

Return of Surplus to Employers – Further News from DWP

Latest Update from the Department of Work and Pensions (DWP):

In June we reported on action that trustees and employers need to take in relation to Section 251 of the Pensions Act 2004. Under Section 251 trustees must take certain steps in order to retain the power under their scheme rules to refund surplus to any employer participating in their scheme. To recap, the steps are as follows:

Trustees give 3 months' notice to employer and members informing them of the trustees' intention to retain the refund of surplus power; and
Trustees pass resolution retaining the power by 6 April 2011.

Scope of Section 251

Section 251 is drafted very widely and applies to any payments that might be made to an employer, not just refund of surplus (eg routine administrative payments such as reimbursement of expenses) and it also applies to schemes in wind-up. The pensions community raised these issues with the DWP during last summer.

Response by DWP

The DWP has now expressed its intention to amend Section 251 as follows:

Money purchase schemes (except earmarked schemes) and schemes in wind-up will be excluded from the application of Section 251. Final salary schemes still fall within Section 251 but the deadline for compliance will be extended to 6 April 2016.

Also excluded from Section 251 will be routine administrative payments to an employer.

There is no intention to amend the terms of Section 251, only the type of scheme to which it applies. The DWP says that it intends to amend Section 251 "when a suitable opportunity arises". It has not offered any firmer timescale.

Action by Trustees and Employers

The response from the DWP has come rather late in the day since many trustees have already issued notices to employers and members. We recommend trustees and employers act as follows:

For both final salary and money purchase schemes, where trustees and employers have already started the communication process with members, they should continue with this process and pass the appropriate resolution after the 3 month notice period expires. Time and expense will already have been spent on the process and completing it will provide

certainty to the trustees. The DWP has not expressed any intention to amend the powers given to trustees under Section 251.

For final salary schemes where trustees have not yet started the communication process, they can still start the process now by giving notice to members before 5 January 2011 and passing the appropriate resolution before 6 April 2011. This will mean the task is completed now rather than leaving it on hold until a later date. Alternatively, trustees will have the option of complying with Section 251 by 6 April 2016.

For money purchase schemes, where trustees have not yet started the communication process, they should take no action.

For schemes that commenced wind-up after 5 April 2006 (final salary or money purchase), where trustees have not yet started the communication process, they should take no action.

For further Pensions advice and assistance, please visit Pitmans Pensions website.

David Hosford - Partner
dhosford@pitmans.com
+44 (0) 118 957 0363

Symon Rowley – Director
srowley@pitmans.com
+44 (0) 118 957 0301

www.pitmans.com/pensions

Reading Offices:
47 Castle Street, Reading
Berkshire, RG1 7SR
T: +44 (0) 118 958 0224
F: +44 (0) 118 958 5097
DX 146420 Reading 21

The Anchorage
34 Bridge Street, Reading
Berkshire, RG1 2LU
T: +44 (0) 118 958 0224
F: +44 (0) 118 958 5097
DX 146420 Reading 21

London Office:
1 Crown Court
66 Cheapside
London, EC2V 6LR
T: +44 (0) 20 7634 4620
F: +44 (0) 20 7634 4621
DX 133108 Cheapside 2

www.pitmans.com

REGULATED BY THE SOLICITORS REGULATION AUTHORITY UNDER NO 57601
A LIST OF PARTNERS IS OPEN TO INSPECTION AT 47 CASTLE STREET, READING
THE FIRM IS A MEMBER OF INTERACT EUROPE (A EUROPEAN NETWORK OF INDEPENDENT LEGAL PRACTICES)
VAT REGISTRATION NO GB199496974