Sackers extra

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Abbreviations commonly used in 7 Days

Alert/News: Sackers Extra publications (available from the client area of our website or from your usual contact)
DB: Defined benefit
DC: Defined contribution
DWP: Department for Work and Pensions
ECJ: European Court of Justice
FAS: Financial Assistance Scheme
GMP: Guaranteed Minimum Pension
HMRC: HM Revenue & Customs
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

LEGISLATION

Finance Bill 2012

The Finance Bill 2012 was published on 29 March 2012, a draft having been published in December 2011.[1] Publication of the Bill follows the Government's latest Budget on 21 March 2012.

HM Treasury Press Release

The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2012: Draft order published

A draft order, which sets out the revised rates for automatic enrolment has been published, together with a draft explanatory memorandum.

In 2012/13:

- the earnings trigger for automatic enrolment and re-enrolment will be £8,105 – in line with the PAYE income tax personal allowance; and
- where the automatic enrolment trigger is reached, contributions will be payable on qualifying earnings between £5,564 and £42,475.

The Secretary of State is required to review these rates each tax year.

The draft order follows the Government's response to consultation on the alignment of automatic enrolment with tax and National Insurance thresholds.[2]

DEPARTMENT FOR WORK AND PENSIONS

DWP Select Committee Inquiry into EU pensions policy

On 26 March 2012, submissions from the NAPF and the European Federation for Retirement Provision (EFRP) were heard by the DWP Select Committee on EU pensions policy.

The submissions focussed on the EU Commission's White Paper on pensions and its proposals to revise the EU Pensions (IORP[3]) Directive. Together with representatives from the CBI, TUC and ABI, NAPF Chief Executive, Joanne Segars, and EFRP Chief Executive, Mati Leppala explained that the "Holistic Balance Sheet" approach to scheme funding (proposed by the European Insurance and Occupational Pensions Authority in its

[1] Please see our Alert: Finance Bill 2012 (dated 8 December 2011)

[2] Please 7 Days dated 26 March 2012

[3] Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision

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advice to the Commission on reform of the Directive), could increase UK pensions liabilities by at least £300bn.

NAPF Press Release

Communications tracking research: Attitudes and behaviour towards retirement and pensions

The DWP has published the findings of research which enables it to track both intended and actual attitudes and behaviour towards retirement and pensions.

The research indicates that people are most likely to be aware that:

- there will be an increase in the state pension age (45% of those surveyed were aware of changes on the horizon);
- people are living longer (40%);
- it is possible to work beyond the state pension age (33%); and
- individuals may need to build on a state pension with some form of private pension saving (20%).

However, people were significantly less aware that:

- employer contributions and tax relief will be available where an individual pays money into a workplace pension (only 12% of those surveyed aware of this);
- if they did not already have a workplace pension they would be automatically enrolled into one (9%); and
- people could have 20 years of retirement to look forward to (9%).

HM REVENUE & CUSTOMS

Fixed protection: Guidance on lump sum death benefits and continued life cover

Following concerns raised by the pensions industry, HMRC has issued guidance clarifying its position on fixed protection and continued life cover.

Fixed protection allows individuals to retain an overall lifetime allowance (LTA) of £1.8 million for pension savings when the LTA reduces to £1.5 million on 6 April 2012.

The new HMRC guidance explains how different types of lump sum death benefits will be classified, identifying those lump sums which will not jeopardise fixed protection, as well as those which might.

In addition, HMRC has today (2 April 2012) issued a general reminder about the 5 April 2012 deadline for registering for fixed protection.

For more information, please see our Alert: Fixed protection: Last minute guidance from HMRC dated 30 March 2012.

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Pension Schemes Newsletter 53

HMRC published its latest pension schemes newsletter on 30 March 2012.

Among other things, Newsletter 53 covers:

- the pensions announcements in the 2012 Budget;
- a reminder of the forthcoming deadline of 5 April 2012 for applying fixed protection;
- confirmation that the maximum income payable under a flexible annuity will remain at 120% of an equivalent annuity; and
- notice of HMRC's new guidance on the payment of short service refund lump sums once DC contracting is abolished on 6 April 2012.

New guidance on Qualifying Recognised Overseas Pension Schemes (QROPS)

HMRC has updated its QROPS guidance in line with recently finalised regulations that will come into force on 6 April 2012.[4]

Key changes to the guidance include:

- a new form APSS251 for schemes to notify HMRC that they meet the requirements to be a QROPS;
- revised reporting requirements in relation to payments made from a QROPS and for schemes which cease to be a QROPS; and
- a new obligation to notify HMRC of any material changes to information that has been provided to HMRC previously.

Existing QROPS will need to ensure that they are approved, recognised by or registered with the relevant tax authorities as a pension scheme in the country or territory in which they are established.

NATIONAL ASSOCIATION OF PENSION FUNDS

New guide: Auto-enrolment Made Simple

The NAPF has published the first two leaflets in a new series – "New rules for pension saving made simple" – which are aimed at helping employers implement automatic enrolment.

The two leaflets explain:

- what automatic enrolment is and what employers will need to do;
- when organisations will need to start enrolling staff into a pension;
- how to choose a pension scheme to automatically enrol staff into;

[4] Please see 7 Days dated 26 March 2012 for further details

- how to enrol employees into a pension scheme; and
- how to manage the costs of automatic enrolment.

NAPF Press Release

PENSION PROTECTION FUND

Updated compensation cap factors

The PPF has today (2 April 2012) released updated compensation cap factors that will apply from 1 April 2012.

The factors have been updated to reflect the statutory increase in the PPF compensation cap at age 65 to £34,049.84 as of 1 April 2012. When applying the new compensation cap to members whose PPF entitlement is restricted to 90% of benefits (i.e. people below their scheme's normal retirement age), the maximum level of compensation payable to an individual at age 65 will be £30,644.86.

PPF Press Release

CASES

Premier Foods Group Services Limited and another v RHM Pension Trust Limited

A pragmatic decision from the courts confirms that a deed of intention was effective to equalise pension ages in November 1990 despite the formal deed of amendment not being executed until February 1993. The decision saved the employer over £17.5 million.

Background

Following *Barber*,[6] the trustee of the RHM Pension Scheme ("the Scheme") decided to equalise the Scheme's normal pension age (NPA) at 65.

First it passed a resolution to equalise NPA at 65 and made an announcement to that effect to members in August 1990.

Second it executed a Deed of Intention on 15 November 1990. Broadly, the deed provided as follows:

- Clause 1 set out an intention to amend the trust deed and rules as soon as practicable to reflect the alterations described in an attached newsletter (which included the equalisation changes); and
- Clause 2 stated that, pending the amendment described in clause 1, the trustee shall continue to administer the Scheme in accordance with the trust deed and rules, subject to the alterations described.

Finally, a Deed of Amendment was executed on 18 February 1993 which provided for an NPA of 65 for men and women.

It was common ground that the resolution and announcement were ineffective to equalise NPA. At issue was whether the Deed of Intention had equalised the Scheme with effect

[5] For the background to these figures, please see 7 Days dated 5 March 2012

[6] *Barber v Guardian Royal Exchange* ECJ Case C-262/88 - [1991] 1 QB 344

from 15 November 1990 (the date it was executed) or whether equalisation did not occur until 18 February 1993 (the effective date of the Deed of Amendment). The additional cost of equalisation as at the earlier date was estimated at £1,190,000 and at £18,954,000 as at the later date.

The key question was whether the Deed of Intention effected a valid amendment or whether it was simply an agreement to amend the Scheme at a future date?

Decision

Mr Justice Warren explained that pension scheme documentation should be construed practically and purposively. In addition he noted the "well established principle" that, "in choosing between an interpretation which makes the instrument valid and effective and one which makes it invalid or ineffective, the court should lean towards the construction which saves the instrument".

Applying this approach, Warren J was satisfied that the Deed achieved the equalisation; it did not matter that it did not include a formal "textual" amendment of the Scheme.

Comment

It is perhaps slightly surprising that the court so willingly found that a deed of "intention" was effective as a deed of amendment. However, this decision, from a well-respected pensions practitioner, is to be welcomed for its practicality.

Dank v Qinetiq Holdings Limited and Pocock

In this useful decision, the judge concluded that a scheme's rules gave the trustees the power to dictate the index used to increase and revalue pensions on an annual basis. This meant that they could switch from the Retail Prices Index (RPI) to the Consumer Prices Index (CPI) without triggering the application of section 67 of the Pensions Act 1995.

Background

On 22 June 2010, the Chancellor of the Exchequer announced in his budget statement that CPI[7] would be used rather than RPI as the basis for uprating most state benefits and public sector pensions. On 8 July 2012, the Minister of State at the DWP declared that this change would be extended to the private sector. On 1 January 2011, the Occupational Pensions (Revaluation) Order 2010 came into force under which CPI, rather than RPI, was the index selected by the Secretary of State to apply to statutory increases to pensions in payment and deferment.

The trustees of the Qinetiq Pension Scheme ("the Scheme") wished to adopt CPI in order to reduce the Scheme's substantial deficit. However, before doing so, they wanted to ensure that such a change would not trigger the application of section 67. They therefore brought an application to the court for the question to be determined.

Section 67

Section 67 applies whenever a power to modify an occupational pension scheme is exercised to make a change which would or might adversely affect a member's "subsisting rights" (rights which have accrued to or in respect of a member and his/her survivors to future benefits under the scheme rules or any entitlement to pension).

[7] CPI is generally a lower and less favourable index than RPI as it excludes housing costs and is calculated as a geometric rather than an arithmetic mean.

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Trust deed and rules

The trust deed and rules required pensions in payment to be increased "on 1 April each year by an amount equal to the percentage increase in the Index over the period of 12 months ending on the preceding 30 September".

"Index" was defined as "the Index of Retail Prices published by the Office of National Statistics or any other suitable cost-of-living index selected by the Trustees".

Decision

Mr Justice Vos concluded that the wording of the trust deed and rules did not afford members a right to a specified level of increase or revaluation. An entitlement to a certain increase (or level of revaluation) only arose when the increase (or revaluation) actually occurred. This meant it would be possible for the trustees to adopt CPI in place of RPI in respect of future increases without section 67 applying to the change.

In addition, Vos J stated that the definition of "Index" would allow the trustees to refer to RPI in respect of some periods or purposes and CPI in respect of others, meaning it would be possible for them to reverse or alter their choice at any time.

Comment

The switch from CPI to RPI continues to be controversial for both the public and private sector. This judgment provides helpful guidance on what may be done for those with similar rules. But making this change will still be a difficult decision for trustees.

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