



THREE COUNTIES

Financial Management Services Limited

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Contracting Out - what should I do?

Millions of taxpayers who swapped part of their state pension for a private policy are being warned to rejoin the state scheme urgently or risk being worse off in retirement.

From 1988 onwards, about 6m people contracted out of the state top-up pension - formerly known as Serps - into plans called appropriate personal pensions (APPs). A series of reports, most recently from the Financial Services Authority and Which?, warn that most people may have lost out financially by switching.

Many insurers have written to customers, strongly recommending that they rejoin the state second pension (S2P), as Serps is now called. However, apathy has led to comparatively few policyholders making the move.

This week Legal & General will once again urge customers to rejoin S2P. On Thursday it will send out 120,000 letters advising policyholders to review their situation urgently. Adrian Boulding, L&G's pensions director, said: "We are asking people to consider where their priorities lie. If they want to maximise the pension they receive, then they should contract back in."

A smattering of companies, including Norwich Union, HBSC and Equitable Life, are so concerned at the implications that they have unilaterally contracted all APP policyholders back into the state pension, unless they have specifically objected. However, these are customers who bought policies directly from the companies and do not include the hundreds of thousands of people who bought via independent financial advisers.

From next April the amount the Government pays into APPs in lieu of state benefits will be cut savagely. Experts are warning taxpayers to investigate their position urgently. If they are contracted out of S2P, they should consider contracting back in immediately - although it may be in the best interests of a minority to remain in the private plans.

"The arguments in favour of contracting back into the state system become even stronger in April, when the Government cuts the National Insurance rebates yet again," says Tom Boardman of Prudential. "It will simply not be enough to replace the lost benefits."

The Employment Equality (Age) Regulations

These came into effect on 1st October 2006 bringing age equality in line with other areas of equality such as sex and disability.

For many years employment specialists have shied away from financial services as 'not a key' element of their work and few referrals (if any at all) have been made to independent financial advisers. However, with the advent of even more discrimination laws financial services should now be at the top of every employment specialist's agenda.

Traditional employee management and Human Resource functions will require altering to fit in with the new regulations, but the greatest impact of age discrimination legislation will be on employee benefits.

At present many employers expect their workforce to retire at a set age and for many, especially larger, employers this is when the employee will become entitled to receive their occupational pension scheme benefits. However having a set age at which employees must retire is now quite clearly in breach of the new age discrimination laws and employers can no longer 'force' employees to retire at 60 or 65 unless they can 'objectively justify' that continuing to work is impractical due to issues such as health and safety or employment planning.

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In fact, under the new rules, employees' rights will widen to include such aspects as the right to receive occupational pension scheme benefits without actually retiring – effectively bringing occupational scheme benefits in line with personal pensions and the ability to gain full or partial benefits whilst continuing to work.

This means that as well as amending office manuals and recruitment processes, employers must also ensure a complete review of current employee benefits – with special attention given to any existing pension benefits and rights to scheme entry.

Employers should check that, unless they can objectively justify to the contrary, all employees no matter what their age have access to the scheme and that all employees have a right to access their benefits without having to take retirement and that employees can continue to accrue benefits after retirement. Traditional schemes which only permitted retirement before a certain age on the consent of the employer and/or trustees will also need amending. It is not only defined benefit schemes which will need reviewing; many defined contribution schemes have differing levels of contributions based on age and again these will need to be amended to bring them in line with the new age discrimination requirements. Likewise death in service and health insurance schemes, which have an automatic age at which cover ceases, will also need to be amended to ensure that employees who choose to stay working beyond the usual end date continue to receive the same employment benefits as their younger colleagues.

All this means employers need clear financial advice and co-operation between their Employment Law specialist and adviser.

Mental capacity is not just an age issue

The Mental Capacity Act 2005 is due to come into effect in April 2007 and the sweeping changes it brings means that once again independent financial advice will form a key part of the professional advice given to clients in relation to their own and their loved ones' mental capacity.

The new Act is underpinned by a set of five key principles:

- a presumption of capacity – that all of us has the right to make our own decisions unless it can be proved otherwise
- that individuals should be supported to make their own decisions before their right to make their own decisions is taken away
- that making unwise decisions does not mean that an individual lacks capacity to continue to make their own decisions
- that anything done for or on behalf of a person without capacity must be done in their best interests and
- that anything done for or on behalf of a person without capacity should be the least restrictive of their basic rights and freedoms

The Act will also affect how clients plan for future incapacity with the removal of Enduring Powers of Attorney to be replaced by the new Lasting Powers of Attorney. Although similar to existing EPAs the new LPAs will cover healthcare and welfare matters as well as financial matters and have the ability to appoint a designated decision maker, a loved one or professional adviser, to take control over their affairs should the individual lose capacity at a future date.

These designated decision makers or court appointed deputies (to replace the current Court of Protection receivers) will have a statutory duty of care to ensure that the fundamental principles of the Act are applied and this means ensuring that financial matters are properly maintained and suitably qualified and experienced advice gained where necessary. This is where the need for joined up thinking is paramount. At the point of writing a new LPA it is important that clients are made aware of the legal implications of the document and the responsibilities placed upon designated decision makers and the need for them to receive financial advice before making any decisions in relation to the financial matters of the individual.

For further information please contact:-

Peter West (Managing Director) pww@three-counties.co.uk

Steve Cann (Director) sec@three-counties.co.uk

Simon Walker (Director) sgw@three-counties.co.uk

John Baxter (Director) John.Baxter@three-counties.co.uk

Peter Braisby (Client Services Manager) pab@three-counties.co.uk

Les Cain (Office Manager) Leslie.Cain@three-counties.co.uk

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CALE CROSS HOUSE 156 PILGRIM STREET NEWCASTLE UPON TYNE NE1 6SU

Telephone (0191) 230 3034 Facsimile (0191) 230 3035 www.three-counties.co.uk

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Tel: 0191 230 3034