

## Abolition of DC short service refunds: action required

Currently, a member of a DC occupational pension scheme who leaves the scheme within two years is entitled to a refund of their contributions to the scheme. From 1 October 2015, this will change, and new joiners to DC schemes will be allowed to take a contribution refund only if they leave the scheme within 30 days. This legislative change may raise a number of issues for DC schemes.

### Which schemes are affected?

This legal update will be relevant to any occupational pension scheme (and its sponsoring employer(s)) that is accepting (or has the power to accept) new members who will accrue only DC benefits. Schemes with both DB and DC sections will be affected if the DC section is open to new joiners.

However, the prohibition on contribution refunds after 30 days will not apply to a member who is accruing a defined (or cash balance) benefit in addition to the DC benefit – for example, if the only DC benefits that members can accrue are AVCs. The change will also not affect schemes that are not accepting new joiners after 1 October 2015, even if existing active members are accruing DC-only benefits.

### What is the issue?

The legislation that has been changed is not “overriding” – in other words, the changes do not automatically alter scheme rules which contradict them. The legislation instead requires trustees to “take such steps as are open to them” to ensure that their rules reflect the new requirements i.e. to amend their rules so that new joiners are only entitled to a contribution refund if they leave within 30 days.

### What should affected schemes and employers be doing?

Affected schemes should review their rules and take legal advice on whether any amendments are required. Whether amendments are required will depend on the current wording of the rules on early leavers, vesting of benefits and rights to contribution refunds. Some affected schemes may not need to make any rule amendments. In certain limited circumstances it appears that there may be a tension between the new requirements and the automatic enrolment legislation. We have written to the DWP to ask for clarification.

Affected schemes and employers should also review the communications given to new joiners to ensure that these correctly reflect the position on contribution refunds for members joining from 1 October 2015.

Where an employer operates a salary sacrifice arrangement in connection with an affected scheme, the contractual provisions in relation to the arrangement should be reviewed to ensure that any wording regarding employer refunds of “notional” contributions made by the employee under the arrangement likewise correctly reflect the position from 1 October 2015.

### What is the deadline for action to be taken?

The legislative changes come into force on 1 October 2015. However, as the changes only affect members who join an affected scheme on or after that date and who leave more than 30 days later, in our view, affected schemes have until 30 October 2015 to make any necessary rule amendments.

## What if an affected scheme wants to harmonise its rules on contribution refunds for pre- and post-1 October 2015 joiners?

In other words, can an affected scheme amend its rules so that benefits accrued by pre-1 October 2015 joiners vest after 30 days' service?

If the scheme rules do not currently offer 30 day vesting, and give the member a right to a contribution refund, the scheme could be amended to offer 30 day vesting as an option for such members. However, the rules cannot easily be amended to make 30 day vesting compulsory: even if the scheme's own amendment power allowed it, any rule change to make 30 day vesting compulsory would have to comply with the formal requirements in s67 Pension Act 1995.

## How can Mayer Brown help?

We are, of course, happy to review scheme rules, to provide a summary of the changes required, and to draft the necessary documentation to make those changes.

Alternatively, for those schemes and employers that would prefer a less bespoke option, we have prepared a standardised rule amendment which will operate to implement the legislative changes by overriding any contrary provisions in the scheme rules. This wording would simply need to be incorporated into whatever type of document is required to amend the rules of the relevant scheme (e.g. deed of amendment, trustee resolution).

We are also happy to review member communications and salary sacrifice documentation, and to update these as required.

If you have any questions on the issues raised in this update or require further advice, please contact your usual Mayer Brown contact or:

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