Universal Retirement Savings Scheme

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Author: Jim Stewart[1]

Summary

Following a commitment made in the Statement of Government Priorities 2014 – 2016, the Government recently decided to proceed with work to develop a roadmap and timeline for the introduction of a new, universal, supplementary workplace retirement saving scheme. Preparation of this roadmap for consideration by Government has been initiated through the establishment of a 'Universal Retirement Savings Group' (URSG) chaired by the Department of Social Protection.

In order to facilitate input from the various sectoral interests and utilise the range of existing expertise, the URSG is undertaking a broad consultation exercise. As part of the first stage of a consultation process by the URSG, TASC was requested to submit its views on the potential parameters of a universal retirement savings system.

TASC considers that there are four key areas that deserve considerable attention in considering a proposed Automatic Enrolment pension system:

- Governance (broadly defined)
- Costs (including transactions costs)
- Returns
- Costs in terms of tax reliefs

Members of the Pension Policy Research Group and TASC have consistently argued that the most efficient pension system which will achieve improved coverage, adequate income in retirement and at lowest cost, is likely to consist of a **basic universal pension** with a **contributory supplementary pension** organized through the social welfare system and based on "pay as you go" (PAYG). Automatic Enrollment by itself will not solve pension system problems.

[1] Jim Stewart is a member of Pension Policy Research Group, Trinity College, the TASC Economists Network, and TASC Pensions Policy Group.

1. Introduction

Pension systems are complex. In many countries complexity is likely to increase. For example it has been predicted that following the requirement to purchase an annuity in the UK the number of products designed to deliver pension income "will widen greatly in choice and complexity" (Cumbo, 2014). Current pension systems are also widely recognized as failing in a number of ways, for example in Ireland coverage has remained around 50% of the work force, despite numerous initiatives. Many current pension arrangements will fail to deliver an adequate income in retirement.

For these reasons a number of countries have introduced or are proposing to introduce, a scheme for automatic enrolment.

2. Automatic Enrolment

In 2010, the Government proposed an automatic enrolment (AE) pension scheme with the stated intention of ensuring increased "coverage and adequacy" (Department of Social and Family Affairs, 2010). The intention was that the employee would contribute 4%, the employer 2% and the State 2%[2]. It was also proposed that AE would only apply to a band of earnings between €352 and €995 per week. Auto-enrolment had been previously discussed in a Green Paper on pension provision (Department of Social and Family Affairs, 2007, p. 125).

The OECD in a review of pension systems for the Irish Government stated (OECD, 2013 p. 12):-

"To increase adequacy of pensions in Ireland, coverage in funded pensions should be increased. Increasing coverage can be achieved through: compulsion; soft-compulsion, automatic enrolment; and/or improving existing financial incentives"

More recently An Tánaiste

"confirmed Government's approval to proceed with work to develop a roadmap and timeline for the introduction of a new supplementary workplace retirement saving scheme"

Press release, Department of Social Protection, Feb. 3rd, 2015

Others have argued that the solution to low coverage and inadequate incomes in retirement is best provided by a universal social welfare based pension system (McCashin, 2005; Larragy, 2013, p.9)

[2] Although this assumed a change of standard tax relief on pensions of 33%

Automatic Enrollment by itself will not solve pension system problems. The Department for Work and Pensions in the UK comment that:

"By 2018, 8 to 9 million people will start saving or be saving more as a result of AE. This places a new responsibility on government, regulators,, and the financial services industry to ensure that workplace schemes are well run."

Department for Work and Pensions, 2014, p. 5

3. Governance Issues

Governance issues have assumed a more central role in pension research and analysis. However in contrast to much of the debate on governance issues in the corporate sector, governance issues in relation to pension schemes are much broader and include many of the issues that are central to funded pension systems, such as costs, returns, and the design of pension systems.

One reason for the increasing recognition of the importance of governance in pension schemes is the rapid change in pension systems in many countries. Almost all defined benefit (DB) schemes are closed to new members.

In many countries there is also considerable emphasis on personal pension provision, which are always Defined Contribution (DC) schemes. The proposed introduction of AE has considerable implications in terms of duties for employers. The UK Pensions Regulator for example itemizes 14 different categories of additional employer duties together with associated guidance[3]

The growth of DC schemes has implications for pension fund governance. Employers have an obligation to meet deficts in defined benefit type schemes, although this may be difficult to enforce[4]. The increased prominence of DC schemes poses additional challenges for trustees (UK Pensions Regulator 2011).[5] The main difference in the role of trustees in DB and DC schemes arises from the absence of an employer guarantee. All of the risk (long term investment performance risk, short term cyclical risk, longevity risk, and the risk of under-funding) is thus transferred to scheme members.

[3] See: http://www.thepensionsregulator.gov.uk/docs/detailed-guidance-1.pdf

[4] Former employees of Waterford Crystal lost much of their pension entitlements when Waterford Crystal went into liquidation. Following a ruling from the ECJ the Irish Government are required to restore most or all of their pension entitlements (Conor Kane, Irish Independent, 25th April, 2013). This was resolved in March 2015. The pension benefits of S. R Techniks employees have also been significantly curtailed since that company closed down its operations in Ireland and refused to make good the pension scheme deficit. The announced closure of Lufthansa Technik would also result in a large deficit in the DB pension (Barry O'Halloran, Irish Times December 16th 2013).

[5] UK Pensions Regulator, "The Role of trustees in DC Schemes, 2011, available at www.the pensions regulator.gov.uk, last accessed March 21 2012.

In contrast whether due to poor investment decision making, or poor administrative and management decisions, employers have no liabilities for deficits in defined contribution type schemes. Hence pension fund governance has a greater impact on pension outcomes for defined contribution type pension schemes. Given the age profile of members of DC schemes, outcomes from poor governance, such as high charges may not become evident for many years.

Even though many defined benefit pension schemes are closed to new members governance via trustees and trusts still account for a substantial number of members of pension schemes in Ireland. For 2012 there were 233,000 member of DC schemes and 190,000 members of DB schemes which were required by law to comply with the funding standard. These are mostly in the private sector. A further 338,000 were members of DB schemes not subject to a legal requirement to meet the funding standard and these are all DB schemes in the public sector. At the end of 2011 there were 982 DB schemes, and it is expected that at the end of 2013 this will fall to 750 with 11% open to new member and 40% meeting the funding standard (Kennedy, 2013). In 1996 there were 2290 Defined Benefit Schemes (Stewart and McNally, Table II, 2014).

Coupled with a change in the nature of pension provision there has also been considerable change in the assets and market for assets of financial products. Regulators have reacted to, rather than anticipated change[6]. The Law Commission in the UK comment in relation to one such change in the ownership of securities “that the law may have been left behind by the speed of recent changes” (Law Commission, 2014, p.232).[7]

A report by the Office of Fair Trading in the UK (OFT 2013), gives considerable emphasis to pension fund governance, given that competition alone is insufficient to secure “value for money and good outcomes” (OFT, 2013, par. 1.5). The OECD (2013) have also called for improved governance and cite high charges especially in relation to DC pension schemes as evidence of poor governance (OECD, 2013 p. 141). In contrast there is no discussion of governance in the most recent Irish Government policy document on pension provision, the National Pensions Framework (2010).

[6] A recent example is the increased interest of regulators in high speed trading following publicity from the book by Michael Lewis, Flash Boys., see S. Patterson, Wall St. Journal June 6th 2014; N. Bullock and P. Stafford, Financial Times July 1, 2014. The growth of private equity also has implications for portfolio choice by pension funds. Fees paid by pension funds to private equity may be 3-4 times disclosed fees (S. Johnson, Financial Times 24Th August , 2104).
[7] Apart from failure to regulate there may also risk due to “legal anachronism”, Law Commission 2014, p. 232.

4. The Role of Trusts

The role of trusts and those responsible for their administration is important in funded pension systems. The Law Commission (2014, p. 25) state "*The role of pension trustees is, ….., still crucial to UK pensions policy*".

The Pensions Authority in Ireland state :

"In previous annual reports and elsewhere the Board has drawn attention to the very important role that trustees perform"

Pensions Authority Annual Report, 2013, p. 4

It is also possible that existing schemes (DB and DC) will be used to facilitate AE schemes, although group personal pensions and master trusts are more commonly used in the UK[8].

A trust is a widely used structure for the ownership of assets by individuals partly because the tax treatment of trusts makes it advantageous to hold certain types of property through trusts and partly because the trust structure facilitates complex ownership structures or arrangements. Examples include situations where ownership is shared for example a family property trust. Financial assets may also be held in the form a trust, for example unit trusts. Charities and organisations with a mixture of social and economic objectives may also be established as trusts.

Trusts are also the common structure for the ownership and management of pension scheme assets. Defined benefit schemes are always organised as a trust and some defined contribution schemes are organised as a trust, but are more generally contract based. These differences are important as trust based schemes are subject to trust law and regulated by the pension regulator, and contract based schemes are subject to the law of contract and regulated by the Financial Regulator – the Central Bank in Ireland and the Financial Conduct Authority in the UK.

Although the pensions regulator in Ireland also has a role in DC based schemes. The financial regulator in various countries is also responsible for regulating the financial archictecture on which all private sector pension funds are dependent. These relationships are complex (See Figure 2.1 Law Commission, 2014). In addition the trust deed which will vary from one scheme to another has assumed particular significance in law cases in Ireland between pension fund trustees and employers.

[8] Source: Pensions Regulator: http://www.thepensionsregulator.gov.uk/trustees/automatic-enrolment-the-role-of-trustees.aspx

The purpose of a pension fund trust is to provide pensions. However pension fund trustees may be obliged to give consideration to wider issues. Because employers in DB schemes effectively guarantee members benefits and conversely may be entitled to any surplus (via a pension holiday), they are effectively residual beneficiaries. The Law Commission state that:

"*pension trustees should use their powers to secure a return which will provide the agreed benefits to members without imposing burdens on th employer which might imperil the continuity and proper development of the employers' business"*

Law Commissionion, 2014, par. 5.34

Issues however arise as to whether short term returns should be maximised at the expense of long term returns. Hence it could be argued that environmentally less damaging investments should be supported because they reduce environmental risk.

Apart from the key role of trustees, other issues that have emerged in pensions governance has been the very different regulatory structure for DB schemes which are trust based and DC schemes which are contract based.

Another issue is the prominence given to "modern portfolio theory" in law and regulations while at the same time in many cases funded pension schemes have failed to meet pension expectations[9].

A common assumption is that those involved in pension provision (trustees, investment managers, stock brokers, etc.) are subject to a general law in relation to fiduciary duties. One definition of a fiduciary duty "is a legal duty to act solely in another party's interest"[10].

The Law Commission in the UK has undertaken a comprehensive analyis of the "fiduciary duties of investment intermediaries" largely focussing on pension provision in the UK (Law Commission, 2014). The report considers in detail a recommendation by an expert committee (The Kay Review, 2012) that "all intermediaries in the investment chain should be held to fuduciary standards". However the Law Commission considers that fiduciary duties "operate in the background of other duties" (Law Commission, 2014, p. 183). The question of who is subject to fiduciary duties is stated to be a "notoriously intracatable question" (Law Commission, 2014, p. 34).

[9] The role of trustees is regarded as being of increasing importance. For example the Pensions Board (the regulator of pension schemes in Ireland), notes that trustees are obliged to invest pension funds in an appropriate manner and to invest reasonably and prudently, but comments that "the data available to the Board raises considerable doubts as to whether the current investment strategy for many schemes fulfills these requirements". Source: The Pensions Board, Annual Report and Accounts (Dublin, Pensions Board, 2009), available at www.pensionsboard.ie.

[10] http://www.law.cornell.edu/wex/fiduciary_duty

The report comments that there are "major difficulties in relying on "judge made" law to control complex and fast-moving financial markets" (Law Commission, 2015, p. 206) and further comment that

"Any attempt to change fiduciary duties through legislation would result in new uncertainties and could have unintended consequences in other areas, especially for trusts"

Law Commission, p. 207

In many cases modern practice is that securities held by pension funds and other investors are not owned directly but rather by intermediaries. For example a Centralised Securities Depository may hold securites on behalf of account holders. These account holders may in turn own shares on behalf of other customers. The Law Commission report comments that there has been some debate on the legal relationships governing this ownership structure and comment "We now think that it generally operates as a series of trusts" (Law Commission, 2015, p. 229). Apart from legal uncertainty, other problems that arise relate to owners exercising rights such as voting, a lack of transparency, for example where securities are lent for trading purposes in terms of identifying the associated income flows, and potential risks (Law Commission, p. 231).

In Ireland recent court cases (High Court 2014a; High Court 214b) illustrate some of the governance issues involving DB schemes. In the case of Element Six (Stewart and McNally, 2014), members of the pension scheme sued the trustees of Element Six for breach of trust for accepting a sum of €23.1 million in full settlement of the obligations of Element Six to its DB scheme, rather than a sum of €129 million required to meet the fund deficit. Another more recent court case ruled that in winding up a scheme trustees were entitled to seek additional payments into the scheme based on the schemes rules, even though the scheme met the requirements of the minimum funding standard under the pension acts (High Court 2014a).

In the UK providers of Defined Contribution work-place pensions will be required to establish Independent Governance Committees (IGCs), the purpose of which is to represent the interest of members, for example in relation to governance and charges. Regulations and conduct of IGC's are however overseen by the Financial Conduct Authority (Freshfields Bruckhaus Deringer, September 2014). IGC's have also been extensively criticized by trade unions and others[11].

The following illustration indicates some of the complexity in regulation of pension schemes in the UK.

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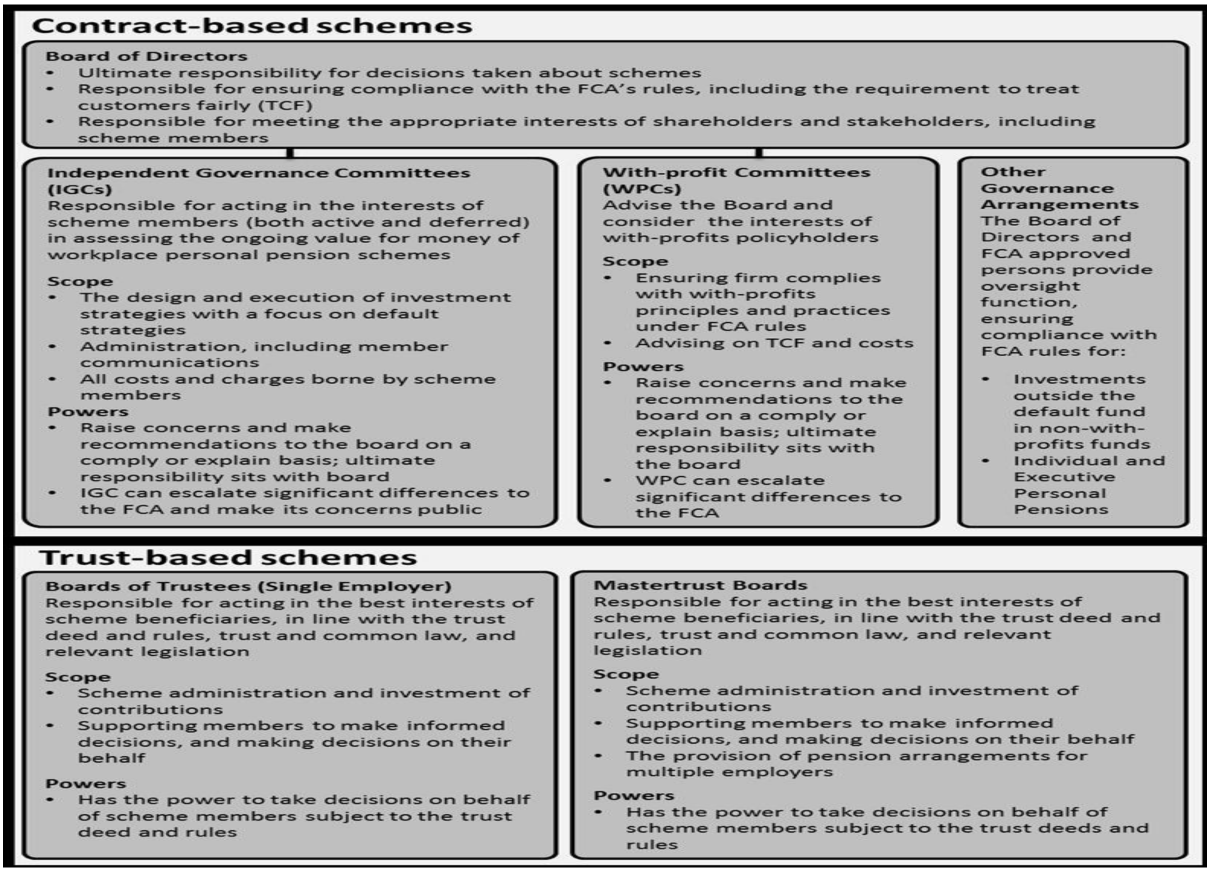
[11] J. Cumbo, Pension Governance Committees 'compromised', say unions, Financial Times, September 12, 2014.



Source: Independent Audit Board, 2014, p. 19

5. Widespread Assumptions of 'modern portfolio theory"

The Law Commission in the UK note that pension schemes "suffer from low contribution levels and lacklustre investment performamce" (Law Commission, 2014, p. 131). At the same time the principles of "moden portfolio theory" have been long established in regulations in prescribing pension scheme investment strategy. The implication is that portfolio theory has been incorrectly applied or that an emphasis on portfolio theory delivers "lacklustre performance". Conjunction of innovation in financial markets for example high frequency trading, with ambiguities and uncertainty relating to the governance and management of pension funds, raises issues in relation to policies which seek to extend substantially personal pension coverage.

Regulations in the UK require pension scheme assets are invested to "ensure the security, quality, liquidity and profitability of the portfolio as a whole".[12] This approach has also been upheld by the courts (Law Commission, 2014, p. 56). A key investment principle for UK pension schemes is that :-

[12] Occupational Pension Schemes (Investment) Regulations 2005 SI 2005 No 3378, reg 4.

"The assets of the scheme must be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and so as to avoid accumulations of risk in the portfolio as a whole" (Law Commission, 2014, p. 249).

Regulations in Ireland follow a similar principle (Occupational Pension Schemes (Investments) Regulations 2006) and state:

1. The assets of the scheme must be invested in a manner designed to ensure the security quality, liquidity and profitability of the portfolio as a whole so far as is appropriate having regard to the nature and duration of the expected liabilities of the scheme.
2. The assets of the scheme must be invested predominantly on regulated markets; investment in assets which are not admitted to trading on a regulated market must in any event be kept to a prudent level.
3. The assets of the scheme must be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and so as to avoid accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group must not expose the scheme to excessive risk concentration.
4. Investment in derivative instruments may be made only in so far as they -
    a. contribute to a reduction of investment risks, or
    b. facilitate efficient portfolio management.

Proposed guidelines on investment by the Pensions Authority for DB pension schemes do not propose any changes to these guidelines.[13]

Pension law and regulation emphasises modern portfolio theory without any recognition of the instability of financial markets and the wide disparity between the assumptions of portfolio theory and the operation of markets in terms of information asymmetries, and possibilities for market manipulation and uncertainty. Portfolio theory emphasises two variables - return and risk. There may be considerable differences between returns to an investment manager compared with an investor such as a pension fund and portfolio theory does not allow for consideration of the effects of costs in terms of management charges and trading costs. Costs could amount to 3.5% of assets under management (Stewart and McNally, 2013). There is growing evidence that costs of some investment categories are so

[13] Pensions Authority (2014), "Consultation on Financial Management guidelines for defined benefit schemes", Dublin: Pensions Authority. Available at: http://www.pensionsauthority.ie/en/News_Press/News_Press_Archive/Consultation_on_financial_management_guidelines_for_DB_schemes_21_July_2014.pdf

high that ignoring these costs in selecting assets is misleading in terms of risk/return tradeoffs[14]. High frequency trading in conjunction with 'dark pools' has increased trading cost for users of equity markets such as pension funds with a consequent increase in profits for financial intermediaries. The UK regulator has estimated that failure to obtain best execution prices increases cost for asset management in the UK by £4.2 billion per annum (FCA, 2014, p. 8 and Grene, 2014).

AE schemes in the UK, were introduced in the context of high charges which were not transparent. It was also recognised that the pensions market is complex, characterised by information asymmetries and absense of competitive pressures.

Costs are lower with AE. For example in the UK the default scheme (NEST) has maximum charge of 0.75% (per annum), but it is proposed that "investment management transactions costs will not be included in minimum charges (Audit of charges, Dec. 2014, p. 12). One study found these could be as high as 1.4%. per annum.

Actively managed funds are likely to have larger costs than passively managed funds. One estimate for the US is that investors in an actively managed mutual fund are subject to costs (including transactions costs) of 2.27% compared with costs of index funds of 0.06% (Bogle, 2015, Table 1). In the US IRA's are typically invested in mutual funds. Individual owners of IRA's and non-pension related investment activity may in turn incur additional costs through "counter-productive investor behaviour" which could add further estimated costs of 2.15% (Bogle, 2015, Table 4).

In the UK a study of DC schemes found 38 different types of charges and 291 different combinations of charges (Independent Audit Board, 2014, par. 4.10). The schemes examined had assets under management of £65.7 billion and of this total £13.4 billion had charges (excluding trading costs) greater that 1.5% and €12.4 billion had charges greater than 1% (Independent Audit Board, 2014, p. 41. Thus many schemes have higher charges than those proposed for UK default AE schemes. This raises the issue of the possible mechanisms and associated cost of transferring from high cost schemes into an AE scheme with lower costs.

Similar issues would arise in Ireland in relation to individual pension schemes such as PRSA's, AVC, etc. following the possible introduction of an AE scheme.

[14] PWC (2012) state "Retirement plan sponsors searching for higher potential performance without comparably higher potential risk are looking more closely at alternative investments, including hedge funds and private equity funds as another investment option". While "Research undertaken by Railpen found that underlying fees may be 300-400 per cent of disclosed fees in particular for private equity and venture capital funds. (S Johnson, 'Investors headline fees 'only a fifth' of total, Financial Times, August 24th 2014).

Deflation, falling/stagnant wages, negative interest rates, and low returns on government bonds (yield on 5 year German Government Bunds is 0.08%, yield on 30 year Bunds is 1.29%), and historically low annuity rates, all make funded pensions systems less sustainable. Pensions in payment increase in real terms. All annuity providers and firms providing long term guaranteed and annuitized payments are potentially at risk, for example German Life Insurance companies[15]. Low or negative interest rates have considerable adverse implications for all funded pension schemes, as shown later.

Figure 1: 10 Year Bond Yields 2008 – 2014[16]

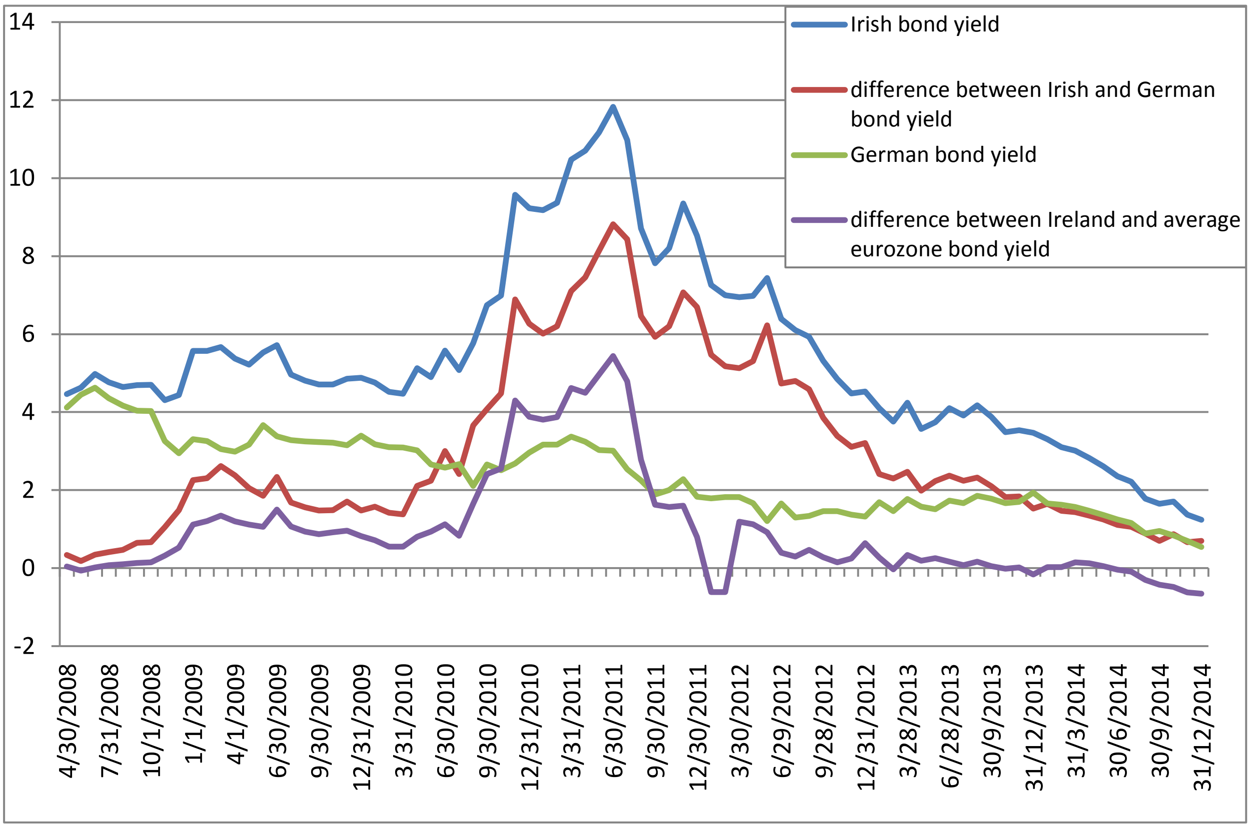


Figure 1 shows the yield on Irish and German 10 year bonds from 2008 –December 2014. Table 1 shows the effect of assuming a 1% rate of return rather than the assumed rate of return of 7% (real return net of costs) in the AE example in the National Pensions Framework (2010, Table 4.1).

Table 1 shows that:

[15] Patrick Jenkins, "Germany's Life assurers: the Next crisis?" Financial Times, April 20th 2015;
[16] Source: http://markets.ft.com/research/Markets/Bonds/data archive and http://www.investing.com/rates-bonds

1. assuming a 1% return rather that 7 % means the annuitised pension payment has fallen by 75%;
2. Assuming a 1% net return and 20 years contributions gives a replacement rate of just 6%.

Table 1: Hypothetical returns from Automatic Enrolment Scheme[17]

Assumed net of cost real returns 7%[18]	
Annual Pay	30000
Total Annual contribution (50% by employee)	1872
Contribution Rate	6.24%
40 payments of €1040 with returns of 7% per annum	373,716.93
Annuity rate 22:1 gives an annual pension of:-	16,987.13
Replacement rate	56%
Plus Assumed social welfare pension € 12,000 per annum	
Net of cost real returns 1% (current German 30 bond yield is 1.29%)	
Annual Pay	30000
Annual contribution (50% by employee)	1872
40 payments of 1040	91,515.29
Annuity rate 22:1 gives an annual pension of	4,159.79
Replacement rate	13.6%
Plus assumed social welfare pension Eur 12,000 per annum	
Same assumptions as above but 20 years contribution	41,219.58
Annual pension	1,873.62
Replacement rate	6%
Plus assumed social welfare pension Eur 12,000 per annum	

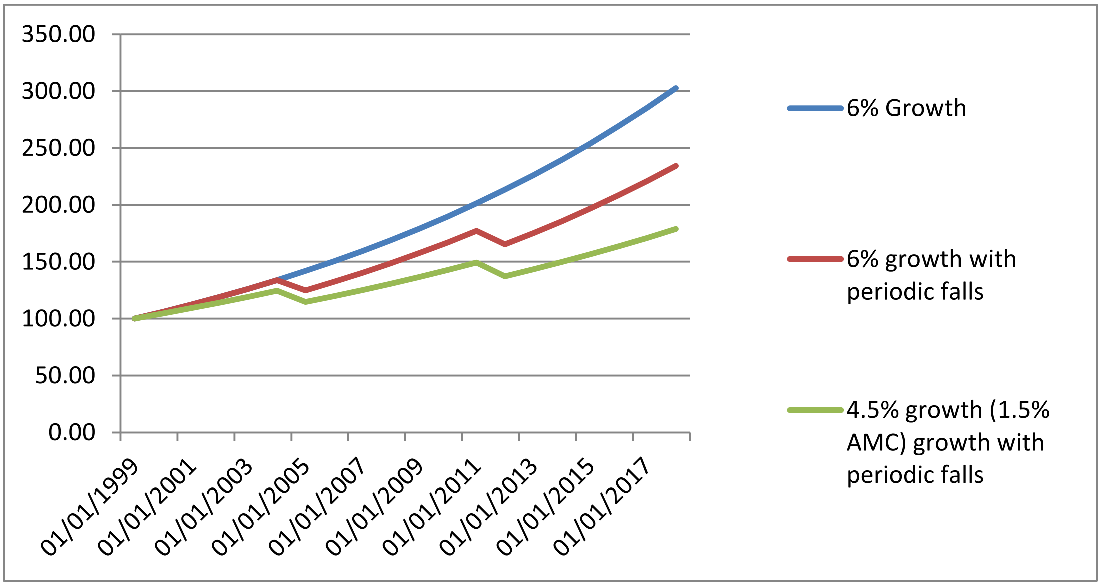
[17] Adapted from Table 4.1, National Pensions Framework

[18] Assumed rate of return in example in National Pensions Framework document, Table 4.1

One implication from Table 1 is that given low rates of return it is very difficult if not impossible to accumulate sufficient funds to provide for an adequate pension income in retirement. A pension system becomes more similar to a long run savings scheme (in particular if draw downs are allowed and annuitisation is abandoned as in the UK). The main benefits of joining a pension system as proposed, would consist of a possible employer contribution and tax relief, assuming tax concessions could be claimed. But in contrast to other long run savings schemes, costs are higher and there could be far greater risk.

In contrast to what is often assumed (National Pensions Framework, Table 4.1; Green Paper, 2007, Table 9.2) returns do not follow a linear path.

Figure 2: Size of accumulated lump sum under various assumptions[19]



The implications of Table (1) and figure (2) are that forecast lump sums and pension entitlements are very dependent on the assumptions made.

[19] assumed 12% fall every seven years

6. Conclusion

The key question is: What is the most efficient system to deliver income to those in retirement?

A pay-as-you-go (PAYG) system? Or a funded pension system?

The state PAYG social security based pension "is at the core of the pension system" (National pensions Framework Document (p. 19), and this is unlikely to change. It has many advantages in terms of provision and coverage for those with low and uncertain incomes, frequent job changes and periods of unemployment.

The State PAYG social security pension is efficient in terms of operation, but to be viable in future years needs increased contributions. Ireland currently has one of the lowest levels of PRSI contributions (Employer plus employee of OECD countries 4% and 10.75% versus 18.7% for pension insurance for employer and employee in Germany).

Automatic Enrolment (AE) is not a solution for many of those without pension coverage because:-

(a) Returns are low compared with initial projected returns of 7% per annum (National Pensions Framework, 2010, Table 4.1)
(b) Low pay, variable work history with periods of unemployment, and frequent employers, for those currently without pension coverage.
(c) Costs for the UK AE scheme are low at a minimum charge of 0.75% , but "investment management transactions costs will not be included in minimum charges (Audit of charges, Dec. 2014, p. 12). Hence overall costs (minimum charge plus investment charges) could exceed returns.
(d) Governance is important for DB schemes and even more important for DC schemes, but successful governance is difficult given the nature of long term pension provision.
(e) Finally there needs to be a comrehensive assessment of costs in terms of tax expenditures of any proposed AE scheme.

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