

AN BORD PINSEAN -
THE PENSIONS BOARD

First
ANNUAL REPORT
1991

The Pensions Board was established by the Minister for Social Welfare under the terms of the Pensions Act, 1990 - legislation designed to safeguard the pension rights of members of occupational schemes.

The Board is responsible for providing information on the Act and its regulations, advising the Minister on pension matters and for encouraging the provision of appropriate training for trustees. But it also has extensive powers to enforce compliance with the legislation, including those of investigation and prosecution.

It is funded by fees collected from occupational pension schemes, which are now required to register with the Board.



Annual Report for 1991

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Chairperson's Introduction

Minister,

I have great pleasure in submitting this first annual report of An Bord Pinsean – The Pensions Board, in accordance with the requirements of Section 23 of the Pensions Act, 1990.

Our first year

During 1991 the main focus of our activities was on establishing the structures necessary for us to fulfil our obligations under the Act. This involved, in particular:

- ◆ ***Clarifying our precise role and functions;***
- ◆ ***Creating appropriate structures, including committees;***
- ◆ ***Recruiting a chief executive;***
- ◆ ***Making appropriate arrangements to enable the Board to become financially independent of the Department of Social Welfare from the beginning of 1992.***

From the outset we have sought to work closely with all parties interested in occupational pensions, seeking their support for our efforts to implement quickly and effectively the provisions of the Pensions Act.

Registration of existing schemes and collection of fees by the end-1991 deadline prescribed in the Act was an immediate priority. We are pleased to report that in this we received the fullest co-operation from life assurance companies, brokers and consultants, and the Retirement Benefits District of the Revenue Commissioners.

The Department of Finance and other Government Departments worked closely with the Board on the registration of public sector schemes and payment of the fees due.



**Mary
Broughan**

For most of 1991 the Board was accommodated in offices of the Department of Social Welfare. We wish to record our gratitude to the officials of that Department for their considerable assistance during this period, and to everyone else who provided support and assistance during the difficult start-up phase of our operations.

Applying the Pensions Act

During 1991 the Board received a number of detailed submissions from professional bodies and pension scheme administrators on the practical application of the provisions of the Act and its regulations. These submissions were of considerable assistance to the Board in its advisory capacity.

The Board was concerned, however, by some comments about the costs to schemes of compliance with the Act. In the case of some defined benefit schemes significant contribution increases were being attributed to the provisions of the Act.

We are of the view that where additional costs are being incurred this is due to previously inadequate funding – something which is now being highlighted by the Funding Standard set in the Pensions Act.

The Disclosure of Information requirements under the Act are not unreasonable and should only give rise to extra costs for schemes which have provided little information to their members up to now.

The Board's administrative structures, and its approach to registration and fee collection, have been carefully designed to ensure that the costs and inconvenience to scheme administrators and trustees are minimised.

Our second year

For 1992 our efforts will be focused on providing an efficient and effective service. We will seek to:

- ◆ ***Assist those involved in pension scheme administration to comply with the provisions of the Act;***
- ◆ ***Help members of schemes who have concerns, either about the way their scheme is being run or about their individual entitlements.***

We will also be preparing for the implementation from the beginning of 1993 of Part VII of the Act, which provides for equal treatment for men and women in occupational schemes.

We will submit a report to you on member involvement in the selection of pension scheme trustees.

We will give particular attention to preservation of benefits, which we consider to be a priority issue. We will ensure that employers comply with the requirements of the Act to preserve pension rights in respect of members' service after 1991. But more than this, we are also encouraging employers to arrange for the preservation of the pre-1991 pension rights of current members.

Given the above agenda, the Board's second year of operations promises to be as active as its first. As chairperson of the Board I would like to commend to you the commitment and dedication shown over the past year by my Board colleagues. They have brought considerable expertise to their task and have been unstinting in their efforts to ensure that the Board begins its life as a vibrant and effective organisation. Their time commitments to the Board have been exceptional.

I am confident that, with their continued support and that of the staff and parties interested in occupational pensions, the Board will continue to promote good practice in scheme administration, directly helping to safeguard the pension rights of scheme members throughout the State.



M. BROUGHAN
Chairperson

1 May 1992

The Role and Functions of the Pensions Board

The main function of the Pensions Board is to monitor and supervise the operation of the Pensions Act. This involves:

- ♦ *Providing information and guidance to trustees, scheme administrators and members on their responsibilities and rights under the Act, and encouraging the provision of training for trustees;*
- ♦ *Resolving disputes that may arise in relation to the provisions of the Act;*
- ♦ *Investigating cases of possible non-compliance and taking appropriate action to enforce compliance, including prosecution if necessary;*
- ♦ *Establishing and maintaining administrative structures to ensure that the above responsibilities are discharged effectively.*

Information and guidance

The Pensions Act makes trustees responsible for the proper running of their pension schemes. The Board has an important duty to provide information and guidance to trustees to enable them to understand and meet these legal obligations. The Board has already published a guide to the duties and responsibilities of trustees under the Act, designed to be of particular value to trustees who are not pension specialists. It has also published an overview of the information they are obliged to disclose.

Further initiatives in this area will include:

- ♦ *Drafting codes of practice for specific aspects of trustee responsibilities and setting standards of "best practice";*
- ♦ *Encouraging the provision of appropriate training facilities for trustees with the aim of ensuring that good quality courses are available at reasonable cost;*
- ♦ *Publishing guidance notes on specific provisions of the Act for people professionally involved in pensions administration;*
- ♦ *Establishing a legislation information service to ensure easy access to the Pensions Act and its regulations, incorporating any amendments, for all interested parties.*

The Board's information booklets will also help to ensure that members fully understand their rights under the Act.

Investigations and enforcement

The Board's aim is to promote good practice in the administration of pension schemes and voluntary compliance with the provisions of the Pensions Act. This should minimise the need for the Board to intervene in the affairs of schemes.

But whenever and wherever necessary, the Board will use its extensive powers, afforded by the Pensions Act, to investigate specific complaints. It will not be reluctant to enforce compliance with the Act through the Courts in particular cases where it considers this to be appropriate.

Advisory role

In addition to supervising the implementation of the Pensions Act, the Board is also involved in advising the Minister for Social Welfare, either at his request or on its own initiative, on the operation of the Pensions Act and on pension matters generally. In discharging this function the Board intends to continue to liaise closely with all interested parties to ensure that it is in a position to provide expert and considered advice on the issues on which it reports. The expertise which already exists within the Board greatly facilitates it in this work.

A review of the reports made during 1991 to the Minister is given on page 12.

Financing the Board's operations

The Board is determined to keep its administration costs as low as possible, consistent with discharging its responsibilities effectively. Such expenses are to be met through the collection of annual fees from occupational pension schemes.

These fees are collected directly by the Board, which uses its pension scheme registration system to determine liability for fee payments, invoicing and recording of fees paid.

How secure are occupational pensions?

The Pensions Board intends to include in its annual report each year, if appropriate, comment on issues of particular interest to pension scheme trustees, administrators and members, or the public generally – whether to inform or to allay concerns.

The following addresses the issue which has caused the greatest concern in 1991, following revelations about the administration of some pension funds in the United Kingdom.

In the light of serious irregularities in some schemes over the past year the Pensions Board has been repeatedly asked whether such irregularities can occur in Ireland now that the new Pensions Act is in force.

The answer is that, while it could still happen, it is far less likely.

Misbehaviour by trustees cannot be prevented in every case, any more than the rigorous enforcement of the most detailed legislation can be guaranteed to prevent wrongdoing in any aspect of human activity.

However, the protection provided by the Pensions Act, 1990 and the powers which the Board has under this Act to enforce its provisions, now make it far more difficult for trustees to mismanage schemes in a way which would pose a serious threat to the pension rights of members.

The disclosure of information requirements under the Act ensure that trustees are fully accountable to members for the administration of their schemes. Trustees must inform their members if more than 5% of the scheme's assets are invested in the employer's business (known as "self-investment") or in any one shareholding or property (known as "concentration of investment").

Trustees should be aware, therefore, that if they mismanage or misappropriate the

resources of the scheme they will eventually be found out. The Pensions Board has the power to investigate fully any suspicion of such irregularities and to take Court proceedings against trustees who fail to carry out their duties and responsibilities. The penalties for such failure are severe, and can include imprisonment and heavy fines.

The Board also has the power to petition the High Court to remove trustees if it considers that they have failed to carry out their duties and that the scheme is being administered – or has been administered – in a manner which jeopardises the rights and interests of members.

The rules concerning the Funding Standard are also intended to safeguard pension rights. The Standard fully protects the future pensions of those already receiving pensions as well as the rights preserved, in respect of service since 1 January 1991, of members yet to retire. Most schemes have also fully secured rights relating to pre-1991 service, but the new Standard requires that all schemes must be in this position by 1 January 2001.

The Standard provides for a further important safeguard. Any self-investment or concentration of investment in excess of 20% of the resources of the scheme cannot be taken into account for the purposes of complying with the Funding Standard.

If a scheme fails to meet the Funding Standard trustees may have to arrange to reduce the benefits due to members to a level which will enable the Standard to be met – and they will have to notify the members of these reductions.

Members of many schemes, furthermore, are going to have a bigger say in the appointment of trustees. The Pensions Act regulations covering member involvement in the appointment of trustees are expected to come into force from 1 January 1994.

The presence of trustees selected by members should reduce the likelihood of mismanagement or fraudulent practices. Where such activity occurs the “member trustees” should be in a position to detect it quickly and to take appropriate action, which could include asking the Pensions Board to intervene.

The effectiveness of the Pensions Act in safeguarding pension rights, however, is largely dependent on members using the rights to information they now have under the Act to monitor the administration and financial soundness of their schemes. The Board urges members to take an active interest in their pension scheme and to study the information which is now becoming available by law.

Members who are concerned that all may not be well within their scheme should, in the first instance, raise such concerns with their trustees. But the Pensions Board is there to help them if they do not receive a satisfactory response.

Trustees may also find themselves in a position where a majority of their trustee colleagues are mismanaging the resources of the scheme, and being in a minority are powerless to prevent it. The Pensions Board is there to help them, too. They should lose no time in acquainting the Board with their concerns, which is empowered to act quickly to prevent the rights and interests of members being jeopardised.

Given that personal and business relationships may be involved, some trustees or members may be reluctant to seek to involve the Board. The Board can assure confidentiality about the source of any information if this is necessary.

Often mismanagement of a scheme’s resources is not due to wilful intent, but to trustees’ lack of knowledge about their duties and responsibilities – in turn often

due to a lack of training. The Board is giving priority to providing appropriate information, drafting codes of practice and “best practice” guidelines and to encouraging the provision of good quality training courses at reasonable cost.

The main purpose of the Pensions Act is to safeguard the pension rights of members. That can only be achieved, on an on-going basis, if everyone involved in pension schemes works with the Pensions Board to use the protections provided in the Act to the fullest extent. Members, as well as trustees, need to become familiar with their rights to information and to know that the Pensions Board is always there to ensure full compliance with the rules.

Administrative and Financial Report

A significant part of the Board's work in 1991 involved putting into place the administrative structures and systems needed by the Board to carry out its statutory functions. At Board level working methods were agreed, committees established and responsibilities delegated.

The chief executive, Gerry Mangan, took up his post in May, followed by senior staff in early July. The Board moved to its own premises in November and a computer system was installed. The Board was fully operational by the year end.

Finance

The Minister for Social Welfare informed the Pensions Board at its first meeting, on 10 January 1991, that IR£700,000 had been allocated in the estimates of his Department to meet administrative expenses in the Board's first year of operation. This provision was intended to meet initial start-up costs as well as those for a full first year, including staffing, provision of accommodation and office administration generally.

During the first few months of 1991 the Board determined that its likely first year costs, including start up, would be IR£400,000. Costs for a full year were estimated as being likely to rise to approximately IR£600,000. On the basis that the Board, therefore, would require around IR£1 million over the two years, a fee structure for 1991 and 1992 was proposed to yield approximately IR£500,000 in each of those years. These proposals were accepted by the Minister for Social Welfare and announced in May 1991.

Fee structure

The fee structure is as follows:

Number of active members	Fee
2 - 500	IR£2 per member
501 - 1,000	IR£1,000 flat fee
1,000 +	IR£1 per member



Chief
Executive
Gerry
Mangan

No fee is payable if the scheme is a "frozen" scheme, a "death benefit only" scheme, an "Additional Voluntary Contribution only" scheme or a scheme with less than two members.

The fee payable by public sector schemes, excluded from the application of the Funding Standard under the Pensions Act, is 40% of that payable by private sector schemes of comparable size.

Financial outlook

Expenditure for 1991, at IR£362,712, was some IR£37,000 lower than originally estimated. But the fee income of IR£434,977 was approximately IR£65,000 below estimate.

This was because exact data on the number of members in occupational pension schemes was not available when the Board had to make its initial fee proposals. As the process of registration was undertaken it became apparent that the number of active members in larger schemes, in both the private and public sectors, had been over-estimated.

Because fee income has been lower than anticipated there will be a cumulative shortfall of income over expenditure of the order of IR£100,000 by the end of 1992.

The Board will review the fee structure in the second half of 1992 because it must ensure that the yield in future years will meet the 1992 shortfall as well as normal full year costs of its operations. It will also review its costs during 1992 with a view to ensuring that these are no more than is needed, while still discharging its functions effectively.

Registration of occupational pension schemes and collection of fees

Section 60 of the Pensions Act empowers the Board to compile and maintain a national register of occupational pension schemes. This is to enable the Board to ensure compliance by schemes with the requirements of the Act. Existing schemes were required to register with the Board by 31 December 1991. All new schemes must register within one year of commencement.

Section 25 of the Act provides for the payment of annual fees to the Board by occupational pension schemes to meet its administrative expenses. The fees for 1991 were due for payment before year end.

It was imperative, therefore, that the Board put into place the necessary administrative systems to meet the above deadlines. This was achieved.

Objectives of registration

The Board decided that the registration system should be designed to achieve a number of objectives, and specifically to:

- ◆ **Identify each individual scheme and both how and to what extent the Act applies to it;**
- ◆ **Assist members who have changed jobs in the course of their career to trace the schemes in which their benefits are preserved;**
- ◆ **Contain the details needed for speedy processing of enquiries and investigations;**
- ◆ **Provide a mechanism for the collection of fees due under Section 25 of the Act.**

Additional data

In future years both national and EC reporting requirements for pension schemes are likely to increase. At a national level more precise and comprehensive data than has been available up to now is also



Staff responsible for registration and fee collection
Thomas Dunphy,
David Moore,
Valerie Clooney.

required to assist in the continuing development of pensions policy.

With these requirements in mind, the Board also determined that the registration system should be designed to facilitate the compilation of data additional to that required for registration purposes under the Pensions Act. It is the intention, however, to confine requests for such additional data to information which is already required to be disclosed in annual reports under the Disclosure of Information provisions of the Act.

Registration procedures

The administrative procedures for the compilation and maintenance of the national register and the collection of fees were determined following consultation with life assurance companies, pension intermediaries and consultants. These procedures are supported by a sophisticated computer system.

In less than nine months over 40,000 schemes were registered and fees collected. The Board regards this achievement as being due to the hard work of everyone involved in the process and the considerable co-operation afforded to the Board by life assurance companies, scheme administrators and pension professionals.

Registration data

The compilation of a national register has already provided interesting preliminary data on the size and composition of occupational pension schemes, which are current.

In total there are 469,103 people who are members of current schemes (this excludes pensioners and members of frozen schemes).

CURRENT SCHEMES - DEFINED BENEFIT		
SCHEME SIZE	NO. OF SCHEMES	NO. OF MEMBERS
One Member	295	295
2 - 50	1,690	25,268
51 - 100	229	16,512
101 - 500	273	59,199
501 - 1,000	38	25,388
1,000 +	32	260,874
TOTAL	2,557	387,536

CURRENT SCHEMES - DEFINED CONTRIBUTION		
SCHEME SIZE	NO. OF SCHEMES	NO. OF MEMBERS
One Member	28,577	28,577
2 - 50	4,693	28,604
51 - 100	102	7,120
101 - 500	63	13,450
501 - 1,000	5	3,816
1,000 +	-	-
TOTAL	33,440	81,567

As the above tables show, there are nearly five times as many people who are members of "defined benefit" schemes as there are in "defined contribution" schemes.

By far the largest number of "defined contribution" schemes – 28,577, or 35% of all such schemes – are operated for the benefit of just one contributor. There are no schemes with more than 1,000 members which operate on the basis of defined contributions.

The preliminary returns have also shown that of the 387,536 members of defined benefit schemes, there are 197,588 members in those public sector schemes which are excluded from the application of the Funding Standard. Out of a total of 43 such schemes, 11 have more than 1,000 members. Those 11 schemes between them have a membership of 193,230, or 98% of the total.

Enquiries

The Board has already received and replied to a wide range of enquiries about the Pensions Act and about pension matters generally from an equally wide range of sources, including members of schemes, employers, pension professionals, trade unions and the general public.

The table below provides an analysis of the enquiries, apart from those of a routine nature, received between July and December 1991. The high proportion relating to registration is understandable, given that this was the first year in which occupational pension schemes were required to register.

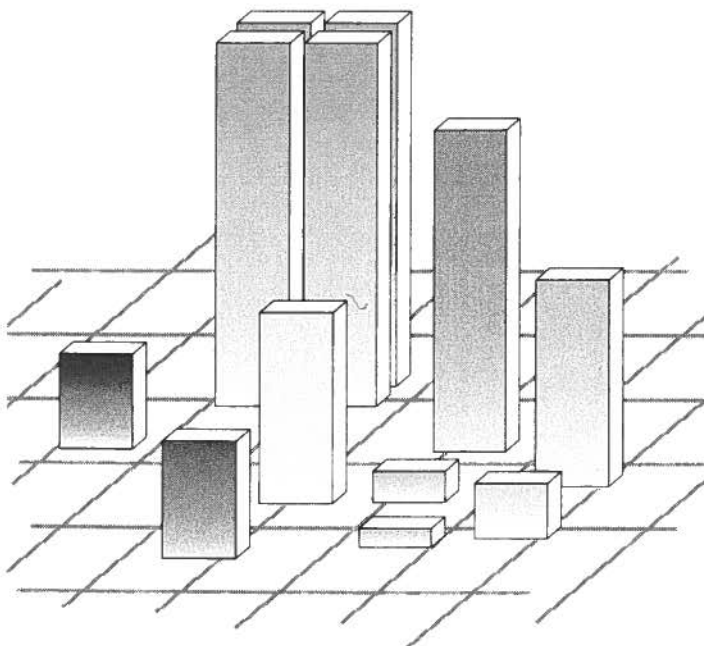
Apart from registration queries, the majority of which come from the pensions industry, the number of enquiries to the Board in the first quarter of 1992 was equal to the number received in the last six months of 1991. This could indicate an increased awareness of the Board's activities, an increased awareness by members and pensioners of the importance of their pension, or both.



Staff responsible for Enquiries and Investigations
Adrian Smith,
Catherine Goulding
and
Edel Stenson.

Pensions Board policy

It is the Board's policy in the first instance to direct enquirers seeking specific information on a scheme to the appropriate administrators, having first explained to the enquirers their rights and entitlements. The experience to date is that most enquirers do not subsequently revert to the Board. If contacted on a second occasion the Board's normal policy is to make direct contact with the pension scheme administrators.



ENQUIRIES BY TYPE

Registration	295
Pensions Act	19
Pensions Board	6
Preservation	24
Funding Standard	11
Disclosure	65
Trustees	38
Equal Treatment	4
Other	42

Advice to the Minister

Providing advice to the Minister for Social Welfare on all matters relating to the operation of the Pensions Act and on pensions generally is an important part of the work of the Pensions Board. During 1991 the Board reported to the Minister on the following matters.

Operation of the Pensions Act and its regulations

During 1991 the Board concluded, from its own experience and consideration of representations made by pension administrators and other professional bodies, that a number of technical amendments to the Act and its regulations were desirable.

The proposed amendments included ones designed to:

- ♦ ***Remove ambiguities in the existing text;***
- ♦ ***Provide for situations not covered by the existing provisions and which the Board considered should be.***

The amendments recommended by the Board were accepted by the Minister and were included in the Social Welfare Acts of 1991 and 1992.

The Board also examined the Disclosure of Information Regulations, which were among the first requirements under the Act to come into force. It recommended to the Minister a series of detailed amendments which were also accepted. In August 1991 he introduced a new regulation, S.I. No. 215 of 1991, to replace the previous regulation, S.I. No. 332 of 1990.

Advice on implementing the Act

The Act provides that procedures for the implementation of some of its main provisions are to be prescribed by regulation. The Minister sought the advice of the Board in relation to:

- ♦ ***Procedures for the registration of schemes;***
- ♦ ***The basis for calculating fees and the level of fees required to meet the cost of the Board's operations in 1991;***
- ♦ ***Procedures for implementing the Funding Standard requirements;***
- ♦ ***Detailed provisions on member participation in the appointment of trustees.***

The regulations subsequently introduced by the Minister were:

- ♦ *S.I. No. 325 of 1991, which prescribes the detailed procedures for registration;*
- ♦ *S.I. No. 372 of 1991, which prescribes the basis for calculating fees and procedures for their collection;*
- ♦ *S.I. No. 371 of 1991, which deals with a number of matters regarding the implementation of the Funding Standard requirements.*

The Trusteeship Committee of the Board is currently preparing a report on member participation in the appointment of trustees. The Minister has indicated that he intends to introduce regulations on this matter, which will come into force from 1 January 1994.

Equal treatment for men and women

The Minister also asked the Board to report to him on the implementation of Part VII of the Act, which provides for equal treatment for men and women in occupational social security schemes, in the light of the Judgment of the EC Court of Justice in what is known as the "Barber" case (Case C-262/88 – Barber v GRE). The Board recommended a number of amendments to Part VII of the Act which were provided for in the Social Welfare Act, 1992.

The Board also provided technical advice and assistance to the Government in the preparation of submissions to the European Court of Justice on the following cases:

- ♦ C-110/91 – *Moroni*
- ♦ C-152/91 – *Neath*
- ♦ C-200/91 – *Coloroll*

In these cases questions were submitted to the Court relating to:

♦ ***The retrospective application of the principle of equal treatment to pension rights in respect of service prior to 17 May 1990 – the date of the "Barber" case judgment;***

♦ ***Whether the use of actuarial calculation factors that differentiate between men and women is contrary to the principle of equal treatment.***

Consultation

In undertaking its advisory function to the Minister the Board is keen to consult all interested parties. Submissions received on any matter in relation to the Pensions Act or pension matters generally are welcome and fully taken into account. The Board is also appreciative of the support and co-operation it receives from the officials of the Department of Social Welfare and other relevant Government Departments and agencies in carrying out this responsibility.

Duties and responsibilities of trustees

The legal duties and responsibilities of trustees have built up over time through case law and the 1893 Trust Act.

Section 59 of the Pensions Act, which sets out the specific responsibilities of trustees of occupational pension schemes, came into operation on 1 November 1991. This is a vital section which formalises what would widely be regarded as good practice, or plain common sense.

Trustees are charged with the responsibility of holding and supervising the assets of a pension scheme on behalf of its members. Their duties and responsibilities can be summarised as being to:

- ◆ ***Ensure that contributions are received;***
- ◆ ***Provide for the proper investment of the resources of the scheme, in accordance with its rules. It should be noted that trustees have to disclose to members if "self-investment" and/or "concentration of investment" exceeds 5% of the scheme's assets;***
- ◆ ***Make arrangements for the payment of benefits;***
- ◆ ***Ensure that proper records are kept;***
- ◆ ***Ensure that the scheme complies with the Pensions Act.***



The Act requires that trustees fulfil a wide range of duties, including:

- ◆ ***Registration of the scheme;***
- ◆ ***Making arrangements to preserve or transfer benefits;***
- ◆ ***Providing information to members in accordance with the Disclosure of Information Regulations (see page 15);***
- ◆ ***Ensuring that the Funding Standard is met by defined benefit schemes;***
- ◆ ***Ensuring that men and women members are treated equally within the scheme.***

In most cases trustees do not perform these duties themselves on a day-to-day basis, but they are still responsible for ensuring that they are performed. **Trustees can delegate the work – but they cannot delegate the responsibility.**

The Board's function in relation to promoting and enforcing compliance with the provisions of the Pensions Act by trustees is described on page 4.

Accounting to members

That the first regulations made under the Pensions Act should concern Disclosure of Information (S.I. No. 332 of 1990) emphasises the importance of trustees being accountable to members for the administration and financial soundness of their schemes. These regulations have already been extensively revised in the light of experience (S.I. No. 215 of 1991).

Mandatory information

Difficulty in obtaining information represents a significant proportion of the enquiries which have been received by the Board so far, especially from members of pension schemes. It is anticipated that, as trustees and administrators become more familiar with the practical aspects of the Act's disclosure requirements, scheme members will be provided regularly with information about their scheme and their individual entitlements. This, in turn, should lead to a significant reduction in the volume of enquiries to the Board on this issue.



Staff responsible
for Information
and Research
**Aideen
Bugler
and
Josephine
Feehily**

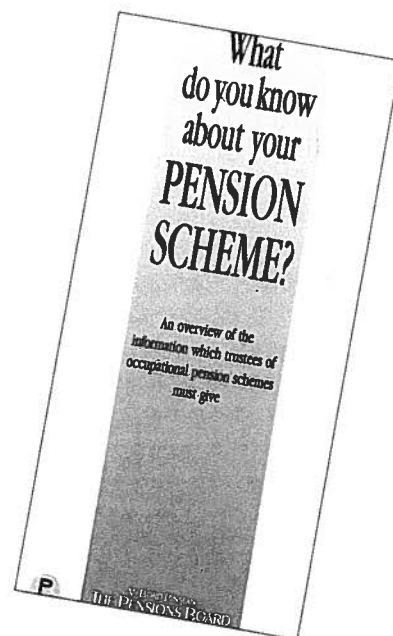
The Disclosure of Information Regulations set out in detail what information must be given, to whom and when. For example, basic information about the scheme must be provided on request to members, prospective members and their spouses and automatically to new members. Personal

information about entitlements must be given on request to members, and automatically to people leaving the employment, when a member retires or dies, or when a scheme is being wound up. The regulations also specify a wide range of documents which may have to be made available, depending on the size and type of the scheme. In particular, schemes must publish an annual report, containing prescribed minimum levels of information, within nine months of their year end.

During 1992 many schemes will be preparing and issuing annual reports for the first time. The Pensions Board urges trustees to make every effort to ensure that such reports are easy to read and understand.

The Board also urges scheme members to read their annual reports carefully. The reports now contain a considerable amount of valuable and relevant information about their scheme – quite possibly for the first time.

The Board is certain that the vast majority of occupational schemes are properly run. It is up to their trustees to demonstrate this to their members by communicating with them clearly. It is now not just common sense, but a legal requirement.



Equal treatment for men and women

Part VII of the Pensions Act, 1990 provides for the application of the principle of equal treatment for men and women in occupational social security schemes. This part of the Act is due to come into force on 1 January, 1993. The following is a brief description of the background to Part VII and its main implications for schemes.

EC Law

Part VII of the Pensions Bill, which was published in April 1990, was designed to implement into Irish law EC Directive 86/378, which covers equal treatment for men and women in occupational schemes. Only a month after the Bill was published, however, the European Court of Justice ruled in the "Barber" case that benefits provided under such schemes constitute "pay" within the meaning of Article 119 of the Treaty of Rome.

This Article, which has direct effect in Member States, provides that there shall be no discrimination between men and women in relation to pay for equal work. As a result of this judgment, therefore, equal treatment for men and women in occupational schemes became a legal requirement, at least with effect from the date of the judgment – 17 May 1990. The Pensions Bill was amended to reflect the implications of the judgment.

How the principle of equal treatment applies

Article 5 of EC Directive 86/378 sets out succinctly what the principle of equal treatment implies for occupational schemes. It states that

"the principle of equal treatment implies that there shall be no discrimination on the basis of sex, either directly or indirectly, by reference in particular to marital or family status, especially as regards:

- *The scope of the schemes and the conditions of access to them;*
- *The obligation to contribute and the calculation of contributions;*
- *The calculation of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of entitlement to benefits.*

The principle of equal treatment shall not prejudice the provisions relating to the protection of women by reason of maternity."

These requirements are specified in greater detail in Part VII of the Pensions Act.

Review of scheme rules

Under the terms of EC Directive 86/378 (Article 8.1), schemes have until 1 January 1993 to change their rules to ensure compliance with the principle of equal treatment. Part VII of the Act will come into force on that date in line with the Directive. Any scheme rule changes required must have retrospective effect to at least 17 May 1990.

If scheme rules discriminate between men and women after 1 January 1993, the more favourable treatment under the rules must be applied to scheme members of both sexes in respect of service from 17 May 1990.

Retrospective application

Article 8.2 of the EC Directive 86/378 is designed to ensure that equal treatment will not result in entitlements already acquired before it became mandatory being reduced. Section 71(3) of the Pensions Act allowed the Minister to let schemes maintain entitlements already acquired for up to 10 years. However, the Pensions Board recommended that this time limit should be reduced to six years from 1 January 1993 – except in the case of retirement ages, where it recommended a limit of 25 years.

In a small number of schemes the retirement age had been 60 years for women and 65 years for men. Since the late 1970s, however, in virtually all such schemes the retirement ages were equalised at 65 – although in practice female members have usually been allowed to retain entitlement to a full pension from the age of 60. Almost all these women will retire over the next 25 years. A 25 year transition period, therefore, should ensure that the accrued entitlements of the women concerned up to 17 May 1990 will be fully protected in virtually all cases.

These recommendations were accepted by the Minister and an appropriate amendment to Section 71(3) was made in the Social Welfare Act, 1992.

Outstanding issues

It is not fully clear from the terms of the European Court's judgment in the "Barber" case whether the retrospective application of equal treatment, i.e. to benefits in respect of service prior to 17 May 1990, is required under EC law. A series of cases have been submitted to the Court on this issue.

The Irish Government has also submitted observations on these cases in which it has stated reasons why immediate retrospective application, particularly in relation to retirement ages, should be ruled out.

A protocol has been included in the Draft Treaty on European Union agreed at Maastricht which provides that equal treatment shall not be required in occupational social security schemes under Article 119 in respect of service prior to 17 May 1990. This protocol should come into force on 1 January 1993, subject to the Draft Treaty being ratified by Member States.

The use of actuarial calculation factors, which differentiate between men and women in determining levels of benefit to the extent permitted under Article 6 of the EC Directive, has also been raised in two cases before the European Court of Justice.

The Pensions Board drew on the detailed treatment of this issue in the Fourth Report of the National Pensions Board on Equal Treatment, published in 1989, when preparing its advice to Government on its submissions on these cases.

A clear decision by the European Court on this issue, on which the EC Commission and EC Council of Ministers hold opposing views, would be welcome.

Guidance notes

The Board is currently preparing guidance notes which detail the equal treatment requirements under Part VII of the Pensions Act. These should enable trustees and scheme administrators to determine whether the rules of their schemes comply with the principle of equal treatment and to make any changes necessary before 1 January 1993.

Funding Standard

Part IV of the Pensions Act provides for a Funding Standard for defined benefit pension schemes. The main objective of the funding requirements is to prevent employers from making pension promises which they are unlikely to be able to afford and to enhance the security of the promises already made. Although this part of the Act came into force on 1 January 1991 and the Minister for Social Welfare made regulations on matters concerning its implementation on 31 December 1991, for most schemes this is an issue for 1992 and beyond.

To comply with the Funding Standard a defined benefit scheme must be able to meet liabilities as set down in the Act in the event of it being wound up. In particular, the future pensions of those already receiving pensions must be fully secured, as well as the preserved rights, in respect of service from 1 January 1991, of those yet to retire. Pre-1991 rights, which in many cases are

already fully secured, must be 100% funded in all cases by 1 January 2001.

The level of a scheme's funding must be demonstrated to the Pensions Board through the submission of an Actuarial Funding Certificate at least every three and a half years – the first one being due no later than 31 December 1993. The form of this certificate, prepared in consultation with the Society of Actuaries of Ireland, is prescribed in regulations and copies are available from the Board.

The Funding Standard also serves another purpose. Under the regulations, excessive self-investment or excessive concentration of investment by schemes which exceeds 20% of the assets of the scheme cannot be taken into account for the purpose of meeting the Standard. This should discourage such investments.

Member participation in the appointment of trustees

The Pensions Act (Section 62) provides for member participation in the appointment of trustees. The Minister for Social Welfare has asked the Pensions Board to prepare a report on how this provision can be given practical effect, with a view to introducing the necessary regulations which are intended to come into force from 1 January 1994.

Complex issues

The issues involved are far more complex than they might at first appear. The Board is acutely aware that the subject of member participation must not be allowed to become a cause of conflict between employers and members. The Board is anxious to avoid a level of regulation which would act as a disincentive to the implementation of member participation. It is also conscious

that participative structures have already been agreed for some schemes in advance of the statutory requirements. It is the Board's intention to make recommendations to the Minister on this matter by the middle of 1992.

The Board is mindful of the Minister's request that it should encourage employers to introduce voluntarily member participation in advance of the regulations. But the Board is also aware that some employers are reluctant to put systems in place which subsequently may not comply with the regulations. To address this concern the Board recommends to the Minister that the provisions of the regulations be announced at as early a date as possible.

The Pensions Board

The Pensions Board is a representative Board, comprising a chairperson and 12 ordinary members. Members are appointed by the Minister for Social Welfare, but under the provisions of the Pensions Act the Board must comprise representatives nominated by trade unions, employers, Government, the pensions industry and professional groups involved with occupational pension schemes.

The term of office for a Board member is five years. Casual vacancies are filled by the Minister for Social Welfare, or the nominating body, as appropriate. A person who fills a casual vacancy only holds office until what would have been the normal expiry date of the term of office of the person he or she has replaced.

Membership of the Pensions Board

The current members of the Board are:



Mary Broughan
(*Chairperson*)
Appointed directly by the
Minister for Social Welfare.



Michael Guilfoyle
Representative of the Minister
for Finance.



Mary Howe
Appointed directly by the
Minister for Social Welfare.



Brian McCracken
Nominated by the Association of
Pension Lawyers.



Kate Hayes
Appointed directly by the
Minister for Social Welfare.



James R. Kehoe
Nominated by the Society of
Actuaries in Ireland.



Patricia O'Donovan
Nominated by the Irish Congress
of Trade Unions.



Monica Healy
Appointed directly by the
Minister for Social Welfare.



Ciarán Long
Nominated by the Irish Insurance
Federation.



Tim Quirke*
Representative of the Minister for
Social Welfare.



Eamonn Heffernan
Nominated by the Irish
Association of Pension Funds.



Donal McAleese
Nominated by the Federation of
Irish Employers.



Robert Woods
Nominated by the Consultative
Committee of Accountancy Bodies in
Ireland.

The Board met 12 times in 1991.

*Replacing Gerry Mangan, who resigned in May 1991 on his appointment as chief executive.

Committees

The Board works through a committee system. Much of its detailed work, such as reports to the Minister for Social Welfare, are initially prepared by a committee. The committees can include people who are not members of the Board, but who have particular expertise in the matter under consideration.

Equal Treatment Committee

James R. Kehoe (*Chairperson*)
 Kate Hayes
 Monica Healy
 Mary Howe
 Gerry Mangan
 Patricia O'Donovan
 Tim Quirke
 Adrian Smith (*Secretary*)

The Committee met 10 times in 1991.

Finance Committee

Robert Woods (*Chairperson*)
 Michael Guilfoyle
 Eamonn Heffernan
 Ciarán Long
 Donal McAleese
 Gerry Mangan
 Tim Quirke
 Thomas Dunphy (*Secretary*)

The Committee met 17 times in 1991.

Legislation Committee

Brian McCracken (*Chairperson*)
 Eamonn Heffernan
 Mary Howe
 James R. Kehoe
 Ciaran Long
 Gerry Mangan
 Tim Quirke
 Adrian Smith (*Secretary*)

The Committee met 19 times in 1991.

Trusteeship Committee

Eamonn Heffernan (*Chairperson*)
 Don Bray
 Mary Howe
 Donal McAleese
 Stephen McCarthy
 Gerry Mangan
 Tim Quirke
 Josephine Feehily (*Secretary*)

The Committee met 6 times in 1991.

Staff of the Board

Chief Executive

Gerry Mangan

Head of Investigations

Adrian Smith

Head of Information and Research

Josephine Feehily
(Secretary to the Board)

Accountant/Registrar

Thomas Dunphy

Enquiries and Administration

Catherine Goulding

Systems Administrator

David Moore

Support Staff

Aideen Bugler
Valerie Clooney
Geraldine Slattery
Edel Stenson



Geraldine Slattery
at Reception

Report of the Comptroller and Auditor General

I have examined in accordance with auditing standards the Accounts on pages 23 to 29 which are in the form approved under the provisions of the Pensions Act, 1990.

I have obtained all the information and explanations which I considered necessary for the purpose of my audit.

In my opinion proper books of account have been kept by the Board and the financial statements, which are in agreement with them, give a true and fair view of the state of its affairs at 31 December, 1991 and of its transactions and source and application of funds for the period then ended.

P. L. McDonnell
Comptroller and Auditor General
1 May, 1992.

Statement of Accounting Policies

The following are the more important policies used by the Board

(a) Accounting Convention

The financial statements are prepared under the accruals method of accounting and under the historical cost convention in the form approved by the Minister for Social Welfare with the concurrence of the Minister for Finance in accordance with Section 22 of the Pensions Act, 1990.

(b) Fee Income

Fee income comprises the fees receivable in respect of the year to 31 December 1991 in respect of occupational pension schemes as laid down in Statutory Instrument No. 372 of 1991.

(c) Taxation

The Board is exempt from Corporation Tax under Section 41 of the Finance Act 1991.

(d) Tangible Fixed Assets and Depreciation

Tangible fixed assets are shown at cost less accumulated depreciation. Depreciation is charged in the income and expenditure account, on the straight line basis, at the annual rates set out below, so as to write off the assets, adjusted for estimated residual value, over the expected useful life of each appropriate category.

LEASEHOLD IMPROVEMENTS	10%
COMPUTER EQUIPMENT	25%
OFFICE FURNITURE	12½%
OFFICE EQUIPMENT	20%
MOTOR VEHICLE	20%

A full year's depreciation is provided for in the year of acquisition.

(e) Leases

i. Finance leases

Where an asset is acquired under a finance lease, the capital element is included in tangible fixed assets and amortised over the life of the asset and the outstanding capital element of the leasing obligation is included in bank and other advances. The interest element is written off over the primary period of the lease.

ii. Operating leases

Rental payments are dealt with in the income and expenditure account in the year to which they relate.

(f) Pensions

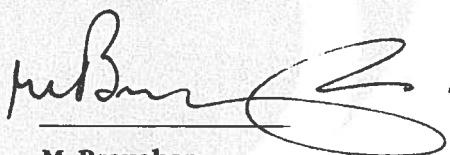
Pension costs of those employees of the Board who continue to participate in Public Service pension schemes have been dealt with in the Income and Expenditure Account. In addition, a provision amounting to 16.66% of pensionable salary cost has been made in the financial statements in respect of all other employees.

Income and expenditure account

FOR THE PERIOD ENDED 31 DECEMBER 1991

	<i>notes</i>	<i>IR £</i>
Income		
Registration fees		434,977
Deposit interest income		1,473
TOTAL INCOME		436,450
Expenditure		
Salaries, fees and expenses	2	87,199
Board member fees		12,000
Accommodation and establishment expenses	3	83,436
Recruitment, training and education	4	32,550
Information, research and publicity		18,157
Computer consultancy and other professional fees	5	77,988
General administration	6	10,645
Depreciation	7	40,737
TOTAL EXPENDITURE		362,712
Surplus for Period		73,738

The statement of accounting policies together with notes 1 to 12 form part of these financial statements.



M. Broughan
Chairperson



G. Mangan
Chief Executive

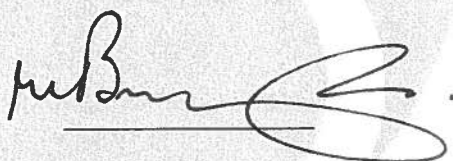
3 April 1992

Balance Sheet

AT 31 DECEMBER 1991

	<i>notes</i>	<i>IR £</i>	<i>IR £</i>
Fixed assets			
Tangible assets	7		170,388
Current Assets			
Debtors	8	207,916	
Cash on hand		39	
		207,955	
Current liabilities			
Creditors: amounts falling due within one year			
Bank and other advances	9	91,785	
Other creditors	10	205,606	
		297,391	
Net current assets			(89,436)
Creditors: amounts falling due after one year			
Bank and other advances	9		(7,214)
Total assets			73,738
Financed by			
Surplus for period			73,738

The statement of accounting policies together with notes 1 to 12 form part of these financial statements.



M. Broughan
Chairperson



G. Mangan
Chief Executive

3 April 1992

Statement of source and application of funds

FOR THE PERIOD ENDED 31 DECEMBER 1991

	<i>IR £</i>
Source of funds	
Results of operations:	
Surplus for period	73,738
Adjustment for item not involving the movement of funds	
Depreciation	40,737
	<u>114,475</u>
Application of Funds	
Purchase of tangible fixed assets	211,125
Increase in working capital	2,310
	<u>213,435</u>
Net outflow	<u>(98,960)</u>
Movement in net liquid funds	
Increase in cash on hand	39
Increase in bank and other advances	(98,999)
	<u>(98,960)</u>

*Notes to the Financial Statements***1. The Pensions Board**

The Board was established on 21 December 1990 and commenced operations on 10 January 1991, the date on which the Board held its first meeting.

2. Employee Numbers and Costs

The total number of employees at 31 December 1991 was 8. The average number of employees in the Board during the year was 3. The aggregate employee and related costs were as follows:

	IR£
SALARIES	71,014
PENSION COSTS	11,573
SOCIAL WELFARE	4,612
	<u>87,199</u>

3. Accommodation and Establishment Expenses

	IR£
SERVICE CHARGE	1,636
RATES	1,500
INSURANCE	173
ELECTRICITY	174
CLEANING	937
VAT AND STAMP DUTY ON LEASE	67,571
CONVEYANCING FEE	7,288
ARCHITECTURAL FEE	4,157
	<u>83,436</u>

The Board occupied Department of Social Welfare offices without charge until 13 November 1991 when a lease was taken on the second floor of Holbrook House, Holles Street, Dublin 2 for a 20 year period with a break option after 10 years. Under the terms of the lease the first six months occupancy is rent free.

4. Recruitment, Training and Education

	IR£
RECRUITMENT	30,882
TRAINING AND EDUCATION	1,668
	<u>32,550</u>

5. Computer Consultancy and Other Professional Fees

	IR£
COMPUTER CONSULTANCY FEES	73,217
LEGAL FEES	2,771
AUDIT FEES	2,000
	<u>77,988</u>

*Notes to the Financial Statements***6. General Administration**

	IR£
STATIONERY AND OFFICE EXPENSES	4,340
TELEPHONE AND POSTAGE	3,340
TRAVEL AND SUBSISTENCE	1,852
INSURANCES	287
COMPUTER EXPENSES	144
INTEREST AND CHARGES	65
LEASING FINANCE CHARGES	617
	<u>10,645</u>

7. Tangible Fixed Assets

	LEASEHOLD IMPROVEMENTS	COMPUTER EQUIPMENT	OFFICE FURNITURE	OFFICE EQUIPMENT	MOTOR VEHICLE	TOTAL
	IR£	IR£	IR£	IR£	IR£	IR£
COST						
Additions in period	49,425	102,953	22,560	23,827	12,360	211,125
ACCUMULATED DEPRECIATION						
Provided during period	4,942	25,738	2,820	4,765	2,472	40,737
Net Book Value*						
At 31 December 1991	<u>44,483</u>	<u>77,215</u>	<u>19,740</u>	<u>19,062</u>	<u>9,888</u>	<u>170,388</u>

- *Assets acquired under finance leases, at cost less accumulated depreciation, included in tangible fixed assets, amounted to IR£9,888. The depreciation charged during the period on such assets amounted to IR£2,472.*

8. Debtors

	IR£
AMOUNTS FALLING DUE WITHIN ONE YEAR:	
REGISTRATION FEES	181,805
PREPAYMENTS	24,638
ACCRUED DEPOSIT INTEREST	1,473
	<u>207,916</u>

9. Bank and Other Advances

	IR£
AMOUNTS FALLING DUE WITHIN ONE YEAR:	
BANK OVERDRAFT	88,092
OBLIGATIONS UNDER FINANCE LEASE	3,693
	91,785
AMOUNTS FALLING DUE AFTER ONE YEAR:	
OBLIGATIONS UNDER FINANCE LEASE	7,214
	<u>98,999</u>
REPAYABLE AS FOLLOWS:	
WITHIN ONE YEAR	91,785
BETWEEN ONE YEAR AND TWO YEARS	4,198
BETWEEN TWO AND FIVE YEARS	3,016
	<u>98,999</u>

*Notes to the Financial Statements***10. Creditors**

	IR£
AMOUNTS FALLING DUE WITHIN ONE YEAR:	
CREDITORS	45,092
ACCRUALS	160 514
	<u>205,606</u>

11. Financial Commitments

i. Capital Commitments

There were no capital expenditure commitments at 31 December 1991.

ii. Finance Leases

The Board's financial commitments at 31 December 1991 in respect of finance lease obligations are set out in note 9.

There were no commitments existing at the balance sheet date in respect of finance leases which had been entered into but which commenced after the year end.

iii. Operating Leases

The Board had commitments payable in the next twelve months under non-cancellable operating leases as follows:

LEASE OF OFFICE ACCOMMODATION AT HOLBROOK HOUSE.	IR£
EXPIRING WITHIN ONE YEAR	-
EXPIRING AFTER ONE YEAR AND BEFORE FIVE YEARS	-
EXPIRING AFTER FIVE YEARS	35,732
	<u>35,732</u>

iv. Pensions

Under Section 17 of the Pensions Act, 1990 the Board may make a scheme or schemes for the granting of superannuation benefits to permanent and pensionable Board staff. Such a scheme is being prepared.

12. Approval of Financial Statements

The financial statements were approved by the Board at its meeting held on 3 April 1992.

Appendix 1 - Legislation

The Pensions Act, 1990, was enacted on 24 July 1990. Since then, it has been amended and a significant number of regulations have been made under the Act, by way of Statutory Instruments.

The following is a list of relevant legislation to date.

ACTS

The Pensions Act, 1990	No. 25 of 1990
The Social Welfare Act, 1991	No. 7 of 1991
The Social Welfare Act, 1992	No. 5 of 1992

STATUTORY INSTRUMENTS

Pensions Act, 1990 (Sections 60 and 61) (Commencement) Order, 1990
S.I. No. 329 of 1990

Pensions Act, 1990 (Parts III, IV and V) (Commencement) Order, 1990
S.I. No. 330 of 1990

Pensions Act, 1990 (Parts I and II) (Commencement) Order, 1990
S.I. No. 331 of 1990

Occupational Pension Schemes (Disclosure of Information) Regulations, 1990
S.I. No. 332 of 1990*

Pensions Act, 1990 (Part II) (Establishment Day) Order, 1990
S.I. No. 343 of 1990

Occupational Pension Schemes (Disclosure of Information) Regulations, 1991
S.I. No. 215 of 1991

Pensions Act, 1990 (Sections 59, 63 and 64) (Commencement) Order, 1991
S.I. No. 259 of 1991

Occupational Pension Schemes (Registration) Regulations, 1991
S.I. No. 325 of 1991

Occupational Pension Schemes (Funding Standard) Regulations, 1991
S.I. No. 371 of 1991

Occupational Pension Schemes (Fees) Regulations, 1991
S.I. No. 372 of 1991

*Revoked from 1 August 1991.

Appendix 11 - Operative Dates of Parts of the Pensions Act

The Pensions Act, 1990, has a total of 81 Sections in seven Parts, which were brought into effect on various dates by way of Statutory Instruments. The following list shows the operative dates, and also those sections which are not yet operative.

		Operative Date
PART I	Preliminary and General	21 December 1990
PART II	Establishment of Pensions Board	21 December 1990
PART III	Preservation of Benefits	1 January 1991
PART IV	Funding Standard	1 January 1991
PART V	Disclosure of Information in relation to Schemes	1 January 1991
PART VI	Trustees of Schemes	
	<i>Section 59</i>	1 November 1991
	<i>Sections 60 and 61</i>	1 January 1991
	<i>Section 62</i>	**Not yet operative
	<i>Sections 63 and 64</i>	1 November 1991
PART VII	Equal Treatment for Men and Women in Occupational Benefit Schemes	*Not yet operative

*Due to come into force no later than 1 January 1993.

**Minister for Social Welfare has announced his intention to bring this section into force by 1 January 1994.

Appendix 111 - Publications

Published by the Department of Social Welfare

- **Protecting your Pension Rights**
- A Guide to the Pensions Act, 1990

Published by the Pensions Board

- **So You're a Pension Scheme Trustee?**
A brief guide to the duties and responsibilities of trustees of occupational pension schemes written for the lay-person.
- **What Do You Know About Your Pension?**
An overview of the information which occupational pension schemes must give. This booklet is of use to trustees and administrators of schemes and to scheme members.
- **The Pensions Board**
An introduction to the Board, its functions and its membership.
- **Guidance Notes**
The Board is preparing a series of technical guidance notes on the Pensions Act and its regulations with pension scheme practitioners in mind. The first note, which covers the Disclosure of Information requirements, is now available. It is intended to develop a full series of guidance notes over time.

In the Course of Preparation

- **Is My Pension Secure?**
(available mid 1992)
In response to the level of concern by members that their pension may not be there for them when they retire, this booklet will outline the various protections provided by the Pensions Act.
- **Legislation Information Service**
Designed for pension practitioners, the Board will shortly introduce a legislation information service which will contain the text of the Pensions Act, 1990, as amended, and all its regulations. Subscribers to this service will receive updates as legislation changes.