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Social Welfare Law Reform and Pensions Bill 2006

The Social Welfare Law Reform and Pensions Bill was published on 20 February 2006. This includes some amendments to the Pensions Act which will affect the operation of occupational pension schemes. We have highlighted below the main issues as set out in the Bill, although it should be noted that there may be changes in the provisions of the Bill during its passage through the Oireachtas.

Compliance monitoring for scheme actuaries

A new Section 51A is inserted in the Pensions Act which gives the Minister power to make regulations requiring scheme actuaries to have actuarial work (defined as actuarial valuations, funding certificates, funding proposals and actuarial statements) reviewed for compliance with the legislation and, by extension, with actuarial guidance which is referred to in the legislation. The detail of how the review will be carried out will be specified in the regulations and in actuarial guidance, which will also deal with the appointment of the reviewing actuary. We understand that the reviewing actuary must be independent of the scheme actuary and cannot, therefore, be employed by the same firm as the scheme actuary.

Change in winding up provisions for index linked pensions

The rules of some defined benefit schemes provide for pensions to increase in payment in line with CPI, usually with a cap of 4% or 5% per annum, or by reference to the increase in salaries of current active employees. On winding up, the trustees are currently required to secure fully pensions in payment by the purchase of annuities, before applying any assets for the active and deferred members. As there is a limited market for inflation linked annuities, due in part to the lack of CPI linked Government bonds, and in some cases annuities could not in practice be purchased (e.g. where pensioners are entitled to parity pay increases), this created difficulties for scheme actuaries in determining funding standard liabilities for such schemes. The relevant actuarial guidance permits the actuary to assume in such circumstances that the trustees would substitute pensions with fixed rate increases (derived by reference to the expected rate of inflation) for index linked pensions.

The Bill provides that on an actual winding up, the trustees of a scheme which guarantees index-linked pensions will be able to substitute fixed rate increases, and will only be required to "top up" to index linking as set out in the Rules when the statutory liabilities for active and deferred members have been met in full.

Power for Pensions Board to impose civil penalties rather than prosecute offences

The Pensions Board have power under the Pensions Act to prosecute trustees, employers, actuaries, auditors and others if they believe that a breach of the Act has taken place. In recent years the Board successfully prosecuted a number of trustees for failure to comply with their obligations in regard to the preparation of annual reports. However, the requirements of a criminal prosecution mean that it is difficult for the Board to deal with all instances of non-compliance that it identifies, and hence the Bill introduces a system of civil penalties that should be less onerous to operate. This will enable the Board, where it has reasonable grounds for believing that a person or persons have committed an offence, to notify that person of that fact, and invite them to remedy the default and pay a fine within 21 days, in which case prosecution proceedings will not be instituted.

Additional powers for the Pensions Ombudsman

Under the current legislation, the Pensions Ombudsman cannot investigate a complaint unless it has been through the Internal Disputes Resolution (IDR) process established by the trustees. The Bill provides for the IDR process to be bypassed if the Pensions Ombudsman considers that the nature of the dispute is such that it would be inappropriate to go through IDR, (the explanatory memorandum with the Bill states “where there is clearly nothing to be gained from the process”) and it is reasonable for him to investigate the complaint. This facility does not apply to public authority schemes or statutory schemes where there is a statutory right of appeal.

Other amendments

The “technical amendments” which are made to tidy up existing provisions include the following:

- Section 35 is amended to permit transfer payments without consent (i.e. where the amount is not more than €10,000) to PRSAs as well as to buy out bonds.
- The Bill amends Section 54 to provide that Statements of Reasonable Projection for defined contribution schemes are to comply with actuarial guidance. These projections must be supplied annually from 1 January 2007 for active members, and with immediate effect for anybody who is entitled to preserved benefits on leaving the scheme.
- Section 55(2) is amended to permit regulations to be made to remove the requirement to produce an annual report in the case of small schemes (i.e. less than 100 active and deferred members) which are winding up. However, the Pensions Board is given power to require a report if it considers it necessary or appropriate and in the interests of members of the scheme.
- The content of the actuarial statement as to whether a funding proposal is “on track” under section 55(4) has been clarified – this should in future confirm whether or not the scheme will meet the funding standard at the end of an extended funding proposal period where this has been agreed by the Board, rather than the usual 3 year period.
- An amendment to Section 121 makes it clear that an employer who offers employees membership of an overseas pension scheme is not required to provide access to a Standard PRSA.
- The explicit provision in Section 149 regarding the requirement for a scheme to satisfy the funding standard when it seeks authorisation to operate cross border has been removed, giving the Pensions Board greater flexibility in dealing with such cases (and in interpreting the relevant requirements of the EU Directive).

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