APLI & SAI

The Social Welfare & Pensions Act, 2009

Introduction

Pensions Board prosecutions

Section 48

PIPS

Section 50/50A

Bulk Transfer Regulations

Pensions Act Prosecutions

- Section 3C: Breach of Section 58A (remittance of contributions) - Power to use payroll data as evidence
- Trustee liability
- Protection for honest trustee – section 19 of 2009 Act

Change in priority order on wind-up

Section 48(1)(b) of the Pensions Act – priorities on wind-up

The assets of the scheme, less winding up expenses, must be applied to meet the liabilities of the scheme for

I. Benefits arising from members' AVCs, including transferred-in AVCs

II. Pensions in payment (and attaching spouses' pensions) and benefits for those past pension age [note – may elect fixed rate substitution (s48(3A))]

III. Preserved benefits for actives and deferred members including future revaluation on post 1991 benefits

Any excess must be used to restore full index linking to category II (s48(3B))

If there are sufficient assets available, future revaluation of pre 1991 benefits must be provided before any surplus is returned to the employer. (s48(2)

No explicit reference to how to deal with an insufficiency of assets but may be inferred (or spelt out in scheme documents) that a pro-rata approach is applied where the assets remaining after the discharge of prior liabilities are insufficient to meet in full the liabilities for the next class

New Section 48 (1A) of the Pensions Act - priorities on wind-up* after 29 April 2009

***or, if wind-up has commenced, where none of the liabilities have been discharged before that date**

The assets of the scheme, less winding up expenses, must be applied to meet the liabilities of the scheme for

I. Benefits arising from members' AVCs, including transferred-in AVCs

II. Pensions in payment (and attaching spouses' pensions) and benefits for those past pension age, **not including post retirement increases in such benefits**

III. Preserved benefits for actives and deferred members including future revaluation on post 1991 benefits, **not including post retirement increases in such benefits**

IV. The balance of the benefits specified in paragraphs 1 [pensions in payment], 2 [AVCs and transfers in], 3 [post 91 preserved plus revaluation] and 4 [pre 91 preserved] of the Third Schedule

If there are sufficient assets available, future revaluation of pre 1991 benefits must be provided before any surplus is returned to the employer.

New section 48(1B)

"The liabilities of the scheme in respect of the benefits in [IV] shall rank equally between each other and shall be paid in full unless the resources of the scheme are insufficient to meet those liabilities, in which case they shall abate in equal proportions as between each other"

- Could also be applied to I, II and III
- Does "in full" mean that fixed rate substitution is not available (there is no amendment to the reference in s48(3A) to include the new s48(1A))?
- How to interpret "abate in equal proportions as between each other"?

“abate in equal proportions as between each other”

Example - scheme with

One 65 year old [male] pensioner entitled to €20,000 p.a. single life pension, 3% p.a. guaranteed increases

One 30 year old [male] active entitled on wind-up to preserved pension of €5,000 p.a. at 65, with statutory revaluation and 3% guaranteed increases post retirement

Assets of €350,000 net of expenses and AVCs

Winding up benefit costs

–Pensioner – level annuity €290,000, increasing annuity €400,000

–Deferred – TV no increases €12,500, TV with increases €16,600

“abate in equal proportions as between each other”

On old priority order, pensioner gets everything.

On new priority order, €290,000 + €12,500 = €302,500 covers benefits excluding increases.

How do I divide balance of €47,500?

Pro rata to the liabilities

- Increase both values by 47,500/302,500 = 15.7% each

Provide same % post retirement increases?

- Provide pension increases of 1.25% p.a. for each? This costs €45,800 [15.8% increase] for pensioner and €1,700 [13.6% increase] for deferred

Other possibilities?

Practical issues

- Pensions already secured by purchase of annuity with guaranteed increases?
- If rules provide say CPI max 5%, do I have to retain CPI linkage and provide say CPI max 2%, or can I replace it with fixed 1.9% if that has same cost? [Fixed rate substitution not clear]
- Availability of annuities with odd increase provisions?
- Can the available assets be applied simply as an addition to basic benefit rather than providing some level of pension increase? Difficult to finalise wind-up otherwise?
- Any others?

Impact on minimum funding standard and actuarial funding certificate

- No change to s 44 but reprioritization intended to apply to AFC (will not impact on whether scheme meets standard but on the coverage for the various priority classes)

- Will enable "less reduced" transfer values to be paid?
  - In previous example, full TV = €16,600. Reduced TV nil under old priority rules
  - Now can pay TV excluding future post-retirement increases plus the coverage % of pension increases = €12,700 + 15.7% = €14,690?

- May also impact early retirement cases as the amount required to maintain the same coverage level (ignoring pension increases if these are currently not covered for anybody) may be reduced to an affordable level?

Pensions Insolvency Payment Scheme

Pensions Insolvency Payment Scheme (PIPS)

- Enabling power – “the Minister for Finance may after consultation with the Minister for Social and Family Affairs, make a scheme …. providing for the payment… of monies to ..relevant pensioners”
- “PIPS shall contain such provisions as the Minister shall determine” including conditions for inclusion and exclusion of schemes and pensioners, terms and conditions of payment, pricing – including…
  - **“such terms and conditions as the Minister considers necessary to ensure that the payments.. out of the Central Fund in respect of a …scheme will not be greater than the sum paid by the trustees of the .. scheme to the Minister”.**
- Is this the Government’s definition of cost-neutral?

Specific provisions

:

- No increasing annuities will be provided
- Power to appoint a person to make the pension payments
- Payment direct to or for the benefit of the Exchequer as Minister directs
- Pension payments from the “Central Fund or the growing produce thereof”
- Pricing delegated to NTMA
- Review after not more than 3 years

Eligibility

Eligible Scheme

- Winding up has commenced
- Scheme has insufficient resources to discharge liabilities on the date of commencement of winding up
- Where the "employer concerned" is insolvent
- Certified by the Pensions Board as compliant with such requirements as may be made by Minister

Relevant Pensioner in Eligible Scheme

- Was immediately before the date of [commencement of] winding up
  - in receipt of pension
  - had reached normal pensionable age and was entitled to receive benefits

Issues

- No real substance yet – when will we see anything?
- Cost-neutrality/pricing – what is intended?
- Paper by SAI working group led by David Harney
- Eligible schemes? Pressure in relation to SR Technics – or will there be debt on employer?
- Relevant pensioners – how to decide exactly who is covered i.e. when winding up commenced?
- How will this fit into the logistics of wind-up?

Section 50

- Pensions Board directs trustees to cut benefits
- New: can cut deferred benefits and pensioners' increases
- 4 headings:
  - No AFC
  - AFC but no funding proposal
  - Negative AFC and funding proposal
  - Pensions Board consents to s50A amendment
- Further 6 month extension on funding proposals
- Drafting problems: s50(1), s50(3)(a)(i)

Section 50A

- Voluntary – at trustees' initiation
- Trustees apply to Pensions Board for consent to amendments
- Member consent not required
- To avoid winding up "by reason only of scheme not having sufficient resources"

Bulk transfer regulations

- Apply where consent is not to be obtained
- Transferring scheme trustees must give information 2 months before transfer
- Members may make observations up to 1 month before transfer
- Trustees and employer must consider observations before transfer

Bulk Transfer Regulations

Information to Members:

- Circumstances giving rise to transfer
- Benefit structure of transferring and receiving schemes, including any “discretionary benefit practices”
- Benefits under receiving scheme
- Any adverse consequences
- Actuary’s statement, if DB
- Note on procedure for making observations and their consideration

Bulk Transfer Regulations

Actuary's Statement

- How tv and benefits in new scheme/contributions to PRSA are calculated
- How discretionary benefit practices are provided for in calculations
- Whether minimum tv (on MFS basis) in receiving scheme/value of contributions in PRSA will be equal to minimum tv in transferring scheme
- If receiving scheme wound up immediately after transfer would each member's tv be at least equal to tv from transferring scheme if wound up before?
- Funding level of receiving scheme at least equal to that of transferring scheme?