

13 May 2013

At a glance

LEGISLATION

- Pensions Bill 2013-14
- The Registered Pension Schemes (Reduction in Pension Rates, Accounting Assessment) (Amendment) Regulations 2013
- The Pension Protection Fund (Tax) (Amendment) Regulations 2013
- The Pension Schemes (Miscellaneous Amendments) Order 2013

DEPARTMENT FOR WORK & PENSIONS

- Government announces clampdown on pension charges
- Employer Debt Regulations amendment

FINANCIAL REPORTING COUNCIL

- Baroness Hogg to step down as Chairman of the FRC

HM REVENUE & CUSTOMS

- Tax Information and Impact Note: Pension Protection Fund – miscellaneous amendments

HM TREASURY

- Responses to consultations on the transposition of the Alternative Investment Fund Managers Directive

PENSIONS POLICY INSTITUTE

- Chris Curry to be new Director

THE PENSION PROTECTION FUND

- PPF Takes Major Step Towards Bringing Member Services In-house

THE PENSIONS REGULATOR

- Annual Funding Statement 2013
- Memorandum of understanding between the Financial Conduct Authority and TPR

CASES

- Futter v HMRC and Pitt v HMRC (Supreme Court)

SO7

Abbreviations commonly used in 7 Days

ACA: Association of Consulting Actuaries

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

FRC: Financial Reporting Council

GMP: Guaranteed Minimum Pension

HMRC: HM Revenue & Customs

NAPF: National Association of Pension Funds

PPF: Pension Protection Fund

TPR: The Pensions Regulator

LEGISLATION

Pensions Bill 2013-14

The Pensions Bill was published on 10 May 2013. It:

- sets out the Government's plans for a flat-rate state pension;
- brings forward the increase in State Pension age ("SPA") to 67 to 2026-28;
- introduces a framework for the regular review of SPA;¹
- provides for a system of automatic transfers of small pension pots;² and
- introduces a new statutory objective for TPR.³

Subject to its parliamentary progress, the Bill is expected to receive Royal Assent by the end of the session in spring 2014.

We will be publishing an Alert with further details shortly.

The Registered Pension Schemes (Reduction in Pension Rates, Accounting and Assessment) (Amendment) Regulations 2013

The Finance Act 2004 introduced two controls over the amount of tax relief available to individuals in relation to registered pension schemes, the Lifetime Allowance and the Annual Allowance ("AA").

The AA puts a limit on the amount an individual can save in a registered pension scheme each year with tax relief. Where the AA is exceeded, an AA charge applies to claw back any tax relief given on the excess.

The "scheme pays" facility was introduced in 2011, when the AA for tax-relieved pension savings was reduced to £50,000, so that AA tax charges could be met by scheme administrators out of scheme members' pension savings.

These regulations:

- require scheme administrators who pay an annual allowance charge on behalf of a member to provide details of the tax year the charge relates to when completing the required Accounting for Tax return; and

¹Please see our [Alert](#): "Pensions White Paper" dated 15 January 2013

²Please see our [Alert](#): "Automatic Transfers for DC Pension Pots" dated 25 April 2013

³Please see our [Alert](#): "Budget 2013 heralds a new objective for TPR" dated 21 March 2013

- provide, with effect from 6 April 2013, an extension to the circumstances in which the rate of a scheme pension may be reduced to include reductions made where the scheme administrator pays an AA charge on behalf of the member.

Explanatory memorandum

On 8 May 2013, HMRC issued a [tax information and impact note](#) on these regulations.

The Pension Protection Fund (Tax) (Amendment) Regulations 2013

From 31 May 2013, these [Regulations](#) align the tax treatment of PPF money purchase lump sum payments and of pension compensation paid by PPF that is shared upon divorce, dissolution or annulment of a marriage or civil partnership, to the treatment of a lump sum paid by a registered pension scheme in similar circumstances.

The Pension Schemes (Miscellaneous Amendments) Order 2013

As well as some more minor changes, these Regulations make the following changes:

- Article 2 amends the Finance Act 2004 to give HMRC the power to withdraw the registration of a pension scheme where the scheme administrator has failed to provide information required by HMRC under Part 1 of Schedule 36 to the Finance Act 2008, with effect from 1 June 2013.
- Article 3 amends the Finance Act 2004 in consequence of amendments made to it by the Finance Act 2011 to ensure that the permitted maximum was not reduced when the lifetime allowance was reduced. Those amendments deleted the definition of current standard lifetime allowance (CSLA) from the modifications even though CSLA is still used in the calculation of the permitted maximum. Article 3 re-establishes the definition of CSLA from 6 April 2012, provided there are no adverse tax consequences.

DEPARTMENT FOR WORK & PENSIONS

Government announces clampdown on pension charges

The Government has [announced](#) a two-pronged plan to tackle high and inappropriate pension charges.

Its first action will be to ban consultancy charges in automatic enrolment schemes.

The Government also plans to publish a consultation this autumn, in light of a forthcoming Office of Fair Trading report on the workplace pensions market.⁴ This consultation will set out proposals including a cap on default fund charges in DC schemes. Legislation in the Pensions Bill aims to enable the Government to take targeted and effective action.

In the past six months, the Government has conducted a thorough review of consultancy charges, and concluded that existing measures to prevent advisers deducting high charges from members' pension pots are inadequate. It also found that consultancy charges can have a disproportionately negative impact on people who move jobs regularly.

The ban will apply both to occupational and personal pension schemes, and the Government intends to lay regulations before Parliament as soon as possible.

⁴ See [7days](#) dated 21 January 2013

Employer Debt Regulations amendment

On 10 May 2013, the DWP published a [consultation](#) and [draft regulations](#) on the Occupational Pension Schemes (Employer Debt) Regulations 2005 ("the 2005 Regulations").

The consultation concerns a proposed amendment to the Occupational Pension Schemes (Employer Debt) Regulations 2005 to address a drafting issue identified by the Joint Committee on Statutory Instruments (JCSI) in their second report of 2010/11.

The change

Regulation 4(3) of the 2010 Regulations was reported by the JCSI for defective drafting in respect of sub-paragraph (b)(ii) of the definition of "receiving employer".

The DWP's policy intention was to provide that, where an organisation was merely changing its status, then the "receiving employer" could be the new legal status of the exiting employer. The intention was to capture situations, for example, where an organisation changed from an unincorporated charity to an incorporated company. However, there are concerns that the provision did not meet that policy intention and organisations have reportedly found it difficult or impossible to use, making it of limited value in practice.

In 2011, further amendments were made to the 2005 Regulations and regulation 6E (flexible apportionment arrangements) was introduced ("the FAA provisions"). Regulation 6E sets out an additional way in which an employer in a multi-employer occupational pension scheme can apportion its liabilities to another employer on leaving the scheme.

From informal discussions with stakeholders, the DWP believes that employers are relying on the FAA provisions rather than the restructuring provisions. It therefore proposes to clarify the definition of "receiving employer" to match the original policy intent.

The proposal

The consultation closes on 31 May 2013. The intention is ultimately to include the proposed change in a package of miscellaneous amendments currently being drafted and due to come into force in October 2013.

FINANCIAL REPORTING COUNCIL (FRC)

Baroness Hogg to step down as Chairman of the FRC

On 8 May 2013, the FRC announced Baroness Hogg's intention to step down as Chairman when a successor has been appointed.

Baroness Hogg has been Chairman of the FRC for three years, Deputy Chairman for another three and a member of the FRC for almost nine years. Her term as chairman formally ended in April 2013 but she has agreed to remain as chairman to allow the search for her successor to be properly conducted and the changeover executed smoothly.

HM REVENUE & CUSTOMS

Tax Information and Impact Note: Pension Protection Fund - miscellaneous amendments

On 8 May 2013, HMRC issued a [tax information and impact note](#) on changes to the tax treatment of certain pension compensation payments made by the PPF.

With effect from 31 May 2013, the amendments will ensure that compensation payments which are subject to a pension compensation sharing order, or are lump sums below certain limits (trivial commutation lump sums) will be taxed in the same way as if the payment had been made by the original registered pension scheme.

HM TREASURY (HMT)

Responses to consultations on the transposition of the Alternative Investment Fund Managers Directive

On 13 May 2013, HMT published [responses](#) to its consultations⁵ on the transposition of the Alternative Investment Fund Managers ("AIFM") Directive.

The AIFM Directive is due to be transposed into national law by 22 July 2013. It aims to establish an EU-wide harmonised framework for monitoring and supervising risks posed by AIFMs and the funds they manage; and for strengthening the internal market in alternative funds.

The Directive covers many different types of asset manager, including managers of hedge funds, private equity funds, retail investment funds, investment companies, and real estate funds as well as common investment funds and common deposit funds. It will be implemented, like other EU financial services directives, through a combination of Treasury regulations and FSA rules.

PENSIONS POLICY INSTITUTE (PPI)

Chris Curry to be new Director

The PPI has [announced](#) that, in June 2013, Chris Curry will succeed Niki Cleal as Director of the PPI.

THE PENSION PROTECTION FUND

PPF Takes Major Step Towards Bringing Member Services In-house

The Pension Protection Fund has [announced](#) that its plans to bring its member administration services in-house have reached an important milestone with the award of a 10 year pensions administration and payroll software support contract. The PPF awarded the contract to specialist systems provider, Civica, whose other clients include some of the largest pension schemes in the country, blue chip companies and public sector bodies.

⁵ See 7days dated [14 January 2013](#) and [18 March 2013](#)

Civica was chosen after a competitive tender process - and its software and support services will be used by the PPF team when it starts to provide new in-house services to its hundreds of thousands of members from 2014.

THE PENSIONS REGULATOR

Annual Funding Statement 2013

The Pensions Regulator [published](#) its 2013 [annual funding statement](#) on 8 May 2013.

The statement aims to help pension scheme trustees and sponsoring employers to agree valuations and deficit recovery plans that protect the interests of retirement savers, whilst also being affordable for employers facing challenging economic conditions.

For details please see our [Alert](#): "TPR's 2013 scheme funding statement" dated 9 May 2013.

Memorandum of understanding between the Financial Conduct Authority and TPR

TPR has published a [memorandum of understanding](#) (MOU) between it and the Financial Conduct Authority ("FCA").

The purpose of the MOU is to facilitate and provide a framework for co-operation and co-ordination between the FCA and TPR by setting out:

- the respective regulatory responsibilities of the FCA and TPR; and
- arrangements for co-operation and the exchange of relevant information.

CASES

Futter v HMRC and Pitt v HMRC (Supreme Court)

The Supreme Court handed down its judgment in the joined cases of *Futter v Futter* and *Pitt v Holt*⁶ on 9 May 2013. These cases are important for the development of trusts law, including pensions.

Background

The facts of both cases involved the unintended tax consequences of trustee decisions.

Mr Futter had two offshore trusts which contained "stockpiled gains" for Capital Gains Tax purposes. By making various distributions to beneficiaries to deal with this, the trustees inadvertently triggered a tax charge. Following her husband's road accident (in which he sustained serious head injuries), Mrs Pitt was appointed as her husband's receiver under Mental Health legislation. She placed his accident compensation into a settlement which led to inheritance tax consequences.

⁶ [2013] UK SC26

When the High Court found in favour of both of the above parties based on the principle in *Hastings-Bass*, perhaps unsurprisingly, HMRC appealed. Given the similarity between them, the two cases were heard under a single appeal.

Rule in Hastings Bass

Many of the cases involving the so-called rule or principle in *Hastings-Bass* have involved private trusts, where the trustees received incorrect advice on the tax consequences of the exercise a particular discretion. But its use is not confined to cases involving tax as the principle has been applied more widely in the occupational pensions arena to cover other unintended consequences of trustee decisions. Until recently, the leading case on the principle was *Sieff and others v Fox*. In that case, Lord Justice Lloyd (sitting as a High Court judge) described the principle as allowing the court to set aside the exercise of a trustee discretion where its effect was different from that intended, and the trustees would not have acted as they did had they not failed to take account of something relevant or taken into account something irrelevant.

But the Supreme Court in *Futter v Futter* and *Pitt v Holt* has approved the 2011 decision of the Court of Appeal in relation to the rule in *Hastings-Bass*. This means that the line of cases following Warner J's interpretation of the rule in *Mettoy Pension Trustees Ltd v Evans*⁷, including *Sieff v Fox*, have been held to be incorrectly decided. In future, a decision made by trustees acting within the scope of their powers is voidable only if the trustees have acted in breach of trust, and that trustees are not in breach of trust if they act on appropriate professional advice.

Mistake

However, the Court allowed the appeal in *Pitt v Holt* on the ground of mistake. The Court held that the true test in order to put aside a decisions on the ground of mistake is simply for there to be a causative mistake of sufficient gravity. The test will normally be satisfied only when there is a mistake either as to the legal character or nature of a transaction, or as to some matter of fact or law which is basic to the transaction. The court held that mistake must be distinguished from mere ignorance, inadvertence, and misprediction. Forgetfulness, inadvertence or ignorance is not, as such, a mistake, but it can lead to a false belief or assumption which the law will recognise as a mistake. Mere ignorance of the law, even if causative, is insufficient.

⁷ [1990] 1 WLR 1587