

## PREMIER PENSIONS MANAGEMENT LTD

### LEGISLATION UPDATE : 1/04

#### Current Issues

"We are still waiting for publication of some of the regulations relevant to the A Day (6 April) changes, particularly those relating to how schemes can use their amendment powers after A Day to implement A Day changes. It had been hoped they would be available by now, but schemes cannot wait any longer before deciding on the steps they need to take regarding rule amendments in advance of A Day.

#### 1. Rule Amendments

Unfortunately, it does not look as if the expected regulations will say in terms that the current Revenue limits and practices will continue to apply unless a scheme decides otherwise. The regulations focus on maintaining the earnings cap. But there are other aspects of current Revenue practice which are not clearly maintained by the regulations in every case (eg averaging salaries over £100,000 and fluctuating emoluments, applying tests for retained benefits etc). Any scheme wanting to maintain these practices, which cover many other areas than those highlighted, should consider making amendments to their rules before A Day to provide for this. It is not entirely clear whether the amendments will work in respect of benefits already accrued, though the better view is that they will work. But, unless schemes make the amendments they will not even be able to argue the point and will have no choice but to rely on the regulations.

Two interim deeds of amendment are therefore proposed for schemes wanting to maintain current Revenue limits. The deeds will be in similar form and can be signed at the same time, though one will be dated and effective from 4 April, the other 7 April. The first deed makes the proposed changes using the scheme's current amendment power as restricted by current statutory requirements. The second deed largely repeats the changes using the scheme's amendment power as restricted by the statutory requirements coming into force on A Day, but also using a new Trustee power to amend to reflect certain of the A Day changes which the Trustees will have from A Day. This way, the Scheme will have done as much as it can to maintain Revenue limits, though it is one of the weaknesses in the way the Government has chosen to introduce the A Day changes that we cannot be sure that this will work for all aspects of current Revenue limits. But it will certainly work to maintain the earnings cap where it currently applies.

Regardless of the Revenue limits issue, it is sensible to amend the Scheme immediately after A Day to ensure that no benefits which are unauthorised after A Day will be permitted to accrue after A Day (eg children's pensions payable up to age 25, rather than 23) and to allow the deduction of the new charges created by the A Day legislation from members' benefits (where permitted by legislation) and to enable the Scheme to take advantage of those A Day changes which benefit members (eg the 25% lump sum).

## 2. Death Benefit Only Members

If the Scheme has members who are entitled to benefits payable on their death but who have never been eligible for membership of the Scheme for pension benefits (and are not in a waiting period for such membership) then these members should be provided with death benefits under a separate scheme. This is not an A Day change, but arises from a recent clarification by the DWP of a provision in the Pensions Act 2004 that occupational schemes can provide only retirement benefits and benefits ancillary to retirement benefits.

## 3. Cross-border Schemes

For UK defined benefit schemes, where any participating employer employs a member of the scheme in another country in the European Union, regardless of whether he is an active, deferred or pensioner member of the UK scheme, then the Trustees need to apply to the Pensions Regulator for registration as a cross-border scheme by 30 March 2005 and strict new funding requirements will apply. Many employers are addressing the issue by transferring the employment of the persons concerned to a non-participating employer or terminating the membership of the person concerned and transferring his accrued benefits out of the scheme. Again, this is not an A Day issue, but an immediate action point.

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*This update includes general information and cannot be relied upon for individual schemes issues.  
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