

Pensions law – the week in review

9 March 2009

AT A GLANCE

LEGISLATION

- The Pensions Act 2007 (Commencement No.3) Order 2009
- The Pension Protection Fund (Miscellaneous Amendments) Regulations 2009
- The Local Government Pension Scheme (Administration) (Amendment) Regulations 2009

BOARD FOR ACTUARIAL STANDARDS

- Exposure draft of actuarial reporting standard published

HM REVENUE & CUSTOMS

- Notice of appeal and application to postpone payment: HMRC updates form APSS413

PENSION PROTECTION FUND

- PPF appoints new Chief Investment Officer
- Section 179 Certificate added to PPF website

CASE

- The Incorporated Trustees of the National Council on Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform (Heyday)

Pensions law – the week in review 9 March 2009

1 LEGISLATION

1.1 The Pensions Act 2007 (Commencement No.3) Order 2009

From 6 April 2009, occupational pension schemes will have the option of converting guaranteed minimum pensions (GMPs) into scheme benefits. This commencement order brings into force the relevant provision of the Pensions Act 2007 (which amends the Pension Schemes Act 1993) in order to permit conversion from that date.

For more information on GMP conversion, please see our Alert - "GMPs: Trying for a conversion?"¹ which is available from the client area of our website or from your usual Sackers contact.

A copy of the commencement order can be accessed by clicking on the link below:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090406_en.pdf

1.2 The Pension Protection Fund (Miscellaneous Amendments) Regulations 2009

These regulations which were published today (9 March 2009) make miscellaneous amendments to various Statutory Instruments relating to the Pension Protection Fund (PPF).

The amendments include changes concerning:

- eligibility for the PPF;
- the provision of revaluation and compensation; and
- minor technical changes.

¹ Dated 5 March 2009

Pensions law – the week in review 9 March 2009

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

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090451_en.pdf

http://www.opsi.gov.uk/si/si2009/em/uksiem_20090451_en.pdf

1.3 The Local Government Pension Scheme (Administration) (Amendment) Regulations 2009

These regulations (also published today, 9 March 2009) will amend the Local Government Pension Scheme (Administration) Regulations 2008 with effect from 1 April 2009, so that:

- clerical staff in The Rent Service who are active members of the Local Government Pension Scheme (LGPS) who are transferring to HM Revenue & Customs; and
- former staff of the Commission for Social Care Inspection who are transferring to the Care Quality Commission;

can remain members of the LGPS following their transfer.

To view the regulations, please click on the link below:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090447_en.pdf

2 BOARD FOR ACTUARIAL STANDARDS (BAS)

2.1 Exposure draft of actuarial reporting standard published

As part of its project to develop new actuarial standards, the BAS has published an exposure draft of a standard for reporting.

The exposure draft follows the recent consultation papers on proposed standards for data and modelling and will be the first of the BAS's standards. The standard will be principles based and is intended to be one

Pensions law – the week in review 9 March 2009

of the BAS's generic standards which will apply across a broad spectrum of actuarial work. It is expected to come into force from April 2010.

Copies of the BAS press release and exposure draft can be accessed by clicking on the links below:

<http://www.frc.org.uk/bas/press/pub1884.html>

<http://www.frc.org.uk/images/uploaded/documents/Exposure%20Draft%20-%20Reporting%20Actuarial%20Information.pdf>

3 HM REVENUE & CUSTOMS (HMRC)

3.1 Notice of appeal and application to postpone payment: HMRC updates form APSS413

HMRC has updated form APSS413, which should be used to appeal against an assessment or a penalty determination made by the Audit and Pension Schemes Services (APSS) division of HMRC.

The form has been updated to accommodate a change in the appeals procedure (as a consequence of the transfer of the functions of tax tribunals to the new tribunals established under the Tribunals, Courts and Enforcement Act 2007 which will take effect from 1 April 2009).

A copy of the updated form can be accessed by clicking on the link below:

<http://www.hmrc.gov.uk/pensionschemes/apss-413.pdf>

4 PENSION PROTECTION FUND (PPF)

4.1 PPF appoints new Chief Investment Officer

The PPF has announced the appointment of a new Chief Investment Officer to oversee its investment portfolio which is currently worth more than £3 billion.

Ian McKinlay joins the PPF from PricewaterhouseCoopers where he was head of its investment consulting practice, providing advice to corporate bodies on how to manage pension scheme risk.

Pensions law – the week in review 9 March 2009

After qualifying as an actuary with Scottish Widows, where he worked until 1996, McKinlay spent five years at Mercers as a scheme actuary. Between 2000 and 2007, he was head of Aon Consulting's investment practice before joining PwC in May 2007. During his time there, he was seconded to the PPF as chief investment officer for six months in 2008. He has now been appointed to the role full-time, following an open and competitive recruitment exercise.

A copy of the PPF's press release can be accessed by clicking on the link below:

<http://www.pensionprotectionfund.org.uk/news-details.htm?id=7042>

4.2 Section 179 Certificate added to PPF website

Actuaries carrying out a section 179 valuation are required to include a section 179 certificate as part of their report to trustees, in accordance with the PPF's valuation guidance.

Previously, information contained in the section 179 certificate was submitted directly to the PPF. However, this information is now submitted to the PPF as part of the annual scheme return via the Pension Regulator's on-line system for providing information - "Exchange".

A specimen section 179 certificate (updated to take account of the Exchange requirements) has been added to the PPF's valuation guidance.

To access the guidance, please click on the link below:

http://www.pensionprotectionfund.org.uk/index/other_guidance/valuation_guidance.htm

Pensions law – the week in review 9 March 2009

5 CASE

5.1 The Incorporated Trustees of the National Council on Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform (Heyday) (ECJ)

The European Court of Justice (ECJ) published its judgment in the Heyday case on 5 March 2009.

The case challenged provisions under the Employment Equality (Age) Regulations 2006 (the Age Regulations) which allow employers to dismiss workers aged 65 or over, provided the reason for dismissal is retirement (and is otherwise not discriminatory). The arguments centred on whether the UK has properly implemented the age discrimination requirements of the European Framework Directive² (the Directive), and whether the so-called default retirement age of 65 is, of itself, discriminatory.

ECJ Decision

Essentially reaching a similar conclusion to the opinion delivered by the Advocate General in September 2008, the ECJ found that the UK's default retirement age could be objectively justified as a matter of national law. It ruled that the Directive "gives Member States the option to provide ... for certain kinds of differences in treatment on grounds of age if they are 'objectively and reasonably' justified by a legitimate aim, such as employment policy, or [the] labour market..., and if the means of achieving that aim are appropriate and necessary".

Next Steps

The case will now return to the UK High Court, which will be required to determine whether the default retirement age can be objectively justified.

² The European Framework Directive on Equal Treatment in Employment and Occupation (200/78/EC)

Pensions law – the week in review
9 March 2009

Comment

The UK Government, having restated its aim of encouraging people to remain in the workforce beyond normal retirement age³, is due to review the default retirement age in 2011 in any event. Both Age Concern and Help the Aged have called on the Government to act immediately “to scrap” the default retirement age. If it did so, this would obviate the need for a decision from the High Court.

For more details, please see our Alert - “Heyday: The ECJ Decides” (dated 6 March 2009), available from the client area of our website or your usual Sackers contact.

³ In its recent consultation on Flexible Retirement and Pension Provision



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