Sackers extra

11 April 2011

At a glance

LEGISLATION

- The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011
- The Social Security (Reduced Rates of Class 1 Contributions, Rebates and Minimum Contributions) Order 2011

DEPARTMENT FOR WORK AND PENSIONS

- A State Pension for the 21st Century
- DWP Delivery Plan: 2011-2012

HM REVENUE & CUSTOMS

- Pension Schemes Newsletter No. 46
- Overseas Pensions received by UK Residents
- Pension Schemes Online user guide updated

HM TREASURY

- Consultation on the discount rate used to set unfunded public service pension contributions: Summary of responses published

NATIONAL EMPLOYMENT SAVINGS TRUST

- Ethical and Sharia mandates awarded

PENSION PROTECTION FUND

- New Factsheet: Compensation and Divorce

SO7

Abbreviations commonly used in 7 Days

Alert/News: Sackers Extra publications (available from the client area of our website or from your usual contact)
BIS: Department for Business, Innovation and Skills
DB: Defined benefit
DC: Defined contribution
DWP: Department for Work and Pensions
ECJ: European Court of Justice
FAS: Financial Assistance Scheme
HMRC: HM Revenue & Customs
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

LEGISLATION

The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011

Since 6 April 2011, employers have no longer been able to issue notifications of retirement using the default retirement age (DRA) procedure (as reported in 7 Days on 4 April 2011). Subject to a short transitional period until 1 October 2011 (to cover retirements already in train), there will no longer be a DRA and employers wishing to retain a compulsory retirement age for their workforce will need to objectively justify this.

Following the publication of draft regulations in February 2011 (and revised draft regulations in March 2011[1]), the final version of the Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 was made on 5 April 2011. These regulations came into force on 6 April 2011.

The regulations are designed to repeal and amend provisions in both the Equality Act 2010 and the Employment Rights Act 1996 which provide for dismissal by reason of retirement.

Subject to transitional provisions, the regulations:

- abolish the statutory notification procedure previously available to employers enabling them to give notice terminating the contract of employment of an employee who reaches age 65 without that being deemed unfair dismissal or unlawful age discrimination;
- abolish the right of employees to request to work beyond age 65;
- repeal the notification procedure relating to dismissals based on retirement ages below age 65 where that retirement age was justified as being proportionate and in pursuit of a legitimate aim; and
- introduce an exception to age discrimination legislation for group insurance benefits provided by employers for their employees (for example, income protection, ill-health benefits and life assurance) by making it lawful for insurance providers to cease providing cover for employees at age 65 or over.

Further information can be found in the Explanatory Memorandum which accompanies the regulations.

The Social Security (Reduced Rates of Class 1 Contributions, Rebates and Minimum Contributions) Order 2011

This Order, which sets out the contracted-out rebate rates which will apply from April 2012, also came into force on 6 April 2011.

It is a legal requirement for the rebate rates to be reviewed at least every five years.

[1] Please see 7 Days dated 7 March 2011

© Sacker & Partners LLP 2011

The key rates which have been set out relate to DB occupational schemes, due to the expected abolition of contracting-out on a DC basis from April 2012.

Currently, if an individual is contracted-out of the State Second Pension (S2P), the employer and the employee pay National Insurance Contributions (NICs) reduced in total by 5.3%. The new rebate will mean that from April 2012, if an individual is contracted-out, the employer and the employee pay NICs reduced in total by 4.8% (3.4% for employers (secondary Class 1 contributions) and 1.4% for employees (primary Class 1 contributions)).

Further information can be found in the Explanatory Memorandum which accompanies the Order.

DEPARTMENT FOR WORK AND PENSIONS

A State Pension for the 21st Century

On 4 April 2011, the Government published a Green Paper setting out its proposals for overhauling the state pension system.

In the Green Paper, the DWP puts forward two broad options for reform:

- acceleration of the existing reforms so that the State Second Pension (S2P) becomes a flat rate structure more quickly; or
- a move to a single-tier flat rate pension.

The consultation also seeks views on the possible introduction of a "more automatic mechanism" for considering and/or implementing future changes to State Pension Age.

Only when the outcome of the consultation is known will it become clear whether contracting-out for DB schemes will be abolished.

The consultation closes on 24 June 2011.

For more information, please see our Alert: "A State Pension for the 21st Century?" dated 6 April 2011.

DWP Press Release

DWP Delivery Plan: 2011-2012

The DWP has published a Delivery Plan in which it sets out the challenges facing it from April 2011 to March 2012, as well as the plans it has in place to meet them.

In terms of pension reform, the Delivery Plan notes that during 2011/12 the DWP will:

- restore the earnings link for the basic State Pension;
- support the passage of the Pensions Bill through Parliament;
- consult on options for reform to the State Pension for future pensioners, including a proposal for a single tier pension, following the publication of the Green Paper "A state-pension for the 21st century" (see above);
- prepare to implement automatic enrolment into workplace pension schemes from October 2012 and commence implementation on a voluntary basis of the National Employment Savings Trust;

- take forward legislation to make changes to the State Pension age and to give effect to the recommendations of the "Making Automatic Enrolment Work" review;
- continue to encourage employers to offer high quality pensions to all employees, removing unnecessary rules and regulations; and
- liaise with BIS to implement changes in legislation to remove the default retirement age.

HM REVENUE & CUSTOMS

Pension Schemes Newsletter No. 46

On 8 April 2011 HMRC published its latest Pension Schemes Newsletter.

The newsletter covers a wide range of recent developments relating to pension scheme taxation, including changes to: the scheme sanction charge process; penalties for failure to submit a Self Assessment tax return; and legislation. Highlights from Newsletter 46 include:

- *Nomination of pension input periods (PIPs)*

  HMRC has received a number of enquiries as to what constitutes a valid nomination for PIP purposes.

  In the newsletter, it states that: "HMRC accepts that a valid nomination for a particular PIP end date is made where the pension scheme administrator provides notice of this in a form that is available to all members. This may be achieved, for example, by setting out the nominated date in the pension scheme rules, in the pension scheme handbook made available to all members, or by a notice placed on the pension scheme's (or in the case of an occupational scheme on the employer's) internet site. Provided the notice is made in this way, there is no requirement to send a letter to each and every member telling them of the nominated date."

- *Payment of the Annual Allowance (AA) charge from pension benefits*

  In March 2011, the Government set out how members affected by high AA charges will be able to meet these from their pension savings.[2]

  The Newsletter clarifies that "scheme members who retire on or after 6 April 2011 and before Royal Assent of the 2011 Finance Bill will not be able to opt for the scheme to pay their annual allowance charge. This is because the pensions regulations needed to set aside the inalienability of accrued benefits to meet a tax bill cannot be laid until the powers in the Bill are in law."

  It also confirms that other aspects of the new AA rules will however apply to these retirements from Royal Assent (which it states is likely to be in July) backdated to 6 April.

- *Disguised remuneration*

  Legislation has been introduced in the latest Finance Bill 2011[3] to tackle third party arrangements which seek to avoid or defer the payment of Income Tax or National Insurance contributions due on employment income or to avoid the restrictions on allowances for tax-privileged pension saving in registered schemes. A draft schedule to enact this measure was published on 9 December 2010 as part of the Government's new tax policy making process.

[2] Please see our Alert: "Annual Allowance payment charge option confirmed" dated 8 March 2011

[3] Please see our Alert: "The Finance Bill rides again" dated 1 April 2011

© Sacker & Partners LLP 2011

The Newsletter explains that, in the light of representations made during the consultation, "the Government has amended the draft legislation to limit impacts on employers and individuals where it is possible to identify arrangements that cannot be used for tax avoidance purposes".

It also summarises the changes made, among them provisions to exclude the following from the tax charges arising under the new legislation:

- certain income from and re-investments of earmarked assets;
- annuity contracts bought from insurance companies and payable for a term ascertainable by reference to human life to the extent that rights to receive the annuity accrued before 6 April 2011;
- lump sum relevant benefits to the extent that rights to receive the relevant benefits accrued before 6 April 2011;
- transfers of rights originating in schemes accepted by HMRC as corresponding to an approved scheme with effect before 6 April 2006 (A-Day);
- relevant steps in respect of employer contributions paid and taxed on the employee before A-Day; and
- pension income.

- *Employer asset-backed pension contributions*

The Newsletter also notes that, as announced in last month's Budget, it will consult on changing the tax rules in relation to employers making asset-backed contributions to their DB pension schemes, to ensure that the tax relief given accurately reflects the increase in fair value of pension plan assets.

The Government's intention is to preserve the flexibility of such arrangements for employers and schemes, while attempting to limit unintended tax relief that may arise from the way these contributions are structured.

A consultation on this is due in "Spring 2011", subject to which, legislation will be included in the Finance Bill 2012.

Overseas Pensions received by UK Residents

On 6 April 2011, the Government announced a change in legislation to prevent tax avoidance.

A new clause will be included in the Finance (No. 3) Bill to prevent tax avoidance through the interaction of relief for pension savings and the provisions of certain double taxation arrangements. The new clause will provide that, notwithstanding the terms of a double taxation arrangement with another territory, a payment of a pension or other similar remuneration may be taxed in the UK where:

- the payment arises in the other territory;
- it is received by an individual resident of the UK;
- the pension savings in respect of which the pension or other similar remuneration is paid have been transferred to a pension scheme in the other territory; and

- the main purpose or one of the main purposes of any person concerned with the transfer of pension savings in respect of which the payment is made was to take advantage of the double taxation arrangement in respect of that payment by means of that transfer.

In the event that tax is paid in the other jurisdiction, appropriate credit will be available against the UK tax chargeable.

This measure is designed to prevent individuals from taking advantage of a tax loophole which would have emerged on that date, but for the Government's action. It will have effect in relation to payments of pensions or other similar remuneration made on or after 6 April 2011.

HMRC Statement

HM Treasury Press Release

Pension Schemes Online user guide updated

HMRC has issued an updated version of its Pension Schemes Online user guide. The guide is intended for scheme administrators (i.e. trustees) and practitioners who need to use the Pension Schemes Online Service.

The guide provides information about the role of the Scheme Administrator, how to access and use the service and explains which scheme reports and returns need to be filed online.

HM TREASURY

Consultation on the discount rate used to set unfunded public service pension contributions: Summary of responses published

In the Spending Review 2010, the Government announced that it would accept the recommendation of the interim report of Lord Hutton's Independent Public Service Pensions Commission to review the discount rate used to set unfunded public service pension contributions. This was followed, in December 2010, by the launch of a consultation which closed on 3 March 2011. The Treasury has now published a summary of responses received.

As announced at the March 2011 Budget, the Government considers that the appropriate discount rate for calculating unfunded public service pension contribution rates should be based on the long term expectations of Gross Domestic Product (GDP) growth. This is to ensure that employment decisions made today take into account the costs passed to future taxpayers on a fair and sustainable basis. A discount rate of 3% above CPI will therefore be adopted under this methodology for future valuations.

NATIONAL EMPLOYMENT SAVINGS TRUST

Ethical and Sharia mandates awarded

NEST has today (11 April 2011) announced the fund managers it has appointed for its Ethical and Sharia Mandates, the building blocks for the scheme's Ethical and Sharia Funds.

NEST Ethical Fund

NEST's Ethical Mandate has been awarded to F&C Asset Management.

© Sacker & Partners LLP 2011

The Ethical Fund will initially invest in actively managed and screened global equities, as well as some UK government bonds.

NEST Sharia Fund

The Sharia Mandate for NEST has been awarded to HSBC Global Asset Management.

The NEST Sharia Fund will invest solely in the HSBC Life Amanah Pension Fund. This fund passively tracks the Dow Jones Islamic Titans 100 index, a global equity index screened so as to be in accordance with Sharia principles. HSBC's Amana's products and operations are overseen by Regional Sharia Committees and a Global Sharia Board.

NEST Press Release

PENSION PROTECTION FUND

New Factsheet: Compensation and Divorce

On 6 April 2011, regulations came into force which set out how PPF compensation may be affected for members who get divorced or who have their civil partnership dissolved.

These new rules make provision for a member's pension compensation to be shared with their ex-spouse or former civil partner under a pension sharing or attachment (earmarking) order.

The PPF's latest factsheet explains how the sharing of compensation will work in these circumstances.

© Sacker & Partners LLP 2011

Nothing stated in this document should be treated as an authoritative statement of the law in any particular aspect or in any specific case. Action should not be taken on the basis of this document alone. For specific advice on any particular aspect you should consult the usual Solicitor with whom you deal. © Sacker & Partners LLP April 2011