

Chapter 7

Department of Education and Science

7.1 Superannuation Schemes

Introduction

Superannuation schemes may be statutory or non-statutory.

A statutory scheme is one which is provided for in an Act of the Oireachtas. The provision usually takes the form of an enabling section in the Act giving authority for the making of Regulations (i.e. Statutory Instruments) setting out the details of the relevant superannuation scheme. Changes to the statutory schemes are intended to be carried out through the making of amending Regulations. The main superannuation schemes for teachers are statutory.

A non-statutory scheme is one which has no legislative foundation but is made, with the consent of the Department of Finance, to implement agreements entered into between the Department of Education and Science (or one of its agencies, with the Department's approval) and the appropriate staff representatives. Non-statutory schemes established over the last 20 years or so will comply with the model superannuation scheme devised by the Department of Finance for state-sponsored bodies. Changes to the non-statutory schemes are implemented with the sanction of the Department of Finance. Most such changes arise out of claims by the public service unions for improvements in superannuation provision.

Non-statutory schemes are regularly operated throughout the public service. Apart from those for which the Department is responsible, the superannuation benefits for non-established civil servants are, for example, provided for by means of a non-statutory scheme.

Audit Issue

I have previously reported to Dáil Éireann on the failure of the Department to ensure that there was up to date legislative authority for amendments to the statutory superannuation schemes of teachers. These reports were subsequently discussed at the Public Accounts Committee where the then Accounting Officers confirmed that steps were being taken to comply with the legislative requirements.

During recent audits by my staff, it became apparent that despite these assurances, amendments made to statutory schemes operated by or under the authority of the Department have not been given the necessary legislative authority.

Accounting Officer's Response

Changing and Consolidating Schemes

The Accounting Officer provided details of the improvements and changes made to the schemes over the years. She pointed out that many have common application but some apply only to particular schemes.

She agreed that formal updating of the statutory schemes, by means of statutory instruments, is necessary in order to meet legal requirements. Apart from this, she accepted that it was most desirable, from the point of view of facilitating administration, to formally update all schemes, statutory and non-statutory, as changes and new provisions come on stream.

She stated that in recent decades, taking into account the pace of change in the area of superannuation, and the fact that industrial relations agreements are regularly implemented with retrospective effect, it has become common practice throughout the public service to implement changes to statutory superannuation schemes administratively, usually through the issue of circular letters, and to make the appropriate statutory instruments at a later date.

She also informed me that a number of initiatives to bring the schemes up to date have been undertaken over the years but have faltered along the way. The most recent of these was in the case of the Secondary Teachers' Superannuation Scheme where, in 2000, a barrister was assigned to the task of drafting a consolidated scheme, including all amendments. The barrister provided the Department with a draft consolidated scheme in Spring 2001 but it has not been possible to address the necessary task of verifying the work of the barrister because relevant staff of Pensions Unit have been occupied by other work, including work which has arisen in connection with the consideration and implementation of the Part-time Work and Fixed-term Work Acts and the consideration and implementation of the recommendations of the Commission on Public Service Pensions. The immediate priority, when work recommences, will be to carry out the required verification in connection with the Secondary Teachers' Scheme.

She added that she expected that the Universities, as required by the Universities Act 1997, would have their new public service model schemes ready for approval by autumn 2005. It would be desirable that other schemes should also be formally updated when the model scheme is available but this will be dependent on resources being made available. In this regard, her Department is not aware that the absence of statutory amendments to schemes has caused any particular difficulties for the Universities, Institutes of Technology, Vocational Education Committees and other external education institutions and bodies. She accepted that a consolidated scheme in each case, including all amendments, would be the optimum in terms of ease of administration and in terms of transparency.

Difficulties to be Overcome

The Accounting Officer said that the main difficulties to be overcome to bring the work of formally updating the Schemes to a successful conclusion include

- The availability of skilled staff to deal with the complex and technical nature of drafting the schemes
- The competing demands for staff resources within the Department
- The rapidly changing superannuation environment.

Given the substantial work involved, addressing this issue is a multi-annual project.

In relation to the allocation of staff for specific projects the Department must prioritise the many demands it faces. The Department must also operate within its approved staffing numbers and is bound by the Government policy on staffing numbers in the public service. Therefore the scope to apply additional resources to the task of bringing the superannuation schemes legislatively up to date is limited. That said, the Department intends exploring other options including contracting the work to appropriately qualified outside experts if such can be found.

Consequences of Schemes not being updated

The Accounting Officer informed me that in the absence of a statutory instrument underpinning a change in a statutory superannuation scheme, the change would be open to the challenge that it is *ultra vires* the Minister for Education and Science.

On the other hand, the changes which have been implemented on an administrative basis are in effect part of the terms of employment of teachers and other staff, negotiated generally through industrial relations machinery. As such they are legally binding agreements related to superannuation. Furthermore, the changes have at all times been subject to the approval of the Minister for Finance.