

Pensions law – the week in review

9 February 2009

AT A GLANCE

LEGISLATION

- The Social Security Benefits Up-rating Order 2009
- The Social Security (Contributions) (Amendment) Regulations 2009
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1 LEGISLATION

1.1 The Social Security Benefits Up-rating Order 2009

This draft Order sets out the 2009-10 rates for all social security benefits and includes details of the basic state pension. It incorporates the increase (announced in the Pre-Budget Report on 24 November 2008) in the basic state pension for a single person to £95.25 (from £90.70) per week and to £152.30 for a couple (up from £145.05). This represents a 5% increase, in line with the increase in the Retail Prices Index from 1 October 2007 to 30 September 2008.

The above change will come into force on 6 April 2009.

To view the draft Order and accompanying explanatory memorandum, please click on the links below:

http://www.opsi.gov.uk/si/si2009/draft/pdf/ukdsi_9780111472798_en.pdf

http://www.opsi.gov.uk/si/si2009/draft/em/ukdsiem_9780111472798_en.pdf

1.2 The Social Security (Contributions) (Amendment) Regulations 2009

These regulations amend the Social Security (Contributions) Regulations 2001 to reflect changes made by the Pensions Act 2007 and the National Insurance Contributions Act 2008 (NICA) in relation to the Upper Accruals Point (UAP). The UAP was introduced by the NICA for the tax year 2009-10 and subsequent tax years.

The Pensions Act 2007 provides for the restructuring of the State Second Pension (S2P), in order to provide a simpler, flat rate pension. The UAP will replace the Upper Earnings Limit (UEL) for the purpose of capping entitlement to S2P. The NICA provides for the introduction of the UAP to be brought forward to April 2009 and sets the UAP at a weekly figure of £770.

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In practice, this means that from 6 April 2009, entitlement to S2P for those in contracted-out employment (and minimum contributions for those who hold appropriate personal pensions) will be calculated by reference to the new UAP.

These regulations ensure that:

- contracted-out rebates and minimum contribution calculations can be made in respect of earners who receive their earnings other than weekly (for example, fortnightly or monthly); and
- the UAP can be reflected on an employer's deductions working sheet (Form P11).

The Regulations will come into force on 6 April 2009.

To view the regulations and accompanying explanatory memorandum, please follow the links below:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090111_en.pdf

http://www.opsi.gov.uk/si/si2009/em/uksiem_20090111_en.pdf

1.3 The Social Security (Contributions) (Amendment No.2) Regulations 2009

These draft regulations specify the levels of Lower and Upper earnings limits (LEL and UEL), as well as the Primary and Secondary Thresholds (PT and ST), for the payment of Class 1 National Insurance Contributions (NICs) for the tax year 2009-10.

As announced in the Pre-Budget Report on 24 November 2008, these limits will be increased as set out below:

- the LEL will be increased from £90 to £95;
- the UEL will be increased from £770 to £844;
- the PT and ST will both be increased from £105 to £110.

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The regulations will come into force on 6 April 2009.

To view the draft regulations and accompanying explanatory memorandum, please follow the links below:

http://www.opsi.gov.uk/si/si2009/draft/pdf/ukdsi_9780111473337_en.pdf

http://www.opsi.gov.uk/si/si2009/draft/em/ukdsiem_9780111473337_en.pdf

1.4 The Social Security (Contributions) (Re-rating) Order 2009

This draft Order increases the rates of Class 2 and 3 NICs and the amount of earnings below which an earner may be exempted from liability for Class 2 NICs.

Class 3 NICs are payable on a voluntary basis (by means of a flat rate weekly contribution) by those who wish to protect their entitlement to certain contributory benefits. The draft Order increases the rate of Class 3 NICs from £8.10 to £12.05.

The Pensions Act 2008 (the Act) permits people retiring before April 2015 to buy back up to six additional years' of state pension entitlement if they already have 20 qualifying years on their National Insurance record. This above inflation increase in the rate of Class 3 NICs, which is provided for in the draft Order, was announced during the passage of the Act through Parliament. The draft Order ensures that the provisions of the Act which allow some people to pay Class 3 contributions for up to six additional years (in respect of "missing" tax years after April 1975) are overall cost neutral.

The draft Order will come into force on 6 April 2009.

To view the draft Order and accompanying explanatory memorandum, please follow the links below:

http://www.opsi.gov.uk/si/si2009/draft/pdf/ukdsi_9780111473351_en.pdf

http://www.opsi.gov.uk/si/si2009/draft/em/ukdsiem_9780111473351_en.pdf

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2 DEPARTMENT FOR WORK AND PENSIONS (DWP)

2.1 Guaranteed Minimum Pensions (GMP) conversion - Government response to consultation

Amendments made to the Pension Schemes Act 1993 by the Pensions Act 2007, included a facility to allow contracted-out occupational pension schemes to convert members' Guaranteed Minimum Pensions (GMPs) into ordinary scheme benefits.

On 2 September 2008, following a commitment made in Parliament to consult before bringing the facility into force, draft amending regulations were published for consultation by the DWP.¹

The Government's response to the consultation has now been published, which considers the responses made to each of the questions asked in the consultation paper.

We can expect the final version of the Occupational Pension Schemes (Contracting-out) (Amendment) Regulations 2009 to be laid before Parliament "shortly". The regulations "are expected to come into force in April or May 2009".

To view the consultation response, please follow the link below:

<http://www.dwp.gov.uk/consultations/2008/occ-pen-contracting-out-consultation-gov-res.pdf>

2.2 Saving for retirement: DWP research report

According to a new DWP research report, most people who save for their future can expect to benefit from saving under the Government's pension reform. This is the general conclusion of the report which is entitled: "Saving for Retirement: Implications of Pensions Reforms on Financial Incentives to Save for Retirement".

¹ For more information, please see our Alert: "GMP Conversion – the facts" dated 9 September 2008, together with our response to the consultation, both of which are available from the client area of our website

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The report sets out the results of research carried out by the DWP, in collaboration with key stakeholders, with the aim of analysing the financial incentives to save in a pension. One of the DWP's central aims has been "to establish what incentives will look like following the reforms in the 2007 and 2008 Pensions Acts". The research included analytical modelling of the impact of pension saving on net retirement income, making assumptions about what the world will look like in the future.

The key findings from the research are that, (given the assumptions applied about the future benefit system and other factors) of those making savings into a defined contribution pension after 2012 with an employer contribution:

- virtually everybody modelled (over 99%) is better off in retirement by saving;
- for the vast majority (over 95%), the improvement is greater than the cost of their contributions, even after taking inflation into account;
- the majority of savers (over 70%) will get back more than twice what they put in, even after taking inflation into account; and
- there is no readily identifiable group in the working age population whose members would not, on average, gain back more than they put into a pension.

The report also confirms the recommendations of the Pensions Commission² back in 2005 and the decision to introduce auto-enrolment in 2012, as part of the Government's introduction of the personal accounts regime.

To view the DWP's press release and the research report, please click on the link below:

<http://www.dwp.gov.uk/mediacentre/pressreleases/2009/feb/pens098-050209.asp>

<http://www.dwp.gov.uk/asd/asd5/rports2009-2010/rrep558.pdf>

² For background information on the Pension Commission's second report, please see our Alert dated 30 November 2005

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3 FINANCIAL SERVICES AUTHORITY (FSA)

3.1 Pension switching advice: “Suitability Assessment Template” published

Following its thematic review (published in December 2008) of the quality of advice given to customers who switch into a personal pension or self-invested personal pension (SIPP) from their existing arrangement³, the FSA has published a “suitability assessment template”. The template is intended to form the basis of follow-up work which the FSA plans to undertake in the third quarter of 2009. The follow-up work will include visits and file reviews, to check that firms have acted on the findings of the project. The FSA suggests that firms may wish to use the template and notes in assessing the suitability of pension switching advice.

It should be noted that the template only applies to advice on switches from a defined contribution pension scheme to a personal pension plan or SIPP. It does not cover the requirements for transfers from defined benefit occupational schemes and switches to use drawdown flexibility.

To access the template and notes on its use, please follow the link below:

http://www.fsa.gov.uk/Pages/Library/Other_publications/pension_switching/index.shtml

4 GOVERNMENT ACTUARY’S DEPARTMENT (GAD)

4.1 Report on the drafts of the Social Security Benefits Up-rating Order 2009 and the Social Security (Contributions) Re-rating Order 2009

GAD has published a report on the draft regulations to which we refer at 1.1 and 1.4 above. It considers the expected effects of these regulations on the National Insurance Fund (which is used to pay for social security benefits such as state retirement pensions).

³ For more information, please see 7 Days dated 8 December 2008

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The report notes that the balance in the fund at 31 March 2010 is estimated at £54.8 billion (or 72.9% of the estimated benefit payments (including redundancy payments) of £75.2 billion). This figure is “comfortably above” the recommended level of 1/6th of annual benefit expenditure.

To view the report, please follow the link below:

<http://www.gad.gov.uk/Services/docs/CM7537.pdf>

5 HM REVENUE & CUSTOMS (HMRC)

5.1 Draft guidance on trustee residence rules

HMRC has published draft guidance on its view of the application of trustee residence rules which were introduced by the Finance Act 2006 (to provide for a common test for both income tax and capital gains tax). The draft guidance focuses on the residency status of trustees and will be of particular interest for any overseas trust companies who may perform some trust activities in the UK, as it provides a number of practical examples.

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

<http://www.hmrc.gov.uk/cnr/trust-res-dr-guidance.pdf>

6 PENSION PROTECTION FUND (PPF)

6.1 PPF publishes Trustee Good Practice Guide

The PPF has today (9 February 2009), published new guidelines for trustees who are managing pension schemes through a PPF assessment period.

The guide, which should be used alongside the “DB Scheme: Insolvent Employer” module of the Pensions Regulator’s Trustee Toolkit and the PPF’s general guidance (which can be found on its website), is designed to help affected trustees take their scheme through the assessment period, effectively and efficiently. In particular, it aims to help trustees understand more about:

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- the assessment period;
- what the PPF expects from trustees during an assessment period;
- the principles and skills which the PPF expects trustees and advisers to apply;
- what trustees can expect from their PPF caseworker;
- monitoring of trustees by the PPF during the assessment period; and
- the tools available to help trustees progress their scheme through the assessment period.

To access the PPF's press release and the Good Practice Guide, please click on the links below:

<http://www.pensionprotectionfund.org.uk/news-details.htm?id=7004>

<http://www.ppfrusteegoodpracticeguide.org.uk/>

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