

**DRAFT HEADS AND GENERAL SCHEME**

**OF**

**THE AUTOMATIC ENROLMENT RETIREMENT SAVINGS**  
**SYSTEM BILL 2022**

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## **ARRANGEMENT OF HEADS**

### **PART 1 PRELIMINARY AND GENERAL**

#### **Head 1      Short title, construction, collective citation and commencement**

Provide that -

- (1) This Bill may be cited as the Automatic Enrolment Retirement Savings System Bill 2022.
  
- (2) This Bill shall come into operation on such day or days as the Minister for Social Protection may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes and different provisions.

#### **Explanatory note**

This Head contains the standard provisions about short title and collective citation for a listing of Acts included or previously included in the collective citation.

It also provides for the coming into operation of the provisions of the Act. It will allow different provisions and any consequential repeals to be brought into operation on different days.

## **Head 2        Interpretation**

Provide for the definition of terms used in the Bill as follows -

‘the CPA’ is the Central Processing Authority, charged with overseeing, administering and setting standards for the automatic enrolment retirement savings scheme on behalf of participant members and employers;

‘chargeable period’ means an accounting period of a company or a year of assessment;

‘Directive of 2016’ means Directive (EU) 2016/2341 [OJ No. L 354, 23.12.2016, p.37] of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast);

‘electronic interface’ means a secure information technology platform, portal, exchange network or other similar interface maintained by, or on behalf of, the CPA, which requires personal log-in details;

‘gross earnings’ means pay of any kind from an employer to an employee, including notional pay and share based remuneration;

‘mandatory participation period’ means the period of six-months during which an employee must remain in the scheme after their first enrolment or re-enrolment;

‘minimum standards’ means the standards that shall apply to a qualifying occupational pension scheme in order to apply an exemption from auto-enrolment.

‘the Minister’ means the Minister for Social Protection;

‘notice’ means a communication given via hardcopy or via electronic means, including via an electronic interface;

‘opt-out window’ means the two month period during which an employee may opt-out of the auto-enrolment retirement savings scheme, which shall occur in months 7 and 8 following enrolment or re-enrolment;

‘penalisation’ means any act or omission that affects a worker to the worker’s detriment, and in particular includes—

- (a) suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,

- (d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
- (e) unfair treatment,
- (f) coercion, intimidation or harassment,
- (g) discrimination, disadvantage or unfair treatment,
- (h) injury, damage or loss, and
- (i) threat of reprisal;

‘period of delay’, in relation to any contributions due and payable, means the period during which those contributions remain unpaid;

‘prevailing rate’ is the percentage rate of contributions to the scheme in accordance with this Act;

‘qualifying occupational pension scheme’ means an occupational pension scheme which meets the minimum standards prescribed;

‘relevant pay reference period’ means the period prescribed by the Minister by regulation for determining an employee’s gross earnings;

**Explanatory note**

This Head is a standard provision containing definitions of the key terms of the Bill, many of which are self-explanatory.

### **Head 3        Regulations**

Provide that -

(1) The Minister may make regulations prescribing any matter or thing which is referred to in this Bill as prescribed or to be prescribed.

(2) Every regulation under this section is to be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it, the regulation will be annulled accordingly, but without prejudice to anything previously done thereunder.

#### **Explanatory note**

This Head is a standard provision to allow for regulations to be made by the Minister on any matter referred to in the Bill as being so prescribed and for the laying of those regulations before the Houses of the Oireachtas.

## PART 2 PARTICIPANTS

### Head 4 Criteria for automatic enrolment

(1) Provide that an employee shall be enrolled into the retirement savings scheme when they meet the following criteria:

- (a) who has attained the age of 23 years but has not attained the age of 60 years;
- (b) whose gross earnings are more than €20,000 from across all of their employments in the relevant pay reference period.

(2) Provide that an employment relationship, for which there exists a qualifying occupational pension scheme into which the employer and employee are actively making contributions, shall be exempt from enrolment.

(3) Provide that the process for determining an exemption from auto-enrolment, as provided for in Subhead (2), shall be prescribed by the Minister in regulations, and which may include incorporating this process within the Pensions Authority's registration process.

(4) The exemption of a specific employment relationship under Subhead (2) does not apply in respect of any other employment relationship to which the relevant employee may be a party and to which Subhead (2) does not apply.

### Explanatory note

This Head sets out the criteria for automatically enrolling employees into the retirement savings scheme whereby current and new employees aged between 23 and 60 years of age and earning €20,000 or more a year across all employments will be automatically enrolled on the automatic enrolment date.

Employees who are existing and actively contributing members of a pension scheme/contract which meets prescribed minimum standards and contribution levels will not be automatically enrolled for the employment to which that pension scheme relates.

The purpose of Subhead (1) is to set an age-based threshold and earnings-related threshold as the basis for enrolment. The lower age limit for being enrolled automatically is to be set at 23 years. Employees who are over 60 when AE is first introduced will not be automatically enrolled. Those who are enrolled at a younger age will continue to pay contributions and remain in the system after 60 years of age, until State Pension Age.

Research shows that those under the age of 23 are also most likely to work in multiple, short term roles reflecting the fact that Ireland has one of the highest levels of participation in third level education among OECD countries. This results in delayed entry into full-time employment. Data indicates that the rate of separation from the labour market attributed to each age rises steadily up to its peak at age 22/23. Beyond the age of 22, the rate of

separations falls steadily with age (until it increases again in the years of the retirement phase). Setting the age threshold below 23 years of age is thought unwise as it would impose an administrative burden on employers, on retirement savings providers and on the proposed CPA as a consequent of the high level of churn/separation amongst this age group.

The upper age limit for being enrolled automatically is to be set at 60 years as it is unlikely that a participant joining over this age will accumulate a meaningful pension fund prior to retirement.

However, it is important to note that any employee over the age of 60 or under the age of 23 may opt in if they so wish.

Within the consultation process there were mixed views on the lower and upper age thresholds. Some stakeholders advocated for a lower or no age threshold, on the basis that it is never too early to start saving for retirement. Others called for a higher age of entry, for example 25 to 27 years of age, as employees in lower age groups tend to be in temporary or part-time employment and may have more immediate financial needs, prompting them to opt-out. With regard to the upper age threshold, some stakeholders advocated for a higher upper age threshold (i.e. above 60 years of age) while other stakeholders argued for no upper age threshold.

In terms of international comparisons, most countries that have implemented an automatic enrolment style system have included an age membership criterion. A minimum entry age exists in New Zealand (18 years) and the UK (22 years). In the United States, employers are permitted to exclude workers younger than 21 years from participation in their pension plans. In New Zealand, people above the age of eligibility for a public pension (currently 65 years) cannot join KiwiSaver, while in Poland those aged 55-70 years of age are not automatically enrolled, but they can opt in.

Subhead 1 also provides for the setting of an earnings threshold at €20,000 from across **all** employments that an individual may have. The threshold recognises that providing for retirement income in the future needs to be balanced against current/real-time income pressures, particularly for lower paid employees.

People on very low incomes, unless they are second earners in a household, generally consume all their income and have little, if any, scope to fund savings. Although the objective of AE is to increase the level of supplementary savings coverage, it is not considered appropriate to automatically enrol all low-income earners. The earnings threshold also takes account of income replacement rates in retirement. The term ‘replacement rate’ means the proportion of pre-retirement income that can be achieved by people in retirement. In their micro/macro-economic analysis of pension auto-enrolment options, the ESRI conducted analysis into the potential impact of AE on income replacement rates. The paper noted that the maximum State Contributory Pension yields high gross replacement rates for those at lower levels of income and it concludes that for many earning below €20,000 the State Pension provides an adequate pension based on income replacement rates.

Within the consultation process there was broad support from stakeholders for the earnings threshold to be set at €20,000. While the case was also made for a lower threshold, or no threshold at all, the majority of written submissions and participants in the consultation seminars agreed that the €20,000 threshold was appropriate and that it should not be higher than this.

In terms of international comparisons, earnings thresholds have been set by governments as triggers for enrolment in supplementary pension schemes. In the UK the earnings threshold is currently set at £10,000 and reviewed on an annual basis to ensure that the level is set where it will enrol as many people as possible who will benefit from pension saving, while avoiding the enrolment of those who will not benefit.

The purpose of Subhead (2) is to provide for the exemption from the auto-enrolment retirement savings system of employees who are actively contributing members of an existing occupational pension scheme. The rationale for this exemption for employees is that the retirement savings system will complement, rather than replace, existing private pension provision. It is important to note that if a person is exempted from auto enrolment because of active participation in an occupational pension scheme, that the exemption applies only to that employment and not to any other employments they may also have.

The purpose of Subhead (3) is to set out the approach for identifying occupational pensions schemes that will qualify as auto-enrolment exempt schemes. It provides for the standards that such a scheme should meet to be set out by the Minister by means of regulation. In time, it is thought that the process for exempting such pension schemes may align with the Pensions Authority's process for registering pension schemes on an annual basis.

The purpose of Subhead (4) is to qualify that the exemption is job-specific and does exempt employees in respect of other employments which are not covered by approved occupational pension schemes. For example, if the worker has multiple employment relationships, and one of those employments is without approved occupational pension coverage, and if the age and total income (including income from employments covered by an approved occupational pension arrangement) criteria are met, then they shall be auto enrolled into the retirement savings system in respect of the employments without pension coverage. In such a situation, contributions to the retirement savings system will only be paid in relation to the employment not covered by an approved occupational pension arrangement. If the worker only has one employment relationship and this relationship involves coverage within an approved occupational pension arrangement, contributions to the retirement savings system will not be paid in relation to this employment. Automatic enrolment will be activated when the employee becomes party to an employment contract without participation in an approved occupational pension scheme and when they fulfil the other eligibility criteria.

## **Head 5      No waiting period**

Provide that -

Contributions made in respects of an employee enrolled into the retirement savings scheme shall be collected as soon as practicable, pending an assessment of an employee's earnings.

### **Explanatory note**

This Head is to provide for no statutory waiting period to enrol an employee. Following an assessment of an employee's earnings, once an employee is deemed eligible, the employee will be automatically enrolled into the retirement savings system and the deduction of contributions will commence. The rationale for this provision is because of the need for employees to save for their retirement consistently, so this provision precludes the use by employers of probationary periods or short temporary contracts as a means of avoiding obligations under auto-enrolment.

Auto-enrolment is particularly effective in increasing participation in pension schemes amongst short-tenure employees. The AE target population is understood to be likely to change jobs more frequently than other workers. The ESRI note that as non-coverage is particularly prevalent among employees aged between 23 and 30 and employees earning under €30,000, automatic enrolment will have the biggest impact on pension coverage for this cohort. As this group will change jobs frequently, whether due to career progression, participation in the gig economy or job insecurity, it is important that each change does not represent a pause in contributions. Therefore, the 'pot-follows-member' approach ensures that participants can continue contributing to the same fund when they change jobs and do not end up with several small pension pots. This combination of having a 'no waiting period' policy and a 'pot-follows-member' approach, means that employees moving to a new employment should be able to start contributing immediately to their pension fund, and therefore not lose out on personal, employer or State contributions.

The provision of enrolling eligible employees into the retirement savings scheme on commencing employment was supported by participants in the public consultation process. Many of the stakeholders' written submissions cited the more transient working patterns of lower income employees and the need to mitigate the risk of employees receiving a reduction in pay once they have passed a certain period in employment (e.g. after a six-month probation period).

In terms of comparisons with similar retirement savings systems from an international perspective, there are some examples of waiting periods being used. In the UK, employers can make use of a waiting period to delay the date they need to automatically enrol workers into the automatic enrolment scheme and start making contributions. However, the system in the UK is different to the pot-follows-member approach Ireland. This design feature in the UK means that for people who move jobs frequently, an individual's pension savings becomes fragmented into several deferred, small pension pots.

## **Head 6          Voluntary participation – right to opt-in**

Provide that:

(1) The following employees may make an application to the Central Processing Authority to become participants to the automatic enrolment retirement savings scheme:

(a) An employee who is not an actively contributing member of a qualifying occupational pension scheme in any one of their employments and who is aged between 16 and 22 or is over 60;

(b) An employee who is not an actively contributing member of a qualifying occupational pension scheme in any one of their employments and whose annual gross earnings are below €20,000;

(c) An employee not participating in the retirement saving scheme because they have opted out.

(2) An employee applying to the CPA to opt into the retirement savings scheme shall pay contributions calculated on the basis of the prevailing rate.

(3) Contributions from the employer and the State shall also be paid at the prevailing rate.

(4) The Minister shall prescribe by regulation the process to apply to voluntary applications by employees to whom Subhead (1) applies.

### **Explanatory note**

Some workers may not be in scope to become members of the retirement savings system on an automatic basis. This Head will allow employees earning below the €20,000 threshold and those outside of the age bracket the option to opt into the retirement savings scheme by voluntarily enrolling. Those who have opted out of the scheme will also be able to opt back into the scheme.

Individual choice is a key component of the AE retirement savings system. This includes the choice to opt-in to the system, as well as to opt-out. This means that employees who are not included within the eligibility criteria, and who are not covered by an occupational pension scheme can opt-in to the retirement savings scheme. In the event of voluntary enrolment, the payment of employee contributions will commence together with contributions from their employer and the State on a mandatory basis.

While the evidence suggests that setting an age and income threshold is appropriate and will overall prevent the enrolment of employees who cannot afford to save, it is possible that it will exclude some who would benefit from membership of the scheme. It is also likely that more women than men will not meet the income threshold of €20,000, and therefore more men will be automatically enrolled in the scheme. This is partly due to the preponderance of women in part-time work as reflected in figures for Ireland published by the CSO and the OECD. Across the OECD nearly 70% of people in part-time employment are women. As

part-time work is generally associated with low pay (due to fewer hours worked), these workers will likely fall below the earnings threshold. Therefore, the inclusion of an ‘opt-in’ feature will lessen the risk of unintentional exclusion of women and other minority groups.

The provision of an opt-in process was supported by most stakeholders who took part in the public consultation process. In terms of comparisons with similar retirement savings systems from an international perspective, other OECD countries, such as New Zealand, the UK and Poland, allow individuals outside the target population to opt-in to their automatic enrolment schemes voluntarily.

## **Head 7        Rules around seasonal workers; workers with irregular hours and posted workers**

Provide that -

- (1) For the avoidance of doubt, that all employees shall be treated the same for the purpose of auto-enrolment.
- (2) The Minister may prescribe regulations setting out any specific rules around the treatment of seasonal workers; workers with irregular hours and posted workers, in line with relevant legislation.
- (3) The term ‘employees’ under subhead (1) shall not include any person working in the State who does not have a valid working permit or right of residence in the State.

### **Explanatory note**

For seasonal workers and workers with irregular hours, the right not to be treated less favourably than comparable full-time employees in respect of their conditions of employment is provided for in the following Acts:

- The Protection of Employees (Part-Time Work) Act 2001
- The Protection of Employees (Fixed-Term Work) Act 2003
- The Protection of Employees (Temporary Agency Work) Act, 2012

These Acts cover conditions of employment which, in relation to pension arrangements, include eligibility for membership of an occupational pension, entitlements to rights under the pension arrangement, and conditions relating to the making of contributions.

With regard to employees from other EU Member States, supplementary pension rights are protected by EU Directives 98/49/EC and 2014/50/EU law. Directive 2014/50 refers to ‘outgoing workers’ moving between Member States, and not workers moving within a member state. This directive was transposed into Irish legislation through S.I 447/2019, which defines an ‘outgoing worker’ as an active scheme member whose employment terminates for reasons other than becoming eligible for a pension and who moves between Member States.

With regard to non-EEA workers who hold a valid work permit, such employees are entitled to the full range of statutory employment rights and protections in the same manner as Irish and EU workers where they are in possession of a valid work permit. These include similar terms and conditions of employment, including pensions.

With regard to posted workers where an employee whose contract of employment remains with their Irish employer but where their employer moves them to a jurisdiction outside the State for a specified duration, the regulations will be cognisant of Revenue rules and EU law, including Council Directive 96/71/EC and EU Directive (EU) 2018/957. The regulations will also take account of S.I. 412 of 2016 - European Union (Posting of Workers) Regulations

2016 and S.I. 374 of 2020 European Union (Posting of Workers) (Amendment) Regulations 2020.

This Head reflects the jurisprudence of the Supreme Court that workers in the State who are not in possession of a valid working permit or who do not have a right to reside in the State are not entitled to accrue rights or social protections simply by virtue of the fact that they are paying PRSI, tax, USC etc. and are otherwise registered in the State as employees. Participation in AE is only valid when the employment relationship underpinning it is also valid.

## **Head 8        Employers must not interfere in any way in the AE choices made by the individual employee**

Provide that -

(1) An employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee, for:

- (a) having made an application to the CPA to become a participant; or
- (b) for not exercising the opt-out or suspension facilities.

(2) An employee's right to participate in the retirement savings system shall be protected by prohibiting a prospective employer from asking an applicant for employment whether or not an applicant might opt out of the retirement savings system.

(3) An employee's right to participate in the retirement savings system shall be protected by prohibiting an employer from inducing an employee to opt out or to suspend their membership of the retirement savings scheme.

(4) In the enforcement of these rights the employee may present a complaint to the Central Processing Authority that the employer has subjected the employee to unfair treatment.

(5) An employer who is found to have contravened this Head shall be liable to pay to the person affected a compensatory penalty of €5,000.

### **Explanatory note**

The Heading is designed to provide for pre-employment and employment safeguards to ensure that employee's participation in the retirement savings scheme can be protected. The provisions under this heading will apply regardless as to whether or not the employee concerned actually meets the eligibility criteria for enrolment set out under Head 4.

The purpose is to put in place a prohibition on employers penalising an employee for either opting-in or choosing not to opt-out or suspend their contributions. For example, where the employee has been dismissed or denied promotion or training opportunities because of their decision not to opt out of the retirement savings scheme.

The purpose is also to prohibit prospective employers from attempting to screen out job applicants on the basis that they want to be a member of the retirement savings scheme. An employer contravenes this prohibition, if, for example, in an application for employment, a prospective employer makes a statement or asks a question that indicates that the application might be conditional on an applicant opting out of the retirement savings system.

The purpose of Subhead (3) is to prohibit an employer from inducing an employee to opt-out or suspend their participation in the retirement savings scheme. An employer contravenes this prohibition if they take any action with the intent of inducing or encouraging an employee to opt-out or suspend their participation in the retirement savings scheme.

The purpose of Subhead (4) is to enable the employee to present a complaint to the CPA if they feel they have been put at a disadvantage as a result of their choice to participate in the retirement savings scheme. In such circumstances the employee will have a right to bring claims against the employer to the CPA.

Where a claim is upheld, an award of compensation of €5,000 should be paid by the employer to the employee.

## PART 3 CONTRIBUTIONS

### Head 9 Rates of Contribution

Provide that -

- (1) For the employee –
  - (a) contributions will be levied as a percentage of the employee's gross earnings, as defined in Head 2 of this Act;
  - (b) contributions will be phased in as follows:
    - (i) 1.5% for Years 1 to 3
    - (ii) 3% for Years 4 to 6
    - (iii) 4.5% for Years 7 to 9
    - (iv) 6% from Year 10 onwards;
  - (c) Tax relief, as provided for in the Taxes Consolidation Act 1997 (as amended), will not be applied to these contributions.
  
- (2) For the employer -
  - (a) contributions will be levied as a percentage of the employee's gross earnings, as defined in Head 2 of this Act;
  - (b) contributions will match the employee contribution and will be phased in as follows:
    - (i) 1.5% for Years 1 to 3
    - (ii) 3% for Years 4 to 6
    - (iii) 4.5% for Years 7 to 9
    - (iv) 6% from Year 10 onwards.
  - (c) contributions will be calculated on the earnings of the employee up to €80,000;
  - (d) contributions will be deductible for Corporation Tax purposes pursuant to the Taxes Consolidation Act 1997 (as amended);
  - (e) contributions to an employee's account will not be subject to the age-related percentage limits nor the overall earnings cap as provided in the Taxes Consolidation Act 1997 (as amended) and employees will not be liable for Benefit in Kind in respect of an employer's contributions as also provided for in the Taxes Consolidation Act 1997 (as amended).
  
- (3) For the State –
  - (a) contributions will be levied as a percentage of the employee's gross earnings, at the following rates:
    - (i) 0.5% from Years 1 to 3
    - (ii) 1% from Years 4 to 6
    - (iii) 1.5% from years 7 to 9
    - (iv) 2% from Year 10 onwards;

(b) contributions will be calculated on the earnings of the employee up to €80,000.

## **Explanatory note**

### Overall contribution rate of 14%

Providing for adequate levels of income post retirement is a core objective of AE. The level of contributions must be affordable for employees, employers and the State, while still allowing for an adequate savings level. The measure of adequacy most often used is the “final earnings replacement rate”. This measure is defined as the proportion of pre-retirement income that can be achieved in retirement and is expressed as a percentage of pre-retirement income. A full 40 years’ of AE contributions will be required to provide an adequate level of income replacement in retirement, including the State Pension.

The proposed maximum 14% contribution rate is to be made up as follows: 6% from the employee, 6% from the employer, and 2% from the State. As the proposed auto-enrolment scheme will be a defined contribution scheme investing in various portfolios, it is important to consider what contribution is appropriate to maximise the probability of meeting the target income replacement rate for poor as well as high performing portfolios. Gallagher and Ryan conducted an analysis of this in 2017.<sup>1</sup> Their findings show that an overall contribution rate of more than 8% but less than 15% will deliver a target income replacement rate for well and poor performing portfolios. Setting the rate at the higher end of this scale provides a better probability of achieving the target income replacement rate even for those who are unfortunate to retire during a market downturn. Therefore, an overall contribution rate of 14% is in line with their findings.

In comparison with the auto-enrolment schemes of Australia, New Zealand, Poland and the UK, the overall contribution rate of 14% is high. In New Zealand, the default overall contribution rate is 6% (excluding the State incentive). This was found to be inadequate in meeting the target income replacement rate of 70% by MacDonald et al. in their 2012 study.<sup>2</sup> In the UK the current overall default contribution rate of 8% is still thought to be too low to achieve adequate retirement incomes and there are calls to raise the total contribution even further to 12%. Australia has finally, after many years, reached a contribution level of 10% and most commentators consider it to be too low to ensure an adequate replacement rate.

### Phasing of contributions

The phasing in of contributions aligns with the principle set out in the Programme for Government that there will be a phased roll-out, over a decade, of the contribution made by

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<sup>1</sup> Gallagher, L.A., Ryan, F. (2017) ‘A Portfolio Approach to Assessing an Auto-Enrolment Pension Scheme for Ireland’. The Economic and Social Review, 48(4). Pp.515-548. Online. Available at: <https://www.esr.ie/article/view/825>

<sup>2</sup> MacDonald, K.L., Bianchi, R.J., and Drew, M.E. (2012) ‘KiwiSaver and Retirement Adequacy’. Australasian Accounting, Business and Finance Journal, 6(4), 2012, 61-78. Online. Available at: <https://ro.uow.edu.au/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1386&context=aabfj>

workers. The phasing in employee contributions on a staged basis will allow time for the contribution rate to “bed in” and earnings to adjust before the next increase. The Government’s 2021 Economic Recovery Plan states that “the impact of COVID-19 on society and the economy has been unprecedented, severe and uneven”. Therefore, a careful phased implementation period is important in introducing the new AE system.

Contribution rates will start off at 1.5% of gross earnings, increasing by 1.5 percentage points every three years. This will have the effect of delaying the full implementation of the 6% contribution rate by employers and employees.

This approach allows a few more years for adjustment in comparison to the UK auto-enrolment scheme, where total contributions were increased over a time period of seven years from 2% in 2012 to 8% in 2019. The feature has been successful in the UK, as analysis shows little evidence of increases in opt-outs following the first contribution increase.

**Subhead (1)** – The purpose of this subhead is to provide for the deduction of employee contributions on a phased basis. It is important that these contributions are at a level high enough to achieve adequate retirement income, while remaining affordable. The results of the public consultation found general agreement in a contribution level of 6% for employees. There was general agreement that this ultimate level would be affordable, although concern was expressed for lower earners who may struggle with this contribution. It is therefore important that all features of the system – including the income threshold, opt-out, saving suspension periods – work together to ensure that those who cannot afford contributions are not automatically enrolled, and those who go through a period of not being able to afford contributions can pause them.

Tax relief will not apply to employee contributions, as the State will provide a top-up contribution. Like most countries in the OECD, Ireland currently operates a system of tax relief on contributions to pensions saving. Within this system, pension contributions are made before tax is paid, resulting in a worker receiving tax relief. Tax relief thereby reduces a taxpayer’s taxable income. This relief is provided at either the standard rate or the marginal rate of taxation (20% or 40%). Despite the significant value of these concessions being available to both employers and employees, the supplementary pension coverage rate has remained largely static at around over 50% of the working population reducing to 35% when the private sector is considered in isolation. This low coverage rate can be attributed, in part, to the benefits of tax relief being not at all well understood by ordinary workers. Given this lack of understanding, tax reliefs as currently structured in Ireland have provided limited incentive, or indeed no incentive, for workers on lower incomes to save for their retirement. As the majority of AE participants will be on lower to middle incomes, a different approach is needed to incentivise this cohort.

**Subhead (2)** – The purpose of this subhead is to provide for the payment of matching employer contributions on a phased basis. It is important that employers contribute to their employee’s pension fund, as the total contribution rate would be too much for most

employees to afford themselves. Employer pension contributions are part of an employee's remuneration package, and as such can be used as an important bargaining tool when employment contracts are negotiated. Generous contributions can help enhance a company's reputation as an employer and attract talented prospective employees. In terms of auto-enrolment, studies in New Zealand show that the employer contribution is a great incentive for employees to join and stay in the scheme, and therefore it is an important feature in the goal of extending pension coverage.

In consultation feedback there was clear concern for the affordability of contributions for employers from mainly SME representative groups. They felt that employers already have a lot of overheads, including paying PRSI for their employees. Despite this, there will be a number of factors that will help employers in this regard. Firstly, the income threshold of €20,000 means that employers will not have to contribute for those earning under this amount (unless the employee opts in). Secondly, there is an upper threshold of €80,000 as part of the design, and employers will not be required to make contributions on income above this. Thirdly, the employer contribution will be tax deductible. Finally, the average employer contribution to current Defined Contribution plans would suggest that an ultimate contribution rate of 6% is reasonable.

As with other payroll charges, employer matching contributions will be deductible for Corporation Tax purposes. In addition, employer contributions will also be exempt from Benefit in Kind, PRSI and USC as is the case in terms of current occupational pension schemes.

**Subhead (3)** - The purpose of this subhead is to provide for the State top-up contribution. The Programme for Government confirmed that the State will provide an incentive for people to participate in the AE system through the provision of a top-up contribution. The rationale for doing so is that financial incentives can play a role in retaining members in the system and encouraging the habit of saving for retirement.

Analysis has shown that an approach that provides a 'top up' contribution to participants' pensions pot is well understood by the target population. To this end, the State will contribute €1 for every €3 that the employee contributes towards their retirement savings account. Given that the fully implemented contribution rate is 6% of gross earnings for the employee, the effective rate from the State will be 2% of gross earnings. For a comparison with the current tax relief system, the value of this 'top up' contribution equates to 25%.

Other countries have chosen a variety of different forms of state incentives. An initial 'kick-starter' or welcome payment from the state is employed in Poland and was available in New Zealand until 2015. Both New Zealand and Poland contribute annually to a participant's fund, based on what the participants themselves have saved in the year. In the UK, the State contributes to pension savings through tax relief on contributions.

Adopting this approach is not without its critics, who argue that the introduction of a top up contribution approach alongside the current system of tax reliefs adds further complexity to the pension system. A further issue identified is the different values of the financial incentives in one system vis-à-vis the other, which could potentially encourage employees to move to the system that is most financially beneficial to them. On the one hand, there could be an incentive for higher rate taxpayers to opt-out of AE in favour of tax relief in ‘traditional’ pensions, where a 40% incentive is provided. On the other hand, standard rate taxpayers currently saving for retirement, where a 20% incentive is provided, may be incentivised to leave their existing pensions (which are incentivised by tax relief) in favour of AE, where the incentive is worth 25% of the employee’s contribution. As a consequence, it has been contended that the setting up of a parallel set of incentives in the AE system has the potential to cause some confusion amongst participants leading to the need for financial advice. However, this situation would only apply to a small minority of employees.

Despite this criticism, it is estimated that of those who are currently making pension contributions, approximately 30% of workers are standard rate taxpayers. Moreover, estimates based on ESRI analysis suggests that if the current system of tax relief were retained and applied to the AE system, then around 75% the AE target population would qualify for relief at the standard rate of 20%. Therefore, a ‘top up’-up contribution approach will be more beneficial for the majority of the target population than tax relief on pension contributions available through the current system.

An upper threshold of €80,000 for the State contribution will align with the income level above which employers will not be required to make contributions.

## PART 4 OPT-OUT AND SUSPENSION

### Head 10 Opt-out

Provide that -

- (1) Employees may opt-out following enrolment or re-enrolment subject to the following conditions:
  - (a) Employees must remain in the scheme for six months after enrolment or re-enrolment (mandatory participation period).
  - (b) Employees may opt-out in months 7 and 8 following enrolment or re-enrolment (the opt-out window).
- (2) Employees may opt-out during the phasing in of contribution rates subject to the following conditions:
  - (a) Employees must remain in the scheme for six months following a scheduled increase in contribution rates (mandatory participation period).
  - (b) Employees may opt-out in months 7 and 8 following a scheduled increase in contribution rates (the opt-out window).
- (3) Following implementation of the contribution rates as laid out in Head 9 of this Act, the option to opt-out as provided for in subsection (2) of this Head shall cease.
- (4) Employees who opt-out and continue to satisfy the criteria set out in Part 2 of this Act shall be automatically re-enrolled after two years from the date of their opt-out, after which they may opt out again in accordance with Subheads (1) and (2) above.
- (5) The Minister may prescribe regulations to make provision for:
  - (a) The form and content of a notice from an employee to opt-out;
  - (b) The period within which notice must be given by the employee.

### Explanatory note

#### Rationale for opt-out

This head sets out the provisions for opting out of the retirement savings scheme. The Irish auto-enrolment system is being designed to facilitate choice but not mandate it, in that individuals need not engage or be active in their pension savings if they choose not to. The aim of the auto-enrolment opt-out option is to maximise participation without imposing compulsion. This is achieved by allowing limited access to opt-out periods so that employees are not forced to stay in the scheme. Employees are encouraged to stay however, and the system relies on inertia and ‘nudges’ to keep employees contributing.

For auto-enrolment to remain quasi-mandatory in nature, there must be some option for employees to opt-out of the scheme, even if that option is provided for a short period of time. The provision of an opt-out option maintains the elements of individual choice and

responsibility for the decision to participate in the retirement savings scheme. This facilitates flexibility for employees to make an active decision in relation to their own earnings and retirement savings.

One other consideration in relation to this policy is the potential infringement on an individual's property rights by imposing a 6-month mandatory participation period. Article 43.1.1 of the Irish Constitution recognises the right to the private ownership of property, including an individual's earnings. Furthermore, the European Convention on Human Rights (ECHR) protects the right to private property (Article 1 of Protocol 1). However, in this context, the potential interference with the right to property is limited and proportionate in that it is rationally connected to the objective and public interest that auto-enrolment aims to achieve; that is improved outcomes for people when they retire. It should also be remembered that AE contributions are not a 'charge' on participants; instead the contributions are deferred savings that are invested on participants' behalf for their own benefit. At all times the contributions remain the property of the participants.

From an international perspective, opt out rates can provide a measure of the success of automatic enrolment programmes. For example, in the UK, the opt-out rate has remained consistently low at around 9%. In New Zealand, the percentage of individuals who opted out and remained out of the KiwiSaver scheme has declined since its introduction to less than 20%. In contrast, other OECD countries have higher opt-out rates, such as Turkey where around half of those enrolled opted out when their auto-enrolment scheme was established in 2017.

## **Subhead (1) and (2) -**

### Six months compulsory membership

A period of 6 months compulsory participation is envisaged to be the minimum requisite period for employees to consider the impact of auto-enrolment on their lives and finances. Deferring the ability to opt-out for an initial six months until an opt-out window in months seven and eight should support retention within the scheme for the long term. Contributions to an employee's retirement savings account will be another deduction at source from individuals' pay, along with PAYE, Universal Social Charge (USC) and Pay Related Social Insurance (PRSI), and a period of financial adjustment will be required. This six month period is believed to be sufficiently long to enable employees to see the value of their personal fund accumulate at a higher rate than their own personal contributions. Employees will have the opportunity to see their contributions matched by their employer and topped up by the State, and as a result see their savings more than double. The rationale for the mandatory period is to encourage employees to remain in the scheme, by trying to make that financial adjustment for their long-term benefit.

The incentive of seeing one's pension pot grow proportionally more than just one's own personal contributions cannot be underestimated. The compulsory period should allow time for members to see the system working, which will help develop understanding and trust in

the new system. For those individuals for whom the impact of AE is unacceptable, or for those who simply do not wish to participate, six months is not an overly punitive length of time to impose before they can avail of an opt-out.

The feedback from the public consultation process showed that there was strong support for a compulsory membership period, with the majority of written submission favouring the idea on the basis that it can influence member behaviour and help individuals see the potential benefit that could be derived from staying in AE.

#### Opt-out windows months 7 and 8

Pension adequacy is an important objective of auto-enrolment. To ensure this is achieved, it is vital that participation and retention rates remain high. Auto-enrolment differs from mandatory retirement savings schemes in that it provides an opportunity for people to exercise some degree of choice in relation to their membership of a retirement savings scheme. The purpose of auto-enrolment is to maximise participation without imposing full compulsion. To facilitate this choice, the provision of opt-outs is made available.

An overview of responses to the consultation process showed that there were some concerns in relation to the proposed two-month opt-out window (i.e. in months seven and eight). Some submissions called for longer and more frequent opt-out windows or the ability for members to opt-out/cease contributions at any time during their life. Those who argued against the provision of an opt-out window claimed such a facility went against the principles of retirement saving, and advocated the system be operated on a mandatory basis (i.e. no opt-out window).

International experience demonstrates that widespread opportunities to opt-out of the pension system risks undermining the underlying objective of auto-enrolment and of ensuring people have an adequate income in retirement. While opt-out windows vary greatly across OECD countries, as do the rules around opt-out including the opt-out windows, the OECD recommends that unconditional exits from an auto-enrolment scheme should not be permitted after an opt-out period.

Therefore, in line with this analysis, a two month opt-out period in months seven and eight will be provided in the auto-enrolment system. Further opt-out opportunities will be available during the phasing-in of the higher contributions rates. The opt-out window is designed to allow maximum flexibility for those who wish to exercise their personal choice not to participate for whatever reason, and still get a refund of their contributions. The opt-out window will also facilitate those who might be experiencing financial difficulties in relation to making contributions when they are auto-enrolled. In making an opt-out option available to employees, a balance is provided between the objectives of the AE system and maintaining an individual's freedom to make choices in relation to their retirement savings.

#### **Subhead (3) – Option in (2) only available for first 10 years**

This subsection provides for opt-out arrangements during the first ten years of auto-enrolment while the contribution rates are being phased in. This provision will no longer apply once the final contribution rate of 6% is reached.

This opt-out function is intended to facilitate employees who cannot, or feel that they cannot, afford the rise in contributions. Accordingly, the difference between the new and previous rate is refunded. However, all other contributions made by the employee are retained. The reason for this is threefold: first, it means that the employee will keep a pot within the fund that will continue to grow with returns and potentially provide some additional income in retirement. Secondly, it is implied that the employee was able to afford the previous contribution levels, and so can afford to keep those contributions in the pot. Thirdly, it aligns with the ‘nudge’ principle, as it is less attractive to opt-out if the employee does not receive a full refund, and so they are ‘nudged’ away from opting-out unless it is essential to their personal finances.

#### **Subhead (4) - Automatic re-enrolment after 2 years**

The automatic re-enrolment of employees who continue to meet the eligibility criteria aligns with the ‘nudge’ principle to encourage participation in the retirement savings scheme. It acts as a counter-weight to the inertia that could see employees stay out of the system indefinitely after opting out. It encourages saving as the norm and will mean that even employees who opt-out frequently will build a small retirement savings fund.

In terms of the findings from the consultation process, there was widespread support for the concept of re-enrolment of members who had previously opted out. Many of these submissions also advocated that those re-enrolled should have the same opt-out options available to them when they recommenced contributions to the system.

The OECD identifies re-enrolment as a method of bringing opt-out rates down. In Lithuania, Poland and the United Kingdom, eligible workers who chose to opt out are re-enrolled automatically at regular intervals of every two to four years. However, the OECD recognises the additional administrative burden on employers who have to keep track of employees’ membership status, re-assess the eligibility of employees who opted out or ceased membership, and automatically re-enrol them. In the Irish system, this administrative burden will fall to the CPA.

#### **Subhead (5) - Regulations for notice**

Administrative arrangements will need to be provided for to formalise the process of opting-out. This Subhead provides for these arrangements to be set out in regulations.

## **Head 11      Suspensions**

Provide that -

- (1) Employees may suspend their contributions to the system, subject to the following conditions:
  - (a) Suspension periods can be taken at any time, except for during the mandatory participation period;
  - (b) Savings suspension periods shall last a minimum of 1 year and a maximum of 2 years, after which the employee shall be automatically re-enrolled.
  
- (2) The Minister may prescribe regulations to make provision for:
  - (a) The form and content of a notice from an employee to suspend their contributions;
  - (b) The period within which notice must be given by the employee.

### **Explanatory note**

The provision of a savings suspension period provides further flexibility and choice in the retirement savings system to account for the differential impacts of auto-enrolment on individuals' personal and financial circumstances. Some examples of personal circumstances that may motivate members to suspend are:

1. To save for a first home
2. Financial hardship
3. Unmanageable debt
4. Ill health/disability
5. Compassionate grounds e.g. caring duties

Auto-enrolment must keep employees' interests to the fore. Savings suspensions provide a mechanism whereby employees experiencing acute financial hardship in circumstances such as those outlined above can pause their retirement savings contributions for a period.

Savings suspension periods complement and enhance the proportionality and fairness of the opt-out policy, in mitigating any potential infringement on employee's property rights during compulsory participation in the retirement savings system.

The policy of allowing a savings suspension period may also mitigate against opt-out, by providing a short-term non-permanent answer to an employee experiencing difficulty in continuing to make auto-enrolment contributions. There are also psychological and behavioural elements that these saving suspension breaks are simply a 'pause' in savings, whereby opt-out infers a more drastic break from the AE system.

For people who may be concerned at their ability to sustain continual payments into the retirement savings system or the impact of short-term financial shocks, the availability of a saving suspension period will provide some reassurance that they can manage their finances in the event of unanticipated or temporary demands on their budgets. Measures to 'nudge'

employees to return to the retirement savings system are consistent with the design of the opt-out mechanisms.

Most written submissions favoured the concept of providing members with the capacity to take periods of ‘savings suspensions’ under tightly controlled and limited circumstances. The types of scenarios in which submissions envisaged a savings suspension period being facilitated included first-time buyers saving for a deposit on a house, marriage, financial hardship, and medical expenses. Written submissions that were opposed to savings suspension periods argued that such arrangements would create an added administrative burden and that such suspension periods would reduce the size of a member’s retirement fund, both of which are valid arguments, however, evidence from other jurisdictions suggests suspension periods will in fact be used infrequently.

An OECD report considering savings suspensions stated that allowing people facilities to stop contributing for a while can reassure savers and increase the attractiveness of private pension arrangements. It also found that affordability is the main reason people cite for not taking out a pension. Allowing for contribution holidays may therefore encourage employees to stay in an auto-enrolment scheme, especially the low-income earners for whom affordability may be an important concern. The OECD concludes that contribution holidays may be appropriate in auto-enrolment schemes where there is no possibility to opt-out or restricted opportunities to opt-out, to give further flexibility to participants.

#### Minimum 1 year, maximum 2 years

The rationale behind the minimum time allowed for a suspension is to lessen the administrative burden of employees suspending their contributions for shorter periods of time. The maximum time allowed aligns with the re-enrolment of employees who opt-out after two years. International experience suggests that recourse to periods where savings can be suspended can undermine the purpose of AE. As highlighted by the OECD, if such contribution holidays are a feature of AE systems, it is critical to set clear time boundaries and to automatically ‘nudge’ workers and restart or increase their contributions after the end of the savings suspension period.

#### Subhead (2) - Regulations for notice

Administrative arrangements will need to be provided for to formalise the process of suspending contributions. This Subhead provides for these arrangements to be set out in regulations.

## **Head 12      Effect of opt-out and suspension on contributions**

Provide that –

- (1) Where an employee opts-out following enrolment or re-enrolment, they shall be refunded their own contributions since enrolment.
- (2) Where an employee opts-out following a contribution increase, they shall be refunded the additional contribution they have made since the rate change.
- (3) Where an employee suspends their contributions, no refund of contributions shall be given.
- (4) In all circumstances, those non-refunded employer, employee and State contributions shall be retained in the employee’s retirement savings account and shall be accessible to the employee pursuant to this Act.
- (5) When an employee opts-out or suspends contributions, all contributions (that of the employee, employer and State) shall cease from the date of opt-out or suspension until the employee is re-enrolled.

### **Explanatory notes**

When an employee decides to opt-out during the opt-out window, they shall receive a refund of their contributions up to the point that they opt-out. A refund of personal contributions during limited opt-out windows is considered to be a fair and proportionate means of balancing any legal considerations of impingement on property rights raised by the six-month mandatory participation period in the retirement savings scheme. As enrolment and pension contributions will be mandated for all eligible employees for the first six months regardless of an individual’s personal and financial circumstances, there is potential for negative financial impacts on individuals and their household. Therefore, a policy offering a full refund of all personal contributions during limited opt-out windows recognises these potential difficulties and provides a means of mitigating potential negative impacts that might arise. Moreover, the availability of an opt-out window and a full refund of personal contributions provides a measure of security and safety for all individuals automatically enrolled.

OECD research outlines how the treatment of contributions with respect to the opting-out window varies across countries. In some countries, contributions start as soon as the individual is enrolled into the scheme. This means that contributions need to be refunded in cases where the individual opts out. This applies in New Zealand, Turkey and the UK. In contrast, contributions only start after the opting-out window has passed in Canada, Italy and Lithuania. This delays the start of contributions but facilitates the administration of the scheme.

Theoretically, savings suspensions do not directly align with the core objectives of Automatic Enrolment: that is, to expand pension coverage and provide an adequate level of retirement income. The implementation of a system that is focused solely on those core objectives would likely propose that periods of a break in savings should not be permitted. No breaks would ensure consistent savings behaviour and help the accumulation of a larger retirement savings fund.

While flexibility in the retirement savings system is provided through the savings suspension and opt-out policy, there needs to be conditions and limitations attached. Without such restrictions, it is possible that widespread and regular suspensions by employees would undermine the objectives of auto-enrolment to expand pension coverage and provide an adequate level of replacement income on retirement.

The restrictions around the availability of savings suspensions is designed to emphasise to employees the benefit of participation in auto-enrolment. That is, the short-term financial gain to the employee from a pause in their contributions is heavily outweighed by the loss of additional employer and State contributions, plus the investment returns lost from that period in which no contributions were paid into their retirement savings account.

Any non-refundable contributions will be retained in the employee's retirement savings account and invested for their ultimate benefit. In terms of the international comparison, while employees in the UK's auto-enrolment system can leave the scheme at any time after the opt-out period, their contributions up until that point are retained and only accessible to the employee at retirement age.

Re Subhead 5 - When an employee chooses to opt-out of the scheme or suspend contributions, contributions from the employer and State also cease. This aligns with the 'nudge' principle, as it is less attractive to opt-out if the employer and State contributions also stop, and so the employee may be 'nudged' away from opting out or suspending and missing out on these contributions.

## **PART 5      CENTRAL PROCESSING AUTHORITY**

### **Head 13      Establishment day**

Provides that:

- (1) The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Act.
  
- (2) On establishment day, there shall stand established a body to be known as the Central Processing Authority.

### **Explanatory note**

This Head is a standard provision to allow for the Minister to establish the Central Processing Authority on a day to be specified by order.

## **Head 14      Establishment of the Central Processing Authority**

Provides that:

- (1) on the establishment day, the Central Processing Authority shall commence performing the functions conferred on it by or under this Act.
- (2) The CPA shall be a body corporate with perpetual succession and a seal and with power:
  - (a) to sue and be sued in its corporate name,
  - (b) to acquire, hold and dispose of land or an interest in land, with the consent of the Minister, and
  - (c) to acquire, hold and dispose of any other property.

### **Explanatory note**

This Head provides for the establishment of the Central Processing Authority on establishment day.

## **Head 15      Responsibilities and functions of the Central Processing Authority**

Provide that -

(1) The purpose of the CPA is to act as the custodian of the auto-enrolment system in order to provide participants or their dependants or legal personal representatives, with relevant benefits accrued under the AE retirement savings system, in respect of service as an employee.

(2) The moneys and other assets from time to time held by the CPA on behalf of the participants in the AE retirement savings system shall constitute the Fund of the Scheme.

(3) The CPA shall, at all times, exercise fiduciary responsibilities in discharging its functions.

(4) Without prejudice to the duties of the CPA as an ‘institution of occupational retirement provision’ and in addition to all other requirements of law, the functions of the CPA shall be as follows:

(a) to organise the procurement process for the selection of investment managers to be known as registered providers;

(b) to set and monitor service and investment standards to be adhered to by the registered providers;

(c) to specify the risk parameters within which registered providers shall offer investment products;

(d) to arrange for the collection of employee and employer contributions;

(e) to arrange for the pooling and allocation of these contributions, together with the State ‘top-up’, to the registered providers in accordance with the default fund (or to an alternative fund where such preference is expressed);

(f) to arrange for the pooling of investment returns from each registered provider for each fund type;

(g) to arrange for the administration of member accounts, including the provision of account statements, the implementation of opt-out or suspension arrangements, and the provision of fund selection and transfer mechanisms;

(h) to provide an online portal to enable members to access personal account information and fund performance data, to update personal information (including employment information), to change fund choice, to exercise opt-out/opt-in options and to apply for savings suspension periods;

(i) to disseminate information and promote public awareness in respect of the automatic enrolment retirement savings system to such extent and in such manner as it thinks fit;

(j) to maintain a register of AE participants;

- (k) to arrange for the offering of retirement products to participants as and when it thinks fit,
- (l) to establish and administer a system of inspection and compliance of employers for such purposes as are provided for in this Act;
- (m) to arrange for the rectification of error in the receipt and transfer of contributions;
- (n) to directly impose sanctions in the event of non-compliance;
- (o) to prosecute breaches of provisions of this Act;
- (p) to keep the Minister informed of developments in respect of the provision of retirement savings services and make recommendations to assist the Minister in co-ordinating and developing policy in that regard:
- (q) to undertake, commission or assist in research projects and other activities in respect of the provision of retirement savings services, which in the opinion of the CPA may promote an improvement in standards for the provision of those services and public awareness of them, and to make recommendations to the Minister arising from those projects or activities, and
- (r) to perform any other functions conferred on it by this Act or by regulations made by the Minister under this Act.

(5) Subject to this Act, the Authority shall be independent in the performance of its functions.

### **Explanatory note**

This Head sets out the CPA's responsibility for the operation, coordination, supervision, and development of the AE system.

It provides for the CPA to have regard for the interest of participants through custodianship responsibilities for the auto-enrolment system, by which the CPA will be charged with ensuring that the auto-enrolment system remains focused on and driven by participant interests in all respects. The CPA will also be charged with fiduciary responsibilities, by which the CPA will ensure that the auto-enrolment system is operated prudently and exclusively in the best interest of all plan participants and beneficiaries.

The custodian role of the CPA goes beyond its operational responsibilities by ensuring that the AE is, and remains, managed, operated, and developed in the best interests of the employees. Custodianship then refers to the broader responsibility for ensuring that the AE is implemented in accordance with its objectives, and that it stays aligned with the best interests of its participants.

As auto-enrolment operates on a quasi-mandatory basis, it is important that members can have trust in the system being mediated by a non-profit State agency which has their interests as its primary driver.

Subhead 4 provides for the operational functions of the CPA. The CPA will be empowered to set out and maintain detailed AE rules and criteria within the framework of the AE law. This

includes tendering for, and describing the standards expected for registered providers, who will be commercial investment management companies. The CPA will also arrange for the provision of fund accounting and administration services on behalf of members of the AE system.

More specifically, the CPA will be responsible for, among other things:

- The procurement of investment managers.
- The registration of employers and participants.
- The auto-enrolment of participants according to defined criteria, including re-enrolment.
- Contribution collection and compliance.
- The allocation of savings and contributions to investment fund managers, who would manage and invest the funds.
- The administration of participants' choice related to fund-affiliation, opt-out of the AE and temporary suspension of AE contribution payments.
- The management of participants' individual savings accounts.
- The provision of AE information and communication with participants.
- The development of a web based MyAE platform for individual AE information, choice simulation, choice execution, pension overview.
- The promotion of public awareness in respect of the automatic enrolment retirement savings system.
- The development of retirement products that may be offered to participants.
- The performance of inspection and compliance of employers.
- The conducting of research projects and other activities in respect of the provision of retirement savings services.
- Any other functions conferred on it.

The responsibilities and functions of the CPA take inspiration from international examples, and in particular from the Swedish occupational pension schemes and Sweden's Premium Pension system. The experience of KiwiSaver in New Zealand and the Superannuation system in Australia has also informed the approach adopted in setting up the CPA in Ireland.

In terms of findings from the consultation process on automatic enrolment, a significant majority of written responses supported the idea of a CPA as a State body with overall responsibility for ensuring the system operated in the best interests of members and members alone.

Subhead 5 provides for the independence of the Central Processing Authority in the operation of its functions. Although a necessary line of responsibility must be drawn to the Minister for Social Protection in particular, the CPA will operate independently and in accordance with this Act.

## **Head 16      Board of Directors**

(1) Provide that -

(a) The CPA shall have a Board consisting of a chairperson and not fewer than 8, and not more than 12, ordinary members appointed by the Minister.

(b) The chairperson and members of the Board shall be appointed by the Minister from among persons who, in the Minister's opinion, have experience of, and expertise in—

(i) matters connected to the functions of the CPA, and

(ii) matters connected to organisational governance, management, pension administration, or financial investment.

(c) Subject to subheads (5) and (6), the Minister, when appointing a member of the Board, shall fix such member's term of membership of the Board which shall not exceed 5 years.

(d) The ordinary members of the Board shall include one officer or representative of the Minister.

(e) The persons who are first appointed by the Minister to be ordinary members of the Board shall hold office as follows—

(a) 4 members for a term of office of 3 years, and

(b) 3 members for a term of office of 4 years.

(2) A member of the Board, appointed under subhead (1), whose term of office expires or is about to expire by the effluxion of time is eligible for reappointment to the Board, but may not serve on the Board for more than 2 consecutive terms.

(3) A member may resign from office by letter sent to the Minister and the resignation shall take effect on the later of—

(a) the date specified in the letter, or

(b) the date of receipt of the letter by the Minister.

(4) The Minister shall, as soon as practicable after an appointment to the Board, publish in Iris Oifigiúil notice of the name of the person so appointed.

(5) A member of the Board shall, not later than 3 months after his or her appointment, furnish to the Minister a tax clearance certificate.

(6) Provide that:

- (a) If an appointed member resigns, dies, ceases to hold office (other than by effluxion of time), ceases to be qualified to hold office or is removed from office, the Minister shall as soon as practicable appoint a person to fill the casual vacancy so arising.
- (b) A person appointed under subhead (a) shall hold office for the unexpired period of his or her predecessor's term of office or such other period as the Minister may determine.
- (c) A member appointed under subhead (b) is eligible for reappointment to the Board, on the expiry of the period referred to, but may not serve for more than 2 further consecutive terms and in any event for a period of more than 10 years.

(7) Provide that:

(a) The Board shall be the governing body of the CPA with authority, in the name of the CPA, to perform the functions of the CPA.

(b) The Board shall:

- (i) oversee the development of corporate strategy in relation to major plans of action, risk policy, annual budgets and business plans,
- (ii) set performance objectives,
- (iii) monitor the implementation of corporate performance,
- (iv) promote high standards of corporate governance,
- (v) establish arrangements for the management of the performance of the chief executive officer and implement the necessary development and appraisal processes, and
- (vi) ensure the integrity of the CPA's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

(c) The Board of the CPA shall be accountable to the Minister for the performance of its functions.

(d) The Board may delegate to the chief executive officer any of the functions of the CPA with the exception of the functions of the Board under subhead (2).

(e) The Board shall inform the Minister of any matter that it considers requires the Minister's attention.

(f) The Board shall hold as many meetings as are necessary for the performance of its functions but in each year shall hold at least 10 meetings.

(8) Provide that:

(a) The quorum for a meeting of the Board shall be more than 50% of ordinary members of the Board and the chairperson.

- (b) Where there is a vacancy on the Board, the number of ordinary members required to be present for a quorum shall be 50% of the non-vacant cohort of the membership.
- (c) The chairperson shall, if present, preside at all meetings of the Board.
- (d) Each question at a meeting shall be determined by a majority of the votes of the members present and voting on the question.
- (e) The Board may regulate, by standing orders or otherwise, the procedures and business of the Board.
- (f) In addition to meeting with all participants physically present, the Board may hold or continue a meeting by the use of any means of communication by which all the participants can hear and be heard at the same time. Such a meeting is referred to in this section as an “electronic meeting”.
- (g) A member of the Board who participates in an electronic meeting is taken for all purposes to have been present at the meeting.
- (h) The Board may establish procedures for electronic meetings (including recording the minutes of such meetings) in its standing orders.

(9) Provide that –

- (a) The Minister may at any time remove a member from office if in the Minister’s opinion:
  - (i) the member has become incapable through ill-health of performing the functions of the office,
  - (ii) the member has committed stated misbehaviour, or
  - (iii) the member’s removal from office is necessary for the Board to perform its functions in an effective manner,
- (b) the member has contravened, or failed to discharge a duty imposed by a provision of the Ethics in Public Office Act 1995 that by a regulation made under section 3 of that Act applies to that member, or
- (c) in performing functions under this Act, the member has not complied with a code of conduct under section 10 (3) of the Standards in Public Office Act 2001.

(10) A person immediately ceases to be a member of the Board if that person—

- (a) is adjudicated bankrupt,
- (b) makes a composition or arrangement with creditors,
- (c) is convicted of an indictable offence,
- (d) is convicted of an offence involving fraud or dishonesty,
- (e) has a declaration under section 150 of the Companies Act 1990 made against him or her or is subject or is deemed to be subject to a disqualification order by virtue of Part VII of that Act, is sentenced to a term of imprisonment by a court of competent jurisdiction,
- (f) is removed by a competent authority for any reason (other than a failure to pay a fee) from any register established for the purpose of registering members of a profession, or

(g) by virtue of their professional or financial associations has, in the view of the Minister, a conflict of interest with matters pertaining to the responsibilities of the CPA or the operation of the AE system more generally.

(11) A Board member who does not, for a consecutive period of 6 months, attend a meeting of the Board ceases at the end of that period to hold office unless the member demonstrates to the Minister's satisfaction that the failure to attend was due to illness.

(12) Provide that -

(a) A person is not eligible for appointment as a member of the Board or of a committee of the Board, if the person is:

- (a) a member of either House of the Oireachtas or of the European Parliament,
- (b) regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or
- (c) a member of a local authority, or
- (d) employed by a company or in a professional capacity, the nature of which could result in a conflict of interest with matters pertaining to the responsibilities of the CPA or the operation of the AE system more generally.

(b) A member of the Board or a member of a committee of the Board shall cease to hold office on—

- (i) being nominated as a member of Seanad Éireann, or
- (ii) being elected as a member of either House of the Oireachtas or of the European Parliament, or
- (iii) being regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or
- (iv) becoming a member of a local authority, or
- (v) Being employed by a company or in a professional capacity, the nature of which could result in a conflict of interest with matters pertaining to the responsibilities of the CPA or the operation of the AE system more generally .

(13) Provide that -

(a) A person appointed as the chairperson of the Board shall be paid by the CPA, out of moneys at its disposal, such remuneration and allowances for expenses incurred by him or her as the Minister may from time to time determine.

(b) A member of the Board and a member of the committee of the Board shall be paid by the CPA, out of moneys at its disposal, such remuneration and allowances for expenses incurred by him or her as the Minister may from time to time determine.

(14) Provide that -

(a) If a member of the Board has a pecuniary interest or other beneficial interest in, and material to, a matter that falls to be considered by the Board—

- (i) he or she shall disclose to the other members of the Board the nature of his or her interest in advance of any consideration of the matter,
- (ii) he or she shall not influence nor seek to influence a decision to be made in relation to the matter,
- (iii) he or she shall take no part in any consideration of the matter,
- (iv) he or she shall absent himself or herself from the meeting or that part of the meeting during which the matter is discussed, and
- (v) he or she shall not vote or otherwise act on a decision relating to the matter.

(b) If a member discloses an interest pursuant to subsection (1), the disclosure shall be recorded in the minutes of the meeting of the Board or otherwise duly recorded. The Board may, at its discretion, refer to the disclosure in the CPA's annual report.

(c) If a member of the Board fails to disclose an interest pursuant to subsection (1), and with that member present the Board makes a decision on the matter, a contract entered into by the CPA in consequence of the decision is not, by reason only of that fact, invalid or unenforceable.

(d) If a member of the Board fails to disclose an interest pursuant to subsection (1), and with that member present the Board makes a decision on the matter, the decision is not invalid if the Board subsequently reconsiders the matter without that member present and confirms the decision. If the Board does so, the decision shall be taken to have always been valid.

(e) If at a meeting of the Board a question arises as to whether or not a course of conduct, if pursued by a Board member, would constitute a failure by him or her to comply with subsection (1), the Chairperson or member of the Board presiding over the meeting may determine the question. The Chairperson's or presiding member's decision is final. If such a question arises in relation to the Chairperson or person presiding over a meeting, he or she shall retire from the chair and the question shall be determined by majority vote of the remaining Board members. In either case particulars of the determination shall be recorded in the minutes of the meeting.

(f) If the Minister is satisfied that a member of the Board has contravened subsection (1), the Minister may, if he or she thinks fit, remove that member from office.

(g) The Board shall issue guidelines as to what constitutes an interest for the purposes of this section having regard to the definitions in the Ethics in Public Office Act 1995.

(15) Provide that -

- (a) As soon as practicable after the establishment day, the CPA shall prepare a Register of Members' Interests.
- (b) By 31 January in each year:
- (i) each member of the Board and each officer of the CPA who has been directed by the Board to do so shall give notice to the CPA of all of his or her registrable interests (within the meaning given by the Ethics in Public Office Act 1995), and
  - (ii) The CPA shall ensure that each registrable interest so notified is entered in the Register of Members' Interests.
- (c) Part VI of the Ethics In Public Office Act 1995 applies in relation to a contravention of this Head as that Part does in relation to a contravention of Part IV of that Act.

### **Explanatory Note**

This Head provides for the establishment of a Board of Directors to lead the CPA. It mirrors several existing legislative drafting approaches and provisions found throughout the Irish statute book pertaining to agencies, authorities, boards etc., each subhead of which is self-explanatory.

## **Head 17      Chair of the Board of Directors**

Provide that -

- (1) The Minister shall designate one member of the Board to be the chair.
- (2) The chair shall be appointed from among persons who, in the Minister's opinion, has experience of, and expertise in—
  - (a) matters connected to the functions of the CPA, and
  - (b) matters connected to organisational governance, management, pension administration or financial investment.
- (3) The Minister shall fix the term of chair of the Board to a period which shall not exceed 5 years.
- (4) The Chair shall hold that office for 5 years or until the end (whether by the passage of time, resignation or removal) of his or her term of office as an appointed member, whichever is the earlier.
- (5) A person may hold the office of Chairperson for 2 terms only, whether or not the terms are consecutive.
- (6) The Chairperson may at any time resign that office (with or without also resigning as an appointed member) by letter addressed to the Minister. The resignation takes effect on the date specified in the letter or when the Minister receives the letter, whichever is the later.
- (7) If the Chairperson dies, resigns, retires, becomes disqualified or is removed from office, the Minister shall nominate another person to fill the vacancy so occasioned. The person nominated may be an appointed member.
- (8) In the circumstances mentioned in subsection (4), and without prejudicing the Minister's powers under that subsection, the Minister may appoint a person to act temporarily as Chairperson. The duration of such an appointment, and the terms under which the person appointed holds that office, shall be as the Minister determines at the time of appointment.
- (9) An appointment pursuant to subsection (4) may be for all or a specified part of the term of office of the person replaced.
- (10) If the Minister proposes to appoint a person who is not already an appointed member, the Minister may—
  - (a) appoint that person to the Board as an appointed member, even though doing so will cause the number of appointed members specified in this Act to be exceeded, and
  - (b) nominate the person as Chairperson.

- (11) The Chair shall be responsible to the Minister and shall ensure that the affairs of the CPA are conducted with the integrity expected of public bodies.
- (12) The Chair shall furnish to the Minister, in conjunction with the annual report and financial statements of the CPA, a comprehensive report to the Minister covering the activities of the CPA.
- (13) The Chair shall be responsible for leadership of the Board and ensuring its effectiveness on all aspects of its role.
- (14) The Chairperson and the chief executive officer shall be responsible for the effective management of the Board's agenda and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues.
- (15) The Chair shall be responsible for ensuring that the Board receives accurate, timely and clear information.
- (16) The Chair shall promote a culture of openness and debate by facilitating the effective contribution of key management and all Board members.
- (17) The Chair in reaching decisions with the Board shall take proper account of any guidance provided by the Minister whilst having regard to the CPA's custodianship and fiduciary duties to participants.
- (18) The Chair shall make himself or herself available to the appropriate Oireachtas Committee to discuss their role as Chair and his or her views about the activities of the CPA.
- (19) The Minister may determine that the Chair shall be paid additional remuneration or allowances on account of his or her responsibilities as Chairperson.
- (20) A person is not eligible for appointment as a chair if the person is:
- (a) a member of either House of the Oireachtas or of the European Parliament,
  - (b) regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or
  - (c) a member of a local authority.
- (21) A chair shall cease to hold office on:
- (a) being nominated as a member of Seanad Éireann,
  - (b) being elected as a member of either House of the Oireachtas or of the European Parliament,
  - (c) being regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or

(d) becoming a member of a local authority.

**Explanatory note**

This Head provides for the appointment of a Chair and his or her functions and mirrors several existing examples from the Irish statute book, each provision of which is self-explanatory.

## **Head 18      Committees of the Board**

Provide that -

- (1) As soon as practicable after the establishment day, the Board shall establish committees, as it sees fit, and shall appoint members to them, that at minimum take responsibility for overseeing and directing -
  - (a) audit;
  - (b) finance;
  - (c) risk-management;
  - (d) such other committees or sub-committees as it considers necessary or expedient in fulfilling the performance of its functions.
- (2) The Board shall determine the terms of reference and procedures of each committee established under this Head.
- (3) Members of the Board appointed to any committee shall not receive any additional remuneration over and above that for which they are provided for under this Act.
- (4) With the approval of the Minister, the CPA, from its own resources, may remunerate a member of the audit committee who is not a member of the Board.
- (5) The Board may dissolve a committee established under this Head. If the Board dissolves such a committee, the Board may re-establish that committee as soon as practicable.

### **Explanatory Note**

This Head provides that the Board must establish an audit, finance and risk-management committee, either as one or multiple committees. Related matters concerning the committees is also included.

## **Head 19 Chief Executive Officer**

(1) Provide that -

- (a) The Minister shall appoint a person to be the chief executive officer of the CPA for a term to be determined by the Minister.
- (b) The chief executive officer shall not be a civil servant within the meaning of the Civil Service Regulation Act, 1956.
- (c) The chief executive officer shall hold office on such terms and conditions as may be determined by the Minister.
- (d) The chief executive officer shall not hold any other office or position without the consent of the Board.
- (e) The chief executive officer may, with the approval of the Minister, be removed from office by the Board for stated reasons.
- (f) The chief executive officer may attend meetings of the Board and may make submissions, orally or in writing, to and otherwise advise the Board at such meetings in accordance with the procedures of the Board regulated under Head 16.
- (g) The remuneration and allowances determined under this Act are payable to the chief executive officer by the CPA out of funds at its disposal.

(2) Provide that -

- (a) The chief executive officer shall be responsible to the Board for the performance of his or her functions and the implementation of the CPA's corporate plan and the business plan.
- (b) The chief executive officer shall:
  - (i) carry on and manage and control generally the administration and business of the CPA,
  - (ii) perform such other functions as may be assigned to that officer by or under this Act or any other enactment or as may be delegated to him or her by the Board,
  - (iii) provide the Board with such information (including financial information) relating to the performance of his or her functions and the implementation of the Board's policies as the Board may require.
- (c) If the chief executive officer is absent or the position of chief executive officer is vacant, the functions of the chief executive officer under this section may be performed by such employee of the CPA, as may be appointed by the Board from time to time to act as acting chief executive officer, subject to approval by the Minister.
- (d) For the purposes of subsection (2), references in this Act or another enactment that assigns functions to the chief executive officer or that regulates the manner in which a function assigned to the chief executive officer is to be performed are to be read as references to the employee appointed under this section as acting chief executive officer.

(3) Provide that -

(a) The chief executive officer, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, shall give evidence to that Committee on—

(i) the general regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that the CPA is required by this Act to prepare,

(ii) the economy and efficiency of the CPA in the use of its resources,

(iii) the systems, procedures and practices employed by the CPA for the purpose of evaluating the effectiveness of its operations, and

(iv) any matter affecting the CPA referred to in a special report of the Comptroller and Auditor General under section 11 (2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General, in so far as it relates to a matter specified in paragraph (a), (b) or (c), that is laid before Dáil Éireann.

(b) When appearing before a Committee referred to in subsection (1), the chief executive officer shall appear as an accountable person and not as an accounting officer.

(c) In the performance of the duties of the chief executive officer under this section, the chief executive officer shall not question or express an opinion on the merits of:

(i) any policy of the Government or of a Minister of the Government, or

(ii) the objectives of such a policy.

(d) The chief executive officer shall not be accountable for the performance of the investments funds and the functions of the registered providers.

(4) Provide that -

(a) The chief executive officer immediately ceases to hold office on—

i. being nominated as a member of Seanad Éireann,

ii. being elected as a member of either House of the Oireachtas or of the European Parliament,

iii. being regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or

iv. becoming a member of a local authority.

### **Explanatory note**

This Head provides for the appointment of a chief executive officer and his or her functions. It mirrors several examples of provisions already on the Irish statute book and each provision is self-explanatory.

## **Head 20      Staff of the Central Processing Authority**

(1) Provide that subject to any directions that may be issued by the Minister in relation to the matters specified in this subhead -

- (a) the CPA may appoint persons to be the CPA's employees and may determine their duties;
- (b) A member of the staff of the CPA shall not be a civil servant within the meaning of the Civil Service Regulation Act, 1956.
- (c) The CPA, with the approval of the Minister shall determine:
  - (i) the terms and conditions of employment (including terms and conditions relating to remuneration and allowances, disciplinary matters and termination of contracts) of employees appointed under this section, or
  - (ii) the grades of the employees of the CPA and the numbers of employees in each grade.

(2) The chief executive officer may from time to time assign such duties as he or she considers appropriate to each member of staff and each member of staff shall carry out the duties so assigned.

(3) A person is not eligible for appointment as an employee of the CPA if the person is:

- (a) a member of either House of the Oireachtas or of the European Parliament, or
- (b) regarded pursuant to section 19 of the European Parliament Elections Act 1997 as having been elected to the European Parliament to fill a vacancy.

(4) The remuneration and allowances of the CPA's employees are payable by the CPA to the employees out of funds at the CPA's disposal.

(5) As soon as may be the CPA shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of its members of staff.

(6) The CPA may engage such consultants or advisers as it considers necessary for the performance of its functions.

(7) Any fees or allowances for expenses due to a consultant or advisor appointed under this section shall form part of the expenses of the CPA.

(8) The appointment of a person as a consultant or adviser shall be for such period and subject to such terms and conditions as the CPA considers appropriate.

### **Explanatory note**

This Head provides for the appointment of staff to the CPA.

It provides that CPA may appoint new staff and that it may determine, with the approval of the Minister, the terms and conditions, grades and numbers in each grade. It also empowers for the chief executive officer to assign duties to the staff. Finally, it provides for the

disqualification of staff from employment by the CPA resulting from membership of either House of the Oireachtas, European Parliament or local authority.

It provides for the preparation and submission of a Superannuation scheme to the Minister and provides for the CPA to engage consultants or advisers and that the fees due in respect of such services will be paid by the CPA.

## **Head 21 Expenses of the Central Processing Authority**

(1) The Minister may from time to time with the consent of the Minister for Public Expenditure and Reform, advance to the CPA out of moneys provided by the Oireachtas, such sums as the Minister may determine for the purposes of expenditure by the CPA in the performance of its functions.

(2) The Minister may prescribe by regulations the charges to be paid to the CPA and when they fall due in respect of—

- (a) the performance of its functions,
- (b) the provision of investment services, and
- (c) the repayment of monies to the Oireachtas.

(3) Provision may be made for the temporary holdings in cash by the CPA for liquidity purposes, with regard to the operation of the investment funds, the rectification of errors and the issuing of refunds.

### **Explanatory Note**

The CPA will undertake significant responsibilities in terms of administering the retirement savings system which will require expenses to pay for. The tasks will include among other things participant registration, enrolment, contribution collection, participant services and administration, compliance, defining and overseeing management standards for registered providers, tendering for investment fund services, evaluating investment fund services, the development of IT services and a wide range of policy and legal issues and financial affairs. There will also be costs related to setting up of the CPA and the development and construction of the auto-enrolment ICT infrastructure.

As the auto-enrolment retirement savings system is not a universal system, it is not appropriate to finance its construction from general tax revenues. Therefore, this Head provides that expenses for the provision of these functions shall be provided for through a loan from the State. As most of the CPA expenses are general, these costs should be distributed over time and shared across all participants during the savings phase. The provision of a loan is an appropriate means to finance the formation of the CPA and to partly finance operating costs during the implementation phase when costs will be relatively high compared to both contributions and accrued savings. The cost of servicing the loan will then become part of the operating costs, to be paid by and distributed among the participants and across generations.

## **Head 22      Reports to the Minister**

(1) The CPA shall submit to the Minister, not later than 31 May in each year, an annual report in relation to the performance of the CPA's functions during the immediately preceding calendar year. The annual report shall include:

- (a) a statement of the activities undertaken by the CPA,
- (b) particulars in relation to financial statements,
- (c) an overview of complaints and review
- (d) other particulars that the CPA considers appropriate or as the Minister may required.

(2) The Minister shall, within 21 days of receiving the annual report, cause copies of it to be laid before each House of the Oireachtas.

(3) The CPA shall publish the annual report:

- (a) on the Internet, or
- (b) in such other manner as the Minister may specify,

as soon as practicable after copies of the report are laid before the Houses of the Oireachtas.

### **Explanatory Notes**

This Head provides for the preparation of an annual report in relation to the CPA's functions during the previous calendar year. It provides for the specifics of the annual report, its adoption by the CPA, its submission to the Minister, its laying before the Houses of the Oireachtas by the Minister and its publication by the CPA as soon as practicable thereafter.

## **Head 23      Accounts and Audits of the Board**

- (1) The chief executive officer shall cause to be kept all proper and usual books or other records of account of—
  - (a) all income and expenditure of the CPA,
  - (b) the source of the income and the subject matter of the expenditure, and
  - (c) the property, assets and liabilities of the CPA.
- (2) The chief executive officer shall, in respect of each financial year, cause to be prepared annual financial statements (including accounts of income and expenditure and a balance sheet) in such form as the Minister may direct.
- (3) The annual statements shall be prepared by the CPA in accordance with accounting standards specified by the Minister.
- (4) Without prejudice to the generality of subsection (1), the chief executive officer will also keep such special accounts as the Minister may direct.
- (5) The books, records and special accounts kept under this section shall be kept in such form, and for such accounting periods as the Minister may specify.
- (6) The accounts of the CPA prepared by the chief executive officer and approved by the Board shall be submitted to the Comptroller and Auditor General for audit not less than 3 months after the end of the financial year to which the accounts relate.
- (7) Within one month of the Comptroller and Auditor General issuing an audit certificate for the accounts of the CPA, a copy of:
  - (a) the accounts, and
  - (b) the report of the Comptroller and Auditor General on the accounts,shall be presented to the Minister who, within 2 months after their receipt, shall cause copies thereof to be laid before each House of the Oireachtas.
- (8) If required by the Minister, the CPA shall furnish to the Minister the information the Minister may require in respect of any balance sheet, account or report of the CPA.
- (9) The CPA, the chief executive officer and other employees of the CPA:
  - (a) whenever so requested by the Minister, shall permit any person appointed by the Minister to examine the books or other records of account of the CPA in respect of any financial year or other period, and
  - (b) shall facilitate the examination,and the CPA shall pay such fee as may be fixed by the Minister for the examination.

## **Explanatory Notes**

This section is a standard provision providing that the chief executive officer will keep accounts including such special accounts as may be directed by the Minister. It provides for the submission of accounts of the CPA to the Comptroller and Auditor General within 3 months of the end of the financial year to which they relate. A copy of the accounts and the report of the Comptroller and Auditor General will be laid before the Houses of the Oireachtas by the Minister within 2 months of their receipt by the Minister.

## **Head 24      Outsourcing of pension administration services**

Provide that -

- (1) The CPA may engage the services of any service provider where the CPA considers it necessary or expedient to do so in connection with the performance of its functions as set out in this Act.
- (2) Contracts for the provision of services to the CPA by expert advisers and service providers may include conditions including, but not limited to, that each service provider:
  - (a) operates to the highest standards of honesty and fairness and with due skill, care, prudence and diligence in conducting its business activities under the mandate given to it so as to promote the best interests of the participants in the auto-enrolment retirement savings system,
  - (b) effectively employs the resources and procedures that are necessary for the proper performance of such business activities,
  - (c) makes every effort to avoid or manage conflicts of interest and to declare any such conflict (actual or potential) to the CPA,
  - (d) complies with any external regulatory regime to which it is subject,
  - (e) is required to facilitate and fully cooperate with auditors appointed by the CPA to carry out an audit of the books, accounts and other financial statements of the service provider so far as they relate to the services performed for the CPA,
  - (f) is obliged to co-operate fully in such audits,
  - (g) complies with requests for information from the CPA.

### **Explanatory notes**

The Head provides that the CPA may engage the services of any service provider where the CPA considers it necessary or expedient to do so in connection with the performance of its functions. It also provides that, in contracts for the provision of services to the CPA, the CPA will seek to ensure that each service provider operates to the highest standards. This section also provides for related matters so that, for example, the CPA is entitled to engage auditors to carry out an audit of the books, accounts and other financial statements of the service provider in so far as they relate to the services performed for CPA.

## **PART 6 CONTRIBUTION COLLECTION**

### **Head 25      Obligation of employer to pay and remit employee and employer contributions**

Provide that -

- (1) Where served with a notice, as defined in Head 2, from the CPA, an employer is responsible for accurately and consistently -
  - (a) Calculating the employee and employer contribution in line with Part 3 of this Act;
  - (b) Withholding the employee contribution from the employee's net pay;
  - (c) Paying simultaneously with other wage obligations the employee and employer contributions to the Central Processing Authority.

#### **Explanatory notes**

This Head provides for the obligation on employers to correctly calculate, withhold and pay the employee's AE contribution to the CPA and to calculate and pay the employer contribution to the CPA. The rationale behind this is that the employer administers the payroll, and so is best placed to ensure that contributions are correctly calculated and deducted from the employee's net pay. They are also best placed to ensure that the employer contribution is calculated and paid.

## **Head 26      Collection of State contribution**

Provide that -

- (1) The Central Processing Authority, on receipt and reconciliation of employer and employee contributions, shall calculate the State contribution in accordance with Part 3 of this Act.
- (2) The CPA shall maintain a register accumulating the State contributions over the tax year. Should the threshold set out in Part 3 of this Act be met, the CPA shall reflect this in its calculation of State contributions due.
- (3) The CPA shall requisition the State contributions from the Department of Social and Protection and the Department of Social Protection shall pay the State contribution to the CPA in the time limit specified by regulation.

### **Explanatory notes**

This head provides for the calculation, requisition and documentation of the State contribution to an individual's account. As the body responsible for administering the scheme, including pooling contributions and allocating them to individual accounts, the CPA is tasked with calculating, deducting and keeping track of the State contributions.

## **Head 27      Timing for payment of contributions**

Provide that -

- (1) An employer, when required to do so by notice from the CPA, shall within the time limited prescribed by regulation prepare and deliver to the CPA a return containing:
  - (a) the names and places of residence of all persons employed by that employer,
  - (b) a statement of the sum of payments made to persons in respect of their employment.
- (2) Contributions reported and contributions paid must match. If not, the CPA shall notify the employer of the discrepancy and the employer shall pay the correct amount within the time limit prescribed by regulation.
- (3) Where an employer fails to send a return, or to remit contributions to CPA, or to make a deduction or repayment in accordance with this Act, that employer shall be subject to penalties pursuant to this Act.

### **Explanatory notes**

As AE contributions constitute part of the earnings of employees and are their property, it is imperative that contributions are paid in a timely manner. This is doubly so because once the contributions are remitted to an individual's account, they will be transferred by the CPA to the investment managers, so any serious delay in remitting contributions could cause a loss in investment return, which could diminish the employee's retirement savings fund.

## **Head 28      Access to Revenue real-time payroll data**

Provide that -

Information held by the Revenue Commissioners for the purposes of this Act relating to employers, their employees, the reckonable earnings of their employees, and details of pension contributions shall be transferred by the Revenue Commissioners to the Minister and the CPA as prescribed by regulation.

### **Explanatory notes**

Access to Revenue real-time payroll data is required by the CPA to ascertain an employee's eligibility, and as a compliance measure to check if the correct contributions have been paid by both employee and employer.

## **Head 29      Documentation of contributions**

Provide that -

- (1) An employer shall document the calculation of employer and employee contributions.
- (2) The CPA shall be empowered to request relevant documentation from an employer.
- (3) The CPA shall document the calculation of the State contributions and retain such documentation.

### **Explanatory notes**

The documentation of calculations and contributions paid are required for future audits and compliance measures. It is also essential that the employee receives a breakdown of their contributions paid for transparency.

### **Head 30      Provision for the facility to pay contributions manually**

Provide that -

A manual/semi-manual process for the payment and documentation of employee and employer contributions shall be prescribed by regulation where an employer administers their payroll manually.

#### **Explanatory notes**

Some employers still rely on manual methods of administering their payroll, and so to ensure that their employees are included in the retirement savings system, provision must be made for a facility to pay contributions manually.

## **PART 7      INDIVIDUAL ACCOUNTS**

### **Head 31      Operation of individual accounts**

Provide that –

- (1) The CPA shall operate for each individual employee an account for holding all contributions remitted in respect of each employee as provided for in Part 3, which the CPA shall hold in custody on behalf of each individual employee.
- (2) For the purposes of this Part, an individual account may include the use by the CPA of the said contributions for investment and for investment returns to be remitted to each individual employee's account.
- (3) The use by the CPA of the services of other financial institutions or nominees in order to provide for investment shall not relieve the CPA of any of its obligations, duties or responsibilities as provided for in Part 5 of this Act.

#### **Explanatory notes**

This head provides for the CPA to establish and operate a system of individual accounts for each employee. The automatic enrolment retirement savings system will be a defined contribution scheme based on individual accounts. Contributions for auto-enrolled participants will be paid into these individual accounts which will be invested in a default pension fund or in a pension fund chosen by the individual. At retirement, the accumulated savings will become a source of supplementary income support for the participant when they retire.

## **Head 32      Provision for the Minister to make regulations**

Provide that -

The Minister may prescribe regulations to make provision for the operation of individual accounts.

### **Explanatory Note**

Administrative arrangements will need to be provided for the operation of individual accounts. This Head provides for these arrangements to be set out in regulations.

## **PART 8 INVESTMENT PROFILES AVAILABLE TO AE PARTICIPANTS**

### **Head 33 Design of the default fund**

Provide that -

- (1) The CPA shall prepare a default investment strategy and shall provide a default fund for the investment of contributions.
- (2) The Minister may by regulations specify requirements to be complied with in relation to the investment of contributions and assets and such regulations shall, in relation to the default investment strategy provide for at least the following:
  - (a) a requirement that such a strategy adopt an investment profile consistent with fulfilling the reasonable expectations of a typical employee for the purposes of making savings for retirement;
  - (b) that contributors shall not be required to make decisions as to the choice of specific investments made by the CPA or its investment managers;
  - (c) that the default fund shall have appropriate diversification of investments, including appropriate diversification of risks;
  - (d) that the default fund will take into account the age profile of participants within its risk parameters.

### **Explanatory Note**

This Head provides for the CPA to have a default investment fund, which will be linked to good practice for investment for retirement. The auto-enrolment system will operate on the basis of a pre-funded defined contribution model with members holding individual retirement savings accounts. While participants will be able to choose a savings fund, in the absence of any savings decision, the enrolled employee will be automatically allocated by the CPA to the default fund.

One of the key roles of the CPA is to ensure that the default option offered is one that is rational, well-designed, well-managed and aligned with the policy objectives set out. The CPA will thereby ensure a level of risk that provides the possibility for a good long-term return while restricting the risk of significant losses and strong fluctuations in the individuals' pension savings close to retirement.

## **Head 34      Design of the alternative funds**

Provide that -

- (1) The CPA shall prepare a range of alternative investment strategies and shall provide at least the following three alternative funds which employees may choose from for the investment of contributions -
  - (a) A conservative, low risk fund;
  - (b) A moderate risk fund;
  - (c) A higher risk fund.
  
- (2) The Minister may by regulations specify requirements to be complied with in relation to the investment of contributions and assets under each of the alternative investment strategies referred to in subhead 1.

### **Explanatory Note**

This Head provides for three other fund types that employees might choose from should they not wish to save through the default investment fund option.

The investment of retirement savings funds or pension plan assets is one of the core activities of a pension fund or entity. In this regard, the OECD's Core Principles of Private Pension Regulation sets out a range of guidelines to support the principles around investments and risk management. This includes a recommendation that the investment policy for pension plans in which members make investment choices should ensure that an appropriate array of investment options, including a default option, are provided for members.

The provision of a default fund will ensure that making an individual choice does not become a prerequisite for an attractive AE outcome, whereby the default fund will be carefully designed and managed in its own right. In fact, the default fund should be an attractive choice option even for individuals who could make an informed own choice.

Subhead 1 provides for a range of alternative investment funds to be offered, which will differ from the default fund in terms of asset allocation, risk level and composition. The number of alternative investment funds will be limited, with the intention of making the system simpler for participants who wish to choose. The following alternative funds are envisaged:

- (1) A conservative option, e.g. a mix of Government bonds, cash and cash equivalents, blue chip private bonds and stock market index funds.
  
- (2) A moderate risk option, e.g. an investment portfolio involving a mix of Government bonds, blue chip equities and property.
  
- (3) A higher risk option, e.g. a portfolio comprising of predominantly equities, commodities, and property.

Subhead 2 provides for the Minister to define and maintain the overall design directions and parameters for the alternative investment funds.

**Head 35      Auto-enrolled participants who wish to do can shift to an alternative fund offered under the AE**

Provide that -

The CPA shall implement the default investment strategy in respect of each employee except where an employee elects not to have the default investment strategy applied to the retirement savings fund to which the employee contributes to, in which case the employee may choose one of the alternative investment strategies provided.

**Explanatory Note**

This Head provides for an employee to choose one of the alternative funds should they not wish to save through the default investment fund. As the default investment fund will be a one-size-fits-all investment strategy, it may not be responsive to the risk appetite/tolerance of individual participants. For some participants, volatility in fund performance could create anxiety, for others the prospect of a higher return from higher risk investments means that they can live with volatility. The auto enrolment system will therefore facilitate choice, but will not demand it.

## PART 9 AE INVESTMENT MANAGEMENT

### **Head 36      The AE investment management function is outsourced to Registered Providers selected by tender**

Provide that -

(1) The CPA may outsource the investment management function so as to enter into an arrangement with investment managers to provide for the proper investment of the resources of the funds offered.

(2) Any outsourcing arrangement shall be procured through a tendering process.

(3) Within this part, registered provider means the investment managers procured as contract providers.

(4) The number of registered providers shall be no more than four.

(5) The CPA shall not appoint a registered provider unless they are satisfied that the registered provider:

(a) is, having regard to section 64AE of the Pensions Act 1990 (as amended), of good repute and integrity, and

(b), possesses the qualifications, knowledge and experience that are adequate to properly carry out that key function when outsourced.

(6) Where registered providers are engaged, a contract or an agreement for the provision of investment management services shall pertain, and the registered providers shall operate according to such contractual arrangements entered into with the CPA.

(7) Nothing in this Act shall operate to restrict the CPA from appointing, for the management of the investment funds, an investment manager established in another Member State which is duly authorised for carrying out such management in accordance with -

(a) Directive 2009/65/EC,

(b) Directive 2009/138/EC,

(c) Directive 2011/61/EU,

(d) Directive 2013/36/EU, and

(e) Directive 2014/65/EU.

(8) Nothing in this Act shall operate to restrict the trustees of a scheme or trust RAC from appointing, for the management of the investment portfolio of the scheme or trust RAC concerned, an authorised entity referred to in Article 2(1) of Directive of 2016.

## **Explanatory Note**

This Head provides for the procurement of commercial investment managers and for the arrangements that will govern the provision of investment management services.

The CPA, in its role as custodian, will procure up to four commercial financial investment companies through a competitive tendering process to become registered providers for the CPA. The design limits the number of registered providers to four. The motive is to balance concerns related to competition, economies of scale and participant overview of the system and the options available.

The registered providers will provide investment options and act as investment managers for AE contributions. The registered providers will invest contributions for the CPA and provide returns on those investments over time. The CPA will essentially be the ‘customer’ of the registered providers and will in turn manage fund allocation and distribution on behalf of participants. A tendering process ensures fairness and accountability in the auto-enrolment system on the part of those managing the investment of participants’ funds.

### **Head 37      The relationship between the CPA and Registered Providers**

Provide that –

- (1) The CPA shall establish appropriate arrangement for the governance of the relationship between the CPA and Registered Providers
- (2) The CPA shall operate on behalf of all employees on a collective basis and for each registered providers contracted, the CPA shall be the single and only client acting on behalf of the employees.

#### **Explanatory note**

The intention behind the design of the auto-enrolment operational architecture here is to ensure that it is structured in the best interests of the participants. While the CPA would allocate participants' contributions to registered providers, who would then invest these funds, the registered providers will only have one client - the CPA - and these providers would not know the identity of the individual participants. As they will not know the identity of the individual participant, they will not engage in participant case handling, advice, or communication.

## **Head 38      The auto-enrolment pooled fund concept**

Provide that -

- (1) The CPA shall operate the auto-enrolment retirement savings funds on a collective investment basis as pooled funds.
- (2) The Minister may provide for regulations that set out the allocation of new contributions to each of the funds operated by each of the registered providers.
- (3) The CPA shall provide for the distribution of the return on investment that reflects the proportionate value of an employee's contributions.

### **Explanatory note**

To accommodate concerns about the volatility in fund performance, the design of the default fund and the alternative funds will operate as composite investment funds, at least in the early years of the AE system as it builds scale. The objective is to ensure that each individual contributor will be exposed to exactly the same level of risk (for their preferred fund choice) and will achieve the same level of return as every other contributor (for their preferred fund choice).

Subhead 1 provides that all pension contributions will be pooled according to the fund choice of the individual participants.

Subhead 2 provides for the Minister to set regulations for the CPA to distribute the pension contributions among each of the registered providers for investment.

Subhead 3 for the distribution of financial returns from each fund type to be pooled and distributed proportionately to all contributors to that fund type.

## PART 10 INVESTMENT RULES

### Head 39 Investment rules

Provide that -

- (1) The registered providers shall invest in accordance with the prudent person rule and in accordance with this section.
- (2) When investing, the registered providers -
  - (a) shall invest the allocated resources in the best long-term interests of members and beneficiaries as a whole, and in the case of a potential conflict of interest, shall ensure that the investment is made in the sole interest of members and beneficiaries,
  - (b) in accordance with the prudent person rule referred to in subhead (1), may take into account the potential long-term impact of investment decisions on environmental, social and governance factors,
  - (c) shall invest the allocated resources in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole,
  - (d) shall invest the allocated resources predominantly in regulated markets and, where there is investment in assets which are not admitted to trading on a regulated financial market, shall keep any such investment to prudent levels,
  - (e) shall comply with subhead (3) if investing in derivative instruments,
  - (f) shall invest in such a manner that the resources shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole, and
  - (g) for the purposes of paragraph (f), where they invest in assets issued by the same issuer or by issuers belonging to the same group, shall invest in a manner that shall not expose the fund to excessive risk concentration.
- (3) In the case of investment in derivative instruments, such investment by registered providers shall be possible insofar as such instruments contribute to a reduction in investment risks or facilitate efficient portfolio management and –
  - (a) they shall be valued on a prudent basis, taking into account the underlying asset,
  - (b) they shall be included in the valuation of the assets of fund, and
  - (c) the registered providers shall avoid excessive risk exposure to a single counterparty and to other derivative operations.

- (4) The Minister may prescribe regulations to make provision for investment rules in line with sections 1 to 3 of this Head.

### **Explanatory Note**

This Head provides for the investment rules that registered providers will be required to follow in terms of the investment strategies for the default and alternative funds. In designing investment strategies, the registered providers will be required to comply with the ‘Prudent Person Principle’ so that the providers may only invest in assets with risks that they can and are equipped to understand, measure, and manage to ensure the best possible risk-adjusted return.

Active risk management can be achieved through diversification of investment by sector, asset type and risk factors, operating under rigorous risk assessment procedures. Assets should therefore be invested in the best long-term interests of participants and that the assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulations of risk in the portfolio. The approach here aligns with IORP-2 standards, ensuring a strong, robust, and already applied regulatory framework for the registered providers and the retirement savings funds.

## **Head 40      Risk management**

Provide that -

- (1) The CPA shall establish and maintain an effective risk management function which shall be structured in such a way that facilitates the functioning of a risk management system for which the Board of the CPA shall adopt strategies, processes and reporting procedures necessary to ensure that the risks to which the retirement savings funds are or could be exposed and their interdependencies can be identified, measured, monitored, managed and be regularly reported on to the Board of the CPA.
- (2) The Board of the CPA shall ensure the risk management system referred to in subhead (1) is effective and well integrated into –
  - (a) the organisational structure, and
  - (b) the decision-making processes of the CPA.
- (3) The risk management system referred to in subhead (1) shall cover risks which can occur in the following areas:
  - (a) underwriting and reserving;
  - (b) asset-liability management;
  - (c) investment, in particular derivatives, securitisations, and similar commitments;
  - (d) liquidity and concentration risk management;
  - (e) operational risk management;
  - (f) insurance and other risk mitigation techniques; and
  - (g) environmental, social and governance risks relating to the investment portfolio and the management thereof.
- (4) the risk management system referred to in subhead (1) shall also assess those risks from the perspective of the members and beneficiaries.
- (5) Where the person carrying out the risk management key function makes a report or recommendation to the Board of the CPA, the Board of the CPA shall have regard to that report or recommendation.
- (6) The Minister may prescribe regulations to make provision for risk management in line with sections 1 to 5 of this Head.

### **Explanatory note**

This Head provides for an appropriate system of risk management to be put in place for the auto-enrolment retirement savings system. Risk is a key characteristic of any defined contribution pension savings arrangements. Investment risk can be defined as the probability

of losses relative to the expected return on any particular investment. It is a precondition for the growth of funds, and as such pension savings arrangements involve calculated and measured risk of varying degrees.

There are a number of different kinds of risk:

- Inflation risk occurs when rising prices erode the buying power of money. It is a concern for people, for instance, who hold savings accounts that do not offer interest rates that keep up with inflation. It can be mitigated by investing savings instead of holding them in an interest free account.
- Specific risk (also called unsystematic risk) relates to the risk of investments in individual company shares. This risk may stem from the management of a company or sectoral issues. While some shares fluctuate more than others, none are free from volatility. Diversification can help to mitigate this risk.
- Market risk (also called systematic risk) refers to the risk that arises from changes in the macroeconomic environment. This risk is undiversifiable but can be mitigated by investing in different stock markets or investing gradually for at least five years to allow for investments to recover.
- Currency risk occurs when investments are made in currencies other than the investor's home currency. The risk can arise when the returns must be converted back and movements in the exchange rate can affect its value. The risk can be limited by only investing in the home currency or diversifying through an international fund that spreads its investments globally.
- Manager risk refers to the variation in investment performance of individual fund managers. It can be difficult to ensure that the chosen fund manager will deliver the expected returns. This can be mitigated by investing in an index-tracking fund.

Investment strategies are usually profiled based on the amount of risk involved in the particular strategy. While there may be an instinct to choose a conservative investment strategy, with little or no risk of losing money through volatility in stock markets, this does not remove the risk of inadequate returns, as the risks of inflation and limited growth are still present. Therefore, risk must be actively managed and assessed.

## **Head 41      Transparency**

Provide that -

- (1) The CPA shall put in place an effective system of governance which provides for sound and prudent management of the activities of the retirement savings funds, which shall include -
  - (a) an adequate and transparent organisational structure with a clear allocation and appropriate segregation of responsibilities; and
  - (b) an effective system for ensuring the transmission of information.
- (2) The Minister may prescribe regulations to make further provision for transparency.

### **Explanatory note**

This Head provides for the CPA to put in place systems of governance that ensure that the investment of retirement savings funds be managed and operated in a transparent and accountable manner. Given that the CPA has full custodianship over employees' individual retirement savings funds, strong transparency and accountability is essential to ensuring the credibility of the auto-enrolment system.

## PART 11 COMMUNICATION AND INFORMATION

### Head 42 Digital first principal – electronic communications

Provide that –

- (1) The CPA shall take a ‘digital first’ approach to communications, providing all communications in digital format in the first instance.
- (2) Communications shall also be available in non-electronic format upon request.
- (3) The Minister may prescribe regulations to provide for the form and content of electronic and non-electronic communications.

#### **Explanatory note**

The ‘digital first’ approach will make it easier for employees to engage with the AE system and reduce overall administrative costs. This is in line with Government commitments, including the commitment to digitally transform public services outlined in the Economic Recovery Plan 2021 and commitments in the Programme for Government 2020. However, a ‘digital first’ approach does not mean digital only, as digital literacy and access to technology levels mean that some will require non-electronic versions of communications. The Programme for Government 2020 also commits to a Just Transition where vulnerable families and communities are protected from being left behind, and so non-electronic communications must be available to those who request them.

### **Head 43      Information to be given upon auto-enrolment**

Provide that –

- (1) Information shall be provided by the CPA to the employee upon auto-enrolment into the retirement savings system.
- (2) The Minister shall prescribe regulations for the form and content of information provided upon auto-enrolment.

#### **Explanatory note**

This Head provides for information to be given to employees upon their auto-enrolment into the retirement savings scheme, to help their understanding of the system and their choices within it. The Minister will prescribe by regulation the information to be provided.

## **Head 44      MyAE**

Provide that –

- (1) An online portal shall be available to employees to access information relating to the scheme and their personal retirement savings account.
- (2) The portal shall be owned and operated by the CPA.
- (3) Public sector digital authentication shall be used for access to the portal.
- (4) The Minister shall prescribe regulations for the form and content of information available through the online portal.

### **Explanatory note**

This Head provides for the development of an on-line portal by the CPA. The use of an online portal as the main information and communication channel with AE participants is in line with the ‘digital first’ approach. It will provide a ‘one-stop-shop’ for employees to obtain information on the scheme, the options available, and their own personal account information, as well as allowing them to action decisions taken based on that information.

MyGovID will be used to authenticate log-ins to make it fully secure. The CPA is the custodian of the AE scheme and will have information from all registered providers feeding into it. This approach will also help to facilitate the ‘pot-follows-member’ approach which is key to the design of the system.

## **Head 45      Annual statement**

Provide that –

- (1) An annual statement shall be provided to employees on the online portal in line with the relevant provisions of IORP.
- (2) The Minister shall prescribe regulations for the form and content of the annual statement.
- (3) The annual statement shall be made available to each member of the scheme free of charge, through electronic means or on paper.
- (4) The annual statement shall be made available to each member not later than 6 months from the exact date specified in the statement.
- (5) A paper copy of the annual statement shall be provided on request not later than 4 weeks from the date the request is made.
- (6) When there is any material change to the information contained in the annual statement in comparison to the immediately preceding statement, the CPA shall clearly indicate that material change to the information in the statement.

### **Explanatory note**

This Head provides for the provision of an annual statement. It replicates the current requirement of pension schemes in Ireland to provide to each member a benefit statement.

The Minister may prescribe the format of the benefit statement, informed by best practice as laid out by the Pensions Authority and the European Insurance and Occupational Pensions Authority (EIOPA). Such benefit statements are suggested to be along the lines of the following:

- (a) the personal details of the employee concerned are included;
- (b) the total contributions credited to the employee's retirement savings account and where a previous statement of account under this subsection has been given to employee, the total contributions credited to the employee's retirement savings account during the period between the date of preparation of the last previous such statement and the date of preparation of the current statement are included;
- (c) An annual statement shall differentiate between contributions paid by the employee and those paid by his employer and the top-up provided by the State.
- (d) An annual statement shall state the value of the retirement savings account on the date of preparation of the statement.
- (e) A statement which specifies the level of benefit which could reasonably be expected at a specified date or dates to be payable at retirement age based on the value of the retirement savings fund at the date of the statement and using such assumptions as to future contributions and investment returns as may be specified in regulations.
- (f) a breakdown of the costs deducted by the provider over the last 12 months.

**Head 46      Advice – provisions to be set by Ministerial order**

Provide that -

The Minister shall prescribe regulations for the provision of advice or information in relation to retirement savings from the CPA to employees.

**Explanatory note**

The CPA will need to provide information or even advice to employees, particularly if they choose to move their savings from the default fund. Therefore, the Minister will prescribe regulations to provide for this.

**Head 47      Application of Freedom of Information Act 2014 to the CPA**

(1) Notwithstanding section 6(12) of the Act of 2014 the obligations under that Act shall apply to the CPA on and from the date of the establishment of the CPA.

(2) In this section, 'Act of 2014' means the Freedom of Information Act 2014.

**Explanatory note**

This Head provides that the Freedom of Information Act 2014 will apply to the CPA on establishment day with the CPA being defined as a public body as provided for in the Freedom of Information Act 2014.

## PART 12 COMPLIANCE

### Head 48 Central Processing Authority right to make enquiries

Provide that -

(1) The CPA may make such enquiries or take such action within its powers to satisfy itself as to the accuracy or otherwise of any return, list, statement or particulars prepared and delivered under the provisions of this Act.

(2) Any employer who has been duly required by notice by the CPA to deliver a return, list, statement or particulars prepared who so fails to deliver the said return, list, statement or particulars prepared, or where an authorised officer of the CPA is not satisfied with the return, list, statement or particulars prepared by that employer, an authorised officer of the CPA may serve on that person a notice requiring that person to do any of the following:

(a) to deliver to the CPA copies of such accounts (including balance sheets) relating to the employer's trade or profession as may be specified or described in the notice within such period not exceeding 10 working days as may be specified in the notice, including where the accounts have been audited a copy of the auditor's certificate;

(b) to make available, within such period not exceeding 10 working days as may be specified in the notice, for inspection by an authorised officer of the CPA, all such books, accounts and documents in that employer's possession or power as may be specified or described in the notice, being books, accounts and documents which contain information as to transactions of the trade or profession.

(3) A notice shall not be served on an employer unless the employer has first been given a reasonable opportunity to deliver, or as the case may be, to make available to the authorised officer of the CPA the books, records or other documents in question, or to furnish the information, explanations and particulars in question.

(4) Where, in compliance with the requirements of a notice served on an employer, the employer makes available for inspection by an authorised officer of the CPA, books, records or other documents, the employer shall afford the authorised officer of the CPA reasonable assistance, including information, explanations and particulars, in relation to the use of all the electronic or other automatic means, if any, by which the books, records or other documents, in so far as they are in a non-legible form, are capable of being reproduced in a legible form, and any data equipment or any associated apparatus or material.

(5) An authorised officer of the CPA may take copies of or extracts from any books, accounts or documents made available for his or her inspection under this section.

(6) Any employer who has custody or possession of any books or papers relating the auto-enrolment retirement savings scheme shall, within one month next after notice in writing from the CPA requiring that employer to do so, deliver such books or papers to the person named in

the notice and, if the employer fails to do so, that employer shall incur a penalty of €5,000 for every such offence.

(7) Where any employer or any person in the first-mentioned person's employ, obstructs, molests or hinders—

(a) an authorised officer of the CPA in relation to any duty provided under this Act,

(b) any person acting in the aid of an authorised officer of the CPA or any person so employed,

the first-mentioned person shall for every such offence incur a fine of €5,000.

**Explanatory note**

This Head sets out a number of powers available to the CPA enabling it, inter alia, to obtain information from an employer, subject to a penalty of €5000.

## **Head 49      Application to High Court for compliance order**

Provide that -

(1) The CPA may make an application to the High Court for an order requiring an employer to comply with any notice, instruction or determination given or made by the CPA under the provisions of this Act, including, but not limited to:

(a) to deliver to the authorised officer of the CPA, or to make available for inspection by the authorised officer of the CPA, such books, records, electronic data, or other documents as are in the employer's power, possession or procurement and as contain, or may (in the opinion of the authorised officer of the CPA formed on reasonable grounds) contain, information relevant to a liability in relation to the employer's obligations under this Act,

(b) to furnish to the authorised officer of the CPA such information, explanations and particulars as the authorised officer of the CPA may reasonably require, being information, explanations and particulars that are relevant to any such liability,

(c) to pay to the CPA any contributions due, any penalties imposed, and, where applicable, any interest same,

and which are specified in the application.

(2) Where the judge, to whom an application is made under subhead (1) is satisfied that there are reasonable grounds for the application being made, that judge may, subject to such conditions as he or she may consider proper and specify in the order, make an order requiring the employer to whom the application relates to comply.

### **Explanatory note**

This Head enables the CPA to apply to the High Court for an order to an employer to comply with an instruction or determination properly given by the CPA in accordance with its powers under this Act.

## **Head 50 Penalties for breach of obligations**

Provide that -

(1) Where an employer fails to remit contributions to the CPA, that person shall be liable to a penalty of €5,000.

(2) Where any employer has been required, by notice, to deliver any return, statement, declaration, list, electronic data, or other document, to furnish any particulars, to produce any document, or to make anything available for inspection, and that employer fails to comply with the notice, that employer shall, be liable to a penalty of €5,000.

(3) Any person who deliberately assists in or induces the making or delivery of any incorrect return, account, statement or declaration shall be liable to a penalty of €5,000.

(4) Any person that has failed to comply with or contravened:

(a) any provision of regulations concerning automatic enrolment or re-enrolment, or

(b) any provision of regulations concerning an employee's right to opt in,

shall be liable to a penalty of €5,000.

### **Explanatory note**

This Head provides for a range of penalties for employers in the event of non-compliance with instructions of the CPA.

## Head 51      Recovery of contributions not paid

Provide that -

- (1) Contributions due that are not paid but are due to be paid shall be payable to the CPA.
- (2) The CPA shall demand payment of contributions that are due from or via the employer and payable but remaining unpaid in the form of an unpaid contributions notice.
- (3) An unpaid contributions notice is a notice requiring an employer to pay to the CPA by a specified date, but within 10 working days, of an amount in respect of unpaid contributions. An unpaid contribution notice shall be issued to both the employer and their employee or employees in respect of whom the contributions are due.
- (4) An unpaid contributions notice may, in particular:
  - (a) specify the employee, or category of employees, in respect of whom the contributions are due;
  - (b) state the period in respect of which the contributions are due;
  - (c) state the due date in respect of the contributions;
  - (d) require the employer to take such other steps in relation to remedying the failure to pay the contributions as the CPA considers appropriate;
  - (e) state that if the employer fails to comply with the notice, the CPA may issue a penalty notice.
- (5) In addition to the penalty provided for under Head 50, interest on overdue contributions shall be payable in accordance with the following:
  - (a) Any and all contributions due and payable for a chargeable period beginning after the commencement of this Act shall carry interest from the date when the contribution becomes due and payable until payment;
  - (b) The amount shall be determined by the formula:  $C \times D \times P$  where:

C is the contribution due and payable which remains unpaid,

D is the number of days (including part of a day) forming the period of delay,

and

P is the interest payable at a daily rate of 0.0274%.
  - (c) The interest payable under this section—
    - a. shall be payable to the CPA;
    - b. shall not be allowed as a deduction in computing any income, profits or losses for any of the purposes of the Tax Acts,

- c. shall be deemed to be a debt due to the employee or employees in respect of whom the unpaid contributions relate to, and
  - d. shall be, when paid, allocated to the retirement savings fund or funds of the employee or employees in respect of whom the unpaid contributions relate to.
- (6) The CPA shall on an annual basis compile and publish in any manner it determines suitable a list of the names and addresses and the occupations or descriptions of every employer —
- (a) on whom a fine or other penalty was imposed or determined under this Act during the previous year,
  - (b) on whom a fine or other penalty was otherwise imposed or determined during that previous year in respect of an act or omission by the employer in relation to their obligations provided for under this Act concerning the payment of contributions in respect of an employee's retirement savings account.

### **Explanatory note**

This Head provides for the payment of contribution due and not paid to the CPA. The CPA shall demand and collect those contributions that are due and payable but not paid by the employer from whom those contributions are payable from. Such a demand may be issued by electronic means.

Interest is charged for each day or part of a day on the overdue contributions. The daily rate of 0.0274% per day equates to an annual rate of 10%. The interest is paid to the CPA and is not allowed as a deduction in computing for tax purposes any income, profits or gains. The interest is deemed to be a debt due to the employee or employees that the unpaid contribution are due to. The interest, when paid, will be allocated to the accounts of the employee or employees who the contributions are due to.

It should be noted that interest charged is separate and in addition to the penalty of €5000 that will be imposed in accordance with Head 50 on non-compliant employers.

This Head also allows the CPA to publicly publish a list of employers who have not complied with their obligations to pay AE contributions.

## PART 13 COMPLAINTS AND APPEALS

### Head 52 Making of complaints

Provide that –

- (1) The Central Processing Authority shall endeavour to resolve, in a timely and informal manner, any matters relating to:
  - (a) processing errors,
  - (b) processing delays,
  - (c) the provision of incorrect information,
  - (d) any dispute of fact or law that arises in relation to conduct by or on behalf of the CPA.
- (2) In the event that a matter cannot be resolved in a timely and informal manner by the CPA, a formal complaint may be considered by it in accordance with this Head.
- (3) A complainant may make a complaint to the CPA in relation to the matters set out in subhead (1).
- (4) A complainant may not make a complaint under *subsection (3)* where –
  - (a) The conduct giving rise to the complaint is or has been the subject of –
    - (i) Legal proceedings before a court or tribunal, or
    - (ii) A decision of the Office of the Ombudsman or the Financial Services and Pensions Ombudsman;
  - (b) the conduct complained of relates to a matter that –
    - (i) is within the jurisdiction of the Workplace Relations Commission or the Pensions Authority, or an alternative suitable forum or tribunal,
    - (ii) occurred outside the time limit of 2 years from the date of the conduct;
  - (c) the matter is capable of being resolved informally and in a timely manner by the CPA.
- (5) A complaint under *subsection (3)* shall be in writing or such format as the CPA considers appropriate in the circumstances.
- (6) Where a complainant dies, or is otherwise unable to act for themselves, then –
  - (a) Any complaint which a complainant might otherwise have made or referred under this Part may be made or referred by the appropriate person, and
  - (b) Anything in the process of being done by or in relation to a complainant under or by virtue of this Part may be continued by or in relation to the appropriate person,

And any reference in this Part, other than in this section, to a complainant shall be construed as including a reference to the appropriate person.

- (7) For the purposes of *subsection (6)* –
- (a) “appropriate person” means –
    - (i) Where the complainant has died, their legal representative, or
    - (ii) In any other case, a member of their family, or some other person who is considered by the CPA to be a suitable person to represent them, and
  - (b) The reference to “complainant”, in so far that subsection relates to a person who is otherwise unable to act for themselves, includes a reference to an intending complainant.
- (8) In considering a complaint, the CPA may –
- (a) Require any person or body, who in the opinion of the CPA, is in possession of information, or has a document or thing in their power or control, that is relevant to the investigation, to –
    - (i) Provide to the CPA that information, either orally or in writing,
    - (ii) Produce to the CPA that document or a copy of the document.
- (9) The CPA shall give notice of a requirement under *subsection (8)* either orally or in writing and shall specify in the notice –
- (a) The information or document required, and
  - (b) The date by which the information or document is required.
- (10) Nothing in this section shall require any person to provide information or produce a document, or a copy of a document, the communication of which is subject to legal professional privilege.

**Explanatory note**

This Head provides that the CPA will endeavour to rectify any errors, delays etc. in a timely and informal manner, but allows for the consideration of a formal complaint where an informal resolution has not been possible.

## **Head 53      Complaints process**

Provide that -

- (1) A complaint shall be made to the CPA not later than 2 years from the date of the conduct giving rise to the complaint.
- (2) The CPA may, in the course of investigating a complaint, issue a preliminary decision to the relevant parties to the complaint, indicating that the potential decision to be taken by the CPA and any evidence or facts considered to arrive at that preliminary decision.
- (3) On completing consideration of a complaint, the CPA shall make a decision in writing to the complainant.
- (4) Subject to the outcome of any appeal against a decision of the CPA in respect of a complaint, the decision is binding on any party to the complaint.

### **Explanatory note**

This Head provides for a time limit for complaints, the issuing of a preliminary decision and a final decision.

## **Head 54      Appeals against complaint decision**

Provide that –

- (1) A person who is dissatisfied with a decision made by the CPA is entitled to appeal that decision by giving written notice to the CPA within 30 days of the date of the decision.
- (2) A late application for appeal may be made and shall be admitted if there is a reasonable explanation as to why the appeal was not made within the normal time limit.
- (3) The appeal shall be carried out by a person senior to the person who made the original decision.
- (4) A party to an appealed complaint before the CPA may appeal to the Financial Services and Pensions Ombudsman against an appeal decision of the CPA.

### **Explanatory note**

This section provides for an appeals process for persons dissatisfied with a decision of the CPA. It also provides for further appeal to the Financial Services and Pensions Ombudsman.

## **Head 55      Appeals against assessment**

Provide that –

(1) A person aggrieved by an assessment to enrolment by the CPA may appeal to the CPA by giving, within 30 days, notice in writing.

(2) A late application for appeal may be made and shall be admitted if there is a reasonable explanation as to why the appeal was not made within the normal time limit.

(3) If the CPA considers that the person is not entitled to appeal, the CPA shall refuse the application and notify the person in writing and state the grounds for refusal. This refusal may be appealed to the CPA in writing within 15 days.

### **Explanatory note**

This section provides for an appeals process for person who is dissatisfied having been enrolled in the AE system or is dissatisfied because they were not enrolled in the system, in order to appeal the enrolment assessment made by the CPA.

## **PART 14 SUPERVISION**

### **Head 56 Pensions Authority Functions**

Provide that -

(1) The Pensions Authority shall be appointed as the competent authority responsible for the prudential supervision of the Central Processing Authority, pursuant to the provisions set out in Part II A of the Pensions Act 1990 (as amended).

(2) The Pensions Act 1990 (No. 25 of 1990) is amended in Section 10(1) by the insertion of the following paragraph after paragraph (h):

“(i) “to monitor compliance, in its capacity as competent authority referred to in Part 14 of the Automatic Enrolment Retirement Savings System Act with its requirements as an institute of occupational retirement provision.”

### **Explanatory notes**

The Pensions Authority is appointed as the competent authority in respect of ensuring compliance with Part 14 of the Act.

While the Central Processing Authority (CPA) will be an independent, statutory body, it will be regulated by the Pensions Authority in the performance of its pension scheme administration functions. In undertaking its regulatory function, the Pensions Authority will apply the principles of prudential supervision as provided for in the Pensions Act (1990), the main objective of which will be to protect the rights of employees and to ensure the stability and soundness of auto-enrolment retirement savings scheme.

For the avoidance of doubt, the Pensions Act, 1990, is amended to expand the functions of the Pensions Authority to include monitoring the compliance of the AE Automatic Enrolment Retirement Savings System with this Part.

## PART 15 RETIREMENT BENEFITS

### Head 57 Access to funds aligned with the State Pension Age

Provide that -

The minimum age that an employee may access their retirement savings fund shall be when the employee has attained pensionable age as provided for in the Social Welfare (Consolidation) Act 2005 (as amended).

### Explanatory Note

This section provides for the retirement age of the AE scheme to be linked to the State Pension age.

Life expectancy in Ireland currently stands at 82 years of age, which is above the EU average. In recent decades, the improvements in life expectancy have been experienced in our older population and researchers predict that life expectancy will continue to increase. Therefore, retirements of longer duration may be experienced by employees participating in the auto-enrolment retirement savings system. This raises the possibility of longevity risk where the retiree runs out of their pension savings before they die. Therefore, linking the age of access to retirement savings funds accumulated through the auto-enrolment scheme should help to mitigate this risk.

Within the wider pensions landscape, although the State Pension age is currently set at age 66, members of occupational pension schemes can generally retire and access their benefits from age 60 without ceasing economic activity. Some people may be able to take early retirement from age 50, depending on the specific provisions of their pension scheme. The report of the Interdepartmental Pensions Reform & Taxation Group (2020) recommends standardising retirement ages as a method of simplifying the pensions landscape.

People are living longer and healthier lives and many, who are in a position to do so, regard working further into their later years and beyond the traditional retirement age, as something that is both possible and desirable. Strand 6 of the *Roadmap for Pensions Reform 2018 – 2023* (Supporting Fuller Working Lives) sets out the Government's intention to alter perceptions around the retirement age and to encourage and facilitate older people in working beyond the 'normal' retirement age. This will empower older people, allowing them to optimise their own arrangements, as well as enabling society to continue to benefit from the skills and experience of older workers and helping to sustain the viability of the wider pension system.

## **Head 58      Provision of a lump sum**

Provide that -

- (1) Subject to the commencement of regulations under Head 59, encashment of the retirement savings fund may be paid to the employee as a once-off lump sum payment.
- (2) Where a lump sum is paid to employee, the excess lump sum, as defined in Section 790AA of the Tax Consolidation Act 1997 (as amended) shall be regarded as income of the employee for the tax year in which the lump sum is paid and shall be chargeable to income tax in accordance with subsection (3) of Section 790AA of the Tax Consolidation Act 1997 (as amended).
- (3) The CPA shall deduct tax from an excess lump sum payment in accordance with this section and remit such tax to the Collector-General as provided for in the Tax Consolidation Act (1997).

### **Explanatory Note**

Initially, pay-outs from the AE system will presumably take the form of lump sum payments only. As AE contributions will be gradually phased in over a 10-year period, the first cohort of retirees are likely to have limited retirement savings funds. Therefore, it is unlikely that, for administrative and pension reasons, annuitizing the relatively small retirement savings fund that have been accumulated would be of much benefit to the employee. Given that it will take an estimated 10-15 years, for employees to accumulate pension pots of sufficient size to warrant the provision of CPA mediated pension drawdown products, the accumulated retirement funds will be provided to employees as a lump sum.

Subhead 1 provides for the retirement savings fund to be drawn down as a lump sum, subject to regulations to be developed that may provide for alternative options under the next Head.

Subhead 2 applies the lifetime tax-free limit on all retirement lump sums paid to an individual, provided in the TCA 1997, at €200,000. This limit applies to a single lump sum or, where more than one lump sum is paid to an individual over time, to the aggregate value of those lump sums. Amounts in excess of this tax-free limit (the “excess lump sum”) are subject to tax in two stages. The portion between €200,000 and €500,000 is taxed under Case IV at the standard rate of tax\* while any portion above that is treated as emoluments and taxed under Schedule E at the individual’s marginal rate of tax.

Subhead 3 provides for the CPA to deduct tax from an excess lump sum in accordance with section 790AA and remit the tax to the Collector-General.

## **Head 59      Retirement Products**

Provide that –

The Minister may prescribe regulations for a retirement benefits scheme that provides for the drawdown of funds accumulated by an employee in the retirement savings scheme.

### **Explanatory Note**

This head makes provision for the Minister (in effect, the CPA) to make regulations as to how the funds accumulated by an employee in the retirement savings scheme can be accessed at retirement.

As the AE system matures, consideration will be given to developing a set of pension drawdown options to be made available via the CPA. If it is decided to make pension products available through AE, then it is expected that the CPA may tender for a number of providers and product types. It is also expected that a default drawdown product could be designed – in keeping with the principle that the system facilitates choice but doesn't require it and to make it easy for people with little knowledge or understanding to be provided with a quality pension arrangement.

If these options are developed, they will not be mandatory, as members will still be free to take their fund and invest it in pension products in the open market if they wish.

## **PART 16 OTHER PAYMENTS**

### **Head 60                      Payments in the event of the death of a participant**

Provide that -

- (1) Following the death of an employee who was prior to their death beneficially entitled to the assets of an auto-enrolled retirement savings fund, the amount or value of those assets shall be distributed to their estate.
- (2) The amount or value of any distribution by the CPA in respect of the assets held in the deceased employee's retirement savings fund shall be treated as the income of that person beneficially entitled to the assets in the fund, to which income tax shall be applied, subject to the provisions of Head 58 where the distribution may take the form of a lump sum.

#### **Explanatory note**

This Head sets out that the assets in the auto-enrolment retirement savings fund are to be distributed to the individual beneficially entitled to the assets in that fund, following the death of the employee who participated in the auto-enrolment retirement savings scheme. When such an event occurs, the assets are to be treated as the income of that individual and is taxable at his or her marginal rate, subject to the provisions of Head 58 in terms of lump sum payments.

## **Head 61**

### **Early access to savings – illness**

Provide that -

(1) The retirement savings fund of an employee may be paid out to the employee as a lump sum before he or she attains pensionable age where the employee becomes permanently incapable through infirmity of mind or body of carrying on his or her own occupation or any occupation of a similar nature for which he or she is trained or fitted.

(2) Where the retirement savings fund is paid out as provided for in Subhead 1, the lump sum shall be treated in accordance with this Act and relevant prevailing legislation.

#### **Explanatory note**

This head sets out the rule for early access to retirement savings in the event of a participant's illness.

Subhead 1 provides for a participant's funds to be paid out as a lump sum before retirement on the basis of ill-health. The definition of ill health is to align with the definition used by the Revenue Commissioners, in respect of the Taxes Consolidation Act (1997) as amended. The definition is as follows: ill-health means a physical or mental deterioration which is serious enough to prevent the individual from following her/his normal employment or which seriously impairs her/his earning capacity. It does not mean simply a decline in energy or ability.

Subhead 2 provides that the payment of the participant's retirement savings fund will be treated as a lump sum in terms of liability to income tax, that is it will apply the tax-free lump sum limit of €200,000, with any excess above this limit treated in accordance with the Taxes Consolidation Act.

The policy rationale for this Head is to enable a participant in the auto-enrolment system to access their savings in the event of enforced workplace retirement due to ill health, injury or disability. This parallels the provision of an Invalidity Pension in the social insurance system. This is a contingency that most will not need, but for those who do, it will be important to be able to their savings to replace their in-work income and to alleviate some instances of financial hardship should they no longer be able to work.

This approach is in line with the findings of the consultation process, which indicated almost universal support for early access to retirement savings on the grounds of ill health and enforced workplace retirement. Many of the written submissions asserted that any measures in this space should mirror existing rules governing occupational and personal pensions. In terms of international evidence, early access to retirement savings tend to be limited to circumstances of hardships, with illness most commonly included in the reasons provided.

**Head 62                      Production of statistical data**

Provide that -

(1) Without prejudice to any other provision of this Act, the CPA shall perform the functions in this Part in a transparent, independent and accountable manner with due respect for the protection of confidential information.

(2) Without prejudice to any other provision of this Act, the CPA shall publish on its website aggregate statistical data relating to the performance of its functions.

**Explanatory note**

This Head provides for the CPA to collect key statistical data relating to the functions that have assigned to it and for this information to be published online on its website.

The rationale for this head is that the CPA will eventually hold substantial individual level information and data on pension coverage and pension savings in Ireland. Therefore, the CPA should be required to develop and publish recurring statistics describing this area. Improved data coverage will eventually become a significant asset for social research and for policy development. The collation of this data will enable policy makers to review and accurately assess the outcomes of adopted policy changes.

## **Head 63**

## **Power to assess, review, evaluate and make recommendations**

Provide that -

- (1) The CPA shall from time to time, as it sees fit, carry out reviews of the operation of the auto-enrolment system and policy to assess and evaluate the provisions of this Act relating, but not limited to, the following matters:
  - (a) eligibility criteria, earnings threshold;
  - (b) eligibility criteria, age;
  - (c) eligibility criteria, employment status;
  - (d) the provision of additional secondary benefits;
  - (e) the provision of a broader range of investment fund options; and
  - (f) any such other matter that may be directed by the Minister from time to time.
- (2) The CPA may make recommendations to the Minister as appropriate consequent on each review and the Minister shall have regard to those recommendations.
- (3) The CPA shall cause a written report of findings resulting from each review to be prepared and published on the website of the CPA.

### **Explanatory Note**

This Head provides for the CPA to review a range of matters concerning the development of the auto-enrolment retirement savings system.

The CPA will evaluate the implementation of the AE system over time. While the first phase (estimated to be the first 10-15 years) of implementation will primarily involve an investment management approach to participants' pension contributions, there are a range of other areas that the CPA will review and report on for consideration by the Government, including:

1. Reviews of auto-enrolment earnings thresholds and age eligibility criteria.
2. Consideration of broadening the system to include those outside the 'employee' cohort such as the self-employed and the non-working.
3. A greater range of investment funds to suit the particular circumstances of individual participants and the level of risk they are comfortable with.
4. An examination of facilitating partial investment across different fund types.
5. Consideration of introducing a range of secondary benefits such as survivor benefits and injury or disablement benefits.

In terms of other matters that the CPA might be directed by the Minister to review, these could include the following:

1. A framework for a more complex range of retirement savings products and pension drawdowns.
2. An examination of introducing additional voluntary contributions over the minimum specified in law.

3. An examination of how pension pots may be portable between the current pension systems and the auto-enrolment system.

## **PART 18 AUTO-ENROLMENT FEES AND CHARGES**

### **Head 64 The maximum direct cost charge to the participant to be capped**

Provide that –

The total amount of all charges made to the assets of an employee's auto-enrolment retirement savings fund shall be calculated as a percentage of the value of those assets at a rate that shall not exceed a limit to be set by the Minister in regulations.

#### **Explanatory note**

This head sets a charges cap on the funds of those participating in the auto-enrolment retirement savings system.

A core objective for the auto-enrolment system is to provide quality assured investment services, and pension products at low cost to AE participants. To this end, a maximum permitted annual administration and investment management charge will be set. Given that a large proportion of the overall target population for AE are lower and medium income earners, achieving low unit operating costs through scale is essential and is, itself, a driving rationale in establishing an auto-enrolment system with a centralised processing authority. By acting as a 'bulk' purchaser, the CPA helps to achieve economies of scale, thereby benefitting the participants in the system.

In terms of the international perspective, many countries try to control costs by applying caps on pension charges. For example, the UK applies a charge cap of 0.75% on occupational funds available under the workplace pension system. The cap applies to funds under the default arrangement, and it applies to all scheme and investment administration charges, excluding transaction costs and a small number of other specified costs and charges. In Sweden, the fee cap on the pension choice platform varies by portfolio composition – 0.89% for equity funds; 0.62% for mixed funds and 0.42% for fixed income funds.

## **Head 65                      Regulations to be set by the Minister regarding cost transparency**

Provide that –

The Minister shall prescribe by regulation the rules for cost calculation and a framework for cost reporting to ensure that employees participating in the auto-enrolment retirement savings system are provided with information in a transparent, independent and accountable manner.

### **Explanatory note**

This head requires the Minister to set out by regulation instructions to the CPA and the registered providers to ensure that information provided to participants is done so transparently.

Setting a charges cap under the previous Head requires auxiliary policy measures to maintain low fees for participants. Given that consumer driven price competition is generally weak in pension markets, policies that increase transparency and accountability play a key role in reducing costs.

In Denmark, a Cost Reporting Framework was introduced in 2012, via Insurance & Pension Denmark (IPD), in response to both political and public calls for transparency. Industry itself, despite the challenges faced, came together, and developed a common framework that's supported by clear definitions of various cost elements together with the methodologies to be used in calculations. The framework is constantly adapted (e.g. for new classes of assets) while compliance and quality are assured through reporting and auditing. In the UK, a Cost Transparency Initiative (CTI) commenced in 2019. This provides pension scheme trustees with a suite of voluntary templates and guidance designed to help trustees understand and compare the costs of their investment services by using a standardised reporting format.

## PART 19 MISCELLANEOUS

### Head 66 Transfer of existing pension funds into the AE system

Provide that -

- (1) An employee participating in the auto-enrolment retirement savings system shall not be permitted to transfer into their auto-enrolment retirement savings account any assets that they hold in any alternative pension arrangement.
- (2) Pension arrangement is defined to include:
  - (a) All Revenue approved occupational pension schemes, including AVC arrangements.
  - (b) All Revenue approved retirement annuity contracts and trust schemes.
  - (c) All PRSA contracts.
  - (d) Qualifying overseas pension plans.
  - (e) All public service pension schemes as defined in the Public Service Superannuation (Miscellaneous Provisions) Act 2004.
  - (f) All statutory schemes – that is schemes established by or under any enactment –that fall outside of the definition of public service pension scheme.

#### Explanatory note

With the introduction of automatic enrolment, the tax relief system as it currently applies to traditional occupational and private supplementary pensions will remain unchanged. Under the tax relief system, pension contributions are made before income tax is applied, that is, the contribution is calculated on a gross income basis and deducted from gross income.

In contrast, under the automatic enrolment system, the State financial incentive is delivered through a top-up payment into the participant's account. As no income tax relief is provided, the personal contribution is calculated on a gross income basis but deducted from net income.

Given the variation in the methodology for providing financial incentives between the two systems, it will not be possible for employees to transfer their assets from their current pension savings into their AE savings accounts. Therefore, the two systems will work, initially at least, in parallel with each other.

However, as provided for in Head 63, an examination as to how retirement savings funds may be portable between the current pension systems and the auto-enrolment system is an issue that may be considered at a later phase by the CPA,

## **Head 67                      Amendments to the Taxes Consolidation Act**

Provide that -

Subhead (1)    Employees not eligible for tax relief on pension contributions

The provisions of Section 774 of the Taxes Consolidation Act 1997 (as amended) shall not apply to employee contributions provided for under this Act.

Subhead (2)    Exemption of employer contribution

The provisions of Section 774 of the Taxes Consolidation Act 1997 (as amended) shall apply to employer contributions provided for under this Act.

Subhead (3)    Exemption from Income Tax

Where a sum is chargeable to tax in accordance with section 118(5) of the Taxes Consolidation Act 1997 (as amended) in respect of a contribution by an employer to an auto-enrolment retirement savings fund, the sum shall be exempt from income tax.

Subhead (4)    Exemption of investment growth

Exemption from income tax shall be allowed in respect of income derived from investments or deposits realised from funds saved in the auto-enrolment retirement savings system.

Subhead (5)    Tax on drawdown

The provisions of Section 787G, 787Q, 787R, 787 S, and 790AA of the Taxes Consolidation Act 1997 (as amended) shall apply to payments from the auto-enrolment retirement savings funds.

### **Explanatory note**

The Head sets out the arrangements for the provision of tax relief in respect of employer contributions and on investment growth on auto-enrolment retirement savings funds. It also provides for the payment of taxes on fund drawdown in line with the current TCA provisions of taxation on the drawdown of pensions.

Subhead 1 provides that contributions paid by an employee will not be a deductible expense in assessing income tax under Schedule E of the TCA.

Subhead 2 provides that, in line with the TCA, contributions paid by an employer to an employee's auto-enrolment retirement savings fund is allowable as an expense in computing the profits of the employer's trade or profession. Relief also only applies to that part of an employer's contribution which relates to employees of a business the profits of which are charged to income tax or corporation tax.

Subhead 3 provides that contributions made by an employer which are regarded, by virtue of section 118(5) of the TCA 1997 (as amended), as a benefit-in-kind in the hands of the employee, are to be provided on a tax free basis.

Subhead 4 provides for the exemption from income tax of income and gains arising from the investment of contributions in the auto-enrolment retirement savings system.

Subhead 5 provides for the payments from the retirement savings system to be taxed as under PAYE provisions. It also provides for the application of the lifetime tax-free limit of €200,000 on all retirement lump sums paid to an individual to payments made through the auto-enrolment system. Amounts in excess of this tax-free limit (the “excess lump sum”) are subject to tax in two stages. The portion between €200,000 and €500,000 is taxed at the standard rate of tax while any portion above that is taxed at the individual’s marginal rate of tax.

This set of provisions retains the ‘Exempt, Exempt, Tax’ approach that supports the current system of retirement savings, with one particular distinction: the replacement of tax relief on employee contributions with a top-up contribution from the State. The rate that State will top-up contributions made by individuals is to be €1 for every €3 contributed by the employee participating in the scheme. This is equivalent to tax relief at 25% and so represents an improvement for low-income participants over the current tax relief system.

For those that are currently saving through the existing pension system, they will continue to contribute to their retirement savings funds on the basis of the current provisions contained in the TCA 1997 (as amended) and therefore the existing tax relief system will be left untouched in respect of these individuals.

Within the OECD, most countries provide some financial incentive to encourage people to participate in and contribute to retirement savings plans. The main type of financial incentive provided by governments tend to be tax related, where contributions to retirement savings are deductible from taxable income. Financial incentives are also provided on a non-tax basis in the form of matching contributions. The OECD has noted that these non-tax financial incentives are becoming increasingly popular as they tend to be more easily understood than tax relief on pension contributions. A further advantage is that the value of such incentives is not limited by a person’s tax liability. Therefore, the OECD concludes that non-tax incentives are appropriate policy approaches where the objective is to encourage low-income earners specifically to save for retirement.

## **Head 68      Application of European Law**

Provide that:

- (1) "Directive of 2016" means Directive (EU) 2016/2341 [OJ No. L 354, 23.12.2016, p.37] of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast);
- (2) The Automatic Enrolment Retirement Savings System is, for the purposes of the application of national and European Union law, an ‘institution of occupational retirement provision’ as defined under Article 6 (1) of the Directive of 2016.

### **Explanatory notes**

Article 6 (1) of Directive (EU) 2016/2341 defined an ‘institution for occupational retirement provision’, or ‘IORP’, as meaning:

"an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed:

(a) individually or collectively between the employer(s) and the employee(s) or their respective representatives, or

(b) with self-employed persons, individually or collectively, in compliance with the law of the home and host Member States, and which carries out activities directly arising therefrom;"

The Head seeks to define the Auto-enrolment Retirement Savings System as an IORP and for the avoidance of doubt state that national and European Union law which makes provisions for IORPs are applicable to the Auto-enrolment Retirement Saving System.

This status as an IORP places several duties on the ‘effective persons who run the IORP’, i.e., the Board of Directors of the Central Processing Authority to have in place a suite of policies and plans (as required by the IORP II Directive, transposed into the 1990 Pensions Act, a number of key functionalities and comply with the relevant disclosure and investment requirements of the Pensions Act. Note that Head 71, modifies the Pensions Act for this purpose.

Furthermore, European law, which has not been transposed into the Pensions Act, principally – but not limited to – Regulation (EU) 2019/2088 Sustainability-Related Disclosures in the Financial Services Sector (SFDR) shall also apply to the AE Retirement Savings System, as it applies to traditional IORPs in the Irish market.

## **Head 69      Amendments to the Pensions Act – Supervision**

Provide that -

- (1) The prescribed sections of the Pensions Act, 1990 shall, where appropriate, apply in relation to this Act as they apply in relation to the Pensions Act 1990 but with modifications, where appropriate.
- (2) Those modifications are that for the words set out in the Schedule to be prescribed under this section, at a particular reference number, being words appearing in a section or sections of Pensions Act 1990 specified in that Schedule at that reference number, there shall be substituted - where those words occur in that section or sections - for the words set out in the relevant AE column of that Schedule at that reference number.

### **Explanatory notes**

This Head provides for the making of Regulations to modify the relevant sections of the Pensions Act in order to facilitate the alignment of the auto-enrolment retirement saving system with IORPs under Irish law. Arising from this alignment, in the following Head, the functions of the Pensions Authority, the national competent authority in respect of the IORP II Directive, and the Pensions Act, into which the provisions of the IORP II Directive are transposed, are also expanded upon so that the Pensions Authority may supervise the auto-enrolment retirement saving system, as if it were an occupational pension scheme under the Pensions Act.

This alignment with IORPs places several duties on the ‘effective persons who run the IORP’, i.e., the Board of Directors of the Central Processing Authority to have in place a suite of policies and plans (as required by the IORP II Directive, transposed into the 1990 Act,) a number of key functionaries and comply with the relevant disclosure and investment requirements of the Pensions Act.

For the avoidance of doubt, it is noted here that while the contracting relationship and investment terms agreed with the Registered Providers falls under the Pensions Act, the activities of the Registered Providers as financial entities, are already regulated by the Central Bank. This mirrors the existing arrangement in respect of standard IORPs whereby in many instances a fund manager is contracted to manage investments on behalf of the trustees.

Note that the drawdown options for the Automatic Enrolment Retirement Savings System will align with the drawdown options afforded to DC schemes under the Taxes Consolidation Act, 1997, as amended; annuities and Approved Retirement Funds (ARFs). These are existing financial products, the providers of which are supervised by the Central Bank. Amendments to the Taxes Consolidation Act, 1997 to extend the options available to DC schemes, will be progressed separately, in conversation with the Revenue Commissioners and the Department of Finance.

Note also that there are further requirements which may be placed on the Central Processing Authority by forthcoming changes to the Pensions Act, for example under Master Trust and Automatic Enrolment legislation proposals, and by delegating the schedule of modifications to secondary legislation, future amendments to the Pensions Act, either by way of primary

legislative change or by way of 1972 Regulations may be taken into account, without the need for primary legislative change.

**Head 70****Amendments to the Pensions Act – Equal Pension Treatment**

Provide that –

The provisions of Part VII Equal Pension Treatment in Occupational Benefit Schemes of the Pensions Act (1990) shall apply to the auto-enrolment retirement savings scheme.

**Explanatory note**

The intention of this Head is to extend the equality measures provided in the Pensions Act 1990 (as amended) to the auto-enrolment retirement savings scheme.

## **Head 71      Extension of the Provisions of the Dormant Accounts Act**

Provide that –

(1) An auto-enrolment retirement savings account shall be deemed to be a dormant account, within the meaning of the Dormant Accounts Act 2001, where, during the dormancy period, as provided for in the said Dormant Accounts Act, no transaction on the account has been effected by the account holder, commencing from the date of the accounts maturation.

“Maturation” in this Head means the date when an employee who is the beneficial owner of the account can access the assets of his or her retirement savings account when he or she attains pensionable age.

(2) The provisions of Part 2 of the Dormant Accounts Act 2001 shall apply to an account that comes within the meaning of Subhead 1.

(3) For the avoidance of doubt the Central Processing Authority shall apply to the list of institutions specified in Part 1 of the Schedule to the Dormant Accounts Act 2001.

### **Explanatory note**

This Head provides for the extension of the provisions of the Dormant Accounts Act 2001 and 2012 to the auto-enrolment retirement savings system.

The Dormant Accounts Fund enables unclaimed funds from accounts in credit institutions in Ireland to be used to support the development of persons who are economically or educationally disadvantaged, or those affected by a disability, within the meaning of the Equal Status Act.

A dormant account is an account with a credit institution that has had no customer-initiated transactions for 15 years. Unclaimed funds are transferred to the Dormant Accounts Fund, which is managed by the National Treasury Management Agency. Whilst the beneficial owner has a right to reclaim their money at any time, the Acts provide for the use of unclaimed funds for measures that address economic, social and educational disadvantage, or support those with a disability.

Subhead 1 extends the definition of dormant accounts to include retirement savings account in the auto-enrolment system, where there has been no customer-initiated transactions for 15 years. The period of 15 years commences from the date that the funds can be accessed by the participant, which is when they reach State pension age.

Subhead 2 provides for the transfer of the dormant auto-enrolment retirement savings account to the NTMA and for the use of the assets as provided for in the Dormant Accounts Fund legislation.

Subhead 3 includes the Central Processing Authority in the list of credit institutions specified in the Dormant Accounts Act, which includes banks, building societies, credit unions and An Post.

## **Head 72      Transitional Provisions**

Provide that –

The Minister may make regulations to do anything that appears necessary or expedient for bringing this Act into operation. Such regulations may contain any such incidental, consequential or transitional provisions as the Minister considers necessary or expedient for the purposes of this Act.

### **Explanatory note**

This Head provides for the Minister to make regulations to do anything that appears necessary or expedient to bring the Act into operation.

**Head 73      The CPA to be listed as a specified body for the purposes of accessing and using a PPSN**

Provide that –

(1) The CPA shall be listed as a specified body as provided for in Schedule 5 of the Social Welfare Consolidation Act 2005 as amended for the purposes of accessing and using a person’s personal public service number in accordance with Social Welfare legislation.

(2) In this Head, “personal public service number” means a number allocated and issued in accordance with Section 262, subsection (2) of the Social Welfare Consolidation Act 2005 as amended.

**Explanatory Notes:**

The legislation governing the allocation and use of the PPS Number is primarily contained in the Social Welfare Consolidation Act 2005, the Social Welfare and Pensions Act 2007 and the Social Welfare and Pensions Act 2010. Only bodies specified in legislation and their agents can use the PPS Number - these are referred to as Specified Bodies. Specified Bodies are asked to submit a return for this register which outlines their ongoing use and future plans for the PPS Number.

This Head provides that the CPA is a Specified Body.