Core Unit 2 – Regulation of Retirement Provision

Mock Examination Notes

*Recommended Time: 1 Hour*

# The powers of the Pensions Regulator are defined in statute. Outline the additions to and adjustments of the TPR’s current powers following the Pension Schemes Act 2021, and provide examples of the regulatory action that can be taken TPR can take to protect the security of members’ benefits.

**10 marks**

Answer should cover:

* Additions/adjustments to powers:
	+ The threat of the new criminal offences may pose real challenges to decision making by company directors and wider stakeholders in businesses sponsoring DB schemes;
	+ The offences have a much wider scope than those guilty of ‘willful or reckless behaviour in relation to a pension scheme’
	+ Criminal penalties include unlimited fines and up to seven years in jail.
	+ The new contribution notice tests mean there will be the need for greater governance oversight and due diligence around dividend payments, refinancing and restructuring – by both company directors and by trustees.
	+ There may be a need to consider mitigation to the pension scheme under a wider range of corporate activities.
* TPR actions to put things right (state 5 from the following):
	+ issue an ‘improvement notice’ to individuals or companies, or a ‘third party notice’, requiring specific action to be taken within a certain time;
	+ take action, on behalf of a scheme, to recover unpaid contributions from the employer if the due date for payment has passed;
	+ where a wind-up is pending and members’ interests may be at risk, it can issue a ‘freezing order’; this order temporarily halts all activity within the scheme, so that it can investigate concerns and encourage negotiations;
	+ prohibition of trustees who it does not consider to be fit and proper persons for the role;
	+ imposition of fines where breaches have occurred; and
	+ prosecution of certain offences in the criminal courts.

(Relevant section of the manual is Part 1 Chapter 3.2.1)

# Outline the relevance of the Human Rights Act 1998 to occupational pension schemes.

**5 marks**

Answer should cover:

* Act came into force on 2 October 2000;
* Act only applies to public bodies, so it includes public sector pension arrangements but (generally) does not include private sector pension arrangements;
* Members of public sector schemes may be able to bring direct claims against the scheme’s trustees and/or sponsoring employers to enforce their human rights;
* Members of private sector schemes (generally) will not be able to bring direct claims against the scheme’s trustees and/or sponsoring employers to enforce their human rights;
* Act also applies to Court proceedings, the actions of the Pensions Regulator (TPR), investigations by the Pensions Ombudsman and to UK legislation, which must be read in a way that is compatible with the Human Rights Act 1998.

(Relevant section of the manual is Part 3 Chapter 1.3)

# Briefly describe the two main categories of trusts and the criteria that must be present in order for a trust to be valid.

**5 marks**

Answer should cover:

* Categories of trust:
	+ Private trusts - trusts for the benefit of an individual or class of persons;
	+ Public trusts - trusts established for some charitable purpose.
* Criteria present for a trust to be valid (“the three certainties”):
	+ certainty of intention - the settlor must show a clear intention to create a trust;
	+ certainty of subject matter - the trust property must be clearly identified or identifiable;
	+ certainty of ‘objects’ - the beneficiaries of the trust and the benefits that they are to receive must be certain

 (Relevant section of the manual is Part 2 Chapters 1.2 and 1.4)

# List 5 common general provisions contained in a Definitive Trust Deed.

**5 marks**

Answer should include 5 from the following:

* effective date for the adoption of the trust provisions and rules;
* parties to the deed;
* appointment of the first trustees of the scheme;
* definitions used in the deed and in the rules;
* a statement that the scheme assets are held upon irrevocable trusts;
* power of amendment;
* provision for participation of new employers and withdrawal of existing employers;
* special and general powers to augment a member’s benefits;
* provision for change of principal employer;
* provision setting out the circumstances in which the scheme will be wound up.

(Relevant section of the manual is Part 2 Chapter 3.1)

# List the arrangements a participating employer departing from a DB scheme may enter into in order to reduce the amount of section 75 debt triggered as a result of the exit from the scheme.

**5 marks**

Answer should cover:

* a withdrawal arrangement;
* an approved withdrawal arrangement;
* a scheme apportionment arrangement;
* a flexible apportionment arrangement;
* a regulated apportionment arrangement.

(Relevant section of the manual is Part 4 Chapter 1.8.1)

# In relation to pensions liberation, outline the typical features of a pension scam and list the key risk indicators for trustees and members.

**10 marks**

Answer should cover:

* Key features:
	+ Members targeted by unsolicited text messages and cold calling;
	+ Members offered pension reviews, higher returns on investments, pension loans and upfront cash to lure them into transferring.
	+ Members may be pressurised by liberators to push through the transfer and sign the paperwork quickly;
	+ Generally, members offered the opportunity to obtain pension monies before their normal minimum pension age (age 55);
	+ New pension flexibilities from 6 April 2015 mean members over age 55 are now being targeted;
* Key risk indicators for trustees and members:
	+ newly established schemes with little or no formal documentation;
	+ cold calling or unsolicited text or emails;
	+ pressure to force through the transfer quickly;
	+ encouragement to take cash and reinvest it;
	+ claims to allow access to pension before age 55;
	+ transfers of money into an overseas investment.

(Relevant section of the manual is Part 6 Chapter 2.1)

# Outline how a person’s total pension rights are valued in order to test the benefits against the Lifetime Allowance. Your answer should include a worked example of a valuation.

**10 marks**

Answer should cover:

* HMRC has laid down a set of criteria for making such a valuation when pension rights are crystallised:
* Money purchase scheme - the value of the pension rights is taken as the fund value at the time of crystallisation;
* Defined benefit scheme - the value is the amount of any cash sum taken plus 20 x the starting pension;
* If a person is receiving a pension that was put into payment prior to 6 April 2006 (i.e., under the previous tax regime – a “pre-commencement pension”) then this is also tested;
* Pre-commencement pensions are tested at the time of the first post 6 April 2006 Benefit Crystallisation Event;
* For that test, pre-commencement pensions are valued by multiplying the pension in payment at the time of the first Benefit Crystallisation Event by 25;
* The value of the pension is then deducted from the member’s Lifetime Allowance;
* Worked example setting out a basic calculation of the value of pension rights and the test against the Lifetime Allowance.

(Relevant section of the manual is Part 1 Chapter 1.3.2)