PENSIONS IN 30 PODCASTS

16 Scheme modification – overview

Key points

- Amendment or modification powers generally are found in scheme rules not in pensions legislation
- Pensions legislation restricts the way a scheme's modification power can be used
- Pensions Act 1995: Section 67 onwards protects accrued rights to pension benefits
- Section 67 also restricts the way changes can be made from defined benefit or final salary benefits to defined contribution or money purchase benefits
- Section 67 also restricts the way changes can be made which might reduce the rate of a pension
- Trust law requires trustees to act in members' interests and this applies to decisions to agree to scheme modifications
- Section 68 Pensions Act 1995 provides a statutory power to make specific modifications regardless of the powers contained in the scheme rules
- Additional considerations arise where the scheme is contracted out and section 37 of the Pension Schemes Act 1993 imposes additional formalities in such cases

Main sources

- Pensions Act 1995 Section 67 – 67I and Section 68
- Pension Schemes Act 1993 Section 37

Power to modify a scheme

A pension scheme can be modified (or "amended") if it has a power in its trust deed and rules that permits modification.

Most schemes have such a power. The power will say how it can be operated. This may be by agreement between the scheme's principal employer and trustees, by one or the other on its own and/or may require certification or agreement from another party such as the scheme actuary. There may be conditions attached to exercise of the power about notifying affected members.

A modification power in a pension scheme may include express provisions about the extent of the power. For example, it may state that retrospective changes are permitted; or that changes that adversely affect pension rights already built up cannot be made.

Modifications attempted in ways not set out in the power or outside of express limits on the power will not generally be valid.

Statutory restrictions on powers to modify

Sections 67 – 67I Pensions Act 1995 apply to all occupational pension schemes, except public service schemes and schemes which are not registered schemes under Finance Act 2004.

These Sections restrict the way in which certain modifications to pension schemes can be made, regardless of the wording of the power in the scheme's own trust deed and rules.

- If a modification would or might adversely affect rights that have already accrued, (generally meaning rights earned by contributions made or periods of employment already completed) then a valid modification cannot be made unless either the affected members give informed consent in writing, or the scheme actuary certifies that the overall value of the member's benefit is maintained.

- If a modification would replace defined benefit rights with money purchase rights, or might result in a reduction to the rate of a pension, then affected members have to give informed consent before the modification can be validly made.

Sections 67 – 67I requires the consent of the trustee of the pension scheme to either of these "regulated" modifications, even if the pension scheme's own modification power would not require the trustee's consent. The legislation provides that trustees may not consent unless the necessary informed member consents and/or actuarial equivalence certificates have been given.

Where a scheme is contracted out, section 37 of the Pension Schemes Act 1993 and Regulation 42 of the Contracting Out Regulations 1996 restrict the amendments that can be made. Actuarial certification is required in some cases and, in others, trustees must be satisfied that prescribed levels of member benefit will still be available after the scheme has been modified. This continues to apply to "former contracted out schemes" after 5 April 2016 when contracting out for ongoing accrual of defined benefits is no longer possible.

English Trust Law restrictions on powers to modify

English Trust Law imposes a duty on pension scheme trustees to act in the interests of the members of the pension scheme. Whether acting under the scheme's own modification power or under the requirements of Sections 67 – 67I. The trustee must therefore be satisfied that it is acting in the interests of the scheme members in giving consent to a modification.

Other modification powers including Section 68 Pensions Act 1995

Section 68 Pensions Act 1995 gives trustees limited powers to modify a pension scheme. These powers exist regardless of any modification power in the scheme trust deed and rules.

These powers allow trustees to modify the pension scheme to:

- provide for member nominated trustees;
- provide for handling any fraud compensation payments from the PPF, and some other provisions associated with employer insolvency; and
- extend the class of beneficiaries under the scheme on a member's death (only with the employer's consent).

Other legislation from time to time creates limited powers for trustees to modify pension schemes. This is usually in connection with the introduction of new legislation that may require changes to pension schemes that might lie outside schemes' own modification powers.

More information

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