

Group Briefing September 2016

Pensions Update

KEY CONTACTS

For further information please speak to your usual Arthur Cox contact or one of the following lawyers:



PHILIP SMITH
PARTNER

+353 1 618 0557
philip.smith@arthurcox.com



CATHERINE AUSTIN
PARTNER

+353 1 618 1102
catherine.austin@arthurcox.com

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.

1. POLICY UPDATE

1.1 *Access to ARF option for holders of Buy-Out Bonds originating in DB Schemes*

A change to the Revenue Commissioner's administrative procedures, effective from 22 June 2016, means that former defined benefit scheme members whose benefits were transferred to a buy-out bond may now access an Approved Retirement Fund ("ARF") rather than being restricted to the purchase of an annuity.

AC Comment: This change has been welcomed by the pensions industry. The Minister for Finance noted that the change would particularly impact on individuals with buy-out bonds whose defined benefit scheme had been wound up.

1.2 *Report of Interdepartmental Group on Fuller Working Lives Published*

The Minister for Public Expenditure and Reform, Paschal Donohoe, published the Report of the Interdepartmental Group on Fuller Working Lives, chaired by his Department, on 12 August 2016. The report was prepared by a working group established to consider policy around retirement age in the public and private sectors.

The working group was established as a result of people living longer, more active and healthier lives in addition to the demographic pressures associated with an

ageing population. Expenditure on State pensions and relevant supplementary payments is set to rise from €7 billion in 2016 to €8.7 billion in 2026. This is despite the increase in the State pension age from 66 to 67 in 2021 (and the further planned increase to age 68 in 2028).

It noted that in a positive aging environment, workers should be facilitated by employers with the option to work beyond normal retirement age in a flexible, certain manner. The group also recognised that appropriate supports for older workers (such as training) may be needed to enable them to be active participants in the labour market and that the State, employers and workers themselves all had responsibilities in this area.

AC Comment: This report is the most recent attempt to examine the implications arising from retirement ages and make recommendations on appropriate policy frameworks to address these issues.

2. CASE LAW UPDATE

2.1 *Pensions Authority pursues District Court action for failure to supply information*

A company has been fined €100 in the District Court for failing to comply with a statutory request made by the Pensions Authority (the "Authority") under

section 18 of the Pensions Act. The Authority had requested information and documentation in relation to pension deductions from employees' wages and payments made to the pension scheme following allegations that monies were not being remitted to the scheme. The information was not provided. Costs were awarded against the company and one of the directors of the company was convicted.

AC Comment: The conviction demonstrates that the Authority regards non-compliance with requests to provide information as a serious matter. Failures in compliance may result in fines to both companies and directors and to criminal convictions of directors.

2.2 UK Court of Appeal orders reference to ECJ on Insolvency Directive

Article 8 of the EU Insolvency Directive requires national governments to take the "necessary measures" to protect the interests of employees and former employees in relation to rights under pension schemes. The Irish government has sought to meet this requirement by the establishment of the Pensions Insolvency Payments Scheme ("PIPS"). In the UK, the Pension Protection Fund (the "PPF") was established.

In *Hampshire v Board of the Pension Protection Fund*, the claimant was a member of a defined benefit scheme. After the sponsoring employer of the scheme became insolvent, the scheme entered a PPF assessment period. The member argued that the combined impact of the PPF compensation cap and non-indexation of certain benefits reduced his pension to less than 50% of his accrued rights and that this was contrary to Article 8.

The Court of Appeal of England and Wales found that capping provisions under the PPF legislation had not correctly or adequately transposed the

provisions of Article 8. However, as it acknowledged the position was not clear, it referred the question to the Court of Justice of the European Union ("CJEU") for review.

AC Comment: Clarification on this point is unlikely to issue for some time but may cast doubt on the PIPS solution, forcing the Irish Government to rethink insolvency protection.

2.3 Use of age limits in police force objectively justifiable - Advocate General

The Advocate General of the CJEU (the "AG") has opined that a national law imposing an upper age limit of 35 to enter the Basque police force is compliant with EU law as it is "strictly necessary to restore an age structure that will no longer threaten the operational capacity and correct functioning of police services". The retirement age of Basque police officers is 59 or 60, with an option to be placed on reduced hours duties from the age of 56.

AC Comment: Whilst it is not binding, the opinion of an AG informs the eventual judgment of the Court. The AG's emphasis on the need to consider operational requirements in the context of a largely aging workforce may be helpful for employers seeking to respond to the changing needs of an aging workforce and expands the available objective justifications for mandatory age limits.

www.arthurcox.com

Dublin

+353 1 618 0000
dublin@arthurcox.com

Belfast

+44 28 9023 0007
belfast@arthurcox.com

London

+44 207 832 0200
london@arthurcox.com

New York

+1 650 943 2330
newyork@arthurcox.com

Silicon Valley

+1 650 943 2330
siliconvalley@arthurcox.com