

Government to Address Virgin Media Issues

The Government has just announced that it will address the issues caused by the Virgin Media case by introducing legislation to permit retrospective actuarial confirmation of benefit changes. This will then give trustees and employers the ability to validate past changes and allow them to clear up any uncertainties over scheme benefits.

Background

In the period between 6 April 1997 and 5 April 2016, pension schemes could contract-out of the State Second Pension (previously the State Earnings-Related Pension Scheme, or SERPS) on a salary-related basis if they passed a "Reference Scheme Test". Section 37 of the Pension Schemes Act 1993 provided that, if the rules of such a scheme were to be amended in a way that affected members' benefits, then the Scheme Actuary had to confirm at the time of the amendment that the scheme would continue to meet the Reference Scheme Test after the amendment had been made.

The decision of the High Court in June 2023 in the case of Virgin Media v NTL Pension Trustees, upheld by Court of Appeal in July 2024, was that if the appropriate actuarial confirmation was not obtained at the time, then past amendments that made changes to members' benefits are void.

The Government's response

The Government was aware that this judgment potentially affected many pension schemes and their sponsoring employers, as it cast doubt and uncertainty over the validity of past amendments made to the rules of contracted-out schemes. As such, the Government has recognised that schemes and sponsoring employers need clarity around scheme liabilities and member benefit levels in order to plan for the future. The Government has therefore announced that it will introduce new legislation. This legislation will give affected pension schemes the ability to retrospectively obtain written actuarial confirmation that historic benefit changes met the necessary standards.

Comment

We commend the Government for responding to the pension industry's appeals for help to resolve the uncertainty created by the Virgin Media case, and enabling this problem to be resolved.

If you would like to discuss any of these matters further, please get in touch with your usual contact at Cartwright.

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