Linklaters

Occupational Pension Schemes in the Private Sector: End of Year Round-Up

An end of year review of recent and impending legislative changes, when they apply and what needs to be done

Changes which took effect during 2011

Change	Timing	Schemes affected	Action
Government's replacement of RPI with CPI as the measure of price inflation for the purposes of statutory increases to pensions in payment and statutory revaluation of deferred pensions.	The change affects pension increases on and after 1 January 2011, and the calculation of deferred pensions falling into payment on and after that date. The change was achieved by means of regulations passed in 2010[1]; the Pensions Act 2011[2] also contains provisions on this subject and, although they are not yet in force, they are likely to be retrospective to 1 January 2011.	All occupational pension schemes.	Schemes may or may not need to alter the calculations used for pension increases and revaluation in deferment, depending on what their scheme rules say and the way that their rules interact with the legislation. Trustees who have not yet begun to do so should therefore review their rules.
End of the five-year "transitional period" which commenced when the current pensions tax regime was introduced on 6 April 2006. The transitional period provisions let schemes avoid having to pay any "unauthorised payments" (as defined in the Finance Act 2004) even if their rules required it and kept pre-6 April 2006 Revenue limits in place.[3]	The transitional period ended on 5 April 2011, although many schemes will have amended their rules so as effectively to end it sooner than that.	All registered pension schemes.	No specific action should be necessary at this stage; most schemes amended their rules before 6 April 2011 so as to ensure that the end of the transitional period would not present them with a problem.

Change	Timing	Schemes affected	Action
Expiry of the temporary “anti-forestalling” tax provisions introduced from 22 April 2009.[4]	Expired on 5 April 2011[5], to be replaced by changes in the annual allowance regime (see next).	All registered pension schemes.	No action required.
Changes to the operation of the annual allowance charge under the Finance Act 2004 (including the reduction of the allowance to £50,000, the introduction of carry-forward relief and the change in the defined benefits conversion factor to 16:1).[6]	The changes relate to contributions and pension accrual during “pension input periods” (as defined in the legislation) ending on or after 6 April 2011.	All registered pension schemes.	A key consideration for schemes now is to consider how they will deal with the “scheme pays” requirements arising from these changes (outlined in this newsletter[7]). For an overview of the new annual allowance regime, see our April newsletter[8].
Greater flexibility for registered pension schemes to pay benefits regardless of whether the member has reached age 75 (subject to some tax changes where this permits a benefit to be paid where it would previously been treated as an unauthorised payment).[9]	Effective from 6 April 2011.	All registered pension schemes.	Review the scheme’s systems in the light of these changes. No specific rule amendment should be necessary to enable the scheme to start paying benefits to members who have reached age 75 (because of the way the legislation has been written), but it would be sensible to alter the rules to reflect the change in law when they are next updated. See this newsletter[10] for more.
Introduction of flexible drawdown (and accompanying changes to the existing drawdown regime) under registered pension schemes.[11]	Effective from 6 April 2011.	All registered pension schemes.	Consider whether the scheme wishes to provide the option of flexible drawdown. This newsletter[12] has more detail.

Change	Timing	Schemes affected	Action
Abolition of an employer's right to require an employee to retire on reaching age 65.[13]	Abolition was phased in over the period from 6 April 2011 to 1 October 2011.	This is only of indirect relevance to pension schemes, as it is really an employment issue.	No specific action relating to pensions should normally be necessary.
Extension to 5 April 2016 of the period within which trustees need to pass a statutory resolution in order to retain an existing power to make payments to the employer (and restriction of the circumstances in which such a resolution is required).[14]	Although this provision (under the Pensions Act 2011) has not yet been brought into force, it will need to be retrospective to 6 April 2011 or earlier in order to be effective.	Most schemes whose rules enable the trustees to make payments to the employer (other than administrative payments) while the scheme is ongoing.	If the trustees have not already addressed this issue, they should consider passing the resolution; even though the prospect of being able to pay surplus to the employer will seem very remote for many schemes, the loss of that power could make employers more wary of how much money they pay into the scheme in the future. With the deadline extended to 5 April 2016, this is clearly no longer urgent.
Tax changes intended to ensure that tax relief on an employer's asset-backed contributions to a registered pension scheme accurately reflect its total payments to the scheme directly or through a special purpose vehicle.[15]	Although this is yet to be introduced in the Finance Bill 2012, the Chancellor has announced that it will relate to arrangements set up with the employer contribution paid on or after 29 November 2011. There will be transitional rules for arrangements that have already received tax relief before then, to ensure that the intended amount of relief is given by the end of the arrangement.	Registered pension schemes into which employers pay or have paid asset-backed contributions.	The details are not yet final. In the meantime, this is a matter to be borne in mind by the employers concerned as relating to their tax liability.

Changes that will or may take effect during 2012

Change	Timing	Schemes affected	Action
Changes to the employer debt regulations. These introduce a new mechanism for reapportioning all or part of the burden that would otherwise have fallen on a given employer when it leaves an ongoing multi-employer defined benefits scheme; the changes also extend the existing "period of grace" timescales. This alert[16] outlines the position further.	The changes come into force on 27 January 2012.	Defined benefits schemes with continuing accrual and more than one participating employer.	These changes will become relevant for trustees and employers when they next need to consider how best to deal with the employer debt implications of an employer ceasing to have employees in a scheme while other employers continue to do so.
Abolition of contracting-out on a protected rights basis.[17]	Abolition takes effect from 6 April 2012.	Schemes currently contracted-out on a protected rights basis.	Consider how the scheme rules interact with these changes, and any amendments that may be necessary or desirable as a consequence. This newsletter[18] describes the position further.
Reduction of the lifetime allowance under the Finance Act 2004 to £1.5m (except for members who have registered by then for fixed protection).[19]	Effective from 6 April 2012.	All registered pension schemes.	Consider issuing communications about the changes (particularly for those who might wish to register for fixed protection). Ensure that the scheme's systems will not inadvertently prejudice a member's fixed protection.

Change	Timing	Schemes affected	Action
Introduction of new duties requiring employers to automatically enrol certain workers into a qualifying pension scheme, and associated requirements.[20]	The requirements (though not yet in force) are to be introduced over a period from 1 October 2012 (currently set at four years, although this may be extended depending on details to be published by the DWP in January 2012). The first employers having to meet the new requirements are those with the most people in their PAYE schemes; the first of these become subject to the legislation on 1 October 2012 (although any employer who would otherwise become subject to the new law on 1 October or 1 November 2012 may instead elect an earlier date, no sooner than 1 July 2012).	This is primarily an obligation of employers (regardless of size, although the largest employers will be caught by the legislation first). The automatic enrolment requirements will only affect those schemes that employers select as the vehicles to meet these requirements.	The first step for employers is to ascertain when the new law will apply to them. For an employer with at least 3,000 people in its PAYE scheme, the staging dates set out in this newsletter[21] still apply. Where there are fewer people than that, the dates set out in that newsletter are set to change (with the details of the new timetable due to be announced in January 2012).
Insurers no longer permitted to charge differential premiums as between men and women for annuities or life cover. The position is summarised in this alert[22].	The European Court of Justice has decided on 21 December 2012 as the date by which European law requires insurers to implement this change.	No direct impact on occupational pension schemes (except in terms of the costs of insuring death benefits and buying annuities for members).	Although the decision does not prevent occupational pension schemes from using different actuarial factors as between men and women on the basis of their life expectancies, a future decision of the Court could change that. Schemes may therefore wish to consider equalising their factors in anticipation of such a decision.

Change	Timing	Schemes affected	Action
Extension of the Pensions Regulator's "look back" period when issuing a contribution notice (CN) or financial support direction (FSD). The period now will end with the date when the Regulator issues a warning notice (instead of the later date of his issuing a CN or FSD).[23]	This change was introduced by the Pensions Act 2011, but it has not yet been brought into force. It is therefore likely to take effect in 2012, but the actual date has not been confirmed.	Defined benefits schemes.	No specific action is required, except to be aware that past actions or events that could lead to an order by the Regulator are now less likely to become time-barred during the course of the CN or FSD process.
Change to the statutory definitions of "money purchase benefits".[24]	There is considerable uncertainty here. Although the changes are largely expressed to be retrospective to 1 January 1997 (to ensure that they work for the Financial Assistance Scheme) , the amending legislation has not yet been brought into force and there is no clear indication of when it will be. In the meantime there are extensive powers for the Secretary of State to pass transitional regulations, or to make other changes which could limit the scope of these amendments or alter the new definitions further. It is therefore too early to say how far-reaching the new definitions will be or when (and for what purposes) they will take effect.	This will depend on the eventual wording, once the regulations have been finalised. It may potentially affect: • defined contribution schemes with defined benefit underpins (and vice-versa); • schemes providing the better of defined benefit and defined contribution pensions; • schemes where a member's defined contribution account is used on retirement to purchase a specified annuity from the general scheme assets; and • defined contribution schemes which guarantee the investment return during the build-up phase.	In spite of the current uncertainty, it does seem likely that schemes which provide a pension from their own assets using a member's defined benefit account, or which guarantee the investment return during the build-up phase, will need comply with funding-related legislation as a result of these changes. Benefits of this nature will therefore need to be fed into the triennial valuation process and also become subject to the employer debt legislation (and have to be covered by employer debt calculations). These schemes will also be subject to the PPF levy in respect of those benefits.

[1] The Occupational Pensions (Revaluation) Order 2010.
[2] Sections 19 to 21, Pensions Act 2011.
[3] The Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006.
[4] Schedule 35, Finance Act 2009.
[5] The Finance Act 2009, Schedule 35 (Special Annual Allowance Charge) (Cessation of Effect) Order 2010.
[6] Changes made by Schedule 17, Finance Act 2011.
[7] http://tinyurl.com/3csutgl
[8] http://tinyurl.com/3tfh5y3
[9] Changes made by Schedule 16, Finance Act 2011.
[10] http://tinyurl.com/blnzbj9
[11] Changes made by Schedule 16, Finance Act 2011.
[12] http://tinyurl.com/blnzbj9
[13] The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011.
[14] Section 25, Pensions Act 2011 amends section 251, Pensions Act 2004.
[15] Announced by George Osborne in his Autumn Statement on 29 November 2011.
[16] http://tinyurl.com/6vehtsb
[17] Section 15, Pensions Act 2007 and section 106, Pensions Act 2008.
[18] http://tinyurl.com/cjxalnr
[19] Changes made by Schedule 18, Finance Act 2011.
[20] Part 1 of the Pensions Act 2008.
[21] http://tinyurl.com/6hz5sjc
[22] http://tinyurl.com/cml4mcj
[23] Changes made by section 26, Pensions Act 2011.
[24] Changes made by section 29, Pensions Act 2011.