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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: Court of Justice of the European Union
FAS: Financial Assistance Scheme
HMRC: HM Revenue & Customs
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

DEPARTMENT FOR WORK AND PENSIONS

Increasing the State Pension Age to 67: DWP Impact Assessment

In his Autumn Statement on 29 November 2011[1], the Chancellor announced the Government's intention to accelerate the planned increase in state pension age (SPA) from 66 to 67 between April 2026 and April 2028. The proposal is designed to ensure that those who have already seen an increase in SPA due to the Pensions Act 2011 do not face a further rise.

The DWP has now published an impact assessment on the proposal, in which it notes that the key fiscal benefit of this option is that it delivers net benefits-related savings to DWP of £58.9 billion in real terms, with a further £9.7 billion gained in increased income tax receipts and National Insurance contributions from people working longer.

It is also estimated that it will affect around 8.0 million in Great Britain, who were born between 6 April 1960 and 5 April 1969, who will have their SPA delayed.

Pensions and Later Life: Communications and tracking research

The DWP has published a report on research designed to enable it to track attitudes and intended/actual behaviours in relation to pensions and later life and to evaluate the success of DWP Communications in influencing these.

Key findings from the report include:

- nearly two thirds of respondents agreed that they "would always save in a work pension if one is available";
- 59% of respondents already had financial plans or savings in place for their retirement;
- for 35% of those surveyed, the main barrier to saving for retirement is the "struggle to cope with day to day expenses"; and
- there was some awareness and understanding of key communications messages, including the impact of greater life expectancy on retirement planning and the fact that people can work beyond SPA and may need to do so.

[1] For more information, please see our Alert: "Autumn Statement 2011" dated 1 December 2011

HM TREASURY

Budget 2012: Date announced

The Treasury has announced that the Budget will be delivered on Wednesday 21 March 2012.

Finance Bill 2012

On 6 December 2011, the Government published the draft Finance Bill 2012, alongside a number of other measures for occupational and personal pension schemes.[2]

Key proposals include:

- *Employer asset-backed contributions (ABCs)*

  Draft Finance Bill provisions are designed to ensure that the value of tax relief given to employers accurately reflects - but does not exceed - the amount of the payments received by schemes under ABC arrangements.

- *Commutation of small pension pots*

  Regulations will extend the ability to access small pension pots to members of personal pension arrangements, thereby allowing individuals aged 60 or over to commute savings of up to £2,000. An individual will only be able to take two such lump payments in their lifetime. However, it will be possible to make these payments regardless of the value of the individual's total pension savings and in addition to any trivial commutation lump sum payments or small pots paid from occupational pension schemes.

  These regulations are intended to come into effect from 6 April 2012.

- *Overseas transfers of pension savings*

  Draft regulations propose revisions to the conditions that a scheme has to meet to be a qualifying recognised overseas pension scheme (QROPS) and strengthen the information and reporting requirements. The changes include:

  - an acknowledgement by the individual (to be completed before the transfer is made) that tax charges may apply;
  - revised time limits within which trustees of registered pension schemes must report transfers to QROPS;
  - additional powers for HMRC to request information from a scheme manager of a QROPS; and
  - new time limits for the reporting of payments by a QROPS to HMRC.

  Consultation on the draft regulations closes on 31 January 2012.

[2] For more information, please see our Alert: "Finance Bill 2012" (dated 8 December 2011)

Government consultation on the use of gender as a risk factor for insurance

On 2 March 2011, in the *Test-Achats*[3] case, the ECJ ruled that, with effect from 21 December 2012, an exemption in a European Directive (the "Gender Directive") which permits insurers to use sex as a determining factor in their assessment of risk, where it is based on "relevant and accurate actuarial and statistical data", will no longer be valid.[4]

Following the judgment, on 30 June 2011, Mark Hoban, Financial Secretary to the Treasury, provided a written statement to the House of Lords, explaining how the UK government interprets, and intends to implement this decision. The Government's view is that the judgment only applies to new contracts for insurance and related financial services entered into on or after 21 December 2012.

Consultation

On 8 December 2011 the Treasury published a consultation on how insurers can use gender as a risk factor in the light of the ECJ ruling. Among other things, the consultation:

- reiterates the Government's legal interpretation that the judgment only applies to new contracts entered into after 21 December 2012, so existing contracts are not affected;
- seeks comments on the Government's impact assessment and requests additional data that would assist its understanding of the potential impact on consumers and insurers; and
- asks for views on some of the key issues arising from the judgment, such as the scope of indirect discrimination.

As the ECJ ruling only concerns the Gender Directive, the Government does not believe there is any requirement to amend the existing exception in the Equality Act 2010 for insurers who provide insurance pursuant to arrangements made by an employer for its employees, and other persons, as a consequence of their employment (i.e. group life insurance policies). It therefore intends to maintain this exemption.

Pension schemes

The consultation does not mention pension schemes, despite the similarity of the provisions in the Gender Directive, which was the subject of the *Test-Achats* case, and the Equal Treatment Directive, which governs sex equality in pension schemes. Under the Equality Act 2010 (and the Equality Act 2010 (Sex Equality Rule) (Exceptions) Regulations 2010) occupational pension schemes are permitted to use sex-based actuarial factors to determine, for example, funding requirements, transfer values and commutation. It seems that the Government has decided not to amend this legislation in the light of the *Test-Achats* ruling.

So for the time being, occupational pension schemes remain unaffected. However, trustees should continue to monitor the position, and if reviewing actuarial factors, bear in mind the direction in which Europe is moving.

HM Treasury Press Release

[3] *Association belge des Consommateurs Test-Achats ASBL* (Case C-236/09)

[4] For more information, please see our Alert: "Is it the end of the road for sex-based actuarial factors?" dated 2 March 2011

NATIONAL ASSOCIATION OF PENSION FUNDS

NAPF Engagement Survey 2011

The NAPF has published its seventh annual survey of pension funds' engagement with investee companies.

40 responses were received from NAPF fund members with more than £1 billion in assets under management. Findings from the report included:

- pension funds are doing more as owners of companies: 52% of respondents agreed that institutional investors (including pension funds) are playing an active enough role as investors (but 31% believe investors can do more);
- engagement with investee companies is adding value: just over half of respondents confirmed that engagement with investee companies has added value to the fund;
- obligations under the Stewardship Code are widely understood: all respondents reported they have an understanding of pension funds' obligations under the Code;
- responsible investment is commonplace, with 65% of respondents setting out their approach to responsible investment in their annual report to members; and
- there is more work to be done: just 5% of respondents have asked their investment managers to review how their voting instructions are being implemented.

New NAPF guides

The NAPF has published two new guides:

- Derivatives: A practical guide to trustees' responsibilities

  This guide looks at the ways in which trustees can monitor and control their scheme's derivative positions. It also aims to provide practical guidance on governance, modelling, implementation, collateral, execution, monitoring and accounting requirements.

- Alternative Investments

  The latest in the NAPF's "Made Simple" Series, this guide is designed to help pension funds understand alternative investments.

  Alternative Investments are commonly defined as all investments that are new and outside the mainstream. They can include commodities, listed infrastructure and volatility trading strategies, all of which are only a small fraction of the alternative investments available. The NAPF guide provides an overview of the main Alternative Investment types, grouping them by similar traits, and introduces a framework to help pension funds consider their allocation to particular alternative assets.

Both guides can be ordered from the NAPF website.

NATIONAL EMPLOYMENT SAVINGS TRUST

NEST: Responsible ownership approach

NEST has today (12 December 2011) announced a number of developments which it hopes will help it deliver on its commitment to act as a responsible owner of assets on behalf of NEST members. These include:

- signing the Financial Reporting Council's Stewardship Code, with a view to exercising its voting rights and actively engaging with its investee companies, with the aim of reducing risk and improving long-term returns for members;
- announcing EIRIS as the successful bidder for a contract to provide NEST with environmental, social and governance (ESG) data services; and
- becoming an affiliate of the UK Sustainable Investment and Finance Association (UKSIF), enabling NEST to join co-operative efforts to influence policy makers on behalf of sustainable and responsible finance.

NEST Press Release

ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD)

Revised Good Practices on pension funds' use of alternative investments and derivatives

The OECD and the International Organisation of Pension Supervisors have revised their "Good Practices" to reflect what pension regulatory and supervisory authorities usually expect to examine when assessing the risk management of pension funds that use alternative investments and derivatives. The document outlines the way in which supervisors should oversee such investments and suggests possible regulatory controls.

THE PENSIONS REGULATOR

Six principles for good workplace DC

TPR has invited the pensions sector to take part in a dialogue on six principles for good design and governance of workplace DC pension provision, which will form the basis of its regulatory approach going forward.

The six principles span the lifecycle of a DC scheme from the design and set-up phases through to the ongoing management, including monitoring of scheme governance, accountability, scheme administration and communications with members.

Publication of these high-level principles forms part of work to improve standards of DC pension provision and ensure that the pensions sector is ready to support automatic enrolment.

TPR Press Release