

PREMIER PENSIONS MANAGEMENT

LEGISLATION UPDATE : 18/06

1. **Serious Ill Health**

Legislation will shortly be published which will enable a member in serious ill health (the new definition with life expectancy of less than one year) to commute their GMP.

2. **Sex Change**

The European Court of Human Rights has ruled a woman (born a man) who was told she would have to wait until she is 65 to receive her State pension was a victim of a breach of human rights.

Previously gender was based on the birth certificate to set retirement. Any case that arises like this should initially be referred to the schemes legal adviser for their advice.

3. **Multi-Employer Schemes**

An Employer withdrawing from a Defined Benefit multi-employer scheme is liable in most cases to a debt. This debt, a Section 75 debt, is likely to be on a full buy-out basis.

This may be modified if the Employer enters into a withdrawal arrangement.

A withdrawal arrangement is a legally binding agreement between the 'Cessation Employer', the Scheme Trustees and the Guarantor.

It sets out: -

- The debt the Cessation Employer will pay.
- Arrangements under which the Guarantor will pay or secure the cessation Employers remaining liabilities.

There could be more than one Guarantor and include: -

- The Cessation Employer.
- The remaining Employers
- If in a sale, the Purchaser.

Any withdrawal arrangement needs the approval of the Pensions Regulator (TPR) and a direction issued confirming that the debt due from the Cessation Employer is modified to be valid

Remember, however, withdrawal may not involve a decision to leave the Scheme. It could simply result from members ceasing accrual. This is moving from being an active member to being a deferred member or pensioner.

Whatever the circumstances, if an Employer no longer employs active members of the Scheme and there is at least one other Employer remaining in the Scheme and employing active members, a 'cessation event' has taken place triggering a full buy-out debt.

A withdrawal arrangement should cover: -

- Agreement between all parties.
- The Cessation Employer must agree to pay up to the MFR basis, by a specified date.
- The Guarantor must be required to pay the remainder of the debt if the Scheme commences wind-up, the continuing employers become insolvent or if the Regulator calls in the debt.
- The remainder of the debt up to buy-out level should either be a fixed amount or a floating liability.
- All Trustees costs must be met by the Employer or Guarantors.

There should also be additional conditions depending on the strength of the Employer.

The Trustees, Employer and Guarantor will have their own considerations when negotiating the details of the withdrawal arrangement before it is submitted to the Regulator.

To apply the following documents must be sent to the TPR normally by the Cessation Employer: -

- Completed application form.
- Board minutes or resolutions from all relevant parties ratifying the arrangement.
- Scheme actuary's confirmation of the validity of the figures.
- Copies of independent advice considered by the Trustees when assessing the financial strength of the Employer or Guarantors.
- Copies of legal advice relating to ongoing conflicts of interest.

The Regulator will decide: -

- Can the Cessation Employer afford the full debt?
- Given the strength of the Guarantor does the withdrawal arrangement mean that the debt is more likely to be paid?

The Regulator will take up to 11 weeks to make a decision.

The Regulator will: -

- Issue a warning notice to all parties.
- Issue a determination notice.
- Issue an approval notice.

If the cessation event takes place before the withdrawal arrangement has been negotiated, the Employer can notify the Regulator that a withdrawal agreement is proposed and request in the interim a direction to suspend Trustee powers to enforce the cessation debt.

The maximum period is six months.

This update includes general information, based on Premier Pensions Management's current understanding. Companies and Trustees should obtain independent advice and not rely on the information contained within this bulletin.

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