

IN FOCUS

PENSIONS & INCENTIVES NEWS

Levy level

Proposed changes in the way the PPF calculates its risk-based levy for 2010/11 could have a material impact on a scheme's bill.

The schemes affected are those that have security over land as a contingent asset and those with an overseas sponsor or guarantor.

The changes are in draft proposals for next year's levy that are out for public consultation. The PPF will publish the final rules in December.

Property valuations

The proposals would reduce the value of many properties charged to schemes as contingent assets. This would tend to increase the levy (though the final bill depends on other variables too).

In order to reflect the general fall in property values, the PPF wants to cut the interval between valuations of property charged to schemes from three years to 15 months. The immediate impact would be on properties first charged in levy years 2007/08 and 2008/09. A new valuation now is likely to show a significant drop in value.

If your scheme relies significantly on property to reduce its levy, you should consider taking valuation advice soon. You may find that you want to consider adding new contingent assets – a process that can have a lead time of two months.

An updating valuation of a property already charged to a scheme can be a "desk top" exercise which is cheaper than a full valuation.

Overseas failure scores

So far the PPF has used locally calculated failure scores to measure the insolvency risk of overseas scheme sponsors and overseas group companies that provide contingent asset guarantees. These reflect the particular characteristics of national economies, including local rates of insolvency. As a result, the same headline failure score in different countries can reflect quite different probabilities of insolvency.

The PPF now proposes to convert local scores to the UK scale. Sample figures show this can make a significant difference. For example, a failure score of 95 in Germany converts to 81 on the UK scale, and 92 in the USA equates to a UK score of 97. Evidently there would be winners and losers.



Other changes

Other proposed changes include:

- as planned, the total levy the PPF anticipates collecting is £720m (last year's figure increased in line with earnings);
- the levy cap (designed to protect the weakest schemes) will be 0.5% of scheme liabilities, down from 1%. The PPF estimates that this will cap the levy of 10% of schemes;
- the "scaling factor" (designed to scale up the individually calculated levies so the total is around £720m) will be 1.64. This figure will not change as a result of the consultation. It is down on the current year mainly because underfunding has gone up;
- schemes will have to tell the PPF about:
 - bulk transfers of all of a scheme's assets and liabilities, and
 - material bulk transfers at least equal to each of 20% of both schemes' assets and £20m;
- notification will be optional for bulk transfers of the lesser of £1.5m and 5% of a scheme's assets.

The final rules are likely to reflect the substance of these proposals. So it is worth doing some provisional planning around them.

Welcome

Welcome to the autumn edition of **In Focus**, our quarterly update keeping you informed of the latest developments in pensions and incentives law.

For further information on pensions issues, please email tim.illston@burges-salmon.com

Green issue

In future we intend to distribute our publications by email to reduce our environmental impact. This also has the advantage of eliminating the delay in printing and posting.

For some of you this will be the first time that you have received one of our publications by email. If it is, we hope you agree with our policy.

If you have received this newsletter by post, please let us have an email address for future mailings.

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Debt relief?

The section 75 employer debt will no longer arise on certain types of group restructuring if a deregulatory proposal from the Department for Work and Pensions becomes law. But the proposed relaxations will be of limited use.

The aim is to make corporate activity easier without putting members' benefits at risk.

Today the debt under s.75 Pensions Act 1995 becomes payable when an employer participating in a multi-employer scheme ceases to employ active members without being the last employer to do so. This often happens when a business is transferred from one company to another in the same group. Already there are several ways to reallocate or defer the debt. The new proposals would add to the toolbox.

General relaxation

If detailed requirements are met, no debt would arise where one employer participating in a multi-employer scheme transfers to another participating employer:

- all its business,
- all its employees, and
- all its scheme funding obligations.

Members' interests are protected by requirements that:

- the trustees satisfy themselves that the covenant of the receiving employer is strong enough to support its increased funding obligations, and
- it is not at short term risk of insolvency.

If all the requirements are satisfied, the relaxation will apply and no debt will be due: the trustees cannot refuse to go along with the process.

If the relaxation does not apply because the conditions are not met, the debt will have to be managed using one of the existing devices e.g. a scheme apportionment arrangement.

The DWP invites views on whether it should extend this relaxation to cases where a business is split between a number of other group companies. But it warns that this would add more complications to already difficult legislation and that the price might have to be that all the employers provide a guarantee.

Cut down version

For particularly small restructurings there would be a cut down version of the relaxation with less demanding requirements.

The trustees would need to be satisfied that:

- the scheme is funded to the level of its "protected liabilities" i.e. benefits at the level of PPF compensation,
- less than 2% of members are affected, and
- the value of the protected liabilities affected is no more than £100,000.

In practice the relaxations would only apply to a limited number of restructurings. Unless the public consultation leads to wider proposals, the s.75 debt would often need to be managed using existing methods.

Talking the talk

New guidance from the Pensions Regulator and the Financial Services Authority tells employers what help and advice they can give their staff about pensions without getting into hot legal water. It covers occupational and personal pension schemes.

It answers questions from employers like these:

- what can I tell my employees about my pension scheme?

- what can I tell employees if they ask whether it's a good idea to join?
- how can I make sure I don't break the rules on giving financial advice?
- how far can I go in promoting my scheme?

The "Guide for employers: talking to your employees about pensions" is available on the Regulator's website.

News in brief

- The UK's default retirement age of 65 is lawful, the court has said. The challenge by Age UK (was Heyday) has failed. But the court thought there was a good case for the default age to rise and made comments which suggest that it might not remain 65 for much longer.

Before the decision the Government had announced that it was bringing forward its promised review of the default age to 2010. The court suggested the outcome of the challenge might have been different if the government had not done this.

The Government was able to satisfy court that a default retirement age was a proportionate means of achieving legitimate social policy aims to do with the integrity of the labour market and short-term

competitiveness. But the judge did not think a default age of 65 could remain after the review.

- A reminder that from 6 April 2010 the minimum age for drawing pension from a registered scheme will normally be 55. There is an exception to do with ill health pensions and a narrow exception where, before A Day, someone had a right to take their pension at an earlier age.
- Changing the definition of pensionable pay for future service in a DB scheme will be an occasion for the employer to hold 60 days consultation with members under draft regulations from the DWP. If it becomes law, the change will take effect from April 2010. In DC schemes, reducing employer contributions already requires consultation.

In the office



We welcome **Katherine Wing** to our pensions litigation team. Katherine trained with the firm and recently qualified as a solicitor.

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