

Pensions law – the week in review

5 January 2009

AT A GLANCE

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1 LEGISLATION

1.1 The Pensions Act 2008 (Commencement No. 1 and Consequential Provision) Order 2008

The first commencement Order made under the Pensions Act 2008 (the Act) has been published. With effect from 19 December 2008, this Order brings into force sections 124(2) and (6) of the Act relating to the Financial Assistance Scheme (FAS), amending, for the purposes only of section 286A of the Pensions Act 2004 (restriction on purchase of annuities), the definitions of “qualifying member” and “scheme’s pension liabilities” in line with recent extensions to the FAS. The Order also makes consequential amendments to the Financial Assistance Scheme Regulations 2005.

The Order can be viewed by clicking on the link below:

http://www.opsi.gov.uk/si/si2008/pdf/uksi_20083241_en.pdf

1.2 The Local Government Pension Scheme (Administration) (Amendment) Regulations 2008

Regulations have been laid before Parliament which provide, in the context of the Local Government Pension Scheme (LGPS):

- that members of the LGPS who transfer employment to new unitary local authorities following the local government re-organisation (due to take place on 1 April 2009) will not be treated as if they were in new employment. This means that their LGPS membership relating to their former local authority employment is not treated as if it were deferred, and service with the new unitary local authority and the former local authority will be treated as continuous active membership; and
- identify which authorities are responsible for administering the pension fund for the respective employing authorities, as a consequence of the local government reorganisation.

These regulations will come into force on 1 April 2009.

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The regulations, together with the accompanying explanatory memorandum, can be accessed by clicking on the links below:

http://www.opsi.gov.uk/si/si2008/pdf/uksi_20083245_en.pdf

http://www.opsi.gov.uk/si/si2008/em/uksiem_20083245_en.pdf

1.3 The Companies (Model Articles) Regulations 2008

Following the introduction of the Companies Act 2006¹, new model articles (the Model Articles) have been published which will replace those currently known as “Table A”.

Every company formed under the Companies Acts is required to have articles of association which are rules, chosen by the company’s members, which govern the company’s internal affairs (this includes trustee companies). The Model Articles set out example articles for three main types of company (a private company limited by shares, a private company limited by guarantee and a public company).

Companies are not required to adopt the Model Articles, but these will automatically be used at the articles for such companies formed under the Companies Act 2006 on or after 1 October 2009 - unless a company chooses to adopt its own tailor-made articles in place of all or part of the Model Articles (in the same way that companies have been able to use the Table A articles).

The regulations will come into force on 1 October 2009.

The regulations and accompanying explanatory memorandum can be accessed by clicking on the links below:

http://www.opsi.gov.uk/si/si2008/pdf/uksi_20083229_en.pdf

http://www.opsi.gov.uk/si/si2008/em/uksiem_20083229_en.pdf

¹ The Companies Act 2006 essentially consolidates existing company law requirements, as well as introducing some new ones relating to directors’ duties and the conduct of private companies. For more information, please see our Sackers Extra News: “Companies Act 2006 – The Next Wave” dated August 2008

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2 ASSOCIATION OF CONSULTING ACTUARIES (ACA)

2.1 Smaller Firms Pension Survey

The ACA has published a report on pension trends, based on a survey of employers with 250 or fewer employees which was conducted during June and July 2008.

According to the ACA, the UK's 1.2 million smaller firms employ around 9.6 million people, but over 1 million of these firms employ 4 staff or fewer. Around 80% of these firms currently offer no workplace pensions.

Of those employers which have made defined benefit (DB) pensions available to their employees, 91% of these DB schemes are now closed to new entrants and half are closed to future accrual. Contributions to defined contribution (DC) pensions have remained flat, with savings into DC schemes much the same as there were in 1996, when this series of surveys started.

For more details, please click on the links below to view the ACA's press release and report:

[ACA Press Release](#)

[2008 ACA Smaller Firms Pension Survey Report](#)

3 DEPARTMENT FOR WORK AND PENSIONS (DWP)

3.1 100 years young - State Pension reaches its centenary

1 January 2009 saw the State Pension reach its 100th birthday. One hundred years ago, the first pensioners collected a State Pension of 5 shillings a week. From these beginnings, when half a million people over age 70 received a pension from the State, the State Pension is now paid to over 12 million people, with more than 700,000 people expected to reach State Pension age in 2009 alone.

The DWP notes that the first pension was non-contributory but was means tested. Pensions Officers visited people's houses to check how much money and what possessions they had - including the kitchen sink. People also had to prove they were of 'good character' before they received a penny.

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Rosie Winterton, Minister for Pensions and the Ageing Society, commented:

“Today we salute the first pension pioneers who fought to provide security for people in old age. 100 years on the State Pension continues to be a foundation of support for people as they retire and we have taken steps now to ensure this will be the case for years to come.”

To view the full press release, please click on the link below:

<http://www.dwp.gov.uk/mediacentre/pressreleases/2009/jan/pens096-010109.asp>

4 HM REVENUE & CUSTOMS (HMRC)

4.1 Pension Schemes Newsletter 35

HMRC has published its 35th Pension Schemes Newsletter.² The current issue contains a number of reminders relating to end of year filing, as well as an update on the Annual Allowance (AA) and Lifetime Allowance (LTA).

The update is a useful reminder that for the tax year 2009/10, the LTA will increase to £1.75 million and the AA to £245,000, with further increases for the tax year 2010/11 to £1.8 million and £255,000 respectively. After this, both the LTA and the AA will be fixed at the 2010/11 rates for a further five years, up to and including 2015/16.³

HMRC intends to publish this Newsletter on a quarterly basis going forwards (or more frequently if HMRC needs to impart information urgently).

To view the latest edition of the Newsletter, please click on the link below:

<http://www.hmrc.gov.uk/pensionschemes/pen-newsletter35.htm>

² The name of this series of newsletters has changed since the last issue when it was known as the “Pensions Tax Simplification” Newsletter

³ The fixing of these rates was provided for in the 2008 Pre-Budget Report - see 7 Days dated 24 November 2008

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4.2 Pensions Industry Newsletter 35

The National Insurance Services to Pensions Industry (NISPI) division of HMRC has also published the 35th edition of its own “Pensions Industry Newsletter”.

Among other topics, this NISPI Newsletter covers:

- details on how to access the NISPI pages on the Internet;
- an article on Apparent Un-notified Terminations (AUT) (which invites feedback from those with experience of NISPI’s processes). (An AUT is generated following a review of contracted-out records and identifies where there are gaps in contracted-out employment but no termination notice has been received from the scheme.);
- a note on the new legislation permitting the conversion of guaranteed minimum pensions (GMPs) into ordinary scheme benefits which is due to come into force from 6 April 2009; and
- the introduction of the Upper Accrual Point (a new threshold for the calculation of both State Second Pension and contracted-out rebates).

To view the NISPI Newsletter, please click on the link below:

<http://www.hmrc.gov.uk/nic/newsletter35.pdf>

5 PENSION PROTECTION FUND (PPF)

5.1 PPF publishes its third Purple Book

The PPF and the Pensions Regulator (TPR) have jointly published The Purple Book 2008 (the third in the series). It is billed as “the most comprehensive picture today of the risks faced by the UK’s defined benefit pension schemes”.

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The data and analysis contained in this latest Purple Book relates to 93% of the defined benefit pension schemes eligible for PPF compensation (6,898 schemes) and 97% of their estimated total liabilities.

The PPF notes that the dataset covered is larger than last year and reflects the better information supplied by schemes to TPR through its improved scheme return processes.

New chapters have also been added this year, focusing on PPF compensation payments and risk reduction. In addition, some existing chapters have been expanded to include more comprehensive information and detail than before, for example on scheme asset allocation.

TPR Chief Executive, Tony Hobman, said that: “The release of the third Purple Book gives increased insight into the volatile nature of scheme funding. While the data reflects the risks faced by schemes up to March, the economic climate since then has clearly got a lot tougher. We will continue to monitor the situation closely.”

Please follow the links below to view the PPF’s press release, Purple Book and Executive Summary:

<http://www.pensionprotectionfund.org.uk/news-details.htm?id=6911>

http://www.pensionprotectionfund.org.uk/purple_book_exec_summary_dec_2008.pdf

http://www.pensionprotectionfund.org.uk/purple_book_dec_2008.pdf

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6 CASE

6.1 Seldon v Clarkson Wright & Jakes (EAT – 19 December 2008)

This case concerns the legality of a compulsory retirement provision in a partnership deed.

Background

Mr Seldon (S) was an equity partner in a firm of solicitors, Clarkson Wright & Jakes (CWJ). He was a signatory to a partnership deed (dated 19 March 1992) which provided that each equity partner who had attained the age of 65 was to retire on the 31 December following.

A new partnership deed was signed on 31 December 2005. It was similar to the 1992 deed in most respects but permitted an equity partner to remain after the age of 65 with the consent of the other partners.

During 2006, S proposed that he continue to work part-time as a consultant and also stated that he wished to carry on working full-time. However, CWJ did not offer him any post-retirement position.

On 31 December 2006, S ceased to be an equity partner and subsequently brought proceedings before the Employment Tribunal.

Employment Tribunal (Tribunal)

The Tribunal accepted that the compulsory retirement provision in the partnership deed amounted to age discrimination but considered that it was a proportionate means of achieving certain legitimate aims (see further below) and was therefore justified.

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The legitimate objectives accepted by the Tribunal included:

- ensuring that associates were given the opportunity of partnership after a reasonable period working at associate level, thereby ensuring that associates do not leave the firm;
- facilitating the planning of the partnership and workforce across individual departments by having a realistic long term expectation as to when vacancies will arise; and
- limiting the need to expel partners by way of performance management, thus contributing to the congenial and supportive culture in the firm.

S appealed.

Employment Appeal Tribunal (EAT)

The EAT concluded that the Tribunal was entitled to find that the principle of compulsory retirement was justified and that it achieved certain legitimate objectives. The partnership could therefore properly adopt a rule requiring partners to retire at a particular age.

However, the EAT held that the Tribunal was not entitled to find that the partnership had established that they were justified in fixing the relevant age at which the partners should be retired at 65 because performance would drop off at around that age - there was no evidential basis for the assumption.

Accordingly the EAT remitted the case to the Tribunal for a fresh decision.

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Comment

This case serves as a warning that an employer/partnership must ensure that any objective justifications for potentially discriminatory treatment of its workforce have been properly conceived and are supported by evidence.



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