

# Focus Update

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## On-the-Spot Fines for Trustees and Employers

With effect from 17 September 2007, the Pensions Board now has the power to issue trustees and employers of occupational pension schemes with on-the-spot fines for breaches of the Pensions Act.

As expected, the fine will be at the rate of €2,000 per offence; in addition the breach must be remedied within 21 days. This means, for example, that if the employer fails to advise the members of their contributions to the scheme two months in a row, there will be a fine of €4,000. The fine cannot be paid out of the resources of the scheme.

If the trustees/employer do not pay the fine and remedy the breach within the time limit, they are open to prosecution by the Pensions Board in the criminal courts. Being found guilty of a breach of the Pensions Act would result in a criminal record for the trustees/employer, whereas paying the fine avoids this.

The Pensions Board have expressed enthusiasm for the new fines as they do not involve any of the delay involved in court prosecutions. Therefore in order to avoid the fines, trustees and employers should be vigilant in

ensuring that they are up to date with their Pensions Act duties: for example trustees should make sure that Pensions Board fees are paid, all disclosure obligations are met, such as preparing and issuing explanatory booklets, benefit statements, annual reports and information on retirement, death or leaving service, as well as Actuarial Funding Certificates and Statements of Investment Policy Principals where applicable.

Employers should take care that, for example, employees are notified of their scheme/PRSA contributions on a monthly basis, that they have a PRSA in place for any employees who are not covered by an occupational scheme within six months of starting work and that they comply immediately with any request from the Pensions Board for information. See the May 2007 edition of Focus Update for full details of the Pensions Act breaches which are subject to fines.

The fine regime only applies to offences where their commission first occurs on or after 17 September 2007. If the first occurrence is before that date the only option is the prosecution route.

## Recent Changes in the Statutory Solvency Standard

The liabilities under the statutory solvency standard (Minimum Funding Standard) for active members and deferred pensioners in Defined Benefit schemes are calculated by reference to the Standard Transfer Value basis. (The liabilities for pensioners in payment are determined by reference to current market annuities.)

The Standard Transfer Value basis is set by the Society of Actuaries in Ireland and is reviewed regularly to reflect current market conditions. Following a recent review of the basis, the discount rate for calculation of the liabilities reduced slightly from 7.25% per annum to 7% per annum. This change took effect from 1 May 2007 and will have the effect of increasing the liabilities slightly (the impact will be greater for schemes with a younger average age).

Accordingly, this change may reduce the solvency position of your scheme.

However, you should be aware that other factors may have a more significant impact on your scheme's solvency position such as recent investment performance, or the market cost of annuities (if your scheme has a significant pensioner liability).

The solvency position of the scheme must be examined on an annual basis by the actuary, and if it is found to be insolvent, then a funding proposal designed to bring it back to solvency must be prepared.

In this way, any negative impact of recent events on your scheme's funding position will need to be addressed in a funding proposal to the Pensions Board.

## Tax on Imputed Distributions – Approved Retirement Funds

The 2006 Finance Act introduced the notion of an imputed (notional) 3% drawdown from an ARF each year, with income tax being charged on that imputed drawdown. This is to combat what the Revenue Commissioners viewed as a tax avoidance aspect of ARFs whereby ARF-holders would use their ARF as an estate-planning tool – they would live on other income and would leave their ARF untouched until death, building up investment return tax-free and possibly being subject to favourable inheritance tax treatment.

The imputed drawdown is being phased in, with a 2% notional drawdown in 2008 and 1% in 2007. The new provision will kick in on 31 December 2007. The market value of all assets in an ARF will be assessed at that date and a notional 1% withdrawn. The tax on that 1% must be paid by 14 March 2008.

The Qualifying Fund Manager looking after the ARF is responsible for deducting and paying the tax. Any moneys actually withdrawn from the ARF in 2007 are netted off from the 1% imputed drawdown. The new provisions do not apply to Approved Minimum Retirement Funds.



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