

Jersey pension reforms: end of the transitional provisions - actions now required

UPDATE

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With the introduction of the Jersey pension reforms on 1 January 2015, a number of transitional provisions were also provided to allow sponsoring employers and trustees to continue to administer existing schemes in accordance with the law as it stood on 31 December 2014.

However, these transitional provisions will come to an end on 31 December 2017 or (in one case, see below) 31 December 2019. Decisions therefore need to be taken as to how such schemes should be managed going forward.

We set out below the relevant provisions that employers, trustees and administrators of approved Jersey schemes currently relying on the transitional provisions will need to consider before the end of 2017. Mourant Ozannes has advised a number of schemes in relation to the relevant issues already and would be pleased to assist with any specific queries in this area.

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Approval of multi-jurisdictional schemes

With effect from 1 January 2015, any new multi-jurisdictional scheme established in Jersey was required to seek approval from the Comptroller under Article 131 of the Income Tax (Jersey) Law 1961 in respect of its Jersey members and under Article 131A in respect of its non-Jersey members.

Multi-jurisdictional pension schemes established under Article 131 before 1 January 2015 were, under the transitional provisions, automatically approved under Article 131A for a two year period in respect of their non-Jersey members.

However, this transitional provision will expire on 31 December 2017. After this date, all multi-jurisdictional schemes in Jersey, whether new or already established, will be required to seek approval under Article 131A for that part relating to non-Jersey members.

Trustees will therefore need to seek specific approval from the Taxes Office in respect of that part of their scheme relating to non-Jersey members in order for such part to continue to be subject to Article 131A approval after 31 December 2017.

Advice should therefore be sought now to ensure that approval from the Taxes Office is obtained prior to the end of 2017.

Maximum benefit provisions

The restrictions on the maximum amount of pension a member may receive from an approved Jersey scheme were lifted under the Jersey pension reforms. However, schemes which wish to continue to operate such caps on benefits are permitted to do so.

Whilst some schemes applying maximum benefit criteria expressly set out the limits on benefit payments within their rules, other arrangements instead look to the maximum amount permitted under Jersey law.

Transitional provisions were therefore put in place in respect of schemes established before 1 January 2015 which invoked such limitations by reference to legislation alone. Under the transitional provisions, such schemes were entitled to use the caps in place on 31 December 2014, as set out under the former tax rules.

However, these transitional provisions will expire on 31 December 2017. It follows that, before this date, schemes will have to decide whether to: (i) remove maximum pension restrictions; or (ii) 'hard wire' in limits into the scheme rules.

Regardless of which option is used, an amendment to the scheme rules will be required in many cases. Should option (ii) be pursued, trustees in particular will need to give careful consideration to any limit to be imposed in light of their fiduciary duties. Advice should therefore be sought on the level of such a cap and how it should be administered going forward.

Looking ahead – repayment of contributions

Approved Jersey schemes established on or after 1 January 2015 are required to restrict the repayment of contributions to any former member who has been a member of the scheme for a period of five years or less.

Approved Jersey schemes established before this date which do not otherwise include a timeframe for the repayment of contributions to former members may continue to follow their scheme rules until 31 December 2019. However, a time cap on payment needs to be implemented in time for 1 January 2020.

It may therefore be helpful for schemes to review their rules and examine this point with a view to introducing a time cap of up to five years in addition to any other amendment required ahead of the end of the transitional provisions in order to consolidate any scheme amendments.

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