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Pensions law – the week in review

6 July 2009

AT A GLANCE

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SACKER & PARTNERS

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1 LEGISLATION

1.1 The Pensions Act 2004 (Code of Practice) (Material Detriment Test) Appointed Day Order 2009

The Pension Regulator's (TPR) latest code of practice, which sets out the circumstances in which TPR expects to issue contribution notices on the basis of the "material detriment test", is brought into force by these regulations with effect from 29 June 2009.

For more information on this latest code of practice and the recently released module of TPR's Trustee toolkit, please see section 5.1 below.

A copy of the regulations can be accessed by clicking on the link below.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091565_en.pdf

1.2 The Pensions Act 2008 (Commencement No. 4) Order 2009

The Pensions Act 2008 provided for the strengthening of TPR's existing anti-avoidance powers so that, among other things, TPR would have the power to issue a contribution notice where an act or failure to act has detrimentally affected, in a material way, the likelihood of members' benefits being received (the "material detriment test").

In tandem with TPR's new code of practice, these regulations bring into force the relevant provisions of the Pensions Act 2008 (which amend the Pensions Act 2004). The provisions in the regulations came into force on 29 June 2009 but the amendments apply retrospectively to 14 April 2008 (the date on which they were first announced).

The regulations also bring into force, from 1 July 2009, section 74 of the 2008 Act. This section requires the Secretary of State to appoint a person to carry out a review of two aspects of the Personal Accounts scheme: the policy on contribution limits and restricting pension fund transfers to and from the scheme. It also allows the Secretary of State to bring other topics within the review's scope.

The regulations can be accessed by clicking on the link below:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091566_en.pdf

1.3 The Pension Protection Fund (Entry Rules) (Amendment) Regulations 2009

Under the Pensions Act 2004, the Board of the Pension Protection Fund (PPF) can give a relevant person (such as the trustees of a scheme) directions regarding the exercise of their powers during a PPF assessment period[1], with a view to ensuring that the scheme's protected liabilities do not exceed its assets or, if they do exceed its assets, that the excess is kept to a minimum.

The regulations make provision for the PPF Board to make directions that would enable it to stop trustees, on a scheme by scheme basis, from making rule changes during an assessment period which would have the effect of increasing the scheme's protected liabilities.

These regulations will come into force on 21 July 2009.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091552_en.pdf

http://www.opsi.gov.uk/si/si2009/em/uksiem_20091552_en.pdf

1.4 The Pensions Act 2004 (Commencement No.6, Transitional Provisions and Savings) (Amendment) Order 2009

These regulations enable the Board of the PPF to make compensation payments to trustees of eligible schemes under sections 83 and 84 of the Pensions Act 1995[2] where the scheme employer had become insolvent before 6 April 2005, notwithstanding that an application under section 82 of the Act was made after the original cut-off date under the regulations, 6 April 2006. (Sections 83 and 84 are designed to cover

[1] This is the period of at least one year during which the PPF Board determines whether a scheme is eligible for entry to the PPF

[2] The provision also covers corresponding legislation in Northern Ireland

circumstances in which an eligible scheme's assets have been reduced as a result of a prescribed offence (which include dishonesty and intent to defraud)).

These regulations (which came into force from 26 June 2009) can be accessed by clicking on the link below:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091583_en.pdf

2 HM REVENUE & CUSTOMS (HMRC)

2.1 Pre-registration for Scheme Administrators and Practitioners (Form APSS161)

We reported in 7 Days on 15 June 2009 that HMRC had removed form APSS161 from its website. On 29 June 2009 HMRC published an update stating that the form had been removed in error and that it has now been reinstated.

HMRC's latest pension scheme news and the reinstated form APSS161 can be accessed by clicking on the links below:

http://www.hmrc.gov.uk/pensionschemes/news.htm

http://www.hmrc.gov.uk/pensionschemes/apss161.pdf

3 NATIONAL ASSOCIATION OF PENSION FUNDS (NAPF)

3.1 Engagement Survey 2009

The NAPF has published its fifth annual survey on "Pension Funds' Engagement with Companies". The purpose of this survey was to examine the engagement policies and practices of NAPF fund members. 45 members responded, representing nearly £200bn of assets under management.

The survey shows that nearly half (49%) of the pension schemes surveyed will spend more time scrutinising the actions of their fund managers on engagement issues as a result of the current economic climate.

Other findings from the survey indicate that:

- 78% intend to give more time to reviewing reporting and 57% will pay more attention to votes cast;
- pension schemes engage both indirectly and directly with the companies in which they invest - 93% carry out some engagement via delegation to investment managers while 44% have a policy of direct engagement with the companies in which they invest;
- 70% of schemes consider that their engagement policies have a tangible effect on corporate governance;
- 51% of schemes have incorporated the Institutional Shareholders' Committee Principles[3] into their contracts with investment managers; and
- competing work priorities act as a barrier to direct engagement for 62% of schemes, while 59% found lack of relevant skills to be an issue.

The NAPF's press release and engagement survey can be accessed by clicking on the links below:

NAPF Press Release - 29 June 2009

NAPF 2009 Engagement Survey

4 THE PENSIONS ADVISORY SERVICE (TPAS)

4.1 TPAS annual review reveals rise in pension complaints

In its annual review (published on 1 July 2009), TPAS reveals that it dealt with a total of 7,746 complaints in the year ending March 2009. This represents an increase of 10% on the previous 12 month period.

[3] http://www.napf.co.uk/DocumentArchive/Policy/ISC/20090624_ISC%20Statement%20of%20Principles%20-%20Jun07.pdf

Most of the complaints relate to individual pension arrangements (complaints relating to occupational schemes fell during the period by 2%), with poor administration (in particular delays and mistakes) coming top of the list of causes for complaint.

The review includes a number of case studies which examine the way in which such complaints arise, as well as the way in which TPAS advisers have helped resolve the issues.

The TPAS press release and 2009 annual review can be accessed by clicking on the links below:

http://www.pensionsadvisoryservice.org.uk/press_releases/articles/20090701.asp

http://www.pensionsadvisoryservice.org.uk/press_releases/articles/documents/AnnualReport2009.pdf

5 THE PENSIONS REGULATOR (TPR)

5.1 TPR explains its approach to risk transfers in a changing landscape

The Pensions Act 2008 expanded TPR's powers in response to fears that the existing anti-avoidance powers were not sufficient to tackle risks posed to members' benefits by "new business models". A significant addition was the power to impose contribution notices, in certain circumstances, where a party's action or failure to act has a materially detrimental effect on the likelihood of members receiving their benefits (the "material detriment test").

As part of a number of safeguards on the use of this new power, TPR was required to produce a code of practice setting out the circumstances in which it expects to issue contribution notices on the basis of the material detriment test. As noted under 1.1 above, TPR's latest code of practice came into force on 29 June 2009.

Alongside the new code, TPR has added a new module to its Trustee toolkit on "Buy-ins and partial Buy-outs", which is designed to provide guidance to those considering transferring pensions risk to insurers. Among other things, the module covers:

- what is meant by buy-in and partial buy-out;
- the differing roles of the employer and the trustee;
- the options and schemes' objectives;
- data management and administration; and
- the process of bulk annuity purchase.

For more information on TPR's latest code, please refer to our Sackers Extra Alert: "Material Detriment Code Revisited" dated 7 May 2009.[4]

TPR's press release and Code of Practice on the Material Detriment Test can be accessed by clicking on the links below:

http://www.thepensionsregulator.gov.uk/whatsNew/pn09-08.aspx

http://www.thepensionsregulator.gov.uk/pdf/CoP12MaterialDetrimentTest.pdf

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[4] Available from the client area of our website or from your usual Sackers contact

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