

## PREMIER PENSIONS MANAGEMENT

### LEGISLATION UPDATE : 11/07

#### 1. Pensions Regulator – Analysis of Recovery Plans

The Pensions Regulator has published an analysis of the first set of recovery plans submitted under the new Scheme Specific Funding regime. All of the recovery plans considered were based on valuations with effective dates in the final quarter of 2005 or the first quarter of 2006.

The key findings of the analysis, conducted from a dataset of nearly 1,300 recovery plans submitted in respect of these valuations, included:

- There is a great deal of diversity across schemes, reflecting the scheme specific nature of the funding regime.
- The majority of trustees and employers have embraced the new regime in a positive way, making prudent assumptions for the calculation of their technical provision.
- Technical provisions – in many cases the amount required to make provision for the scheme's liabilities – came out close to the FRS17 accounting standard and often above PPF protected liabilities.
- Most schemes have made some allowance for equity out-performance when setting the discount rate used for liabilities in respect of members who have not yet retired.
- Recovery plans averaged 7.5 years. 80% of plans are no longer than 10 years or less. The Regulator has commented that there is a noticeable spike at the 10 year mark, which suggests that the 10 year trigger may be influencing trustees in a general, rather than scheme specific way.
- Around 30% of recovery plans did not trigger further action by the Regulator. Of the 70% that did trigger, most only needed minimal action such as the provision of further information to support decisions.
- The Regulator expects mortality assumptions to be reviewed for future valuations, to ensure that proper allowance is made for the improvements in life expectancy.

There seems to be no right or wrong recovery period, this is as expected.

It is important therefore when setting a recovery plan that there is a clear reason why the period was set, so that questions from the Regulator can be easily explained.

## 2. Pensions Regulator – Revised Clearance Guidance

The clearance process involves the Regulator issuing a clearance statement that gives assurance that, based on the information provided, he will not issue a contribution notice or a financial support direction in respect of a particular event, such as a corporate transaction. The Regulator first published guidance on the clearance process in April 2005. After operating within this guidance for two years, the Regulator has decided to publish some revised guidance (for consultation).

The Regulator expects clearance to be sought in relation to Type A events. Type A events – all events that are materially detrimental to the ability of the scheme to meet its pension liabilities – which have now been split into scheme-related and employer-related events. This is to draw a distinction between corporate activity and those that relate more directly to the scheme. It is important to note that employer-related events will be classified as Type A only if the scheme has a relevant deficit. The draft guidance includes some examples of scheme-related events to assist trustees and others.

The basis for assessing the liabilities of a scheme has also been updated. The basis, in most cases, will be the highest of the scheme's deficits according to the following bases:-

- FRS17 accounting basis
- Section 179 basis
- Pension Protection Fund valuation basis (where available)
- Technical Provisions
- Ongoing (where technical provisions are not available)

Exceptions include where the event is considered to be significantly detrimental to the scheme, and where there are reasonable doubts that the sponsoring employer will continue as a going concern.

The draft regulations dispense with the terminology of Type B and Type C which were rarely used in practice.

The principles set for assessing the need for clearance includes:

- appropriate sharing of information with Trustees;
- assessment of the Employer covenant pre and post the event;
- materiality of any weakening in the covenant;
- the relevant deficit for the circumstances, the draft focuses much less on accounting deficits.

A clearance statement will only be given if the parties to a potential A event apply for it. An application is never mandatory and there is always a decision to be made as to the benefits that clearance would provide.

The move to the more flexible principle based approach with greater detail and discussion provided by the draft guidance may make this decision more difficult.

### **3. 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 not 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.

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*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](mailto:paul.couchman@premierpensions.co.uk), if you require definitive advice*