



Pensions Board Update Trustees and Compliance

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Agenda

- Pensions Acts 1990 – 2007
- Trustees Main Duties
- E U Pensions Directive ‘IORPS’
- Trusteeship Post IORPS
- Trusteeship Review
- On-the-spot fines
- Pensions Board Supervisory Developments



Pensions Acts 1990 - 2007

- 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 – Trustees of Scheme
- *¹ Part VII – Equal Treatment

*¹*Equal Pension Treatment introduced by Social Welfare Act, 2004*



Pensions Acts 1990 - 2007

*² Part VIII– Compulsory and Voluntary Reporting

*² Part IX – Miscellaneous Applications to the High Court

*² *Introduced by the Pensions (Amendment) Act, 1996*

*³ Part X – Personal Retirement Savings Accounts

*³ Part XI – Pensions Ombudsman

*⁴ Part XII – Cross Border Schemes

*³ *Introduced by the Pensions (Amendment) Act, 2002*

*⁴ *Introduced by the Social Welfare and Pensions Act, 2005*

- Social Welfare Law Reform and Pensions Act, 2006
- Social Welfare and Pensions Act, 2007

Trusteeship under the Pensions Act

- In broad terms, main trustee duties are:
 - to ensure contributions are received
 - to ensure contributions are remitted
 - to invest the funds
 - to pay the benefits
 - to ensure that funding standard is met
 - to keep records and accounts
 - to preserve or transfer benefits
 - to disclose information
 - to ensure equal pensions treatment
 - to apply the resources of the scheme on wind up
 - to register the scheme with the Pensions Board

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EU Pensions Directive

- Directive 2003/41/EC came into force on 23 September 2003 “on the activities and supervision of Institutions for Occupational Retirement Provision” – “IORPS”
- EU Member States required to implement by 23 September 2005
- Directive sets common minimum level of supervision across EU Member States
- Allows pension schemes to operate “Cross-Border”
- “Budapest” protocol agreed between pension supervisors on “who does what and when” for cross-border supervision.

Link to Protocol is available on www.pensionsboard.ie

IRISH IMPLEMENTATION OF IORPs DIRECTIVE

- Statutory
 - Requirements in Social Welfare and Pensions Act 2005
 - Underlying Regulations in place by 23 September 2005
 - Remake Regulations 2006
 - Associated tax changes introduced in Finance Act 2005
- Approach
 - Implements essentials of Directive
 - No further new supervisory requirements added other than the essentials of the Directive
- Areas affected
 - Scheme management
 - Investment
 - Funding
 - Cross-border

Note on Remake Regulations is on www.pensionsboard.ie

Trusteeship Post IORPs Directive Scheme Management

Trustee Qualification Requirements

- S59 A(1) – addresses aspect of good repute
- Person shall not act as trustee if: -
 - undischarged bankrupt / composition with creditors (and is not discharged)
 - convicted of fraud / dishonesty
 - trustee is a company and director is prohibited under this section
 - Person subject of declaration under S.150 Companies Act 1990 (restriction)

Trusteeship Post IORPs Directive Scheme Management

Trustee Qualification Requirements

- S59 A(2) requires Regulations to be made providing that:
 - Trustees must possess (or employ or contract with advisers who do possess) qualifications and experience prescribed in those regulations, and
 - Specifying circumstances in which trustees will be regarded as possessing the specified qualifications and experience
- “Qualifications and experience” are those appropriate and relevant to investment of resources of scheme
 - enter into contract with one/more investment managers to provide investment service
 - one of trustees themselves have such qualifications and experience

Trusteeship Post IORPs Directive Scheme Management (cont.)

employ an adviser with qualifications and experience - Act and other Regulations already require appropriate professional qualifications for other aspects of running a scheme

- Regulations only refer to need for investment qualifications
 - Act and other Regulations already require appropriate professional qualifications for other aspects of running a scheme.
- Board has power to determine if trustee meets requirements

Trusteeship Post IORPs Directive

Trustees Investment Duties

- S59 1(b) duty to provide “proper investment of the resources of the scheme in accordance with regulations and, subject to those regulations, (and S59(2) member directed investment), and rules of scheme”
- S 59 (1A) “Regulations shall prescribe rules which shall be adhered to by trustees in providing for proper investment of scheme resources in particular, in accordance with para (1) of Article 18 of IORPS Directive”

FAQs on Investment Regulations are available on www.pensionsboard.ie

Trusteeship Post IORPs Directive Investment

Trustees Investment Duties

- Regulations set out specific rules that must be applied to pension fund investment
 - implement “prudent person” rule as required by Article 18.1 of IORPS Directive
- Assets to be invested:
 - in manner to ensure security, quality, liquidity and profitability
 - predominantly on regulated markets (>50%)
 - in a diversified manner so as to avoid excessive accumulations of risk
- Prohibition on borrowing (except for 1 member arrangements)
- Derivatives permitted but limited
- Applies to all schemes (no exemption for small schemes)
- SIPPs required for schemes with > 100 members

Trusteeship Post IORPs Directive Funding

- Funding Standard (Amendment) Regulations
 - implement some recommendations of Board's review of Funding Standard
- Additional grounds for funding proposal – S49 (3)(b)
- Adverse experience relating to:-
 - price inflation or interest rates underlying actuarial values over relevant period
 - increases in pensionable earnings
 - payment of benefits (other than long service benefits)
 - AFCs every 3 years
- Also new S59 G – early retirement subject to trustees consent if scheme does not meet Funding Standard

Trusteeship Post IORPs Directive

Cross-Border

- Part XII of Pensions Act and Cross-Border Regulations
 - sets out provisions
- Cross-Border Activity
 - Undertaking in one Member State (Host State) may set up IORP in another Member State (Home State)
 - Supervision is by Home State
 - Prudential rules are Home State
 - Social and Labour Laws are Host State
 - Information requirements and investment restrictions may be imposed by Host State
- Co-operation
 - Member States must apply Directive
 - Must create conditions for cross-border membership

Trusteeship Post IORPs Directive Cross-Border

Cross-Border Schemes

- Irish approved scheme (Home Member State)
 - Trustees apply to Pensions Board for prior authorisation to operate cross-border – conditions set out in S149
 - Trustees apply to Board for approval to accept contributions from Host Member State – Section 151
 - Approval granted by Board within 3 months
 - Board must notify trustees and Regulator in Host Member State

*Pensions Board Guidelines in relation to Cross-Border Schemes are available on
www.pensionsboard.ie*

Trusteeship Post IORPs Directive Cross-Border

Conditions For Authorisation

- Trustees provide written statement in form (available on www.pensionsboard.ie)
- Trustees confirm compliance with Pensions Act requirements: -
 - Disclosure of Information
 - Trustee qualifications
 - Remittance of contributions
 - Funding Standard
- Trustees must also supply the Board with: -
 - AFC where applicable
 - PB registration number of scheme
- Small IORPS operating cross-border (<100 active and deferred members) must comply with all requirements of Directive

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Trusteeship Post IORPs Directive New Disclosure of Information Regulations

- 1998 Regs. revoked and replaced
- Based on Pensions Board recommendations
- Some Pensions (Amendment) Act provisions
- IORPs Disclosure requirements

New Guidance Notes available in Guidance Section on Board's website

Trusteeship Post IORPs Directive

Trust Based RACs

- Social Welfare and Pensions Act 2007 bring trust RACs under remit of certain provisions of Pensions Act with effect 27.04.07
- Regulatory Requirements:
 - Trustees Duties
 - Scheme Registration and pay fees
 - Remittance and investment of contributions
 - SIPPs (not small trust RACs)
 - Investment obligations
 - Trustees qualifications and experience
 - Disclosure of information (not small trust RACs)
 - Cross-border requirements
 - ‘Whistleblowing’

FAQs on Trust Based RACs are available on www.pensionsboard.ie

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Trusteeship Review

Terms of reference for Trusteeship Review

- Evaluate trust model of pension scheme governance
- Identify potential regulatory and governance improvements to perform more effectively
- Examine supports in place for trustees

Guiding principle

- Facilitate competent performance and increased governance standards while minimising additional compliance burdens

Trusteeship Review

Review Process

- November 2005 to October 2006
- Policy Committee and Trusteeship Review Group
- Consultation with industry bodies
- Examination of recent national and international developments
- New academic research and consultation

Trusteeship Model

Advantages: Distinct positive characteristics that set it apart

- Flexibility associated with trustee discretion and trust law
- Alignment of interests of scheme stakeholders – act in best interests of beneficiaries
- Member trusteeship – democratic and further protection layer
- Separating scheme assets from employer
- Ability of a members' dependants to enforce their rights
- Tried and tested model

Key Recommendations

- Current trust model should be retained
- It continues to offer protection to pension schemes that justify its retention
- Contracts and master trusts now allow choice
- **Some improvements can be made to enhance member protection**

Key Recommendations

External Regulation

To enhance the standard of scheme administration:

- Pension scheme administrators should be registered and supervised
- Service level agreements between trustees and administrators should be made compulsory. Guidance on appropriate content should be introduced

Key Recommendations

Trustee Ability

To increase the standard of trustee ability, and therefore good governance!

- Employers should automatically arrange trustee training for all trustees within 6 months of their appointment and every 2 years thereafter and report in annual report
- Potential new means of training (e.g. e-learning) should be explored
- New training content e.g. ethics, service level agreements to be introduced

Key Recommendations

Internal Scheme Governance

- Guidance on managing relationships between trustees and with employers to be given in new trustee handbook and training
- Each scheme should have copy of Pensions Board's trustee handbook with a trustee checklist
- Pensions Board should have power to appoint trustees and authorise an administrator to carry out wind-up processes

Conclusion of Review

- Solution to many of the problems faced by pension schemes is to:
 - create strong and effective governance and
 - administration that:
 - will enable trustees to minimise risk, and
 - maximise value in their schemes

On-the-spot fines

- New form of remedy for specified breaches of the Act commenced on 17 September 2007
- Provide an alternative to going to Court
- Board gives offender 21 days to remedy the offence and pay an appropriate fine
- If complied with a prosecution will not proceed

On-the-spot fines

- Fine for each offence is €2,000 per trustee
- More serious matters will continue to be dealt with by going to Court
- Coincides with a tougher approach by the Board to offences

On-the-spot fines

- Specified breaches are not new
- Mainly administrative–type breaches
 - Scheme Registration
 - Disclosure of information
 - Request for information
 - Submission of AFCs
 - Procedures for transfer payments
 - SIPPs
 - Increases to pensions in payment

See Pensions Board Trustee Checklist on www.pensionsboard.ie

On-the-spot fines

- Breaching the Pensions Act is breaking the law
- Timescales are generous, no real excuses
- Breaches will result in fines or prosecutions

Pensions Board Supervision Developments

- Supervision function divided into 2 teams
 - Defined Benefit Supervision headed by Mary Hutch
 - Defined Contribution Supervision headed by Philip Dalton (to include PRSAs, DC OPS, Trust Based RACs)
- Move to risk-based supervision
- More focus on administration
- On-site and off-site supervision

Other Developments

- Green Paper published – consultation process commenced
- Booklet on Hybrid Pensions published
- Implementation of Trusteeship Review expected in Social Welfare and Pensions Bill 2008
- Trustee e.learning in development
- Women and pensions research
- Review of IORPs Directive in 2008

