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

LEGISLATION

Bribery Act 2010

The Bribery Act 2010 (the Act) came into force on 1 July 2011.

The Act modernises the criminal law of bribery, providing a consolidated scheme of offences which cover bribery both in the UK and abroad.

For further details, please see our Alert, "Bribery Act 2010" dated 19 April 2011.

DEPARTMENT FOR WORK AND PENSIONS

Consultation on employer debt (section 75 of the Pensions Act 1995)

Generally, if a company exits an underfunded multi-employer DB scheme, its share of the deficit (if any) becomes a debt due to the trustees (the "employer debt"). A debt calculation is currently triggered where an employer has "ceased to employ at least one person who is an active member" of the pension scheme, where another employer with DB liabilities continues to employ at least one active member).

Introduced in April 2010, two easements[1] from the employer debt legislation where there is an internal reorganisation have not generally provided sufficient flexibility for companies. The latest draft amending regulations aim to address this issue while maintaining sufficient protection for scheme members.

The key points of the consultation are as follows:

- A new option is proposed for dealing with an employer debt, the "Flexible Apportionment Arrangement" ("FAA").
- Provided certain conditions are met, it will be possible to use an FAA in any circumstances, not just a corporate restructuring.
- Trustees will have discretion to extend an employer's "period of grace"[2] up to a maximum of 36 months.
- The DWP has decided not to go ahead with certain technical changes to the employer debt legislation.

For further details please see our Alert, "Employer Debt Revisited" dated 30 June 2011.

[1] For details please see our Alert, "Employer Debt – Seven Steps to Heaven?" dated 18 March 2010

[2] Under the current employer debt legislation an employer may cease employing an active member of the pension scheme temporarily without triggering an employer debt

GOVERNMENT

Written ministerial statement on use of gender by insurers

On 2 March 2011, the Court of Justice of the European Union (ECJ) ruled that, with effect from 21 December 2012, an exemption in a European Directive[3] (the "Directive") which permits insurers to use sex as a determining factor in their assessment of risk, where it is based on "relevant and accurate actuarial and statistical data" will no longer be valid.

On 30 June 2011, Mark Hoban, Financial Secretary to HM Treasury, provided a written statement to the House of Lords, explaining how the UK government interprets, and intends to implement this decision.

The Government's view is that the judgment only applies to new contracts for insurance and related financial services entered into on or after 21 December 2012. In such contracts, the use of gender as a risk factor should not result in individual differences in premiums and benefits for men and women. However, any contracts with gender-sensitive pricing of premiums or benefits concluded ahead of 21 December 2012 can continue unchanged after that date. The Government intends to amend the Equality Act 2010 early next year to make the necessary changes.

In addition, the Government is working with the European Commission and other member states to ensure a unanimous view across the EU of the implications of the judgment, and the factors that need to be considered by member states in their implementation of the judgment. In the interests of clarity, the Government's preferred outcome would be an amendment of the Directive to give effect to the judgment.

However, the written statement does not address the issue of sex-based related actuarial factors used in occupational pension schemes. This is a distinct but analogous issue governed by a different EU Directive. For more information, see our Alert "Is it the end of the road for sex-based actuarial factors?" dated 2 March 2011.

HM TREASURY

First payments confirmed for Equitable Life policyholders

The Financial Secretary to the Treasury, Mark Hoban MP has confirmed that the first cheques were sent to Equitable Life policyholders on Thursday 30 June 2011.

Hundreds of policyholders are due to receive cheques in the coming weeks at the start of a three year payment programme. The Government has set aside half a billion pounds for the Equitable Life Payment Scheme over the coming year.

Policyholders do not need to get in contact at this time; the Government will be writing to all the eligible policyholders it can by June 2012 to provide information about their personal status within the Scheme. In accordance with the Independent Commission on Equitable Life Payments' recommendations, the Scheme will prioritise the oldest policyholders for earlier payment, along with payments to estates of deceased policyholders.

Press release

[3] Directive 2004/113/EC which implements the principle of equal treatment between men and women in the access to and supply of goods and services

INSTITUTE AND FACULTY OF ACTUARIES

New President appointed

On 27 June 2011, Jane Curtis became the first woman President of the Institute and Faculty of Actuaries. Ronnie Bowie now replaces Nigel Masters as Immediate Past President and Philip Scott becomes President-elect.

Press release

PENSIONS POLICY INSTITUTE

Assessment of the Government's options for state pension reform

On 28 June 2011, the PPI published an independent assessment of the potential impact of the state pension reforms set out in the Government's Green Paper: A State Pension for the 21st Century.

Press release

Sackers' response to the consultation on the Green Paper

THE PENSIONS REGULATOR

Annual report and accounts

On 1 July 2011, TPR published its annual report and accounts for 2010-11.

The report details TPR's work during 2010-11, which includes:

- reducing risks to members of DB pension schemes - raised awareness of the risks associated with Enhanced Transfer Values and similar exercises.
- reducing risks to members of DC pension schemes - initiated a dialogue with the pensions sector on what good DC pensions look like and how our regulatory approach can support good outcomes for members.
- improving governance and administration - set robust standards for record-keeping to ensure that members receive correct retirement benefit.
- preparing for 2012 - continued working to build a robust employer compliance framework in order to maximise compliance with automatic enrolment duties.

Recovery plans: Scheme funding and other security arrangements

This publication is the second part to TPR's December 2010 report, "Recovery plans: Assumptions and triggers".[4]

The document presents an analysis of recovery plans with valuation dates up to and including 21 September 2009 that were submitted to TPR before 1 February 2011. It specifically considers the funding aspects of these plans, where the December 2010 report covered the technical assumptions underlying funding targets and statistics relating to TPR's triggers.

[4] For details, see 7 Days dated 20 December 2010