

PREMIER PENSIONS MANAGEMENT LEGISLATION UPDATE : 24/06

Equalisation

The infamous case of the Barber judgement took place more than 16 years ago, but there are still contemporary challenges. The latest High Court case on equalisation (Harland and Wolf Pension Trustees v Aon Consulting Financial Services) has highlighted whether some schemes have equalised benefits fully and correctly.

Mr Justice Warren upheld a previous decision (Smith v Andel Systems) that benefits could not be levelled down in the Barber window by way of an amendment power.

Where schemes have adopted this approach, the case raises the concern that men may have a right to take early retirement at an earlier age than the Trustees currently permit. This would result in an increase in pension scheme liabilities and impact on scheme funding.

Overseas Pension Transfers Post A-DAY

A-DAY legislation also introduced changes to the procedures for transferring to and from overseas schemes. The new HMRC forms to complete such transfers have now been released.

The new requirements are as follows: -

(a) ***Transfers into registered pension schemes from overseas schemes***

It is now possible to transfer-in benefits to a UK registered scheme from any overseas arrangement.

All transfers are:

- Not recognised transfers but neither are they classed as unauthorised payment charges on either the member or the scheme.
- Not benefit crystallisation events.
- Not treated as a contribution and will not qualify for tax relief.
- Free of income tax and capital gains tax on any investment income or gain.
- For annual allowance purposes in a Defined Benefit Scheme, the transfer value is subtracted from the closing value. There is no impact for a Defined Contribution Plan as only contributions count towards the annual allowance.

If the transfer is from a recognised pension scheme which is not a registered scheme, the member, if he claims it, is eligible for a lifetime allowance enhancement for any part of the transfer that has not received UK tax relief.

An overseas scheme can become a qualifying scheme by applying to HMRC using Form APSS251. The Form lists the requirements.

(b) ***Transfers out of Registered Pension Schemes into Overseas Schemes***

Post A-DAY the main issue is whether the overseas scheme has been designated by HMRC as a qualifying recognised overseas pension scheme.

If this is not the case the transfer will constitute an unauthorised payment with the normal tax penalties on transfer.

Transfers to qualifying recognised pension schemes are Benefit Crystallisation Events (BCE). The scheme must ensure: -

- The member has enough lifetime allowance otherwise a lifetime allowance charge will need to be applied.
- The member is notified of the percentage of the lifetime allowance used.
- If there is a lifetime allowance charge the member must be provided with a notice stating the chargeable amount, how this is calculated, the resulting tax charge and whether the scheme administrator has accounted for it.
- If the payment is in excess of the lifetime allowance, this must be included in the quarterly tax return.

Finally there is a chance of a member payment charge arising. If the member is still a UK resident (or has been in the preceding five years at the point of transfer payment) a member payment must be levied on the individual.

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This update includes general information and cannot be relied upon for individual schemes issues. You should contact your adviser or P 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