

Group Briefing

October 2019

Pensions Autumn Update

Best Firm in Ireland 2019, 2018 & 2017
Europe Women in Business Law Awards

Best National Firm for Women in Business Law 2019, 2018 & 2017
Europe Women in Business Law Awards

Best National Firm Mentoring Programme 2019, 2018 & 2017
Europe Women in Business Law Awards

Best National Firm for Minority Women Lawyers 2019 & 2018
Europe Women in Business Law Awards

Ireland Law Firm of the Year 2019 & 2018
Who's Who Legal

Most Inclusive Law Firm 2019
Managing Partners' Forum Awards

Ireland M&A Legal Adviser of the Year 2018
Mergermarket European M&A Awards

Ireland Client Service Law Firm of the Year 2018
Chambers Europe Awards

Ireland Law Firm of the Year 2018
International Financial Law Review (IFLR) Europe Awards

Advised on Equity Deal of the Year 2018 – Allied Irish Banks IPO
International Financial Law Review (IFLR) Europe Awards

Ireland Law Firm of the Year 2017
Chambers Europe Awards

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.

BENEFICIAL OWNERSHIP OF PENSION SCHEMES

With effect from 29 January 2019, all occupational pension schemes established under trust are required to comply with the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019. Trustees of a pension scheme are required to (amongst other things) take “all reasonable steps” to gather and hold certain information on the pension scheme’s beneficial owners and to set up a “Beneficial Ownership Register” for the pension scheme.

Trustees will be required to submit the information contained in the Beneficial Ownership Register to a central register (which each EU member state is required to establish) by 10 March 2020. Non-compliance with the main obligations outlined in the Regulations is a criminal offence, exposing the trustee to a fine of up to €5,000.

DEFINED CONTRIBUTION MASTER TRUSTS: TRUSTEE OBLIGATIONS

The Pensions Authority have published their response to the consultation on obligations for trustees of DC master trusts. The response sets out the Pensions Authority’s view of appropriate obligations for DC master trusts after the transposition of the IORP II Directive.

The obligations will require a master trust trustee to have more robust governance and sustainability requirements than would apply to a normal defined contribution pension scheme.

The Pensions Authority response is available on the Pensions Authority website [here](#).

S.I. 447 OF 2019 EUROPEAN UNION (SUPPLEMENTARY PENSION RIGHTS) REGULATIONS 2019

The Supplementary Pension Rights Regulations amend the Pensions Act 1990 (the “1990 Act”) by specifying requirements in respect of “outgoing workers”. “Outgoing workers” are active scheme members whose current employment relationship terminates other than by reason of becoming eligible for a supplementary pension and who move between EU Member States.

Where Irish scheme service terminates without an entitlement to a preserved benefit, the Supplementary Pension Rights Regulations provide:

- » In the case of a defined benefit scheme: a right to a refund of pension contributions paid by or on behalf of an “outgoing worker” (i.e. member contributions); or
- » In the case of a defined contribution

scheme: a right to a refund of either:

- a. contributions paid by the employee and employer (if any); or
- b. the value of the investments arising from contributions paid by both the employee and employer (if any).

Where the pension scheme rules provide for a refund of a greater amount than those specified above, the rules will prevail.

Notwithstanding that an outgoing worker is not entitled to a preserved benefit, the Supplementary Pension Rights Regulations amend section 35 of the 1990 Act to allow trustees to effect a transfer payment where an outgoing worker consents in writing.

The Regulations also specify a waiting period of not greater than 12 months may apply from the date of commencement of service in the relevant employment of the outgoing worker to be admitted to membership of a scheme.

There are a number of issues with these new provisions. First, the 1990 Act applies to tax approved pension schemes and such schemes are prohibited from making refunds of employer contributions. Second, a 12-month waiting period (which is not a requirement of the Directive) takes no cognisance of the requirement to provide access to a PRSA where a scheme imposes a waiting period which is greater than 6 months. Employers who operate the permitted 12 month waiting period will be obliged to offer PRSA access prior to completion of this 12-month period. Third, it would appear that the more favourable treatment accorded to persons of a different nationality (namely non-Irish persons) is a potential breach of the principle of equal pension treatment on the grounds of race (which includes different nationalities). The Pensions Revenue Manual has been updated as recently as August 2019, however, does not take account of the above amendments to the Pensions Act.

S.I. 239 OF 2019 OCCUPATIONAL PENSION SCHEMES (DISCLOSURE OF INFORMATION) (AMENDMENT) REGULATIONS 2019

These Regulations amend the current disclosure regulations to provide that in circumstances where benefits are payable from a defined benefit scheme on death, surviving beneficiaries can request certain information on the value of and treatment of their benefit. Trustees are obliged to provide the requested information within two months of the request.

The Regulations transpose an obligation imposed by the Portability Directive (2014/50/EU) into Irish law regarding provision of information to surviving beneficiaries.

CIVIL LAW (PRESUMPTION OF DEATH) ACT 2019

The Civil Law (Presumption of Death) Act 2019 (the “**Presumption of Death Act**”) was signed into law on 10 July 2019.

Prior to the commencement of the Presumption of Death Act, a person who was missing and presumed dead could not be declared dead (and a death certificate could not be obtained) until they had been missing for at least 7 years. This had resulted in the inability to process various assets relating to the presumed deceased’s estate, including, in some instances, death in service claims.

Under the Presumption of Death Act, an application may now be made to the Circuit Court or High Court for a presumption of death order where the circumstances of the person who has gone missing indicate that death is “virtually certain or highly probable”.

PURCHASE AND TRANSFER OF BENEFITS UNDER THE SINGLE PUBLIC SERVICE PENSION SCHEME (“SINGLE SCHEME”)

The Minister for Public Expenditure & Reform has made new regulations under the Single Scheme entitled The Single Public Service Pension Scheme (Purchase and Transfer of

Retirement Benefits) Regulations 2019 (SI No. 252/2019). The purpose of the Regulations is to allow eligible members of the Single Scheme to:

- a. purchase additional service for the purposes of augmenting their benefits payable under the Single Scheme; and
- b. transfer in to the Single Scheme of benefits accrued under other approved retirement schemes and/or PRSAs relating to the member.

Referred to as a “Purchase and Transfer Facility”, the process will operate on the basis of the purchase of additional referable amounts for pension and/or lump sum and will operate on a cost neutral basis with the pricing of purchased benefits being based on the actuarially calculated cost of paying out those benefits at retirement.

These new arrangements come into force with effect from 1 October 2019.

REPORTING OBLIGATIONS

As previously reported, the European Central Bank has introduced a regulation (2018/231) on statistical reporting requirements for pension funds. The requirements of the regulation are mandatory for all pensions funds resident in Ireland and the regulation is binding on both pension funds and their trustees.

The regulation requires pension funds to report detailed data on assets, liabilities and membership numbers, security-by-security reporting on assets, and additional pension fund register information such as birth date, closure date and whether the fund provides DB or DC benefits only or both. This information must be reported on a quarterly and annual basis. The first reporting will be due in December 2019. The Central Bank of Ireland (“CBI”) is responsible for the collection, compilation and transmission of statistical data.

On 19 September 2019 the Pensions Authority announced that it is deferring the collection and reporting of this information to EIOPA. This means

that pension schemes will not have to provide the Pensions Authority with EIOPA data for a temporary period. In the interim the Pensions Authority may contact a small number of large pension schemes directly requesting them to provide certain information. This does not affect the data to be provided to the CBI.

PENSIONS AUTHORITY'S UPDATED GUIDANCE AND REPORT IN RELATION TO SUSPECTED NON-REMITTANCE/ NON-PAYMENT OF CONTRIBUTIONS

The Pensions Authority has updated its guidance in relation to suspected non-remittance and non-payment of contributions. The updated guidance includes revisions to improve the clarity of the reporting of employer, employee and additional voluntary contribution arrears.

The guidance provides that a report must be made to the Pensions Authority “*as soon as practicable*” where there is suspected non-remittance or non-payment of contributions. The Pensions Authority considers this to mean within three months of the first incident of non-remittance. The guidance states that all avenues should be exhausted in seeking payment of outstanding amounts before making a report to the Pensions Authority and these attempts should be documented in the report.

A form for reporting suspected non-remittance and non-payment of contributions accompanies the guidance. The guidance provides information on how to complete the form with the aim of ensuring consistency of approach in how reports

are submitted.

UPDATE TO REVENUE PENSIONS MANUAL

The Revenue Commissioners have published an update to four chapters of the Revenue Pensions Manual which updates the following topics:

1. Contributions by Employers: A new paragraph has been inserted dealing with contributions in corporate groups and following corporate reorganisations. It outlines situations whereby a company may make contributions to an employee pension scheme in circumstances where an employee ceases to be an employee of the contributing company at the time the contributions are made or where contributions are made to a scheme which is not operated by the contributing company. The new paragraph provides guidance that will apply in corporate transactions including TUPE transfers of employees where contributions are to be made for and in respect of employees post completion of the transaction.
2. Lump Sum Benefits and Commutation: The threshold for the payment of trivial pension lump sums has been amended to €30,000 (previously €20,000). In addition, a new paragraph has been inserted regarding the taxation of commuted benefits.
3. Approved Retirement Funds (ARF): Certain payments to individuals from the Department of Employment, Affairs and Social

Protection are now included in determining income threshold for transferring benefits to an ARF. The effect of this change is that many recipients of the full State pension will now have the freedom to elect to transfer their benefits to an ARF rather than having to allocate sums to an Approved Minimum Retirement Fund.

4. Tax Relief for Pension Contributions: minor amendments made including updating the current rates of universal social charge.

As noted above, the amendments to the Revenue Manual do not include the consequences of the amendments to the Pensions Act under the Supplementary Pension Rights Regulations.

FAQS ON THE FUNDING STANDARD RESERVE

The Pensions Authority has published FAQs on the funding standard reserve requirements of the Pensions Act 1990. These are designed to assist trustees and actuaries in assessing whether a scheme satisfies the funding standard reserve provided for under the Pensions Act. The FAQs, amongst other things, clarify that interest rate swaps, non-euro denominated bonds issued by a non-EU State but hedged to Euro denominated bonds, derivative holdings and deferred annuity policies do not meet the criteria for qualifying assets for the purpose of calculating the funding standard reserve.

KEY CONTACTS

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