

PREMIER PENSIONS MANAGEMENT

LEGISLATION UPDATE : 10/07

PENSIONS ACT 1995

Proposed Changes under Section 75

Under existing legislation where an Employer ceases to participate in a multi-employer scheme and the scheme has a deficit on a “buy-out” basis, the leaving Employer will owe a debt to the Scheme equal to their share of the deficit.

There are several ways in which leaving Employers can reduce the amount of debt but much uncertainty has surrounded how these provisions actually operate in practice.

The DWP has therefore issued a consultation paper to amend the existing legislation.

Key elements are: -

1. Money Purchase (DC) assets and liabilities are to be disregarded. Where an Employer only has DC assets the debt provisions will not apply.
2. An Employer will be treated as ceasing to participate when it ceases to have active members. Currently it is when an Employer stops employing actives and anyone eligible to become a member.
3. There will be a 12 month period of grace if the Employer notifies the Trustees that it intends to have actives again within that period.
4. The proposed alternative ways of dealing with a leaving Employer’s liabilities are as follows: -

4.1 Scheme Apportionment Arrangements

Apportionment will be allowed with the agreement of the Trustees. The Trustees must be satisfied that the remaining Employers are able and willing to properly fund the Scheme.

4.2 Regulated Apportionment Arrangements

Will require the approval of the PPF and The Pensions Regulator (TPR) and are intended to be rare. It will need to result in better funding for the Scheme than if the Employer’s insolvency event occurred in relation to one of the Employers. Also the Scheme must be likely to enter a PPF assessment period in the next 12 months.

4.3 Cessation Agreements

The leaving Employer will need to pay the Trustees its share of any shortfall calculated on the Scheme Specific basis as opposed to the Buy-out Basis. These payments can be made in instalments.

Guarantors must agree to pay the balance of that Employer’s share of the buy-out debt when the Scheme winds-up or ceases to have solvent Employers.

The Trustees must be satisfied that this does not affect other Employers commitments to the Scheme and at the date of the agreement the guarantors are likely to have sufficient assets to pay the amount guaranteed.

4.4 Withdrawal Arrangements

These exist at the moment, are similar to Cessation Agreements, but require TPR approval. They allow flexibility in the amount to be paid by the guarantors. It is proposed that if TPR agree the leaving Employer may pay a smaller amount than would be required under a Cessation Agreement.

IMPORTANT: Note, the above types of arrangements would be treated as Compromise Agreements for the purpose of the PPF and should not prevent schemes entering the PPF.

INTRODUCTION: The regulations are dated December 2007 with consultation closing on 01 October, however, no date is set.

August 2007

This update includes general information and cannot be relied upon for individual schemes issues. You should contact your adviser or Paul Couchman at Premier Pensions Management Ltd, Capital Business Centre, Units 14 & 15, 22 Carlton Road, South Croydon, Surrey, CR2 0BS. DL: 020 8916 2129. Email: paul.couchman@premierpensions.co.uk, if you require definitive advice