



STATUTORY INSTRUMENTS.

**S.I. No. 181 of 2007**



SOCIAL WELFARE AND PENSIONS ACT 2007 (SECTION 37)  
(COMMENCEMENT) ORDER, 2007

**(Prn. A7/0845)**

S.I. No. 181 of 2007

SOCIAL WELFARE AND PENSIONS ACT 2007 (SECTION 37)  
(COMMENCEMENT) ORDER, 2007

The Minister for Social and Family Affairs, in exercise of the powers conferred on him by section 1(4) of the Social Welfare and Pensions Act 2007 (No. 8 of 2007), hereby orders as follows:

*Citation*

1. This Order may be cited as the Social Welfare and Pensions Act 2007 (Section 37) (Commencement) Order, 2007.

*Commencement*

2. The 27th day of April 2007 is appointed as the day on which section 37 of the Social Welfare and Pensions Act 2007 comes into operation, in so far as it relates to—

- (a) Part 1 of Schedule 2,
- (b) Part 2 of Schedule 2 (except in so far as it relates to section 3A of the Pensions Act 1990 (No.25 of 1990)) and,
- (c) Part 3 of Schedule 2

of the Social Welfare and Pensions Act 2007.



GIVEN under my Official Seal,  
25 April 2007

SÉAMUS BRENNAN  
Minister for Social and Family Affairs.

*Notice of the making of this Statutory Instrument was published in  
"Iris Oifigiúil" of 4th May, 2007.*

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation).*

This Order provides for the commencement of section 37 of the Social Welfare and Pensions Act 2007 with effect from the 27th April 2007, as follows.:

Part 1 of Schedule 2 to the Act provides for amendments to the Pensions Act in relation to Trust Retirement Annuity Contracts (trust RACs). While most RACs are set up under individual contracts with an insurer and are governed by the Life Directives, it is the view of the Department of Social and Family Affairs and the Pensions Board that trust RACs come under the remit of the Directive 2003/41/EC on the activities and supervision of Institutions for Occupational Retirement Provision (known as the IORPs Directive). In order to comply fully with the provisions of the IORPs Directive, it is therefore necessary to bring such trust RACs under the remit of certain provisions of the Pensions Act where appropriate.

Part 2 of Schedule 2 to the Social Welfare and Pensions Act 2007 (other than in so far as it relates to section 3A of the Pensions Act 1990) provides for amendments to the Pensions Act in relation to fines and penalties, which may be imposed under the Act, as follows—

- amends the Pensions Act, where appropriate, to provide that any fines imposed under the Act shall not be paid out of the resources of the scheme, trust RAC or out of the assets of any PRSA, as the case may be.
- increases the level of fines for both summary and indictable offences under the Act from £1,500 (€1904.61) to €5,000 for a summary offence and from £10,000 (€12,697.38) to €25,000 for an indictable offence.

Part 3 of Schedule 2 to the Social Welfare and Pensions Act 2007 provides for a number of miscellaneous amendments to the Pensions Act, as follows—

- amends section 3 which is a technical amendment to clarify a cross reference in section 3(2A)(c) by inserting a reference to section 81G of the Pensions Act.
- amends section 10 of the Act to clarify that one of the functions of the Pensions Board is to exercise the powers and duties conferred on the Board by the Pensions Act 1990.
- inserts a new section 22A into the Pensions Act in relation to the accountability of the Chief Executive of the Pensions Board before the Public Accounts Committee.
- amends section 26 to clarify a cross reference in subsections 26(1)(a) and 26(6) by substituting section 81G for 75. The original section 75

of the Pensions Act had previously been replaced and renumbered as section 81G (section 22 of the Social Welfare (Miscellaneous Provisions) Act 2004).

- amends sections 38(4), 53(3), 58(3) and 64A(3) of the Pensions Act, by inserting a six month time limit on the right to appeal to the High Court on a point of law from a determination of the Pensions Board. The determinations of the Pensions Board under these sections may be made for the purposes of the preservation of benefits under Part III, the funding standard under Part IV, disclosure of information under Part V and the duties of trustees under Part VI.
- amends section 43 of the Pensions Act in relation to the Funding Standard under Part IV of the Act to provide that defined contribution schemes which are paying benefits to members, where those benefits are not secured under a policy or policies of assurance must produce their first AFC with an effective date no later than 1 April 2007.
- Section 49(3) of the Act allows the Board, on application to it by the trustees, to extend the funding period and to specify a date later than the effective date of the next AFC where certain specified conditions are met and in the circumstances and on the terms that the Board consider appropriate. As schemes, which had been exempt from the funding standard and which cease to be exempt as per section 43(1)(d) of the Act, did not previously have to meet the funding standard they would not be able to meet the specified conditions that would allow the Board to consider an extended funding period. Section 49(3) of the Act is now amended to provide that the Board may also extend the funding period beyond the date of the next AFC in respect of these schemes, where the Board considers it necessary or appropriate and not contrary to the interests of the members.
- amends section 50 of the Pensions Act to allow the Board direct a reduction in some or all of the benefits for active members, without the requirement that the scheme meets the funding standard immediately after the reduction takes place in certain circumstances. Also provides for a technical amendment to section 50, which corrects a cross-reference in section 50(2)(a).
- amends section 59A of the Pensions Act to clarify that the trustees of a scheme are regarded as possessing the qualifications and experience specified in regulations, pursuant to section 59A, where the trustees themselves have the specified qualifications and experience or have satisfied the Board that their advisers do.
- a technical amendment to section 81G of the Pensions Act for clarification, to refer to a defined benefit scheme as well as a defined contribution scheme. Section 81G is also amended by inserting a six month time limit on the right to appeal to the High Court on a point of law from a determination of the Pensions Board as to whether a scheme

is a defined benefit or a defined contribution scheme for the purposes of Part VII (equal pension treatment) of the Pensions Act.

- amends section 104(11) of the Pensions Act to provide that PRSA providers must give at least two months prior notice only in relation to any increase in charges. Previously, the two months notification period applied to all changes in charges, including decreases.
- inserts a new section 143A in the Pensions Act in relation to the accountability of the Pensions Ombudsman before the Public Accounts Committee (PAC).
- technical amendment to Part XII of the Pensions Act in relation to cross-border schemes. Section 150 of the Act is amended to clarify that the authorisation conditions required to operate cross-border schemes are applicable continuously from the time of the granting of authorisation.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHAN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2  
nó tríd an bpost ó  
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,  
51 FAICHE STIABHNA, BAILE ÁTHA CLIATH,  
(Teil: 01 - 6476834/35/36/37; Fax: 01 - 6476843)  
nó trí aon díoltóir leabhar.

---

DUBLIN  
PUBLISHED BY THE STATIONERY OFFICE  
To be purchased directly from the  
GOVERNMENT PUBLICATIONS SALE OFFICE  
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2,  
or by mail order from  
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,  
51 ST. STEPHEN'S GREEN, DUBLIN 2  
(Tel: 01-6476834/35/36/37; Fax: 01-6476843)  
or through any bookseller.

---

€2.54

ISBN 1-4064-1551-0



9 781406 415513