Considerations in response to the Publication of the Automatic Enrolment Retirement Savings System Bill 2022

Insurance Ireland

Introduction

In November 2022, Insurance Ireland submitted a detailed response[1] on the General Scheme of Automatic Enrolment Bill to the Joint Committee on Social Protection, Community and Rural Development and the Islands and was pleased the majority of the issues raised as part of the submission were addressed in the recommendations of the Committee's Report on Pre-Legislative Scrutiny of the General Scheme of the Automatic Enrolment Retirement Savings System Bill 2022 (hereinafter the Bill).[2]

Since that publication and the recent publication of the Bill, however, Insurance Ireland has been disappointed that limited to no action has been taken to progress any of these recommendations. While a number of these issues with the proposed auto-enrolment (AE) system in both Insurance Ireland's submission and the report of the Joint Oireachtas Committee remain, and Insurance Ireland calls on the Department for Social Protection (DSP) to action them accordingly, a number of further issues were identified by Insurance Ireland in an earlier iteration of this position paper.

Insurance Ireland is pleased that the Minister has taken on board, septically Insurance Ireland's feedback in relation to consumers being able to make complaints and about the external adjudication for the AE system and that issues relating to the data sharing arrangement between the National Automatic Enrolment Retirement Savings Authority (NAERSA) have also been clarified. That said, a number of the enduring issues remains, which are detailed in the latter part of this position paper.

These issues include:

1. A lack of a cost/benefit analysis of the AE system
2. A lack of consumer protection regulation to be applicable to the AE system
3. A lack of parity of obligations between occupational schemes and AE.

Since the publication of the Bill, however, a number of areas that require clarification have come to the fore, which Insurance Ireland has detailed in the following section and would strongly encourage the Minister and the DSP to take note of and action.

[1] Insurance Ireland - The Voice of Insurance. https://www.insuranceireland.eu/news-and-publications/insurance-ireland-submission-on-auto-enrolment.

[2] Oireachtas, Houses of the. Social Protection Committee Publishes Report on the Automatic Enrolment Retirement Savings System Bill – 3 May 2023, 15:00 – Houses of the Oireachtas. 3 May 2023, https://www.oireachtas.ie/en/press-centre/press-releases/20230503-social-protection-committee-publishes-report-on-the-automatic-enrolment-retirement-savings-system-bill.

Considerations since the publication of the Bill

Insurance Ireland encourages the Minister to consider the following issues in relation to the AE system in light of the publication of the Bill, as well as the comments relating to specific sections of the Bill in Appendix 1 below.

Regulatory Status

Insurance Ireland believes further clarity should be provided in relation to the regulatory status of the AE system in particular in relation to the adherence to the institutions for occupational retirement provision (IORPs)

Insurance Ireland is unclear under what grounds a scheme can circumnavigate European Union legislation or elements of it, if this system is not fully subject to IORPs. Also, there is a potential conflict and member detriment issue if the scheme is not fully IORPs compliant (e.g. does a member lose some potentially important controls and oversights on their fund).

Further clarity should also be provided on the actual regulatory status of the AE system and how this compares to the current pension landscape.

Alignment to current landscape

Insurance Ireland would like to highlight that the main issues identified by the insurance sector in the alignment of the AE system with the current landscape is that there is a lack of clarity on the alignment of the provisions of the Bill with the Payment of Wages Act but also, that the Bill and legislation relating to the AE system override the contractual obligations for Government, but this is not also the case for existing occupational pension schemes.

Insurance Ireland would further reiterate that the issues identified with the inflexibility of the AE system, firstly for women and carers as it outlined at length in Insurance Ireland's previous positions and representations on this matter, but further in relation to additional voluntary contributions (AVCs), access to funds at state pension age, etc.

Insurance Ireland believes that in reality there will be a significant overlap with the current pension landscape as people move through their working life. Insurance Ireland encourages the Minister to layout how different scenarios will be dealt with.

While Insurance Ireland understands it is difficult to legislate for every scenario that may arise, we believe that a full understanding of the practical interactions between the current landscape and AE system should be considered and at the very least robust guidance notes provided.

Failure to clarify this position will lead to confusion, potential breaches and a lack of trust or understanding of the new system, which will in turn impact the trust of the pensions landscape as a whole.

Below are some examples of scenarios Insurance Ireland and members see as concerning:

1. **Waiting periods to join:** Currently, a number of occupational schemes have a three- or six-month period from the commencement of employment before employees are eligible to join a scheme.

   If the AE system has a 'Day 1' requirement, there could be scenarios where someone is in the AE system for six months and then must either transition to the occupational defined contribution scheme or, through passive nature, remain in the AE system, which may be at lesser terms than the occupational scheme in place. This could mean employees who do not transition could be at a detriment versus their colleagues who are in the occupational scheme.

   It is also unclear how would such a transition from the AE system to an established occupational scheme would work in practice, i.e. what happens to the 6 months contributions made to the AE system? More clarity is required on this element of the AE system.

   Further, for those employees that are enrolled into the AE system on 'Day 1' of their employment, but transition to an occupational scheme when available, it is not clear how the AE system will ensure that AE system contributions will not be deducted the following month.

   Is there an assumption that the six month opt out for the AE system will be overruled by a defined contribution scheme contribution? In this instance, what is the status of all employee, employer and state contributions? As above, more clarity is required on this element of the AE system.

2. **Change of Employment:** When an employees move from one employer who may be using the AE system to an employer offering an occupational scheme, what happens to the AE system benefits? Who is responsible for updating the authority (employer/member) and how does this happen? What interconnecting relationships will exist?

3. **Tax Relief versus Top Up:** While it is clear how the AE system will operate, what is less clear is what information will be made available to members in relation to the different way the benefits are calculated and at what salary.

   In some instances, the tax relief system on private pensions may be more beneficial to employees versus the AE system's top up. How will employees be made aware that this might be the case?

Retirement Benefits

Insurance Ireland maintains its belief that further clarity is needed on what the retirement benefits will look like when an employee comes to retirement age. The language within the Bill implies that the retirement benefits of the day will apply, however, the wording is such that it gives an impression that the benefits are yet to be decided upon. Employees need clarity when entering into the AE system. This would need to be clear to ensure there is no detriment or benefit v's the current position prior to launch.

Insurance Ireland further notes that there is uncertainty around the taxation of retirement benefits when employees within the scheme reach retirement age. Will the AE system pension pot be considered as part of the current €200,000 tax free lumpsum or indeed the current €2m Standard Fund Threshold (SFT)? It is understood by Insurance Ireland as the AE system is not a pension in a traditional sense, rather a saving scheme, that the lumpsum and SFT limits will not apply, but further clarification is required.

AE System Exclusions

Insurance Ireland maintains its position that the entry thresholds for the AE system are in need of review, however, the publication of the Bill has highlighted some other key cohorts that will be excluded from the AE system.

Firstly, it appears that the legislation as drafted inadvertently excludes employees who are paying into a Personal Retirement Savings Account (PRSA) where there are no employer contributions being made from AE system. Insurance Ireland encourages the Minister to review the Bill in this light and make the required changes to ensure employees contributing to a PRSA without employer contributions can fall into the AE system.

Further it appears that there is no capacity for those who are above the State Pension Age to continue to contribute to the AE system. Clarification should be provided as to whether such employees can opt-in to continue to contribute to the AE system.

Entities involved

Insurance Ireland notes the reference to a new State body NAERSA. Insurance Ireland believes that further detail needs to be shared on the formation and role of this new entity, which, when it is established, will manage the biggest retirement savings system in the State.

Operational readiness

Insurance Ireland believes there remains a number of gaps in the description of the operation of the system and the communications plan for employers and employees on the system. Insurance Ireland maintains its belief that more clarity is required on the operation of the system.

1 A lack of a cost/benefit analysis of the AE system

Insurance Ireland would encourage the Department of Finance (DFIN) and DSP to clarify the financing and regulation of the Central Processing Authority (CPA).

Insurance Ireland is unaware of any cost/benefit analysis of the CPA having been carried out or any financial review having been undertaken by the Department for Public Expenditure and Reform (DPER). Insurance Ireland strongly recommends that such analysis take place in advance of progressing the implementation of AE any further.

2 A lack of consumer protection regulation to be applicable to the AE system

In relation to regulation, Insurance Ireland notes that the legislation states:

> *"The Automatic Enrolment Retirement Savings System is, for the purposes of the application of national and European Union law, an 'institution of occupational retirement provision' as defined under Article 6 (1) of the Directive of 2016."*[3]

We understand, however, that the DSP has provided clarifications on the working of AE over recent weeks, which have raised some concerns for Insurance Ireland and its members.

AE will have a special status with regard to entry rights. Many private pension plans will have strong legal requirements in relation to employment contracts to protect the interest of the employee, but not the state-provided AE system.

The DSP has confirmed that, contrary to the evidence provided by the Pensions Authority to the Joint Oireachtas Committee for Social Protection, Community and Rural Development and the Islands during pre-legislative scrutiny in Spring 2023[4], the proposed AE system will not be an institution of occupational retirement provision (IORP) or a Master Trust or a pension in contrast to the definition referred to above and, therefore it is not subject to any existing pension plan/scheme legislation.

While the system will be regulated by the Pensions Authority, the sole piece of legislation that will drive the regulatory oversight will be the Automatic Enrolment Retirement Savings

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[3] *Draft Heads and General Scheme of the Automatic Enrolment Retirement Savings System Bill 2022.* *https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_social_protection_community_and_rural_development_and_the_islands/submissions/2022/2022-11-10_draft-heads-and-general-scheme-of-the-automatic-enrolment-retirement-savings-system-bill-2022_en.pdf*.

[4] Houses of the Oireachtas. *Joint Committee on Social Protection, Community and Rural Development and the Islands Debate*, *https://www.oireachtas.ie/en/debates/debate/joint_committee_on_social_protection_community_and_rural_development_and_the_islands/2023-01-18/2*.

System Bill 2022, unlike the private pensions market, which is subject to the following, amongst others:

- Pensions Act 1990
- Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision or IORPs II Directive, and
- Central Bank of Ireland's Consumer Protection Code

The effect of this is the AE system, which will be the largest second pillar pension provider in the country, will not be subject to the same level of regulation and oversight as all other pillar two private pensions. This means it is subject to a much lower level of consumer protection than both second and third pillar pensions.

While the DSP has stated the AE system will be regulated 'as an IORP', unless the full Bill completely replicates the provisions of the *IORPsII legislation*, the Board of Directors will be unable to be held accountable for any breaches of the rules.

The AE system will not be required to provide for the same risk management system nor will it need to meet any of the disclosure requirements mandated under the IORP II directive e.g. an annual Statement of Reasonable Projection., It is not clear which consumer protection safeguards and information the system will be required to provide to consumers. The AE system as proposed is likely to have lower standards than usual occupational retirement schemes in Ireland and across the EU and could substantially undermine consumer information and communication. This contradicts all efforts towards well-informed decision making by emancipated consumers.

The AE system will not be required to achieve the same levels of solvency and governance as pillar two pensions, meaning that the lines of defence which financial institutions and insurers are subject to will be much reduced - including responsibilities on its Board of Directors. Given One-Man arrangements (OMAs) fall under the IORPsII Directive, but the AE system will not, it is unclear why the DSP is of the view that OMAs) pose a greater risk than the AE. In addition to the oversight and regulation, Revenue pension limits will not apply to the AE system but will continue to apply to other occupational pension arrangements.

It is clear from the above that there will be a distinct lack of consumer protection regulation for the AE system, which will bake in an unlevel playing field between it and private pensions in Ireland. The unlevel playing field is aside from the start-up loan that will be provided to the AE system from the State significant and will deteriorate consumer protection and information as well as the competition in the Irish market.

3 A lack of parity of obligations between occupational schemes and AE

Concerningly, the DSP has also confirmed in recent weeks that employers will not be able to use their privately-run occupational scheme to fully cover their obligations under AE legislation because they cannot enroll employees in their scheme without changes to employment contracts.

This also means the two systems cannot be run in the same organisation as generally occupational schemes will have a waiting period, whereas the requirement to be opted into the AE system will be from the start date of employment.

Nor will an employee be able to be a member of an occupational scheme and AE in respect of the same employment, even where they can obtain a higher contribution through an existing occupational pension scheme than through the AE system. This effectively means that AE system users will not be able to invest in additional voluntary contributions (AVCs).

Not only will taking participating in two different pension systems create an unnecessary administrative burden for employers, but it also impacts hugely on the consumer giving them a confusing mixture of pensions and greatly undermining the concept of a simple easy to understand pension savings system.

Conclusion

There is no doubt that the introduction of AE can be a significant milestone for closing the pension gap in Ireland, it is indispensable that before any further action is taken, that time is taken to re-focus on the objectives.

Ireland has one of the most sophisticated life insurance sectors globally and this expertise must be embraced to make the new AE system a success. At the very least, the concerns of the sector raised in this paper and Insurance Ireland’s previous submissions relating to the AE system, based on the expertise within the sector, must be taken into account. Ignoring this expertise and building a new CPA from scratch puts the overall success of the AE system at risk from the very beginning.

The AE system must focus on an effective and efficient delivery for consumers and employers in Ireland and not create unnecessary hurdles or any potential risk to public finance.

Appendix 1: Feedback in relation to specific provisions of the Bill

1. References to one-man arrangements in the Bill should be updated to one member arrangement.

2. Consideration should be given to the comments of the Society for Chartered Accountants in relation to section 47 of the Bill, in that "employee" means a person in receipt of emoluments.

   There will be instances where say a person does a-hoc work for a business and under tax law would be regarded as an employee and not self-employed. However, under workplace legislation, wouldn't normally be brought into the net of pension, bonuses, sick leave, annual leave etc because while they are payrolled, the workplace wouldn't consider them as employees per se. e.g. Directors of Boards.

3. Section 2: many of the definitions which were included in the General Scheme are spread across various sections of the Bill which is confusing. A definitions section should be included that contains all definitions of the Bill.

4. Section 3(2): should this read 'for the purposes of the Act.'

5. Section 5: Further clarity required around the expenses referred to, why should such monies be provided by the Oireachtas? Clarity required here.

6. Section 9:
   a. 9(1)(h): this provision is extremely specific and detailed. Further clarity is required as to the research that is expected to take place.
   b. 9(2): A definition of 'digital by default' should be included in the definitions section.
   c. 9(3): how will independence of the Authority be guaranteed? What will the oversight over the Authority be? Further clarity required.

7. Section 11
   a. 11(2): the proposed number of Board members in the Bill is lower than in the General Scheme and includes the Chair of the Board in it. Clarity is required as to this change.
   b. 11(7): is 'endeavour' strong enough language when it comes to ensuring gender parity at the Board level?

8. Section 42: in relation to the production of statistical data, this provision is different from the General Scheme where the data was supposed to be on the performance of the functions of the Authority. Further clarity on this change required,

9. Section 43: is the five-year review too long? Should there be provision for an earlier review after the implementation of the AE system, i.e. Two or three years and then five years thereafter?

10. Section 44: there is no specific chapter on supervision as in the General Scheme, also the supervisory functions of the Pensions Authority are not described, only their responsibilities in relation to the supervisory report. Further detail is required in this section.

11. Section 50:
    a. the definition on 'payment reference period' should be included in the definitions section at the beginning of the Chapter not in S.50(4).
    b. 50(3)(b) is unclear; the JOC recommendation for a removal of the income threshold was not taken into consideration.

12. Section 52(6): the deadline for the development of standards is quite long. Review of this timeline is required.

13. Section 53(2): in relation to the right to opt in – the age threshold was increased from 16 (in the General Scheme) to 18 in the Bill and the upper threshold is 'under pensionable age'. Insurance Ireland would encourage the Minister to review this position in line with Insurance Ireland's previous submissions on this matter. In addition, there is no income threshold mentioned in the Bill, contrary to the 'below €20,000' in the General Scheme. Clarification on whether such a threshold applies is needed.

14. Section 55: in relation to automatic re-enrolment – what will be the Authority's process for establishing that employees are eligible for re-enrolment? Clarification on this point is required.

15. Section 57: refers to 'under pensionable age' for defining 'contributing person', not the upper age threshold of 60 – clarification on the implications of this is required.

16. Section 58:

    a. 58(1): clarification required between 'total gross payment' and gross payment. Is the language used in the Bill correct?
    b. 58(4): the information necessary for the calculation and payment of contributions payable under this section shall be notified by the Authority – clarification required as to the process for this.

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Register ID: 978587826097-61