

CROSS BORDER PENSIONS THAT MUCH CLOSER

Jill Kerby sketches out the main features of the IORPS Directive

A ten year struggle to find a way for companies to provide pan-European pension cover for their employees has now entered the home stretch. The Directive will have a particular significance here for many multi-national companies with manufacturing and services operations in Ireland and in other member states which are currently required to operate a range of different pension schemes.

Last September the EU Directive on the articles and supervision of Institutions for Occupational Retirement Provision (IORPS) was finally published in the Official Journal of the EU and member countries now have until September 2005 to implement the Directive.

Consultation groups will be meeting all over the EU to work out exactly how this implementation will take place with invitations to interested parties – pension practitioners, fund managers, trustees – to also make their contributions. The Irish pension authorities will, like their British and Dutch counterparts, probably have a much easier implementation process: the Directive has adopted some of the principals of best pension practice already in operation here.

The Directive is targeted at the regulation of supplementary pensions on a pan-European basis and covers both funded pension schemes and life assurance companies where they provide occupational pension cover

At the heart of the Directive is the requirement to allow companies to set up cross border occupational pension plans with a commitment towards not just ensuring appropriate member protection, but ensuring the freedom of schemes to develop an effective investment policy that avoids being too burdensome for industry.

Although there is still no tax harmonisation agreed in the Directive –

which could prove to be a serious stumbling block in the widespread creation of cross-border schemes, the key features of this directive include:

Investment: Establishes the 'prudent person' approach in EU law as operated in the Irish and UK pension markets. The Directive also provides for some liberalisation of investment rules that are currently applied in some EU countries.

Regulation: IORPS to be supervised and regulated by national 'competent authorities' (such as the Irish Pensions Board). Institutions will need to be registered with the appropriate competent authority and fulfil a number of minimum conditions, such as being run by people of good repute and have properly constituted rules for the schemes. The competent authority (ie. the Pensions Board) would be able to carry out inspections and intervene to help protect members' rights.

Cross-border activity: A new provision, all employers will be able to sponsor institutions based in other EU countries. This cross-border activity can only occur where an institution for occupational retirement provision in one state is sponsored by one or more employers in another. The Directive sets out an important role for the competent authorities in member states regarding supervision in this context.

Disclosure of information: The disclosure requirements for IORPs are broadly in line with those required already here and in the UK. There are also disclosure requirements to the competent authorities, who will also have powers to require schemes to provide certain information.

Funding: The way in which pension funds value their accrued liabilities (often referred to as 'technical provisions') will now be defined by the Directive which lays down

a framework for how the calculation of these liabilities is to be done. Such institutions must now hold "sufficient and appropriate assets" to cover their accrued liabilities. If an institution is underfunded, it will be required to adopt a recovery plan. Rules are laid down about how the recovery plan must be drawn up and about wind-up procedures. This provision could prove more difficult for Irish companies and regulators which are already struggling with funding standards.

Two discretionary or optional elements of the Directive will undoubtedly draw the attention of Irish and UK authorities: namely the choice of whether specified Articles should apply to insurance companies' occupational retirement provision business and the extent to which the Directive should apply to pension schemes with fewer than 100 members.

The latter option is particularly significant here where so many occupational schemes are quite small, relative to bigger EU member states like the UK.

The increasing number of workers moving between countries was the spur for the publication of this long-awaited Directive. That is only set to continue as EU membership widens over the coming years, nearly doubling the number of member states.

Yet the diversity of national pension systems has also been recognised by the Directive; some would say it has little choice since the EU member states have been unable to reach agreement – not just on the pensions issue – about tax harmonisation within the Community.

Whether this will help or hinder the practical implementation of the Directive will only be known in about two years time.