



Pinsent Masons

Pensions

making...scheme changes...easier

A "making it easier" guide to pensions law for trustees and employers

Introduction

Pension schemes are around for a long time, so it's not surprising that they are sometimes changed. Some changes introduce a different way of calculating benefits or contributions. Others are designed to reflect changes in the law, such as changes in the tax laws or new age discrimination laws. Whatever the reason, it is important that all changes are made properly, or else they might be invalid.

10 steps to successful scheme changes

1. The procedure for changing your scheme will be set out in the **scheme rules**. This must be followed. For example, if it says you need a deed to change the scheme, you must have a deed.
2. The most common procedure requires **the agreement of the employer and the trustees** to the change. Where the trustees' agreement is required, they must consider the impact of the change on the scheme members.
3. Changes cannot worsen **benefits which have already been earned**, unless the members affected by the change consent to this.
4. Some schemes are more restrictive, and also prohibit any change to **future benefits** - although this is rare. More commonly, schemes sometimes prevent certain types of change. Each scheme is different, so it is important to check what your scheme says.
5. Where an employer is proposing a benefit change, any **conflicts of interest** for the trustees should be considered. For example, do they owe duties to the employer, or are they members of the scheme? Conflicts of interest for advisers should also be considered.
6. It is usually necessary to **consult with the affected members** before making significant benefit changes. This involves explaining the changes to members, and listening to their concerns. Consultation should usually last for at least 60 days.
7. **Employment contracts** should also be checked, to ensure that changing the scheme does not breach these. Often, employment contracts are loosely worded, and allow the scheme to be changed without the member's agreement.

Pensions law can be tricky... but it doesn't have to be. These 'making it easier' guides explain key issues in simple terms, giving practical help to trustees and employers.

The series is growing; additional copies can be downloaded from www.pinsentmasons.com/pensions.

Current topics include:

- Death Benefits
- Using Advisers
- Becoming a trustee

Comments and ideas for further topics are welcome...

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8. Some rule changes need a **certificate from the scheme actuary**, for example if they affect contracted-out final salary benefits. This should be considered at an early stage.
9. **If a scheme cannot be changed** in the way that is desired, for example because the scheme prohibits a certain type of change, it may be possible to achieve the same result in other ways. For example, it may be possible to agree a change directly with the members. This is complicated, and changes are usually only made this way as a last resort.
10. If the change involves **members ceasing to earn benefits**, it is important to check that this will not result in the scheme being wound up.

Further reading

Take a look at the Pensions Regulator's statement about consulting with scheme members about changes, and its guide to changes affecting benefits which have already been earned:

<http://www.thepensionsregulator.gov.uk/docs/employer-duty-to-consult-on-scheme-changes.pdf>

<http://www.thepensionsregulator.gov.uk/docs/code-10-modification-of-subsisting-rights.pdf>

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Should you have any questions please contact your usual Pinsent Masons adviser who will be able to assist you further.

This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.

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