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Pensions Act 2004 – Internal Dispute Resolution Procedures

1 INTRODUCTION

Amendments contained in the Pensions Act 2004 (PA 2004) will allow trustees of occupational pension schemes to operate a simplified one stage internal dispute resolution procedure (IDRP) under section 50 of the Pensions Act 1995.

Whilst a consultation paper on the draft Regulations¹ was published by the Department for Work and Pensions on 24 January 2005, we have been waiting for details of the time limits which will apply to dealing with complaints. A draft Code of Practice "Dispute Resolution – reasonable periods" was published for consultation by the Pensions Regulator on 1 April 2005.

The new IDRP provisions were originally due to come into force in April 2005, but commencement has been put back to 23 September 2005.

2 THE CHANGES AFOOT

The current IDRP provisions set out a prescriptive two stage IDRP but the amended provisions will leave it up to scheme trustees to design a process for dealing with pension disputes which is appropriate for their scheme.

It is open for the trustees to retain their current procedure provided that it complies with the new requirements. The key questions to ask in order to test whether a current IDRP will continue to comply post-September 2005 are:

- Does the IDRP meet the framework requirements? (see item 3 below)
- Does the IDRP meet the requirement as to timing? (see item 4 below)

¹ The Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 2005

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3 FRAMEWORK REQUIREMENTS

Some of the essential elements of these requirements are as follows:

- The trustees must take the decision. Whilst appearing uncontroversial, there are a couple of crucial points on which clarification has yet to be received:
 - Can a decision be taken by a sub-committee of the trustees?
 - What is the legal situation if the decision is taken by someone other than the trustees (say, the pensions manager) at the first stage of a two stage IDR and then the complaint does not go further? Have the framework requirements been met?
- The formal procedure must state:
 - The manner in which an application is to be made;
 - The particulars which must be included (as well as any "standard items of information" to be provided);
 - The manner in which decisions are required to be reached and given.
- Any person who has "an interest in the scheme" can make a complaint to the trustees of an occupational pension scheme – the key change from the current list of potential applicants is the addition of "a surviving non-dependant beneficiary of a deceased member" (presumably, a person who could be entitled to a lump sum death benefit).
- The trustees can set the time limit in which an IDR application must be made, provided that the cut-off is not less than six months from the date the applicant ceased to be a person with an interest in the scheme.

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4 DRAFT CODE OF PRACTICE – REASONABLE PERIODS

4.1 What is a reasonable time period?

The draft code sets out the Pensions Regulator's expectations of what constitutes a reasonable time period for dealing with a complaint.

- Where trustees choose a **one stage** procedure (so that the trustees reach the decision and there is no "built-in" review or appeal stage), the decision must be reached and notified **within four months** of receipt of the application.
- Trustees who choose to have a procedure with **more than one stage** (i.e. where an applicant is able to ask for a review of the decision) are expected to reach their final decision and to notify the applicant **within 10 months**. This 10 month time limit is consistent with the current IDRPs time limits. This means that trustees should be able to keep their current two stage process and still comply with the new provisions as regards timing.
- Applicants should be informed of the IDRPs decision "as soon as practicable after the decision has been made". The draft code suggests that seven days should usually be sufficient.

4.2 Additional requirements

- The start date for the time limits is the date when the trustees receive the IDRPs application (and the "necessary relevant information") from the applicant. If required information or documents are missing from an application the Pensions Regulator will still expect trustees, wherever possible, to go ahead and consider the complaint.
- Trustees should provide an applicant with an acknowledgment of receipt and confirmation of when they should expect to receive a response.

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- If, for good reason, trustees are unable to reach a decision within the time-frame specified in the draft code, they must let the applicant know as soon as reasonably practicable and keep the applicant informed of the delay and the reasons why it is necessary to extend the time period. A revised target date for a response should also be given.

5 CONCLUSIONS

The Pensions Regulator is keen to allow trustees the flexibility to adopt an IDRPs which is appropriate for their scheme. In particular, trustees will welcome the opportunity to continue to operate their existing IDRPs, so long as the framework requirements are met.

But worryingly for trustees, under the revised provisions, a person can make a complaint to the Pensions Ombudsman at any time before or during the IDRPs process. Previously, a person had to complete the IDRPs before making a complaint. A member may, therefore, attempt to cut short an IDRPs or by-pass the process altogether.

A copy of the draft Code of Practice is available at:

<http://www.thepensionsregulator.gov.uk/codesandguidance/codes/consultation.aspx>.

This Sackers Extra Alert was prepared with the assistance of our Dispute Resolution Unit. If you would like any further information regarding IDRPs, please speak to your usual contact at Sackers or to:

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