

Further Update on Pensions

Although there is yet no sign of the long-awaited Pensions Framework document following last year's Green Paper consultation exercise, the last few weeks have seen, amongst other things, the publication of bulk transfer regulations, the Civil Partnership Bill and Government proposals for a guarantee of minimum benefits from defined benefit schemes on double insolvency.

Bulk Transfer Regulations

Section 59E of The Pensions Act (inserted by the Pensions (Amendment) Act 2002) provided for regulations to be made requiring Trustees who are proposing to make a bulk transfer in respect of a group of members to another arrangement to provide information to those members before the transfer takes place. The Occupational Pension Schemes (Duties of Trustees in Connection with Bulk Transfer) Regulations 2009, which were signed into law on 7 May 2009 and come into effect on 1 August 2009, set out the requirements on Trustees in relation to bulk transfers without member consent. A bulk transfer is defined in the Act as a transfer of an amount of money by the Trustees of a Scheme in discharge of liability under the Scheme to provide benefits to a group of members.

The regulations do not apply to individual transfers e.g. transfers without member consent under Section 35 of the Pensions Act, in respect of which separate notification and information requirements apply. The requirements do apply in the context of a bulk transfer on winding up, and are in addition to the requirements of the Disclosure Regulations brought into effect in December 2007.

The Bulk Transfer Regulations require Trustees who propose to make a bulk transfer to notify the affected members and any authorised trade union representing them at least 2 months in advance of the date of transfer, giving details of the circumstances giving rise to the transfer, specifying the benefit structures of the transferring and receiving schemes (including discretionary benefit practice and the treatment of surplus), and the benefits that are to be granted to the transferring members in the receiving Scheme. Information must be provided in relation to any adverse effect on the transferring members and any charges to be paid by them as a consequence of the transfer. If the transfer is made to a defined benefit scheme, an actuarial statement must be provided setting out the manner in which the benefits to be granted are calculated and the allowance made for discretionary benefit practices, and confirming whether the minimum transfer value from the receiving scheme immediately following the bulk transfer will be at least equal to that which was available from the transferring scheme immediately before the bulk transfer. In addition, the Actuary has to certify whether, if the receiving Scheme were to be wound up immediately after the bulk transfer, the payment which would be received by each transferring member in respect of the bulk transfer would be at least equal to the payment which would have been received from the transferring scheme had it been wound up immediately before the transfer. The Actuary must also advise whether the ratio of assets to liabilities (on the minimum funding standard basis) in the receiving Scheme following the transfer is likely to be at least equal to the same ratio in the transferring Scheme immediately before the transfer.

The notification to members must state that they have the right to make observations within one month for consideration by the Trustees or employer. Before the bulk transfer is made, the transferring Trustees or the employer must consider the observations made for a period of not less than one month before the bulk transfer can take place. If there is a material change in the terms relating to the bulk transfer, this must be notified to the members and they must be given a further month to make observations before the transfer can be effected.

Finance Act 2009

The Finance Act (see Spotlights 17 and 18) was enacted on 3 June 2009 and hence the provisions relating to the introduction of a 1% levy on certain insurance premiums with effect from 1 August 2009 have been passed into law. Although we understand negotiations with the Government are ongoing, it seems prudent to assume that this levy will come into effect and to take action before the end of July to pay premiums due on risk insurance, purchase annuities, and pay any transfers to PRSA and personal retirement bonds.

Civil Partnership Bill

The Government published the Civil Partnership Bill 2009 on 24 June 2009. This establishes a statutory civil partnership registration scheme for same sex couples. Section 96 of the Bill provides that where a pension scheme provides benefits for the spouse of a married member, equivalent benefits must be provided for the civil partner of a member who is in a registered civil partnership. The courts will have powers to make pension adjustment orders in respect of civil partners on the break up of a civil partnership which will be similar to those on divorce under the Family Law (Divorce) Act 1996.

The Bill also introduces rights for cohabitants, defined to be two adults of the same or opposite sex who live together in an intimate committed relationship but who are not related to each other or married to or civil partners of each other. A qualified cohabitant who has been in a relationship for at least 3 years (2 years if there are dependant children) is entitled to apply to the Courts on the dissolution of the relationship if he or she was financially dependent on the other cohabitant. The Court has a range of powers, including the making of pension adjustment orders, in such cases. Again, the powers are similar to those in the Family Law (Divorce) Act 1996 on the break-up of a marriage, although a contingent order over death in service benefits can only be made if a cohabitant has an entitlement under the rules of the Scheme to benefits on death.

Application Form in respect of Section 50/50A

Following the enactment of the Social Welfare & Pensions Act 2009, the Pensions Board issued guidelines on the operation of Section 50 and 50A as amended by that Act (see Spotlight 18). The Pensions Board has now issued an application form for Trustees seeking a Section 50 order from the Pensions Board, or seeking consent from the Board to a Section 50A adjustment to benefits. The application form requires the Trustees to confirm that they have undertaken a comprehensive review of the Scheme, taken legal and actuarial advice and considered all available options and communicated with members before concluding that the application for a Section 50/50A order was in the best interests of the members of the Scheme. The Trustees are also required to set out the funding policy and the investment policy to be adopted and to list the short term and long term risks to which the Scheme is exposed and their proposed responses in the event of such risks materialising. The form may be signed by the employer to confirm that he is aware of the application, but this is not a requirement. The Actuary is required to sign a statement confirming that the proposed amendment to benefits will enable the Scheme to meet the funding standard, either immediately or at the end of the funding proposal.

Pensions Insolvency Minimum-Guarantee Scheme

On 23 June 2009, the Government published a document entitled "Further Measures to Support National Recovery through Social Partnership" setting out its proposals for discussions with the Social Partners. This includes the establishment of a Pension Insolvency Minimum-Guarantee Scheme (PIMS) which would complement the Pensions Insolvency Payment Scheme (PIPS) to be established following the enactment of the Social Welfare & Pensions Act to provide annuities on the wind up of a Scheme in deficit where the employer is insolvent. The proposed PIMS would top up the benefits secured on wind-up for existing pensioners to 100% of their pension, or €12,000 per annum if less, and for active and deferred scheme members to 50% of their accrued entitlements or €6,000 per annum if less. This would be funded to the tune of €100m per annum for a 3 year period. This would provide an additional safety net in the event of "double insolvency" provided the funding available is sufficient to meet all claims during the 3 year period.

Pensions Ombudsman

On 2 July 2009, the Minister for Social & Family Affairs reappointed Paul Kenny as Pensions Ombudsman. Mr. Kenny announced that in the first 6 months of 2009, his office received 908 new complaints compared with 582 in the same period in 2008, a 56% increase.

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