Pensions Bulletin May 2010

The purpose of this bulletin is to alert trustees to the latest developments in the pensions industry and ensure that you have a simple checklist of actions and deadlines to refer to.

If you require further clarification of what any issue may mean for you please contact your usual Quattro Pensions adviser.

A-day and modification regulations

The modification regulations which allow schemes to rely on the “old” (ie pre A-day) Revenue limits will cease to apply on 5 April 2011. Schemes which have not done so already have less than one year to amend their deeds and rules to retain any of the old pre A-day rules and limits, if desired.

Trustees are advised to check that the required deed amendments have been done to avoid unexpected and unwanted increases to scheme liabilities in April 2011.

Refunds of surplus to employers

Similarly, trustees have until 5 April 2011 to pass a prescribed resolution under section 251 of the Pensions Act 2004 to enable refunds of any surplus to be made to the employer. If the resolution is not passed before the deadline the scheme will **never** be able to make a refund payment in the future, regardless of what is drafted into their scheme’s rules. This is therefore relevant even for schemes that are not currently in a position to make such a payment.

Trustees should seek legal advice to see whether this issue applies to them and ensure the prescribed form of the resolution is adopted.

Changing the definition of pensionable earnings is now a “listed change”

Since 2006, certain changes to pension benefits have been recorded in the Legislation as being a “listed change”, which means that an employer must consult with members before the change can take effect. With effect from 6 April 2010 any change in the definition of pensionable earnings is a listed change. (So for example, changes that cap the pensionable salary or prevent overtime payments from being pensionable will be subject to the consultation requirements.)

Other listed changes include: closure to new entrants or to future accrual; an increase in employee contributions; an increase in normal pension age; changes to the basis of future accrual; converting to money purchase benefits and removing an employer’s liability to make contributions.

Please contact us if you require further details of what must be done during a consultation process.

Changes to employer debt legislation

New regulations came into effect on 6 April 2010 to provide an easement for employers during a restructuring process. Under the new regulations, if one employer's pension assets and liabilities are transferred to another, it will now be possible for the employer to follow a series of prescribed steps to ensure no statutory debt will arise from the "employer cessation event".

The trustees of the scheme in question will be required to agree to any easement, and a key feature of the Legislation is that the trustees can only do so if they are satisfied that the receiving employer is at least as able as the outgoing employer to fund the Scheme's liabilities.

Any employer engaged in such a restructuring event should seek advice at an early stage to avoid any surprises from the pension scheme.

The end of contracting out for DC schemes

From 6 April 2012 defined contribution schemes will no longer be able to contract out of the State Second Pension. Any restrictions on how Protected Rights can be taken will also be removed.

Employers and trustees may wish to consider, and communicate to members, how contributions will be affected. You may also wish to consider whether any amendments will be required to your deeds to ensure that your scheme can benefit from the relaxing of the Legislation regarding Protected Rights.

The Regulator's new code on Trustee Knowledge and Understanding

The Regulator's revised Code of Practice regarding the statutory requirement for trustees to have adequate knowledge and understanding is now in force. The Regulator expects all Trustees to read the Code in full. The key changes from the previous code are:

- Trustees should read all trust documentation thoroughly.
- Trustees are expected to use the Trustee Training Toolkit available via the Regulator's website, unless they can demonstrate they have followed an alternative learning programme.

Note that, under employment legislation, trustees have the right to time off for the purposes of performing their duties as trustees and for relevant trustee training.

Note also that newly-appointed individual trustees have a period of six months from the date of appointment as trustee to complete the required learning.

The Regulator's guidance regarding good record keeping

In January 2009 the Regulator issued guidance on the standards of record keeping appropriate for pension schemes. The guidance anticipated that trustees would discuss these standards with their administrators and design tests and action plans to help audit the data held for the pension scheme. However, the guidance did not set out required, mandatory actions, but instead described only what the Regulator regards as best practice.

On 2 February 2010 the Regulator revealed that less than 20% of schemes surveyed had taken any action to review their standards of record keeping in accordance with the January 2009 guidance. As a result, the Regulator has now released a consultation document on the subject, proposing that the record keeping guidance will now describe mandatory actions that all schemes must follow.

Trustees may wish to start taking action now, by discussing with their administrators what steps need to be taken to test and document the standards of record keeping for their scheme.