

## Legislative update

### This issue of Spotlight includes

- **Introduction of on the spot fines for Trustees and Employers**
- **Changes introduced in the Social Welfare and Pensions Act 2007**
- **Increases in transfer values**
- **Pensions Board report on Trusteeship**

### On the Spot Fines

The Social Welfare Law Reform and Pensions Act 2006 introduced Section 3A into the Pensions Act, which provided for civil penalties to be imposed for breaches of the Act, as an alternative to prosecution of Trustees and Employers for criminal offences. The Social Welfare and Pensions Act 2007, which was signed into law on 30 March 2007, sets out the process for imposing civil penalties, and the offences for which such penalties can be imposed. The Pensions Board have indicated that this section of the Act is likely to be commenced by September 2007, and that once it is in place, the Board will routinely impose fines in circumstances where the specified offences have been committed. Although the relevant regulations have not yet been laid, the Board have indicated that the fine is likely to be €2,000 per offence, and that it will not have discretion to impose fines which are lower than the prescribed amount. The offences which are subject to these “on the spot fines” are specified in the Act.

Among the offences for which fines will be levied on Trustees are failure by the Trustees

- o To register the Scheme and keep the registration details up to date.
- o To pay Pension Board fees.
- o To submit Actuarial Funding Certificates for Defined Benefit Schemes within the prescribed deadlines.
- o To prepare Annual Reports in accordance with the statutory requirements.
- o To prepare and audit Annual Accounts where required.
- o To ensure that an Actuarial Valuation of a Defined Benefit Scheme is undertaken when required.
- o To make or accept transfer payments as required under Section 34.
- o To prepare and keep up to date a Statement of Investment Policy Principles if required.
- o For Defined Contribution Schemes and AVCs, to provide sufficient information on the investment options to members.

Fines will be levied on Employers if they do not

- o Confirm to the Pensions Board, if requested, that a Pension Scheme or Standard PRSA is in place for all employees with at least 6 months’ service.
- o Provide monthly statements of the amounts deducted and remitted to the Scheme Trustees or PRSA provider.

The alternative of prosecution is still available to the Pensions Board where they consider this to be more appropriate, and the Act also provides for an increase in the maximum fines which can be imposed by the Courts in such circumstances (€5,000 for a summary offence and €25,000 for an indictable offence). If the Pensions Board imposes a fine in respect of one of the specified offences, the Trustees or Employer have 21 days to pay the fine and remedy the error, in which event no prosecution will be instigated. If this is not done, the Pensions Board have the power to prosecute as at present. The Trustees or Employer may consider that they have grounds for defending any such prosecution under Section 3 of the Act (i.e. if they were relying on another party to undertake some action to enable them to discharge their duty), and may wish to take their chance in Court rather than to pay the fine.

## Social Welfare and Pensions Act 2007

The Act also introduced some other minor amendments to the Pensions Act, including:

- Extension of Pensions Act requirements to retirement annuity contracts set up under trust.
- Inclusion of provisions requiring the Chief Executive of the Pensions Board and the Pensions Ombudsman to be accountable before the Public Accounts Committee.
- An amendment to Section 50 of the Pensions Act whereby the Pensions Board has power to reduce accrued benefits. This permits reductions to be made which will enable the funding standard to be met at the end of the funding proposal period, rather than immediately.
- A requirement that Scheme Actuaries must submit information directly to the Pensions Board if requested.

## Changes in Transfer Values

Transfer values paid from defined benefit pension schemes must not be less than those determined in accordance with actuarial standard of practice ASP PEN-2 (formally known as GN11(ROI)) issued by the Society of Actuaries in Ireland and approved by the Minister for Social and Family Affairs.

The Society has proposed, and the Minister has consented to, a change in the basis of calculation which will take effect from 1 May 2007. This change is a reduction in the pre retirement discount rate, to reflect recent falls in equity dividend yields. This increases transfer values at younger ages, although the effect for those closer to retirement is modest, as shown in the table below:

Years to Retirement	Increase %
35	7.3
30	6.0
25	4.8
20	3.6
15	1.2
10	0.3

This change will increase the funding standard liability for defined benefit schemes. As the liabilities for members in respect of whom the change is greatest (i.e. younger, short service members) are small, the impact is likely to be modest except for schemes which have a preponderance of such members.

## Pension Board Report on Trusteeship

The Pensions Board has produced a report for the Minister for Social and Family Affairs on Trusteeship. The Terms of Reference of the report were to evaluate the trust model, to identify potential improvements and to examine the supports in place for Trustees. The report indicates support for the current trust model for most pension schemes, although contract arrangements may be more suitable for small defined contribution scheme. The key recommendations which the Board has suggested be included in the Social Welfare and Pensions Bill 2008 are:

- Pension Scheme administrators should be registered.
- It should be compulsory to have Service Level Agreements between Trustees and Administrators.
- Employers should automatically arrange Trustee training within six months of the appointment of each Trustee, and every two years thereafter.
- Annual reports should include details of the Trustee training provided during the year.
- Each Scheme should have a copy of the Pensions Board Trustee Handbook, which will be amended to include a Trustee checklist.

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