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Pensions Update: Winter 2024

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This Winter update from our Pensions Group covers topical issues in pensions law including the latest news on automatic enrolment, an update on DORA transposition, a summary of proposed changes to the Standard Fund Threshold and the taxation of employer PRSA contributions, an overview of the new Cost Transparency Standard, and a case law update.

Automatic Enrolment

Automatic Enrolment Commencement Order Signed

As reported in our Summer Update, the Automatic Enrolment Retirement Savings System Act 2024 (the "**AE Act**") was signed into law on 9 July 2024. The AE Act will come into operation when commenced by orders passed by the Minister for Social Protection. On 30 September 2024, the Minister signed the Automatic Enrolment Retirement Savings System Act 2024 (Commencement) Order 2024 which provides that the parts of the AE Act which require employees to be enrolled into the automatic enrolment ("**AE**") system will commence on **30 September 2025**.

The parts of the AE Act which relate to the establishment of the authority responsible for the AE system (to be known as the "National Automatic Enrolment Retirement Savings Authority (NAERSA)" or "An tÚdarás Náisiúnta Um Uathrollú Coigiltis Scoir") will commence on **31 March 2025**.

Employers who have not already done so, should now seek to implement a clear action plan to get their business AE ready ahead of the commencement date of 30 September 2025. If we can be of assistance in preparing your business for AE, please do not hesitate to reach out to a member of our Pensions Group.

To receive further updates on the introduction of AE in Ireland, you can subscribe to our auto-enrolment portal here.

Automatic Enrolment provisions in Finance Act 2024

The Finance Act 2024 (the "**Finance Act**") was enacted on 12 November 2024. The Finance Act makes a number of amendments to the Taxes Consolidation Act 1997 (the "**TCA**") to facilitate the taxation and relief rules for the AE system. The amendments to the TCA provide that (inter alia):

- employer contributions to the AE system will not be considered taxable benefits-in-kind for the employee and will be allowable as an expense of management or a trading deduction for the

employer;

- income and gains of AE funds, while held within the AE system, will be exempt from income tax and capital gains tax; and
- members will be entitled to draw down a lump sum of up to 25% of the value of their funds in the AE system on retirement. The lump sum will be tax-free up to €200,000, taxed at 20% between €200,000 and €500,000, and taxed at the member's marginal rate above €500,000. The remaining balance of a member's funds in the AE system will be subject to income tax on drawdown and processed through PAYE.

Note that employee contributions to the AE system will not be tax relieved. The State will instead make direct "top-up" contributions to employees' accounts within the AE system at a rate of one-third of employee contributions. The Finance Act provides that such "top-up" contributions will be exempt from income tax and USC.

Digital Operational Resilience Act ("DORA")

DORA is an EU regulation which aims to create a harmonised regulatory framework strengthening the ICT security of financial entities (which includes pension schemes). DORA will be directly effective across the EU from 17 January 2025, so it is important that pension scheme trustees now begin to take steps towards compliance with its requirements in advance of this date.

On 29 July 2024, the Pensions Authority (the "**Authority**") published guidance (available here) on how it expects pension schemes and trustees to comply with DORA. The guidance clarifies that it is trustees who will be responsible for ensuring the scheme's compliance with the DORA requirements, even in situations where there are outsourcing arrangements in place.

In its guidance on DORA, the Authority has summarised the main requirements for trustees under DORA to include:

- documenting and maintaining a comprehensive ICT risk management framework to include ICT business continuity plans and other policies and controls, as part of the overall risk management system;
- identifying all sources of ICT risk and cyber threats on a continuous basis together with ongoing monitoring of the security and functioning of ICT systems relied upon;
- effective management of ICT third-party risks ensuring that key contractual provisions are in place with service providers as set out in article 30 of DORA;
- maintaining a register of information on all contractual arrangements on the use of ICT services provided by third-party providers;
- managing and reporting major ICT related incidents to the Authority and keeping a record of significant cyber threats; and
- testing ICT systems supporting critical or important functions at least annually.

With the compliance deadline of 17 January 2025 approaching, trustees of pension schemes should now put a plan in place to ensure DORA compliance. This will include:

- undertaking trustee training to understand your responsibilities under DORA;

- preparing a list of any scheme activities that are supported by ICT systems and services and identifying any third parties providing those ICT services;
- preparing the main documents required (or appropriate additions to existing documents) to include an ICT risk management framework document and ICT business continuity plans as well as a register of information on all contractual arrangements in place with third party service providers;
- appointing a relevant person to take ownership of ensuring compliance with DORA; and
- putting in place DORA compliant contractual terms with all ICT service providers (which may include sponsoring employers, particularly where scheme administration is undertaken in-house).

Our Pensions Group are currently providing trustee training on DORA to trustee boards and assisting with amending and preparing appropriate documentation. If you would like to receive trustee training on DORA at your next trustee meeting, or have any queries on DORA implementation or documentation, please reach out to your usual contact using the details below.

Standard Fund Threshold ("SFT")

SFT to increase to €2.8 million by 2029

On 18 September 2024, the Department of Finance published the report of Dr Donal de Buitléir's examination of the SFT (available here). On foot of the recommendations in the report, the Minister for Finance confirmed that the SFT would increase on an incremental basis of €200,000 per year between 2026 and 2029 to reach a level of €2.8 million by 2029 and increase in line with average earnings growth thereafter. The legislative changes required to implement the incremental increases to the SFT have been included in section 13 of the Finance Act.

The limit of the "standard chargeable amount" (the portion of a retirement lump sum that is taxed at the standard 20% rate) will remain at €500,000. Currently the standard chargeable amount is defined by reference to the SFT and thus would be expected to rise in line with the SFT. However, the amendments in section 13 of the Finance Act will decouple the standard chargeable amount from the SFT and provide for it to remain at €500,000 so that any lump sums above this amount will be taxable at the higher (40%) rate.

Where employees have previously opted out of occupational pension schemes in order to avoid exceeding the SFT, such employees may now seek to re-join schemes in order to avail of the additional tax headroom provided by the changes to the SFT regime. If employers or trustees receive such requests, they should carefully review and consider the provisions of their scheme rules regarding eligibility and opted-out members before implementing such requests. To the extent that such employees are not readmitted to pension schemes, they may be caught by the new AE rules from September 2025.

PRSAs

Introduction of an "employer limit" on tax relieved contributions to a PRSA

Following amendments made in Finance Act 2022, employer contributions to a PRSA were no longer treated as a benefit in kind and employer contributions were no longer aggregated with employee contributions for the purposes of age-related tax relief on contributions. Consequently there was no limit

on employer contributions to an employee's PRSA. However, the employee's pension savings remained subject to the SFT.

However, amendments introduced by the Finance Act introduce a limit on the level of employer contributions to a PRSA that can benefit from this favourable tax treatment. Section 12 of the Finance Act introduces an "employer limit" of 100% of an employee's salary in the year of assessment. Any employer contributions to an employee's PRSA which exceed this limit will be subject to income tax as a benefit-in-kind and will not be allowable as an expense of the employer.

Authority launches consultation on revised Code of Conduct for PRSA Providers

Under the Pensions Act, the Authority is required to prepare and periodically amend a code of conduct in relation to the producing, marketing and selling of PRSA products by PRSA providers (the "**PRSA Code**"). It is a condition of the approval of PRSA products by the Authority that the product and PRSA provider are compliant with the PRSA Code. On 20 September 2024, the Authority published a draft revised PRSA Code which is available here.

The PRSA Code includes requirements on PRSA providers to co-operate with the Authority, put in place a written conflicts of interest policy, provide risk warnings to PRSA contributors where appropriate, to identify the target market for its PRSA products and to take steps to ensure that its products are being distributed to the identified target market. A particular focus of the revised draft PRSA Code is to ensure that PRSA providers are providing sufficient information to PRSA contributors about the risks arising from unregulated investment products.

The Authority's consultation closed on 1 November 2024. Following a review of the submissions received, it is anticipated that the revised PRSA Code will be published in Q1 2025 and will come into effect six months after its publication date.

Pension Scheme Value for Money

IAPF introduces Cost Transparency Standard

On 16 July 2024, the Irish Association of Pension Funds ("**IAPF**") launched the Cost Transparency Standard ("**CTS**"). Trustees of pension schemes which participate in the CTS will be required to ask their asset managers to complete template documents setting out a breakdown of the costs incurred by the asset managers. The CTS is intended to enable trustees to better understand the investment costs they pay and to benchmark those costs against their peers. Trustees can register for the CTS here.

The Authority has welcomed the introduction of the CTS and stated that it will be closely monitoring participation levels as part of its supervisory activities. Whilst participation in the CTS is not mandatory, the Authority has noted that it will expect those schemes which are not participating in the CTS process to have an equivalent level of data on investment costs available to them.

The Authority has noted that it favours a voluntary approach to cost transparency, benchmarking and disclosure. However, the Authority has stated that in the longer term if cost disclosure and comparability are not adequate, it will seek legislative change in this area.

Case Law Update

BBC v BBC Pension Trust Ltd

On 9 July 2024, the UK Court of Appeal upheld the ruling of the UK High Court that a restriction in an amending power which refers to the "interests" of members should be read to include both past and future service rights.

This case concerned the BBC pension scheme (the "**Scheme**") which provided defined benefit retirement benefits for employees who had joined the Scheme before 1 December 2010. The BBC was considering amendments to the Scheme to limit future service benefits for Scheme members. The Scheme amendment power was subject to a limitation that no alteration could take effect in relation to active members unless the actuary certified that the alteration or modification did not "substantially prejudice the interests of such members". The BBC had sought directions from the High Court in relation to the interpretation of the word "interests" in the Scheme amendment power.

The High Court held that the concept of members' "interests" was not limited to protecting rights earned by past service, but also covered the ability of current active members of the Scheme to earn future service benefits. This finding was upheld by the Court of Appeal who, having considered the leading authorities on the interpretation of pension scheme provisions, concluded that "interests" in the context of the Scheme amendment power should be construed broadly to include (inter alia) active members' ability to continue to accrue benefits on particular terms as their length of pensionable service increased. An amendment to the Scheme which prejudiced members' future service benefits could therefore potentially affect their "interests" and thus engage the restrictions on the amendment power.

The Court of Appeal noted that the term "interests" would not necessarily have the same precise meaning in every context within which it appeared and distinguished the use of the term "interests" from terms such as "accrued rights" or "secured rights" which may appear in other scheme amending powers. Nevertheless, the case serves as a reminder for employers and trustees to carefully examine their scheme amending powers and any restrictions thereon, particularly when contemplating measures that may affect future service benefits for scheme members.