

# What's New

## The McCann FitzGerald **Employment, Pensions & Incentives Group** Update

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Welcome to the McCann FitzGerald Employment, Pensions & Incentives update. Below is an update on some of the latest developments.

### [CJEU finds in favour of Tesco workers in equal pay dispute](#)

The Court of Justice of the European Union (the “CJEU”) has confirmed that Tesco shop workers can rely directly on European law in order to compare themselves to distribution centre workers for the purposes of an equal pay claim. Several existing and former Tesco shop floor workers, mostly women, brought equal pay claims against Tesco. They argued that their work is of equal value to that of more highly paid distribution centre workers, who are mostly men. The shop floor workers sought to rely on Article 157 of the Treaty on the Functioning of the European Union (the “TFEU”) which allows a comparison to be made between employees if there is a “single source” that is responsible for setting their pay. The CJEU held that the pay of workers of different sex performing equal work or work of equal value can be compared on the basis of Article 157 TFEU, even if they perform their work in different establishments, provided there is a “single source” responsible for setting their pay. The CJEU held that Tesco Stores appears to constitute, in its capacity as employer, a single source to which the pay conditions of the workers in its stores and distribution centres may be attributed and which could be responsible for any discrimination prohibited pursuant to Article 157 TFEU. The CJEU left the question of discrimination to the Watford Employment Tribunal to decide. The CJEU confirmed that Article 157 TFEU has direct effect in proceedings between individuals in which failure to observe the principle of equal pay for male and female workers for ‘work of equal value’, as referred to in that article, is pleaded.



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### [WRC issues updated notice on post-Zalewski procedural changes](#)

The Workplace Relations Commission (the “WRC”) has issued an updated notice to service users on procedural changes arising from the recent Supreme Court judgment in *Zalewski v. Adjudication Officer and WRC, Ireland and the Attorney General* [2021] IESC 24. Please see our previous [briefing](#) for an analysis of the key changes. The updated notice states that some cases “part-heard” before April 7 may have to be restarted, with a different adjudication officer. If the adjudicator finds that there is such serious and direct conflict of evidence, then the case will have to commence afresh before a different adjudication officer who will administer the oath or affirmation once the legislation is in place. The WRC also stated that parties to such cases will have the opportunity to make submissions before any determination is made on this question, and that part-heard cases will be scheduled for hearing to determine whether there is a serious and direct conflict of evidence.

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### [Employment wage subsidy scheme approved to end of December 2021](#)

The Covid-19 Employment Wage Subsidy Scheme (“EWSS”) has been approved to run to the end of 2021, with some planned tweaks to how it supports employers, as the Pandemic Unemployment Payment (“PUP”) will be reduced incrementally until the enhanced rates expire next February. As at the week ending 27 May, a total of €3.835 billion has been spent under the scheme of which €3.293 billion relates to direct subsidies and €0.542 billion relates to Employers’ PRSI foregone. For Q3, the Government has decided to broadly maintain the status quo for EWSS, including the enhanced rates of support and the reduced rate of Employers’ PRSI with a modification to widen eligibility. For Q4, the Government has approved the extension of the EWSS, however, it is considered too early yet to prescribe the precise operational parameters of the scheme that should apply for that quarter and decisions in that regard would be taken closer to the time around the end of August / early September.

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### [Revenue eBrief No. 110/21 - Pensions Manual Updated](#)

According to Revenue eBrief No. 110/21 the Pensions Manual has been updated. Chapter 17 of the Pensions Manual looks at overseas employers, overseas employees and employees seconded from overseas. The Pensions

Manual has been amended to maintain the current position for reliefs following the exit of the UK from the EU, such as relief for migrant workers and relief for contributions to UK pension schemes. These amendments follow enactment of relevant sections of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020.

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### [Pensions Council Seeks Views on Gender Gaps in Supplementary Pensions](#)

The Pensions Council invites submissions on gender gaps in supplementary pensions arising as a result of current practices within the supplementary pensions system in Ireland. The Pensions Council has already published a wide-ranging report on 'Gender, Pensions and Income in Retirement', pointing out that the elimination of the gender pension gap would require, among other points, changes that lie outside the domain of current pension rules, such as increased provision for childcare and other measures that would improve female participation in the workforce. At the request of the Minister for Social Protection, the Pensions Council now seeks to review more specifically the rules governing supplementary pensions. The aim of the review is to identify current measures or gaps within those rules that may give rise to gender gaps in supplementary pension income and to advise the Minister for Social Protection accordingly. The deadline for submissions is 21 June 2021.



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