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Pensions law – the week in review

2 February 2009

AT A GLANCE

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SACKER & PARTNERS

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1 LEGISLATION

1.1 The Pensions Act 2008 (Commencement No.2) Order 2009

The second commencement order (the Order) made under the Pensions Act 2008 (the Act) was published by the Office of Public Sector Information on 27 January 2009 and brings into force various provisions of the Act.

The provisions in force from 29 January 2009 include:

- the power of the Pensions Regulator to intervene in funding decisions, if it considers that the trustees have failed to comply with prescribed requirements; and
- requirements for the purposes of the personal accounts regime relating to compliance and information-sharing.

The Order will also bring into force further provisions from 6 April 2009, including:

- amendments to the Pensions Schemes Act which introduce the new lower cap of 2.5% on the revaluation of defined benefit pensions in deferment for future service; and
- the abolition of the legislative requirements relating to "safeguarded rights"[1]. In practice, this will mean that contracted-out rights which are shared as a result of a pension sharing order will be treated in the same way as shared non contracted-out rights (making it easier to transfer shared benefits outside the scheme).

[1] Pension credit benefits derived from contracted-out rights

Section 131 of the Act, which amends the Pensions Act 1995 to give the Pensions Regulator power to appoint trustees where it considers it reasonable to do (instead of the previous test for the appointment to be "necessary"), also came into force on 26 January 2009.[2]

To view the Order, please click on the link below:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090082_en.pdf

1.2 The Guaranteed Minimum Pensions Increase Order 2009 (Draft Order)

This Draft Order specifies that the increase payable by contracted-out defined benefit occupational pension schemes in respect of guaranteed minimum pensions (GMPs) will be capped at 3%.

Under section 109(3) of the Pension Schemes Act 1993, the percentage increase which must be specified in the Draft Order is the actual percentage increase in the general level of prices in the period under review, or 3%, whichever is lower. As the rate of inflation in the twelve months to 20 September 2008 was 5%, the annual rate of increase for affected schemes from 6 April 2009 will be 3%.

To view the Draft Order and accompanying explanatory memorandum, please click on the links below:

http://www.opsi.gov.uk/si/si2009/draft/pdf/ukdsi_9780111472804_en.pdf

http://www.opsi.gov.uk/si/si2009/draft/em/ukdsiem_9780111472804_en.pdf

2 DEPARTMENT FOR WORK AND PENSIONS (DWP)

2.1 DWP report: "Opportunity Age Indicators"

According to a new research from the DWP, older people are living longer, healthier lives than they did ten years ago.

[2] This is in accordance with the Act's own commencement provision which stated that the section would come into force "at the end of the period of 2 months beginning with the day on which this Act is passed"

First published in 2005, the DWP's "Opportunity Age" report was aimed at ending the perception of older people as dependent; ensuring that longer life is healthy and fulfilling; and that older people are full participants in society. The report used thirty-three indicators to monitor older people's well-being and independence, with the aim of measuring improvements in overall quality of life. The 2008 update ("Opportunity Age Indicators" looks at progress made by the Government since the publication of its strategy for an ageing society in 2005, with the new strategy intended to build on this and address four key areas: creating an age friendly society, preparing for later life, living well in later life and providing stronger protection and support."

The DWP's press release, update report and summary of results can be accessed by clicking on the links below:

http://www.dwp.gov.uk/mediacentre/pressreleases/2009/jan/pens097-290109.asp

http://www.dwp.gov.uk/opportunity_age/indicators/

http://www.dwp.gov.uk/opportunity_age/indicators/indicators-update-2008.pdf

3 HM REVENUE & CUSTOMS (HMRC)

3.1 Guide for pension and annuity payers

HMRC has published a guide for pension and annuity payers which is designed to supplement information in the "Employer Further Guide to PAYE and NICs". It provides detailed, practical information and includes a Q&A designed to answer some frequently asked questions as well as some less common situations.

To access the guide, please click on the link below:

http://www.hmrc.gov.uk/employers/pen-annuity-guide.pdf

4 OFFICE FOR NATIONAL STATISTICS (ONS)

4.1 Pension Trends Report: Pension Scheme Funding and Investment

The ONS has published an update to Chapter 12 of its Pension Trends Series, which focuses on pension scheme funding and investment.

Chapter 12 looks at the aggregate funding position of pension schemes, using monthly data from the Pension Protection Fund (PPF) and the income, expenditure and asset holdings of pension funds, using annual data collected by the ONS up to 2007 (the latest year of data available).

Among the statistics included in the updated chapter 12, the ONS notes that:

- there has been an overall decline in the net income of pension schemes in 2007, from £19.7bn to £17.6bn;
- the amount spent on pensions has risen since 1984 (when the ONS started recording this data), due to the increasing maturity of defined benefit schemes and as a result of compulsory indexation (introduced in 1987). However this figure fell in 2007 (the first time since 1984) by 4.7%, which the ONS attributes to the rise in the number of pension scheme buy-outs; and
- there has been a notable change in investment patterns. UK corporate securities were mostly invested in shares in 1986 (95%) but this fell to 39% in 2007. By contrast, the proportion of assets invested in UK mutual funds rose from 2% of total investment in UK corporate securities in 1986 to 46% in 2007. Investment in UK company bonds also rose, from a flat rate of 5% until 2000 to 15% in 2007.

To view the revised Chapter 12, please click on the link below.

http://www.statistics.gov.uk/downloads/theme_compendia/pensiontrends/Pension_Trends_ch12.pdf

5 ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

5.1 OECD Working Paper 31 - Pension Coverage and Informal Sector Workers: International Experiences [3]

The OECD's latest working paper on private pensions looks at pension provision for workers in the "informal sector" - defined as "generally those with low incomes or self-employed, working in very small (unregistered) companies or the household sector, often on a part-time basis (and migrant workers) in industries such as agriculture, construction and services".

The papers reports that pension reform around the world in recent decades has focused mainly on the formal sector, meaning that many of those working in the informal sector have been left out of structured pension arrangements, particularly in developing countries. However, since 2000, there has been improvement for informal sector workers in a number of countries and the working paper provides an overview of the experience in selected countries. It also provides some suggestions for governments in developing countries which are considering implementing their own pension reform to ensure that informal sector workers receive the retirement income they need.

To view Working Paper 31, please click on the link below:

http://www.oecd.org/dataoecd/41/7/42052126.pdf

[3] Hu, Y. and F. Stewart (2009) *OECD Working Papers on Insurance and Private Pensions*, No. 31, OECD publishing, © OECD doi:10.1787/227432837078

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6 PENSION PROTECTION FUND (PPF)

6.1 Alan Rubenstein appointed Chief Executive of the PPF

The PPF has announced that Alan Rubenstein will become its new chief executive from 1 April 2009.

Formerly a managing director at Lehman Brothers, Mr Rubenstein was responsible for establishing their Pensions Advisory Group. Mr Rubenstein qualified as an actuary with Scottish Widows before moving into senior executive positions in investment banking with BZW Asset Management, Lucas Varity Fund Management and Morgan Stanley. He is a former Vice-Chairman of the NAPF, and chairman of its Investment Council. Mr Rubenstein is on the Management Board of the UK Actuarial Profession and a Council Member of the Faculty of Actuaries, and is a former member of the Takeover Panel.

Welcoming the appointment, PPF Chairman, Lawrence Churchill, said that: "I am delighted that we have been able to attract someone of Alan's calibre. He brings to the role a wealth of knowledge and experience of the financial markets and the pensions industry that will help ensure that the PPF continues to deliver financial security in retirement for thousands of pension scheme members across the UK."

To view the PPF's press release, please click on the link below:

http://www.pensionprotectionfund.org.uk/news-details.htm?id=6981

7 CASE

7.1 Lever v The Lancashire County Cricket Club (Pensions Ombudsman)

The Deputy Pensions Ombudsman (DPO) has recently exercised his discretion not to investigate a complaint which was out of time under normal limitation periods.

Background

Mr Lever was employed by The Lancashire County Cricket Club (LCCC) between 1960-1977 and again between 1983-1986. During his first period of employment he accrued pension benefits under an insured scheme originally administered by Equity and Law (later absorbed by Axa) (the Scheme), while during the second, he accrued pension benefits under a new arrangement, in a policy with UK Provident (now Friends Provident) (the Arrangement). Normal Retirement Age (NRA) under the Scheme was age 40, but was age 60 under the Arrangement.

No definitive documentation was available in respect of the Scheme, and the insurer had no record of any live benefits for Mr Lever. In respect of the Arrangement, a chain of correspondence with Mr Lever existed, which appeared to indicate that he had been sent a cheque representing a return of contributions (as the policies had been held for less than two years).

Mr Lever complained that he had never received any benefits from the Scheme nor from the Arrangement.

The DPO agreed to consider, as a preliminary issue, whether the complaints brought fell within the time limits prescribed for bringing a claim.

Decision in respect of the Scheme

While the DPO had considerable sympathy for Mr Lever, he determined that Mr Lever's complaint relating to the Scheme was out of time. For a beneficiary to be able to bring an action for breach of trust, time starts to run from the accrual of the right of action and not from the date of knowledge of a potential action. As Mr Lever reached the Scheme's NRA of 40 in 1980, his interest under the Scheme (and therefore his right of action) arose at that time.

Decision in respect of the Arrangement

Similarly, the time limit for of Mr Lever's claim under the Arrangement had expired. At the latest, this would have been in 2006 (six years' after his 60th birthday). But this part of the claim was only six months outside the expiry date of the limitation period, a "substantially shorter" period than the delay in respect of the Scheme, the DPO agreed to consider this part of the complaint.

However, on the basis that there was insufficient evidence to support a finding of maladministration against the LCCC, the DPO dismissed this part of the complaint.

Comment

As the LCCC pointed out, one purpose of the statutory limitation periods is to protect trustees who no longer hold trust assets from being exposed to claims by beneficiaries for an indefinite period of time.

Although the time limits which apply to complaints referred to the Pensions Ombudsman differ from those which apply to proceedings before the courts, trustees will take comfort from the DPO's comments in this case that "even though I may have the power to investigate a complaint which would be time barred if brought before a court, it is unlikely that I would decide that it was right for me to do so." This conclusion was drawn on the basis that it "might be somewhat odd, if a matter would be time barred if taken direct to court, but not, if it came before me first and onward to the court on appeal against my decision" and also if he were to try to grant a remedy where a court would not do so. This will be particularly helpful where trustees are asked to investigate claims relating to schemes which have long since wound-up.

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