

Requirements of Irish social and labour law

Guidance notes

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Irish social and labour law requirements relevant to the field of occupational pensions in respect of which an Institution for Occupational Retirement Provision (IORP) established in another Member State must comply where it accepts contributions from an Irish employer

1. General

The Irish social and labour law requirements are the entirety of Parts III and V of the Pensions Act, 1990 as amended (the Act), sections 59B and 59C of the Act, and Regulations 31 to 37 of the European Union (Occupational Pension Schemes) Regulations 2021 (the Regulations).

Early leavers are entitled to a preserved benefit after two years membership of the scheme. Contributors to defined benefit (DB) pension schemes are entitled to a minimum benefit on retirement.

Outgoing workers, meaning an active scheme member whose employment terminates for reasons other than becoming eligible for a pension and who moves between Member States, are entitled to specified additional rights.

Irish members of schemes established in another Member State should be entitled to similar information as Irish members of Irish schemes.

There is a prohibition on reducing the pension payable to a person in receipt of a pension below what was payable in the previous year save as outlined in section 59B of the Act.

Pensioners in receipt of a pension which is integrated with the State pension should not be disadvantaged by increases in the State pension being higher than increases in the occupational pension.

2. Summary of social and labour law provisions of the Act

2.1 Part III of the Act – Preservation of Benefits

Section 27 – this is an interpretation section defining terms for the purposes of Part III and the Second Schedule of the Act.

Section 28 – provides that a member of a scheme whose employment terminates otherwise than on death and before normal retirement age is entitled to a preserved benefit if he or she has two years' membership of the scheme.

Section 29 – deals with how preserved benefit entitlements should be calculated in respect of a DB scheme and also sets out provisions as to the calculation and distribution of benefits due under such schemes in respect of the member where the member dies before normal retirement age.

Section 30 – deals with how preserved benefit entitlements should be calculated in respect of a defined contribution (DC) scheme and also sets out provisions as to the calculation and distribution of benefits due under such schemes in respect of a member, where that member dies before normal retirement age.

Section 31 – states that a preserved benefit is to be paid out of the resources of the scheme in accordance with the rules of the scheme.

Section 32 – provides that a person who is entitled to a preserved benefit shall not be entitled to a refund of the contributions paid to the scheme.

Section 32A – provides that an outgoing worker who leaves a scheme without an entitlement to a preserved benefit is entitled to receive a refund of:

- the pension contributions paid by or on behalf of the outgoing worker, in the case of a DB scheme; or
- either (i) the sum of the pension contributions paid by, on behalf of, and in respect of the outgoing worker by the worker or the employer, or both, or (ii) the value of the investments arising from those contributions, in the case of a DC scheme.

Section 33 – provides for annual revaluation of deferred members' preserved benefits in the case of DB schemes.

Section 34 – sets out the provisions governing deferred members' entitlements to request a transfer out of their preserved benefit to another scheme or pension arrangement and sets out how the transfer value is to be calculated.

Section 35 – allows the trustees of a pension scheme to transfer a deferred member's

pension benefits to certain other kinds of retirement provision arrangements, without the consent of the member where the amount being transferred does not exceed a particular value (currently €10,000) or with the approval of the Pensions Authority (the Authority). However, notwithstanding this power, trustees may only transfer the pension benefits of a deferred member who is an outgoing worker with their written consent.

Section 35A – requires that in the case of a contributory DB scheme that the scheme should provide a minimum benefit level equating to 120% of the member’s personal contributions, in certain limited circumstances.

Section 36 – requires any rule of a scheme providing for the forfeiture of a preserved benefit or of a minimum contributory benefit or enabling the employer to exercise a lien on a preserved benefit to be disregarded. It also provides for what may happen to the preserved benefit where the member or person entitled to the benefit becomes bankrupt or tries to assign or charge the benefit.

Section 37 – allows the Minister for Social Protection to make statutory instruments under Part III providing for certain matters, including the exclusion of certain categories of schemes from the application of Part III.

Section 38 – provides for the Authority to determine certain matters relating to schemes, such as whether any provision of Part III conflicts with a rule of a scheme in which case Part III will override the rules, or a question as to whether a scheme is a DB or a DC scheme for the purposes of Part III.

Section 39 – provides that there is no prohibition on a scheme from providing higher benefits to members than those set out in Part III or the Second Schedule of the Act.

Section 39A – provides that an outgoing worker must not be subject to a waiting period of longer than twelve months before they are admitted to a pension scheme for which they would otherwise be eligible.

2.2 Part V of the Act – Disclosure of information requirements

Section 54 – requires the trustees, registered administrator or actuary of a scheme or an employer to whom the scheme relates to disclose certain information in relation to the scheme to the Authority and other specified persons as may be prescribed. The type of information that may be required is more particularly set out in the remaining sections of Part V and in the Occupational Pensions Schemes (Disclosure of Information)

Regulations 2006, as amended (the Disclosure Regulations). It includes information on the benefit structure of the scheme, and the provision of annual benefit statements to members, as well as the provision of information on the occurrence of certain events, such as the member's death or termination of their employment. In addition, a statement of reasonable projection must be included as part of the annual member benefit statement. With the exception of schemes funded on a pay-as-you-go basis, once the trustee of a scheme makes available to relevant members the first pension benefit statement as required under the Regulations, the provisions regarding the annual member benefit statement will no longer apply to the scheme.

Section 55 – requires the trustees of a scheme to prepare an annual report. The contents and the persons to whom it is to be made available are set out in the Disclosure Regulations.

Section 56 – requires the trustees of certain schemes to ensure that the annual accounts of the scheme are audited, and in the case of a DB scheme the resources and liabilities are valued by the scheme actuary at such times as may be prescribed. The information required and the persons to whom it is to be made available are set out in the Disclosure Regulations.

Section 57 – allows the Minister to make regulations excluding specified schemes from the requirements to comply fully with sections 54, 55, 56 and 56A of the Act in certain circumstances with the consent of the Minister for Public Expenditure and Reform and provided that any modifications are compatible with the Directive (EU) 2016/2341 (the IORP II Directive).

Section 58 – provides that in the event of conflict between a rule in a scheme and Part V of the Act, the provisions of Part V shall override the scheme rules and any question as to whether there is such a conflict shall be determined by the Authority on an application in writing being made to it in that regard.

Section 58A – requires an employer to remit employer and employee contributions in respect of DC schemes and employee contributions in respect of DB schemes to the trustees of the scheme within a certain period and without making any deductions and for the provision of information on the amount deducted and paid over in the preceding month to the employer and trustees.

2.3 Miscellaneous provisions of social and labour law

Section 59B of the Act – contains a prohibition on reducing the amount payable to a person in receipt of a pension below what was payable in the previous year, save in very limited circumstances.

Section 59C of the Act – is a technical provision which protects pensions in payment that are integrated with the State pension, that is, where the calculation of the pension involves an offset in respect of the State pension. The purpose of the section is to avoid pensioners being disadvantaged by increases in the State pension being higher than increases in the occupational pension.

3. Summary of social and labour law provisions of the Regulations

Regulation 31 – is an interpretation section defining terms for the purposes of Part 6 (Regulations 31 to 37) of the Regulations.

Regulation 32 – requires the trustees of a scheme to appoint a registered administrator to prepare, on the trustees' behalf, the pension benefit statement that must be issued annually under Regulation 33. The registered administrator must provide the pension benefit statement to the trustees at least one month before the date on which it must be made available to members.

Regulation 33 – requires the trustees of a scheme to issue a pension benefit statement to all active and deferred members of the scheme annually. This statement will replace the annual member benefit statement required under the Disclosure Regulations for all schemes other than those funded on a pay-as-you-go basis which will continue to provide the annual benefit statement. The pension benefit statement must be made available in English and must be accurate, up to date and written in a clear and easy to understand manner. Material changes to the information contained in the immediately preceding pension benefit statement must be clearly indicated. The statement must be made available to relevant members free or charge within six months of the date to which the statement relates and may be provided either electronically (including via a website) or on paper. However, members may request a paper copy of the statement in which case it must be provided free of charge within four weeks of the request.

Regulation 34 – sets out the minimum information that must be contained in the pension benefit statement. The minimum information that must be provided includes information on the member's accrued benefit entitlements and information on pension benefit

projections at retirement age. Trustees may include additional information in the pension benefit statement if they wish. It also provides that the Authority shall set out rules to determine the assumptions that must be used for the purposes of the information regarding pension benefit projections.

Regulation 35 – provides that the pension benefit statement must also specify where and how certain specified supplementary information can be obtained.

Regulation 36 – prescribes the penalties applicable to persons who fail to comply with the requirements of certain provisions of the Regulations. A person who charges a member for provision of the pension benefit statement will also be guilty of an offence.

Regulation 37 – contains transitional provisions for schemes that have commenced on or before the coming into force of the Regulations. It provides that the trustees of such schemes must make the first pension benefit statement available to relevant members by 31 December 2022. One-member arrangements commenced on or before the coming into force of the Regulations are exempt from the requirements until 22 April 2026.

4. Relevant legislation

The primary and secondary legislation set out below should be referred to as the definitive statement of the law in all cases.

4.1 Primary legislation

Parts III, V, section 59B and 59C of the Act.

4.2 Secondary legislation

Occupational Pension Schemes (Preservation of Benefits) (Special Calculations) Regulations 2002 – S.I. No. 277 of 2002

Occupational Pension Schemes (Preservation of Benefits) Regulations, 2002 – S.I. No. 279 of 2002

Occupational Pension Schemes and Personal Retirement Savings Accounts (Overseas Transfer Payments) Regulations, 2003 – S.I. No. 716 of 2003

Occupational Pension Schemes (Preservation of Benefits) (Amendment) Regulations

2005 – S.I. No. 188 of 2005

Occupational Pension Schemes (Preservation of Benefits) (Amendment) Regulations 2005 – S.I. No. 604 of 2005

Occupational Pension Schemes (Preservation of Benefits) (Amendment) Regulations 2010 – S.I. No. 148 of 2010

Occupational Pension Schemes (Preservation of Benefits) (Amendment) Regulations 2014 – S.I. No. 218 of 2014

Occupational Pension Schemes (Revaluation) Regulations 2006 – S.I. No. 70 of 2006

Occupational Pension Schemes (Revaluation) Regulations 2007 – S.I. No. 30 of 2007

Occupational Pension Schemes (Revaluation) Regulations 2008 – S.I. No. 20 of 2008

Occupational Pension Schemes (Revaluation) Regulations 2009 – S.I. No. 22 of 2009

Occupational Pension Schemes (Revaluation) Regulations 2010 – S.I. No. 47 of 2010

Occupational Pension Schemes (Revaluation) Regulations 2011 – S.I. No. 38 of 2011

Occupational Pension Schemes (Revaluation) Regulations 2012 – S.I. No. 48 of 2012

Occupational Pension Schemes (Revaluation) Regulations 2013 – S.I. No. 56 of 2013

Occupational Pension Schemes (Revaluation) Regulations 2014 – S.I. No. 71 of 2014

Occupational Pension Schemes (Revaluation) Regulations 2015 – S.I. No. 43 of 2015

Occupational Pension Schemes (Revaluation) Regulations 2016 – S.I. No. 152 of 2016

Occupational Pension Schemes (Revaluation) Regulations 2018 – S.I. No. 35 of 2018

Occupational Pension Schemes (Revaluation) Regulations 2019 – S.I. No. 31 of 2019

Occupational Pension Schemes (Revaluation) Regulations 2020 – S.I. No. 52 of 2020

Occupational Pension Schemes (Revaluation) Regulations 2021 – S.I. No. 87 of 2021

European Union (Occupational Pension Schemes) Regulations 2021 – S.I. No. 128 of 2021

4.3 Regulations under Part V of the Act

Occupational Pensions Scheme (Annual Reports) Regulations, 2004 – S.I. No. 233 of 2004

Occupational Pensions Schemes (Disclosure of Information) Regulations, 2006 to 2021

Note: A copy of the consolidated Act can be found on the Authority's website [here](#).