Core Unit 2 – Regulation of Retirement Provision

Assignment 3 Notes

*(Part 3 – Other Relevant Areas of Law and Part 4 – Corporate Transactions)*

*Recommended Time: 1 Hour*

# Explain the two ways in which a bulk transfer of a scheme’s assets and liabilities can be transferred into another scheme during a scheme merger.

**10 marks**

Answer should cover:

* Transfers with members’ consent:
  + Members given full details of the benefits in the receiving scheme for past and future service;
  + Member offered the choice of transferring their accrued rights into the receiving scheme or retaining deferred benefits within the transferring scheme (these deferred benefits would then be bought out on the subsequent winding up of the transferring scheme);
  + Members may opt to transfer their benefits into a separate arrangement of their choice;
  + In practice, obtaining members’ consent to a transfer in connection with a scheme merger is uncommon.
* Transfers without members’ consent - Trustees can agree terms of a transfer with the trustees of the receiving scheme without the consent of each member provided that:

• the trust deed and rules permit such a transfer without the members’ consent;

• either both schemes apply to employment with the same employer, the transfer results from a financial transaction between the employers or the employers are (broadly) in the same corporate group;

• the actuary to the seller’s scheme has issued a certificate under Schedule 3 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 to the effect that the benefits to be attributed to the transferring members in the receiving scheme are broadly no less favourable than those given up under the transferring scheme; and

• the trustees of the transferring scheme consider that the bulk transfer would not adversely affect the security of the members’ accrued rights.

(Relevant section of the manual is Part 4 Chapter 1.9.1)

# State why data controllers must submit an annual notification to the Information Commissioner’s Office (ICO) and the information that must be included in the notification.

**5 marks**

Answer should cover:

* ICO uses the details to make an entry describing the processing in the register of data controllers that is available to the public for inspection.
* The information which data controllers must notify to the ICO includes:
  + a description of the personal data that is being processed;
  + a description of the category or categories of data subject in respect of whom personal data is being processed;
  + the purposes for which the data is being processed;
  + any person to whom the data needs to be disclosed.

(Relevant section of the manual is Part 3 Chapter 1.1.2)

# List 5 common age-related pension scheme provisions which are specifically excluded from the application of age discrimination legislation.

**5 marks**

Answer should mention 5 of the following:

# minimum and maximum ages for admission to a scheme;

* a minimum level of pensionable pay for admission (provided not above lower earnings limit);
* use of age-related criteria in actuarial calculations;
* a minimum age for entitlement to benefits;
* specified ages for drawing benefits early without reduction or late with an enhancement;
* ill-health pensions based on prospective service;
* age-related contributions to occupational defined contribution schemes where the aim is to equalize benefits or make them more nearly equal.

(Relevant section of the manual is Part 3 Chapter 1.4.4)

# Briefly outline the power the TPR has regarding the provision of false or misleading information to TPR of pension trustees.

**5 marks**

Answer should cover:

* Provision of Information to TPR:
  + A new section 80A was inserted into the Pensions Act 2004 by the Pension Schemes Act 2021;
  + Gives TPR power to issue fines of up to £1 million to a person who has knowingly or recklessly provided information to TPR, provided in certain circumstances, that is false or misleading;
  + includes the pension scheme return and notifiable events
* Provision of Information to Pension Trustees:
  + A new section 80A was inserted into the Pensions Act 2004 by the Pension Schemes Act 2021;
  + Gives TPR power to issue fines of up to £1 million to a person who has knowingly or recklessly provided information to the trustees of a DB pension scheme, provided in certain circumstances, that is false or misleading;
  + includes the pension scheme return and notifiable events
* In both cases the fine is also available where the person providing the information intends, or could be reasonably expected to know, that TPR would use the information for the purpose of carrying out its functions.

(Relevant section of the manual is Part 3 Chapter 1.9)

# In a share sale, ownership of the Target company transfers from the buyer to the seller. State four common scenarios where pension issues may arise and briefly outline how these circumstances are typically dealt with.

**10 marks**

Answer should cover:

The target is the sole employer of an occupational pension scheme:

* Pension scheme likely to remain with the Target;
* Target becomes part of the buyer’s corporate group;
* Target remains liable to fund the scheme in the same way as prior to the transaction.

The Target is the principal employer of a multi-employer pension scheme:

* + Generally, scheme remains with principal employer, the Target, which remains liable to fund scheme.
  + Scheme becomes part of the buyer’s group;
  + If buyer not acquiring all of the scheme’s other participating employers, a mechanism is required to enable the other participating employers to leave the scheme
  + Exiting employers must discharge their share of the liabilities, including any S75 debt.

The Target is a participating employer of a multi-employer pension scheme:

* + Generally, scheme remains with principal employer;
  + Scheme remains part of the seller’s group;
  + The Target will need to leave the scheme on completion of the transaction;
  + The Target must discharge their share of the liabilities, including any S75 debt.

The Target to a group personal pension plan:

* + Obligation to contribute to the GPP remains with the Target;
  + If the seller’s group operated the plan, the Target may need to set up a new plan for employees to join immediately after the transaction.

(Relevant section of the manual is Part 4 Chapter 1.4.1)

# Describe the key stages of a transaction pertaining to share sales and business sales.

**10 marks**

Answer should cover:

* Due diligence:
  + buyer’s investigation Target company prior to deciding whether to proceed with the transaction;
  + solicitors, accountants, professional advisers report on all aspects of Target’s business;
  + includes Target’s financial position, properties, current disputes and pension arrangements;
  + information normally provided by the seller.
* Negotiation:
  + Once due diligence complete, parties negotiate final terms of the transaction;
  + Once agreed, terms documented in a Sale and Purchase Agreement;
  + Disclosure letter executed, detailing the information provided by the seller as part of the due diligence exercise
* Signing:
  + SPA signed by both parties once terms agreed;
  + Signing of the SPA does not constitute completion of the sale.
* Completion:
  + Terms of sale take effect at completion;
  + Signing and completion may occur simultaneously if there are no pre-conditions to completion;
  + Generally, completion takes place later, to allow time for any pre-conditions to be met.

(Relevant section of the manual is Part 4 Chapter 1.2.1 and 1.2.2)

# Outline the changes made to the law relating to pensions and divorce by the Welfare Reform and Pensions Act 1999 and the Civil Partnership Act 2004.

**5 marks**

Answer should cover:

* Welfare Reform and Pensions Act 1999:
  + Introduced the option of pension sharing for divorcing couples;
  + Effective for divorces occurring after 1 December 2000;
  + Pension rights had to be treated as any other asset and could be transferred from one spouse to another on settlement.
* Civil Partnership Act 2004:
  + Effective from December 2005;
  + Allows same sex couples to enter into a civil partnership with rights and responsibilities similar to the legal status of married couples;
  + Discretionary powers introduced for a court on dissolution of a civil partnership, including powers to make pension sharing and earmarking orders.

(Relevant section of the manual is Part 3 Chapters 2.2.4 and 2.2.5)