

## **Pensions: Auto Enrolment**

### **[00:00:00.500] - Sarah McCague, Partner**

Hello and welcome to this podcast on Pensions Auto Enrolment in Ireland. I'm Sarah McCague, a Partner in the Pensions Group in Arthur Cox, and today I'm joined by my colleagues, Deirdre Cummins, Of Counsel and Daniel Watters, Senior Associate, to discuss the recently passed automatic enrolment Retirement Saving System Act 2024, which was signed into law by the President on the ninth of July. There's been plenty in the media about the new auto-enrolment or AE system, and I expect the first question in most people's minds will be, when is AE going to be implemented in Ireland?

### **[00:00:38.550] - Deirdre Cummins, Of Counsel**

I'll take that one, Sarah. I think the short answer there is we just literally don't know at this stage. The Minister for Social Protection, Heather Humphreys, previously indicated that the first contributions would be paid into the system on the first of January, 2025. I think at the time the Act was published, she said early 2025 so it remains to be seen and whether they actually make that deadline, because there's a lot to be done before the contributions can be paid into the system and that, coupled with the prospect of a general election, makes the date seem somewhat ambitious so I think that's all we can really say for now in terms of when it's coming.

### **[00:01:16.000] - Sarah McCague, Partner**

Okay, so if we work with what we know at this point, the bill was published back in April, you might remind us what the main features of the AE system is, Dan, and what the changes are.

### **[00:01:27.440] - Daniel Watters, Senior Associate**

Yes, so the whole auto-enrolment system is going to be run by a new authority, which would be known as 'An tÚdarás Náisiúnta um Uathrollú Coigiltis Scoir'. We will refer to it as 'The Authority' for brevity. The auto-enrolment system is going to apply to employees who are aged between 23 and 60 who are not in exempt employment. So what's exempt employment? Well, employees are in exempt employment if they or their employer on their behalf contributes to a qualifying pension arrangement and to be a qualifying pension arrangement, the pension scheme will need to meet certain conditions that will be set out in regulations in future but in the short term, effectively, any pension scheme will do. Contributions are going to be payable by the employee, the employer, and by the state at rates which start at 1.5% for the employee and employer and 0.5% from the state, increasing to 6% over a 10-year period for the employer and

the employee with a top-up contribution of 2% from the state. The tax regime is one of the most fundamentally different areas when we compare the auto enrolment system to an occupational pension scheme, and that has remained unchanged in the Act when compared to the bill as initially published.

**[00:02:51.460] - Daniel Watters, Senior Associate**

Contributions are based on gross pay, subjected to a cap of €80,000, but they're deducted from net pay, so there's no tax relief at source. So as we've said previously, where an employer operates both a pension scheme and the auto-enrolment system, they will be operating a dual taxation system.

**[00:03:10.630] - Sarah McCague, Partner**

And Deirdre, were there any changes to the legislation that we saw introduced as a result of the Act being passed?

**[00:03:17.730] - Deirdre Cummins, Of Counsel**

Thanks Sarah, Well, I guess the main thing really to say, just following on from what Dan has said there, is that the main features of the auto enrolment system remain unchanged, and that's really an important message that we want to communicate. So what we have said previously in relation to the features of the system hasn't changed, and that remains the case. Having said that, there are some minor changes to the legislation, and they can be divided, broadly speaking, into a handful of different categories and I might just talk to you very briefly about some of the procedural changes, just to highlight a handful of those that we think are important. The first one is the authority now has the ability to set out procedural matters on their website rather than in regulation and that might seem like a minor change, but it really is a positive step, I think, because it gives the authority a lot more flexibility in terms of potentially amending procedures if something isn't working. Regulation is secondary legislation and would take a little bit of time to get through so by allowing the authority to publish it on a website just makes the whole system more efficient, I guess.

**[00:04:23.180] - Deirdre Cummins, Of Counsel**

Another thing to say is about the provision of information to the authority. It's interesting that an additional provision has been added to the Act, which allows the minister to make regulations which would require an employer to provide certain information to the authority on or before making the payment of an emolument and that basically means on or before paying wages and that's a notification requirement in advance of doing that so that's interesting, and

employers should keep an eye on that. The other one, which probably is very obvious and not so interesting, but it is important to point it out at the same time, is that the revised text of the legislation makes it explicitly clear that it will be the authority which will issue a refund of contributions to a member and not the employer itself. Now, as I said, that is not surprising, but at the same time, it's good that we have clarity on that point.

**[00:05:13.490] - Daniel Watters, Senior Associate**

And I just maybe add two additional main points to note from the Act to add to what Deirdre has just outlined that would be quite relevant to employers. The first is around secondments. So the legislation now also expressly addresses how the auto enrolment system will apply in a secondment situation, where the employee is seconded to a new organisation and paid via that new organisation's payroll, but where the original employer remains the employer at law. One key point to note is that where there is a failure to pay contributions and contributions remain owing, the contributions can be recovered from either of those organisations, but importantly, not both. The second main additional change that I would note is a new offence for employers. So where an employee is over 18, but under the state pension age, and crucially, not in the pension scheme, but also not in the auto enrolment system, that person can exercise a right to opt in to the auto enrolment system. The employer, in that case, is required to give notice of this to the employee and now, under the act, failure to give notice to the employee is an offence. In addition to those main points, there are a couple of other smaller points of detail that might be worth flagging.

**[00:06:37.200] - Daniel Watters, Senior Associate**

These relate to PEPs and climate matters. First of all, in relation to PEPs, these are pan-European pension products, they're not a pension product that we come across too often in practise. They are for those internationally mobile employees but for those employers who do currently contribute to a PEP on behalf of an employee, the key point to note is that they will be treated exactly the same as any other occupational pension scheme. So if contributions are being made to a PEP, that will constitute exempt employment, and that employee will fall outside of the auto-enrolment system. Secondly, we are also seeing a lot of members of pension schemes raise queries with their employers and the trustees of their pension schemes relating to climate-related risks and one point to note here is under the revised Act, the minister can, by regulation, prescribe certain conditions which will need to be satisfied by the methodology used to determine the risk rating attributable to investment options. The Minister is required to have regard to the extent to which climate-related risks are taken into account in the methodology used to determine those risk ratings so climate-related risks will be a feature of investment options under the auto enrolment system.

**[00:07:48.400] - Sarah McCague, Partner**

So apart from some tweaks around the edges, it sounds like things are generally unchanged from the original bill that was published. On that basis, it seems employers are going to need to start preparing for the implementation presentation of auto enrolment. Deirdre, I might come to you first. What do you think employers need to do next?

**[00:08:05.630] - Deirdre Cummins, Of Counsel**

Thanks, Sarah. I think it very much depends on what they have done already, to be quite honest with you. I mean, if the employer has already thought about what it wants to do with auto enrolment and whether it's going to use its existing scheme or whether it's going to allow employees to fall into the auto enrolment system. I mean, if they have a strategy or they have a plan and they've thought about it already, I think it's now time to start implementing that plan or at least thinking about the steps they need to take in terms of implementing the plan so they know what it looks like and potentially how long it will take to implement it. If as an employer, you haven't thought about this already, and auto-enrolment is something that's out there, but you haven't really applied yourself to it yet, I would seriously advise that you start thinking about it as soon as possible and think about what you want to do in terms of auto-enrolment, I think it's very important that you think about that plan, think about the steps necessary to implement the plan, and start implementing those steps as soon as you can.

**[00:09:07.670] - Sarah McCague, Partner**

Thanks, Deirdre. So appreciating employers all have different circumstances from a pension's perspective, broadly, what do we think that plan might look like then?

**[00:09:17.440] - Daniel Watters, Senior Associate**

Well, I think the answer to that question is the typical lawyer answer, and the answer is "it depends". So it depends on whether you want to roll out auto-enrolment for your employees or whether you want to ensure that all your employees fall outside outside of auto enrolment. If you don't particularly care and you're happy for auto enrolment to apply to your employees, then the main points are, first of all, you need to start budgeting. You're going to start making contributions for employees who, to date, you have not had to make contributions in respect of. The second thing is you're going to need to communicate with your employees. You're going to have to let them know what's coming down the track and the impact that that's going to have when contributions start coming out of their pay packet and thirdly, you need to update your payroll systems. Again, going back to that dual taxation system which we mentioned, it is a new

taxation system which payroll systems will not be used to and will need to be updated to cater. For those employers who we have been working with to date, our experience is that the general approach being adopted is that they're looking for assistance to help them make sure that their existing occupational pension scheme applies to their entire workforce.

**[00:10:25.410] - Daniel Watters, Senior Associate**

So that's the second option for employers. So what does that look like? Well, taking that approach, the main things an employer needs to action include. First of all, for your new hires, you need to update your template contracts of employment. Secondly, you then need to look at your existing employees. What some employers are trying to do is engage with them and agree an addendum to existing contracts to make scheme membership compulsory as a condition of employment. Then finally, you need to review your pension scheme to see if any amendments are necessary in order to make it applicable to all employees.

**[00:11:00.910] - Sarah McCague, Partner**

Thanks, Dan. We're talking a fair bit about planning here. So do we have certainty in relation to auto enrolment? In other words, do we know everything we need to know now from the Act? Or, Deirdre, do you foresee any other issues or considerations arising in practise?

**[00:11:17.790] - Deirdre Cummins, Of Counsel**

I think the first thing to say in answer to that, Sarah, is no, we certainly don't know everything about auto enrolment and while we're still working through the detail of the legislation, it's very important that people understand or appreciate that a lot of the detail is left to regulation, which haven't been prepared yet, or potentially to procedures now, which will be published on the authority's website. So we certainly don't have all the detail around this yet. We do have the main features, and they won't change, but we don't have all the finer details and as you know yourself, Sarah, the devil sometimes is in the detail. So that's the first thing to say. Having said that, we are seeing a number of issues crop up again and again as employers start to think about their own organisations and what they need to deal with in practise. So just to give you a bit of a flavour of some of those, we're seeing a lot of questions around employees who have opted out of pension schemes already and these are usually employees who have hit the standard fund threshold, which is currently €2 million, or are approaching it, and it doesn't really make sense for them to stay in a pension scheme.

**[00:12:25.670] - Deirdre Cummins, Of Counsel**

So they have opted out for a reason but potentially, as the legislation is currently drafted, these individuals will be caught by the AE system if some proactive step is not taken around them so that's something to bear in mind if you're an employer and you have individuals like that. Another thing we're seeing questions about at the moment is around non-executive directors and if you have a non-executive director sitting on your board who is perhaps paid an annual sum via payroll, then that sum could fall within the definition of a monument, which would mean that that non-exec director is caught by the AE system unless you add them potentially to your scheme or do something to take them out of the net and the other thing we're seeing, and this can be quite tricky, is questions around internationally mobile employees who are part of their time in Ireland and part of their time in another jurisdiction and whether they will be caught by the AE system. Now, that needs a good bit of consideration, and there's quite a lot of detail to be considered in questions around So care needs to be taken when dealing with those individuals.

**[00:13:35.380] - Deirdre Cummins, Of Counsel**

If you have individuals like that in your organisation, we're also seeing questions about leave and unpaid leave and different things like that. So there is a lot to be considered here but having said that, there are solutions to all these questions, and it's just a matter of getting familiar with the detail in the legislation and working through the various scenarios.

**[00:13:57.440] - Sarah McCague, Partner**

Well, with all that information, Dan, if I were to ask you for your three key takeaways on auto enrolment right now, what would they be?

**[00:14:06.020] - Daniel Watters, Senior Associate**

Okay, so I think the first point to note is that there are no fundamental changes from the Bill to the Act as finalised in terms of the overall design of auto-enrolment, and that's the key message. Secondly, employers have started working on getting their houses in order and practical issues are cropping but in our experience, all of these can be addressed with sufficient time. The third thing that I would note is just around timing. The Bill and the Act made their way through the Houses of the Oireachtas quite quickly. For the legislation to commence, we will need the Minister to pass a commencement order. The current government have created quite a bit of momentum and are aiming for the system to go live early in 2025. We don't know when those ministerial commencement orders will come, but for now, the advice has to be that employers should seek to get their houses in order between now and the end of the year.

**[00:15:01.210] - Sarah McCague, Partner**

Thanks, Dan and your key takeaway, Deirdre?

**[00:15:03.910] - Deirdre Cummins, Of Counsel**

I think, Sarah, if I was to say one thing to you or to employers, I'd say start now. Decide what you want to do. Do you want to use your existing scheme for everyone? Or do you want to allow everyone to be auto-enrolled into the AE system? Or is it a combination of both? And if it is a combination of both, you'll be operating dual systems with different taxation regimes, etc. So that's the first thing, really, you need to decide to what do you want to do? Then there are several things you can do after that, I guess. You can update your contracts of employment for new hires to reflect whatever route you are taking and you should also be reviewing any employment policies to make sure they are up to date and accurate. You also need to start thinking about your communication plan to your employees. This is in the media a little bit, and there will probably be a bigger launch at some point in 2025, and it will get even greater media coverage but you need to start thinking about what you're going to say to your employees and when you are going to say it.

**[00:16:06.650] - Deirdre Cummins, Of Counsel**

So that's an important point for employers as well. I think you also need to potentially have a backup plan, if you like. So if some employees aren't potentially happy with the course of action the employer is proposing to take and they object to whatever is put in front of them, what is the employer going to do at that point? And I would also say, consider the tricky cases around the edges. So the people who are potentially hitting the SFT or who have unusual circumstances and work abroad for part of the year, whatever it might be, those individuals will need to be addressed on a case-by-case basis also. So I think there's a lot to be thinking about, and it's a very long-winded way of me saying start now, but I think that's the crucial point, really.

**[00:16:47.840] - Sarah McCague, Partner**

Thanks, Deirdre and Dan, for those insights. We have more information generally on auto enrolment online on our dedicated pensions page of the Arthur Cox website. You can also choose to sign up for our AE updates by signing up to our mailing list. I hope you found this audio briefing helpful. If you would like further information on any of the points mentioned in this briefing, please feel free to contact a member of the Arthur Cox Pensions team or your usual Arthur Cox contact. Thank you for listening.