SQUIRE SANDERS

PENSIONS HOT TOPICS
WINTER 2011/2012

1. Scheme return time

DB plans that have not yet identified their "statutory employers" should consider this sooner rather than later – it may not be straightforward where the plan has a complicated employer history. Trustees should also ensure that they can give a full breakdown of their plan's asset split (including pooled funds) and, where the fund has liabilities of less than £1.5 billion, should consider the merits of a bespoke investment risk assessment.

2. Contingent Assets

For new or existing PPF Type A guarantees, trustees will be required to certify that they have no reason to believe that the guarantor could not meet its full commitment under the contingent asset at the certification date – if not, a partial amount can be certified.

A wider range of companies can now act as a Type A guarantor. Further changes affect multi-employer plans.

3. Abolition of Protected Rights

Legal advice may be required on the abolition of protected rights: for DC plans, rule amendments may be necessary; for final salary plans wishing to contract-out on a different basis, prompt action needs to be taken. Good communication is the key to ensuring that members approaching retirement understand the effects of taking benefits before and after 6 April 2012. Contracts of employment will need to be amended.

4. Fixed Protection

Employers/trustees should consider communicating with employees/members regarding the reduction in the Lifetime Allowance to £1.5 million from 6 April 2012. Individuals can apply to HMRC for 'Fixed Protection' by 5 April 2012 if their benefits from all registered pension plans will exceed £1.5 million. Individuals with Fixed Protection cannot build further savings in a registered pension plan.

5. RPI/CPI conundrum

Pension plans often provide RPI based increases to pensions in payment or deferred pensions. RPI increases are generally expected to be more generous than the minimum increases required by statute, which are based on CPI. We now have legal clarity on the extent to which minimum statutory increases underpin the increases required under plan rules. Trustees should clarify the impact on their pension plan.

6. Employer debt amendments

Useful amendments to the employer debt regulations on 27 January 2012 introduce the concept of a "Flexible Apportionment Arrangement". When an employer leaves a multi-employer DB plan, a debt will not arise if specific conditions are met, which include meeting a funding test and reapportioning liabilities to one or more participating employers. Entering into an FAA will be a notifiable event.

7. Auto-enrolment timescales

The Pensions Minister has announced a delay in automatic enrolment for small businesses with less than 50 employees. Under the revised timeline, such employers will begin automatically enrolling their staff in May 2015, instead of the current timing of April 2014. Employers with less than 3,000 employees will also see changes to their staging dates, to "smooth" the transition.

8. State Pension Age – more change

The female State Pension Age will increase to 65 between April 2016 and November 2018. From December 2018, the SPA for both men and women will start to increase, reaching age 66 in October 2020. The Chancellor has also announced that a further increase in SPA to age 67 will be brought in over a two year transitional period between April 2026 and April 2028.

9. Regulatory statements

The Pensions Regulator has issued statements for trustees of DC and hybrid pension plans clarifying its governance expectations. DC trustees should appreciate the specific risks inherent in this type of plan. Trustees of hybrid plans need to have a good understanding of the benefit structure and ensure that assets attributable to each benefit type are separately identifiable. Time for trustee training?

10. Payments to employers

Before 6 April 2011 trustees had an opportunity to pass a resolution to preserve a power in their trust deed and rules to be able to make payments to participating employers. Those who missed this opportunity have a further window of opportunity from 3 January 2012 to 5 April 2016 to complete the resolution and notice requirements. Sponsoring employers have a vested interest in this issue.

Further Information

For further information please contact Catherine McKenna or your usual contact in the Squire Sanders pensions team.

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