SQUIRE SANDERS

PENSIONS ALERT

BE READY FOR MONEY PURCHASE MAYHEM!

9 April 2014

The new statutory definition of "money purchase benefits" is likely to come into force in July 2014. This could affect all pension plans which provide any defined contribution benefits at all: the only pension plans not likely to be affected will be those providing only defined benefits (and where these plans do not provide money purchase Additional Voluntary Contribution arrangements). Employers and trustees should be on alert and poised to consider the effect of the new legislation and take any necessary action quickly.

Background

The focus of the new definition is on the matching of the plan's assets with its liabilities. To meet the new definition, the benefit must be "calculated solely by reference to assets which (because of the nature of the calculation) must necessarily suffice for the purpose of its provision". Broadly, a pension in payment will only fall to be treated as a money purchase benefit if, at all times before coming into payment, it would have met the test described above and its provision to or in respect of a member is thereafter secured by an annuity contract or insurance policy – i.e. it must be bought out or bought in. It is not sufficient that the pension is met from the general assets of the pension plan.

The new definition is set out in Section 29 of the Pensions Act 2011 which is not yet in force but will, when implemented, come into force retrospectively from 1 January 1997. In October 2013, the DWP issued draft Regulations setting out transitional and consequential provisions which would vary the application of the definition, both in respect of certain types of benefits and the timing on which various aspects of the definition would be treated as coming into effect. The DWP consulted on the draft Regulations and the consultation ended on 12 December 2013. There was a considerable body of responses to the consultation, many raising the complications that the new definition may cause, its retrospective effect and various unintended consequences. Although the DWP had said the Regulations were intended to come into force on 6 April 2014, the final Regulations have yet to be published.

Consequences

For many pension plans, without some important changes to the draft Regulations or suitable action taken in relation to the pension plan (if possible), a consequence of the new definition could be that some benefits that were anticipated and intended to be money purchase may not be treated as such. This could have implications on winding up, funding and on various administrative practices. One potentially painful consequence for AVC payers could be that AVCs may have to be treated as part of a defined benefit plan's general funds and cease to be prioritised and/or paid in full for the AVC payer if the plan winds up.

What next?

On 3 April 2014, the Minister for Pensions gave a written statement to Parliament indicating that he intended to lay the Regulations before Parliament "*in due course to come into effect in July 2014*" and that the Government's response to the consultation would be published at the same time. Accordingly, we anticipate that the Regulations will be published imminently and that the new legislation will be brought into force in July 2014. What is not yet clear is how different the new Regulations will be from the October 2013 draft (although the Minister's statement indicated that some of the transitional protection set out in the draft Regulations in respect of the retrospective effect of the new definition will be extended).

We hope that many of the problem areas flagged in consultation will be addressed, but time to react is likely to be short. There is much merit now in considering contingency planning and legal advice to ensure any implications can be identified and necessary action can be taken as quickly as may be needed.

For further information please contact any of the partners listed or your usual contact in the Squire Sanders pensions team.

Catherine McKenna
Pensions Practice
Group Leader
T +44 113 284 7045
E catherine.mckenna@
squiresanders.com

Anthea Whitton
Local Leader, Leeds
T +44 113 284 7364
E anthea.whitton@
squiresanders.com

Matthew Giles
Local Leader, Birmingham
T +44 121 222 3296
E matthew.giles@
squiresanders.com

Charmian Johnson
Local Leader, Manchester
T +44 161 830 5047
E charmian.johnson@
squiresanders.com

Wendy Hunter
Local Leader, London
T +44 20 7655 1119
E wendy.hunter@
squiresanders.com

12851/04/14