

DWP will act to clarify s251 on payments to employers

You will recall that section 251 Pensions Act 2004 appeared to be drafted more widely than intended, restricting payments to employers. The DWP have now responded to lobbying on this issue. They wrote to us last week to say that they will amend the legislation to remove the ambiguities that were causing a problem. For many schemes this means that no further action is required.

The headline points are:

- Refunds on winding up are not meant to be caught by section 251;
- Nor are repayments of expenses or other administrative payments;
- Section 251 was intended to apply only to refunds of surplus to employers from an ongoing scheme (in other words, payments subject to section 37 Pensions Act 1995);
- A commitment to amend the legislation to clarify the position in due course, though that may not happen before the April 6 2011 deadline; and
- A proposal to extend the deadline by 5 years, to 6 April 2016.

What does this mean for your scheme?

The implications of the DWP's letter for your scheme will depend on your scheme's particular circumstances:

If there is power to refund surplus while the scheme is ongoing, a resolution under section 251 will still be required if the refund power is to continue. We would generally recommend that it should continue, appropriately updated, on the basis that payment can be made only if the trustees decide at the time that it is in members' interests to make it.

- If notice has already been given, the Trustee Board should simply pass the resolution when the three months have expired.
- If notice has not yet been given, the deadline for action is being extended until 2016. The Trustee Board may wish to wait until the DWP has published its proposed amendments to the legislation before proceeding.
- If there is no power to refund surplus while the scheme is ongoing, no resolution will be required. Many schemes have been considering passing the resolution on a precautionary basis.
- If notice has been given, the Trustee Board should tell members in due course that it proved unnecessary to pass the resolution originally contemplated, because the Government stepped in to remedy the legal problem.
- If members and employers have not yet been sent a notice, the Trustee Board need take no further action.

Finally, if your scheme has already passed a resolution under section 251, no further action should be needed.

Please get in touch with your usual contact in the Mayer Brown pensions team to discuss the appropriate next steps.

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