Sackers extra

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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: 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 Pensions Act 2008 (Commencement No. 9) Order 2011

This Order brings into force a number of provisions of the Pensions Act 2008, in connection with the sharing of PPF pension compensation on divorce, on the dissolution of a civil partnership and in cases of nullity, as well as in connection with attachment orders made in such cases. It also makes provision for the PPF Board to recover associated charges.

The majority of the provisions under the Order will come into force on 6 April 2011.

The Application of Pension Legislation to the National Employment Savings Trust Corporation Regulations 2011

Between 9 December 2010 and 3 February 2011, the DWP undertook a consultation on the application of pension legislation to the National Employment Savings Trust Corporation (NEST) Regulations. The Government's response to the consultation was published on 10 March 2011.

NEST has been designed as a low-cost pension scheme, which can be used by employers to fulfil their duty to enrol employees automatically into a workplace pension scheme, when this duty starts to apply from October 2012.

These Regulations extend some of the legislation which applies in relation to a person as a trustee of an occupational pension scheme to the NEST Corporation, subject to certain prescribed modifications to take account of the large scale of the scheme. These include:

- disclosure requirements;
- employer-related investments;
- audited accounts; and
- borrowing arrangements.

The Regulations will come into force on 6 April 2011.

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

The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011

Between 18 October 2010 and 10 January 2011, the DWP consulted on proposals for a number of minor amendments to Regulations governing occupational and personal pension schemes.

The final Regulations have now been laid before Parliament and make changes to seven separate sets of regulations. Among other things, the Regulations:

- provide an exemption for an employer from the requirement to notify the other employers where that employer proposes making a "listed change" and the only affected members work for that employer. The proposing employer does not need to inform the other employers in the multi-employer scheme and they will not need to consult about the change;
- amend the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991[1] to reflect the replacement of actuarial guidance note GN16 (transfers without consent) with principles based guidance. The Regulations introduce a requirement that the bulk transfer without the members' consent must be made within three months of the date the actuary signs the certificate, replacing the requirement in GN16 for the actuary to set a period of up to three months from which the certificate is valid; and
- increase the maximum amount of the fraud compensation levy which can be raised in any one financial year to 75p per member (up from 23p per scheme member - the rate set in 1997). The PPF Board will raise a fraud compensation levy at the rate of 23p per scheme member for this financial year 2010/11. This levy has been charged twice before - in 1997 and 2005. The increase is deemed necessary to allow the Board of the PPF to continue to manage the Fraud Compensation Fund effectively.

The Regulations will generally come into force on 6 April 2011, but the change to the maximum fraud compensation levy will come into force on 31 March 2011.

Further information can be found in the Explanatory Memorandum which accompanies the Order and for background to the consultation on the draft regulations and the Government's response, please see 7 Days dated 18 October 2011 and 28 February 2011.

The Pension Protection Fund (Prescribed Payments and Investment Costs - Amendment) Regulations 2011

These Regulations allow four sets of costs to be paid out of the PPF:

- costs incurred by the PPF Board in connection with making investments for the purposes of the prudent management of its financial affairs;
- expenditure which is incurred for the purpose of exercising the Board's rights as a creditor under the 2004 Act or its functions under that Act which relate to those rights;
- expenditure incurred in relation to the transfer of UK property, rights and liabilities to the Board; and
- expenditure that is incidental to the Board's functions but only insofar as it relates to those costs that are also to be met from the PPF.

[1] SI 1991/167

The Government considers it appropriate to make these changes because, among other things, if the PPF were a pension scheme, the activities giving rise to these costs would be charged to the scheme rather than the sponsoring employer. The regulations also avoid putting an undue burden on well-run schemes that are unlikely to enter the PPF, which would occur if the costs were otherwise met from the administration levy.

The Government's response to the consultation on the draft regulations was published on 10 March 2011. The Regulations have not changed significantly from the consultation draft.

Further information can be found in the Explanatory Memorandum which accompanies the Regulations. For background to the consultation, please see 7 Days dated 13 December 2010.

INDEPENDENT PUBLIC SERVICE PENSIONS COMMISSION

CARE recommended for public sector pensions

On 10 March 2011, the Independent Public Service Pensions Commission (the Commission), headed by Lord Hutton, published its final report, setting out proposals for the reform of public service pension schemes.

The report aims to achieve a balanced deal between public service workers and the taxpayer. As such, the Commission recommends a move away from traditional final salary benefits, which are seen as unfairly benefiting high earners, exposing tax payers to salary risk and creating a barrier to employees switching from the public into the private sector. Instead, it proposes a switch to Career Average Revalued Earnings (CARE) going forwards.

In total, the Commission makes 27 recommendations for reform. In addition to the proposed move to CARE schemes for the future, key proposals include:

- the protection of accrued rights in existing schemes, with current members retaining a link to final salary for past service;
- linking normal pension age (NPA) to state pension age in most public service schemes, with a new NPA of 60 for the uniformed services (namely, the armed forces, police and firefighters);
- a "clear cost ceiling" for public service schemes with "automatic stabilisers" to keep future costs under more effective control; and
- simplification of the current legal framework for public service pensions.

In terms of timing, the Commission recommends that, if adopted, the new schemes are introduced before the end of the current Parliament in 2015. It is now up to the Government to decide whether to accept and act on the Commission's proposals.

For more information, please see:

- our Alert: "Hutton recommends new career average scheme" dated 10 March 2011;
- HM Treasury Press Release;
- Lord Hutton's speech at the NAPF investment conference;
- GAD Technical Bulletin; and

- a Press Release from the Actuarial Profession on figures (announced to coincide with the Commission's report) which show that a career average pension could benefit lower paid public sector workers.

NATIONAL ASSOCIATION OF PENSION FUNDS

NAPF Annual Survey

The NAPF's latest Annual Survey of its pension fund members was published on 9 March 2011.

Key findings from the survey indicate that:

- 17% of schemes have shut their pension to both new and existing members (up from 7% in the 2009 survey and 3% in 2008);
- 21% of private sector DB schemes remain open to new joiners, compared with 88% ten years ago;
- 33% of schemes are planning changes around existing members, including cutting benefits or migrating staff to a DC pension;
- the overall share of investment in UK index-linked gilts rose to 12.3% (up from 7.9% in 2009), while investment in equities fell by a quarter between 2005 and 2010.

The survey is available to purchase from the NAPF website.

NAPF Press Release

New guides published

The NAPF has published two new guides in its "Made Simple" series.

- Hedge Funds Made Simple is designed to help pension funds understand hedge funds and how they could use them as part of their investment strategy. The guide explains how hedge funds work, why pension schemes might want to consider investing in them (and why they might not), and highlights the pros and cons of investing in a hedge fund.
- Stewardship Made Simple: "Practical Steps for Pension Fund Trustees in applying the Stewardship Code" aims to encourage more pension funds to sign up to the Financial Reporting Council's (FRC) Stewardship Code. The objective of the Code is to facilitate better engagement between organisations and shareholders to help improve governance and long-term returns. Asset owners, such as pension funds, are strongly encouraged to report to the FRC as to whether and how they have complied with the Code's Principles.

The NAPF's Made Simple guides are available to purchase from the NAPF website.

PENSIONS POLICY INSTITUTE

Briefing Note 58: How can we measure adequacy in the context of public sector pensions?

Also timed to coincide with the publication of Lord Hutton's final report on public sector pensions (see above), the Pensions Policy Institute (PPI) has published Briefing Note 58.

This Briefing Note reports on the discussions from a seminar, organised by the PPI for the Commission, (held in January 2011) on a number of specific questions relating to the adequacy of public service pension provision.

It was generally agreed among the seminar participants (and in line with Hutton's conclusions) that the Pension Commission replacement rates are an appropriate way to assess adequacy. Replacement rates are defined as the ratio of pension benefits to working life earnings and are applied as a ratio to average earnings or as a ratio to pre-retirement earnings.

The Notes sets out estimates which show the typical DB scheme as providing a replacement rate for a median earner which is above the Pensions Commission benchmark of 67% of earnings, compared with a career average scheme which may achieve a total replacement rate of 50% and minimum contributions to NEST, which would reach a replacement rate of around 46%.