

## Pensions law – the week in review

2 March 2009

### AT A GLANCE

#### LEGISLATION

- Pensions Act 2004 (Commencement No. 12) Order 2009

#### HM REVENUE & CUSTOMS

- Draft amendments to pensions chapter of Inheritance Tax Manual and draft Unauthorised Payment Calculator

#### PERSONAL ACCOUNTS DELIVERY AUTHORITY

- Helen Dean appointed as Policy and Product Development Director

#### CASE

- Warwick v Trustees of the Rangers Pension Scheme

## 1 LEGISLATION

### 1.1 Pensions Act 2004 (Commencement No. 12) Order 2009

This Order brings into force sub-sections 166(6) and (7) of the Pensions Act 2004 with effect from 1 March 2009.

These sub-sections give the Secretary of State for Work and Pensions the power to make regulations which require the Board of the Pension Protection Fund (PPF) to take actions in respect of certain rights which pension scheme members had immediately before the commencement of a PPF assessment period. (The

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example given in the explanatory notes to the 2004 Act is that of rights to contribution refunds which arose before the assessment period but which had not been discharged before that period began).

The Order can be viewed by clicking on the link below:

[http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20090325\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090325_en.pdf)

## **2 HM REVENUE & CUSTOMS (HMRC)**

### **2.1 Draft amendments to pensions chapter of Inheritance Tax Manual and draft Unauthorised Payment Calculator**

#### *Inheritance Tax Manual*

On 24 February 2009, HMRC published draft guidance on pensions and inheritance tax under the rules relating to the taxation of pension schemes which were introduced on 6 April 2006 (A-Day). The guidance, which covers both scheme pensions and alternatively secured pensions, will be of particular use to pension scheme administrators and personal representatives who need to deal with the distribution of benefits on a pension scheme member's death.

#### *Inheritance Tax: Unauthorised Payment Calculator*

HMRC has also published a draft version of a new unauthorised payment calculator. The calculator is for administrators of registered pension schemes and lifetime annuity providers, to help them calculate how much inheritance tax is due when unauthorised payments are made:

- on or after 6 April 2006 when a member of a registered pension scheme (or dependant of such a person) dies after reaching age 75;
- that person was being paid a scheme pension or a lifetime annuity or, in the case of a dependant, a dependants' scheme pension or dependants' annuity; and

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- the scheme administrator/annuity provider makes an unauthorised payment in respect of that pension or annuity.

The final version of the guidance will contain links to relevant provisions in the Registered Pension Schemes Manual.

To access the draft guidance and draft unauthorised payment calculator, please click on the link below:

[http://www.hmrc.gov.uk/cto/iht/iht\\_man\\_draft.htm](http://www.hmrc.gov.uk/cto/iht/iht_man_draft.htm)

### **3 PERSONAL ACCOUNTS DELIVERY AUTHORITY (PADA)**

#### **3.1 Helen Dean appointed as Policy and Product Development Director**

PADA has announced its recent appointment of Helen Dean as Policy and Product Development Director for PADA.

Dean, a Civil Servant who has been seconded to PADA from the Department for Work and Pensions (DWP), will be responsible for:

- the product development, marketing and brand management of the personal accounts scheme;
- providing support and advice to the DWP on legislation relating to personal accounts;
- defining the requirements for the procurement of the administration of the personal accounts scheme;
- establishing the Trustee Corporation which will run the personal accounts scheme (like PADA, this will be a non-departmental public body); and
- running PADA's customer insight research programme.

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This is Dean's second secondment to PADA from the DWP. In keeping with all PADA board appointments, Dean has been appointed for a fixed period which ends on 31 December 2011 (when she may be eligible for re-appointment).

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

<http://www.padeliveryauthority.org.uk/documents/Press-Release-02-2009.pdf>

## **4 CASE**

### **4.1 Warwick v Trustees of the Rangers Pension Scheme (Pensions Ombudsman)**

This decision of the Pensions Ombudsman (PO) will be of interest to pension scheme trustees for its treatment of a potentially conflicted trustee.

#### *Background*

The case concerned the distribution of benefits following the death of Mr Ranger in March 2004. At the time of his death, Mr Ranger was in a relationship with Mrs Warwick, with whom he had been co-habiting since 1997. He had separated from his wife in 1995, but remained married to Mrs Ranger. On Mr Ranger's death, a lump sum and dependant's pension became payable at the trustees' discretion.

The only relevant beneficiaries were Mrs Warwick and/or Mrs Ranger. However, Mrs Ranger was also one of the two trustees of the scheme and therefore partly responsible for the exercise of the discretion in relation to the payment of death benefits. The other trustee was an independent trustee.

The scheme rules listed the categories of person to whom the death benefit lump sum could be paid. The categories included dependants of the deceased, or any persons entitled to benefit under the deceased's will or nominated in writing by the deceased. Having initially proposed to split the lump sum benefit 80% / 20% in respect of Mrs Warwick and Mrs Ranger respectively, following representations from Mrs Ranger that the benefits should be divided 60% / 40%, the trustees decided to pay 70% to Mrs Warwick.

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Under the rules, a dependants' pension was payable to an individual who was "wholly or partially financially dependent" on the member. The trustees therefore requested information from Mrs Warwick as to her financial arrangements with Mr Ranger, in order to ascertain whether she had been "wholly or partially financially dependent on him". However, she supplied limited information and was unwilling to accede to further information requests from the trustees. On the basis of the evidence supplied, the trustees decided that it was reasonable to apportion 50% of the sum available for purchasing a dependant's pension in favour of Mrs Warwick.

Mrs Warwick challenged the trustees' decision on the grounds that one of the trustees (Mrs Ranger) had a conflict of interest. In particular, she felt that the independent trustee should not have reduced what it had initially considered to be her entitlement to 80% of the lump sum for the sake of compromise and that it had not resolved the conflict situation properly. She also felt that the request for further details of Mr Ranger's and her financial affairs had been instigated by Mrs Ranger and that the reduction of the sums to be paid to her was, she claimed, entirely due to the personal interests of Mrs Ranger.

### *Decision*

The PO recognised that Mrs Ranger had a potential conflict of interest but noted that the scheme rules expressly permitted a trustee who was also a beneficiary or potential beneficiary to exercise a discretionary power in these circumstances.

The PO considered that while there had been a difference of opinion between Mrs Ranger and the independent trustee as to the appropriate split of the lump sum benefit, the independent trustee, being a professional organisation, could be taken to have known what its responsibilities (and those of Mrs Ranger) were. Therefore, even though there was a potential conflict due to Mrs Ranger's position, the PO did not find any tainting of Mrs Ranger's thinking by irrelevant matters and, given "the special position of the independent trustee", the PO did not consider that the possibility of bias had invalidated the decision made by the trustees jointly.

The PO also found that the trustees' request for further information to establish dependency was not unreasonable, and that the refusal to provide the information requested could properly be taken into account. As a result, the PO did not uphold the complaint.

*Comment*

Although cases of this sort will turn on their own facts, trustees who find themselves in similar positions of conflict will be able to take comfort from this determination of the PO, which balances the facts against the legal requirements and the practicalities involved in the decision making process.

It is also worth noting the importance placed by the PO on the position of the independent trustee to exercise professional judgment when managing a potential conflict. Having an independent trustee on board can be a useful tool in managing conflicts.