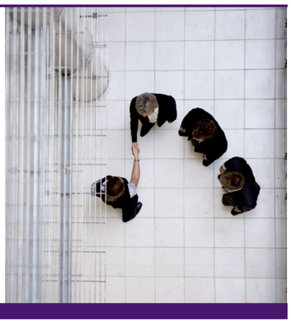
Autumn 2010



Hot Topics

Pensions

1. DEFAULT RETIREMENT AGE

Under current proposals the DRA will be phased-out from 6 April 2011. Compulsory retirement will be unlawful unless it can be objectively justified. Employers will need to review policies on how to deal with ageing employees without contravening legislation. Trustees will need to review scheme rules for changes required to permit late/flexible retirement. Problems may be encountered with insured death benefits, as insurance for over 65s may be expensive.

2. HIGH EARNERS' TAX RELIEF

The Government is under pressure to respond swiftly to the consultation on pensions tax relief. The reduction in Annual Allowance to £30-£45K is broadly welcomed by the pensions industry but there are concerns that the valuation of DB benefits will be overly frugal, and that the Treasury's fixation with tax-avoidance may lead to an unnecessarily complicated system.

3. INCENTIVE EXERCISES

The Pensions Regulator takes a strong stance in its draft guidance on "transfer incentives". The guidance covers enhanced transfer value exercises, pensions increase exchanges and "scheme modifications or benefit forfeitures where members are being asked to make a choice". Be aware of the Regulator's views, but also consider timing issues: transfers from contracted-out DB schemes to DC schemes may not be possible from 6 April 2012.

4. ABOLITION OF PROTECTED RIGHTS

From 6 April 2012 protected rights will no longer exist: post-abolition they will become ordinary money purchase benefits. Contracting-out on this basis will no longer be possible. Employers and trustees should consider with their advisers whether any changes to scheme rules are required and what communications to members will be necessary.

5. CONSUMER PRICES INDEX

We await draft legislation on the move from RPI to CPI as the "appropriate" measure of inflation for pensions in payment and revaluation of deferred benefits. In the absence of over-riding legislation, pension schemes will be affected on a "lottery basis" – depending on the precise wording of the existing pension scheme rules. Employers and trustees should take advice on the possible impact on pensioner and deferred members.

6. EMPLOYER DEBT

Legislation surrounding when an employer debt becomes due to a multi-employer defined benefit pension scheme is particularly complex. The recent 'Pilot's case' in the High Court clarifies the position where a company left a pension scheme before 6 April 2008. Employers and trustees should work with their advisers to assess the effect of this judgment in relation to former employers and unpaid historic debts that may have arisen prior to 6 April 2008.

7. COMPULSORY ANNUITISATION

The requirement for DC members to purchase an annuity by age 75 will be removed from April 2011. (Transitional provisions already allow deferral.) Government proposals contain two drawdown solutions for members wishing to defer annuity purchase. Trustees need to consider whether extra flexibility will be offered via the pension scheme, although member uptake is unlikely to be high.

8. EUROPE-WIDE DEBATE

The European Commission's Green Paper "Towards adequate, sustainable and safe European pension systems" seeks views on how to successfully meet current pensions challenges, including those arising from an ageing population. It also considers the need for an EU guarantee system to address pension scheme failures. Given that the implementation of any proposals will be highly controversial there will be little impact on schemes for some time.

9. SPECIAL PURPOSE VEHICLES

Companies with DB pension schemes may seek to plug funding deficits by using special purpose vehicles created uniquely to provide financial backing to the scheme. These often involve property based solutions, but can include other company assets (maturing whisky has reportedly been used in one case!). Employers and trustees need to ensure that such arrangements are legally watertight.

10. BRIBERY ACT 2010

The Act will come into force in April 2011, radically transforming the scope of UK anti-corruption legislation. The Act carries a maximum of ten years imprisonment or an unlimited fine. The four new offences and the broad definition of "bribery" raise potential issues for companies and trustees. Trustees may wish to amend their conflicts of interest policy to reflect the new requirements.

FURTHER INFORMATION

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