

PENSIONS AND EMPLOYEE BENEFITS

Autumn Update 2020

Updated December 2020

THE EMPLOYMENT WAGE SUBSIDY SCHEME (THE "EWSS") AND PENSION CONTRIBUTIONS

The EWSS has replaced the Temporary Wage Subsidy Scheme (the "TWSS") with effect from 1 September 2020 and will operate until 31 March 2021. The EWSS provides a flat-rate subsidy to qualifying employers. Employee pension contributions can be deducted from the EWSS where they could not from the TWSS.

BUDGET 2021

The budget was announced on 13 October 2020. The budget did not make any changes to private pension provisions. There was no change to the State Pension Age (currently 66). There was however, a €5 increase to the weekly Living Alone allowance from €14 to €19.

PENSIONS AUTHORITY GUIDANCE

IORPs II - new guidance for DB schemes issued for Trustees (available here)

The Authority has issued new guidance outlining its expectations for DB schemes in their implementation of the IORP II Directive. The three key takeaways from the guidance are: the Authority is moving towards a risk-based, forward looking approach to supervision of DB schemes; the majority of the 570 DB schemes in

Ireland have significant challenges; and trustees will be expected to change the way they work.

The Authority will place DB schemes into three categories based on their ability to pay out benefits promised over time and the Authority's time and focus on those schemes will depend on those categories. While some schemes will be monitored (those in category 1 which are likely to pay out benefits as promised), others will be expected to reduce benefits or wind-up (category 3- those unlikely to pay out benefits no matter what).

The Authority has indicated that trustees can prepare for the implementation of IORP II by: assessing the knowledge and experience on the trustee board; looking at service agreements/contracts with service providers; starting to identify who might be the risk management function holder; and building knowledge and expertise in the area of risk generally.

Investment strategy implementation for schemes under funding proposals

On 19 August 2020 the Authority issued a reminder to defined benefit scheme trustees of its expectations in relation to investment strategy implementation for schemes that apply for a funding proposal for a term longer than 3 years. In this regard, the Authority made the following key points:

- the proposed investment strategy should represent the trustees' considered views and their intention for the investment of scheme assets over the term of the funding proposal period;
- if the trustees intend to change or review the investment strategy before the expiry of the funding proposal term, this should be outlined in the funding proposal application and these considerations completed prior to submitting the application; and
- if at a future date the trustees consider the continued implementation of the investment strategy is not in the best interests of scheme members, they have a fiduciary responsibility to change the investment strategy. The Authority expects trustees to promptly notify and engage with it to explain and justify the changes if required.

The Authority noted it will monitor asset allocations and liability developments for relevant schemes by analysing Annual Actuarial Data Return Submissions and is likely to engage with trustees where there is a lack of progress in the implementation of the investment strategy. The Authority's decision to grant an extended term for the funding period is likely to be reconsidered or rescinded if the changed strategy is not appropriate or consistent with the requirements of the guidance governing funding proposals.

COMPANIES (MISCELLANEOUS PROVISIONS) (COVID-19) ACT 2020 (THE "ACT")

The Act was signed into law on 1 August 2020 and seeks to address certain practical issues that have arisen as a result of social distancing requirements and COVID-19 including: (i) holding general meetings; (ii) declaration of dividends; (iii) sealing by companies; (iv) the debt threshold from a winding up perspective; (v) practical issue in relation to examinership. The provisions of the Act will apply for an interim period up to 31 December 2020 with the Government reserving the right to extend that period.

From the perspective of a corporate trustee, the provisions in respect of holding AGMs and sealing by companies may be useful:

1. The Act gives companies the power to hold virtual or hybrid AGMs (and EGMs) or the opportunity to postpone their AGM up to 31 December 2020. A hybrid meeting is one which combines a physical meeting with a virtual one. Where an AGM is to be held virtually additional information must be included in the AGM notice;
2. A document under seal must be executed by the seal being affixed, the document being signed by the director and counter-signed by the company secretary or another director. With working from home the norm at the moment, the company seal and directors are often in different locations. For the interim period, the Act permits the company seal and the signatures to be applied to different documents which can all be counted as one document for Companies Act, 2014 purposes. We would note however, that the area of execution of trusts documentation by e-signature is a grey one and we would generally advise that, in order to ensure the enforceability of trust relate documents such as deeds, "wet ink" signatures are obtained. As such this additional provision will be of only limited assistance to corporate trustees.

PENSIONS AUTHORITY ANNUAL REPORT AND ACCOUNTS FOR 2019 AND ACCOMPANYING PENSIONS REGULATORS' STATEMENT

On 13 August 2020 the Pensions Authority (the "Authority") published its Annual Report and Accounts which sets out in detail the activities of the organisation in 2019.

a. Prosecutions, investigations and audits

The Authority concluded 9 prosecutions, opened 55 new investigations into various alleged

breaches of the Pensions Act and finalised and closed 63 investigations during the year. On-site inspections were carried out at three PRSA providers and one professional trustee, 15 engagement meetings were held with regulated entities and 159 desk-based audits were carried out on a sample of occupational pension schemes and PRSAs.

b. Defined benefit ("DB") schemes

The report outlines that four funding proposals from DB schemes were approved, 503 of the 597 DB schemes subject to the funding standard were in compliance with the standard as at 31 December 2019 and one application to reduce accrued benefits from a DB scheme was approved.

c. Data management

In 2019, five FOI requests were received and completed by the Authority, 9,800 general pension and data processing questions were dealt with and 354,220 data submissions from regulated entities were processed through the Authority's Pension Data Register.

d. Ongoing strategies

The Authority has adopted a number of strategies to achieve the objectives it has outlined in its Statement of Strategy 2016-2020 which aims to ensure pensions savings are secure and well managed and to encourage pensions savings. The annual report sets out the activities undertaken to meet these objectives including: compulsory and voluntary reporting/whistleblowing, prosecutions, investigations, compliance audits, on-site inspections of registered administrators ("RA") and PRSA providers, RA annual renewal process.

Mr. Brendan Kennedy, the pensions regulator, highlighted that overall one of the key challenges for Irish retirement savings is insufficient focus by trustees and their appointed advisers on member outcomes, resulting in too many instances of poor value for money, lack of risk management and poor quality communications with members.

e. Impact of COVID-19

Mr Kennedy noted that the Authority was monitoring the effect of the pandemic on the pensions sector. He highlighted that scheme administration and management systems have worked very well and benefits have continued to be paid and contributions collected and invested without interruption. The Authority has stated that it will take into account the challenges of dealing with COVID-19 in assessing the compliance of pension schemes and PRSA providers.

f. Market Volatility

Mr Kennedy highlighted how the recent market recovery has reduced losses for DB and defined contribution ("DC") pension schemes, which occurred as a result of the sharp falls in markets from mid-March. He noted that the Authority's view remains that many pension schemes, both DB and DC have excessive risk and do not measure and manage their investment risk in a structured way.

g. Transposition of the IORP II Directive

The Authority indicated that it expects the transposition of IORP II Directive into Irish pensions law to be completed before the end of 2020. Mr Kennedy noted that the most significant changes resulting from IORP are as follows:

- i. Trustees will be obliged to demonstrate that they have the expertise, commitment, professional support and structured approach needed to fulfil their responsibilities to their members;
- ii. The Authority highlights how the number of small schemes in Ireland is very untypical by international standards; and
- iii. IORP II will present a significant challenge for many DB schemes.

FINANCIAL SERVICES PENSIONS OMBUDSMAN ("FSPO")

In August 2020, the FSPO published a digest of legally binding decisions which contained summaries and case studies based on decisions issued by the FSPO between January and May 2020. Included in that digest are two case studies relating to pensions complaint decisions, one relating to chargeable excess tax and the other, pension entitlements of a retired public servant.

In the first decision, the FSPO upheld the complaint of the member and in the second, the FSPO partially upheld the member's complaint. In relation to financial services decisions, the FSPO notes that his office has the power to grant compensation where it deems it appropriate to do so. In relation to occupational pension schemes, the legislation governing the FSPO provides more limited powers and indicates that while the Ombudsman can direct rectification, it cannot exceed "any actual loss of benefit" under the pension scheme concerned. He cannot direct a pension provider to pay compensation. It is interesting to note that the previous regulations, under which the original Pensions Ombudsman's office operated, were revoked with effect from 1 January 2018 and replacement regulations are still awaited.

EIOPA OPSG REPORT ON THE GENDER GAP IN PENSIONS

The Occupational Pensions Stakeholder Group (“OPSG”) of the European Insurance and Occupational Pensions Authority (“EIOPA”) released a report on 24 June 2020 with advice on practices to reduce the gender gap in pensions. The report ([available here](#)) outlines the policies and good practices Member States are pursuing across the European Union to reduce national unequal pensions schemes based on gender and outlines a number of recommendations to the European Commission, EU Member

States, EIOPA and IORP Providers to examine and incorporate.

The OPSG recommends that selected interventions can contribute to the reduction of the gender gap in occupational pensions. These interventions include: removal of barriers to making contributions, flexible work practices that are mindful of care responsibilities, sharing benefits (in households partnerships that are sustained or that break up) or maintaining some level of contributions during short term withdrawals from the workforce.

Although most efforts to decrease the pension gap has taken place in the first pillar (State pension), the OPSG encourages pension schemes to provide arrangements that ensure the pension gap is further reduced in the second (employer pension arrangements) and third pillar (personal pension arrangements). Gender pay gap and pay transparency is a key focus for the European Gender Equality Strategy 2020-2025.

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