

## **Employer duty to consult on scheme changes**

The Department for Work and Pensions (DWP) has recently commenced consultation on a package of amending regulations which include a proposal to give the Pensions Regulator the power to impose a financial penalty for breaches of the employer consultation requirements.

This would seem an appropriate time to remind employers of their duty to consult with the representatives of as many affected members, or with as many affected members, as is reasonably practicable before making certain specified changes to future pension arrangements. (Affected members are defined in legislation as the active or prospective members of the scheme to whom the proposed change relates). The consultation process is not onerous and we expect employers to carry it out in good faith, taking all responses into account.

The Pensions Regulator supports the obligation on employers to consult. We believe it is important to allow employees to provide their views on proposed changes to pension schemes before any final decisions are made as to whether or not to implement these changes. We also encourage employers to consider consultation on any matter that would affect the growth of employees' pension rights even if there is not a statutory requirement to do so.

In the majority of cases we expect employers to comply in full with the requirement to consult. The employer should provide as much information to initiate the consultation period as is necessary to enable those affected to understand the implications of the proposal and the context in which any decisions regarding the proposal have been made. The employer should also consider the quantity and complexity of the information that is being provided and allow an appropriate time period for carrying out the consultation. In any event, the consultation period must not be less than 60 days.

The employer and any person consulted have a duty to work in a spirit of co-operation, taking into account the interests of both sides. The regulator would therefore not expect to see instances of coercion or inducement. Employers should not make employees feel that the proposals will be implemented irrespective of how they respond to the consultation, for example, by seeking decisions during the consultation period on options arising out of the proposals. Employees who have not agreed to the proposals should not be treated any differently than those who have agreed to them and any employee who feels they are being unfairly treated during the course of the consultation may consider taking the matter to an employment tribunal.

If anyone other than the employer has proposed a change (for example, the trustees) that person must satisfy themselves that the consultation has been carried out in accordance with the regulations. We would also remind employers or anyone else who has proposed a change that they must consider the responses received before making any final decisions regarding implementation. We expect an adequate time period to be allowed for this consideration.

We realise that it is not always practical to consult, for example, when restructuring is taking place and there is an immediate threat to either the scheme or employees' jobs if the process is delayed. In such cases we urge employers to provide as much information as possible to those affected even if only on a confidential or restricted basis and to apply the longest practicable timescale before the changes are implemented.

The regulator may agree to waive or relax any of the requirements in connection with the duty to consult if it is satisfied that it is necessary to do so in order to protect the interests of the majority of the scheme members.

The employer duty to consult is set out in sections 259-261 of the Pensions Act 2004, the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 as amended, and the Occupational Pension Schemes (Consultation by Employers) (Modification for Multi-employer Schemes) Regulations 2006.

For further detailed information about the regulations and compliance with them, please refer to the DWP guidance which is available on their website at: <http://www.dwp.gov.uk/docs/occ-personal-pens-schemes-regs06.pdf>. Any queries employers still have after reading the DWP guidance should be directed to the regulator.