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SPOTLIGHT

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Recent Legislative Changes

In Issue 1 we summarised the changes being introduced in the Finance Act 2005 and the Social Welfare & Pensions Act 2005, and we commented that some of these changes would not come into effect until later in 2005 when relevant regulations were made.

These regulations were issued in September and hence most of the changes have now been brought into effect. A brief summary of the key changes is given below. Many of these changes were required to meet the requirements of the EU Directive on IORPS (Institutions for Occupational Retirement Provision), which were implemented on 23 September 2005, the deadline set by the EU for introducing the required legislation. Ireland is one of the few countries in the EU to have met this deadline.

In addition, changes to the Disclosure Regulations were made on 30 September 2005, although many of these do not come into effect immediately. These are discussed below.

Main Changes in Disclosure Requirements

- Defined contribution schemes with 100 or more members (active or deferred) must prepare an Annual Report and Audited Accounts for scheme years commencing on or after 23 September 2005.
- Additional information must be included in Annual Reports (and Alternative Annual Reports for small schemes) for scheme years commencing on or after 23 September 2005. This includes information on any funding proposal for defined benefit schemes, a statement on the financial, technical and other risks associated with the scheme and the Statement of Investment Policy Principles. The Trustees are also required to include a statement that they have appropriate procedures in place to ensure that contributions payable during the year are received within 21 days after the end of the month in which they are deducted.
- With effect from 1 January 2007, Trustees of defined benefit schemes must issue annual benefit statements to members which include both benefits payable on the assumption that the member will remain in service to normal pension age, and the benefits which would be available had he left service on the date of the statement.
- Trustees of defined contribution schemes, who are already required to produce annual benefit statements, will be required from 1 January 2007 to include a Statement of Reasonable Projection with the benefit statement, showing the level of benefits which could be reasonably expected at retirement. There will also be a requirement to show the breakdown of contributions received during the year, and to reconcile the opening and closing balances of the members' account. Statements of Reasonable Projection must be provided to all leavers from defined contribution schemes on or after 23 September 2005.
- If Trustees give members sufficient information in relation to the investment choices available to them under a defined contribution (including AVC) arrangement, they can have an indemnity in respect of any losses incurred by members who made what turned out to be the wrong choice. The regulations set out the information which Trustees must provide to enable them to benefit from this indemnity.

Cross Border Schemes

- An Irish Scheme which wishes to include members employed by entities in other EU Member States must apply for authorisation to the Pensions Board and provide prescribed information.
- For a defined benefit scheme which wishes to operate cross border, there must be an Actuarial Statement or Actuarial Funding Certificate with an effective date within the 12 month period prior to the date of application confirming that the scheme met the funding standard on that date. For a new scheme, a period of two years is granted before the funding standard must be satisfied.
- The elements of "social and labour law" which an IORP established in another member state must respect in relation to Irish members, and which an Irish scheme is required to disregard in relation to members employed in another EU member state, are prescribed as preservation of benefits, the jurisdiction of the Pensions Ombudsman and issues relating to the effect on pensions in integrated schemes of changes in the Social Welfare pensions.
- Existing schemes which include UK members under the reciprocal approval agreement which existed prior to 1994 must apply for authorisation to operate cross border before 31 March 2006 (or establish separate UK scheme for the UK members).

Changes in relation to the Funding Standard

- The Pensions Board have discretion to extend the Funding Period in circumstances where the failure to satisfy the Funding Standard is due to unexpected changes in the liabilities arising from
  - Price inflation
  - Rates of interest
  - Increases in pensionable earnings
  - Payment of benefits other than long service benefits

  over the period since the scheme last satisfied the funding standard.
- Actuarial funding certificates for effective dates after 23 September 2005 must show the value of assets and liabilities at the effective date and the percentage coverage for each category of beneficiary in the priority order set out in the Pensions Act.
- The period between funding certificates is reduced from 3.5 years to 3 years.

Trustee Regulations

Trustees who do not employ an investment manager to manage the scheme's assets must demonstrate that at least one of their number has appropriate qualifications and experience to manage the assets.

Investment Regulations

- Trustees (other than Trustees of schemes with less than 100 active and deferred members) must prepare, maintain and review at least each three years, a Statement of Investment Policy Principles including information set out in the regulations.
- Trustees of Pension Schemes will not be permitted to borrow, except to provide liquidity. One member schemes are exempt from this requirement.
- Trustees must invest the assets in a manner designed to ensure the security, quality, liquidity and profitability of the portfolio; having regard to the nature and duration of the expected liabilities of the Scheme; predominantly on regulated markets; in a properly diversified manner and to avoid excessive risk concentration, and in derivatives only so far as they contribute to a reduction in investment risk or facilitate efficient portfolio management.

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