

21 October 2005

Ref: K148/319

Circular 22 / 2005

To: Chief Executive Officers; Superannuation Officers (LGSS, NHASS & VHSS)
All Agencies under the aegis of the Department of Health & Children

Re: Circular 22/2005 – PRSAs
(Department of Finance Circular Letter)

I am pleased to forward a copy of the circular letter concerning Personal Retirement Savings Accounts (PRSA) issued by the Department of Finance for the attention of all Departments and is of concern to Offices and Bodies under the aegis of the Department of Health and Children.

The letter updates employer obligations in relation to PRSAs which was issued in September 2003.

Please bring this to the attention of relevant staff in your agency / organisation.

With best wishes and kind regards.

Yours sincerely

Fergal Somerville
Pension Policy Unit / Superannuation Section
Department of Health & Children

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[To all Departments]

A Chara,

Personal Retirement Savings Accounts (PRSA)

I am directed by the Minister for Finance to refer to this Department's letter of 11 September 2003 about employer obligations in relation to PRSAs. In the light of experience and following consultations with the Department of Social and Family Affairs and the Pensions Board, it has been decided to update the terms of that letter. That letter is accordingly superseded by this correspondence.

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

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"Excluded employees" are employees of an employer:

- (a) who are not offered an occupational pension scheme ("scheme"), or
- (b) who are included in a scheme for death in service benefits only, or
- (c) who are included in a scheme that does not permit the payment of additional voluntary contributions, or
- (d) who are not eligible to join a scheme and who will not become eligible to join the scheme for pension benefits within 6 months from the date they commenced employment.

Both the superannuation schemes for established and non-established 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. Public service bodies may be similarly affected.**

In relation to (c) above and by virtue of Section 123 of the Pensions Act, an employee who is eligible for membership of a pension scheme could also be deemed to be an “excluded employee” if the pension scheme does not include an option enabling the payment of voluntary contributions or if no alternative arrangements for the payment of voluntary contributions are in place. This Department is satisfied that Section 123 has no implications for public service employers who operate schemes for the purchase of notional service or who facilitate access to an Additional Voluntary Contribution (AVC) scheme.

The key determinant for Departments, Offices and public service bodies as to whether or not an employee falls into the category of “excluded employee” is whether eligibility for membership of the scheme is limited or whether the scheme imposes a waiting period for membership greater than six months, not actual membership of such scheme. Having consulted the Department of Social and Family Affairs and the Pensions Board, this Department is satisfied that a member of an organisation’s pension scheme who might not actually qualify for payment of pension benefits, or who may be precluded from purchasing notional service, as a result of his/her terms and conditions of employment (e.g. due to insufficient pensionable service or non-renewal of a short term contract) would not be an “excluded employee”.

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

- enter into a contractual arrangement with a PRSA provider 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 workplace 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; and
- 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 PRSA contributions by employees to the PRSA provider 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 and remitted to the provider in the preceding month.

Each Department, Office and public service body has a direct responsibility in its own right to ensure that it complies with the provisions of the Act. In doing so each organisation must also have regard to its obligations under, for example, the

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<#>In the case of an employer who is not operating a pension scheme, all staff of the employer;¶
<#>In any other case, an employee who is not eligible for membership of any pension scheme operated by the employer and who, if he remains an employee will not become eligible for membership within 6 months from the date of commencement of employment. ¶
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Bby virtue of Section 123 of the Pensions Act, an employee who is eligible for membership of a pension scheme is could also be deemed to be an “excluded employee” if the pension scheme does not allow for the payment of additional voluntary contributions or if no alternative arranger (... [1]

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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.**

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 are there any requirements under the legislation to facilitate access for those who are not 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 on any particular PRSA provider.

It should be noted, however, that employees who are members of an organisation's pension scheme are not precluded from availing of PRSAs. Such employees may pay additional voluntary PRSA contributions subject to the PRSA provider agreeing to take responsibility (which would otherwise fall to the scheme trustees/administrators) for ensuring that Revenue limits regarding contributions and overall benefits at retirement are not exceeded. Tax relief may also be availed of by the scheme member at the end of each tax year. Scheme members who intend to avail of a PRSA should 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>

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As is normal practice, Departments, Offices and public service bodies should endeavour to resolve queries from individual staff in relation to PRSAs internally. Cases of difficulty may be addressed by the organisation to the relevant parent Department or to this Department. Such cases may require further consultation with or referral to the Department of Social and Family Affairs and/or the Pensions Board.

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

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In any other case, an employee who is not eligible for membership of any pension scheme operated by the employer and who, if he remains an employee will not become eligible for membership within 6 months from the date of commencement of employment.

Bby virtue of Section 123 of the Pensions Act, an employee who is eligible for membership of a pension scheme is could also be deemed to be an “excluded employee” if the pension scheme does not allow for the payment of additional voluntary contributions or if no alternative arrangements for the payment of additional voluntary contributions are in place. This Department understands that Section 123 has no implications for public service employers who operate schemes for the purchase of notional service or who facilitate access to an Additional Voluntary Contribution (AVC) scheme.

The key determinant for Departments, Offices and public service bodies as to whether or not an employee falls into the category of “excluded employee” is eligibility for membership of the organisation’s pension scheme(s), not actual membership of such scheme. This Department also understands that, on foot of legal advice, the Department of Social and Family Affairs, and the Pensions Board, which monitor and supervise the implementation of the Pensions Act, are satisfied that a member of an organisation’s pension scheme who might not actually qualify for payment of pension benefits, and/or who may be precluded from purchasing notional service, as a result of his/her terms and conditions of employment (e.g. due to insufficient pensionable service or non-renewal of a short term contract) would not be an “excluded employee”.

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