Guidance by the Pensions Regulator

The Pensions Regulator has issued three sets of guidance (one in draft) which set out its expectations of trustees in relation to:

- **Internal controls** – Trustees are expected to work out key risks faced by their scheme, grade the level of each risk (green, amber, red), draw up a risk register, set up and implement an action plan to mitigate risks and monitor progress.
- **Inducements** – Where an employer plans to offer inducements to defined benefit members to transfer out or accept reduced benefits, trustees are expected to check any communications the employer intends to send out, so as to ensure members are fully informed.
- **Abandoning defined benefit schemes (draft guidance)** - Trustees will be expected to consider the implications of any proposals seeking to avoid paying a full "section 75" debt and severing the link between an employer of substance and the scheme. This would involve forming a view of the employer's financial strength and possibly consulting with members.

Rule amendments for Section 75 debts

Our December 2006 Bulletin mentioned that the High Court in the *L v M* case had looked at amendments to scheme rules adopting a scheme-specific method for working out the "section 75" debt on an employer withdrawing from a pension scheme. We have now seen the judgment which confirms that such amendments can be made without fear of disqualifying the scheme from the Pension Protection Fund where the change is made before the event triggering the debt. This means that there may be some risk of disqualification where such an amendment is made after the event triggering the debt. It therefore seems worth considering whether rule amendments should be made, in advance of an employer withdrawing.

Pensions Bill

Another Pensions Bill has been published. Changes include abolishing money purchase contracting-out, converting guaranteed minimum pensions into actuarially equivalent rights and providing that schemes will not be forced to adopt a one-stage internal dispute resolution procedure, but may have a two-stage process instead. The Bill also covers raising the State Pension Age in stages to age 68 and restoring the earnings link to Basic State Pension increases.

Relationship between scheme rules and booklet

The Court of Appeal has decided in *Steria v Hutchison* that the trust deed and rules of a scheme overrode incorrect statements in the scheme's booklet and in a letter about the scheme's normal retirement date. The Court also said that the statement in the booklet that the trust deed and rules were to prevail meant that it was "impossible" for the member to rely on the incorrect statements.

Pensions Regulator disqualifies Trustee

The Pensions Regulator has used its powers under the Pensions Act 1995 to prohibit a trustee company director from holding the position of trustee in relation to any pension scheme in the future. The Regulator was alerted by a "whistleblower" report and decided to exercise its powers because of concerns about the director's honesty, integrity, competence and capability. Amongst other things, the director misrepresented executives' benefits, failed to identify and handle conflicts of interest and excluded fellow trustee directors from significant decisions. The scheme involved was the Ericsson Employee Benefits Scheme.

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