Group Briefing

Spring 2018

Pensions Update

1. A ROADMAP FOR PENSIONS REFORM 2018-2023

Overview

The Government published a paper called A Roadmap for Pensions Reform 2018-2023 (the "Roadmap") on 28 February 2018. The Roadmap aims to build on reports published by previous Governments, identifies specific actions that need to be taken to reform private and public sector pension provision and sets out a timetable for implementation. The Roadmap looks at six key "strands" of action. They are: (i) reform of the State pension; (ii) a new auto-enrolment savings system; (iii) improving governance and regulation (including IORP II); (iv) measures to support the operation of defined benefit ("DB") schemes; (v) public service pensions reform; and (vi) supporting fuller working lives. Additional summary information in relation to each is set out further below. The paper may be obtained from http://www.welfare.ie/en/pressoffice/pdf/PensionsRoadmap.pdf.

1.1 Reform of the State Pension

The Roadmap notes that the current rate of State pension is 34/35% of average earnings. In order for a PAYG model to work generally there need to be roughly four workers contributing to the Social Insurance Fund for every pensioner drawing from it. Within 40 years, the ratio of people of working age (and note, not workers) to pensioners in Ireland is estimated to fall to 2.3:1.

The Roadmap indicates the Government's intention to:

(a) examine and develop proposals to:

  (i) set a formal benchmark target of 34% of average earnings for the State contributory payments; and

  (ii) link future changes in the rate of the State pension to CPI and average wages;

(b) replace the current "yearly average" system with a "Total Contributions Approach" ("TCA") by 2020. TCA will make the State pension directly proportionate to the number of social insurance contributions made by a person over their working life with pension credits granted for people to have taken time out of the workforce to perform caring duties;

(c) link the State pension age to life expectancy, although there will be no further increase in the State pension age prior to 2035 and there will be 13 years' notice given of any proposed changes; and

(d) engage actuarial advice in the setting of social insurance fund contribution rates.

A target date of Q3 2020 is proposed for legislation to implement the TCA.

1.2 Auto-enrolment system

The Roadmap notes that with just 1% of the EU's population, Ireland has about 50% of pension schemes in Europe (approximately 160,000 schemes), however, just 35% of the private sector workforce has private pension cover.

In light of the low level of coverage, the Roadmap sets out the Government's intention to:

(a) introduce, by 2022, a State sponsored supplementary retirement savings system in which workers will be automatically enrolled;

(b) roll out public consultation, targeted for Q2 2018, on the form of auto-enrolment to be introduced with the following key characteristics:

  (i) contributions will be made by employees, employers and topped up by the State and there will be provision for employees to opt out;

  (ii) benefits under the auto-enrolment scheme will be payable at the same age as the State pension; and

(iii) existing private pension arrangements can be retained.

1.3 Improving governance and regulation

The Roadmap notes that concerns have been expressed for some time regarding the large number of pension schemes in Ireland, the professional fees charged to those schemes (for both administration and investment advice) and the standard of governance of those schemes. The Roadmap indicates Government's intention to advance the regulatory framework imposing further obligations on providers and giving the Pensions Authority further powers to enable intervention and address non-compliance:

(a) transpose the IORP II directive (the "Directive") into Irish law with effect from 2019;

(b) require all new and existing schemes to obtain "authorised status" from the Pensions Authority in order to carry on activities and get tax relief;

(c) introduce a personal fitness and probity benchmark for trustees and introduce professional standards for trustees echoing the Directive's requirement that persons who run an IORP should be fit and proper i.e. have adequate qualifications and be persons of good repute and integrity;

(d) require that all trustee boards (including the board of a corporate trustee) have a minimum of two trustees at least one of whom has mandatory minimum trustee qualification and at least one other has at least two years' experience acting as a trustee;

(e) grant the Pensions Authority the power to remove trustees where they do not meet those standards;

(f) introduce new governance codes and standards detailing appropriate governance and management structures and identify what further powers/measures the Pensions Authority would need to take pre-emptive action to address shortcomings identified on a prospective, prudential and risk based basis echoing the Directive's general governance requirements; and

(g) identify options to rationalise the number of individual pension vehicles which exist at present and in particular review the ARF option and consider whether regulatory oversight is fit for purpose.

The Roadmap also sets out that an Interdepartmental Pensions and Reform and Taxation Group, chaired by the Department of Finance, has been established and it will review the cost of funded supplementary pensions to the Exchequer. Its review will include an assessment of the economic and social benefits delivered and an evaluation of equity in the distribution of tax expenditure on pensions i.e. the fairness and effectiveness of tax relief is to be reviewed.

1.4 Measures to support the operation of DB schemes

The Roadmap notes that with over €62 billion of assets under management in DB schemes in Ireland, the DB sector forms an important part of retirement provision in Ireland. Over 90% of DB schemes are closed to new entrants and approximately 26% of DB schemes were reported as not meeting the statutory minimum funding standard. In order to support DB schemes, the Government intends to:

(a) advance the Social Welfare, Pensions and Civil Registration Bill 2017 and identify whether there are other potential regulatory measures that can be introduced to improve oversight of and transparency in the financial status of DB schemes;

(b) identify and investigate other potential regulatory measures to improve effective oversight and transparency in the financial status of DB schemes; and

(c) arrange for further consultations to take place with sectoral representatives to identify any appropriate and sustainable funding standard reform options.

1.5 Public Service pensions reform

The Government intends to implement the following changes in public service pension provision:

(a) review the mandatory retirement age in the public service where it falls before the State pension age; and

(b) introduce a new permanent additional superannuation contribution for public servants.

1.6 Supporting fuller working lives

The Government indicates that it will take the following measures to support and encourage fuller working lives:

(a) permit the deferral of receipt of the contributory State pension on an annual basis and increase the rate received when claimed;

(b) review current employment practices in relation to using mandatory retirement ages and consider the merits of restricting the capacity to use mandatory retirement provisions; and

(c) review pension drawdown rules in general and the inconsistencies that apply across various retirement products in relation to minimum and maximum ages for drawdown (e.g. occupational pension schemes, PRSAs, RACs and buy-out-bonds).

The Roadmap contains an outline of the Government's intentions in relation to pensions up to 2023. There is, therefore, no action to be taken by trustees. The areas of the Roadmap that trustees will need to keep under review are those that relate to the governance and funding of DB pension schemes (in particular, those areas in relation to trustee qualification) and those that may impact on scheme pension ages.

2. LEGISLATION - EUROPEAN UNION (OCCUPATIONAL PENSION SCHEMES INVESTMENT) (AMENDMENT) REGULATIONS 2016 (THE "2016 REGULATIONS")

The 2016 Regulations relate to direct investment by pension schemes in debt instruments. The 2016 Regulations are applicable if a scheme has directly invested in any of: corporate bonds; US Treasury bonds; and/or any other more sophisticated debt instruments. It excludes investment in collective investment undertakings and investments in an insurance policy.

If a scheme has invested in any of non-excluded debt instruments, its trustees must complete a form, available from the Pensions Authority website, and submit the notification to the Pensions Authority by 31 March 2018. Failure to comply with the direction in the 2016 Regulations to submit the notification is an offence under the Pensions Act which carries a maximum penalty of a fine up to €25,000 and/or imprisonment of up to two years.

Trustee boards should establish if they are required to submit a notification to the Pensions Authority in accordance with the 2016 Regulations.

3. THE PENSIONS AUTHORITY

3.1 Compliance alert: 2018 administration calendar

The Pensions Authority issued an alert dated 19 February 2018 recommending trustees establish a governance plan of action to ensure they develop and apply appropriate policies, processes and controls in the management of their scheme's administration. The alert states that a key aspect of any governance plan of action is to identify statutory timeframes and deadlines in relation to administration activities to be completed each year. The Pensions Authority states that this allows trustees to plan and schedule these activities in short, medium and longer cycles.

3.2 The Pensions Authority summary of 2017 regulatory activity and plans for 2018

On 6 March 2018, the Pensions Authority issued a summary of its plans for 2018. Its plans for 2018 include: (i) reducing the number of active schemes in Ireland; (ii) proactive compliance activity; (iii) continued direct engagement with trustees; (iv) engagement with registered administrators; and (v) monitoring pensions activity in the construction sector.

4. THE REVENUE COMMISSIONERS

On 19 January 2018 the Revenue Commissioners ("Revenue") issued an e-brief confirming their policy on the maximum period of validity of Revenue opinions/confirmations and also to provide information in respect of a review of opinions or confirmations that were issued more than five years ago. A taxpayer who wishes to continue to rely on an opinion/confirmation issued by Revenue in the period between 1 January and 31 December 2012 (and which has not already ceased to have effect before 1 January 2018) is required to make an application for its renewal or extension on or before 30 March 2018. The taxpayer must provide evidence of the opinion/confirmation in the form of a written communication from Revenue and lodge a full application for the renewal or extension of the opinion or confirmation with the Revenue District dealing with the taxpayer's affairs.

The trustees of pension schemes should consider whether they have any previous Revenue opinions or confirmations that they continuously rely on, if so these will need to be reviewed.

5. THE IRISH ASSOCIATION OF PENSION FUNDS – TRUSTEE GUIDANCE ON MEMBER OPTION EXERCISES

In December 2017, the IAPF published guidance for trustees on exercises offered by sponsoring employers to members of defined benefit schemes. The guidance considers the following option exercises: enhanced transfer value exercises, pension increase exchange exercises and retirement transfer option exercises. The guidance is informed by publications from the Pensions Regulator, the Incentive Exercises Industry Forum, the Incentive Exercises Monitoring Board in the UK and the joint session held by the Society of Actuaries in Ireland and the Association of Pension Lawyers in Ireland in April 2017. A useful analysis of the key legal, administrative, funding, communications and governance considerations in each exercise is included in the guidance.

6. WORKPLACE RELATIONS COMMISSION CODE OF PRACTICE ON LONGER WORKING (DECLARATION) ORDER 2017 (THE "CODE")

The Code sets out a detailed five-step procedure to deal with requests to work beyond the retirement age and standard retirement contractual arrangements. The Code relates to the employment law aspects of retirement duties and longer working in employment contracts. The Code does not take into account the pensions law aspect of the setting of a retirement age in a pension scheme for longer working. Nor does the Code address the fact that no objective justification is required to set the normal retirement date in a pension scheme or that equal treatment claims for occupational benefits schemes, including pensions schemes, are made under Part VII of the Pensions Act rather than the Employment and Equality Acts). As a result of the Code, employers may need to review retirement clauses (if any) in contracts of employment and their retirement age policies.

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