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11/09/2003 LP:- Personal Retirement Savings Accounts (PRSA)

11 September 2003

[To all Departments]

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Personal Retirement Savings Accounts (PRSA)

Section 121 of the Pensions Act 1990, as inserted by section 3 of the Pensions (Amendment) Act 2002, obliges all employers to facilitate access to Personal Retirement Savings Accounts (PRSAs) for some categories of employees in certain circumstances. This section of the Act comes into operation on 15 September 2003 following the signing of the required commencement order by the Minister for Social and Family Affairs.

The obligation arises where an employer does not operate a pension scheme, limits eligibility for membership of a scheme or imposes a waiting period for membership greater than six months from the start of employment. In any such case, the Pensions Act imposes requirements on employers in respect of “excluded employees”. Both the established and non-established superannuation schemes for civil servants contain some restrictions on eligibility for membership. **It follows that Departments and Offices employing civil servants will be subject to the PRSA requirements of the Pensions Act. Most public service bodies will be similarly affected.**

The term “excluded employee” includes (i) employees who are not members of a pension scheme or who, if they are members of a pension scheme, will not accrue entitlement to long-service benefit by minimum retirement age, and (ii) those employees whose pension scheme does not allow the payment of voluntary contributions.

In relation to (i) above, queries as to whether or not a particular employee or class of employee fall within the category of excluded employee should appropriately be addressed to the Pensions Board. However, as a prelude to such enquiries, a public service employer will need to have determined whether or not the employee or class of employee concerned is eligible for membership of the employer’s pension scheme. In this regard, each Department, Office and public service body has a direct responsibility in its own right to ensure that it

complies with, for example, the provisions of the Protection of Employees (Part-Time Work) Act 2001 and the Protection of Employees (Fixed-Term Work) Act 2003. Pension rights were conferred by the terms of those Acts on certain part-time and fixed-term employees **regardless of whether schemes and/or employment contracts have been formally amended to provide appropriately for such staff.** In cases of doubt therefore, public service employers generally may consider it prudent in the first instance to presume that the employee concerned is an excluded employee for the purposes of the Pensions Act, and act accordingly.

In relation to (ii) above, it is understood that employees will not be regarded as excluded employees where the employer operates either standard public sector arrangements for purchase of notional service or facilitates access to an Additional Voluntary Contribution (AVC) scheme.

An employer who is subject to the PRSA obligations in the Pensions Act is required to -

enter into a contractual arrangement with one or more PRSA providers to enable excluded employees to participate in a standard PRSA

notify excluded employees that they have a right to contribute to a standard PRSA administered by a provider with whom the employer has a contractual arrangement

allow the PRSA provider or intermediary reasonable access to excluded employees at their work place for the purpose of concluding standard PRSA contracts

allow reasonable paid leave of absence to enable excluded employees to set up a standard PRSA, subject to work requirements

make deductions from payroll at the excluded employee's request in respect of the standard PRSA administered by the provider with whom the employer has a contractual arrangement.

Employers are also required to pay over contributions by employees to a PRSA within 21 days of the end of the month in which the contributions are deducted and to advise the provider and contributing employees in writing at least once a month of the amount deducted in respect of PRSAs in the preceding month.

It should be noted that there is no obligation on an employer to make a contribution to a PRSA; and it is not envisaged that public service employers would do so. Nor is there any requirement under the legislation to facilitate access by non-excluded employees to a PRSA, to facilitate access by any employees to non-standard PRSAs, or to enter contractual arrangements with more than one PRSA provider. It would be a matter for individual Departments, Offices and public service bodies to determine their own practice in these latter regards. However, in doing so, public service employers should make every effort to ensure

that the practice adopted cannot be viewed as conveying favourable status to any particular PRSA provider.

It should also be noted that in order for an employee who is a member of an occupational pension scheme to avail of tax relief in respect of PRSA contributions, those contributions must be made to an AVC-type scheme. Scheme members who indicate an intention to avail of a PRSA should accordingly be advised to clarify their tax position with the relevant PRSA provider or with the Revenue Commissioners.

The Pensions Board has issued a booklet, "Personal Retirement Savings Accounts (PRSAs) Employers' Obligations", which is available from the Board (telephone 01-6131900) or can be downloaded from the Board's website www.pensionsboard.ie.

The provisions of the Protection of Employees (Part-Time Work) Act, 2001 and the Protection of Employees (Fixed-Term Work) Act 2003 are also relevant to the determination of eligibility of certain employees for membership of pension schemes. The Pensions Board has a useful guide to the Part-time Act and pensionability on its website at http://www.pensionsboard.ie/faq_doc.asp?id=5, which advises that specific questions should be addressed to the

Employment Rights Information Unit
Department of Enterprise, Trade and Employment
Davitt House
65A Adelaide Road
Dublin 2
Phone: 631 3131 Fax: 631 3267 Lo-Call: 1890 201 615 (outside the 01 area)
Website: www.entemp.ie
E-mail: erinfor@entemp.ie

That Unit also has a guide to the Fixed-term Act for employers and employees at <http://www.entemp.ie/erir/protfixexpl03.doc>

Departments are requested to bring the contents of this letter to the attention of Offices and Bodies under their aegis.

Mise le Meas,

Des O'Leary
Principal
Personnel and Remuneration Division