

## Forthcoming Legislative Changes

In this issue we summarise the changes in Pensions Legislation included in the Finance Act 2005 and the Social Welfare & Pensions Act 2005, some of which are required to bring into effect the EU Directive on Institutions for Occupational Retirement Provision (IORPS). The majority of these changes will be brought into effect later this year when the relevant regulations and guidelines are put in place. Changes covered by the EU Directive on IORPS must be implemented by 23 September 2005.

The principal changes can, broadly speaking, be categorised as follows:

- Changes affecting Domestic Pension Schemes
- Changes in respect of Cross Border Pension Schemes & Migrant Workers
- Changes to the Funding Standard
- Changes in Transfer Rules

## Changes Affecting Domestic Pension Schemes

- Definition of a Small Scheme has been amended to comply with the EU Directive and is now a Scheme with less than 100 members not receiving Retirement Benefits (i.e. Active Members and Deferred Pensioners).
- Trustees will be required to be, or employ advisors who are, persons of good repute who have professional qualifications and experience.
- Trustees of Schemes with more than 100 Active Members/Deferred Pensioners will be required to have, and review every three years, a Statement of Investment Principles.
- Trustees of Defined Contribution Schemes with more than 100 Active Members/Deferred Pensioners will be required to produce an Annual Report, and Annual Accounts which give a true and fair view of the Scheme's assets, liabilities and financial position; liabilities of Defined Contribution Schemes must now also be established, although these will generally be equal to the assets held by the Scheme. There is no requirement for the Annual Accounts to be audited.
- Trustees will be prohibited from investing more than 5% of the assets of the Scheme in shares of the Sponsoring Employer, or property which it occupies.
- Trustees will be required to submit Actuarial Funding Certificates to the Pensions Board at least once every 3 years to comply with the EU Directive.
- Defined Contribution Schemes which pay pensions to members from cashflow rather than by annuity purchase will be subject to actuarial supervision and will have to comply with the certification requirements for Defined Benefit Schemes.
- Trustees of Pension Schemes will not be permitted to borrow, except to provide liquidity. The Minister subsequently set up a working party to consider whether Small Schemes should be exempt from this requirement. The Bill has been amended to give the Minister power to make regulations permitting borrowing for any reason for Schemes with less than 100 members.

## Changes in Respect of Cross Border Pension Schemes and Migrant Workers

- Revenue has been given the power to approve Occupational Pension Schemes based in other EU Member States, which meet the requirements of the EU Directive on IORPS.
- There is now provision to establish Cross Border Pension Schemes, subject to certain conditions, covering employees in more than one EU Member State.
- Irish employees who are members of an IORPS established in another EU Member State may obtain the same tax relief on their contributions as would be the case if they were paid to an Irish Approved Pension Scheme.
- There is also provision for tax relief on contributions paid by migrant workers, from other EU Member States working in Ireland, to Pension Plans in their home Country.
- Irish Schemes which wish to include members employed by entities in other EU Member States must obtain prior authorisation from the Pensions Board and must satisfy the Funding Standard at the point of authorisation, reflecting the “fully funded at all times” requirement of the EU Directive.
- It is no longer a requirement that Annuity Contract Providers must be established in Ireland and it will be sufficient if the provider is an insurance undertaking authorised to transact such business in Ireland under the EU Life Directive.
- There is provision for extending the availability of Common Contractual Funds (CCF's), which are tax transparent pooled investment vehicles designed primarily for Institutional Pension Arrangements. The objective is to establish Ireland as a base for the pooling of assets of Pan European and Multi National Pension Schemes.

## Changes to the Funding Standard

- There are no significant changes to the Funding Standard itself, other than a change to the approach used to calculate Transfer Values, which is the measure of the liabilities for Active Members and Deferred Pensioners.
- The Pensions Board recommends that the so called “short term” measures introduced in 2003 extending the period of a Funding Proposal, where the failure to satisfy the Funding Standard is mainly due to investment performance, become a permanent feature of the Funding Standard.
- The Bill gives power to the Pensions Board to extend the Funding Period in circumstances where the failure to satisfy the Funding Standard is due to unexpected changes in the liabilities outside the control of the Employer and/or the Trustees.
- Defined Contribution Schemes which pay pensions from the assets of the Scheme rather than purchasing Annuities at the time of retirement will be required to satisfy the Funding Standard.
- The reduction in the maximum period between the preparation of Actuarial Funding Certificates from 3½ years to 3 years is likely to have cost implications for future Funding Proposals.
- Where a Scheme does not satisfy the Funding Standard, the payment of Early Retirement Pensions should be subject to the consent of the Trustees, notwithstanding the provisions of the Scheme Rules.

## Change in Transfer Rules

- Transfer Payments of less than €10,000 (previously €4,000) can be paid from an Occupational Pension Scheme to a PRSA without requiring completion of a Certificate of Benefits Comparison and a Reasons Why Letter.
- This provision is consistent with a separate change in legislation which permits Trustees to make Transfer Payments to other Occupational Pension Schemes or Pension Transfer Bonds without member consent where the amount is less than €10,000.

## Further Information

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