

intouch

PENSIONS NEWS AND INFORMATION FROM THE EXPERTS



Do you know your 'statutory employer'?

This is the question being addressed to the trustees of defined benefit or hybrid schemes by The Pensions Regulator.

In a statement issued on 28 July, the regulator is requiring trustees to take steps to ensure they identify their scheme's statutory employer. This information will need to be included on scheme returns submitted from November 2011 onwards.

Who is a statutory employer?

This is any employer who has a legal obligation to support the scheme. In particular, this encompasses any employer who:

- is responsible for meeting the scheme's funding objective, including any deficit recovery payments;
- would be liable for any section 75 debt on scheme wind-up or employer insolvency, or where an 'employment-cessation event' occurs in a multi-employer scheme; and/or
- whose insolvency would trigger entry to a Pension Protection Fund assessment period.

Why is the regulator now asking this?

It would seem that this has arisen following an actual case where the scheme trustees had believed, in error, that their scheme was eligible for the Pension Protection Fund (PPF). The company attached to the scheme had become insolvent. However, as it had never employed active members in the scheme it did not meet the definition of a statutory employer for the purposes of entry to the PPF.

The regulator is concerned that, as more and more schemes close to future defined benefit accrual, there is an increased risk that a situation might arise which may leave a scheme without a statutory employer, particularly when there has been employer group restructuring or scheme transfers.

The regulator also notes that for scheme funding, in setting the level of a scheme's technical provisions and any recovery plan, trustees will have taken into account the strength of the employer covenant; this may also have influenced the scheme's investment strategy. Clearly, if the statutory employers are incorrectly identified, the assumed level of covenant strength could be inaccurate!

Identifying the statutory employers

A scheme's statutory employers may differ from its principal or participating employers.

If the scheme has active members, identifying a current statutory employer should be relatively straight-forward.

Where schemes no longer have active members, trustees will need to identify the statutory employers at the time accrual of benefits ceased.

In either of the above situations, trustees will also need to consider if any employers have ceased to participate in the scheme in the past and whether any of these are still statutory employers. For example, in a ▶

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multi-employer scheme, a section 75 debt may have been triggered but not paid by the departing employer – in that scenario the exiting employer could still be ‘on the hook’.

Particular issues may arise in hybrid schemes with a closed benefit section (DB) and an open defined contribution (DC) section, or where a DC scheme has received a transfer in of DB liabilities and has set up a separate DB section. In such cases, if a current employer has only employed DC members it may have no, or little, contingent section 75 liability in respect of the DB section.

As a result of recent case law, there is some uncertainty about when exactly an employer might have ceased to participate in a scheme.

Given that we are concerned with pensions’ legislation, it is perhaps not surprising that there are additional complexities:

- Firstly, the definition of ‘employer’ is not entirely consistent in the relevant areas.
- Secondly, as a result of recent case law, there is some uncertainty about when exactly an employer might have ceased to participate in a scheme. Some employers who, prior to April 2008, thought they had ceased to participate (and had been discharged from any future scheme liability) might still remain as statutory employers.

So what should trustees now do?

As a matter of some urgency, trustees will need to identify companies who are or have been an employer in relation to their scheme, and the nature and extent of any legal obligation on them. For some schemes this may prove to be very time consuming.

As well as reviewing their own historic documentation regarding employer participation and departures from the scheme, trustees may need to request information from the employers. The regulator notes that past

scheme accounts will indicate whether payments of section 75 debts have been made to the scheme, whilst information from Companies House and Her Majesty’s Revenue & Customs may be of assistance in identifying former employers.

Where appropriate, the regulator expects trustees to seek formal legal advice as part of the process of identifying the statutory employers. This is understandable, given the complexities described above.

As already noted, details of the statutory employers will need to be included within the annual scheme return. If the trustees are unable to identify the statutory employers they will have to notify the regulator, with explanations.

Going forward, the regulator asks trustees to be vigilant for situations that might cause their scheme to lose the employers legally responsible for meeting scheme funding obligations and section 75 liabilities, so that they can take steps to ensure this does not happen. If trustees are faced with such a scenario the regulator wants to be informed. ■



The Finance Act gets Royal Assent

The legislation reducing the Annual Allowance and Standard Lifetime Allowance is now in place, but a number of issues remain unclear.



On 19 July the Finance (No 3) Bill 2010/11 received Royal Assent, becoming the Finance Act 2011. A number of associated regulations were subsequently laid and came into force on 11 August.

The following summarises the main aspects from a pensions' perspective.

Annual Allowance

- The Annual Allowance (AA) for pension savings (beyond which there will effectively be a claw-back of tax relief) has been reduced to £50,000 in respect of the 2011/12 tax year; compared to the significantly higher figure of £255,000 that applied for the 2010/11 tax year. The lower figure will also apply in future tax years unless revised by HM Treasury.
- For the 2011/12 tax year; transitional provisions may apply where a pension input period (PIP) ending in the tax year commenced prior to 14 October 2010.

- Individuals will however now be allowed to carry forward unused AA from the three previous tax years, which in many cases will help to mitigate the effect of the reduction in the AA. For this purpose, the AA for each of the 2008/9, 2009/10 and 2010/11 tax years will be deemed to have been £50,000.

- The way that increases in the value of defined benefits are calculated has been changed.

- An AA tax charge can now arise in the tax year of retirement.

- For new arrangements entered into after 5 April 2011, the default end date of a member's PIP will be 5 April each year.

- Where an individual's pension savings to a scheme exceed the AA for a tax year; the scheme will have to automatically provide a pension savings statement by the following 6 October; for the 2011/12 tax year; this deadline is extended by 12 months

to 6 October 2013 to enable schemes extra time to set up the necessary systems and decide on procedures. A pension savings statement will similarly have to be provided on request to other members. (The statement will set out the pension savings amounts in relation to the scheme counting against the AA for the tax year and for the three previous tax years.)

- Employers will be under an obligation to provide sufficient information to enable schemes to calculate the pension savings amounts.
- Where certain conditions are satisfied, individuals will have the option of having an AA tax charge paid by their scheme administrator, with a consequential reduction in benefits, known as "Scheme Pays". The legislation sets out detailed timescales for schemes to be notified and for the resulting tax to be paid.

Whilst the legislation is now in place, there are a number of areas where uncertainty remains. Examples include the determination of the value of defined benefit accrual in Career Average Revalued Earnings (CARE) schemes, or where different normal pension ages apply to different tranches of benefit - perhaps as a result of "Barber equalisation" - or where members take late retirement.

These and other issues have been raised with HMRC by the Association of Consulting Actuaries and the Society of Pension Consultants, of which we are members. Although HMRC has responded on some of the points raised, we still await the publication of relevant new pages to HMRC's Registered Pension Schemes Manual (RPSM). Indeed, whilst we expect to see some new RPSM pages in the next month or so, we suspect that these will not answer all the outstanding issues.

We also believe there are some defects in the legislation that will need to be retrospectively rectified.

Standard Lifetime Allowance

- The current Standard Lifetime Allowance (SLA) of £1.8m will be reduced to £1.5m for the 2012/13 tax year. This will also apply to subsequent tax years unless HM Treasury specify a higher figure.
- The various "lifetime allowance enhancement factors" that can be claimed, and the transitional protections that were introduced from A-Day (6 April 2006) will, nevertheless, continue to be based from next April on the present figure of £1.8m until such time as the SLA catches up. ▶

- A new form of transitional protection, termed "Fixed Protection", will be available under which a Lifetime Allowance of £1.8m will be retained (again until such time as the SLA catches up) provided active membership of all registered pension schemes ceases from 6 April 2012. To obtain Fixed Protection, written notice – using form APSS 227 – has to be sent by the individual to HMRC by no later than 5 April 2012. The Fixed Protection option is not available to anyone that already has Primary Protection. If a member has Enhanced Protection, without a fall back on Primary Protection, an application may be made for Fixed Protection so long as Enhanced Protection is surrendered first.

With effect from 6 April 2012 the trivial commutation and trivial winding up lump sum limits will be based on £18,000 rather than one per cent of the SLA. This is to avoid a reduction in those limits!

Age 75 Rules

- Most of the constraints that have applied to benefit options once a member reaches age 75 have been removed with effect from 6 April 2011. This includes the payment of a pension commencement lump sum on retirement.
- There will still be no tax relief given on employee contributions paid after age 75.

- A "benefit crystallisation event" (BCE) triggering a check against a member's Lifetime Allowance will continue to arise at age 75 if a scheme pension has yet to commence or there are unused money purchase funds. (The only BCE that can occur after age 75 will be where a scheme pension increases beyond the limits set out in the Finance Act 2004.)

- A "serious ill-health lump sum" can now be paid on or after age 75, but would then be subject to a 55% tax charge.

- A 55% tax rate will apply to any lump sum death benefit if death occurs on or after age 75.

- The tax rate on certain other lump sum death benefits is increased from 35% to 55% regardless of age.

Income Withdrawal

- As an adjunct to the general removal of the age 75 restrictions, the two previous types of income withdrawal under money purchase arrangements – "unsecured pension" and "alternatively secured pension" – no longer exist: there is now just "drawdown pension".

- Regardless of whether age 75 has been attained, there is now no minimum for the annual income that can be withdrawn.

- The maximum annual income under drawdown pension is capped at the "basis amount" (an estimate of the annuity that could be bought using the fund based on tables from the Government Actuary's Department), unless an individual qualifies for "flexible drawdown" in which case there is no upper limit in any year.

- For flexible drawdown an individual must have qualifying income for the tax year from secured occupational and State pensions and annuities of at least £20,000. In addition, the person must declare that there will not be any contributions to a money purchase scheme in the tax year then current, and that active membership has ceased under any defined benefit scheme.

- Unused drawdown funds will generally no longer be subject to inheritance tax, even when the individual dies after reaching the age of 75.

The Act also contains extensive and complicated provisions aimed at tackling arrangements using trusts and other vehicles to reward employees that seek to avoid, defer or reduce tax liabilities. This includes the use of "employer financed retirement benefit schemes" to get around the effect of the reduced Annual and Lifetime Allowances applying to registered pension schemes. ■



To be or not to be ... a money purchase benefit?

The Supreme Court decision in the *Houldsworth v Bridge Trustees Ltd* case was handed down on 27 July.

The case considered the meaning of money purchase benefits and where the line is drawn between a DC and a DB benefit.



Following a High Court decision in 2008 the Secretary of State for Work and Pensions intervened in the case given its importance. The Government paid for the costs of an appeal firstly to the Court of Appeal last year, where it lost, and then on to the Supreme Court.

At issue for the Government was the fact that if the decision of the High Court were upheld (which it was) some schemes would be outside the protections which are afforded to defined benefit schemes in terms of scheme funding, employer debt and eligibility for the PPF, despite members being at risk due to a potential mismatch between assets and liabilities.

The case

This concerned the winding up of the Imperial Home Décor Pension Scheme with a deficit.

The Scheme had started as a DB scheme with a number of scheme changes over the years

introducing DC benefits. The original application to the High Court concerned how the statutory priority order on winding-up should be applied, as it stood prior to 2005. The legislation provided at the time – and still does – that money purchase benefits in a hybrid scheme fall outside of the statutory order of priority (unless they are underpin benefits or represent additional voluntary contributions).

Under the legislation, a 'money purchase benefit' is defined as meaning a benefit "the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member and which are not average salary benefits".

The Supreme Court had to decide whether a defined contribution arrangement is a money purchase benefit from a legislative standpoint in either of the following situations:

- Where in the pre-retirement phase there is a minimum guaranteed investment return.
- Where at retirement there is internal annuitisation – so that the pension is paid directly by the scheme – rather than an annuity being purchased from an insurer.

In theory a deficit could arise in relation to these DC situations. For the former, the actual investment returns could be lower than the guarantee. For the latter, the resources could prove insufficient if the annuitisation rates are generous, or the investment returns post-retirement are disappointing, or the pensioners live longer than expected. So the Government argued that they were in essence defined benefits, on the premise that a deficit could not arise in relation to a money purchase benefit.

The Supreme Court disagreed by a four to one majority – it held that both met the statutory

definition of a 'money purchase benefit'. Despite the guaranteed investment return, members' benefits were still calculated by reference to the contributions paid. In addition, the fact that an internal annuity was provided was not incompatible with a money purchase benefit – after all, whether an internal or external annuity was being provided, its quantum would be determined by using actuarial tables to convert the accumulated lump sum into a pension.

So, finally a conclusion has been reached on this vexatious question and clarity provided. Or has it?

Following the Supreme Court's decision the Department for Work and Pensions (DWP) announced that this would not be the end of the matter. Rather, it intends 'correcting' the legislation retrospectively to make it clear that benefits under which it is possible for a funding deficit to arise cannot be regarded as money purchase benefits.

The Government believes that this will provide the necessary protection for scheme members and, importantly from the Government's perspective, ensure that it has complied with its obligations under European law.

This will have significant implications for those DC schemes that do operate investment guarantees or internally annuitise, as well as for those DC schemes that historically contracted-out of SERPS on a GMP basis. For example, once the legislation is amended they will have to have triennial actuarial valuations, and reserve for their 'defined benefit' liabilities on a prudent funding basis. They will also become liable for levy payments to the Pension Protection Fund.

Some such schemes may have already thought that they were potentially eligible for the Pension Protection Fund and, as a result, have previously paid PPF levies. This leads to the interesting question as to whether they can reclaim those levies, at least to the extent that they relate to levy years prior to the effective date of any retrospective legislation!

At the present time the extent of retrospection is unknown but is anticipated that the legislation will be amended at least from the date of the Supreme Court's ruling on 27 July. In the meantime, the uncertainty is likely to be of concern for potentially affected schemes; trustees and sponsoring employers may need to seek legal advice. ■

Recovery plans – scheme funding and other security arrangements

The Pensions Regulator has now published the second part of its latest analysis into recovery plans of defined benefit pension schemes.

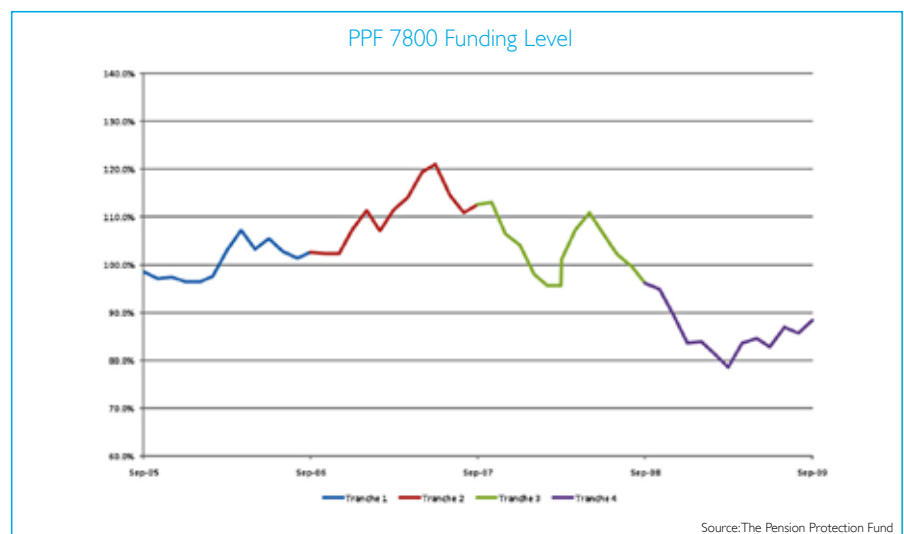
In the June 2011 issue of Intouch we looked at the first part of The Pension Regulator's analysis of scheme funding valuations and recovery plans. It analysed schemes which had effective dates of valuation between September 2008 and September 2009, called 'tranche 4' in the report. That analysis concentrated on assumptions and triggers. Just after we went to press, the regulator published a further investigation of these valuations, this time looking at funding levels and the use of contingent assets.

Most schemes undertake valuations on a triennial cycle, so tranche 4 largely represents the second scheme funding valuation under the Pensions Act 2004. Comparing the key figures with those for valuations carried out between September 2005 and September 2006 ('tranche 1') reveals some interesting trends, as these primarily relate to the same schemes.

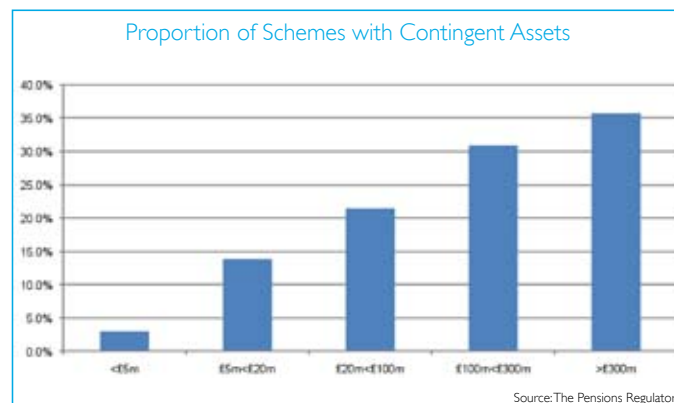
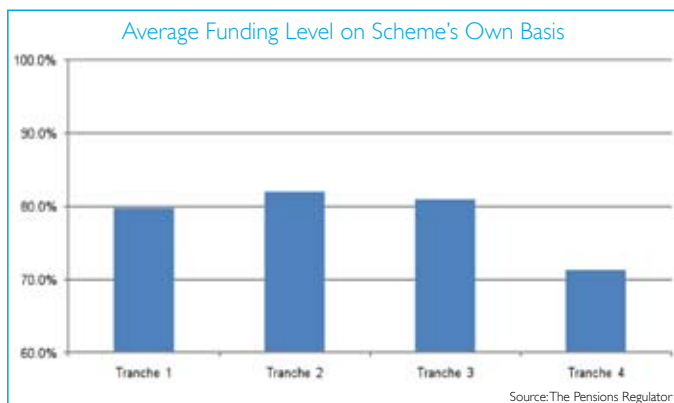
At a glance – the report in numbers	
71.3%	The average funding level on the scheme funding basis in tranche 4
79.8%	The average funding level on the scheme funding basis in tranche 1
17.4%	The proportion of tranche 4 schemes with some sort of contingent asset
1.1%	The proportion of tranche 1 schemes with some sort of contingent asset

Funding Levels

Funding levels have been very volatile over the last few years. The Pension Protection Fund publishes an index every month which shows the funding level on the s179 basis (the basis used for determining the PPF levy). The following graph splits these funding levels into the period covered by the four valuation tranches analysed so far by the regulator. It shows that the average s179 funding level of all schemes fell between tranche 1 and tranche 4.



The graph relates to the estimated s179 funding level for all schemes, including those in 'surplus'. Unsurprisingly the same trend is apparent for the level of technical provisions (i.e. on the scheme's own funding basis) of schemes submitting recovery plans, as shown in the bar chart overleaf. ▶



Scheme characteristics have a strong influence on funding. Larger schemes tend to be better funded, more mature schemes tend to be better funded, and schemes with strong employers tend to be better funded.

Tranche 4 schemes show a trend to have a higher funding target when the employer is weaker. This trend was not present in previous tranches. However, it backs up anecdotal evidence that trustees now consider assessing the strength of the employer to be an integral part of the valuation process.

Contingent Assets

'Contingent assets' are assets which a pension scheme can claim on the occurrence of specified events, such as:

- employer insolvency;
- the failure to achieve a specified funding level;
- increased employer borrowing;
- movements in corporate asset holdings.

These are not counted as scheme assets when assessing whether a scheme meets its statutory funding objective until they have been transferred to the scheme following the happening of the contingent event. However, in the meantime they can support scheme funding and can also reduce the PPF levy.

The regulator's Purple Book 2010 noted that the total number of PPF-recognised contingent assets in place had risen in the 2010/11 levy year from the previous year:

This upward trend is even clearer when looking at schemes which have had a valuation and submitted recovery plans. There were 321 tranche 4 schemes with some sort of contingent asset, which represents 17.4% of schemes submitting recovery plans. This compares to three years earlier when only 1.1% of tranche 1 schemes had a contingent

asset. Of the tranche 4 schemes with contingent assets, the majority - 10.3% out of the 17.4% - are held in a form which is recognised by the PPF in the levy calculation; these are primarily parental or group guarantees.

There is also a clear trend that larger schemes have some sort of contingent asset. In fact, one third of very large schemes (by size of technical provisions) have at least one such asset.

As noted earlier, contingent assets are often used to support a scheme's funding. In particular they can enable trustees to:

- set lower technical provisions, through the use of less prudent funding assumptions than would otherwise be the case;
- accept longer recovery plans; and/or
- invest a higher proportion in return-seeking assets.

The regulator operates triggers based on the level of technical provisions and the length and structure of recovery plans to determine whether a valuation warrants further scrutiny. The regulator's analysis demonstrates that more schemes with contingent assets triggered than those without contingent assets. This suggests that contingent assets have indeed been used to support longer recovery plans or lower technical provisions. Of course, the existence of the contingent assets may have subsequently satisfied the regulator that no further action was required.

The regulator's analysis highlights some interesting trends. The increased use of contingent assets is likely to continue, particularly if this enables a sponsoring employer to retain funds within its business at a time when 'cash is king'. ■



Do we Care?

...asks the independent Commission on Funding of Care and Support.



Our future Kings, Charles and more especially William, are going to be kept very busy if they continue the tradition of the Monarch sending a congratulatory card to every one of their citizens on becoming a centurion. It is estimated that within 50 years, half-a-million people in the UK will be aged over 100 and that 1 in 3 girls born today will reach 100. Amazing statistics but at this stage merely projections!

But an ageing population is already a reality. In 1901, there were just 60,000 people in the UK aged 85 and over. Today there are 1.5 million – a 25 fold increase, with that number expected to double within 20 years.

So that's the good news – now for the bad.

As part of living longer, we can expect to need more care and support. How that support is provided and more specifically how it should be funded was at the heart of the report produced this summer by the Commission on Funding of Care and Support. Chaired by Andrew Dilnot the Commission found that the adult social care funding system in England was not “fit for purpose” - being confusing, unfair and unsustainable - and that rather than celebrating the fact we are living longer many “live in fear” worrying about their care costs.

Why is there fear? Currently, the social care system is means-tested and delivered via local authorities. People with assets over £23,250 receive no financial support and need to fund their own care. Different rules apply for domiciliary and residential care, and for the latter someone's housing assets are taken into account in the means-test.

It is estimated that of those aged 65, only a quarter will need to spend very little on care over the rest of their lives, whilst half will have outlays of up to £20,000. However, one in ten 65-year olds will face future lifetime costs of more than £100,000. It is worth noting that £100,000 equates to less than a four-year stay ▶

in a nursing home, the costs of which are projected to double over the next 25 years.

Moreover, people cannot predict in advance what their own care needs will be and they are currently unable to protect themselves against the risk of very high costs by pooling their risk using insurance.

The Commission's report

Recognising these financial fears, the Commission's main recommendation is that people should be protected from extreme care costs through capping the lifetime contribution to adult social care at £35,000. Care costs that exceed the cap would be eligible for full support from the state (with no "postcode lottery") thereby, they believe, bringing greater peace of mind and reduced anxiety to both individuals and carers.

Additionally, they recognise that not everyone will be able to afford their personal contribution and that those just outside the eligibility for means-testing help are not adequately protected. So, they propose increasing the asset threshold for those in residential care, beyond which no means-tested assistance is given, from £23,250 to £100,000; those below the new threshold would nevertheless be required to meet their general living (as distinct from care) costs – relating to food and accommodation - up to a suggested level of no more than £10,000 a year.

Combined with the £35,000 cap, the effect of raising the means-tested threshold to £100,000 would mean that no one going into residential care would have to spend more than 30% of their assets on their care costs.

The Commission sensibly identifies that there is a product gap in the financial services market resulting in individuals being unable to protect themselves in advance against the future costs of social care. By having a cap on care costs individuals will now have a target to aim at. We support the Commission's assumption that, with Government encouragement, financial services providers will enter this hitherto uncharted territory.

Currently, about 40,000 homes are sold each year to pay for social care costs and it is thought that individuals will continue to use part of housing wealth to meet their contribution, perhaps through tighter controlled

It is estimated that of those aged 65, one in ten will have outlays in excess of £100,000

equity release schemes. Critical illness and life insurance products could also be extended to offer cover for care costs.

One particular "pension" solution that could be popular is a disability-linked annuity. This would work by reducing the income from an otherwise flat annuity (by say around 10%) but then doubling or trebling the income at the point of developing a care need (for example, failing three activities of daily living) or reaching a certain age (say 85).

For this to happen, though, the Government would need to make a clear statement that such annuities are permissible under current pension taxation rules.

It is to be hoped that the Government "grasps the nettle" rather than the issue of care costs being placed in the "too difficult box" and left to future administrations to deal with the problem. ■



Multi-employer scheme debts

The Department for Work and Pensions is proposing more amendments to the section 75 employer debt rules from 1 October.

The proposed changes follow concerns expressed on the lack of flexibility under the existing legislation.

Background

If an employer leaves a multi-employer defined benefit scheme or ceases to employ any active members whilst at least one other employer continues to do so - termed an 'employment-cessation event' - it must pay to the scheme its share of any deficit calculated on a buy-out basis.

The legislation allows the exiting employer's debt to be reduced in a number of ways. For example, the balance of the debt can be shared amongst some or all of the remaining participating employers under a 'scheme apportionment arrangement' or guaranteed by guarantors under a 'withdrawal arrangement'.

The legislation also recognises that an employer may cease to employ active members purely by chance and on a temporary basis. For instance, the employer might only have one employee who is an active member of the scheme. That person might die or simply leave service or retire. To cater for this type of situation, an employer may operate a 'period of grace', whereby no employment-cessation event is deemed to occur provided the employer:

- intends to employ at least one active scheme member – and does so – in the following 12 months; and
- notifies the trustees in writing of its intention within a month of first ceasing to have active members.



Following comments that the employer debt rules were inhibiting corporate restructuring, two easements were introduced from April 2010 that treat an employment-cessation event as not having occurred at all providing certain conditions are met. Both require another participating employer to take over responsibility for not only the exiting employer's scheme liabilities, but also all of the exiting employer's assets as well as responsibility for that employer's employees.

It is generally accepted that these easements have not been of much practical assistance to employers, as well as being overly complex.

The latest proposals

The DWP have been consulting on intended changes which relate to the operation of the period of grace and, more importantly, the introduction of a new 'flexible apportionment arrangement'.

The period of grace

The DWP is proposing that the period during which an employer must notify the trustees that it is applying for a period of grace is extended from one month to two months. This follows representations made to the DWP that the current one month period is too short.

In addition, the DWP is envisaging allowing trustees to extend the basic 12 months period of grace by up to a further 2 years. Theoretically, this would give employers a mechanism to delay payment of their debt for up to 3 years should they not again employ an active scheme member in the period. Whether trustees would be willing to grant such an extension is a moot point: firstly, no interest would be added to the original debt amount; secondly, there is the risk that the financial position of the employer might deteriorate in the meantime.

Whilst any extensions to the period of grace must be welcome to employers, it is likely to have little effect for most employers.

Flexible apportionment arrangements

Under the new 'flexible apportionment arrangement' the departing employer's scheme liabilities would simply be re-attributed to one or more of the remaining participating employers. An employment-cessation event would not then be regarded as having occurred, so there would be no employer debt falling on the departing employer.

Unlike the two easements introduced from April 2010, there would not have to be a transfer of the departing employer's assets, nor of employment contracts. ▶



However, certain prerequisites would apply. In particular, the DWP propose that:

- The trustees would have to be reasonably satisfied that the employers to whom the departing employer's liabilities would be re-attributed (the 'staying employers') will be able to continue to meet their statutory funding obligations, and that the security of members' benefits will not be adversely affected. (This is the same 'funding test' that must be met under a 'scheme apportionment arrangement'.)
- The trustees, the departing employer and the staying employers would have to consent in writing to the flexible apportionment arrangement.
- In order to count as a 'staying employer', each such employer would need to be employing at least one active member accruing defined benefits. This would mean that a flexible apportionment arrangement could not be used if all DB accrual has ceased, which seems unduly restrictive.
- The departing employer must not already be in a 'period of grace'.
- No employer debt has been paid by the departing employer.
- The scheme is not in a PPF assessment period.
- The trustees have to be satisfied that the scheme is unlikely to enter a PPF assessment within a year of the flexible apportionment arrangement taking effect. In essence, this means that the trustees need to be fairly confident that none of the staying employers or any other participating employer will become insolvent in the near term.

The proposed 'flexible apportionment arrangement' will be a welcome addition to the options that will be available where an employer ceases to participate in a multi-employer scheme. Indeed, the DWP envisages that, going forward, these arrangements would be used instead of the 'scheme apportionment arrangement' that has tended to be used to date. It is a shame, though, that the DWP would require an employer taking over the liabilities to have at least one active member, as it would be much more useful without that requirement.

There still remain a number of grey areas surrounding the existing legislation which the Government appears reluctant to clarify; this can lead to significant extra legal expenses for both trustees and employers, which could be reduced through appropriate amendments to the legislation. We are at the time of going to press awaiting the finalised regulations. ■

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