An tÚdarás Pinsean
The Pensions Authority

Social Welfare and Pensions (No. 2) Act, 2013

Information note

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Social Welfare and Pensions (No. 2) Act, 2013

The Social Welfare and Pensions (No. 2) Act, 2013 (the 2013 Act) came into force on 25 December 2013. It introduced two new wind-up priority orders and expands the type of benefit reductions which the Board may direct under section 50 of the Pensions Act, 1990, as amended (the Act).

This information note provides general information on the changes introduced by the 2013 Act to the Act. It is intended to assist trustees and scheme members. It aims to summarise what are complex and technical points of pension legislation and should not be taken as legal advice or interpretation. It is the responsibility of trustees to ensure that they comply with their statutory obligations.

Wind up priority orders under section 48 of the Act

For all schemes which start to wind up on or after 25 December 2013, one of two priority orders will apply:

- The single insolvency order will apply if the scheme's employer is solvent at the date of wind up.
- The double insolvency order will apply if the scheme's employer is insolvent at the date of wind up.[1] In a multi-employer scheme, all participating employers must be insolvent for the double insolvency order to apply.

Examples

1. The Bloggs pension scheme started to wind up on 24 December 2013. The new wind-up priority orders do not apply to this scheme.
2. The Murphy pension scheme started to wind up on 24 December 2013 but had not started to pay out the benefits on 25 December 2013. The new wind-up priority orders do not apply to this scheme.
3. The Smith pension scheme started to wind up on 26 December 2013. The Smith company was solvent at that date. The single insolvency priority order applies to this scheme.
4. The Jones pension scheme started to wind up on 26 December 2013. The Jones company was insolvent on 26 December 2013. The double insolvency priority order applies to this scheme.

[1] Insolvency is defined in the Protection of Employees (Employers' Insolvency) Act, 1984 and can include (for example) liquidations, receiverships, resolutions to wind up a company.

Single insolvency order

Benefits will be distributed in the following order of priority:

1. Additional voluntary contributions (AVCs) and transfers in of AVCs; and defined contribution (DC) benefits and transfers in of DC benefits.
2. Pensioner benefits (excluding post-retirement increases), in accordance with the following limits:

   (a) if the annual pension is €12,000 or less, 100% of the pension,
   (b) if the annual pension is more than €12,000 and less than €60,000, the greater of €12,000 and 90% of the pension, and
   (c) if the annual pension is €60,000 or more, the greater of €54,000 and 80% of the pension.

3. 50% of active and deferred benefits, excluding post-retirement increases.
4. Remaining pensioner benefits, excluding post-retirement increases.
5. Remaining active and deferred benefits, excluding post-retirement increases.
6. Any remaining benefits, including post-retirement increases.

N.B. The benefits which scheme members receive in a wind up will depend upon the scheme assets which are available for distribution.

Examples

The Smith pension scheme is underfunded and can cover only priorities 1 to 3. John, Mary and Tom are all pensioner members of this scheme. Cara is a deferred member of this scheme.

John is receiving a pension of €11,000 per year. After the wind up, John will continue to receive a pension of €11,000 per year under priority 2. Any post-retirement increases payable to John after the date of wind up are not covered.

Mary is receiving a pension of €15,000 per year. After the wind up, Mary will receive a pension of €13,500 per year under priority 2. This is the greater of €12,000 and 90% of her current pension (i.e., €13,500). Any post-retirement increases payable to Mary after the date of wind up are not covered.

Tom is receiving a pension of €62,000 per year. After the wind up, Tom will receive a pension of €54,000 per year under priority 2. This is the greater of €54,000 and 80% of his current pension (i.e., €49,600). Any post-retirement increases payable to Tom after the date of wind up are not covered.

Cara is a deferred member with a preserved benefit of €20,000 per year. After the wind up, Cara will receive a transfer value in respect of €10,000 per year under priority 3. Any post-retirement increases payable to her after the date of wind up are not covered.

Double insolvency order

Benefits will be distributed in the following order of priority:

1. AVCs and transfers in of AVCs; and DC benefits and transfers in of DC benefits.
2. 50% of pensioner benefits, including post-retirement increases.
3. 50% of active and deferred benefits, including post retirement increases.
4. Pensioner benefits up to a maximum of €12,000 per year, excluding post-retirement increases.
5. Remaining pensioner benefits, excluding post-retirement increases.
6. Remaining active and deferred benefits, excluding post-retirement increases.
7. Any remaining benefits, including post-retirement increases.

N.B. The benefits which scheme members receive in a wind up will depend upon the scheme assets which are available for distribution.

However, in a double insolvency, if the scheme does not have enough assets to pay for the benefits under priorities 2, 3 and 4, the Minister for Finance will provide the necessary money to make up the shortfall, subject to criteria set out in legislation.

Examples

The Jones pension scheme is underfunded and can cover only priorities 1 to 4. Anne, Cormac and Jane are all members of this scheme.

Anne is receiving a pension of €11,000 per year. After the wind up, Anne will continue to receive a pension of €11,000 per year. This is because she will receive €5,500 per year under priority 2 and the remaining €5,500 per year under priority 4. Any post-retirement increases payable to Anne in respect of the first €5,500 are covered.

Cormac is a deferred member with a preserved benefit of €14,000 per year. After the wind up, Cormac will receive a transfer value in respect of €7,000 per year under priority 3, including any post-retirement increases payable to him.

Jane is receiving a pension of €15,000 per year. After the wind up, Jane will receive a pension of €12,000 per year. This is because she will receive €7,500 under priority 2 and a further €4,500 under priority 4. A maximum of €12,000 per year is protected under priority 4. Any post-retirement increases payable to Jane in respect of the first €7,500 are covered.

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Benefit reductions under section 50 of the Act

With effect from 25 December 2013, the Act permits section 50 reductions of pensioner benefits currently in payment and not just future increases in pensioner benefits.

There will be limits on any such reductions, as outlined below:

- A minimum floor of €12,000 applies. No reduction may be made from an annual pension of €12,000 or less and no reduction may be made which reduces an annual pension to below €12,000.

- If an annual pension is over €12,000 and less than €60,000, a reduction may be made by a percentage no greater than 10% and to an amount which is no less than €12,000.

- If an annual pension is €60,000 or more, a reduction may be made by a percentage no greater than 20% and to an amount which is no less than €54,000.

N.B. The 10% and 20% are maximum reductions – the extent of the reduction which is necessary will depend upon the particular scheme deficit and will be a matter for the scheme trustees.

Examples

The ABC pension scheme is underfunded. Its trustees apply to the Pensions Authority for a section 50 direction in order for the scheme to meet the funding standard. Brian, Carol, Diarmaid and Emma are pensioner members of the scheme.

Brian is receiving a pension of €12,000 per year. The trustees may not reduce Brian's pension.

Carol is receiving a pension of €13,000 per year. The trustees may reduce Carol's pension to no less than €12,000 and therefore may not reduce her pension by 10% because that would reduce her pension to below €12,000. However, they may reduce her pension by a lesser percentage which does not reduce her pension to below €12,000.

Diarmaid is receiving a pension of €40,000 per year. The trustees may reduce Diarmaid's pension by any percentage up to 10%.

Emma is receiving a pension of €62,000 per year. The trustees may reduce Emma's pension to no less than €54,000 and therefore may not reduce her pension by 20% because that would reduce her pension to below €54,000. However, they may reduce her pension by a lesser percentage which does not reduce her pension to below €54,000.