

Pensions Simplification – Information for Pension Trustees

This document highlights the main areas where you, the trustees (as Scheme Administrator), may have added responsibilities under your scheme because of Pensions Simplification and (*in italicised texts*) amendments to the simplified tax regime since A-day. We also highlight official websites where you can obtain more in-depth information.

Trustee knowledge and understanding

Trustees are expected to have a certain level of knowledge and understanding about pension schemes, and their own scheme in particular. You are not expected to become a pensions expert, but may need to broaden your level of awareness about your scheme and pensions in general. In relation to your scheme, you must be familiar with any documents relevant to its administration.

Where a scheme has a corporate trustee, the officers of that company are expected to comply with these requirements.

No trustees are exempt from this requirement, but new individual trustees (i.e. named people, as opposed to corporate bodies) appointed on or after A-Day have six months to get themselves “up to speed” before the requirements apply to them.

The Pensions Regulator offers free e-learning to help trustees meet these new requirements, through its trustee toolkit, available at:

<http://www.trusteetoolkit.com/arena/index.cfm>

You can find out more about the trustee knowledge and understanding requirements on the Pensions Regulator's website at:

<http://www.thepensionsregulator.gov.uk/trustees/trusteeKnowledge/index.aspx>

Member-nominated trustees (MNTs)

In 1997, the Government introduced the requirement for one-third of a scheme's trustees to be member-nominated (a requirement set out in the Pensions Act 1995). If your scheme existed in November 1996, we would have sent you a booklet on the Pensions Act 1995 that explained the MNT requirements as they then stood.

Under those MNT requirements, the employer sponsoring the pension scheme could propose the scheme opt out of having MNTs. The ability to opt out has been removed, so at least one-third of the scheme's trustees **must** be nominated by its members.

Where a scheme has a corporate trustee, similar provisions apply. The ability to opt out of having member-nominated directors has also been removed so at least one-third of the company's directors **must** be member-nominated.

You can find out more about the new requirements for MNTs on the Pensions Regulator's website at:

<http://www.thepensionsregulator.gov.uk/codes/code-mnt-mnd-arrangements.aspx>

Pensions Regulator Codes of Practice

The Pensions Regulator is responsible for publishing Codes of Practice in relation to certain aspects of pension scheme administration. Subjects covered by the Codes include:

- internal dispute resolution procedures,
- reporting breaches of the law,
- trustee knowledge and understanding,
- reporting late payments,
- member-nominated trustees, and
- reporting notifiable events.

Codes of Practice do not constitute legal requirements, but they will be taken into account and used as a basis for good practice when looking at the administration of a scheme. They would also carry weight in any Court proceedings involving allegations of maladministration.

There are others, in addition to those mentioned above. You can find out more on the Pensions Regulator's website at:

<http://www.thepensionsregulator.gov.uk/codesofpractice>

The Pensions Regulator has also issued a wide variety of guidance, particularly for trustees of money purchase pension schemes, which you should consider. It covers areas such as the member retirement process, and the importance of keeping complete and up to date scheme member records.

You can find out more on the Pensions Regulator's website at:

<http://www.thepensionsregulator.gov.uk/doc-library/guidance.aspx>

Registered Pension Schemes Manual

HM Revenue & Customs (HMRC, formerly known as the Inland Revenue) has published comprehensive guidance on the requirements for Registered Pension Schemes on its website. This includes both technical and practical guidance and will be of particular help in understanding the aspects of the new simplified regime relating to taxation, allowances and scheme registration.

You can find out more about the Registered Pension Schemes Manual on HMRC's website at:

<http://www.hmrc.gov.uk/manuals/rpsmanual/index.htm>

Scheme rules and the new regime

Please note that fundamental changes have been made to the way pension schemes are run (details can be found in the main Pensions Simplification section of this website). Although many of these changes were effective from A-Day, HMRC have informed us that the changes aren't necessarily overriding on the rules currently governing schemes governed by trustees.

HMRC require all pension schemes to have rules which are consistent with the requirements of the Finance Act 2004, and they should be in place by 6 April 2011.

If your scheme's rules offer options or benefits which fall outside of those expressly permitted under the Finance Act 2004, unauthorised member payments may result, and such payments trigger significant tax charges on scheme members and the scheme administrator.

If you have not yet amended your rules, we suggest you give urgent consideration to doing so. We strongly recommend that you seek independent legal advice when considering rule amendments of this nature.

Unless you tell us otherwise, we will assume that you have amended the rules of your Pearl scheme to comply with the simplified tax regime.

Protecting existing benefit rights

The Government accepted that some people may have pre A-day rights that were (or may end up being) in excess of what the new simplified regime will allow. Without protection, those benefits which exceed the new regime's limits may be subject to a tax charge at the point at which they are paid out.

Various forms of protection were made available for existing benefits, and some of those had to be applied for by 5 April 2009. You can find more information on these on our website at:

<http://www.pearl.co.uk/pearl/pearl.nsf/Content/news-article-simple>

As a result of changes to tax law effective from 6 April 2012, notably the reduction of tax allowances, an additional form of protection is available and can be claimed between from 6 April 2011 to 5 April 2012. Claims must be made by scheme members using a specific claim form available from HMRC.

You can find out more about the reduction of tax allowances in the news section of our website at:

<http://www.pearl.co.uk/pearl/pearl.nsf/Content/news-article-pensions01>

Reaching age 75

Prior to 6 April 2011 tax law effectively enforced money purchase pension schemes to buy an annuity for their member before they reached age 75. The only exception to this was the option of starting alternatively secured pension (ASP).

With effect from 6 April 2011, annuity purchase can be delayed beyond age 75 without entering into an income drawdown arrangement. Furthermore, certain lump sum benefits which were available only before age 75 can now be paid after age 75, although some of these are subject to a tax charge.

You can find more information about annuitisation at age 75 on our website at:

<http://www.pearl.co.uk/pearl/pearl.nsf/Content/news-article-pensions03>

Abolition of Contracting-Out under Money Purchase Pensions

The government have confirmed that the ability to contract-out of the State Second Pension (S2P) under a money purchase pension scheme is abolished on 5 April 2012. Contracting-out certificates given to such schemes will be automatically surrendered at that point.

This decision has consequential effects on the protected rights funds which have been built up from contracted-out employment. From 6 April 2012, the restrictions which apply to the use of protected rights are also abolished, so those funds will be subject to the same options, under the law, as non-protected rights funds.

Please note – if your scheme's rules currently require protected rights to be subject to special treatment, the rules may need to be amended to offer the options on protected rights funds which are available in law.

Trustees are required to notify scheme members of this change in law, and explain to members what it means for them. This must be done by 5 May 2012.

If you have a contracted-out money purchase pension scheme administered by Pearl, we will send you an explanatory leaflet, by 5 April 2012, which you may use to meet this disclosure requirement.

Defined benefit schemes are not directly affected by this change, but they may be indirectly affected in relation to the transfer of contracted-out rights.

You can find more information about the abolition of contracting-out on our website at:

<http://www.pearl.co.uk/pearl/pearl.nsf/Content/news-article-pensions02>

Reporting

HMRC require you to make reports to them for various reasons. From October 2007 onwards these reports **must** be made "online" via the internet.

From time to time, you will have to complete a Registered Pension Scheme Return. You must also make an Event Report if certain events take place during a tax year, for example:

- unauthorised payments,
- certain lump sum death payments,
- any transfers to qualifying recognised overseas schemes, etc.

Additionally, you will need to make a return in relation to any tax charge for which you are responsible.

It is important to note that, as Scheme Administrator, you will be liable to account to HMRC for certain tax charges arising in relation to the scheme. Also, where you instruct us to make a payment to a scheme member and a tax charge is generated (e.g. a Lifetime Allowance Charge), we will deduct that charge from the member's fund before making any payment to the member. We will then pass the tax charge to you so that you can account to HMRC in respect of it.

In order for you to make scheme returns and tax payments you will first have to register your scheme, online, with HMRC **-we cannot do this for you**. We aim to tell you when you need to make a report or tax payment to HMRC, but the responsibility to do so rests with **you** as Scheme Administrator.

Should you fail to submit a report when one is due, or if your submission is made outside of prescribed schedules, HMRC will levy fines against you, as Scheme Administrator.

You can find out more about scheme returns on HMRC's website at:

<http://www.hmrc.gov.uk/pensionschemes/tax-simp-forms.htm>

Civil Partnership Act 2004

This Act, which came into force on 5 December 2005 (not A-Day), enables same-sex couples to obtain broadly the same legal rights as a married heterosexual couple, by registering their partnership in a formal civil ceremony. References to husband, wife, spouse, marriage or divorce in any material we issue or supply should be taken to apply to registered civil partners and registered civil partnerships.

You can find out more about civil partnerships from the Government Unit for Women and Equality website at:

<http://www.equalities.gov.uk>

Summary

Pensions Simplification has introduced many important changes. Please read the information in the main Pensions Simplification section of our website to familiarise yourself with them, as they do affect your scheme.

You should also look at the pensions news items in the latest news section of our website since that contains details of changes in tax law which may be relevant to your scheme and your scheme members.

If you want more information on the points covered in this document, please visit the websites we've mentioned.

For official guidance on the operation of the new simplified regime, including the protection available for existing members, and amendments to the tax regime, please consult HMRC's Registered Pension Schemes Manual:

<http://www.hmrc.gov.uk/manuals/rpsmmanual/index.htm>

If you need financial advice in relation to pensions simplification and changes in tax law, please remember we are legally unable to provide it. You should consult your financial adviser. If you do not already have a financial adviser, then you can find details of the advisers in your area on the IFA Promotion Ltd website (www.unbiased.co.uk). Please note, financial advisers may charge you for providing advice.

The content of this document is based on Pearl's understanding, as at December 2010, of actual and intended changes to UK pensions law. It is not meant as an authoritative statement of the law nor as advice of any kind, and Pearl can accept no legal responsibility for it. Pearl strongly recommends employers and trustees seek independent professional advice when considering the impact of changes in the law on their pension schemes