

Pensions law – the week in review

16 February 2009

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1 LEGISLATION

1.1 The Occupational Pension Schemes (Levy Ceiling - Earnings Percentage Increase) Order 2009

This Order (which has been made under section 178 of the Pensions Act 2004 (the Act)) specifies the increase in the general level of earnings during the latest review period, for the purposes of uprating the Pension Protection Fund (PPF) levy ceiling for the financial year beginning on 1 April 2009. The increase has been set in line with the general level of earnings increase of 3.6%.

Please follow the link below to view the Order:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090200_en.pdf

1.2 The Occupational Pension Schemes (Levy Ceiling) Order 2009

Section 175 of the Act requires the PPF to set a levy for defined benefit occupational pension schemes (and the defined benefit element of hybrid schemes) to fund the compensation it will pay to scheme members if their employer becomes insolvent and the scheme has insufficient assets to enable it to provide benefits up to the protected level.

As noted in 1.1 above, the levy ceiling has been uprated by affirmative Order in line with the general level of earnings of 3.6%. Consequently, the draft Levy Ceiling Order specifies the levy ceiling figure to be imposed on the pension protection levy for the financial year beginning 1 April 2009 as £863,412,967.

To view the draft Order and accompanying Explanatory Memorandum, please follow the links below:

http://www.opsi.gov.uk/si/si2009/draft/pdf/ukdsi_9780111473603_en.pdf

http://www.opsi.gov.uk/si/si2009/draft/em/ukdsiem_9780111473603_en.pdf

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1.3 The Financial Assistance Scheme and Incapacity Benefit (Miscellaneous Amendments) Regulations 2009

The Department for Work and Pensions has published the Government's response to its consultation¹ on further amendments to the Financial Assistance Scheme (FAS), together with revised draft amending regulations.

The draft regulations are designed to address the concern that a small number of people with conditions which mean that they have significantly reduced life expectancy could be excluded from early access to FAS because they were not within five years of normal retirement age and were not "terminally ill" as defined in the legislation.² Representations had also been made that the actuarial reduction of payments under the ill-health provisions was inappropriate where a person was likely to have a significantly shorter life expectancy due to their severe ill-health.

The draft regulations therefore allow eligible scheme members over age 55 who have a significantly reduced life expectancy as a result of severe ill-health and who are not already in receipt of benefits from FAS early access to unreduced payments. This provision is designed to cover certain persons suffering from progressive diseases who have reduced life expectancy.

The draft regulations will also benefit existing FAS recipients, who would have been entitled to earlier access to payment for past periods, had these regulations been in force at the time. They will also apply where it can be shown that a person who died before the regulations come into force, was unable to work due to ill-health and there is evidence that the reduced life expectancy criteria were met.

Subject to Parliamentary process and approval, it is intended that the regulations will come into force by the Parliamentary Easter recess.

¹ Reported in 7 Days on 10 November 2008

² Regulation 2(9) of the FAS Regulations 2005 (SI 1986) defines a person as terminally ill if "he suffers from a progressive disease and his death, in consequence of that disease, can reasonably be expected within six months"

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To view the consultation response, revised draft regulations and accompanying explanatory memorandum, please follow the links below:

Consultation response: <http://www.dwp.gov.uk/consultations/2008/govt-response-fas-ibmp-regs09.pdf>

Draft regulations: http://www.opsi.gov.uk/si/si2009/draft/pdf/ukdsi_9780111473672_en.pdf

Explanatory memorandum: http://www.opsi.gov.uk/si/si2009/draft/em/ukdsiem_9780111473672_en.pdf

2 DEPARTMENT FOR WORK AND PENSIONS (DWP)

2.1 Consultation on draft Regulations: The Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009

On 11 February 2009, the DWP published a further consultation on FAS regulations, in order to seek views on the draft Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009. The purpose of these draft regulations is to implement all of the remaining enhancements to the FAS, as announced on 17 December 2007 by the then Secretary of State for Work and Pensions.³

The Government envisages that the remaining measures will be implemented in two phases:

- a package of regulations (which are the subject of the present consultation) which the Government plans to introduce in the summer of 2009 (the Summer Regulations); and
- a further package of regulations which are expected to be consulted on in detail later this year, but details of which are included in the present consultation on a preliminary basis. This will include legislation relating to taking the remaining FAS scheme assets into government and making payments associated with them.

³ For more details, please see 7 Days dated 17 December 2007 and our Sackers Extra Alert: "FAS is for life, not just for Christmas" (available from the client area of our website or your usual Sackers contact)

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It is envisaged that the Summer Regulations will implement the remaining enhancements to the assistance structure for those FAS qualifying members whose schemes will not be transferring assets to government. These are:

- the indexation of payments derived from post-97 service;
- maintaining the value of the cap;
- treatment of different tranches of accrued pension (covering split retirement ages); and
- extending survivors' rights to dependent children and surviving partners.

The consultation period runs until 25 March 2009.

To view the consultation document, please click on the link below:

[http://www.dwp.gov.uk/consultations/2009/FAS\(Miscellaneous%20Provisions\)Regulations2009-Consultation.pdf](http://www.dwp.gov.uk/consultations/2009/FAS(Miscellaneous%20Provisions)Regulations2009-Consultation.pdf)

2.2 Pickering and Swinson reappointed to roles at the Pensions Regulator (TPR)

James Purnell, the Secretary of State for Work and Pensions, has today (16 February 2009) announced the reappointment of Alan Pickering and Chris Swinson as non-executive directors of TPR.

Both Mr Pickering and Mr Swinson have already served four years as inaugural non-executive directors of TPR.

Alan Pickering is a director of BESTrustees and became Chairman on 1 February 2009. He joined Watson Wyatt in 1992 after twenty years with the Electrical, Electronic, Telecommunications and Plumbers Union where he gained experience in many aspects of employee relations, pensions and personal finance. He was chairman of the National Association of Pension Funds from 1999 to 2001. Between 2001 and 2004 he served as chairman of the European Federation for Retirement Provision and in 2001 he led a review into

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the simplification of private pension provision. His report, “A Simpler Way to Better Pensions”, was published in July 2002.

Chris Swinson is Comptroller and Auditor General of Jersey. He was formerly senior partner of BDO Stoy Hayward. He served as a council member of the Institute of Chartered Accountants in England and Wales and was president from 1998 to 1999. He currently works as an expert witness in financial cases.

Messrs Pickering and Swinson began new four year contracts on 8 February 2009.

To view the DWP’s press release, please click on the link below:

<http://www.dwp.gov.uk/mediacentre/pressreleases/2009/feb/pens099-160209.asp>

2.3 DWP Research Report No. 563: Money’s Worth of Pension Annuities⁴

The DWP has published a new research report, by Edmund Cannon and Ian Tonks, which examines a time series of pension annuity rates in the UK for 1994-2007. The report computes the money’s worth of annuities and concludes that, on average, the money’s worth of the sample period for 65 year old males has been 90% and 91% for an equivalent sample of females. The DWP notes that the implication of this (taking into account load factors associated with annuity contracts and in comparison with other financial and insurance products) is that annuities are fairly priced.

The value of the money’s worth is sensitive to the assumptions made about life expectancy and the authors explain the assumptions made about the appropriate life tables to apply to annuitants in the pensions annuity market.

The report also notes that there is some evidence that money’s worth has fallen since 2002. The report discusses a number of factors which could have influenced this, including: changes in insurance regulations;

⁴ A report of research carried out by Department of Economics, University of Bristol and Xfi Centre for Finance and Investment, University of Exeter on behalf of the Department for Work and Pensions

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changes in industrial concentration; an insurance cycle; pricing of mortality uncertainty and the growth in the impaired lives market.

To view the DWP's report, please click on the link below:

<http://www.dwp.gov.uk/asd/asd5/rports2009-2010/rrep563.pdf>

3 HM REVENUE & CUSTOMS (HMRC)

3.1 Moved home? Tell HMRC by email

HMRC has today (16 February 2009) launched a new facility which enables employees or pension scheme members in receipt of an occupational or private pension to inform HMRC of a change of name or address using their new email form. HMRC say this new method is “fast, easy and secure”.

For more details of the service, and to access the email form, please click on the link below:

<http://www.hmrc.gov.uk/individuals/change-of-circs.htm>

4 NATIONAL ASSOCIATION OF PENSION FUNDS (NAPF)

4.1 Corporate Governance and Voting Guidelines updated

The NAPF has updated its Corporate Governance Policy and Voting Guidelines⁵ ahead of the 2009 AGM season.

Amendments to the policy include:

- combined chairman / chief executive office guidelines: where the role of chairman and chief executive officer is combined for more than a year, investors may consider an actively withheld vote or vote against the board chairman;

⁵ Available from the NAPF

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- the role of the chairman in maintaining corporate governance standards; and
- updated guidance on waivers of Rule 9 of the Takeover Code (usually sought where a company proposed to institute a share buy back programme in which a large investor or concert party intends not to participate).

The voting guidelines are designed to assist shareholders and others in interpreting the Combined Code⁶ (the document which the guidelines are based on) when considering voting at company meetings.

To view the NAPF's press release (which sets out at Annex 1 the changes made to the guidelines) and Governance Policy, please click on the links below:

[NAPF Press Release: 13 February 2009](#)

<http://www.napf.co.uk/Policy/Governance.cfm>

5 ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

5.1 Private Pensions Outlook 2008

The OECD has published its first edition of "Private Pensions Outlook", a new publication intended to guide readers through the changing landscape of retirement income provision.

This first edition presents a special feature on the implications of the financial crisis for private pensions, as well as in-depth, international analyses of private pension arrangements across OECD and selected non-OECD countries.

⁶ The Combined Code on Corporate Governance sets out standards of good practice in relation to issues such as board composition and development, remuneration, accountability and audit and relations with shareholders. The most recent version was published in June 2008 and is available from the Financial Reporting Council's website:

<http://www.frc.org.uk/CORPORATE/COMBINEDCODE.CFM>

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The publication includes data on assets, investments, membership and industry structure based on the latest official statistics. The first issue presents a framework for evaluating the trends shaping the pensions industry, based on the role of the private pensions in relation to the public pension system.

To view the executive summary of the publication, as well as key facts and figures, please click on the link below:

http://www.oecd.org/document/60/0,3343,en_2649_34853_41770428_1_1_1_1,00.html



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