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*

# List the powers that the Information Commissioner’s Office (ICO) has to enforce the data protection principles under the Data Protection Act 2018 .

**5 marks**

Answer should include 5 of the following:

* conduct assessments or audits to check organisations are complying with the DPA;
* serve information notices requiring organisations to provide it with specified information within a certain

time period;

* serve enforcement notices and ‘stop now’ orders where there has been a breach of the DPA, requiring

organisations to take (or refrain from taking) specified steps in order to ensure they comply with the law;

* issue penalty notices for serious breaches;
* prosecute those who commit criminal offences under the DPA; and
* report to Parliament on data protection issues of concern

(Relevant section of the manual is Part 3 Chapter 1.1.5)

# Describe how a pension loss is calculated when an employee who is a member of a defined benefits scheme is compensated for loss of pension contributions following a successful claim for wrongful dismissal.

**5 marks**

Answer should cover:

* a comparison is made between pension rights at the date of leaving and the pension rights that

would have accrued at the end of their notice period;

* the difference is the pension loss, calculated by actuary calculates the value of this difference unless the employee is offered an additional period of service in the pension scheme to cover the notice period;
* Several factors will be taken into account including:
	+ any pay rises the employee might have been entitled to during the notice period;
	+ the fact that the employee is being paid the money before he would have been entitled to it;
	+ any new job the employee may obtain, as this is likely to offer some form of pension thus mitigating the loss;
	+ any contributions that the employee would have had to make during the notice period.

(Relevant section of the manual is Part 3 Chapter 1.4.6)

# Name the three main ways of dealing with pension benefits on divorce and outline the main features of each.

**10 marks**

Answer should cover:

# Offsetting:

# Total value of pension benefits offset against other assets;

# Offsetting does not vary between UK jurisdictions (unlike the other two methods);

# Simples way to deal with pension benefits on divorce;

* Pension Attachment Order/Earmarking:
	+ - Part of the member’s benefit set aside for the spouse;
		- Amount is directed by the Court;
		- Takes effect when member’s benefits come into payment;
		- Pensions and lump sums can both be earmarked but
* Pension Sharing:
	+ - Applicable to divorce proceedings from 1 December 2000 only;
		- Pension Sharing Order sent to scheme administrator who must implement it;
		- Applies to all pension assets belonging to both parties;
* Some differences between assets used in Scotland.

 (Relevant section of the manual is Part 3 Chapter 2.2.7)

# List the common pensions issues that may arise from a share sale and the resultant effect on the Target company’s pension scheme in each case.

**5 marks**

Answer should cover:

* The pension issues arising will depend on the role of the target in relation to its pension scheme;
* Target is sole employer of an occupational pension scheme – pension likely to remain with the Target;
* Target is principal employer of a multi-employer occupational pension scheme – scheme generally remains with principal employer;
* Target is participating employer of a multi-employer occupational pension scheme – scheme generally remains with principal employer;
* Target contributes to a group personal pension plan – obligation to contribute to the GPP will remain with the Target after the sale.

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

# Outline in the circumstances that would determine the pension warranties and indemnities that a buyer would normally request under a Sale and Purchase Agreement, and list the confirmations that a set of pension warranties would typically include.

**10 marks**

Answer should cover:

* The warranties and indemnities that a buyer would normally request under an SPA will depend upon:
	+ the structure of the transaction (i.e., whether it is a share sale or a business sale);
	+ the nature of the Target’s pension arrangements and whether the buyer will be assuming any liability for those arrangements as a result of the transaction;
	+ the results of the buyer’s due diligence; and
	+ the respective bargaining position of the parties.
* A typical set of pension warranties will normally include confirmation that:
	+ all pension and life insurance schemes in respect of which the Target has a liability to contribute (now or in the past) have been fully disclosed to the buyer;
	+ all contributions due to such arrangements have been paid, and paid on time;
	+ there are no disputes in relation to the Target’s pension arrangements;
	+ the trustees of those arrangements (if any) and the Target have at all times complied with the governing documentation of those arrangements and all applicable laws and requirements;
	+ the arrangements (as appropriate) are registered with HMRC;
	+ all documentation governing the arrangement and member communications and data has been

disclosed.

(Relevant section of the manual is Part 4 Chapter 1.3.3)

# When should a company consider seeking clearance from the Pensions Regulator, and outline the various categories of Type A event, giving examples.

**10 marks**

Answer should cover:

* Should seek clearance in the relation to events that are “materially detrimental to the scheme’s ability to meet its pension liabilities” (“Type A events”);
* All Type A events will do one or more of the following either immediately or in the future:
	+ prevent recovery of the whole or part of a section 75 debt;
	+ prevent a section 75 debt from becoming due or compromising the section 75 debt;
	+ reduce the amount of the debt which would otherwise become due;
	+ weaken the strength of the employer’s financial covenant in respect of the scheme;
	+ 2 categories - employer-related events and scheme-related events;
	+ Employer- related event only a Type A event if scheme has a deficit on the highest of the prescribed bases;
* Examples of employer-related events include:
	+ a change in a group’s structure;
	+ business sales from an employer or wider group;
	+ Scheme-related event may be a Type A event, whether or not scheme has a deficit on the prescribed bases;
	+ Scheme-related event may have a direct impact on the employer’s legal obligations to the scheme;
* Examples of scheme-related events include:
	+ agreements to compromise a section 75 debt;
	+ non-payment of all or any part of a section 75 debt for an unreasonable period;
	+ an arrangement which has resulted in preventing a section 75 debt from being triggered.

(Relevant section of the manual is Part 4 Chapter 1.8)

# Outline the relevance of the Bribery Act 2010 to the trustees of pension schemes.

**5 marks**

Answer should cover:

* 3 of the 4 offences relevant under the Act:
	+ giving a bribe;
	+ taking a bribe;
	+ failure by a corporate organisation to prevent bribery by someone associated with it;
* Definition of bribe – “a financial or other advantage” and can include corporate hospitality of gifts;
* Corporate offence is only relevant to corporate trustee and requires commercial activity;
* Penalties for breaching the Act:
	+ Individual – up to 10 years imprisonment, unlimited fine or both;
	+ Company – unlimited fines, can be imposed on both the company and its individual directors.

(Relevant section of the manual is Part 3 Chapter 1.7)