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

LEGISLATION

Draft regulations to ban consultancy charging for automatic enrolment

In 2012 Steve Webb, the Minister for Pensions, initiated a six month review of the interaction between automatic enrolment and consultancy charging.

The key findings of the review were that:

- the structure of consultancy charging was flawed in an automatic enrolment context;
- it had an unfair impact on some individuals; and
- it would be difficult to cap or effectively restrict it.

The Minister concluded that the consultancy charging mechanism was inappropriate in automatic enrolment schemes and should be banned.

Draft regulations have now been published which aim to achieve this. In order to qualify as an automatic enrolment scheme, a scheme must not include a provision which allows for any amount to be deducted from contributions or investment returns, or for the value of a jobholder's rights to be reduced by any amount, where the amount is to be paid to a third party under an agreement between the employer and the third party.

However, the ban does not apply to a legally enforceable agreement between an employer and a third party, entered into before 10th May 2013, under which an amount is to be paid to the third party in one or more of the ways set out above.

Draft explanatory memorandum

DEPARTMENT FOR WORK AND PENSIONS

Government calls for evidence on pension scheme quality

On 4 July 2013, the DWP published a call for evidence on how work-based schemes are managed, with a view to setting out standards to protect members.

Looking at the quality of DC pension schemes, the government has asked the industry for evidence on:

- the current state of pension scheme governance;

- default options;
- administration and record-keeping; and
- scale of schemes.

Responses to the call for evidence will inform the development of a set of minimum legislative standards.

The consultation closes on 9 September 2013.

Press release

Civil partners and same sex marriage: impact assessment

The government have published an estimate of the increase in pension scheme liabilities of equalising survivor benefits for civil partners and same-sex married couples in contracted-in defined benefit pension schemes.

Background

Pension schemes are not required to provide the same benefits to civil partners as they would to spouses under UK law. Civil partners are only entitled to the following survivors' benefits:

- contracted-out survivors' benefits relating to service on or after 6 April 1988 (the date on which contracted-out benefits for widowers were introduced); and
- all survivors' benefits relating to service on or after 5 December 2005.

As currently drafted, the Marriage (Same Sex Couples) Bill will only require pension schemes to provide the same limited survivors' benefits for same sex spouses.

As the Bill passes through Parliament, interest has arisen in DWP's estimate of the cost to employers sponsoring private sector contracted-in DB pension schemes of equalising survivor's benefits for civil partners and same sex marriages – that is, making it compulsory for these schemes to provide civil partners and same-sex married couples with the same survivor's rights as opposite sex married couples.

Following a Parliamentary question on this subject, the DWP has published its estimate. On its calculations, equalisation would increase pension liabilities by approximately £18 million (rounded to the nearest million). This increase would be funded by the sponsoring employers of affected schemes.

For further information on survivors' benefits for same sex couples, please see our Alert: dated 1 March 2013.

PPF compensation cap amendments: impact assessment

The PPF provides compensation to members of eligible DB pension schemes, when there is a qualifying insolvency event for the employer, and where there are insufficient assets in the pension scheme to cover the PPF level of compensation.

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On 25 June 2013 the Minister for Pensions announced that the amount of money which long-serving staff can receive in retirement if their company folds is set to increase.

The proposal

The current compensation cap (currently £34,867.04) will remain as the base cap applied to all relevant members of the PPF. Where a person has 21 years or more service in the scheme this base compensation cap will be increased by 3 per cent for each full year above 20 years. Service transferred from a previous scheme will count towards the qualifying periods, because these people have, effectively, been relying on this single pension scheme for their retirement income. Where a person has a scheme pension which does not equate to a period of service (for instance, some individuals who have been given part of a pension during a divorce settlement) will have a deemed period of service for these purposes.

Those in the PPF will be moved onto this method of calculating the compensation cap. Those who are in receipt of a payment will, where appropriate, have their payments increased with effect from the April following the legislation coming into force, based on 3 per cent of their original compensation cap for each full year over 20 years.

On 4 July 2013, the DWP published an impact assessment which estimates the cost of this change. In the DWP's opinion, the combined impact of claims by:

- existing capped members;
- potentially capped members of schemes currently undergoing PPF assessment; and
- expected future capped members

will give rise to an expected increase in the PPF levy of 3.9% for the period to 2030, all other factors remaining unchanged. This has a present value of approximately £138.8 million.

The assessment notes that this estimate is highly dependent both on the current level of scheme funding and the deficits of schemes entering the PPF in the future.

Pensions Bill 2013-14 Briefing paper (Automatic enrolment)

The DWP has published a briefing paper on clause 34 of the Pensions Bill 2013-14, which relates to powers to create general exemptions to the duty of an employer to automatically enrol a jobholder.

While the Government remains committed to its policy of automatic enrolment, it notes that, "there is growing evidence of some specific circumstances where the benefits of being automatically enrolled are outweighed by either the practical, financial or legal consequences. In particular [it] has been presented with evidence about situations in which being automatically enrolled is likely to cause detriment to some jobholders".

The DWP invited views on its current thinking in the consultation: Technical changes to Automatic Enrolment. (Please see our Alert dated 28 March 2013.)

The initial evidence suggested to the DWP that there is a case to re-examine the appropriateness of the employer duty in some, very carefully specified circumstances. For example for individuals:

- with protection from tax charges under HMRC enhanced or fixed protection provisions;
- whose notice period spans their automatic enrolment date;
- who give notice of retirement and stop contributing to their DC scheme before the purchase of an annuity.

Following further assessment, the DWP proposes to hold a formal consultation on draft proposals in the autumn.

EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

First EU assessment of the financial situation of pension funds

On 4 July 2013, EIOPA published its final report on the Quantitative Impact Study (QIS) on Institutions for Occupational Retirement Provision (IORPs).

The study aimed to assess the financial situation of EU pension funds in a comparable and comprehensive way.

The report shows a wide dispersion in impacts of the holistic balance sheet, ranging from surpluses in some member states to large shortfalls in others (such as the UK).

EIOPA is convinced that the holistic balance sheet approach can contribute to the sustainability of pension funds and the protection of current as well as future generations. However, the QIS also confirmed the need for further work, which EIOPA is fully committed to undertake.

Press release

THE PENSIONS REGULATOR

Annual report and accounts 2012 - 2013 published

On 4 July, TPR published its annual report and accounts for 2012/2013.

Chair of TPR, Michael O'Higgins, said:

"Automatic enrolment has made a promising start among the largest employers but significant tests lie ahead for [TPR] and [the] pensions sector as we look to help prepare medium and small employers.

In the last year we've also consulted on our approach to regulating DC schemes and we continue to work with the [DWP] and Financial Conduct Authority to improve quality standards across the DC landscape.

It has continued to be a challenging economic climate for DB pension schemes. We published statements in 2012 and 2013 to help trustees and sponsoring companies to agree appropriate funding plans, and later this year we will review our DB strategy and funding code of practice.

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Importantly, we also responded to the rise in pension liberation fraud with a cross-Government awareness campaign targeted at trustees, providers and pension scheme members, and will be undertaking compliance and enforcement activity in the future."

Press release

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