RECENT DEVELOPMENTS IN THE IRISH PENSIONS FIELD

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I think that the biggest single development which I have seen in pensions is its changed image. Pensions are no longer regarded as something dull and boring associated with the end of life.

Pensions are now fairly widely recognised as having an influence on many different areas

- Pension is seen as deferred pay i.e. the deferment of receipt of part of one's earnings to provide an income in retirement. This recognition is not only legally enshrined but is recognised for industrial relations purposes.

- Pension fund assets form a very important part of the total Irish economy. Pension assets now exceed IR£8 billion and account for 27% of the Irish equity market and 20% of the Irish gilt market.

- The spread of private pension schemes has an impact on the overall savings market. Pension assets now make up 25% of the Irish domestic savings market.

- Private pension schemes are believed to affect labour mobility, retirement ages (whether early or delayed) and affect the distribution of wealth between different wage, sex and service brackets.

- All countries, including Ireland, recognise that adequate retirement provision (whether provided by state or private schemes) is an essential feature of civilised countries and pension expenditure has now become the biggest public social expenditure item for industrialised countries.

Background and Influences

The Irish State Social Insurance System provides a basic state pension. The pension provided is flat rate (i.e. not income related) and in the case of a single person amounts to 29% of average industrial earnings. In order to have a reasonable standard of living in retirement it is now generally accepted that the state pension must be supplemented by a private occupational pension scheme.

Until the 1950s private pension schemes in Ireland were very much for privileged employees, mainly those employed by public sector employers or very large corporations. The Irish industrial development policy of the 1950s was successful in attracting a considerable number of foreign companies to extend their operations to Ireland and many of these firms provided pensions for their employees. The example of foreign firms, together with changes in the tax treatment of pension schemes between the late 1950s and early 1970s, seemed to have a strong influence on the growth of private pension schemes during this period. Another factor which influenced the development of private schemes during the 1970s was the National Wage Agreements which started in 1971. The agreed rules governing pay increases severely restricted the scope for local bargaining on wages but left room for negotiation on fringe benefits which was used in many cases to introduce private pension schemes or extend existing schemes.

These combined influences resulted in a considerable expansion of private pension scheme coverage in Ireland - there are now 550,000 people included in these schemes, representing more than half the Irish work force. This figure actually represents a high level of coverage by most national standards, since many of the people who are not included in private schemes are in an income bracket where the basic state pension provides adequate income replacement on retirement and some others have themselves effected personal pensions.

The rapid growth in pension schemes combined with high inflation, unemployment and soaring interest rates in the 1980s gave rise to some pension scheme problems. In particular, there were difficulties with underfunded pension schemes i.e. some employers had not set adequate assets aside to provide the pensions which they had promised. A few of these were widely publicised when the employer's company was closed down and it emerged that the employees not only lost their jobs but also failed to receive the pension benefits which they had been promised.

There was increased Trade Union, political and media interest in pensions. This interest was partly fueled by the problem cases.

During the 1980s there was also uncertainty about the future development of the State Pension Scheme, and Trade Unions were calling for improvements in state benefits.

The Government found itself in a difficult position in relation to pension because they had no independent advice on what needed to be done to regulate the pension industry or in relation to development of the State Pension Scheme. There were calls for the establishment of some form of advisory board and in 1986 the National Pensions Board was established. This Board included representatives of all the various pension interests in Ireland and it worked extremely well. It issued four major Reports and, in particular, the First Report of the National Pensions Board made detailed recommendations on the organisation of Irish pension schemes. These Reports have had a major influence on recent pension developments in Ireland.

Recent Developments

A number of the developments which I would like to talk about are related to regulation of occupational pension schemes which was implemented as a result of the National Pensions Board recommendations. This regulation was implemented through the Pensions Act 1990, and affects all pension scheme members. The Pensions Act is basically consumer legislation and is aimed at ensuring that pension schemes are properly administered and that, above all, the pension rights of members and their dependents are safeguarded.

Pensions Board

The Pensions Act provided for the establishment of a new statutory Pensions Board which will replace the existing advisory National Pensions Board. It will supervise the implementation of the Pensions Act and will also have an advisory role to the Government on pensions matters generally. The Board appointed seems to have all the ingredients for success in its tasks. It is made up of a Chairman and twelve people representing pension interests, e.g. Trade Unions, Employers, pension schemes, life offices, actuaries, accountants, lawyers and relevant Government Departments. The Board also has a Chief Executive and staff to manage its activities.

The Government has decided to finance the new Board by fees levied on all pension schemes. Effectively, pension schemes will be paying for their own regulation and organisation but I believe that most people who have thought about pensions in Ireland would agree that the Board is necessary, and in the present Irish economic climate it is probably necessary that it should be financed by Irish pension schemes.

Pension schemes will be required to register with the Pensions Board and this will provide for the first time a clear and complete register of all Irish pension schemes, with associated information. This register should be very useful for pension scheme members because it will enable the Pensions Board to process any enquiries and queries made to it speedily, and will also provide a facility to assist members who change jobs in the course of their career to trace the schemes in which their benefits are preserved.

The Pensions Board hope to minimize the need for them to get directly involved in the affairs of pension schemes through the issuing of guidance notes, codes of practice, standards for trustees and training and information for members. However direct involvement is inevitable in cases where members are not satisfied that they are obtaining their rights or where pension schemes are not complying properly with the Pensions Act. The Board provides pension scheme members with an ultimate place to take their pension problems and the Board will either investigate these for them or ensure that they are investigated by the scheme itself. The Board has powers of investigation and also has strong sanctions against any pension scheme representatives who fail to comply with Pensions Act requirements. These include the right to initiate Court proceedings, and people convicted of offences under the Act are subject of fines of up to £10,000 and/or two years imprisonment.

Preservation of Benefits

Prior to the Pensions Act, employers under Irish pension schemes did not have any statutory obligations to preserve benefits for employees leaving service. In practice, more than 90% of pension scheme members took a refund of their own contributions when they left a pension scheme and forfeited all right to the employers' contributions on their behalf.

Since 1st January 1991 a member of a pension scheme who leaves employment before his normal pension date will have a statutory entitlement to preserved benefits related to service and contributions after 1st January 1991, subject to a qualifying service requirement. The Act also requires compulsory revaluation of these preserved benefits, although this will not start until 1st January 1996. If a pension scheme member wishes to transfer his preserved benefit entitlement the Act goes on to provide for compulsory transfer payments to be made to another pension scheme or to a Life Office annuity contract.

Members entitled to these preserved benefits will not be entitled to opt for a refund of their own contributions (including any voluntary contributions) which they have paid to the scheme after 1st January 1991. This prohibition on refunds of member contributions is unlikely to be universally popular, since most employees have become used to the concept of refunded contributions and, in particular, to refunds of additional voluntary contribution which were regarded by some as a form of tax efficient saving. However, the concept of compulsory preservation of pension entitlements must be good for pension scheme members in the long run.

The new preservation requirements go some way towards reaching a situation where an employee can change job in the knowledge that the employer he is leaving must maintain a certain amount of benefit for him. This will not be fully achieved until preservation has been extended to benefits which arose before 1st January 1991, and the possibility of introducing this is being looked at by the Pensions Board at present.

Funding Standard

Prior to the Pensions Act there were no funding requirements for Irish pension schemes i.e. employers could make pension promises without setting any assets aside. This obviously devalued the whole concept of pension schemes. The issue was hotly debated and the principal arguments against a funding stardard were that funding standards might result in discouraging employers from operating private pension schemes, since there is no statutory obligation on employers to operate such schemes at all.

The funding standard which has now been included in the Pensions Act is a statutory minimum funding standard, which concentrates on the security of pension rights in respect of completed service rather than future rights. The objective is to ensure that in the event of the scheme winding up, sufficient assets are held within the scheme to secure the pension rights of existing beneficiaries and the benefit expectations of active members relating to their completed period of scheme membership.

The funding standard will be achieved by requiring "Actuarial Funding Certificates" to be submitted to the Pensions Board at regular intervals of approximately every three years. These Certificates will give confirmation from the pension scheme actuary that the required funding levels are being met.

This funding requirement will now ensure that pension scheme members may feel secure that the pensions which they have been promised are being properly funded and, if their scheme winds up at any time, there will be sufficient assets to meet the promises made to them in relation to the service which they have already completed.

Disclosure of Information in relation to Pension Schemes

Disclosure of Information to pension scheme members has been the subject of discussion in pension circles for a number of years.

Some people felt that it was the solution to most pension scheme problems and that our much publicized pension problem cases would not have occured if there had been adequate disclosure. I would not fully agree with this, but I think that most people agree that the level of disclosure of information to pension scheme members which operated prior to the Pensions Act could be described as insufficient, at best. The disclosure requirements contained in the Pension Act require disclosure to be carried out as a two-stage process. Firstly, the trustees of the pension scheme must obtain specific information and secondly, they must provide the members with certain information.

The basic requirements are now that pension schemes are required to disclose

- details about the constitution of the pension scheme
- basic information about the pension scheme, and
- information to individual members (i.e. details of benefit entitlements).

In addition they must arrange for

- Annual Audited Accounts
- Actuarial Valuations, and
- Annual Reports.

The people who have rights to information are pension scheme members, prospective members, spouses of members and prospective members, other people qualifying for benefits under the scheme and authorised Trade Unions representing scheme members concerned.

The thrust of this is that it is essential in safeguarding pension rights that the members, and their Trade Unions, take an active interest in the administration and financial soundness of their pension scheme. The requirements which have now been introduced should ensure that members are well informed about their contributions and their future pension entitlements and are in a position to monitor the health of their pension scheme.

There has been some discussion as to whether we are in danger of heading towards over regulation in this area, and whether the pension scheme members will really gain enough from all this extra information to justify the increased costs arising from producing it. Overall I believe that there is strong awareness of the dangers of over-regulation and that this will be carefully monitored - the experience of the UK and US in this context are a good warning to Ireland.

Trustees of Schemes

Almost all our Irish pension schemes are established under trust. This is essential in order to avail of the tax reliefs available, and it also means that the assets are separated from the employer's property.

Pension trusts are subject to general trust law, and until the Pensions Act there was no specific legislation relating to pension Trustees. The Pensions Board aims to provide clear guidance and support to pension Trustees through

- the issue of guidelines and codes of practice on their duties and responsibilities
- encouraging the provision of appropriate training facilities for Trustees and
- advising on standards for Trustees.

One of the problems arising from our pension trust system was that the members' redress system was not satisfactory. The only redress was through the Courts and only one such case came before the Irish Courts. This was probably not because of the complete satisfaction of pension scheme members with the performance of their Trustees, but rather because of the cost and uncertainty of taking any such case to the Irish High Court.

This has now been addressed by the Pensions Act and pension scheme members may take their problems to the Pensions Board. The Board will investigate any such complaints and if it considers it necessary it may request the High Court to order the replacement of the Trustees of a pension scheme. The Pensions Board may also appoint new Trustees to a pension scheme where there are no Trustees or the Trustees cannot be found.

In addition to complying with the requirements of the Act in general, certain duties for Trustees are set out in the Pensions Act. These include

- ensuring that the contributions due to the pension scheme are paid and properly invested
- ensuring that the benefits of the pension scheme are paid when due
- ensuring that proper membership and financial records are kept.

This clear definition and emphasis on pension scheme Trustees' duties and responsibilities should help to make sure that pension schemes are well organised. The Act also provides a good form of investigation and redress for pension scheme members who are not happy with the way their pension scheme Trustees are discharging their duties.

Defined Benefit Basis v Defined Contribution Basis

There are two alternative bases for occupational pension schemes. They can be on a defined benefit basis or a defined contribution basis. Defined benefit schemes define the actual amount of the final benefits which will be paid, whereas defined contribution schemes provide whatever the contributions to the schemes purchase as a final benefit.

In Ireland the vast majority of pension schemes have traditionally operated on a defined benefit basis, although in recent years there has been a growth in the popularity of the defined contribution concept, particularly for small and medium size employers. An influence on the increased popularity of defined contribution schemes would seem to be the more stringent legal and accounting requirements which apply to defined benefit basis schemes.

The Trade Unions are unhappy with this trend and are generally somewhat hostile to defined contribution schemes. The Labour Court underpinned the Trade Union attitude to defined contribution schemes recently, when they ruled that an American multinational should not switch their Irish pension scheme from defined benefit to defined contribution without the members' consent.

This defined benefit versus defined contribution basis for pension schemes is a difficult issue. It is easy to see how employers would favour the basis where they know exactly how much they have to pay to the pension scheme (i.e. a defined contribution) and where they have less stringent accounting and legal requirements in relation to their pension schemes. Employees, on the other hand, are likely to favour a pension scheme where they know exactly what they will receive on retirement. Decisions can really only be made taking into account the circumstances of each particular employment.

Pension Fund Investment

There are a variety of investment vehicles available to pension funds in Ireland ranging from

- traditional insurance contracts
- unit linked or pooled funds
- segregated funds.

Until the 1970s the bulk of Irish pension contracts were insured schemes using traditional insurance contracts, and only a few very large schemes operated as self-administered schemes where the assets were invested other than wholly in insurance contracts.

In recent years there has been a strong move amongst small and medium sized funds towards unit-linked type investment, mainly through managed funds. There are eleven investment institutions offering services in this area so there is a wide range of choice.

Large funds tend to opt for segregated management i.e. direct asset holdings. This approach gives Trustees more direct influence over investment policy and the freedom, if they wish, to impose specific stock constraints.

Until 1988 Ireland had exchange controls which affected pension fund investment. When these controls were virtually removed at the beginning of 1989 there was an increased trend towards overseas investments for Irish pension funds but this has now stablised - the most recent survey figures for 1990 show just over 25% overseas assets held by Irish pension funds.

Disability Benefits

Many Irish pension schemes have associated disability benefits i.e. replacement income payable to an employee who becomes disabled prior to his normal retirement date.

The insurance of disability plans is now causing problems for many employers.

This has arisen due to losses on the part of insurers coupled with a growing concern that some of the more common benefit formulae currently in place are providing excessive benefits - these benefits in turn encourage dubious and marginal claims.

Another factor in the disability area has been the uncertainty surrounding the AIDS threat. AIDS cover involves a considerable increase in existing insurance charges, and some employers have now opted for excluding AIDS cover for their employees or deciding to carry the AIDS risk themselves on a self insured basis.

The disability benefit area is likely to see continued change for some time as a number of the insurance companies offering insurance of these benefits in Ireland have now withdrawn from the market. The companies remaining are offering alternative products and options in order to try to meet employers' needs. The alternatives on offer include limited term disability, serious illness cover, early ceasing ages or extended deferred periods.

Likely Future Developments

Member Participation in Trusteeship

Up to now members of pension schemes have no legal rights to participate in the appointment of pension scheme trustees unless this is expressly provided for in the trust documents, and only a very small number of Irish schemes provide for this. The selection and appointment of trustees is normally completely at the employer's discretion.

The subject of member participation in pension scheme trusteeship is a very controversial one, and polarised views are held by employer representatives and by the Trade Union Movement.

As a result of considerable Trade Union pressure a section was included in the Pensions Act which gave a statutory base for member participation in the appointment of trustees. This has not yet been implemented but the Minister for Social Welfare has said that he proposes to implement it with effect from 1st January 1994.

The implementation of member participation in pension scheme trusteeship worries many employers because they feel it will weaken their control on the pension scheme. Employers express specific worries about increased demands, confrontation and breaches in confidentiality. In practice, these fears may be ill-founded because actual experience of member trusteeship has produced quite satisfactory results.

In fact, a trustee who has been nominated by the members will have exactly the same responsibilities as other trustees. His duty will be to administer the pension scheme rather than to negotiate benefit improvements, and he must distinguish his role as a trustee from any other conflicting roles he may have such as a Trade Union role.

This change is likely to require careful introduction in order to make it work well. In the end it should be beneficial for pension schemes and should result in an increased degree of member participation in their own pension schemes.

Development of the State Pension Scheme

There is an ongoing debate in all EC countries concerning the relationship between state and private pension provision. All countries acknowledge the necessity for adequate retirement provision and the debate centres on the best division of pension provision between state and private pension schemes. Overall the attractiveness of private funded pension schemes seems to be growing.

The advisory National Pensions Board is about to produce a Report on this issue for Ireland. This Report will examine the existing state pension arrangements and will consider the need for introducing some form of earnings related pension for employees.

The Government has given a commitment in the Programme for Economic and Social Progress that the Board's findings will be discussed with the main interests in the pensions area, and it is likely that this report will be a major influence in the future relationship between state and private pension provision in Ireland.

Tax Treatment of Pension Funds

Up to now successive governments in Ireland have encouraged the development of private pension schemes by allowing them to operate in a favourable tax environment. The tax treatment of private pensions varies for different countries, but all countries who wish to encourage private pension schemes offer some form of tax incentive for this purpose.

The National Pensions Board examined the tax treatment of Irish pension schemes and recommended no change in the present system. It found that the present tax treatment of pension funds in Ireland "is simple to understand and operate, is broadly equitable and clearly acts as a major encouragement to the establishment of funded occupational pension schemes". The Board saw no justification for changing the present tax status unless it is decided fundamentally to alter the present system by discouraging occupational pension schemes and providing income related pensions through an extended state system.

There have been some recent rumours that the 1992 budget could introduce some changes in the tax regime for pensions. It is to be hoped that the Government will consider any such suggestion carefully as it could have very serious implications for private pensions in Ireland.

Single Market for Pensions

The EC Commission have three main objectives in order to bring about the Single Market for pensions. These are

- Freedom of cross-border pension fund investment
- Freedom of cross-border pension fund managment
- Freedom of cross-border pension scheme membership.

The first two freedoms are currently being introduced through an EC Directive and it is likely that they will lead to some form of centralised EC investment and pension fund management for multinational employers' pension arrangements.

The third proposed freedom relating to cross-border pension scheme membership is an extremely complex proposal because of the different tax, social security schemes and employee rights operating throughout the EC countries. This has been put on ice for the moment but when it is fully implemented it is proposed that it will lead to the possibility of Pan-European pension schemes, so that employees can move freely throughout the EC without any loss of pension rights.

These concepts could have serious implications for Irish pension scheme since Ireland has a substantial number of multinational employers. Most of these multinationals are either UK or US based so this could lead to pension fund monies currently invested in Ireland being moved abroad.

In fact, one of the driving forces behind the introduction of the Single Market for Pensions was the imminent implementation of the EC Life Directives which will create a Single Market for life offices throughout the EC. The Life Directives will enable life assurance companies authorised in any EC country to operate throughout the EC by establishing branches or by free provision of services, and it was felt that it would create an unfair playing field if pension funds which used means of financing other than life offices did not have the same advantages.

Equal Treatment for Men and Women

The last development which is currently hovering over the pensions world is somewhat strange. This is the question of equal treatment for men and women in private pension schemes. On the face of it this seems a simple matter, since most people in 1991 would agree that male and female members of pension schemes should have equal treatment and benefits.

A European Court of Justice decision in May 1990 interpreted the Treaty of Rome, which instituted the European Economic Community, as meaning that there must be complete equal treatment in pension schemes between the sexes, but a monumental argument has ensued on the retrospective effect of the judgement.

This issue is currently dominating the pensions world, and some of the possible interpretations could have serious effects not only for pension schemes but also for the countries involved.

Although the Irish position is not as serious as that of the UK or the Netherlands, the equality question does have serious implications for us. Approximately one-sixth of our schemes still have current inequalities and there are historical problems for many more schemes. The worst interpretation of retrospective equality would not only cause some Irish schemes to be insolvent but could also put serious financial strain on the employers in question.

It is interesting to note that whilst the original cases related to women looking for equal treatment with men, the emphasis is now on men seeking equal treatment with women.

The outcome of this equality question is impossible to predict. However it is certain that it will ultimately effect all Irish pension schemes to a greater or lesser extent. At this stage our government are watching events before they do anything further and they are delaying implementing the next phase of Irish equality legislation until the position is clearer.

Conclusion

It has been an exciting time to be involved with Irish pensions over the last few years. I believe that the developments which have taken place were well considered and are generally very much in the interests of pension scheme members. We can also be quite proud of this development because we have now got a pension scene which is very much our own and where we are seeing independent Irish thinking on pensions.

Of course, we are all Europeans now and we must follow the European drum in certain areas. However I think it is important that we preserve the member protection and rights which are now in place in Ireland because I can think of no other European country where I would prefer to be a member of a pension scheme.