

Legal and Regulatory Update

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Some legislative updates



The Digital Operational Resilience Act (“DORA”)

- Implementation date of [17 January 2025](#)
- Aims to achieve uniform requirements across EU for the security of network and information systems operating within the financial sector (including IORPs)
- Financial entities must ensure they can withstand, respond to and recover from all types of information communication technologies (“[ICT](#)”) - related disruption/threats
- Responsibility for a pension scheme compliance with DORA lies with the scheme trustees

The Digital Operational Resilience Act (“DORA”)

- First step in compliance is to identify sources of **Information Communication Technologies (“ICT”)** risk.
- Trustees to determine whether a third-party service provider is an “ICT third-party service provider”.
- **Intentionally broad definition** of ICT services – initial uncertainty within the pensions industry as to application of DORA to third-party service providers to pension schemes.
- Pensions Authority – decision tree on identifying ICT services in scope for DORA
- The Pensions Authority has summarised the main requirements for trustees:

Documenting and
maintaining an ICT
management
framework

Identifying all sources
of ICT risk

Key contractual
provisions in place with
ICT providers – Article
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Managing and
reporting major ICT
incidents to the
Authority

Testing ICT systems

The Financial Services and Pensions Ombudsman (Amendment) Act 2025

- The Financial Services and Pensions Ombudsman (Amendment) Act 2025 was commenced on [7 May 2025](#)
- Main purpose of the Act is to amend the legislation underpinning the proceedings of the FSPO following the decision of *Zalewski*
- Supreme Court, by a majority, held that the exercise of powers by adjudication officers of the Workplace Relations Commission was an administration of justice within the meaning of Article 37 of the Constitution
- Act enables FSPO to:
 - **Section 56** - Hold oral hearings in public where the 'interests of justice' require and following consultation with the complaint parties.
 - **Section 47** - Cross-examine individuals appearing before them on oath or affirmation.
- **New offence – Section 59**

Introduction of a Class A fine or imprisonment up to 3 months where an individual gives false evidence on oath or affirmation that they know to be false.

Automatic enrolment - what do employers need to consider?

Make up of your workforce

- Do you have primarily high earners / low earners or a mix of both
- Do you have temporary / seasonal staff – small pots issue
- How many employees are members of your existing pension arrangement (if any)
- How many employees are potentially going to be caught by the AE system

Existing Pension Provision

- Do you operate an occupational pension scheme or PRSA?
- Is membership mandatory or optional? Are contributions payable?
- Based on your analysis of your workforce, is there a preference to
 - **Option 1:** extend existing pension provision to all employees; or
 - **Option 2:** rely on the AE system for all employees; or
 - **Option 3:** a combination of Options 1 & 2

Amend your existing pension scheme?

- If making your pension scheme mandatory for all or some employees consider:
 - Eligibility provisions;
 - Practices around refunds of contributions;
 - A new benefit schedule for 'AE members' with specific contribution rates?

Adapt employment practices

- Review contracts of employment re mandatory pension scheme membership
- Update payroll systems to cater for:
 - Under Option 1: increased levels of contributions;
 - Option 2: contributions being deducted from net pay and remitted to Authority; or
 - Option 3: a combination of Options 1 & 2

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Some case law updates



Environmental Social and Governance (“ESG”) factors: two opposing views

- USA position – 10 January 2025
- Texan federal judge found American Airlines breached duty of loyalty to scheme members by including funds in 401(k) Plan managed by Blackrock that the judge determined to have engaged with issuer companies on ESG-related issues and on occasion voted proxies in support of ESG-related proposals
- Note: this is not about ESG investing, none of the funds in the 401(k) Plan were ESG funds
- Members claimed AA gave the Plan assets to the manager who purposefully pursued ESG activism which allegedly caused the Plan’s holdings to underperform and lose value
- Two claims:
 - *Breach of fiduciary duty of prudence in investing with manager and failing to monitor manager and stop them pursuing objectives that were harmful to the members’ investments [unsuccessful];*
 - *Breach of duty of loyalty by continuing to use manager, endorsing manager’s pro-ESG agenda and failing to act with “an eye single to the interests of the participants and beneficiaries” [successful].*

Environmental Social and Governance (“ESG”) factors: two opposing views

- UK position, 15 January 2025
- Publication of Counsel’s Opinion summarising present state of the law on incorporation of non-financial factors in investment decision-making in England and Wales:
 - Nigel Giffin KC advising the Local Government Pension Scheme (“LGPS”)
 - Position somewhat clearer since 2020 decision of UK Supreme Court *R (Palestine Solidarity Campaign Ltd) v Secretary of State for Housing, Communities and Local Government*
 - Can take account of ESG once two tests are met:
 - *Financial criterion*- no significant risk of financial detriment to scheme; and
 - *Member support criterion* – good reason to think scheme members would support their decision

Protim Abrasives – WRC decision

- WRC ruled in January 2025
- Protim Abrasives went into liquidation in November 2009
- DB scheme in deficit, trustees made a contribution demand (via the liquidator)
- Liquidator sought payment from Minister for Enterprise Trade and Employment under the Pensions Insolvency Payments Scheme
- Minister refused, liquidator brought WRC compliant under Protection of Employees (Employers' Insolvency) Act, 1984
- 1984 Act refers to “*relevant contributions*” meaning “*contributions falling to be paid by an employer in accordance with an occupational pension scheme*”
- Adjudicator found this could include a capital sum or one off contribution to ensure pension scheme can meet its obligations and determined that €2.8m was payable from the PIPS
- Minister is considering the decision

In the matter of the Amcor Pension Scheme (Ireland) [2025] IEHC 176

- Principal Employer issued notice to terminate liability to contribute to DB scheme and trustee argued scheme required a period of reasonable notice whether by interpretation or implication
- This would have given the trustee the opportunity to issue a contribution demand under the provisions of the scheme
- Termination provision stated that: *“An Employer may at any time, by notice in writing to the Trustees, terminate its liability to pay contributions to the Fund”*
- McDonald J. found no basis to interpret this as requiring reasonable notice nor could notice be implied
- Noted that *“this conclusion is capable of having potentially significant consequences for other pension schemes on similar terms particularly for schemes that have been inadequately funded”*.
- Left door open on the legislative front

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Looking down the track



Employment (Contractual Retirement Ages) Bill, 2025

- Applies to employees with a contractual retirement age (“CRA”) of less than State pension age (currently 66)
- Employee can notify employer (between 1 year and 3 months prior to CRA) that they do not wish to retire at CRA but at a specified date up to State pension age
- An employer who has received notification from an employee must not enforce the CRA unless:
 - the retirement at the CRA is objectively and reasonably justified by a legitimate aim; and
 - the means of achieving that aim are appropriate and necessary.
- No impact on normal retirement dates under occupational pension schemes
- Employers may seek to amend to introduce flexibility
- Trustees may wish to review trust to consider late retirement provisions

Expected legislation and regulation

- **Ireland**

- Pensions Act amendments/regulations to introduce an authorisation regime - expected to create a “one-stop” shop of approval with PA and Revenue “approval” removed
- DB consolidation – the dawn of the superfund?
- In scheme drawdown

- **European**

- AML –Sixth Anti-Money Laundering Directive to be transposed by 2027- European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2021 excluded occupational pension schemes from beneficial ownership of trusts requirements
- IORP III directive?
- EU Commission consultation on IORP II and Pan European Pension Products – May 2025

Thank You!

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