

Protected rights are to be abolished with effect from 6 April 2012. Where pension plans contract out on this basis we strongly advise that rules should be amended to remove unwanted restrictions (on paying benefits) and underpins (to DB benefits).

Our previous communication focused on key areas requiring the attention of employers and trustees. The draft regulations we highlighted, allowing trustees to pass a resolution to remove references to protected rights from pension plan rules, have now been finalised and will come into force on 6 April 2012.

Employers and trustees of DB or DC pension plans that are (or have been) contracted out on a protected rights basis should consider amending their rules. For some pension plans this will be “belt and braces” to ensure that the protected rights rules fall away. For others, their structure will mean that protected rights provisions (and any restrictions or underpins) form an integral part of plan design and will therefore remain a feature until the rules are amended.

Trustees must pass any resolution before 6 April 2012 and it can be made retrospective to 6 April 2012. However, until it is actually passed, trustees may experience problems in establishing the rights and options available to those members whose benefits come into payment. In addition, a trustee resolution cannot be used in all circumstances, and any formal rule amendment using the plan’s power of amendment might not be capable of properly having retrospective effect. Early action is therefore needed.

Contribution levels to DC pension plans are a particular case in point. In most cases, contribution levels can only be adjusted by using the plan’s power of amendment to alter its rules. Prior employee consultation may also be needed. Note also that protected rights underpins in DB pension plans can only be removed using the power of amendment and for service from or after 6 April 2012.

Be aware of potential employee relations implications. For example, some pension plan rules will require the same level of contributions after 6 April 2012, in addition to the payment of higher NICs. This will result in a reduction in take-home pay for affected staff. In any such case, communicating with the workforce in advance is highly advisable. In addition, obligations apply in respect of notifying members of the abolition of protected rights.

If employers and trustees have not yet assessed the provisions of their pension plan rules, we recommend that this is done as soon as possible so that appropriate action can be taken.

Contact

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