Regulation in the Pensions Industry

14 December 2011

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Agenda

- Background to pension legislation
- Current regulations
  - Regulatory Bodies
  - Pensions Act 1990
  - Taxes Consolidation Act 1997
  - Family Law Act 1995 & 1996
  - Employment law
  - Data protection
  - Equal treatment
  - National Pensions Framework and Recovery Plan
  - Budget 2011 & 2012
- Future changes

Life in the dark ages.....

Governed by Trust Law, Revenue practice and Finance Act 1972

- No Pensions Board
- No disclosure requirements
- No annual report
- No preservation
- No funding standard
- No standard priorities on wind up
- No regulations around self investment
- No member trustees or trustee training
- No equal treatment

- Mainly DB Schemes
- Lots of surpluses
- High interest rates
- High inflation
- Contribution holidays
- Greater flexibility

Regulatory Bodies

- The Pensions Board
  - Regulates pension schemes
  - Monitors and supervises the operation of the Pensions Act
  - Advises the Minister for Social Protection
  - Generally aims to ensure compliance without having to resort to penal measures but will take enforcement actions where necessary
  - Produces booklets, guidance notes and Frequently Asked Questions (FAQs) on specific areas of pensions legislation
  - Provides an enquiry service in relation to its technical guidance
- The Pensions Ombudsman
  - Investigates complaints of financial loss
  - Impartial adjudicator
  - Services free of charge
- The Revenue Commissioners
  - Regulation of the tax treatment of pensions
  - Granting or refusing exempt tax approval status

Pensions Act 1990

- Supplemented by a large volume of related regulations and decided case law
- Regulates occupational pension schemes, PRSAs and trust RACs

Pensions Act 1990 – Common references

- This valuation report was prepared in accordance with Section 56 of the PA90
- This funding proposal was prepared in accordance with Section 49 of the PA90
- A Section 49(3) application made to extend funding proposal period to 10 yrs
- Transfer values are to be reduced in accordance with Section 34 of the PA90
- Pension increases to be removed by Section 50 amendment

Pensions Act 1990

- Part I – Preliminary and General
- Part II – Establishment of Pensions Board
- Part III – Preservation of benefits
- Part IV – Funding Standard
- Part V – Disclosure of information
- Part VI – Trustee of schemes/ Registered Administrators
- Part VII – Equal treatment in occupational benefit schemes
- Part VIII – Compulsory and voluntary reporting to Board
- Part IX – Miscellaneous applications to High Court
- Part X – Personal Retirement Savings Accounts
- Part XI – Pension Ombudsman
- Part XII – Cross border schemes

Pensions Act 1990 Part III (S27-39)

- Aims to protect members' accrued benefits
- Applies to a member who has service in relevant employment after 1/1/1991
- A member is entitled to a preserved benefit if
  - Service terminates after 1/1/1991 but before 1/6/2002 and at least five years service has been completed
  - Service terminates after 1/6/2002 and at least two years service has been completed
- Basic preserved benefit calculated with reference to completed and potential scheme service
- The preserved benefit is revalued annually in line with CPI capped at 4%
- Transfer values
- Refund of member contributions

Pensions Act 1990 Part IV (S40-53)

- Aims to ensure schemes have minimum funds required to pay benefits
- Actuarial Funding Certificates (AFCs)
  - Required every three years
  - Must be submitted within 9 months
  - If following a negative Actuary statement at year end must be submitted within 12 months
  - Actuary statement required annually
- Components of AFC
- Funding proposals
  - Three years
  - Extensions
  - Amendments to benefits
- Priorities on wind up

Pensions Act 1990 Part V (S54-58A)

- Aims to ensure all parties have sufficient information available
- Disclosure of information on entry, annual, exit
- Trustee annual report & accounts
- Actuarial valuation report
- Trust Deed & Rules
- Obligation of employer to remit contributions within 21 days after month end

Pensions Act 1990 Part VI (S59-64A)

- Specifies day to day requirements for running scheme
- Ensuring contributions are received and invested without delay
- Making arrangements for paying benefits and keeping records
- Taking trustee training
- Appointing a registered administrator
- Preserving or transferring benefits
- Ensuring the minimum funding standard is met
- Providing information
- Registering the scheme with the Pensions Board
- In the event of a wind-up, distributing the resources of the scheme
- Duties and responsibilities of Trustees

The Act overrides the trust deed and rules if they contain something different

Pensions Act 1990 Part VI(S64B-64P)

- Registered administrators:
  - – are regulated by the Pensions Board
  - – must prepare the annual report for signature by the trustees and deliver it to the trustees within 8 months of the scheme's year end
  - – must prepare the annual benefit statements, and deliver them to the trustees within 5 months of their effective date
  - – must maintain sufficient member information and financial records to provide these services.

Taxes Consolidation Act 1997 (Ch1 Pt30 S770-790C

- The Taxes Consolidation Act 1997 replaced the Finance Act 1972 in respect of Revenue regulation of pension schemes
- In particular it addresses the "traditionally favourable" tax position on pension scheme contributions/investments
- It can be amended from time to time, usually in the Finance Acts
- A new pension scheme must be approved under the legislation and meet certain criteria in order to maintain that approval
- However in addition to the specifics of the legislation continuing Revenue approval is also reliant/dependent on Revenue practice as set out in the Revenue Manual (as amended from time to time)
- Supplemented and amended each year by other legislation, including the annual Finance Act

Other legislation

- Family Law Acts 1995 & 1996
  - Regulate the granting of PAOs on judicial separation or divorce
  - The legislation sets out how the assets of a couple, including their pension benefits, are shared in the event of a legal separation or divorce.
  - The court may issue a Pension Adjustment Order (PAO) splitting the pension benefits between the member and his or her former spouse.
    - This overrides the rules of the scheme.
  - The non-member spouse is entitled to information relating to the scheme including legal documents, annual reports and actuarial valuations in the case of defined benefit schemes.
  - The court may also direct the trustees to provide the spouse with more specific details of the member’s benefits within a specified time period
- Civil partnership
  - Registered civil partners have the same entitlements as spouses
  - Cohabiting couples may apply for a PAO on separation

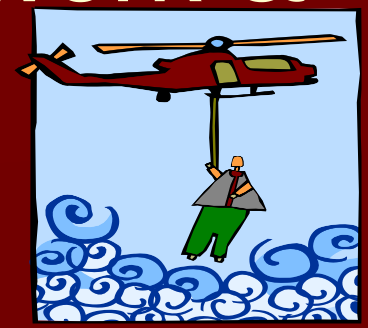
Other legislation

- Equal treatment
  - Pension schemes must comply with legislation on equality.
  - Rules of the scheme must be consistent with the requirements of equal pension treatment included in the Pensions Act.
  - Pension schemes must not discriminate on any of the following grounds:
    - Gender, marital status, family status
    - sexual orientation
    - Religion, age
    - Disability, race
    - membership of the Traveller community.
  - Indirect discrimination is prohibited
  - Can occur where an apparently neutral rule of a scheme puts one person or group at a disadvantage, relative to another in respect of one of the discriminatory grounds

Other legislation

- Employment law
  - Pension schemes must comply with employment law generally
  - Contractual terms for members of pension schemes can be set out in:
    - employment offer letters
    - contracts of employment
    - employee handbook
    - the pension scheme booklet
    - the trust deed and rules of the pension scheme
    - collective agreements
    - presentations and verbal commitments to employees
- Data protection
  - Trustees are ‘data controllers’ and are responsible for:
    - holding correct information
    - keeping it secure
    - only using it for the purpose for which it is provided.
  - Individuals whose details are retained must have access to these details and may ask for them to be changed if they are not accurate.
  - Criminal sanctions may be imposed if data is disclosed to anyone who is not entitled to the information.

National Pensions Framework & Recovery Plan



- Recovery Plan
  - Most items dealt with in Budget 2011
  - Indicated no increase in State Retirement Pension for the next 4 years
- Retirement Age - increase to 66 in 2014, 67 in 2021 and 68 in 2028
- National Pensions Framework
  - State pension – sustain value at 35% of average weekly earnings
  - Tax relief – previous government proposed to reduce relief from marginal rate
  - Other items
    - Review regulatory regime for defined benefit schemes
    - Reform public sector pensions

2011 Budget changes

- Pension contributions no longer receive relief from PRSI and the income and health levy (which have been replaced by the USC)
  - Members still receive relief at the marginal tax rate

- Lower earnings cap applies in 2011 for tax relief on pension contributions (€150,000 in 2010 and €115,000 in 2011)

- Reduced lifetime limit on the value of pension scheme benefits (€2.3million and likely to change to €1.2million)

- Tax free lump sums at retirement limited to €200,000 from 1 January 2011

2012 Budget changes

- Employer PRSI relief on employee contributions to be abolished from 1 January 2012
- Annual distribution from ARFs increased from 5% to 6% where fund exceeds €2m
- The above also applies to vested PRSAs

Future changes

Funding standard

- Funding proposal deadlines will be "switched on" by year end
- Credit to be given for investment in sovereign bonds/sovereign annuities
- Introduction of a risk reserve requirement

Pensioner priority

Priority given to pensioners' benefits in the event of wind-up will be limited to the lower of 75% of current pension or €30,000

Statutory revaluation

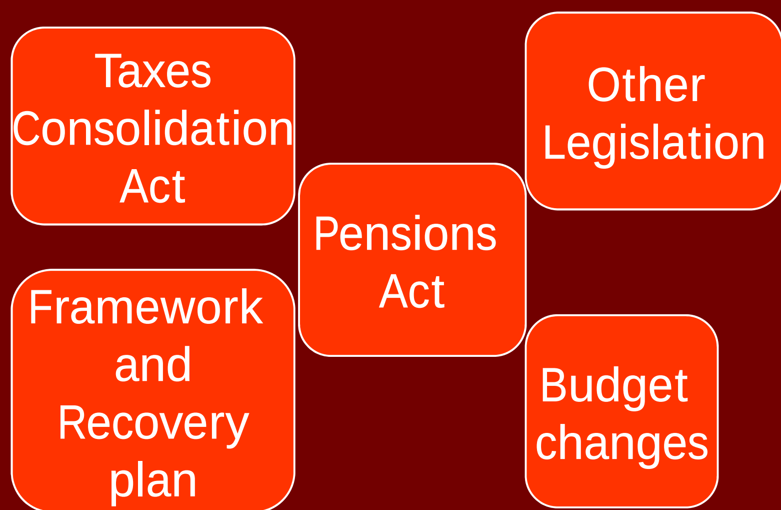
Benefits for deferred members will only have to be revalued if accrued benefits for active members are increasing in line with salary increases or inflation

Pensions Board powers

Pensions Board will have power to wind-up schemes in certain limited circumstances

Summary

- Key bodies include Government, Pensions board, Revenue, EU/ECB/IMF
- There are a number of overlapping regulations affecting pensions in Ireland



- Regulation constantly under review and regular updates made

Questions

The Society of Actuaries in Ireland