ARTHUR COX

Group Briefing

Summer 2017

Update on Social Welfare and Pensions Bill 2017

The General Scheme of the Social Welfare and Pensions Bill 2017 (the "Bill") was published by the Department of Social Protection on 9 May 2017. The Bill follows three private members' bills introduced to Dáil Éireann in early 2017, each of which contained provisions restricting the power of employers to terminate their liability to contribute to defined benefit occupational pension schemes. Currently, the provisions in the Bill will not be retrospective but will come into force on enactment. It is proposed that the Bill will be enacted before the Dáil's summer recess.

While there are a number of points in the General Scheme of the Bill that we anticipate will be clarified as the Bill makes its way through the Oireachtas, we consider that, as published, the Bill gives rise to a number of important considerations necessitating an urgent review by employers and trustees of certain defined benefit occupational pension schemes.

MAIN CONSIDERATIONS

- The effect on schemes without notice periods on service of a notice of termination of contributions is to change the balance of power and introduce a notice period. The power to terminate contributions or wind up schemes on immediate notice is eliminated.
- The effect on schemes with notice periods is to extend the minimum period of notice to 12 months (save by agreement between the employer and the trustees after consultation with the members). This will impact on the duration of a scheme wind up.
- Where employers and trustees cannot agree a funding proposal, the power to impose an employer contribution rate covering a statutory minimum funding standard ("MFS") deficit (which is enforceable as a statutory debt) is vested in the Pensions Authority. This power is regardless of the current balance of power in the scheme relating to the setting or agreement of contribution rates (or any statutory contribution rate or existing funding agreement).
- Employers and trustees of schemes that allow immediate termination of contributions to, or power to effect an immediate wind-up of, the scheme should review their deeds and consider what action, if any, to take and the timeframe in which to take it. The introduction of a notice period and the potential statutory debt may have accounting implications for certain employers.
- A lot of detail is left to regulations and there are a number of key points which will no doubt be clarified as the Bill progresses.

DEBT ON THE EMPLOYER IN CERTAIN CIRCUMSTANCES

The Bill contains provisions which, if enacted, will create a statutory debt on the employer in the event that the trustees and principal employer of a defined benefit pension scheme in deficit on the MFS basis cannot agree a funding position.

The Bill gives the Pensions Authority power to determine a schedule of contributions ***"which shall satisfy the funding standard and the funding standard reserve".*** The amount detailed in the schedule of contributions will be deemed a debt due from the employer to the trustees and may be recovered by the trustees in court. While the current scope of the debt appears to be limited to the MFS (including the risk reserve in certain circumstances), the effect of this will be more pronounced if, in future, the MFS becomes more robust.

It is currently unclear how the Bill would impact on the wind-up of a scheme on an employer's insolvency and how it will interact with related legislation.

12 MONTH NOTICE PERIOD TO WIND UP

The Bill provides for a 12 month notice period prior to an employer terminating its contributions to a defined benefit scheme (or taking any action to wind up a defined benefit scheme) whether that scheme is in deficit or not.

» If a scheme is not in deficit, the employer must continue to make contributions as normal (i.e. in accordance with any prevailing contribution agreement) during a 12 month notice period.

» If a scheme is in deficit on the MFS basis and a funding proposal has been agreed, the employer funding obligations under the funding proposal continues for the term of the notice period (regardless of any provision of the funding proposal to the contrary). Additionally a "funding proposal" must be agreed during the 12 month period. This appears to be an additional funding proposal which presumably addresses the MFS deficit within that 12 month period.

» The Bill provides for notifications to and consultations with all scheme beneficiaries by the trustees and the employer as may be prescribed by regulations.

OTHER PROVISIONS RELEVANT TO PENSION SCHEMES

The Bill also contains provision to reduce the time period to 6 months for submission of a funding proposal following a negative actuarial funding certificate and to introduce certain changes to the equal treatment provisions of the Pensions Act.

If you have any queries in relation to the Bill, please contact Philip Smith, Catherine Austin or your usual Pensions Group contact.

KEY CONTACTS

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