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Regulation of state and supplementary pension schemes in Ireland: overview

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PENSIONS

State pensions

1. Do employers and/or employees make pension contributions to the government in your jurisdiction?

Contributions paid to the government

Employers and employees make pay related social insurance (PRSI) contributions to the government which are based on the level of an employee's earnings. These PRSI contributions are used to fund various state benefits including social welfare benefits and state pensions.

While these PRSI contributions are not pension contributions, the number of PRSI contributions made by (or credited to) an individual will determine whether they are entitled to a contributory state pension.

Taxation of contributions

No pension contributions are paid to fund the state pension. This is funded through PRSI contributions.

Monthly amount of the government pension

The current rate of contributory state pension payable to a single person with a full history of PRSI contributions on reaching state pension age (currently age 66) is EUR233.30 per week (equivalent to EUR1,010 per month). Lesser rates are payable in respect of individuals with only a partial history of PRSI contributions.

A non-contributory state pension system, which is means-tested, is also operated. The current maximum rate of non-contributory state pension payable to a single person on reaching state pension age is EUR222 per week (equivalent to EUR962 per month).

Supplementary pensions

2. Is it common (or compulsory) for employers to provide access, or contribute, to supplementary pension schemes for their employees? If they do, are they:

- Occupational (that is, linked to an employment or professional relationship between the plan member and the entity that establishes the plan)?
- Personal (that is, not linked to an employment relationship, established and administered directly by a pension fund or a financial institution acting as pension provider, where individuals independently purchase and select material aspects of the arrangements, though the employer may make contributions).

It is common for employers to provide access and contribute to supplementary pension arrangements. Both occupational and personal arrangements are common.

Occupational pension schemes are trust-based structures established by an employer for the benefit of its employees. Connected or associated employers are permitted to operate group schemes subject to certain requirements of the Revenue Commissioners. There are a small number of industry wide schemes operated in Ireland.

Employers participating in occupational schemes will have ongoing duties, obligations and functions to these schemes arising under legislation (primarily the Pensions Act 1990 (as amended) (Pensions Act)), requirements of the Revenue Commissioners and the terms of the scheme's governing documentation. The administration and investment of scheme assets will be the responsibility of the scheme's trustees.

The minimum statutory requirement on employers is to provide employees with access to a standard personal retirement savings account (PRSA) unless they provide access to an occupational pension scheme within six months of employees commencing service. A PRSA is a form of defined contribution personal arrangement. There is no obligation on an employer to pay employer contributions to a PRSA, though many employers choose to do so.

There are two types of PRSA products which can be marketed by PRSA providers (usually insurance companies and other financial institutions), standard and non-standard, and different investment rules apply to each.

Employers have no direct role in the administration of a PRSA, as these functions are fulfilled by the relevant PRSA provider and investment decisions are made by the PRSA holder.

3. Where supplementary schemes are provided, do these schemes provide pensions, the value of which:

- Is linked to the employee's salary (defined benefit)?
- Is linked to employer and/or employee contributions and investment return on those contributions (defined contribution)?

Linked to the employee's salary

Some employers provide employees with access to defined benefit pension schemes under which, broadly speaking, the level of benefits to be provided is determined by an employee's salary and service. Defined benefit schemes are generally structured as occupational pension schemes.

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The rate of benefit accrual is a matter of scheme design, usually based on a fraction of salary for each year of service (for example, 1/60th or 1/80th of salary for each year of service). Most schemes operate on a "balance of cost" model whereby the rate of employee contribution is fixed and the employer is required to pay the balance of contributions needed to provide benefits.

It is increasingly less common for employers to provide access to defined benefit schemes owing to the uncertain nature of the funding obligation and the additional administration and regulatory supervision involved. Many employers operating defined benefit schemes will have already closed these to new entrants (and possibly future benefit accrual).

Linked to employer and/or employee contributions

It is now more common for employers to provide access to a form of defined contribution (or money purchase) arrangement under which, broadly speaking, the level of benefits to be provided is determined by the level of contributions paid and the investment return.

Defined contribution arrangements can be either occupational pension schemes established by a sponsoring employer or a PRSA arrangement (*see Question 2*) established between an individual and a PRSA provider.

A small number of employers provide access to hybrid arrangements, such as retirement balance plans. Under these types of arrangement, employees are guaranteed a specified level of fund on retirement but the level of benefits that fund will deliver is not guaranteed.

It is permissible (though uncommon) for an occupational pension scheme to operate distinct defined benefit and defined contribution sections.

4. For supplementary pensions:

- Is there a minimum period of service before workers are entitled to receive vested rights?
- Are there any legal requirements for schemes or providers to index pensions in payment and/or revalue pension rights in deferment?

Minimum period of service

Contributions paid into a PRSA vest immediately and cannot be refunded to an employer on an employee leaving service.

Under occupational pension schemes, it is a statutory requirement that benefit entitlements will vest following completion of two years of "qualifying service" (broadly, service as a member of the relevant scheme).

Unless the rules of a scheme provide otherwise, an early leaver with less than two years qualifying service will not have any entitlement to preserved (or deferred) benefits from a scheme. However, many schemes will allow early leavers with less than two years' qualifying service to take a refund or transfer of their own member contributions.

Legal requirement to index

Where a member of an occupational scheme leaves service with over two years of qualifying service he has an entitlement to a preserved benefit. Under defined benefit schemes, a preserved benefit must be revalued (or adjusted) annually up to the date of retirement. The statutory minimum level of revaluation applying is the lesser of 4% and the increase or decrease in the consumer price index (CPI) in a given year.

There is no statutory requirement to increase pensions in payment. However, it is not uncommon for defined benefit pension schemes to do so or to permit discretionary increases.

Funding and solvency requirements

5. In relation to supplementary schemes, are these generally funded or unfunded? If funded, are there any solvency requirements on the sponsoring employer or provider?

Funded or unfunded?

While some unfunded pension arrangements exist, benefits provided to members under supplementary schemes are generally funded as they are accrued.

Solvency requirements for funded schemes

Defined benefit schemes must comply with a statutory funding requirement, the minimum funding standard (MFS). The MFS assesses a scheme's liabilities on the basis of the funding needed to secure all members' benefits on the immediate winding-up of the scheme. Such schemes must also hold a buffer above the MFS, the funding standard reserve (the FSR).

Pensions in payment (and the benefits of members who have passed normal retirement age) are valued by reference to the cost of purchasing annuities. The benefits of all other members will be assessed on a cash equivalent transfer value basis, that is, the transfer estimated to provide the member's benefit using various prescribed assumptions including in relation to future investment returns and annuity costs.

The FSR is calculated as a percentage of a scheme's MFS liabilities and the percentage can be reduced to take account of a schemes holding of less risky assets such as cash and high quality bonds.

The Pensions Act requires that an actuarial valuation of a defined benefit scheme's assets and liabilities must be completed every three years (with annual checks undertaken in the intervening years) to assess whether the scheme satisfies the MFS and FSR. Where a scheme is underfunded, a funding proposal must be agreed to correct this over an agreed period.

The Pensions Act permits The Pensions Authority to unilaterally reduce benefits (and/or wind-up a scheme) where it fails to meet the MFS or the FSR.

Reporting and accounting

Subject to certain exceptions, trustees of occupational pension schemes must prepare annual reports and accounts (which must be independently audited).

Investment requirements

Assets held by occupational pension schemes must be invested by its trustees in accordance with:

- Pensions legislation.
- Revenue requirements.
- The scheme's governing documentation.
- General trust law duties.

The relevant legislative requirements are contained in the Pensions Act and the Occupational Pension Schemes (Investment) Regulations 2006 (as amended).

Less stringent requirements apply to schemes which are established as one member arrangements.

Schemes with 100 or more members must prepare and maintain a statement of investment principles.

Separate investment requirements apply in respect of PRSAs. Standard PRSAs may only invest in pooled (or managed) funds. This restriction does not apply to non-standard PRSAs.

6. In relation to access for members to the funds in their supplementary pension scheme:

- To what extent can members transfer their funds to another pension scheme?
- How do members normally take the benefit of their funds (for example, lump sums, income withdrawals (drawdown), life annuity arrangements)?
- What are the legal restrictions upon access to the funds (for example, age)?
- What are the common arrangements for early retirement and ill-health retirement?
- Are dependants of deceased members entitled to receive benefits payable on the member's death? What form do these commonly take?

Member's transfer of funds

Where a member leaves service with in excess of two years' qualifying service under an occupational pension scheme, he will generally have a statutory entitlement in the two-year period after leaving service to transfer those benefits to another occupational pension scheme, a PRSA or another prescribed type of pension arrangement. Members with in excess of 15 years' service under an occupational pension scheme cannot transfer those benefits to a PRSA.

PRSAs are fully portable.

Transfer entitlements of other members are determined by the rules of the scheme.

In the case of underfunded defined benefit schemes, the Pensions Act allows for a transfer value to be reduced to reflect the scheme's funding level.

Particular restrictions apply to the circumstances in which benefits can be transferred to overseas pension arrangements.

Taking pension benefits

Under occupational pension schemes and PRSAs members will ordinarily be entitled to a pension from the scheme (or in the form of an annuity purchased from an insurance company) with the option to claim part (or, if their benefits are trivial, all) of their benefits as a tax-relieved lump sum.

An alternative option on retirement for PRSA holders and members of occupational defined contribution schemes (and in limited circumstances, defined benefit schemes) is to transfer their accrued benefits to an approved minimum retirement fund (AMRF) and/or approved retirement fund (ARF). These products allow for assets to remain invested and for cash to be drawn down intermittently subject to various restrictions and requirements.

Legal restrictions

Where a member retires he is entitled to take his benefits from age 50.

Early and ill-health retirement

Other than in cases of ill-health, benefits cannot ordinarily be accessed prior to:

- Age 50 (occupational schemes).
- Age 60 (PRSAs).

However, benefits can be taken from age 50 under a PRSA where the member is retiring from employment.

It is common for a scheme's governing documentation to specify a normal retirement age (which must be between ages 60 and 70) and whether or not early retirement is permitted. In the case of underfunded defined benefit schemes, the Pensions Act permits the trustees of such schemes to refuse applications for early retirement.

Dependants' benefits

It is common for occupational pension schemes to provide dependants' benefits. Typical benefits include:

- A lump sum payable on the death of a member while in service.
- A refund of the member's contributions payable as a lump sum.
- A pension or pensions payable to a surviving spouse, partner, child or other dependant on the death of a member.

Such dependants' benefits (other than a refund of contributions) will ordinarily be insured under a defined contribution scheme. Under a defined benefit scheme such benefits may be insured or funded through the scheme.

Occupational pension schemes may also give members the option to surrender part of their benefits to provide dependants' benefits on the death of a member.

Under a PRSA arrangement, the value of a member's fund will be payable to their estate on their death prior to retirement. It is not possible to provide insured death in service benefits under a PRSA. Following retirement, depending on the options chosen, dependants' benefits can be provided in the event of the PRSA holder's death.

7. Is there a regulatory body that oversees the operation of supplementary pension schemes? Do any other governance regimes apply to supplementary pension schemes?

Regulatory body

The regulation of occupational pension schemes is overseen by The Pensions Authority, a statutory body created under the Pensions Act which is headed by the Pensions Regulator (an individual).

The Revenue Commissioners also monitor compliance by exempt approved occupational pension schemes with the Revenue's terms of approval.

The approval, monitoring and supervision of PRSA products and PRSA providers is overseen by The Pensions Authority, the Revenue Commissioners and the Central Bank of Ireland.

The Pensions Ombudsman, also created under the Pensions Act, deals with complaints relating to occupational pension schemes, PRSAs and other pension arrangements.

Regulatory framework

The powers and functions of The Pensions Authority are set out in the Pensions Act. Its key functions include:

- Monitoring and supervising the operation of the Pensions Act.
- Issuing guidelines or guidance notes on the operation of the Pensions Act.
- Encouraging the provision of appropriate training for trustees of occupational pension schemes.

Certain guidance issued by The Pensions Authority and prescribed by the relevant government minister (known as "statutory guidance") has the same legal status as legislation.

The Pensions Authority has also issued guidance, guidelines and other publications on a wide variety of other issues. These documents do not have the same legal force as statutory guidance.

Other key governance requirements

The exempt approved status of occupational pension schemes is subject to those schemes meeting various requirements of the Revenue Commissioners relating to, amongst other issues:

- The nature and level of benefits provided.
- Eligibility requirements.
- Contributions payable by employees and employers.
- The circumstances in which transfers of benefits are permitted.
- The operation of group (or multi-employer) schemes.

Penalties for non-compliance

The Pensions Authority has the power under the Pensions Act to impose on-the-spot fines in respect of breaches of legislation.

Where an offence has been committed, enforcement action can be taken by The Pensions Authority which can result in fines of up to EUR25,000 or custodial sentences of up to five years on conviction.

Where an occupational pension scheme breaches the terms of its tax approval, the Revenue Commissioners can withdraw the scheme's tax approved status. This could have implications for the tax relief granted on contributions and investment returns, and the tax treatment of benefits provided by the scheme.

Tax on pensions

8. Are any tax reliefs available on contributions to supplementary pension schemes (by the employer and employees)?

Tax relief on employer contributions

Ordinary employer contributions to an occupational pension scheme are allowed as a deduction for tax purposes.

Special contributions (that is contributions which are not ordinary contributions) can also be tax deductible although the Revenue may require that these are spread forward over a number of years.

The amounts contributed by employers cannot exceed the amounts that are necessary to provide the benefits of scheme members.

Tax relief on employee contributions

Tax relief on employee contributions is granted on earnings subject to an age-related cap of 15% to 40% of earnings. Earnings are subject to a further limit of EUR115,000. Tax relief is available at the marginal rate but only after paying universal social charge and PRSI. The portion of earnings that an employee can claim tax relief on is determined by their age in accordance with the following table:

- Aged under 30: 15% of earnings.
- Aged 30 to 39: 20% of earnings.
- Aged 40 to 49: 25% of earnings.
- Aged 50 to 54: 30% of earnings.
- Aged 55 to 59: 35% of earnings.
- Aged 60 or over: 40% of earnings.

9. Are there any approval or registration requirements with the local tax authority where a supplementary scheme is established?

A supplementary scheme must be approved by, and registered with, the Revenue Commissioners. It must also be registered with The Pensions Authority.

10. What is the tax treatment of investments made by the scheme?

Revenue approved schemes are exempt from:

- Income tax on income from investments.
- Capital gains tax on investment gains.

Dividends received from Irish companies are also entitled to an exemption of dividend withholding tax.

Pension schemes remain liable for all other types of tax, such as VAT and stamp duty.

11. What is the tax treatment of pension and lump sum payments made to members?

The aggregate of a member's capitalised pension entitlements from all employments cannot exceed the Standard Fund Threshold (currently EUR2 million) unless the member has received a Personal Fund Threshold from the Revenue Commissioners, in which case the aggregate of the member's capitalised pension entitlements from all employments cannot exceed their Personal Fund Threshold. Any amounts in excess of the Standard Fund Threshold or the Personal Fund Threshold will be immediately subject to a penal tax charge.

A tax-relieved lump sum of the greater of 1.5 times' final remuneration or 25% of the value of the member's retirement fund can be paid on retirement. These amounts are subject to further limits as follows:

- The first EUR200,000 is tax-free.
- The next EUR300,000 is taxed at the standard rate (currently 20%).
- Anything above this amount is taxed at the marginal rate (currently 40%).

If a pension is paid with the balance of the fund, normal income tax (PAYE), PRSI and universal social charge will be payable on the regular pension payments that are paid.

Aggregate benefits payable to an employee who retires at normal pension age with 40 or more years' service with the

same employer, when expressed as an annual pension for life (taking into account any benefits payable as lump sums), should not exceed 2/3rds of final remuneration. Final remuneration is defined broadly to include basic remuneration over any 12-month period in the five years prior to retirement or leaving service plus the average of fluctuating emoluments over three or more consecutive years ending on the last day of the 12-month period used in calculating basic remuneration.

For persons with less than 40 years' service with the same employer, the maximum 2/3rds of final remuneration pension can still be earned but only where the member in question accrued it over a minimum of ten years to retirement. If the pension is accrued over nine years or less to retirement the maximum approvable is determined in accordance with the following:

- One year of service to normal retirement age: 4/60ths of final remuneration.
- Two years of service to normal retirement age: 8/60ths of final remuneration.
- Three years of service to normal retirement age: 12/60ths of final remuneration.
- Four years of service to normal retirement age: 16/60ths of final remuneration.
- Five years of service to normal retirement age: 20/60ths of final remuneration.
- Six years of service to normal retirement age: 24/60ths of final remuneration.
- Seven years of service to normal retirement age: 28/60ths of final remuneration.
- Eight years of service to normal retirement age: 32/60ths of final remuneration.
- Nine years of service to normal retirement age: 36/60ths of final remuneration.
- Ten years of service to normal retirement age: 40/60ths of final remuneration.

12. Are there any other applicable tax charges on schemes?

Schemes were obliged to pay a levy to the Revenue Commissioners for the years 2011 to 2015. In 2015 the levy was 0.15% of the market value of the scheme's assets as at 1 June 2015 which had to be paid to the Revenue Commissioners on or before 25 September 2015. For the years 2011 to 2013, the levy payable was 0.60% and for the year 2014 the levy payable was 0.75%. This levy has ceased to be payable from 2016.

Business transfers

13. Is there any legal protection of employees' pension rights on a business transfer?

Transfer of accrued pension rights

Irish law in this area is governed by the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (Transfer Regulations).

Under the Transfer Regulations, transferee employers must offer employees the same general terms and conditions of employment as they were entitled to prior to the transfer of their employment. However, transferee employers do not have to offer employees the same terms and conditions in relation to old age, disability or survivors' benefits which are provided under an occupational pension scheme. Therefore, where pension benefits are provided through an occupational pension scheme, employees have limited legal protection in relation to pension benefits in respect of their service post-transfer.

Employees' contractual pension entitlements which are independent of the occupational pension scheme (including, where applicable, contributions to a PRSA) will be protected on transfer.

Under the Pensions Act, an employee who is entitled to a preserved benefit from the occupational pension scheme of their pre-transfer employer is entitled to have the trustees of that scheme make a transfer payment of his preserved benefit to another pension arrangement within three months of leaving service.

Other protection for pension rights

The accrued pension entitlements of the member in respect of pre-transfer service will be protected under the Pensions Act. Where the member has completed two years of qualifying service (broadly, service as a member of the scheme in question), he will be entitled to a preserved benefit from the scheme.

The Pensions Act also prohibits trustees of schemes from transferring out members' preserved benefits without that member's consent, except where the value of the preserved benefit is less than EUR10,000.

Subject to having the power to make the transfer, trustees of pension schemes are only entitled to make a bulk transfer of multiple members' accrued entitlements to another pension arrangement without obtaining member consent, where they comply with a prescribed statutory consultation process.

Participation in pension schemes

14. Can the following participate in a pension scheme established by a parent company in your jurisdiction:

- Employees who are working abroad?
- Employees of a foreign subsidiary company?

Employees working abroad

Employees of an Irish company working abroad can participate in a pension scheme established by an Irish company in Ireland. Generally, if the employee is on secondment abroad with an expectation of returning to Ireland, no special notification or authorisation requirements apply. However, in other circumstances approval of the Revenue Commissioners may be required. In addition, registration with The Pensions Authority (as outlined below) may be required.

If the employee is working in another member state of the EU, that employee can only participate in an Irish-authorised pension scheme where the scheme has been registered with the Irish Pensions Authority as a cross-border scheme, and that scheme must adhere to the social and labour law of that other EU member state.

Employees of a foreign subsidiary company

Employees of a foreign subsidiary company working in Ireland can participate in a pension scheme established in Ireland by a parent company. Generally, employees working abroad for a foreign subsidiary company can participate in a pension scheme established in Ireland but (other than in limited circumstances) that part of the scheme which relates to those

employees will not be entitled to avail of the favourable tax treatment outlined above.

Employees of a foreign subsidiary working in another member state of the EU may be able to participate in an Irish-authorised pension scheme where the scheme has been registered with The Pensions Authority as a cross-border scheme, and the foreign subsidiary is notified to The Pensions Authority. The scheme must also adhere to the social and labour law prescribed by that other member state.

Employer insolvency and overall scheme solvency

15. Is there any protection provided for pension scheme benefits where the sponsoring employer becomes insolvent? If so, who provides the protection, and how does this operate? If the scheme itself is underfunded, are there any funding obligations on connected or associated legal entities?

Where the scheme sponsoring employer becomes insolvent and the scheme is insolvent and winding up, all members are entitled to have a minimum of 50% of their accrued benefits secured. If the scheme is so underfunded that it cannot provide this minimum level of benefit, the state will fund the shortfall. It is likely that the benefit will be secured in accordance with the statutory minimum funding standard methodology, which provides for annuities to be bought for pensioners and transfer values payable in respect of active and deferred members, though the legislation is not clear in this regard.

Insolvency legislation also provides for an Insolvency Payments Scheme under which unpaid pension contributions due from an insolvent employer can be recovered. Under a separate Pensions Insolvency Payments Scheme, trustees of insolvent schemes (where the employer is also insolvent) can make a lump sum payment to the state. The state will then pay the pensions of pensioners directly rather than the trustees having to purchase annuities.

No funding obligations are imposed on connected or associated entities of the sponsoring employer under legislation. However, obligations may be imposed under the provisions of the relevant scheme.

ONLINE RESOURCES

Irish Statute Book

W www.irishstatutebook.ie

Description. This website is the electronic Irish Statute Book (eISB) and includes Acts of the Oireachtas and Statutory Instruments, the official versions of which remain the printed versions published by Government Publications. The eISB is maintained by the Office of the Attorney General.

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- Acting for the trustee of one of Ireland's largest defined benefit schemes in relation to a complex restructuring to address a significant past service deficit.
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