

TRUSTEE TRAINING: SIX MONTH DEADLINE

All trustees of pension schemes have to receive trustee training on their responsibilities and duties under the pension scheme and the Pensions Act. Any trustee who has been appointed to a scheme on or after February 1, 2010 must complete the training within six months of their appointment. That deadline will be fast approaching, or already passed for trustees appointed in the early months of the year.

Trustees who were appointed before February 1, 2010 have until January 31, 2012 to complete their training.

Where trustees do not complete their training before their deadline, the Pensions Board may impose a €2,000 on-the-spot fine and require them to complete the training within 21 days. Failure to do this can lead to prosecution in the Courts.

The employer is obliged to arrange the trustee training for the trustees (except a professional trustee such as Willis Trustsure Limited). If the employer does not arrange training by the deadline, the Pensions Board can prosecute them. This can lead to a fine of up to €25,000 and/or up to five years in prison.

The Pensions Board website has a register of trustee training providers as well as an online course. Willis runs regular trustee training courses which ensure the trustees have met their obligations under the Pensions Act – please contact Vickey Howell (vickey.howell@willis.ie) for further information.

CONTINGENT ASSETS MAY HELP SCHEMES IN DEFICIT

The deadlines for the submission of funding proposals for defined benefit pension plans loom ever larger. A majority of defined benefit pension plans are finalising funding proposals for submission to the Pensions Board at present. In light of these deadlines sponsoring employers who may be asset rich but faced with constraints on their available cashflow are



looking towards contingent assets. A contingent asset is an asset, the value of which depends on the occurrence of a specific future event. In the case of a contingent asset pledged to a defined benefit plan, it would typically be an asset realisable by the pension plan trustees in the event that the pension plan is wound up in deficit at some future point.

It is very important for sponsoring employers to give serious consideration to the knock-on impact of pledging assets to a pension plan in the event of a future plan windup in deficit. For example banking covenants and shareholder agreements may need to be reviewed to ensure compliance with the pledging of any assets. In addition, the employer and the trustees need to ensure they do not fall foul of regulations that limit self-investment and concentration of investment. These regulations may impact on the level of assets recognisable for statutory funding purposes.

The Pensions Board require that all contingent assets have a measurable value, must exist for a minimum period and must be definite and solid. It is possible to grow the level of contingent assets pledged to a pension plan over the period of a funding proposal and to swap the assets pledged to a plan provided these criteria are met.

From the sponsoring employer's perspective, one of the benefits of pledging contingent assets to a pension plan is that the sponsoring employer retains greater control over the assets that would otherwise be assets of the legally distinct pension plan. It also allows a sponsoring employer to postpone the date at which they realise the value of a property whilst in the interim providing a higher degree of comfort to the plan beneficiaries.

Some of the contingent asset options which are typically explored by plan sponsors include:

- Charges on property
- Captive insurance vehicles
- Shareholder guarantees
- Arm's length letters of guarantee which may also include an element of credit insurance
- Bank or Insurer arrangements

Key considerations are the level of financing which the sponsoring employer can afford, the employer's cash flow requirements and whether phased contribution levels are appropriate. It is therefore important that your scheme Actuary understands the nature of the sponsoring employer's business and its own particular circumstances and the corporate objectives which are being set. Please contact us should you be interested in exploring the issues in relation to contingent assets in greater detail or independently reviewing proposals in relation to same: oliver.kelly@willis.ie or joe.byrne@willis.ie

EUROPEAN COMMISSION RELEASES GREEN PAPER ON PENSIONS

The European Commission last month released its consultation document, the Green Paper on Pensions. The Green Paper doesn't make any definitive proposals: instead it is intended to encourage debate about the issues facing pension provision in Europe.

The Green Paper sets out the overriding aims of adequacy and sustainability of pension provision in the EU. It points out that two of the main challenges to these aims are changing demographics and the economic crisis. As life expectancy increases, pensioners require pension payments for a longer period, which is more expensive. The ratio of workers to pensioners is continuing to reduce, with the result that there will be fewer PRSI contributions to fund State pensions relative to the increased cost. The current economic situation means there is little spare cash to deal with these issues.

The Green Paper suggests increasing retirement ages to maintain a sustainable balance between years spent working and years in retirement. The (Irish) National Pensions Framework, published in March this year, already set out the Government's plan to increase the State retirement age in stages up to 68 between 2014 and 2028. The Green Paper also suggests an automatic adjustment to retirement ages in line with future increases in life expectancy.

The Commission notes that action will have to be taken to facilitate older workers: for example, retraining, flexible work arrangements and financial (e.g. tax-related) incentives to continue working. In addition it suggests that member states should encourage health policies, as poor health can push many workers into early retirement.

Other areas raised by the Green Paper are:

Mobility within the EU:

The Green Paper notes that different EU pension schemes are covered by different rules and points out that regulatory differences are a barrier to mobility. It does however say that it is not seeking a 'one size fits all' type of pension provision, although it raises the prospect of a new EU-wide private pension alongside the existing pension regimes.

In addition it suggest the establishment of an EU-level tracking system for deferred members to trace their pensions, and the removal of discriminatory tax rules to improve mobility of pensions within the EU.

Safer, more transparent pensions:

Given the trend towards defined contribution (DC) schemes, where the investment risk falls on the employee rather than the employer, the Green Paper suggests that current EU legislation could be reviewed to ensure consistent regulation. Particular concerns are the areas of governance, risk management, investment rules and disclosure of information. In relation to disclosure, it notes that DC scheme members need to be given sufficient information to make choices about pension provision. It also suggests that DC members could be given some flexibility around whether or not, and when to purchase an annuity. This is also dealt with in the National Pensions Framework which proposes making Approved Retirement Fund options available to all DC members.

Solvency regime:

At present under EU law, member states are obliged to take measures to protect pension benefits. However, while it is clear that the State is not obliged to fully guarantee all pension benefits, EU law is very vague on what minimum level of protection should be provided. The publicity in recent years around the closure of a number of defined benefit pension schemes with a severe funding deficit, leaving members with a fraction of the pension they expected, has raised concerns. The Green Paper queries:

- (a) should there be a guarantee system in place, possibly facilitated at EU level? and
- (b) should the current EU legislation be revised to strengthen the protection given to members where the employer is insolvent?

The European Commission invites any interested party to respond to the issues set out in the Green Paper via their website, <http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=pensions>. Submissions have to be made by 15 November 2010.

THE GROWING ISSUE OF DEFERRED MEMBERSHIP

When people leave an employment, they very often retain some pension rights in their former employer's plan.

Anyone with a minimum of two years' plan membership is entitled to preserved benefits under the Pensions Act. A person may choose to transfer to another plan, to an approved pension policy or, with certain exceptions, to a Personal Retirement Savings Account.

In reality, most people do not exercise their right to transfer immediately on leaving. Sometimes people need to wait until they have made alternative pension arrangements. A lot of people simply go away and neglect to deal with their pension rights.

As a consequence, many pension plans have large and growing numbers of former employees who are entitled to benefits which will not become payable

until some time in the distant future. In a few cases, these deferred pensioners actually outnumber the current employee members.


So what are the problems with having large numbers of former employees as deferred members?

They are many, and insidious. Trustees would be well advised to consider very carefully what their responsibilities are to deferred pensioners and how best to deal with them.

- Costs. There is an inevitable cost for maintaining records and managing individual accounts, and dealing with subsequent enquiries or transfers, which frequently falls on the sponsoring employer.
- People move on, change addresses, leave the country, lose touch, leave no forwarding address – making them difficult for the trustees to contact when the time comes to pay their benefit.
- People die. Survivors and legal personal representatives may not even be aware of the existence of a benefit from an old employment.
- As a person gets close to retirement there may be demand for individually tailored advice on benefit options.

A lot of the problems mentioned above could be at least mitigated by maintaining communication with people after they leave the employment. Of course, someone would have to pay for communications to be extended to deferred members. Employers are often reluctant to incur additional cost for the benefit of former employees, some of whom may have gone to work for the opposition. If the cost comes from the fund, it can potentially have a detrimental effect on other members.

One way of addressing the issues may be to reduce the numbers, or possibly to eliminate the deferred membership altogether.



The Pensions Act allows trustees to discharge their obligation in respect of deferred members by transferring the value of their benefits to approved policies (Buy-out Bonds). This can be done without the member's consent where the person has left service more than two years and the amount is less than €10,000. For amounts greater than €10,000, the Pensions Board may give its consent, but only where it can be shown to be in the members' interests and the interests of the plan as a whole.

Critics may say that this approach does not solve the problems associated with deferred members, but merely transfers it to a life office. While there is validity in this argument, it is also true that most pension plans are not equipped, or resourced, to deal with a disparate group of people over a prolonged timescale, whereas that is close to the core business of a life office.

We do not endorse a particular strategy for dealing with deferred members, but we do recommend that trustees as a minimum take stock of the number of former employees to whom they retain a legal responsibility and consider whether these people are well served by the present arrangements.