

The changing face of section 67

From 6 April 2006, section 67 takes on a whole new look. Employers and trustees of occupational pension schemes contemplating changes will potentially have to surmount several hurdles in pursuit of safeguarding members' rights. A draft code of practice was issued by the Pensions Regulator for consultation back in July. More recently, the DWP have published draft regulations¹. Here we preview section 67's radical makeover.

The current section 67

A reminder

- Section 67 of the Pensions Act 1995 prevents a scheme's power of amendment being exercised in a manner which would or might affect a member's accrued rights or entitlements unless:
 - the member consents; or
 - the scheme actuary certifies that the amendment would not **adversely** affect such rights or entitlements.

Sections 67 to 67I

Protecting
"subsisting rights"

- The new sections will protect a member's "subsisting rights". This covers both entitlements and also a member's "accrued rights" (and those of his/her survivors).
- But the new sections will only kick in where changes would or might "adversely" affect such subsisting rights (known as "regulated modifications").
- If a proposed change is not a regulated modification then section 67 will not apply.

Regulated modifications

The two types

- Regulated modifications sub-divide into:
 - "protected modifications" – changes which would or might convert "subsisting rights" from defined benefit into defined contribution or reduce pensions in payment²; and
 - "detrimental modifications" – all other regulated modifications.
- Protected modifications always require a member's informed consent.

¹ The draft Occupational Pension Schemes (Modification of Subsisting Rights) Regulations 2006

² Regulations can add to this list

The key elements

At a glance

- It will only be possible to make a regulated modification if:
 - the member gives “informed consent” (always needed in the case of protected modifications); or
 - the “actuarial equivalence requirement” is met and trustees take all reasonable steps to provide members with information about the change and its effect on them beforehand; and
 - the trustees approve the change and report this to members before the change takes effect.

Code of practice

What does it say?

- To meet the various elements of the new provisions, specific steps need to be taken at the correct time.
- The draft code puts forward various time-frames for achieving this, some of which are quite tight³.
- It also details the information which the Pensions Regulator expects members to be given.
- Members must also be allowed a reasonable time to make representations (the draft code suggests one month).

The draft regulations

What do they do?

- The draft regulations focus heavily on the “actuarial equivalence requirement”.
- To meet the test the “actuarial value” of a member’s subsisting rights immediately after a change must be equal to or greater than the actuarial value immediately before.
- Trustees need to be informed of the methods and assumptions used in the calculation, which must be consistent with the scheme’s approach to calculating cash equivalent transfer values.
- Actuarial guidance will supplement the legislation.

Conclusions

- If a change amounts to a regulated modification and the provisions of sections 67 to 67I are not met, the Pensions Regulator can declare any change void.
- It can also impose penalties and intervene to prevent a proposed modification taking place.
- Because of the intricacies of the new sections, early planning and advice will therefore be essential for both employers and trustees.

³ For example, where the member consent route is used, the modification must be made within 6 months of the first member consent being received. See our Sackers Extra Alert: “Changing scheme benefits – the all new section 67” dated 12 July 2005

This edition of Sackers Extra News is part of a series focusing specifically on Pensions Reform to keep you abreast of the key issues throughout this period of change.

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