

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. 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).

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/codesofpractice/mnt/index.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>

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 our 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. This means the rules of your scheme will need to be amended if you want to adopt any aspect of the new simplified regime, if it's advantageous to members, beneficiaries etc when compared with what the existing rules permit. For example, the changes to the maximum contributions that can be paid by, or in respect of, a member; or the changes to commuting the member's whole fund on grounds of triviality; may be advantageous when compared with what is currently available. However, you would need to change the rules now governing your scheme before you, and the member(s), could invoke them. You need to think about this now, particularly if you know (or have reason to believe) a claim may arise under your scheme in the near future. If you amend the rules of your scheme, you may avoid the possibility of disadvantaging members.

If you would like to amend your (Pearl provided) rules to be able to take advantage of aspects of the new simplified regime that you consider beneficial to your scheme members, we can supply you with a draft rule amendment. This draft amendment is intended as an interim measure, as your scheme must adopt full simplification rules by 5 April 2011. We will issue draft rules to you for your consideration before that date. If you want to request a draft interim amendment please contact us. **We strongly recommend you seek independent legal advice when considering rule amendments of this nature, as we cannot guarantee any rule amendment we supply will correctly reflect your intentions, or those of the employer sponsoring the scheme, or that it will satisfy specific legal or regulatory requirements.**

Protecting existing benefit rights

The Government has 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 have, therefore, been made available for existing benefits. You can find more information on these on our website at:

<http://www.pearl.co.uk/simple>

Applications for protection must be made to HMRC by 5 April 2009. Only scheme members themselves may make such an application. If your scheme has any members who may benefit from protection, you should bring this to their attention.

Tax-free lump sums after age 75

Tax-free lump sums at retirement (pension commencement lump sums) are usually available as a benefit option, and are not normally a compulsory benefit. The scheme member's entitlement to such a lump sum must therefore be established, and this is commonly achieved by obtaining their signed acceptance of a benefit quotation.

A member's entitlement to a tax-free lump sum must be established before they reach their 75th birthday. If entitlement has not been established by then, any lump sum paid on or after the member's 75th birthday will be treated as an unauthorised member payment and will be subject to an unauthorised payments charge (a tax charge) of 40%.

If your scheme has any members approaching the age of 75 years, you may wish to bring this to their attention.

You can find more information about this on HMRC's website at:

<http://www.hmrc.gov.uk/manuals/rpsmanual/RPSM08100040.htm>

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.womenandequalityunit.gov.uk/lgbt/partnership.htm>

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. 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, please consult HMRC's Registered Pension Schemes Manual:

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

Remember, you will need to amend the rules of your scheme if you want to take advantage of any aspects of the new simplified regime you consider beneficial when compared with existing provisions. In any event, the rules of your scheme must be fully compliant with Pensions Simplification rules by April 2011.

If there are any further important developments regarding pensions simplification, we'll put details on our website (www.pearl.co.uk/simple). If you need financial advice in relation to pensions simplification, please remember we are legally unable to provide it. You should consult your financial adviser. If you do not have a financial adviser, you can contact IFA Promotions on 0800 085 3250 and they will give you details of a selection of financial advisers in your area. Financial advisers may charge for providing advice.

The content of this letter is based on Pearl's understanding, as at 1 June 2007, 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.