**IRELAND MUST CONSIDER PENSION PROTECTION FUND AFTER EUROPEAN RULING**

Last week, the European Court of Justice (ECJ) ruled in favour of Waterford Crystal workers who had taken a case against Ireland’s Government for the loss of their pensions following the company’s collapse. Following the appointment of a receiver in July 2009, 1,500 workers were advised that they would receive as little as 18 per cent and a maximum of 28 per cent of their full pension entitlements. This compares to the fate of their counterparts from Royal Doulton in the UK, who will receive around 90 per cent of their pension entitlements from the Pension Protection Fund.

The court found that under Article 8 of the EU’s 2008 Insolvency Directive Ireland had an obligation to protect the pension entitlement of workers in the event of a company becoming insolvent. The court rejected a claim that the state contributory pension should be taken into account in assessing how much of the lost pensions should be made up following the insolvency of Waterford Crystal and its pension fund.

The court also criticised the Irish Government for not fulfilling obligations which were imposed following the 2007 judgement in favour of an English woman who brought a similar case against the UK, before the EU Insolvency Directive was introduced. On that occasion the court ruled that Carol Robins should have received more than 49 per cent of her pension entitlements following the insolvency of her employer. When transposing the 2008 Insolvency Directive member states were supposed to apply the findings of this case which led the ECJ to rule that Ireland’s Government was in serious breach of its obligations for failing to do so.

The court stated that offering retirees half of what they had been promised under a defined benefit pension scheme does not amount to protection by the state. It rejected the state’s argument that the economic situation should be taken into account when assessing its liabilities under the Insolvency Directive. It added that “the economic situation of the member state does not constitute an exceptional situation capable of justifying a lower level of protection of the interests of employees as regards their entitlement to old-age benefits under a supplementary occupational pension scheme”.

The case will now go back to the High Court in Dublin to determine how much the state will be liable for the lost pensions of the workers. Following the Robins case, the UK government agreed to restore her pension to 90 per cent. Based on this judgement the Waterford workers should expect to receive a minimum of the ‘more than 49 per cent’ of their pension entitlement that was referred to in the 2007 judgement.

The financial impact of the ruling will be very significant. The trade union Unite has stated that if the Government contests liability it could end up costing €258m in a one-off payment to the pension fund. If the state accepts, then it could be about €15m a year over the remaining lifespan of the pension scheme beneficiaries.

The impact of this ruling will, of course, go far beyond the Waterford workers. It will have implications for other employees who suffered losses to their pensions in similar situations which is likely to mean that the Irish Government will have to find substantial amounts of money to meet these additional liabilities. As a nation which is in the middle of one of the most severe austerity programmes in living memory, you can only wonder where the additional funding will be found.

The Waterford Crystal ruling comes hot on the heels of a report into the country’s pension system by the Organisation for Economic Cooperation and Development (OECD). It criticised the absence of adequate protection of benefits for defined benefit members, including the absence of a pension protection fund.

 The combination of the ECJ ruling and the OECD report must surely force the Irish Government to now look at some form of pension protection scheme that could safeguard workers in the event of their companies and pension schemes becoming insolvent. While the current state of the Irish economy will make funding such a scheme a huge challenge, the model used in the UK could prove to be a potentially attractive option.

The Pension Protection Fund (PPF) could work for Ireland as it is funded by an industry-wide levy rather than the taxpayer.

As the High Court in Dublin sets about determining the levels of pension entitlement to be paid to the Waterford Crystal workers, a much bigger picture issue is emerging about how Ireland must address the intertwined issues of insolvent employers and underfunded pensions. We might well look back on 2013 as the year that the seeds were sown for an Irish Pension Protection Scheme.

**Brian Spence, Director, Dalriada Trustees Limited**