



Partnership

ARTHUR COX

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Cross-border Pensions Briefing

Irish & UK Pensions Law: Some comparative highlights

Set out below is a summary of some of the main differences between Irish and UK pensions law. The differences listed below are only a brief summary and do not reflect the entirety of the differences in pensions law between the two jurisdictions (or the full detail in any particular instance).

Background framework

Revenue Limits

The Irish Revenue have prescribed one set of limits in respect of both defined benefit and defined contribution schemes. Those limits are similar to the pre-1987 old regime UK limits and have not been subject to A day type revisions. However, Irish limits do provide for maximum fund thresholds and annual contribution limits.

Amendment

There is no Irish equivalent of section 67 however there has always been a general presumption that it would be difficult to reduce leaving service accrued rights without member consultation and consent. In fact, the legislature has recently provided a statutory mechanism for reductions in accrued benefits without member consent by application to the Pensions Board.

TUPE

In Ireland, similar to the old position in the UK, TUPE has been interpreted as not covering occupational pension schemes. The Irish regulations do not provide for any minimum replacement benefit. The term occupational pension scheme does not include a Personal Retirement Savings Account (PRSA) which is a personal contractual arrangement established between an account holder and the provider of the PRSA. A contractual commitment by an employer to contribute to PRSA must be replicated on a TUPE transfer. Policy based life cover also falls outside TUPE and so must be replicated.

Compulsory Membership

Compulsory membership is permitted in Ireland.

Administration of pension schemes

Preservation

The preservation rules in Ireland changed in 1991 and 2002. For new entrants, there is a minimum of two year's service before benefits must be preserved under statute. Where a member dies in deferment, it is mandatory in a defined contribution scheme that payment be made to the deferred member's estate.

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

Death Benefits

Irish "tax free" death in service lump sums are not always tax free. The nearest Irish equivalent to UK Inheritance Tax is Capital Acquisitions Tax (CAT). There are various thresholds of exemption from CAT depending on the relationship to the deceased. Spouses are wholly exempt from CAT. The trustees of a pension scheme are secondarily liable for the payment of CAT if the recipient does not account for it. Trustees usually withhold part of the benefit pending confirmation of settlement of tax liability.

Payment/Investment Timing

The timescales for payment and investment of contributions are different in Ireland. The Pensions Act places an obligation on employers to remit contributions to trustees within 21 days following the end of the month in which the deduction was made. The trustees then have an obligation to invest those contributions within 10 days.

Transfers

The trustees of a funded scheme cannot refuse to accept a transfer in (and transferring trustees are obliged to pay a transfer payment). The timescales, disclosure requirements and statutory obligations in respect of the transfer differ from those in the UK (although casual terminology is similar if not identical). Deferred pensions cannot be transferred out of a scheme without the consent of the deferred member except in the limited circumstance of wind-up and bulk transfer.

Judicial Separation and Divorce

There are two legal methods for ending a marriage in Ireland. They are judicial separation and divorce. They are governed by the Family Law Act, 1995 and the Family Law (Divorce) Act, 1996 respectively. Irish family law distinguishes between retirement and contingent (death in service) benefits. The non-member spouse's entitlement is dependant on the member spouse and comes into payment on the retirement of the member, although the option of pension splitting exists. The UK concepts of earmarking and pension sharing do not apply in Ireland. The Irish regime is nearer to the concept of earmarking.

Trustees

Member Nominated Trustees (MNTs)

MNTs are not automatic in Ireland. The relevant regulations can be invoked by the members of an occupational pension scheme where there are 50 or more qualified members in the scheme. Due to certain inflexibilities in the regulations there is a tendency in Ireland for employers to put in place informal procedures which are more flexible than the formal regulations.

Internal Dispute Resolution Procedure (IDRP)

The IDRP procedure in Ireland is a one stage procedure. An application is made by or on behalf of an aggrieved member to the trustees of the pension scheme setting out the required details and the trustees make a determination within three months from the date on which all of the application particulars were received.

Trustee Training

From 1 February 2010 trustees of Irish pension schemes will be obliged to undertake trustee training at least every two years. In addition newly appointed trustees will be required to receive training within six months of their appointment and existing trustees must complete initial training by 1 February 2012. The Pensions Board has recently launched an e-learning facility free of charge to trustees to assist them in meeting these obligations.

Contacts

If you would like further information on Irish pension law and developments, please do not hesitate to contact:



Philip Smith Partner
+353 (0)1 618 0557
philip.smith@arthurcox.com



Declan Drislane Partner
+353 (0)1 618 0511
declan.drislane@arthurcox.com

or your usual Arthur Cox contact.

Dublin

Earlsfort Centre, Earlsfort Terrace, Dublin 2, Ireland
tel: +353 (0)1 618 0000 | fax: +353 (0)1 618 0618
email: dublin@arthurcox.com

London

12 Gough Square, London EC4A 3DW, England
tel: +44 (0)20 7832 0200 | fax: +44 (0)20 7832 0201
email: london@arthurcox.com

Belfast

Capital House, 3 Upper Queen Street, Belfast BT1 6PU, Northern Ireland
tel: +44 (0)28 9023 0007 | fax: +44 (0)28 9023 3464
email: belfast@arthurcox.com

New York

300 Park Avenue, 17th Floor, New York NY 10022, USA
tel: +1 (1)212 705 4288 | fax: +1 (1)212 572 6499
email: newyork@arthurcox.com