



EU PENSIONS DIRECTIVE

Pan European pensions

The Pensions Act 1990 was amended with effect from 23 September 2005 to enable Irish pension schemes to operate on an EU cross-border basis, and to permit employees in Ireland to participate in overseas EU pension schemes. This implements an EU Pensions Directive, commonly referred to as the IORPs Directive¹.

Cross-border pension schemes are of particular interest to multinational companies with EU wide operations.

What is an IORP?

An IORP is a funded arrangement which provides retirement benefits and is a separate legal entity from its sponsoring employer. In an Irish context, most company pension schemes are IORPs.

Key goals of IORPs Directive

Broadly speaking, the Directive has two key goals:

- to provide security for scheme members through a minimum common standard of governance;
- to facilitate cross-border pension schemes.

Irish implementing legislation

As existing Irish pensions law is consistent with many of the Directive's requirements, relatively few changes were required to bring the Pensions Act into line with the Directive.

The Pensions Act contains the main implementing framework provisions, which are supplemented by a number of Regulations which set out more detailed changes in a number of areas including cross-border provisions, trusteeship and investment requirements.

The Irish implementing legislation is very pragmatic, the underlying aim being to minimise the compliance burden on schemes.

Cross-border schemes

An undertaking (which, in an Irish context, largely means an employer) can sponsor and establish an IORP in one Member State (known as the home state) to which its employees in one or more EU Member States may belong (a country where the overseas employees are located is known as a host state).

Supervision of the cross-border IORP is by the home state regulator (for example, in the case of an IORP established in Ireland, by the Pensions Board). The IORP is run according to the governance requirements of the home state (where the IORP is established) but the scheme must, in respect of overseas members, comply with the social and labour law of the host state where the participating overseas members are located. It is left to each host state regulator to determine what its relevant social and labour laws are. The main elements of Irish social and labour law which apply to Irish members of a non-Irish overseas IORP are the Irish preservation of benefits requirements and the jurisdiction of the Irish Pensions Ombudsman.

The host state regulator monitors compliance by the overseas scheme with its social and labour laws. There are procedures to enforce compliance with such laws by both the home and host state regulators.

Certain parts of the Pensions Act are disapplied to overseas members of an Irish IORP. The main excluded areas are the Irish preservation of benefits requirements, the disclosure of information requirements and the jurisdiction of the Pensions Ombudsman.

Schemes which operate on a cross-border basis must be fully funded at all times. A possible

¹ EU Directive 2003/41/EC on the activities and supervision of Institutions for Occupational Retirement Provision (IORPs).

consequence of this requirement is that there may be few cross-border defined benefit schemes and that most cross-border schemes will be defined contribution schemes.

Setting up an Irish IORP

Prior authorisation is required from the Pensions Board for an Irish scheme to operate on a cross-border basis. Once this has been granted, the scheme trustees must obtain approval from the Board to accept contributions in respect of overseas members. Various items of information and a statement of compliance have to be submitted to the Board to obtain authorisation and approval. In practice it may be possible to make a single application for regulatory clearance. The timescale for this may be up to 5 months but could possibly be less.

Tax relief

Complimentary tax relief provisions apply in respect of cross-border Irish IORPs and Irish members of overseas IORPs. Irish Revenue approval is needed to operate the Irish element of an overseas IORP.

Trustee qualifications

Pension scheme trustees must be of “*good repute*” and certain persons are debarred from acting as trustees. These include undischarged bankrupts and anyone convicted of an offence involving fraud or dishonesty.

Trustees must also have “*appropriate professional qualifications and experience*” or else employ advisers who do. If trustees do not have “*appropriate*” investment qualifications, they will have to appoint an investment manager. Where no investment manager is appointed and the scheme is not arranged through an insurance company, at least one trustee must satisfy the Board that he/she possesses appropriate qualifications and experience relevant to the investment of the scheme’s resources.

It is a requirement that all trustees, except Revenue approved ‘pensioner’ and professional trustees, must receive appropriate training within 6 months of their appointment. This is an ongoing requirement and trustees must re-train every 2 years.

Apart from the Board’s approval of a trustee’s investment qualifications and experience as outlined above, no formal authorisation process with the Pensions Board applies, but the Board is empowered to determine any relevant issue if requested to do so.

Investment

Pension schemes (except small schemes with less than 100 members) must prepare and maintain a statement of investment policy

principles (SIPP). A SIPP is a written statement of the basis on which the trustees choose investments, and its contents must cover certain specified matters. If the trustees change their policy, they must update the SIPP within a reasonable time. SIPPs must also be reviewed by trustees once every 3 years.

Trustees must also invest the scheme assets in a manner appropriate to a scheme’s circumstances. Investments are to be made “*predominantly*” in regulated markets, and investments in non-regulated markets are to be kept to a “*prudent*” level. Proper investment diversification is required in order to avoid excessive reliance on any particular type of asset. Investment in derivatives must be linked to either reducing investment risks or for the efficient management of the investment portfolio. (These requirements do not apply to a one member arrangement).

Borrowing by pension schemes is only permitted for liquidity purposes and only on a temporary basis (a one member arrangement may however borrow without restriction).

Irish IORPs – the future

There is an increasing drive among many multinational companies towards some form of consolidation and streamlining of their European pension arrangements. Central to this is a wish to save costs.

The Irish legal framework and regulatory environment for cross-border IORPs is practical and balanced at the right level. This, together with Ireland’s enabling tax regime, are just some of the attractions which make Ireland a preferred location and domicile of choice for cross-border IORPs and pension planning by multinationals.

Further information

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