

# alert

## IDRP – THE NEW ARRANGEMENTS

### 1 INTRODUCTION

From 6 April 2008, the option of having a simplified single stage internal dispute resolution procedure (IDRP) will become a reality, although trustees can stick with their current two-stage IDRP if they wish.<sup>1</sup> Representing a move away from the prescriptive two-stage IDRP required by the Pensions Act 1995, the amended provisions will leave it largely up to scheme trustees to design a process for dealing with pension disputes which is appropriate for their scheme (provided certain “framework” requirements are met). Transitional provisions will apply, so any “disagreement which is ongoing” before 6 April 2008 should be dealt with under the scheme’s current two-stage IDRP.

The final Regulations were laid before Parliament this week and come into force on 6 April. Although the final code of practice has not yet been laid, the Pensions Regulator issued a response to consultation (the Response) in February 2008 which clarified its intention on reasonable periods<sup>2</sup>.

### 2 KEY POINTS

- From 6 April 2008, trustees may switch to a single stage procedure at any time. But if they do choose to operate a single stage IDRP, the trustees must make the IDRP decision (although it could be made by a sub-committee of the trustees).
- If trustees wish to keep their existing two-stage IDRP, some tweaks will need to be made in order to comply with the new framework requirement (section 3)
- The Regulator’s code of practice will set out “reasonable periods” but stresses these are not targets (section 4).

<sup>1</sup> See also our Sackers Extra Alert – Disputes - draft Regulations and Code on Trial dated 1 November 2007

<sup>2</sup> <http://www.thepensionsregulator.gov.uk/pdf/DisputeResolutionConsultation.pdf>

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### 3 KEEPING YOUR EXISTING IDRP

If trustees choose to operate a two-stage procedure, a third party – typically the pensions manager – can decide the dispute at the first stage, provided that the procedure enables that person's decision to be "confirmed or replaced" by a decision of the trustees<sup>3</sup>.

An existing IDRP will continue to comply post-April 2008, provided it meets the new "framework" requirements. In order to minimise disruption, many of the "framework" requirements have been designed to mirror existing provisions. But the following two key changes will need to be made to existing IDRPs:

- The trustees will need to ensure that all those who are entitled to make a claim under the scheme's IDRP are listed in the document (and, importantly, are aware that they can make a claim). The key change from the current list of potential applicants is the addition of a "surviving non-dependant beneficiary of a deceased member"<sup>4</sup>.
- When trustees write to tell an applicant of their determination they will need to point out that they can take their complaint to the Pensions Ombudsman. Currently, trustees only have to tell the complainant about the existence of The Pensions Advisory Service (TPAS). Strictly speaking, trustees will no longer be required to inform applicants of TPAS, but given that the Ombudsman cannot investigate a complaint without TPAS already having looked at it, it seems sensible to continue to include a reference to TPAS (with the aim of cutting down the time it takes to refer matters between organisations).

The trustees will also need to comply with the "reasonable periods" specified in the code although it should be possible to keep the existing two-stage IDRP and also comply with these – see section 4.

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<sup>3</sup> Or a sub-committee of the trustees

<sup>4</sup> Presumably a person who could be entitled to a lump sum death benefit, who is not otherwise a dependant of the member

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### 4 REASONABLE PERIODS

The Regulator's code of practice sets out its expectations of what constitutes "reasonable periods" for dealing with a complaint. However, it makes it clear that the time limits given are not intended to be target times, and should be adjusted to be reasonable in the context of the complaint and the scheme (for example, to fit in with the cycle of trustee meetings). In some cases, the "reasonable period" will be shorter than the period given in the code, and in others, perhaps longer.

#### *Time limit for making an application*

The reasonable period for making an IDRP application is within six months from the date the applicant ceased to be a person with "an interest in the scheme". This period may need to be extended where the person could not reasonably have known about the basis of the dispute or because of exceptional reasons, such as incapacity.

#### *Making the decision*

The Regulator has confirmed in its Response that:

- for a single stage IDRP, the trustees have a "reasonable period" of 4 months to make the decision; and
- for a two-stage IDRP, the "reasonable period" for making a decision at each stage is 4 months.

#### *Informing the Applicant*

Applicants should be informed of the IDRP decision "usually no later than 15 working days after the decision has been made".

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*Appealing a two-stage IDRP*

The legislation does not contain a reasonable period for the member to bring the dispute back to the trustees after a first stage decision (the time period is currently six months). This means the Regulator does not have authority to prescribe a period in the code (to override the trustees' discretion). We understand from the Response that the Regulator may refer this back to the legislators.

The pre-6 April 2008 legislation requires that the two-stage IDRP is completed within 10 months of an application. If the trustees set a two month period for appealing a decision (provided this is appropriate) this means that, taking into account the two 4 month stages, the overall time limits set by the existing IDRP can be retained.