PENSIONS IN 30 PODCASTS

20 Winding up occupational pension schemes

Key points

- Winding up an occupational pension scheme means that the scheme will come to an end, the trustees will collect in the scheme's assets and distribute them for the benefit of the scheme's beneficiaries.
- The trustees will need to carry out data reconciliation of member records.
- Benefits may be secured by transferring benefits to another scheme and/or by buying annuities with an insurance company.
- The trustees must notify The Pensions Regulator of the scheme wind up.
- Where a defined benefit scheme is in deficit upon wind up, an "employer debt" may become payable under s75 of the Pension Act 1995.
- If wind up is triggered because an employer suffers an insolvency event, it may enter a PPF assessment period and ultimately go into the PPF.

Main sources

- Pension Schemes Act 1993
- Pensions Act 1995
- Pensions Act 2004
- Occupational Pension Schemes (Winding Up) Regulations 1996
- Occupational Pension Schemes (Winding Up Notices and Reports etc) Regulations 2002
- Occupational Pension Schemes (Winding Up etc) Regulations 2005

Winding up an occupational pension scheme means that the scheme will come to an end, the trustees will collect in the scheme's assets and distribute them for the benefit of the scheme's beneficiaries. There are two key stages:

1. the circumstances which trigger a wind up of the scheme; and
2. the process of winding up the scheme and securing benefits for members, such as by purchasing annuities for members or transferring their benefits to another scheme.

Wind up triggers

The events that will trigger the wind up of an occupational pension scheme are generally set out in the scheme's trust deed and rules. Wind up may be triggered on purpose, for example by an employer serving notice on the trustees. An employer might do this because it has decided to replace its trust based scheme with a cheaper contract based scheme. Alternatively, wind up might be triggered as a consequence of the employer's insolvency or if the employer stops paying contributions to the scheme.

Independently of the scheme rules, The Pensions Regulator may trigger wind up in certain circumstances, although this rarely happens and only where the Regulator perceives a real threat to benefits.

Once wind up has been triggered, existing members will not accrue any further benefits (if accrual is still continuing) under the scheme and no new members may join. Contributions also

cease from both employers and employees. Scheme rules may (or may not) limit trustees' powers to operate the scheme. Some schemes' rules may allow trustees to defer winding up and run the scheme as a closed scheme.

Employer debt

If a defined benefit ("DB") pension scheme is in deficit on winding up, a debt may became payable under section 75 of the Pensions Act 1995. The debt is calculated on a 'buyout' basis, ie the cost of securing members' benefits by buying annuities from an insurer. Where the trustees run the scheme as a closed scheme, the date of calculating the section 75 debt may be postponed.

Pension Protection Fund ("PPF")

If an employer of a DB scheme suffers an insolvency event and wind up is triggered, PPF compensation may be payable to members. The PPF works with the scheme's trustees to determine if the scheme is eligible to pass into the PPF. This is essentially based on the funding level of a scheme on the PPF's statutory basis.

If the scheme is potentially eligible, it will go through a PPF assessment period. The scheme's assets and liabilities are valued to see whether the scheme can pay member benefits at or above PPF levels. If it cannot, the scheme will transfer to the PPF and the PPF will take over the administration of the scheme from the trustees.

Wind up process

Priority order for securing members' benefits

The trustees must collect in the scheme's assets and distribute them to the beneficiaries according to a statutory priority order. If any assets are left over they should be distributed according to any order set out in the trust deed and rules.

Statute and a scheme's rules will usually govern the position if there is a surplus or a deficit by reference to the scheme's benefits.

Two common ways of securing benefits on wind up are buying annuities for members with an insurance company and transferring their benefits to another pension scheme. Statute sets out the ways in which benefits can be secured to discharge the trustees and should be read alongside the scheme's rules.

Provision of information

Trustees must notify The Pensions Regulator of the scheme wind up. They must also provide certain specified information to members and beneficiaries within one month of beginning wind up and provide updates every 12 months. The Pensions Regulator expects schemes which are winding up to complete the key activities within two years. Where a scheme has been winding up for more than two years, trustees must notify The Pensions Regulator and provide it with updates every 12 months.

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Data reconciliation

The trustees will need to take steps to identify contact addresses for all members (who have not already been provided with an annuity or deferred annuity). They will need to carry out data reconciliation of member records to ensure the trustees have the necessary information to determine benefits and of contracting-out records (if a scheme has been contracted-out for any period). This can be particularly time consuming.

Trustee protection

Trustees should seek protection against untraced (but identified) beneficiaries claiming benefits and other claims made after the scheme has wound up and has no assets. This is because the trustees may be personally liable in respect of claims once they can no longer rely on a scheme's exoneration and indemnity clauses and the assets of the scheme have been distributed. Trustees may seek protection against any future liabilities in the form of insurance and/or an indemnity from the employer, if available.

More information

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