Spotlight

Hewitt

A retirement and investment update from Hewitt Ireland

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In this issue of Spotlight, we outline

- **Two new measures designed to improve pension scheme governance included in the Social Welfare and Pensions Bill 2008 which was published recently**
    - **Mandatory trustee training**
    - **Registration of administrators:**
- **An increase in the maximum retirement funds which can be built up tax-free**

Mandatory Trustee Training

The Social Welfare and Pensions Bill introduces requirements in relation to trustee training. It will be a duty of a trustee to undertake trustee training and there is an obligation on an employer who operates a scheme to arrange for the trustees to receive “appropriate training”. This is defined as being training “in relation to the Act, the regulations, and under any other law of general application governing the operation of that scheme.., the duties and responsibilities of trustees generally, and such other matters …. as are prescribed.” This is a very broad definition and will presumably be fleshed out by regulation and Pensions Board guidance in due course.

The training must be provided to any trustee (and to any directors of a corporate trustee) appointed after the date of commencement of the relevant section of the Act within 6 months of his or her appointment, and every 2 years thereafter. For trustees (including corporate trustees) already appointed when the relevant section of the Act commences, training must be undertaken within 2 years.

The trustees must disclose to members (presumably in the annual report) that they are compliant with the trustee training requirements of the Act. Failure to undertake trustee training is an offence which comes under the “on-the-spot” fine regime – it appears that the fine is levied on the trustee (or director of a corporate trustee) notwithstanding that the obligation to arrange training falls on the employer.

Training is not required under the Act for a pensioneer trustee of a Small Self Administered Scheme or for a professional trustee, which is now defined in the Act as “a person who holds himself out as having special knowledge, skills and expertise with respect to pension trusts and in the course of a profession or business provides trustee services to schemes”. Some existing independent trustees may not meet this definition.

The common practice in smaller schemes (particularly defined contribution) of appointing the employer company as trustee will become impractical in many cases as all directors of the company would have to undergo trustee training on a regular basis.

Registration of Administrators

The Bill contains proposed amendments to the Pensions Act which will introduce the registration of administrators. The Pensions Act will require Trustees to appoint a “registered administrator” to prepare annual benefit statements in relation to the Scheme, and prepare an annual report. The amendments to the Act make it clear, however, that such appointments do not absolve the Trustees from their statutory duties in relation to the issue of annual reports and benefit statements.

The Pensions Board will establish a Register of Administrators and the details of the information to be included in the Register will be set out in regulations. Any person or organisation who wishes to provide administration services must apply to be registered by completing an application form.

Registration must be renewed each year, and the Act will give the Pensions Board power to refuse to renew registration, or to impose conditions on the administrator. The Board will be required to publish details of those who are to be removed from the register. The administrator has the right of appeal to the High Court if his registration is terminated.

The duties of a registered administrator are:

- the preparation of an annual report, and
- the preparation of annual benefit statements for members.

In both cases, these are to be delivered to the Trustees not less than one month prior to the latest date that they must be made available by the Trustees to the members and other persons. In practice, this means that annual reports must be completed by the registered administrator within eight months and benefit statements within five months. The registered administrator is also required to keep accurate records to enable the report and benefit statements to be prepared, and there is provision for other requirements to be prescribed by regulation.

The Bill also confirms the powers of the Board to investigate registered administrators, and to appoint authorised persons to enter their premises and take away documents etc. This power also extends to any third parties to whom the administrator has outsourced any of the functions which relate to the statutory duties it has undertaken. The Bill also empowers the registered administrator to obtain information from the employer, actuary or auditor to enable it to discharge its functions, and imposes a duty on registered administrator to provide information to these parties if requested.

The Pensions Board are given very broad powers to request information from a registered administrator in relation to its activities in that capacity, and requires the registered administrator to provide that information within time limits set by the Board.

The registered administrator is not included in the list of persons who may be subject to an on-the-spot fine, but is liable for prosecution under the provisions of Section 3 of the Act. A registered administrator who does not fulfil a statutory duty is not able to rely on the defence that others on whom he was relying to provide information had not done so, where the registered administrator has entered into an outsourcing agreement with that other party in relation to the information not provided.

There are no provisions in the Pensions and Social Welfare Bill in relation to Pensions Board fees, but we understand that proposals for an increase for 2009 will be made later in the year. The Bill will now progress through the Oireachtas, where it may be amended, and will be enacted in April 2008.

Earnings adjustment factor for 2008 tax year

The Minister for Finance has announced that the earnings adjustment factor to be applied to the Standard Fund Threshold (the maximum pension fund which can normally be held without incurring a tax liability) is 4.9%, thereby increasing it to €5,418,085 for 2008. The same percentage increase applies to Personal Fund Thresholds certified by Revenue, and to the earnings limit for tax relievable member contributions, which for 2008 is €275,239.

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