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Pensions law – the week in review

11 May 2009

AT A GLANCE

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1 LEGISLATION

1.1 The Registered Pension Schemes (Authorised Payments) Regulations 2009

Regulations which add to the list of categories of payments that can be made by registered pension schemes as authorised payments without attracting a charge to tax have been published in final form, almost one year after their original publication in draft[1].

The measures covered by the Regulations were initially announced in the 2008 Budget and had been expected to come into force in July 2008. However, HM Revenue & Customs received "many" comments on the draft regulations and as a result, and in the light of these, made a number of changes to the Regulations. The Regulations will now come into force on 1 June 2009.

To recap, the Finance Act 2004 sets out restrictions on the types of payment that a pension scheme can make to members or their dependents. These are known as "authorised payments" and include regular payments of a pension and lump sums payable on retirement. Payments which do not fall into this category are classed as "unauthorised" and are subject to various tax charges (potentially of up to 55% on a member), depending on the circumstances. Since the authorised payments rules were introduced on A-Day (6 April 2006), the Government has become aware of a number of circumstances in which the authorised payments rules catch payments that it considers it would be fairer to treat as authorised. These include:

- lump sums representing commutation of certain small pension pots;
- certain payments made in error; and
- arrears of pension due after the death of the member.

In order for such payments to be authorised payments, the requirements set out in the regulations will need to be met.

[1] For more information, please see 7 Days dated 26 May 2008

The Regulations therefore enable these payments to be treated as authorised and taxed as such. Changes from the original draft regulations include the addition of further instances in which it will be possible to commute small pension pots, as well as additional lump sums paid in error.

The Regulations will apply retrospectively to those payments which relate to lump sum or pension errors from 6 April 2006, while the provisions authorising new commutation payments will apply to payments made on or after 1 December 2009.

The Regulations and accompanying explanatory memorandum can be accessed by clicking on the links below:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091171_en.pdf

http://www.opsi.gov.uk/si/si2009/em/uksiem_20091171_en.pdf

1.2 The Taxation of Pension Schemes (Transitional Provisions) (Amendment) Order 2009

In tandem with The Registered Pension Schemes (Authorised Payments) Regulations 2009, this Order supplements the Regulations and ensures that where certain small pension funds are commuted, any previous authorised protected tax free lump sums will continue to be authorised and to be tax free (see 1.1 above for more information).

The Order will come into force on 1 June 2009.

The Order and accompanying explanatory memorandum (which covers the Regulations as well as the Order) can be accessed by clicking on the links below:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091172_en.pdf

http://www.opsi.gov.uk/si/si2009/em/uksiem_20091172_en.pdf

2 DEPARTMENT FOR WORK AND PENSIONS (DWP)

2.1 DWP publishes three year business plan

The DWP published (on 5 May 2009) its business plan for the next three years, setting out "the strategic challenges facing the Department for Work and Pensions over the 2009 to 2012 period and the actions [it] will be taking to meet them."

Unsurprisingly, the current financial crisis features strongly in the DWP's business plan, as it notes that "the last twelve months [have] seen the most significant change to both the financial and labour markets since the Department's inception."

As well as setting out the DWP's response to the downturn, the business plan includes, among other things, details as to how the DWP will deliver its public service agreements and departmental strategic objectives, as well as improving upon delivery and efficiency.

The DWP's three year plan can be accessed by clicking on the link below:

http://www.dwp.gov.uk/publications/dwp/2009/3yrplan/three_year_plan_2009.pdf

3 HM REVENUE & CUSTOMS (HMRC)

3.1 Pension Schemes Newsletter 37

On 8 May 2008, HMRC published edition 37 of its Pension Schemes Newsletter. This contains:

- links to HMRC's guidance on the Budget 2009 and related draft legislation[2];
- responses to customer concerns;

[2] For more information about the pensions provisions of the 2009 Budget, please see our Alert - "Budget 2009: Building Britain's Future" (dated 23 April 2009) which is available from the client area of our website or from your usual Sackers contact

- clarification of HMRC's position on employer contributions that include asset transfers; and
- guidance on the protection of low pension ages on transfer of benefits in payment

Newsletter 37 can be accessed by clicking on the link below:

http://www.hmrc.gov.uk/pensionschemes/ps-newsletter37.htm

3.2 Research Report 66: NI Deficiency

A research report published by HMRC on 5 May 2009 investigates "what customers want to know about National Insurance contributions".

This research found that attitudes to pensions depend on a number of factors, including: age; employment status (whether employed or self-employed); and existing or future pension arrangements. While the respondents generally had knowledge about financial products (such as pensions, ISAs and savings accounts), some found it difficult to keep track of different products, as well as interest rates etc.

Most of those surveyed were found to have "only a basic understanding of NI and knowledge gaps existed". While HMRC found there to be "a reasonable understanding of the link between NI and pensions" it found "less awareness of the link between the number of years NI is paid and the amount of pension."

Research Report 66 can be accessed by clicking on the link below:

http://www.hmrc.gov.uk/research/report-66.pdf

3.3 Research Report 67: Pre-Retirement Communications

A second research project (carried out in March 2008), on "Pre-retirement Communications: understanding customer needs before retirement", was also published on 5 May 2009. Those who participated in the research worked in non-pensionable jobs and had a household income of less than £16,000 per annum.

While HMRC encountered a range of attitudes towards retirement among those who participated in its discussion groups, HMRC found that "most participants said they had made little or no provision for retirement and considered themselves unprepared. Many were suspicious of pension schemes and felt they had lost out by investing in them." The results of the research also indicate that most participants "may have made better provisions if they had had more information when they were younger."

The research also looked at individuals' reaction to stimulus material (such as booklets or fact sheets) and sought to identify different channels which could be used for communication.

Research report 67 can be accessed by clicking on the link below:

http://www.hmrc.gov.uk/research/report-67.pdf

3.4 Research Report 68: Trivial Commutation Research

HMRC also published on 5 May 2009 the results of research (again carried out in March 2008) which was designed to assess customers' understanding of the rules relating to eligibility for trivial commutation. In addition, the research looked at how customers make their decisions about trivial commutation and their experience of the process.

HMRC found that most of those surveyed "had no real expectations about what would happen to their pension at retirement" and that they "were pleasantly surprised that there was an option for them to take the money as a lump sum and all of them took their payment as a lump sum".

The research report notes that respondents' circumstances were such that they "would have been relatively unaffected by the new rules" on trivial commutation.

Research report 68 can be accessed by clicking on the link below:

http://www.hmrc.gov.uk/research/report-68.pdf

4 PARLIAMENTARY OMBUDSMAN

4.1 Equitable Life: Parliamentary Ombudsman publishes further report

On 6 May 2009, the Parliamentary Ombudsman (the Ombudsman), Ann Abraham, laid before both Houses of Parliament a further report concerning the Equitable Life Assurance Society.

The Ombudsman's first report on the collapse of Equitable Life[3] was published in July 2008. That report contained the results of a four year investigation into complaints that the regulators and the Government Actuary's Department had "failed for considerably longer than a decade properly to exercise their regulatory functions in respect of The Equitable Life Assurance Society." This report was followed by a response from the Government in January 2009, in which some (but not all) of the Ombudsman's findings were accepted.[4]

The Ombudsman said last week that she found that "The Government's response to my report was deeply disappointing. It provided insufficient support for the rejection of my findings of maladministration and injustice. It also begged a rather larger question as to what the purpose of regulation was supposed to be." She also expressed concern over the Government's appointment of Sir John Chadwick to advise on an alternative ex gratia scheme for members who lost out as a result of Equitable Life's failure for a number of reasons, including the fact that there is no detailed timetable for this work.

To view the Ombudsman's press release and her latest report on this subject, please click on the links below:

http://www.ombudsman.org.uk/news/press_releases/pr2009_05.html

http://www.ombudsman.org.uk/pdfs/Equitable_Life_2009.pdf

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[3] Equitable Life: A Decade of Regulatory Failure (http://www.ombudsman.org.uk/improving_services/special_reports/pca/equitable_life/index.html)

[4] For more information, please see 7 Days dated 21 July 2008 (on the Parliamentary Ombudsman's July 2008 report) and 19 January 2009 (on the Government's response to that report)

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5 THE PENSIONS REGULATOR (TPR)

5.1 Material Detriment Code revisited

Following a consultation which closed in February 2009, TPR has published a revised draft code of practice (together with a response to its consultation) on the "material detriment test". The draft code has been laid before Parliament for final approval.

The Pensions Act 2008 expanded TPR's armoury in response to fears that TPR's anti-avoidance powers were not sufficient to tackle risks posed to members' benefits by "new business models" which have the potential to "reduce the security provided by the pension scheme's sponsoring employer". 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. This is known as "material detriment test". The key changes made to the code as a result of the consultation include:

- restructuring to ensure that it is clear and accurately reflects the policy intention;
- the addition of the concept of "replacement" of the employer, to the circumstance dealing with the transfer of the sponsoring employer out of the jurisdiction;
- changing "sufficient" to "significant reduction" in sponsor support in relation to the transfer of liabilities of the scheme;
- replacing the term "employer" with "sponsor" support; and
- explanations for all legislative references as well as further clarification of defined terms.

TPR's latest code of practice is one of a number of safeguards on the use of this new power, as it is required to set out in a code the circumstances in which it expects to issue contribution notices on the basis of the material detriment test.

The new powers are expected to come into effect during the summer of 2009, but TPR will be able to apply them retrospectively to 14 April 2008 (the date on which they were first announced).

To view TPR's press release, consultation response and revised draft code, please click on the links below:

http://www.thepensionsregulator.gov.uk/mediaCentre/pressReleases/pn09-05.aspx

http://www.thepensionsregulator.gov.uk/pdf/COP12MaterialDetrimentConReport.pdf

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

5.2 Scheme funding in the economic downturn - free national workshops announced

TPR has announced the dates for a series of free workshops which it hopes "will reaffirm the approach to DB [defined benefit] scheme funding in the economic downturn".

TPR Chairman, David Norgrove, described these workshops as "an opportunity for our regulated community to engage directly with the regulator as we continue to communicate openly in these difficult times."

The workshops will be held at the following locations:

- Edinburgh - 03 June;
- Manchester - 08 June;
- Nottingham - 17 June;
- Bristol - 19 June;
- London - 22 and 23 June.

For more information, please click on the link below to TPR's press release:

http://www.thepensionsregulator.gov.uk/mediaCentre/pressReleases/pn09-06.aspx

6 PERSONAL ACCOUNTS DELIVERY AUTHORITY (PADA)

6.1 Investment discussion paper launched

PADA launched its discussion paper on investment - "Building Personal Accounts: Designing an investment approach" - on 7 May 2009.

According to PADA, the purpose of this paper "is to draw upon good practice and expertise from across the pension and investment industries, and relevant stakeholders, on the most appropriate investment approach for the personal accounts scheme." PADA's intention is that responses to the paper (which must be submitted by 7 August 2009), will inform its recommendations to the trustee corporation regarding the design of the scheme. (The personal accounts scheme will be run by a not for profit trustee corporation.)

PADA notes that one of the key questions is how to meet future members' needs at low costs and states that there will be a particular focus on the default fund, as this is where it anticipates the majority of members' funds will be invested.

The discussion paper covers a range of investment issues, including:

- the investment objective and design of the default fund;
- the investment approach as members near retirement;
- achievement of high quality corporate governance;
- responsible investment and its role within the scheme; and
- the number and types of further fund choice that should be made available.

PADA's press release and the discussion paper can be accessed by clicking on the links below:

http://www.padeliveryauthority.org.uk/documents/press_08_may_2009.pdf

http://www.padeliveryauthority.org.uk/investment-discussion-paper.asp

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