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SO7

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

HMRC: HM Revenue & Customs

PPF: Pension Protection Fund

TPR: The Pensions Regulator

LEGISLATION

Finance (No. 2) Act 2010 (the Act)

The second [Finance Act](#) of 2010 received Royal Assent on 27 July 2010.

The Act gives HM Treasury the power to make an order repealing those parts of the original Finance Act 2010 relating to the tax relief restriction measures introduced by the former Labour Government, which had been due to come into force in April 2011. Subject to consultation, these provisions look set to be replaced by the Coalition Government's "alternative approach" (see HM Treasury section below for more details).

The Act also includes transitional provisions ahead of the removal of the requirement to annuitise by age 75 from April 2011. These provisions extend the existing rules for people with DC arrangements who reach age 75 on or after 22 June 2010 (the date of the Coalition Government's Budget when this measure was announced). Affected individuals will have until their 77th birthday to use their pension fund to purchase an annuity or otherwise secure a pension income, thus allowing them to defer their decision on what to do with their pension savings until after the new rules announced by the Government are finalised.

Please see 7 Days dated [19 July 2010](#) for details of the Treasury's consultation on proposals relating to the removal of the requirement to annuitise by age 75.

The Pensions Regulator (Contribution Notices) (Sum Specified following Transfer) Regulations 2010

Under the Pensions Act 2004, TPR has the power to issue a "contribution notice", by which an employer or connected/associated person can be required to pay money into a scheme where there has been an act, or deliberate failure to act, to avoid or reduce a debt that would otherwise have fallen due from a company to a pension scheme.

The Pensions Act 2008 extended these powers in the light of TPR's experience and changes in the pensions marketplace. These changes included amendments to address the unforeseen effect of the legislation by which an employer could avoid a contribution notice by transferring members out of the scheme.

These [regulations](#) set out how TPR will calculate the amount of a contribution notice where:

- the grounds for issuing a contribution notice have been met; and
- a transfer of two or more members has occurred to an occupational DC pension scheme.

The regulations are required because the existing statutory method for calculating the amount in a contribution notice is based on the DB funding rules and the relevant deficit in a DB scheme. These rules do not apply to DC schemes.

The regulations came into force on 29 July 2010. Further information can be found in the [Explanatory Memorandum](#) which accompanies the regulations.

The Occupational Pension Schemes (Levies) (Amendment) Regulations 2010

Regulations came into force on 8 March 2010 which are designed to implement the European Commission's decision of 11 February 2009, that the partial exemption of the BT Pension Scheme from payment of a levy to the PPF, arising from the Crown guarantee, constituted an incompatible state aid (reported in 7 Days on [8 February 2010](#)). Those regulations remove the partial exemption from payment of the PPF levy and also enable schemes with a full Crown guarantee to become "eligible schemes", where retaining these provisions would give rise to incompatible state aid.

These [regulations](#), which came into force on 29 July 2010, make consequential amendments to remove an exemption from payment of the PPF administration levy where it gives rise to incompatible State aid and ensure that where that levy becomes payable part way through a financial year it is paid in full for that year.

Further information can be found in the [explanatory memorandum](#) which accompanies the regulations.

DEPARTMENT FOR BUSINESS INNOVATION & SKILLS (BIS)

Consultation on the future of the Default Retirement Age

Under the Employment Equality (Age) Regulations 2006, it is lawful for an employer to dismiss an employee aged 65 or over by reason of retirement, this is known as the default retirement age (DRA).

The DRA had been under threat since the High Court's decision in *Heyday*¹. The outgoing Labour administration had pledged to review the position in 2010. However, the change in Government brought decisive action and the Coalition immediately committed to phasing it out.

On 29 July 2010, BIS, jointly with the DWP, published a [consultation](#) on specific proposals to phase out the DRA. The consultation closes on 21 October 2010.

The DRA will be removed from legislation on 6 April 2011, but a transitional period will run between 6 April 2011 and 1 October 2011 to allow retirements that are already in progress to be completed, provided that:

- a notification of retirement is issued by the employer prior to 6 April 2011;
- the date of retirement falls before 1 October 2011;
- all requirements of the DRA procedure are met.

Retirements using the DRA will cease completely on 1 October 2011. This means that if someone is notified of their retirement date in February 2011 but does not reach this date until after 1 October 2011 they cannot be compulsorily retired using the DRA process.

¹*R (on the application of Age UK) v Secretary of State for Business, Innovation and Skills* [2009] EWHC 2336.

For further details, please see our Alert: "[Default retirement age of 65: Here today, gone tomorrow?](#)" dated 30 September 2009

BIS and the DWP have also published a number of research reports, the findings of which have been used to inform the review of the DRA. These can be accessed by clicking on the links below:

- [Second Survey of employers' policies, practices and preferences relating to age, 2010](#)
- [Review of the Default Retirement Age: Summary of the stakeholder evidence](#)
- [A comparative review of international approaches to mandatory retirement](#)
- [Pathways to retirement: The influence of employer policy and practice on retirement decisions](#)
- [Default retirement age - employer qualitative research](#)

For more information, see our News: "[The end of the default retirement age is nigh!](#)" dated July 2010.

[BIS Press Release](#) / [BIS Summary of research evidence](#)

DEPARTMENT FOR WORK AND PENSIONS

Abolition of DC contracting-out: consultation on implementing legislation

On 28 July 2010, the DWP published a [consultation](#) on draft consequential legislation relating to the abolition of DC contracting-out. The consultation closes on 19 October 2010.

The consultation includes four sets of draft regulations which are designed to amend or revoke existing legislation to enable contracting-out to be ended for all DC schemes.

It also confirms that DC contracting-out will be abolished from 6 April 2012.

Broadly, the draft regulations:

- allow a three-year transitional period so that the current automated rebate and recoveries process between HMRC and DC schemes can continue. Among other things, this will ensure that the final year's rebate (for the tax year 2011/12) can be paid after 6 April 2012, in order to ease administrative burdens;
- introduce a "de minimis" limit on the amount of rebate required to be paid. This is designed to avoid HMRC having to make a payment if the cost of doing so exceeds the actual amount of the proposed payment;
- apply a 50% contracted-out deduction to survivors' SERPS in all cases. This is to account for the fact that schemes will no longer be required to track protected rights separately and HMRC will not know whether effect has been given to those rights;
- provide that, where a contracting-out certificate applies to a COMB, it will automatically be valid only for the salary-related section of the scheme; and
- require trustees to provide members with certain minimum information in connection with the abolition of contracting-out.

For more information, see our Alert: "[Abolition of DC contracting-out: consultation on implementing legislation](#)" dated 30 July 2010.

Member nominated trustees: DWP research on attitudes to increasing the proportion

The Pensions Act 2004 introduced a requirement for trustees to ensure that (subject to certain limited exceptions) at least one-third of the total number of trustees on a pension scheme trustee board are Member-Nominated Trustees (MNTs). The Act also reserved the power for this minimum proportion of MNTs to be increased at some point in the future to 50%. Initial indications were that this would happen in 2009, once the new MNT arrangements had had time to bed down. However, this was subsequently deferred, pending the outcome of research commissioned by the DWP (under the former labour Government) into possible consequences of such an increase.

On 28 July 2010, the DWP published a [report](#) which presents the findings from a qualitative study which explores attitudes to increasing MNT representation on pension scheme trustee boards from the perspectives of employers, pension scheme trustees (both MNTs and employer-nominated trustees (ENTs)) and trade union representatives.

The findings of the research include:

- generally, trustee boards which had met or exceeded the one-third MNT requirement felt that the arrangements were working well;
- difficulty recruiting MNTs was a widespread problem with perceived issues including: the MNT role being seen as boring and technical; office politics; perceptions of personal liability; placing an employee in opposition to their employer should a dispute arise; the commitment involved in terms of time and effort; and fears of a negative impact on an MNT's main job role. These issues led some employers, particularly those from "blue-collar" industries, to express concern that they would struggle to recruit sufficient MNTs to make up 50% of their board;
- a proposed move to 50% MNT representation was generally seen in a positive light by MNTs and trade union representatives, while support for 50% MNTs was less evident amongst employers and ENTs, to the extent that some employers were actively opposed to any such measure and suggested that if such a rule were introduced they would consider closing their scheme; and
- trustee boards that had already met, or exceeded, 50% MNT representation were generally pleased with the operation of the trustee board and felt that scheme governance was enhanced (although this depended on whether the Chairperson had a casting vote).

Respondents generally felt they would be able to meet the 50% MNT requirement if it were introduced, but there were a number of concerns about practical considerations, such as recruitment, the increased need for training and support, and maintaining expertise on the board.

As yet, however, the DWP has not given an indication as to whether it will exercise the Pensions Act power to increase the minimum number of MNTs.

Workplace pension reforms: DWP research reports

The DWP has recently published two research reports relating to the proposed 2012 workplace pension reforms.

[Research Report No. 669](#) on "Individuals' attitudes and likely reactions to the workplace pension reforms" was designed to measure support for the reforms among workers eligible for automatic enrolment and estimate their likely behaviour, including whether they are likely to stay in workplace pensions and their likely contribution levels. The findings are used by the DWP to estimate the likely impact of the reforms on future pension saving.

The research indicates that:

- there is broad support for the key features of the reforms: 90% of respondents said the employer contribution was attractive; 83% found the opportunity to opt-out attractive; 68% supported the individual contribution; and 64% supported automatic enrolment for eligible workers; and
- the majority of respondents (65%) said that if they were automatically enrolled into a workplace pension scheme tomorrow, they would expect to stay in the scheme, while 20% would opt out and 15% were undecided.

Research report No. 676 on “Preparing for pension reform: The information needs of small and micro employers at auto-enrolment” explores how pensions fit into the wider priorities of small and micro employers, including how they obtain information, what influences their decisions on whether or not to offer a pension to their workers, how they communicate with workers and how they might prepare for the upcoming reforms.

Review of workplace pension reforms

It should be noted that the DWP is conducting a review over the summer into the new employer duty to enrol staff automatically into a workplace pension scheme (currently scheduled to commence on 1 October 2012) and the National Employment Savings Trust, which can be used by employers for this purpose. For details of the review, please see 7 Days dated 28 June 2010.

FINANCIAL REPORTING COUNCIL (FRC)

Draft Revised Guidance on the Audit of Occupational Pension Schemes

The Auditing Practices Board (APB) of the FRC has published an Exposure Draft of revised Practice Note 15, on “The Audit of Occupational Pension Schemes in the United Kingdom (Revised)”. The consultation closes on 29 October 2010.

When finalised, the guidance will apply to the audits of occupational pension schemes for periods ending on or after 15 December 2010. The exposure draft updates the current guidance, which was issued in March 2007, to reflect:

- the issuance of the new International Standards on Auditing (UK and Ireland) (which apply to audits of financial statements of occupational pension schemes for periods ending on or after 15 December 2010); and
- changes in the legislative and regulatory framework.

APB Press Release

HM TREASURY

Restricting pensions tax relief: The Coalition’s alternative approach

In the Coalition Government’s emergency Budget on 23 June 2010², the Chancellor, George Osborne, announced a review of the former Labour administration’s plans³ to restrict tax relief on pension savings for high earners. Having already initiated an informal consultation, the Treasury has now published a discussion paper on a possible alternative approach which would see the annual allowance (AA) reduced to a level between £30,000 - £45,000. The consultation closes on 27 August 2010, giving interested parties little over four weeks to respond.

² Please see our Alert: “Coalition Budget 2010: Final economic remedies from Gladstone’s Bag” dated 23 June 2010

³ Please see our Alert: “Scant relief for pensions in Darling’s pre-election Budget” dated 25 March 2010

With Labour's planned pensions tax relief restrictions shelved for being unduly complicated, the Government intends to replace these with the simpler concept of a lower AA. Its provisional analysis suggests that an AA of between £30,000 - £45,000 would raise at least the same revenue for the Treasury - one of the Government's main aims in its quest for an alternative approach.

Among other things, the consultation covers:

- changes to enable a reduced AA to operate effectively, including a tailored charge on contributions above the AA, in place of the current 40% flat rate tax charge and the possibility of aligning the "pension input period" (PIP) to the tax year;
- options for measuring "deemed" contributions to a DB scheme so that contributions over the PIP can be valued;
- possible exemptions from the AA, such as in circumstances of serious ill-health; and
- consequential amendments, including a simultaneous reduction in the lifetime allowance (LTA) to ensure "more coherence" between the LTA and the reduced AA, and transitional protection for those with savings above a reduced LTA.

For more information, please see our Alert: "[Restricting pensions tax relief: The Coalition's alternative approach](#)" dated 29 July 2010.

INSTITUTE AND FACULTY OF ACTUARIES

Launch of newly formed Institute and Faculty of Actuaries

The Institute and Faculty of Actuaries was launched on 1 August 2010 and will be led by Ronnie Bowie, former president of the Faculty of Actuaries. The launch follows the vote of 25 May 2010 when members of the Faculty of Actuaries and Institute of Actuaries agreed to merge both organisations. The final approval came in June when the Privy Council gave its approval.

[Institute and Faculty Press Release](#)

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

The impact of the financial crisis on defined benefit plans and the need for counter-cyclical funding regulations (Working Paper No.3)

This latest [working paper](#) on private pensions from the OECD discusses the impact of the financial and economic crisis on DB schemes and looks at the temporary measures introduced by regulators to help ease financially strained plan sponsors.

The paper puts forward a number of suggestions to governments and policy-makers which would enable funding regulations to be more counter-cyclical in nature - for example by encouraging deficit reduction contributions and the build up of surplus while a sponsoring employer's finances are strong. The authors consider that such measures could strengthen the security of DB benefits and help to maintain DB plans for future workers. The paper also sets out some broad guidelines as to how reforms of funding legislation could be structured.

PARLIAMENTARY OMBUDSMAN

Parliamentary Ombudsman responds to Chadwick Report on Equitable Life

As we reported in 7 Days on [26 July 2010](#), HM Treasury has announced the publication of Sir John Chadwick's final report in relation to losses suffered as a result of Government maladministration in the regulation of the Equitable Life Assurance Society (Equitable Life). It also announced the establishment of an independent commission to advise the Government on the best way to allocate payments to Equitable Life policyholders under the payments scheme which is to be set up under the Equitable Life (Payments) Bill.

Subsequently the Parliamentary Ombudsman, Ann Abraham, wrote to all Members of Parliament to inform them of her [initial assessment](#) of the proposals made by Sir John on the proposed payments scheme.

While the Ombudsman welcomes a number of the steps announced by the Government, including the appointment of the independent commission and the work done by Towers Watson to calculate the relative losses sustained by policyholders and annuitants, she considers that Sir John's proposals would not enable fair and transparent compensation to be delivered.

The Ombudsman notes that her letter fulfils her undertaking to assist Parliament to consider what action should be taken as a result of her 2008 report *Equitable Life: a decade of regulatory failure*.⁴

[Parliamentary Ombudsman press release](#)

⁴ For details of the report, see 7 Days dated [21 July 2008](#)