Core Unit 2 – Regulation of Retirement Provision

Assignment 2 Notes

*(Part 2 – Trust Law, The Role of Trustees and Establishing a Trust-Based Pension Scheme)*

*Recommended Time: 1 Hour*

# List the requirements of trustees when exercising trustee discretion.

**5 marks**

Answer should cover:

* ask themselves the correct question, in accordance with the law and the relevant provisions of their

scheme;

* consider all relevant information;
* not consider any irrelevant information;
* exercise the discretion themselves (unless there has been a valid delegation); and
* not act capriciously, in other words the trustees’ decision should not be perverse or irrational (i.e., a

decision which no reasonable body of trustees could have reached).

(Relevant section of the manual is Part 2 Chapter 2.12)

# Where schemes choose to insure scheme benefits, outline the key provisions of the insurance contract and the typical specifications of the insurance policy.

**10 marks**

Answer should cover:

* Contract will consist of:
  + the proposal form completed by the trustees or employer;
  + the acceptance document issued by the insurance company; and
  + the terms referred to in the proposal form and acceptance document;
* Policy should specify:
  + to whom the benefits are payable;
  + circumstances in which they are payable and any conditions to which payment is subject;
  + the amounts payable;
  + In addition, a group policy should include:
    - the rates of premium to apply and the terms on which the insurance company can revise them;
    - the terms on which the insurance company will include further members;
    - the terms on which the insurance company will grant further increases in benefits;
    - provisions dealing with payments of benefits other than at normal retirement date (i.e., on early or late retirement);
    - details of pension (or cash) options; and
    - where the policy participates in profits, details of bonus distributions

(Relevant section of the manual is Part 2 Chapters 3.3.1 and 3.3.2)

# Name five types of trustee who may be involved in running a pension scheme and state the main feature applicable to each.

**10 marks**

Answer should cover any 5 of:

* Individual Trustee – any person over age 18, with some specific exceptions;
* Corporate Trustee – a company which is formed to act as a trustee with its powers in constitutional/governing documents;
* Trust Corporation – a corporate trustee formed under UK or EU law, and meets certain minimum statutory requirements;
* Custodian Trustee and Committee of Management – trustee functions may be separated and Custodian Trustee holds the scheme assets while a committee of management is has responsibility for the administration of the scheme;
* Pensioner Trustee - pre 6 April 2006, HMRC required a SSAS to have one pensioner trustee;
* Independent Trustee – a trustee with no connection with the employer or the scheme;
* Member-nominated Trustee – nominated and selected using a process involving some or all of the scheme members;
* Professional Trustee – an individual who is an expert or considers themselves an expert in general trustee matters, and who is remunerated.

(Relevant section of the manual is Part 2 Chapter 2.1.2.)

# Give a brief outline of the following:

# what constitutes a breach of trust;

# the possible methods for amending the provisions of a trust; and

# the circumstances where a trust may be terminated.

**10 marks**

Answer should cover:

* Breach of trust occurs when a trustee:
  + acts outside the terms of the trust;
  + exercises his power for an improper purpose;

fails to discharge his legal duties;

* Methods for amending the provisions of a trust:
  + exercising a power of amendment contained in the trust deed, subject to its precise terms;
  + obtaining the consent of all the beneficiaries, provided they are not minors or suffering from incapacity;
  + exercising a statutory power to amend the trust; or
  + obtaining a Court order or other authorisation from the Court to modify the terms of the trust.;
* Termination of a trust:
  + where the trustee has distributed its proceeds to the beneficiaries;
  + where there are express terms under the trust deed which bring the trust to an end.

(Relevant section of the manual is Part 2 Chapters 1.6, 1.7 and 1.8)

# Outline the main features of the process to register a pension scheme with HMRC.

**5 marks**

Answer should cover:

* the Scheme Administrator (usually the trustees or an agent for the trustees) must register with HMRC as

a user of its Pension Schemes Online Service;

* once this registration process is complete the Scheme Administrator applies online to register the

scheme, giving details about the scheme and who set it up and making a declaration that:

* + the scheme meets the Finance Act 2004 criteria for a pension scheme (e.g., it provides benefits on

retirement, death, reaching a particular age or incapacity);

* + the information on the form is correct;
  + the scheme documents do not entitle any person to unauthorised payments;
  + the Scheme Administrator is a fit and proper person.

(Relevant section of the manual is Part 2 Chapter 3.2)

# List the information that must be included in an annual benefit statement for a defined contribution pension scheme.

**5 marks**

Answer should cover:

* a statement of contributions paid;
* details of the accrued fund;
* the transfer value, if less than accrued fund;
* the options available at normal retirement age; and
* wording that states that a member’s benefit will depend on several factors including the amount of

contributions paid, investment performance and the cost of converting pension into an annuity.

(Relevant section of the manual is Part 2 Chapter 2.8.2)

# List five provisions relating to the administration of a pension scheme that would typically be found in the Definitive Trust Deed and Rules.

**5 marks**

Answer should include any 5 of the following :

* provisions relating to periods of absence (including temporary absence, maternity leave, paternity leave,

adoption leave and parental leave);

* giving notices to beneficiaries;
* mechanics of payment of benefits (e.g., timing, what to do if the recipient is a minor/mentally ill);
* requirement for members to provide trustees with information regarding age/health/marital status, etc.;
* what happens to unclaimed benefits;
* incapacity of beneficiary;
* employer’s lien or set off (i.e., ability for employer to recover moneys owed to it by a member of the

scheme (usually) due to the member’s criminal, negligent or fraudulent act);

* prohibition on the assignment of benefits.

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