04 April 2011

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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
HMRC: HM Revenue & Customs
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

LEGISLATION

A-Day: Transitional period ends

Transitional Regulations[1] were put in place at A-Day (6 April 2006) to protect schemes which took no action before then from unintended cost consequences arising from the change in tax regime. The regulations applied to all schemes which were in place at A-Day and will still apply to those schemes which have not yet taken action to put in place a deed or a trustee resolution to deal with the A-Day changes.

The Regulations preserved old-style Revenue limits (such as the Earnings Cap) and gave trustees and employers the power to refuse to pay benefits which were written into their scheme rules but which would be unauthorised (and therefore incur adverse tax charges) under the post A-Day regime.

The Transitional Regulations fall away after 5 April 2011 potentially lifting the lid on scheme liabilities for any schemes which have not taken A-Day action.

For more information, please see our Sackers Extra News: "Just when you thought it was safe to go back in the water..." dated August 2010 and "Taxing issues for 2011" dated January 2011.

Abolition of the Default Retirement Age

From 6 April 2011, employers will no longer be able to issue notifications of retirement using the default retirement age (DRA) procedure. Subject to a short transitional period until 1 October 2011 (to cover retirements already in train), there will no longer be a DRA and employers wishing to retain a compulsory retirement age for their workforce will need to objectively justify this.

According to the Government, "the removal of the DRA does not affect occupational pension schemes" as the absence of a DRA does not affect the setting of a normal retirement age (NRA) for the purposes of the scheme. This suggests that the Government will retain the exemption from age discrimination legislation allowing occupational pension schemes to set an age at which people become entitled to benefits. However, it ignores the problem that, even if it is possible to set an age at which benefits become payable, this does not stop it being discrimination if individuals working beyond that age are prevented from accruing benefits.

For more information, please see our Alert: "The bell tolls for the default retirement age" dated 17 January 2011.

[1] The Registered Pension Schemes (Modification of the Rules of existing Schemes) Regulations 2006

Bribery Act 2010

The Ministry of Justice (MoJ) has announced that the Bribery Act 2010 will come into force on 1 July 2011 - three months after the publication of guidance on the Act by the MoJ.

The Act reforms the criminal law of bribery, providing a consolidated scheme of bribery offences which cover bribery in the UK and abroad. It is designed to "ensure the UK is at the forefront of the battle against bribery, allowing the country to clamp down on corruption without being burdensome to business".

The Act creates four offences:

- bribing another person;
- being bribed;
- bribing a foreign official; and
- a commercial organisation failing to prevent bribery.

Individual and corporate pension scheme trustees will be subject to the first three offences, while corporate trustees will also be subject to the fourth. We expect the impact on trustees to be limited as their decisions should be based on the interests of scheme members (rather than any corporate hospitality received) in accordance with trust law principles.

The MoJ has a statutory duty to put in place guidance to help businesses comply with the Act. The guidance will also provide a defence for businesses which follow it.

We will be issuing an Alert on the Act, explaining in more detail the implications for pension scheme trustees.

MoJ Press Release

BOARD FOR ACTUARIAL STANDARDS

Draft of revised Statutory Money Purchase Illustration Rules published

Since 6 April 2003, all schemes which provide "money purchase benefits" have been required under the Disclosure Regulations[2] to supply members with an annual illustration of those benefits in the form of a Statutory Money Purchase Illustration (SMPI).

SMPIs are produced in accordance with Technical Memorandum (TM1), which sets out the assumptions to be used. On 31 March 2011, the Board for Actuarial Standards (BAS) published a proposed new draft of TM1.

BAS proposes to update the mortality assumptions specified in TM1. It is also consulting on whether the maximum rate at which funds can be assumed to accumulate should be lowered. The maximum rate is currently 7% per annum, which many have commented is too high.

BAS has also revised the structure and content of TM1 to make it shorter and easier to understand.

The consultation closes on 10 June 2011.

BAS Press Release

[2] The Occupational Pension Schemes (Disclosure of Information) Regulations 1996

HM REVENUE & CUSTOMS

Registered Pension Schemes Manual: Latest updates

On 29 March 2011, HMRC published a number of updates to the Registered Pension Schemes Manual (RPSM). These include changes in relation to:

- pensions tax reliefs which apply from the tax year 2011/12 (see further Treasury section below); and
- new online reporting requirements for scheme administrators (namely, trustees).

HM TREASURY

Finance (No.3) Bill 2010-11

The third Finance Bill of the 2010/11 Parliamentary session was formally published on 31 March 2011, and will ultimately implement the Coalition Government's plans for restricting pensions tax relief which were first announced on 14 October 2010. These include the reduction of both the Annual Allowance (AA) to £50,000 and the Lifetime Allowance (LTA) to £1.5 million.

As anticipated, the reduced AA of £50,000 is to take effect from the tax year 2011/12, while the new lower LTA will come into effect in April 2012.

In addition, the Bill:

- includes a number of measures for dealing with high accrual, including carry forward provisions and the ability to pay charges from pension benefits;
- will amend the requirements relating to PIPs so that, going forward, the default end date will be aligned with the tax year;
- contains provisions to deal with the cessation of compulsory annuitisation at age 75.

Alongside the Bill, HMRC has made available:

- draft guidance on changes to the rules governing registered pension schemes;
- draft regulations relating to flexible drawdown of pensions; and
- an announcement on certain extra statutory concessions.

For more information, please see our Alert: "The Finance Bill rides again" dated 1 April 2011, and the draft explanatory notes which accompany the Bill.

PENSION PROTECTION FUND

Strategic Plan 2011

The PPF has today (4 April 2011) published its Strategic Plan for 2011, setting out its priorities and objectives for the next three years.

The Strategic Plan incorporates the PPF's Management Plan for the period 2011/12 - 2013/14, as well as its Business Plan for 2011/12 and its updated financial plan and budget.

The PPF notes that its focus over the next 12 months will be on:

- successful implementation of the new pension protection levy framework, which comes into effect in 2012/13;
- making the "Assess & Pay" programme (part of the PPF's long-term programme to wind-up schemes in assessment more quickly before) the standard model for processing schemes through the assessment period; and
- increasing its pool of fund managers, and further developing its management of risk, so that the PPF's Statement of Investment Principles (SIP) can target a higher expected investment return.

PPF Press Release

Updated Compensation Cap Factors

Following the publication of the final PPF Compensation Cap Order for 2011 (see 7 Days dated 28 March 2011) the PPF has released updated compensation cap factors.

The compensation cap is also used in valuation calculations required under Section 179 (risk-based levy calculations) and Section 143 (entry calculation) of the Pensions Act 2004.

The factors have been updated to reflect the statutory increase in the PPF compensation cap at age 65 to £33,219.36 as of 1 April 2011 (£29,897.42 after the 90% cap has been applied). The new factors apply from 1 April 2011.