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Pensions law – the week in review

4 May 2009

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1 LEGISLATION

1.1 Finance Bill 2009

As reported in 7 days on 27 April 2009 and in our Alert: "Budget 2009 – Building Britain's Future"[1], the Chancellor, Alistair Darling, set out in his Budget Report measures which will reduce the tax relief available on pension contributions for the country's highest earners.

The Finance Bill 2009, which enacts many of the Budget measures, was published on 30 April 2009. Although the main tax relief reduction measures are not due to come into force until April 2011 (and will be subject to consultation), interim measures designed to prevent individuals from taking advantage of the lead-in period to make significant additional pension contributions are contained in a schedule to the present Finance Bill.

To review the Treasury's press release and the first draft of the Bill, please click on the links below:

http://www.hm-treasury.gov.uk/press_44_09.htm

http://www.publications.parliament.uk/pa/cm200809/cmbills/090/2009090.pdf

2 DEPARTMENT FOR WORK AND PENSIONS (DWP)

2.1 Consultation on proposals for the personal accounts scheme order and rules

The Pensions Act 2008 contains enabling powers which allow the personal accounts scheme to be established under secondary legislation. On 28 April 2009, the DWP issued a joint consultation document, together with the Personal Accounts Delivery Authority (PADA), which sets out proposals on the legal framework for the personal accounts scheme. These are referred to as the "scheme order and rules".

The scheme order is intended to be the equivalent of the trust deed for a typical trust-based pension scheme and outlines the main parameters of the scheme, including eligibility criteria, and the conditions for

[1] Dated 23 April 2009 and available from the client area of our website or from your usual Sackers contact

member and employer participation. The scheme rules set out more of the detail, for example, general administrative provisions, including the conditions for employer and member contributions, the annual contribution limit and the application of benefits on retirement.

The consultation closes on 20 July 2009.

To view PADA's introduction to the consultation and a copy of the consultation document, please click on the links below:

http://www.padeliveryauthority.org.uk/scheme-rules.asp

http://www.dwp.gov.uk/consultations/2009/draft-scheme-order-and-rules28april2009.pdf

2.2 State Pensions Reform: Briefing pack for advisers

On 30 April 2009, the DWP published a briefing pack which is aimed primarily at financial advisers and is designed "to support any advisers whose customers wish to understand how they may be affected by changes to State Pensions coming into effect from 6th April 2010."

The guidance covers the key elements of State Pensions reform, including:

- the increase in the State Pension age for women from 60 to 65, which is being phased in from 2010;
- the increase in the State Pension age for men and women from 65 to 68, which is being phased in starting from 2024;
- the reduction in the number of qualifying years needed to get a full basic State Pension; and
- the removal of the current minimum National Insurance contribution conditions required to obtain a basic State Pension.

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

http://www.dwp.gov.uk/pensionsreform/pdfs/third-party-briefing-pack.pdf

3 EUROPEAN UNION (EU)

3.1 European Commission publishes report on the Pensions Directive

The European Commission has published a report on some key aspects of the Directive on the activities and supervision of institutions for occupational retirement provision[2] (known as the "IORP" or Pensions Directive). Under the terms of the Directive, the Commission is required to produce a number of regular reports concerning various aspects of implementation.

This report fulfils the Commission's reporting requirements in terms of providing an update on:

- the Commission's examination of the different methods and assumptions used by Member States for calculating a scheme's technical provisions;
- compliance with the Directive's investment provisions;
- progress achieved by Member States "in the adaptation of national supervisory systems"; and
- the different approaches by Member States to custodianship.

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

http://ec.europa.eu/internal_market/pensions/docs/legislation/iorp_report_en.pdf

3.2 Renewed strategy for tackling Europe's demographic challenge

With life expectancy still increasing but birth rates falling, projections indicate that deaths will outnumber births in the EU from 2015, and that the percentage of the EU population aged 65 and over will increase to

[2] Directive 2003/41/EC

30% in 2060 from 17% in 2008. The biggest rise is expected during the period 2015-35 as the post-war "Baby Boomers" retire. The percentage of people aged over 80 is predicted to almost treble, to 12% of the total.

The European Commission believes that whilst recent pension reforms across Europe have gone some way towards the common goal of ensuring that there will be adequate provision to meet the pension and healthcare needs of our ageing populations, the current financial and economic crisis is hindering progress.

On 29 April 2009, the Commission issued a Communication to the institutions of the EU which summarises the impact of an ageing population. The Communication is based on the Commission's 2009 Ageing Report: "Economic and budgetary projections for the EU-27 Member States (2008-2060)"[3].

The Communication notes that there is currently a window of opportunity – a period of about ten years during which labour forces will continue to increase – for implementing the structural reforms needed by ageing societies. If no action is taken now, the implication is that this would weaken the EU's ability to meet the future needs of an ageing population.

Suggestions for addressing these issues include:

- increasing participation and employability in the workforce, to make it easier for people to extend their working lives;
- improving public health to allow higher productivity and labour participation;
- encouraging school leavers to remain in education or vocational training, as a "high level of educational attainment is associated with higher labour force participation and is a precondition for lifelong learning and hence the ability of older workers to remain on the labour market"; and
- continuing to receive and integrate immigrants into the EU.

[3] Joint report prepared by the European Commission (DG ECFIN) and the Economic Policy Committee (AWG)

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To view the EU Commission's press release and 2009 Ageing Report, please click on the links below:

Press release

The 2009 Ageing Report

4 HM REVENUE & CUSTOMS (HMRC)

4.1 Pensions Tax Simplification - New summaries available

On 29 April 2009, HMRC uploaded new facts sheets on pensions tax simplification to its website. These cover pensions tax for:

- individuals;
- individuals who have international interests;
- employers; and
- scheme administrators.

These fact sheets replace the pensions simplification information previously on HMRC's website which had become out of date.

To access the fact sheets, please click on the link below:

http://www.hmrc.gov.uk/pensionschemes/simplification-factsheets.htm

4.2 Stakeholder guidance updated

HMRC has also published updated guidance notes and forms SHP100 (application to register a stakeholder scheme) and SHP104 (stakeholder pension scheme trustee questionnaire). These can be accessed by clicking on the link below:

http://www.hmrc.gov.uk/stakepension/index.htm

5 PENSIONS POLICY INSTITUTE (PPI)

5.1 Retirement income and assets: do pensioners have sufficient income to meet their needs?

The PPI's latest report, published on 28 April 2009, "identifies the main factors that determine pensioners' needs for income and considers whether pensioners are likely to have sufficient income to meet their needs and expectations throughout their retirement."

The research on which the report is based shows changing needs throughout retirement. The PPI notes that: "Typically, when in their 60s, many pensioners remain active and may desire relatively high levels of retirement income. In their 70s, pensioners may become less active but may still be able to live independently and the need for income can reduce. In their 80s and 90s, the onset of disability, widowhood, and the need for long-term care can all contribute to higher costs in later retirement."

To view the PPI's press release and report, please click on the links below:

PPI Press Release

PPI Report

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6 CASE

6.1 Trustees of the Hoval Limited Pension Plan (Deputy Pension Protection Fund Ombudsman)

A challenge mounted by trustees against the Dun & Bradstreet (D&B) methodology (used by the Pension Protection Fund (PPF) in determining its levies), has been rejected by the Deputy Pension Protection Fund Ombudsman (DPPFO).

Background

The trustees of the Hoval Limited Pension Plan (the Plan) opposed the amount of their 2007/08 levy on the basis that the Board of the PPF (the Board) had "failed to properly assess the likelihood of an insolvency event" and, as a result, had treated the Plan unfairly. They complained that the failure score given to the scheme employer by D&B was incorrect, as it had not taken account of all of the information provided in the company's annual report and accounts. Specifically, they considered that D&B should have considered the notes to the accounts on post balance sheet events (information which is required by the "UK Generally Accepted Accounting Practice"). The trustees considered that if this information had been taken into account, the employer's improved financial position after the year end would have merited a lower PPF levy.

The trustees' complaint was initially considered by the Reconsideration Committee of the PPF, which upheld the Board's calculation of the pension protection levy for the Plan. The trustees subsequently appealed to the DPPFO.

Determination of the PPF levy

Under the Pensions Act 2004, the Board is required, before the beginning of each financial year, to determine a number of factors in respect of that year, including the factors by reference to which the pension protection levies are to be assessed, and the rate of the levies. As part of that process (and in accordance with the Board's determination), D&B provide to the Board normal failure scores for each scheme employer (i.e. the likelihood of an insolvency event occurring in respect of that employer). D&B's process for assessing an employer's failure score involves "using information extracted from accounts filed at Companies House".

The DPPFO's determination

The DPPFO held that the Board had calculated the Plan levy in accordance with the 2007/08 PPF levy Determination. He considered that "for [D&B] to review notes to accounts and directors' reports, would be costly and would introduce a degree of subjectivity."

Comment

This case highlights the inevitable frustration that trustees may encounter when faced with the automated D&B process. But, it also serves as a reminder for trustees and employers to take advantage of those options which are under their control (for example, by submitting a deficit reduction certificate or other voluntary certificate), to ensure that they are not faced with a disproportionate PPF levy.

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