

A GUIDE TO THE WINDING-UP OF A COMPANY PENSION PLAN

This is not a consumer advertisement. It is intended for trustees of pension schemes and their advisers only.

▶ ABOUT LEGAL & GENERAL.

The Legal & General Group, established in 1836, is one of the UK's leading financial services companies. As 30 June 2016, the total value of assets across the group was £841.5 billion, including derivative assets. We also had over nine million customers in the UK for our life assurance, pensions, investments and general insurance.

INTRODUCTION.

The purpose of this guide is to explain the process that is followed both before and after the decision has been made to close a company pension plan.

The information provided is not intended to be exhaustive, and we urge trustees to seek independent advice, including legal advice where appropriate.

Trustees and employers can also refer to The Pensions Regulator for guidance as necessary:
www.thepensionsregulator.gov.uk/trustees/managing-your-dc-scheme.aspx.

Winding-up this type of pension scheme is not a simple operation, and even with the willing co-operation of all parties it can take several months to complete.

It is important to ensure that all the relevant parties are aware of their respective responsibilities, and that reviews are set throughout the process to ensure that the correct actions have been taken as and when appropriate.

INCLUDED IN THIS GUIDE:

- A general overview of the winding-up process.
- Specimen trustee resolutions.
- Specimen member announcement letter.

Legal & General will be pleased to offer further guidance as necessary throughout the process, and help deal with enquiries from members via the employer/trustee. We will also assist with submissions to HM Revenue & Customs (HMRC) departments with the trustees, where required.

Most of what we do will be covered by the administration and investment charges made under the scheme, but any additional non-standard work leading to further charges will be identified and agreed in advance of work commencing.

A glossary of terms is provided on page 7. Whenever terms covered in the glossary appear in the main text, we've highlighted them in yellow.

SCHEME RESPONSIBILITIES.

EMPLOYER

A company pension plan is established by the employer to provide retirement benefits for its employees - the scheme members. The employer has a number of duties in relation to the effective management of the scheme - including, for example, collecting and paying contributions to the scheme.

Further details on the duties of the employer can be found on The Pensions Regulator's website:

www.thepensionsregulator.gov.uk/employers/managing-a-scheme.aspx.

TRUSTEE

The trustee of the scheme will have a number of different legal obligations with an overall objective to ensure the scheme is well run and is delivering good member outcomes.

Duties will range from ensuring the scheme is administered efficiently, communications are structured to enable members to make good decisions and that there is an appropriate governance framework in place.

Legal & General have prepared a separate guide on the obligations for trustees in relation to governance requirements. Further details are available on request.

In many cases the employer will also act as the sole (corporate) trustee. In this case it will be the directors of the partners who will be responsible for the duties that the trustees undertake as part of that role.

Some schemes have named individuals as trustees, and these individuals continue to retain their trustee responsibilities regardless of whether or not they continue to be employed. If there is a need to change named trustees because, for example they no longer have a connection with the employer or scheme, or they have no experience of winding-up a scheme, the retirement or removal of the trustee(s) will need to be documented as early as possible. Legal & General will be able to provide specimen wordings on request.

PROVIDER

Legal & General act as the scheme provider. As part of that role we provide investment funds for the scheme, day to day administration of the member benefits and provide general support to the trustees and employer in satisfying their duties.

Reporting obligations in relation to the scheme, both to The Pensions Regulator and to HMRC will remain with the trustees and this is not a function we can undertake for the trustees.

ADVISER

The process involved in winding-up a scheme can, in some cases, be complicated. Trustees have a duty of care towards the scheme members and where there are complex benefits such as **Scheme Specific Tax-Free Cash** or where there are product features, for example With Profit guarantees, the decision to **wind-up** the scheme and offer members an alternative arrangement needs to take these into account.

Trustees need to consider a wide range of factors as part of the **wind-up** process and Legal & General would always recommend that trustees obtain professional advice to ensure that the **wind-up** process is run in a compliant manner and delivers good member outcomes.

DISCONTINUANCE.

The employer usually starts the '**discontinuance**' process by deciding to stop paying contributions to the policy within the scheme. The decision may be taken for a number of reasons - there may be no eligible employees, or contributions may need to be directed to a scheme that complies with the auto enrolment requirements.

Stopping payment of contributions (**discontinuance**) to the policy does not automatically mean that the **wind-up** process for the scheme will commence.

If contributions cease to the policy, either through formal notification or because there are no active members, then Legal & General will continue to manage the individual member accounts in accordance with the terms of the policy. The member benefits will be treated as 'deferred,' otherwise known as 'paid-up.'

It is the trustees' duty to ensure that all contributions due or expected up to the date of **discontinuance** from members and the employer, are paid to the scheme.

If the employer is insolvent, the insolvency practitioner must report the fact to The Pensions Regulator, normally by filing a S120 notice. Since, by operation of Pensions Act 1995 and Pensions Act 2004, the duties of the trustee cannot vest in insolvency practitioners where the principal employer is declared as sole trustee of the scheme, Legal & General will in those circumstances, make representations to The Pensions Regulator for the appointment of an independent trustee from its register of trustees.

Such a trustee will be entitled to take a fee from the proceeds of the CPP policy securing benefits under the scheme.

WINDING-UP.

Where the decision is taken to close the scheme - known as 'winding-up' there are a number of key steps that need to be followed and these are outlined on The Pensions Regulators website. The trustees retain responsibility for the scheme throughout the winding-up process and must ensure that the scheme is wound up in accordance with the scheme rules.

KEY ACTIVITIES

Once the decision has been taken to formally **wind-up** the scheme there are a number of key activities that need to take place including a requirement to:

- Ensure that all contributions that are due have been paid to the scheme.
- Establish that all beneficiaries have been identified, fund values determined and statements issued.
- Provide options to members.

The Pensions Regulator has set a benchmark that all of the key activities of winding-up a scheme should be completed within two years of the formal decision.

REPORTING ACTIVITIES

Having made the decision to commence the **wind-up** of the scheme there are certain reporting obligations that the trustees need to undertake when the process commences and as the work progresses:

- The Pensions Regulator needs to be notified that the scheme is being wound up.
- If the scheme is not fully wound up within two years after **wind-up** was triggered the Regulator must be informed.
- Complete the final report when the process is completed.

All notifications are made through the Regulator's 'Exchange' website.

DATE OF WIND-UP

The effective date of **wind-up** has to be decided in advance. The trustees must examine the scheme rules to ensure that they are up to date. They will need to ensure member records are complete and that they hold up to date information for all the deferred members.

All of the key tasks that need to be completed will need to be set out in advance so that the process can be effectively tracked.

The trustees will need to document that formal decision to undertake the **wind-up**. An example is provided in **Appendix A** on page 8.

ANNOUNCEMENTS TO MEMBERS

Within one month of the scheme starting the **wind-up** process, members must be told in writing what the implications are for them and what winding-up will entail.

An example is given in **Appendix B** on page 9.

Where the employer is the sole (corporate) trustee, the announcements may be reproduced on the employer's headed paper.

Subsequently, members should be told in writing what their options are, or how the trustee intends to secure their benefits (which may involve paying winding-up lump sums).

At this stage, transfer values should be quoted. Where members are given options, it is customary to allow three months for advice to be sought and decisions made.

It is extremely important prior to the **wind-up** that all necessary data such as members' salaries, addresses and dates of leaving employment (if applicable), are notified to Legal & General. This will ensure that everything is in place to allow the **wind-up** to proceed smoothly.

MEMBERS' BENEFITS

Members will include those who:

- A) Were in employment at the date of the **wind-up** and who paid contributions up to that date (or had them paid on their behalf).
- B) May or may not have been in employment at the date of the **wind-up**, but had paid-up benefits as at that date, and
- C) Pensioners in receipt of pensions from the scheme.

For members in A) or B), benefits can be quoted and settled during the winding-up process as normal. However, it is important that members' attention is drawn to any unpaid contributions that the trustees may be trying to claim from the employer.

MEMBERS' OPTIONS

Letters need to be issued to members setting out the options available, and have the basis on which the trustees will secure benefits if members do not respond or cannot be allocated.

It is the trustees' responsibility to tell their members what options are available but Legal & General will, at the request of the trustees, prepare a standard 'options letter' for each member detailing the choices that can be made.

As an example, the possible member options available are outlined below, although not all options will be available to all members - there will be age restrictions on the option of immediate benefits:

- Transfer to a new employer's registered pension scheme.
- Transfer to an individual personal pension plan (which may be a stakeholder pension scheme).
- Transfer to a Section 32 buy-out annuity policy.
- If over age 55, take immediate early retirement benefits.

At the expiry of the notice period the trustees can take action to secure benefits on a default basis for any members who have not responded or who cannot be traced.

For those members where addresses are not known, contact letters should be sent via the Department for Work and Pensions Tracing Service for them to forward. Allowance will need to be made for delays resulting from the issue of option letters in this way. This is one of the key reasons why the scheme data needs to be reviewed prior to the commencement of the **wind-up** process.

WINDING-UP LUMP SUMS

If the transfer value for any one member is less than the HMRC's limit, a winding-up lump sum may be payable instead of giving options provided:

- the member can be traced and,
- the member can confirm that they have not exhausted all their Lifetime Allowance.

PUTTING ELECTED OPTIONS INTO EFFECT AND SECURING BENEFITS BY DEFAULT

Throughout the winding-up process, members' individual funds will continue to remain fully invested. At the end of the three month notice period, units will be sold once instructions have been received from the trustees to process elected options. Where elected, transfer values will be calculated as at the date of the settlement, subject to any deductions or charges as set out in the scheme literature.

Where members have not responded to either type of letter, the default option will be put into effect.

The trustees are discharged of their liability to members who elect options when the members sign to that effect (on the forms that Legal & General provides).

If the trustees secure benefits on the default basis or pay winding-up lump sums, they automatically receive a statutory discharge under Section 74 of the Pensions Act 1995.

FINALISING THE WIND-UP OF THE SCHEME

Once all the members' elected options have been dealt with and default transfer values (or winding-up lump sums) paid, the scheme assets have been entirely dispersed.

The trustees are responsible for reporting the **wind-up** event. This means notifying The Pensions Regulator and undertaking an 'Event Report' via the HMRC's Government Gateway website.

Also Legal & General can also support the trustees with the necessary notification to The Pensions Regulator.

The winding-up process is effectively at an end. The trustees must pass a resolution to record that everything has been taken care of and a Deed of Wind-Up needs to be signed to formally close the scheme.

GLOSSARY.

DISCONTINUANCE

This is the process whereby the employer for the scheme notifies Legal & General of their intention to cease paying premiums under the scheme. Subject to the circumstances of the reasons for the discontinuance the scheme will either continue as a 'paid up' arrangement or the formal process to wind-up the scheme will commence.

SCHEME SPECIFIC TAX-FREE CASH

Some members may have a tax-free cash entitlement of more than 25% of their fund value, by virtue of the fact that they are entitled to the higher amount as a result of their membership of the scheme under the previous pre-April 2006 tax regime. In some circumstances this higher entitlement is lost when a member transfers out.

WIND-UP

This is the formal process that is followed by the employer, trustees and/or scheme provider of a scheme when they have decided to close the scheme and transfer all remaining members to a suitable alternative.

APPENDIX A

TRUSTEE RESOLUTION TO COMMENCE WINDING-UP

RESOLUTION TO COMMENCE WIND-UP BY THE TRUSTEES

OF * 1 (“the Scheme”)

WE HEREBY RESOLVE:

- (i) Following the occurrence of an event leading to the winding-up of the Scheme, the Scheme shall commence to wind up with effect from [date] *2 which date may hereafter be referred to as “the wind-up date”;
- (ii) To accept responsibility in respect of members who are not yet in receipt of their benefits
- (iii) For members who provide a specific request, to ensure benefits for such members are settled in accordance with their written requests,
and
- (iv) For all other members we shall discharge our liability by payment of winding-up lump sums where possible or otherwise secure their benefits by transferring their funds to a
- (v) *3 that liability under the Scheme in respect of insured death-in-service benefits has ceased or will cease with effect from [date]

Signed by the Trustees of the Scheme:

| | | | |
|----------------|--|-------------------|---|
| Your full name | <input style="width: 95%;" type="text"/> | Date (DD/MM/YYYY) | <input style="width: 25px;" type="text"/> <input style="width: 25px;" type="text"/> <input style="width: 25px;" type="text"/> <input style="width: 25px;" type="text"/> <input style="width: 25px;" type="text"/> <input style="width: 25px;" type="text"/> <input style="width: 25px;" type="text"/> <input style="width: 25px;" type="text"/> |
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Winding-up will be triggered from the date on which contributions cease to be paid and the policy/Scheme is discontinued. The Trustees must pass a resolution to confirm beyond a

Drafting Notes

- *1 Insert name of scheme
- *2 insert date of commencement of wind-up
- *3 delete is cover for death-in-service benefits was never provided, or if provided has already ceased before the wind-up date

APPENDIX B.2**INITIAL ANNOUNCEMENT TO MEMBERS**

(excluding pensioners)

[Insert title of scheme].....Company Pension Plan (“the Scheme”)

[Insert name of principal [or only] Employer]... has added to wind up the Scheme with effect from [insert date of discontinuance] and the Trustees will be responsible for completion of the exercise. It is likely to take at least 12 months to complete the wind-up, but the Trustees will keep you informed of progress periodically.

The primary purpose of this announcement is to give you assurance that the assets of the Scheme will continue to be held in the name of the Trustees by Legal & General Assurance Society Limited until such time as the winding-up process can be completed.

Details of the options available to you will be issued in due course. Your individual fund will, however, remain invested with Legal & General in line with your investment choice (or the Trustees’ default choice where you have made no choice). A transfer value quotation will be issued to you within the next three months.

[optional paragraph for members where death in service benefits apply]

With the commencement of winding-up of the Scheme, you will no longer be covered for lump sum death in service benefits. You may need to consider making your own future provision for these benefits.

If you have any other questions relating to the winding-up of the Scheme, or wish to register a complaint, please contact the Trustees at [insert contact address for Trustees]. You may also contact The Pensions Advisory Service for independent help:

**The Pensions Advisory Service**

11 Belgrave Road
London
SW1V 1RB



0300 123 1047



www.legalandgeneral.com

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Registered in England and Wales No.00166055
Registered office: One Coleman Street, London EC2R 5AA

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Q55636 06/17 NON ASD