

Issue 101: Early retirement faces a "cliff edge" change

While the issues of living longer are looming large for pension schemes at present, at the other end of the pension spectrum, changes are soon to come into operation to the lowest age that most people can retire. From 6 April 2010, this will increase from 50 to 55, with the only exceptions being for those in ill-health - who can retire at any age - and those with a 'protected pension age' (which we discuss below).

Among other implications, this means that if some scheme members who, subject to consent, are eligible to retire early, delay their decision, they may have to wait for up to five years for a further opportunity.

Who is affected?

The change potentially affects those who will be aged between 50 and 55 on 6 April 2010. These members may be able to start drawing their pension benefits before 6 April 2010. However, there will be a window of up to five years, between 6 April 2010 and the member's 55th birthday, during which the member will not be able to retire unless they have a protected pension age.

It may also be significant for any younger members who have been planning to retire in their early fifties, and will now not be able to do so.

This will be a sudden 'cliff edge' change, as most schemes have not amended their rules to phase in the change earlier than required.

Who can have a 'protected pension age'?

Members of occupational pension schemes who are entitled to take their benefits between ages 50 and 55 will now be protected. Those who are entitled to take their benefits below age 50 are already protected.

Being 'entitled' to benefits means that the member does not require any consent in order to take their benefits at the relevant age. Benefits can be reduced on account of early retirement, under the scheme rules, without affecting the protected age. The protected age can also be dependent on certain contingencies, such as redundancy or leaving service, but not the exercise of future discretion (such as a requirement for employer or trustee consent).

Providing the conditions set out below are met, then retirement at the relevant age is an automatic right - neither the member nor the scheme have to apply for protection. The right is also generally maintained if the member is part of a bulk transfer between schemes.

For members of occupational schemes the conditions that must be met are:

- The member must have had an actual or contingent entitlement to retire at that age on 5 April 2006;
- The scheme's rules as at 10 December 2003 must have provided for such entitlement;
- That provision would have applied to the member had he/she been a member of the scheme on 10 December 2003;
- The member must take all his/her benefits from the scheme in one go; and
- If the protected pension age is 50 or over, the member generally cannot be employed by the same employer, or a related employer, for six months following retirement (or one month in a materially different role).

For those with personal pensions, the conditions are more restrictive. There is only protection for those currently entitled to take benefits before age 50. This only applies to individuals in prescribed occupations, such as sportsmen.

Actions required

There are a number of actions that trustees and employers need to take in the run up to 6 April 2010:

- Ensure that members know about and understand the change - members may have been told about this change when it was introduced as part of the 2006 tax changes but now that the change is imminent it is worth reminding members, ;
- Consider whether there will be a surge in early retirement applications from members in their early fifties who will not be able to retire for a period after 6 April 2010;
- Trustees of defined benefit schemes may need to assess their cashflow requirements to meet any increase in retirements over the next year, particularly if members are likely to take the maximum tax-free lump sum;
- If consent is required for early retirement between ages 50 and 55, review your current consent policy to ensure it remains appropriate for a potential rise in applications; and
- Establish whether any members will now have a protected pension age.

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