UNDER THE DORMANT ACCOUNTS ACT 2001, TO PROVIDE FOR THE PAYMENT OF MONEYS FROM THE FUND, TO PROVIDE FOR THE APPOINTMENT OF INSPECTORS, AND FOR THOSE AND OTHER PURPOSES TO AMEND AND EXTEND THE DORMANT ACCOUNTS ACT 2001 AND TO PROVIDE FOR RELATED MATTERS. [22nd February 2003]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Unclaimed Life Assurance Policies Act 2003.

Short title,  
collective citation  
and  
commencement.

(2) The Dormant Accounts Act 2001 and *section 27* may be cited together as the Dormant Accounts Acts 2001 and 2003.

(3) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be appointed for different purposes or different provisions.

2.—(1) In this Act, except where the context otherwise requires— Interpretation.

“Act of 2001” means the Dormant Accounts Act 2001;

“Agency” means the National Treasury Management Agency;

“approved policy” means—

(a) a policy approved by the Revenue Commissioners—

(i) for the purpose of receiving payments from retirement benefit schemes approved under Chapter 1 of Part 30 of the Taxes Consolidation Act 1997, or

(ii) under section 784 or 785(1)(a) of Part 30 of the Taxes Consolidation Act 1997,

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or

- (b) a Personal Retirement Savings Account established with an insurance undertaking;

“communication” means an electronic or written communication from a policy holder to an insurance undertaking in relation to a policy and includes the payment of premiums under, or partial encashment of, a policy by the policy holder;

“continuing risk policy” means a policy which has acquired a surrender value and continues, by the imposition of charges on the policy without reference to the policy holder, to assure an amount which will become payable by the insurance undertaking in the event of death or disability;

“correspondence address” means—

- (a) subject to *subsection (2)*, in the case of a policy holder other than a body corporate, the holder’s last known address for correspondence according to the records of the insurance undertaking at which the policy is held, and
- (b) in the case of a policy holder that is a body corporate, its registered office or place of business;

“First Directive” means Council Directive No. 79/267/EEC of 5 March 1979<sup>1</sup>;

“Fund” means the Dormant Accounts Fund established by the Act of 2001;

“insurance undertaking” means—

- (a) the holder of an authorisation granted under the European Communities (Life Assurance) Framework Regulations 1984 (S.I. No. 57 of 1984) or the Life Regulations of 1994,
- (b) the holder of an official authorisation granted pursuant to the First Directive as amended or extended from time to time, or
- (c) the holder of an official authorisation to undertake insurance in Iceland, Liechtenstein and Norway, pursuant to the EEA Agreement within the meaning of the European Communities (Amendment) Act 1993, who is carrying on the business of life assurance in the State,

and references to “undertaking” shall be read accordingly;

“life assurance” means insurance of a class specified in Part A of Annex I to the Life Regulations of 1994 the text of which Annex is set out for convenience of reference in *Schedule 1*;

“Life Regulations of 1994” means the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994);

“Minister” means the Minister for Community, Rural and Gaeltacht Affairs;

“Personal Retirement Savings Account” has the same meaning as in Chapter 2A (inserted by the Pensions (Amendment) Act 2002) of Part 30 of the Taxes Consolidation Act 1997;

<sup>1</sup> OJ No. L 63, 13.03.1979, p. 1.

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“policy” means—

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- (a) a policy of life assurance in respect of which the contract may or may not be evidenced by a policy document, or
- (b) a Personal Retirement Savings Account established with an insurance undertaking;

“policy holder” means—

- (a) a person who proposes for life assurance to an insurance undertaking and to whom the undertaking issues the policy concerned,
- (b) where a policy has been assigned to another person, that person, to the extent of his or her entitlement,
- (c) where a person is deceased, the heirs, executors, administrators and assigns of that person,
- (d) where another person is entitled to be paid an amount payable under the policy, that other person, to the extent of his or her entitlement,
- (e) a person appointed to administer the policy on behalf of the policy holder, whether by a court or pursuant to Part II of the Powers of Attorney Act 1996 or otherwise, or
- (f) a contributor (within the meaning of Chapter 2A (inserted by the Pensions (Amendment) Act 2002) of Part 30 of the Taxes Consolidation Act 1997) in respect of a Personal Retirement Savings Account established with an insurance undertaking,

and “holder” shall be read accordingly;

“prescribed” means prescribed by regulations made by the Minister and cognate words shall be read accordingly;

“register” means the register of unclaimed policies established under *section 12*;

“regulatory authority” means the Minister for Enterprise, Trade and Employment or any successor to his or her functions as the regulatory authority for life assurance business in the State;

“specified term”, in relation to a policy, means, subject to *subsection (3)*, a period after which moneys become payable under the policy to the policy holder;

“surrender value” means the monetary value of a policy where it is surrendered by the policy holder to the insurance undertaking;

“unclaimed policy” means a policy to which this Act applies by virtue of *section 6* or pursuant to regulations made under *section 7*.

(2) Where a person (other than a body corporate) does not give an address for correspondence to the insurance undertaking concerned, any other address given by the person to the undertaking is deemed to be his or her correspondence address for the purposes of this Act.

(3) For the purposes of this Act an approved policy is deemed to have a specified term which expires on the date for commencing payment of the retirement or superannuation benefits out of, or

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secured by, the proceeds of the policy, or where there is more than one such date provided for in the policy, the latest of those dates.

(4) (a) For the purposes of this Act, the net encashment value of an unclaimed policy is the total of—

(i) the amount payable by an insurance undertaking to a policy holder under the policy if the policy holder were to make a claim, whether by encashment or otherwise, on the assumption that any contingency assured under the policy which would vary the amount otherwise payable has not occurred, and

(ii) any interest applied by the insurance undertaking, on the relevant date, to the moneys payable under the policy, in accordance with the usual practice of the undertaking concerned.

(b) In the case of an approved policy, amounts payable to the policy holder under the policy include amounts available to be applied on behalf of the policy holder in accordance with the terms of the policy.

(c) In the case of a continuing risk policy, when transferring moneys to the Fund under *section 10*, the amount referred to in *paragraph (a)(i)* is exclusive of the charges (if any) payable to maintain the policy in force until the life assured or, in the case of joint lives, the youngest of the lives assured under the policy has reached, or would have reached if he or she were living, 100 years of age.

(d) In this subsection “relevant date” means—

(i) in the case of the transfer of moneys to the Fund under *section 10*, the date of transfer, and

(ii) in the case of a claim under an unclaimed policy under *section 15*, the date of the notice given to the Agency under *subsection (1)(b)* of that section.

(5) In this Act—

(a) a reference to a Part, Chapter, section or Schedule is to a Part, Chapter or section of or Schedule to this Act, unless it is indicated that a reference to some other enactment is intended,

(b) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended,

(c) a reference to any other enactment shall, unless the context otherwise requires, be read as a reference to that enactment as amended by or under any other enactment, including this Act, and

(d) a reference to the performance of functions includes, with respect to powers and duties, a reference to the exercise of powers and the carrying out of duties.



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3.—(1) The Minister may—

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Regulations and  
orders.

- (a) by regulations provide, subject to this Act, for any matter referred to in this Act as prescribed or to be prescribed, and
- (b) in addition to any other power conferred on him or her to make regulations, make regulations generally for the purposes of, and for the purpose of giving full effect to, this Act.

(2) Regulations under this Act—

- (a) may contain such incidental, supplementary and consequential provisions that appear to the Minister to be necessary or expedient for the purposes of the regulations, and
- (b) may apply either generally or to a specified class or classes of policy, insurance undertaking or person (including a class or classes of policy, insurance undertaking or person specified in regulations under *section 7*) or to any other matter that may be considered by the Minister to be appropriate and may include different provisions in relation to different classes of policy, insurance undertaking or person.

(3) Where the Minister proposes to make regulations under *section 7* or an order under *section 9(7)*, he or she shall cause a draft of the regulations or order to be laid before each House of the Oireachtas and the regulations or order shall not be made until a resolution approving of the draft has been passed by each House.

(4) Every regulation or order under this Act (other than regulations made under *section 7* or an order made under *section 1(3)* or *9(7)*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly but without prejudice to the validity of anything previously done under the regulation or order.

4.—Except where otherwise provided for in this Act, the expenses incurred by the Minister in the administration of this Act shall, to the extent that may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Expenses.

5.—(1) A person guilty of an offence under this Act is liable—

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proceedings.

- (a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 5 years, or both.

(2) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent, connivance or approval of, or to be attributable to any neglect on the part of any director, manager, secretary or other officer of the body

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corporate or any other person who was purporting to act in any such capacity, that officer or person as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(3) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted within 2 years from the date on which the offence was committed or, if later, 2 years from the date on which evidence that, in the opinion of the person by whom the proceedings are brought, is sufficient to justify the bringing of the proceedings comes to that person's knowledge.

(4) Summary proceedings in respect of an offence under this Act may be brought and prosecuted by the regulatory authority.

(5) Where a person is convicted of an offence under this Act, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the regulatory authority the costs and expenses, measured by the court, incurred by the regulatory authority in relation to the prosecution of the offence.

PART 2

UNCLAIMED POLICIES

CHAPTER 1

*Application of Act*

Unclaimed policies. 6.—(1) Subject to *subsection (3)*, this Act applies to an unclaimed policy in respect of which moneys are payable in the State to a policy holder who has a correspondence address in the State.

(2) For the purposes of this Act, a policy is deemed to be unclaimed—

(a) where—

- (i) the policy has a specified term which has expired,
- (ii) an amount would be payable to the policy holder under the policy if the policy holder were to make a claim under the policy or, in the case of an approved policy, is available to be applied on behalf of the policy holder in accordance with the terms of the policy, and
- (iii) the insurance undertaking has received no communication from the policy holder for a period of 5 years or more beginning on the later of—
  - (I) the day following the last day of the specified term of the policy, or
  - (II) the date on which the undertaking last received a communication from the policy holder,

or

(b) where—

- (i) the policy does not have a specified term,

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- (ii) an amount would be payable to the policy holder if the policy holder were to make a claim under the policy, and
- (iii) the undertaking has received no communication from the policy holder for 15 years or more beginning on the date on which the undertaking last received a communication from the policy holder.

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(3) This Act does not apply to a policy which constitutes or forms part of the assets of any of the following:

- (a) an occupational pension scheme, other retirement benefit scheme or trust, approved under Chapter 1 of Part 30 of the Taxes Consolidation Act 1997 (other than an approved policy within the meaning of this Act);
- (b) a group permanent health insurance or disability benefit scheme;
- (c) a sponsored superannuation scheme within the meaning of Chapter 2 of Part 30 of the Taxes Consolidation Act 1997.

7.—(1) The Minister, having regard to the purposes specified in *subsection (3)*, following consultation with the regulatory authority and subject to the consent of the Minister for Finance, may make regulations providing for the application of this Act and instruments made under this Act, with and subject to any modifications that may be specified in the regulations, to policies (including policies other than policies of life assurance), that are issued to such class or classes of person by such class or classes of undertaking specified in the regulations.

Extension of application of Act.

(2) Without prejudice to the generality of *subsection (1)*, the modifications, if any, may relate to any of the following matters:

- (a) the period specified in *paragraph (a)(iii)* or *(b)(iii)* of *section 6(2)*;
- (b) the notice procedure set out in *Chapter 2*;
- (c) the transfer of moneys to the Fund under *section 10*;
- (d) the keeping of a register under *section 12* and the particulars required to be entered in the register under that section;
- (e) the disclosure of information for statistical purposes under *section 13*;
- (f) the processing of claims under *Chapter 4*;
- (g) any other matters that may appear to the Minister to be necessary for carrying the regulations into effect.

(3) The Minister may make regulations under this section for the following purposes:

- (a) consumer protection;
- (b) the proper and orderly regulation of the financial services industry;
- (c) to facilitate the accessing or identification by persons of policies or moneys to which they are entitled;

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Pt.2 S.7 (d) to reduce the administrative and financial burden of maintaining unclaimed policies.

CHAPTER 2

*Notice Procedure*

Notice to policy holders.

8.—(1) Subject to *section 9*, except where a policy holder has previously been given notice under this section in respect of an unclaimed policy, each holder of an unclaimed policy shall be given written notice by the insurance undertaking concerned of the following:

- (a) the name and current address of the undertaking and any information regarding a change of name since the policy issued;
- (b) that an unclaimed policy to which the policy holder appears to be entitled is held at the undertaking;
- (c) that if no communication is received by the insurance undertaking from the policy holder on or before 31 March next following, commencing on 31 March 2004, the net encashment value of the policy will be transferred to the Fund without further notice to the policy holder;
- (d) that the policy holder is entitled, subject to this Act and the terms and conditions of the policy, to claim the moneys payable under the policy from the insurance undertaking;
- (e) any other matters that may be prescribed.

(2) The notice referred to in *subsection (1)* shall be sent by ordinary post to the correspondence address of the policy holder—

- (a) in the case of the first notice sent after the commencement of this section, as soon as practicable after such commencement, and
- (b) in the case of each subsequent notice, as soon as practicable after 30 September, commencing on 30 September 2003.

(3) An insurance undertaking that fails to give notice to a policy holder in accordance with this section is guilty of an offence.

Publication of notice.

9.—(1) Where an unclaimed policy is held at an insurance undertaking and—

- (a) subject to any order made under *subsection (7)*, the value of the policy is less than €500 or its equivalent in any other currency,
- (b) the insurance undertaking has been instructed by the policy holder not to correspond with or contact the policy holder, or
- (c) the insurance undertaking has taken all reasonable steps to notify the policy holder in accordance with *section 8* and fails to do so,

*section 8* does not apply and the insurance undertaking shall publish or cause to have published a notice in 2 or more daily newspapers circulating in the State and in *Iris Oifigiúil*.

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- (2) The notice shall be published—
- (a) in the case of the first notice published after the commencement of this section, on 21 March 2003, and
  - (b) in the case of each subsequent notice, on the first weekday in October in each year commencing on 1 October 2003.
- (3) The notice shall be in the prescribed form or in a form to the like effect and shall contain the following information:
- (a) subject to *subsection (4)*, the name of the insurance undertaking, the current address of its head office and any information regarding a change of name;
  - (b) that the undertaking holds unclaimed policies;
  - (c) that if no communication is received by the insurance undertaking from the holder of an unclaimed policy on or before 31 March next following, commencing on 31 March 2004, the net encashment value of the policy will be transferred to the Fund without further notice to the policy holder;
  - (d) that any interested person should contact the insurance undertaking to establish if he or she is a policy holder and entitled to any moneys payable under an unclaimed policy;
  - (e) that policy holders are entitled, subject to this Act, and the terms and conditions of the policy concerned, to claim the moneys payable under the policy from the insurance undertaking;
  - (f) any additional information that may be prescribed.
- (4) (a) An insurance undertaking which publishes, or causes to have published, on its behalf, a notice under this section shall, on request, make available free of charge—
- (i) details of the current address of its head office and any information regarding a change of name, and
  - (ii) subject to *paragraph (b)*, any other relevant information specified in the request.
- (b) Where the information referred to in *paragraph (a)(ii)* is otherwise made available to persons subject to a lawful charge, that information may be made available under this subsection subject to that charge.
- (5) Copies of a notice published under this section shall be—
- (a) permanently displayed in a prominent position at each premises in which the insurance undertaking carries on business in the State and which is open to the public, and
  - (b) published in a prominent position in all brochures and publicity material, in relation to unclaimed policies, issued by the undertaking.
- (6) An insurance undertaking that fails to comply with this section is guilty of an offence.

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(7) The Minister may, by order, amend at any time the amount specified in *subsection (1)(a)* if the Minister—

- (a) considers it appropriate to do so having regard to all the circumstances, and
- (b) is satisfied that by doing so members of the public will not be prejudiced.

(8) The Minister may by order amend or revoke an order made under this section, including an order made under this subsection.

CHAPTER 3

*Transfer of Moneys to Dormant Accounts Fund*

Transfer of moneys  
to Fund.

**10.**—(1) Where no communication has been received by an insurance undertaking from the holder of an unclaimed policy on or before the date specified in *section 8(1)(c)* or *9(3)(c)*, as the case may be, the insurance undertaking at which the unclaimed policy is held shall, subject to *subsection (2)*, not later than 30 April next following, transfer to the Fund the net encashment value of the policy and the first transfer after the commencement of this section shall take place not later than 30 April 2004.

(2) Where the net encashment value of an unclaimed policy cannot be ascertained, the insurance undertaking shall transfer to the Fund the estimated net encashment value.

(3) An insurance undertaking that transfers moneys to the Fund under this section shall furnish to the Agency a written statement specifying—

- (a) the total amount of moneys transferred,
- (b) the total number of unclaimed policies which have a specified term, and
- (c) the total number of unclaimed policies which have no specified term.

(4) An insurance undertaking that does not hold any unclaimed policies to which *subsection (1)* applies shall make a written report to that effect to the Agency not later than 30 April in each year and the first report after the commencement of this section shall be made not later than 30 April 2004.

(5) An insurance undertaking is guilty of an offence if it—

- (a) fails to transfer moneys to the Fund under this section,
- (b) fails to furnish a statement to the Agency in accordance with *subsection (3)*, or
- (c) fails to make a report to the Agency in accordance with *subsection (4)*.

(6) (a) Moneys which an insurance undertaking fails to transfer to the Fund under this section shall be a simple contract debt due and owing by the undertaking to the Fund and may be recovered by the Minister from the undertaking in any court of competent jurisdiction.

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- (b) Moneys recovered under *paragraph (a)* shall be paid into and form part of the Fund. Pt.2 S.10
- (c) The Minister shall, without prejudice to the rights of the policy holder, be deemed to be the policy holder for the purposes of recovering moneys from an insurance undertaking in accordance with this subsection.
- 11.**—(1) After the relevant date, an insurance undertaking shall not transfer moneys to the Fund under *section 10* if— Prohibition on transfer of moneys under *section 10*.
- (a) the authorisation of the insurance undertaking is revoked, withdrawn or suspended,
- (b) the regulatory authority gives a direction to the insurance undertaking under—
- (i) Article 54(2) of the Life Regulations of 1994, or
- (ii) section 17 or 18 of the Insurance Act 1989,
- (c) the regulatory authority applies to the court for an order under Article 36 of the Life Regulations of 1994 in relation to the insurance undertaking,
- (d) an examiner or administrator is appointed by the court to the insurance undertaking, or
- (e) the insurance undertaking is—
- (i) in receivership,
- (ii) in liquidation,
- (iii) being wound up, or
- (iv) otherwise being dissolved.
- (2) The prohibition in *subsection (1)* ceases to apply to the insurance undertaking when—
- (a) its authorisation is restored or the suspension is terminated,
- (b) a direction referred to in *subsection (1)(b)* is revoked, set aside, terminated or otherwise ceases to have effect,
- (c) in the case of an order referred to in *subsection (1)(c)*, an application for an order is withdrawn or refused or the order is set aside, terminated or otherwise ceases to have effect, or
- (d) the appointment of an examiner or administrator has terminated.
- (3) In this section “relevant date” means—
- (a) the date of the revocation, withdrawal or suspension of the authorisation, as the case may be, or the date on which the direction is given or an application for an order is made,
- (b) the date of appointment of the examiner or administrator,

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- (c) the date of appointment of the receiver,
- (d) where the insurance undertaking is being wound up—
  - (i) in the case of a voluntary winding up, the date of the passing of the resolution for voluntary winding up,
  - (ii) in the case where, before the presentation of a petition for the winding up by the court, a resolution has been passed for voluntary winding up, the date of the passing of the resolution, and
  - (iii) in any other case, the date of the presentation of a petition for the winding up by the court,
- or
- (e) where the institution is otherwise being dissolved, the date of the dissolution.

(4) An insurance undertaking that fails to comply with *subsection (1)* is guilty of an offence.

Register of  
unclaimed policies.

**12.—(1)** Each insurance undertaking shall keep a register of unclaimed policies.

(2) Subject to *subsection (3)*, an insurance undertaking shall enter in the register the following particulars of unclaimed policies in respect of which moneys are transferred to the Fund under *section 10*:

- (a) the name and correspondence address of the policy holder, if ascertainable;
- (b) the policy number, if any and ascertainable;
- (c) the total number of policies which have a specified term;
- (d) the total number of policies which have no specified term;
- (e) if a notice was sent to the policy holder under *section 8*, the date on which the notice was sent;
- (f) the date on which the policy was deemed to be an unclaimed policy in accordance with *section 6*;
- (g) the date of the transfer of moneys to the Fund and the amount transferred;
- (h) where notice to the Agency has been given under *section 15*, the date on which moneys were paid and the amount paid in accordance with that section—
  - (i) by the Agency to the insurance undertaking, and
  - (ii) by the insurance undertaking to the policy holder;
- (i) in the case of continuing risk policies, the total amount of the charges (if any) referred to in *section 2(4)(c)* made by the undertaking in respect of those policies;
- (j) any other matters that may be prescribed.



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(3) Where moneys are transferred to the Fund in accordance with *section 10(2), subsection (2)* of this section does not apply and the following particulars only shall be entered in the register: Pt.2 S.12

- (a) the total amount transferred;
- (b) the number of policies in respect of which the moneys have been transferred;
- (c) the date of the transfer to the Fund;
- (d) the total amount paid to policy holders under *section 15*.

(4) The register may be kept in any form subject to its being capable of being converted into a legible form and being used to make a legible copy or reproduction of any entry in the register.

(5) (a) Subject to *paragraph (b)* the register shall not be open to public inspection.

(b) Nothing in *paragraph (a)* shall be read as restricting—

- (i) the application of the Data Protection Act 1988, or
- (ii) the right of a person who proves to the satisfaction of the insurance undertaking that he or she is, or may be, a policy holder, to inspect the register insofar as that policy is concerned.

(6) An insurance undertaking is guilty of an offence if it fails to—

- (a) keep a register, or
- (b) enter in the register the particulars specified in *subsection (2) or (3)*, as the case may be.

**13.**—(1) The Minister, following consultation with the regulatory authority, in the interests of consumer protection and the proper and orderly regulation of the financial services industry, may, for statistical purposes only, make regulations providing for the disclosure of the information specified in *subsection (2)*— Disclosure of information for statistical purposes.

- (a) to the persons and subject to the conditions (including the payment of charges by the person seeking the information concerned) and restrictions that the Minister may prescribe, and
- (b) in a form that the information cannot be directly or indirectly related to an identifiable person.

(2) The information referred to in *subsection (1)* may include—

- (a) prescribed information from the register,
- (b) details of the classes of unclaimed policies, and
- (c) the number of unclaimed policies in each class.

**14.**—The transfer of moneys to the Fund under *section 10* is without prejudice to the rights of policy holders as provided for in the Rights of policy holders.

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Pt.2 S.14 documents constituting, or the enactments governing, insurance undertakings.

CHAPTER 4

*Processing of Claims under Unclaimed Policies*

Processing of claims.

**15.**—(1) Where a person who makes a claim under an unclaimed policy in respect of which moneys have been transferred to the Fund under *section 10* proves to the satisfaction of the insurance undertaking concerned that he or she is the policy holder, the undertaking shall—

- (a) give written confirmation to the person that he or she is the policy holder,
- (b) within 10 working days after giving the confirmation give written notice to the Agency of the net encashment value of the unclaimed policy, and
- (c) send to the policy holder a copy of the notice to the Agency.

(2) The Agency shall pay to the insurance undertaking, within 21 days after the date of the notice, the net encashment value of the policy as stated in the notice given under *subsection (1)(b)*.

(3) Within 5 working days after receipt of payment under *subsection (2)*, the insurance undertaking shall—

- (a) subject to any charges or deductions that may be made by the insurance undertaking—
  - (i) pay to the policy holder the moneys payable under the policy, or
  - (ii) at the written request of the policy holder and in accordance with the terms of the policy, apply the moneys payable under the policy,

and

- (b) provide to the policy holder a written statement of the moneys payable or applied under the policy, as the case may be, and of any charges or deductions made.

(4) In this section “working day” means a day that is not a Saturday, Sunday or public holiday (within the meaning of the Organisation of Working Time Act 1997).

Processing of claims where insurance undertaking is wound up, etc.

**16.**—(1) Where an insurance undertaking has been wound up, the liquidator appointed to the insurance undertaking shall, in addition to his or her duties and obligations in respect of the winding up and following dissolution of the insurance undertaking, submit the register to the regulatory authority.

(2) Where a register is submitted to the regulatory authority under *subsection (1)*, the regulatory authority shall—

- (a) process, in accordance with *section 15*, claims made under unclaimed policies in respect of which moneys were transferred to the Fund under *section 10*, and

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(b) enter in the register the following particulars: Pt.2 S.16

- (i) where notice was given to the Agency under *section 15*, the date on which moneys were paid and the amount paid in accordance with that section—
  - (I) by the Agency to the regulatory authority, and
  - (II) by the regulatory authority to the policy holder;
- (ii) any other matters that may be prescribed.

PART 3

COMPLIANCE WITH ACT

CHAPTER 1

*Certificate of Compliance*

**17.—(1)** In this section—

Certificate of compliance.

“duly authorised officer” means a person authorised, in writing, by the insurance undertaking concerned or by some person authorised in that behalf by that undertaking;

“financial year” means the financial year of the insurance undertaking concerned.

(2) Each insurance undertaking shall furnish a certificate of compliance to the regulatory authority, not later than one month after the end of each financial year, in the form and manner that the regulatory authority may specify, stating, if this is the case, that the insurance undertaking has complied with this Act in respect of the following:

- (a) the publication of a notice under *section 9*;
- (b) in the case of an insurance undertaking that holds unclaimed policies to which *section 10(1)* applies, the transfer of moneys to the Fund under that section;
- (c) in the case of an insurance undertaking which does not hold any unclaimed policies to which *section 10(1)* applies, the filing of a report to that effect with the Agency under *section 10(4)*;
- (d) the keeping of a register in accordance with *section 12*;
- (e) the processing of claims under *section 15*.

(3) The certificate shall be signed by a duly authorised officer and shall include any qualifications, amplifications or explanations that the officer considers appropriate.

(4) An insurance undertaking is guilty of an offence if it fails to—

- (a) appoint a duly authorised officer, or
- (b) furnish a certificate of compliance under this section.

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CHAPTER 2

*Inspections*

Interpretation  
(Chapter 2).

**18.**—In this Chapter—

“branch” means an agency or branch of an insurance undertaking or any permanent presence of an undertaking in the State even if that presence does not take the form of an agency or branch but consists merely of an office managed by the insurance undertaking’s own staff or by a person who is independent but has permanent authority to act for the insurance undertaking in the same way as an agency;

“by way of services into the State” means the covering of a commitment by an insurance undertaking in the State through a head office or branch situated in another Member State;

“computer” includes a personal organiser or any other electronic means of information storage and retrieval;

“home Member State” means the Member State (other than the State) in which the head office of an insurance undertaking is situated;

“inspector” means a person authorised by the regulatory authority under *section 19* to exercise the powers conferred on an inspector by this Chapter;

“Member State” means a Member State of the European Communities;

“record” means any book, document (including accounts) or any other written or printed material in any form including—

- (a) any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form and that is capable of being reproduced in a legible form, and
- (b) all the electronic or other automatic means, if any, by which any such material or information is capable of being so reproduced and to which an insurance undertaking, being inspected for the purposes of this Chapter, has access;

“supervisory authority” means the authority charged by law with the duty of supervising the activities of insurance undertakings in the home Member State.

Authorisation of  
inspectors.

**19.**—(1) The regulatory authority may authorise one or more persons to be inspectors for the purposes of—

- (a) ensuring compliance by insurance undertakings with this Act,
- (b) examining notices to the Agency under *section 15*,
- (c) ascertaining whether insurance undertakings have established systems, procedures and practices that are adequate to secure an effective check on the identification, notification, transfer, recording and payment of moneys payable under unclaimed policies, and

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- (d) determining whether those systems, procedures and practices have been employed and applied in an adequate manner in relation to moneys payable under unclaimed policies. Pt.3 S.19
- (2) An authorisation under this section shall be in writing and shall be subject to any terms and conditions (including terms and conditions relating to the remuneration, fees and allowances for expenses) that may be determined by the regulatory authority, with the consent of the Minister for Finance, and that are specified in the authorisation.
- (3) The remuneration, fees and allowances for expenses referred to in *subsection (2)* shall be payable out of the Fund.
- (4) The authorisation of an inspector under this section ceases when the regulatory authority revokes the authorisation.
- 20.**—(1) An inspector may, for the purposes specified in *section 19*, on production of his or her authorisation— Power to inspect records.
- (a) at all reasonable times and on reasonable notice inspect and take copies of or extracts from (including, in the case of information in a non-legible form, a copy of or extract from that information in a permanent legible form), and make any enquiries that the inspector considers necessary in relation to the following records kept by an insurance undertaking—
- (i) policies held by the insurance undertaking,
  - (ii) records of the transfer of moneys to the Fund under *section 10*,
  - (iii) the register,
  - (iv) notices to the Agency under *section 15*,
  - (v) any other records relating to the matters specified in *subparagraphs (i) to (iv)*, and
  - (vi) any other records relating to unclaimed policies,
- and, for those purposes, enter any premises on which the inspector reasonably believes that those records are kept and search and inspect the premises,
- (b) secure for later inspection any premises or any part of a premises on which those records are kept or there are reasonable grounds for believing that those records are kept,
- (c) where records that are stored in electronic form or are not in the English or Irish language, require the insurance undertaking concerned or a person employed by that insurance undertaking to produce in a legible form a copy of those records in the English or Irish language,
- (d) require a person by whom or on whose behalf a computer is or has been used to produce or store records or any person having charge of, or otherwise concerned with the

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operation of, the computer to afford the inspector all reasonable assistance in relation thereto, and

(e) remove and retain those records for such period as may be reasonable for further inspection or until the conclusion of any legal proceedings, subject to a warrant being issued for that purpose by a judge of the District Court.

(2) A person who has in his or her power, possession or procurement any records referred to in *subsection (1)* shall—

(a) produce them at the request of the inspector and permit the inspector to inspect and take copies of or extracts from them,

(b) at the request of the inspector, give the inspector any information that the inspector may reasonably require in relation to any entries in those records and provide an explanation of any apparent omissions from them or any omission of a record required to be produced, and

(c) give any other assistance and other information to the inspector that is reasonable in the circumstances.

(3) The duty to produce or provide any record or information extends to an examiner, administrator, liquidator, receiver, official assignee or any person who is or has been an officer or employee or agent of an insurance undertaking or who appears to the regulatory authority or the inspector to have the information or record in his or her possession or under his or her control.

(4) Where a person from whom production of a record is required claims a lien thereon, the production of the record shall be without prejudice to the lien.

(5) An inspector shall not, except with the consent of the occupier, enter a dwelling unless he or she has obtained a warrant issued by a judge of the District Court under *subsection (7)* authorising the entry.

(6) An inspector, where he or she considers it necessary, may be accompanied by a member of the Garda Síochána when performing any powers conferred on an inspector by this Part.

(7) If a judge of the District Court is satisfied on the sworn information of an inspector that there are reasonable grounds for suspecting that there is information required by an inspector under this section held on any premises or any part of any premises, the judge may issue a warrant authorising an inspector, accompanied by other inspectors or by a member of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production of the warrant if requested, to enter the premises, if need be by reasonable force, and exercise all or any of the powers conferred on an inspector under this section.

(8) A person is guilty of an offence if he or she—

(a) obstructs an inspector in the exercise of a power under this Chapter,

(b) gives to an inspector information that the person knows is false or misleading, or

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(c) without reasonable excuse, fails to comply with a request or requirement made by an inspector under this Chapter. Pt.3 S.20

(9) For the purposes of carrying out inspections under this Chapter the inspector shall have access to—

(a) all records kept by the Agency in relation to—

(i) the transfer of moneys to the Fund under *section 10*,  
and

(ii) the payment of moneys from the Fund under *section 15*,

and

(b) the certificates of compliance furnished to the regulatory authority under *section 17*.

**21.—(1)** Where an insurance undertaking is carrying on life assurance business in the State by way of branch establishment or by way of services into the State, in the interests of consumer protection, the proper and orderly regulation of the financial services industry or the general good, it shall submit to an inspector, on request, all documents which the inspector considers necessary for the purposes of implementing this section insofar as an insurance undertaking with a head office situated in the State is also required to do so.

Power to inspect insurance undertakings carrying on life assurance business in the State by way of branch establishment or by way of services into the State.

(2) Where an insurance undertaking carrying on life assurance business by way of branch establishment or by way of services into the State does not comply with a request from an inspector under *subsection (1)*, the inspector shall inform the regulatory authority which may, by written direction, require the insurance undertaking to comply with the request.

(3) Where an insurance undertaking fails to comply with a direction under *subsection (2)* of this section or *section 25(1)*, as the case may be, the regulatory authority shall inform the supervisory authority concerned.

(4) If, after informing the supervisory authority concerned under *subsection (3)*, any measures taken by the supervisory authority against the insurance undertaking concerned are, in the opinion of the regulatory authority, not adequate and the undertaking continues to contravene this Act, the regulatory authority may, after informing the supervisory authority of its intention, apply to the High Court for such order as to the Court may seem fit, in order to prevent further infringements of this Act, including, insofar as is necessary and in accordance with the Insurance Acts 1909 to 2000, regulations made under those Acts and regulations relating to insurance made under the European Communities Act 1972, the prevention of that insurance undertaking from continuing to conclude new insurance contracts within the State.

(5) The regulatory authority shall give written notification to the insurance undertaking concerned of any order of the High Court under *subsection (4)* or measure adopted by the regulatory authority pursuant to this section together with the grounds for the adoption of the measure.

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Inspector's report.

**22.—**(1) Where, following an inspection under this Part, the inspector is of the opinion that—

- (a) there is reason to believe that the insurance undertaking concerned is in breach of any provision of this Act, or
- (b) there is a material defect in the systems, procedures and practices referred to in *section 19(1)(c)*,

the inspector shall prepare a written report and shall submit a copy of the report to the regulatory authority.

(2) Subject to *subsection (3)*, policy holders shall not be referred to in a report under this section (otherwise than for the purposes of *subsection (3)*) by name or in any manner by which they could be identified as being the policy holder.

(3) An inspector who, in the course of an inspection, obtains *prima facie* evidence of—

- (a) a possible underpayment of moneys, or failure to transfer moneys, under *section 10*, or
- (b) a fraudulent notice to the Agency under *section 15*,

shall furnish to the regulatory authority particulars of the evidence and of the policies and policy holders concerned.

(4) An inspector shall provide to the regulatory authority any information and assistance that may reasonably be required by the regulatory authority in respect of any matters relating to an inspection carried out under this Chapter or for the purpose of clarifying any matter in the inspector's report.

(5) The regulatory authority may give directions in relation to the form, manner and content of a report under this section.

Privilege of  
inspector.

**23.—**Utterances made in good faith by an inspector for the purpose of performing the functions of an inspector under this Chapter are absolutely privileged and such utterances and reports in any form prepared by an inspector for that purpose are absolutely privileged wherever and however published.

Disclosure of  
information to  
inspector.

**24.—**(1) Subject to *section 22(2)*, any prohibition or restriction imposed by law (including any contract) in relation to the disclosure of information (including records in any form) does not apply in relation to—

- (a) the disclosure of information in good faith to, or access to information by, an inspector for the purposes of his or her functions under this Part, or
- (b) any information that is contained in an inspector's report under *section 22* and in the opinion of the inspector ought, in the public interest, to be so contained and no liability of any kind shall attach to the person or insurance undertaking (including their directors, officers or employees) making the disclosure.

(2) Nothing in this section or *section 20* or *21* compels the disclosure by any person of any information that the person would, in the



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opinion of the court, be entitled to refuse to produce on the grounds of legal professional privilege or authorises the taking possession of any document containing such information that is in the person's possession. Pt.3 S.24

**25.**—(1) Without prejudice to any prosecution that might be brought under this Act, where an inspector's report under *section 22* discloses particulars of— Failure to comply with Act.

- (a) non-compliance by an insurance undertaking with any provision of this Act, or
- (b) a material defect referred to in *section 22(1)(b)*,

the regulatory authority may, as soon as practicable after receiving the report, give written directions to the insurance undertaking aimed at ensuring compliance or rectification of the material defect, as the case may be, subject to any terms and conditions that the regulatory authority may specify in the directions.

- (2) (a) An insurance undertaking that fails to comply with a direction under *subsection (1)* is guilty of an offence.
- (b) It shall be a defence to a prosecution under *paragraph (a)* for the insurance undertaking concerned to prove that a direction under *subsection (1)* was unreasonable having regard to—
  - (i) the scope and terms of the provision of this Act that, in the opinion of the inspector, the insurance undertaking failed to comply with, or
  - (ii) the nature and consequences of the alleged material defect.

PART 4

MISCELLANEOUS

**26.**—Where an insurance undertaking— Confidentiality.

- (a) transfers moneys to the Fund under *section 10*, or
- (b) gives notice to the Agency under *section 15*,

the insurance undertaking concerned shall not refer to a policy holder by name or in any manner by which he or she could be identified as being a policy holder.

**27.**—The Act of 2001 is amended to the extent specified in *Schedule 2*. Amendments to Act of 2001.

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SCH.1  
Section 2.

SCHEDULE 1

PART A OF ANNEX I TO THE LIFE REGULATIONS OF 1994

“A. Classes of insurance

Class	Description
I	Life assurance and contracts to pay annuities on human life as described in Article 1(1)(a), (b) and (c) of the First Directive, but excluding contracts within Classes II and III below.
II	Contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.
III	The assurances referred to in Article 1(1)(a) and (b) of the First Directive which are linked to investment funds.
IV	Permanent health insurance as defined in Article 2 of these Regulations.
V	Tontines as described in Article 1(2)(a) of the First Directive where these are carried on by an undertaking holding an authorisation.
VI	Capital redemption operations as described in Article 1(2)(b) of the First Directive where these are carried on by an insurance undertaking holding an authorisation.
VII	Management of group pension funds as described in Articles 1(2)(c) and 1(2)(d) of the First Directive where these are carried on by an undertaking holding an authorisation.

”.

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SCHEDULE 2

SCH.2

Section 27.

AMENDMENTS TO ACT OF 2001

No.	Provision affected	Amendment
1.	Section 2	In subsection (1), in paragraph (b) of the definition of “transaction”, delete “or fixed deposit”.
2.	Section 4	(a) Substitute the following for subsection (3)—  “(3) Where the Minister proposes to make regulations under section 9 or an order under section 11(7), he or she shall cause a draft of the regulations or order to be laid before each House of the Oireachtas and the regulations or order shall not be made until a resolution approving of the draft has been passed by each House.”.  (b) In subsection (4), substitute “(other than regulations made under section 9 or an order made under section 1(2), 3 or 11(7))” for “(other than a regulation referred to in subsection (3) or an order made under section 1(2) or 3”.
3.	Section 6	In subsection (1)(a) and (2), substitute “€3,000” for “€1,900” in each place where it occurs.
4.	Section 10	In subsection (1), substitute the following for paragraph (e):  “(e) any other matters that may be prescribed.”.
5.	Section 11	(a) In subsection (1), substitute the following for paragraph (a):  “(a) subject to any order made under subsection (7), the amount in the account is less than €100 or its equivalent in any other currency.”.  (b) Insert the following after subsection (7):  “(8) The Minister may by order amend or revoke an order made under this section, including an order made under this subsection.”.
6.	Section 13	In subsection (3)(d), substitute the following for subparagraph (iii):  “(iii) in any other case, the date of the presentation of a petition for the winding up by the court,  or”.
7.	Section 15	In subsection (1)(a), substitute “prescribe” for “determine”.
8.	Section 17	(a) In subsection (2)— (i) insert “and the <i>Unclaimed Life Assurance Policies Act 2003</i> ” after “this Act”, and (ii) insert “under this Act and the <i>Unclaimed Life Assurance Policies Act 2003</i> ” after “functions”. (b) Substitute the following for subsection (4)(a) and (b)— “(a) defraying— (i) the fees, costs and expenses incurred by the Agency in performing its functions under this Act and the <i>Unclaimed Life Assurance Policies Act 2003</i> , (ii) the fees, costs and expenses incurred by the Board in performing its functions under this Act, and (iii) the remuneration, fees and allowances for expenses of the inspectors who may be authorised by the Minister under section 22 or by the regulatory authority under section 19 of the <i>Unclaimed Life Assurance Policies Act 2003</i> ,

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No.	Provision affected	Amendment
		<p>and (b) making repayments under section 19 or 29 or payments under section 15 of the <i>Unclaimed Life Assurance Policies Act 2003</i>.”.</p>
9.	Section 19	<p>In subsection (8)(b), substitute the following for subparagraph (ii):</p> <p>“(ii) enter in the register the following particulars:</p> <p>(I) if moneys transferred to the Fund under section 12 were repaid to the account holder under this section, the date on which the moneys were repaid and the amount repaid;</p> <p>(II) any other matters that may be prescribed.”.</p>
10.	Section 41	<p>Substitute the following for section 41:</p> <p>“Disbursement of moneys for certain purposes. 41.—(1) (a) The moneys in the investment and disbursements account shall be applied by the Agency, on the direction of the Board, for the purposes of programmes or projects, designed to assist the personal, educational and social development of persons who are economically, educationally or socially disadvantaged or persons with a disability (within the meaning of the Equal Status Act 2000).</p> <p>(b) The Minister, in consultation with the Board, may, from time to time, specify programmes referred to in paragraph (a) having regard to the plan prepared under section 42.</p> <p>(2) Whenever a programme is specified under subsection (1)(b), the Board shall publish notice of the specification in <i>Iris Oifigiúil</i>.”.</p>
11.	Section 42	<p>Substitute the following for section 42:</p> <p>“Plan of Board. 42.—(1) As soon as practicable after its establishment, the Board shall prepare a plan for the disbursement of moneys from the investment and disbursements account and the plan shall include—</p> <p>(a) the objectives of the Board in making disbursements under this Part and its strategy for achieving those objectives, and</p> <p>(b) the priorities of the Board in respect of particular programmes or projects referred to in section 41(1)(a).</p> <p>(2) In preparing the plan the Board shall comply with any directions issued by the Minister, from time to time, including directions relating to the objectives referred to in subsection (1)(a).</p> <p>(3) The plan prepared in accordance with this section shall be submitted to the Minister for approval as soon as practicable after it is prepared.</p> <p>(4) The plan is deemed to be adopted when it is approved in writing by the Minister.</p> <p>(5) The Minister may amend a plan submitted for approval under this section and the Board shall comply with the plan as so amended.</p> <p>(6) The Board shall review, and if necessary, update the plan not later than 3 years after its establishment and at least once in every 3 years thereafter and subsections (1) to (5) apply to a plan reviewed and updated under this subsection.”.</p>

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SCH.2

No.	Provision affected	Amendment
12.	Section 45	<p>(a) In subsection (1)—</p> <p>(i) in paragraph (a), after “the Fund” insert “under this Act and the <i>Unclaimed Life Assurance Policies Act 2003</i>”, and</p> <p>(ii) in paragraph (c), after “this Act” insert “and the <i>Unclaimed Life Assurance Policies Act 2003</i>”.</p> <p>(b) In subsection (4) after “functions” insert “under this Act or the <i>Unclaimed Life Assurance Policies Act 2003</i>, as the case may be,”.</p>
13.	Section 47	In subsection (1), insert “and the <i>Unclaimed Life Assurance Policies Act 2003</i> ” after “this Act” in each place where it occurs.