Sackers extra

18 March 2013

At a glance

LEGISLATION

- The Pensions Act 2011 (Commencement No.4) Order 2013
- The Guaranteed Minimum Pensions Increase Order 2013
- The National Employment Savings Trust (Amendment) Order 2013

DEPARTMENT FOR BUSINESS, INNOVATION & SKILLS

- Government to simplify and improve employment tribunals

HM REVENUE & CUSTOMS

- Withdrawal of contracting-out DC forms

HM TREASURY

- Transposition of the Alternative Investment Fund Managers Directive: further consultation
- Announcement re: introduction of single-tier state pension

NATIONAL ASSOCIATION OF PENSION FUNDS

- Guide to help pension trustees select good stewards

PENSIONS POLICY INSTITUTE

- Current Director to step down

PENSION PROTECTION FUND

- PPF Appoints New Chief Investment Officer
- PPF Appoints New Head of Restructuring and Insolvency
- Further information for eligible last man standing pension schemes with Type A contingent assets where the guarantor is an employer
- Guidance on FAS overpayments

THE PENSIONS REGULATOR

- New DC executive director joins regulator

THE PENSIONS ADVISORY SERVICE

- TPAS chief executive to step down in the summer

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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
GMP: Guaranteed Minimum Pension
HMRC: HM Revenue & Customs
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

LEGISLATION

The Pensions Act 2011 (Commencement No. 4) Order 2013

This Order brings certain provisions of the Pensions Act 2011 which relate to the PPF (in particular the postponement of compensation), into force, so far as they are not already, with effect on and from 13 March 2013.

The Guaranteed Minimum Pensions Increase Order 2013

Under the Pension Schemes Act 1993, the Secretary of State is required to review the general level of prices in Great Britain for the period of 12 months commencing at the end of the period last reviewed. Where that level has increased at the end of the period of review, the Secretary of State is required to lay a draft Order before Parliament, specifying a percentage by which there is to be an increase of the rate of that part of the GMP which is attributable to earnings factors for the tax years in the relevant period (the period beginning with the tax year 1988-89 and ending with the tax year 1996-97). There is no requirement for pension schemes to increase GMPs accrued between 1978 and 1988.

The level of inflation proofing is limited to the lesser of the increase in the general level of prices and 3 per cent. The Consumer Prices Index for the appropriate review period (1 October 2011 to 30 September 2012) was 2.2 per cent. The increase in the GMP specified by this Order is therefore 2.2 per cent.

The Order comes into force on 6 April 2013.

Explanatory memorandum

The National Employment Savings Trust (Amendment) Order 2013

This Order (which comes into force on 1 April 2013) amends the National Employment Savings Trust Order 2010. Its purpose is to align the statutory framework of NEST with recent changes to automatic enrolment legislation, and to make some minor and technical changes that are intended to provide clarity and certainty to NEST and to the employers and members who use it. For example, it provides for:

- an extension to the trustee discretion to admit self-enrolling members (self-employed persons and single person directors) until 1 March 2018 to align with revised legislation which extends the staging period for automatic enrolment;
- a discretionary power to allow the trustee to decide whether to accept contributions relating to individuals defined as "qualifying persons" or "qualifying self-employed

persons" to align with regulations that exempt certain European employments from automatic enrolment; and

- a minor change to the description of who can contribute to a member's account to make clear that a third party (for example, a relative) can make contributions to a member's account.

Explanatory memorandum

DEPARTMENT FOR BUSINESS, INNOVATION & SKILLS

Government to simplify and improve employment tribunals

On 14 March 2013, the Government announced new rules aimed at streamlining the Employment Tribunal process.

In November 2011 the government commissioned Mr Justice Underhill, former President of the Employment Appeal Tribunal to lead a fundamental review of the rules of procedure for employment tribunals.

The proposals the government have accepted include:

- new strike out powers to ensure that weak cases that should not proceed to full hearing are halted at the earliest possible opportunity;
- guidance from the Employment Tribunal Presidents to help ensure that judges deal with hearings in a consistent manner which ensures parties know what to expect;
- making it easier to withdraw and dismiss claims by cutting the amount of paper work required; and
- a new procedure for preliminary hearings that combines separate pre-hearing reviews and case management discussions. This is intended to reduce the overall number of hearings and lead to a quicker disposal of cases saving time and costs for all parties.

HM REVENUE & CUSTOMS

Withdrawal of contracting-out DC forms

Following the abolition of contracting out on a DC basis from 6 April 2012,[1] there is no longer a requirement for pension schemes to notify HMRC of any arrangements which are made after this date to secure former protected rights.

The CA series of forms have been available on the HMRC website for the last year to allow time for any late notifications to be submitted. Schemes which made arrangements to secure protected rights before 6 April 2012, but have not yet notified HMRC of these arrangements should do so as soon as possible. The forms will be removed from HMRC's website on 1 April 2013.

[1] Please see our Alert: "Abolition of DC contracting-out: final regulations published" dated 1 March 2012

HM TREASURY

Transposition of the Alternative Investment Fund Managers Directive: further consultation

The Alternative Investment Fund Managers Directive (the "Directive") is due to be transposed into national law by 22 July 2013. It will have a significant impact on firms that run any type of fund, other than those authorised under the Undertakings for Collective Investment in Transferable Securities Directive (often referred to as "UCITS").

The Government published its first consultation paper on 11 January 2013; this closed at the end of February.[2] This consultation paper considers a number of issues that could not be addressed at that time.

The Directive establishes an EU-wide harmonised framework for monitoring and supervising risks posed by Alternative Investment Fund Managers and the funds they manage. It 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. The Directive will be implemented, like other EU financial services directives, through a combination of Treasury regulations and Financial Services Authority rules.

The policies addressed in this consultation are focused in particular on the managers of Common Investment Funds and Common Deposit Funds and their charity investors, non-UK managers of UK “recognised schemes”, and non-UK EEA managers of UK authorised funds. There is also an impact on the managers of internally managed investment companies.

Draft regulations accompany this consultation paper and these are intended to be combined with the draft regulations attached to the first consultation paper.

The consultation closes on 5 April 2013.

Announcement re: introduction of single-tier state pension

The Chancellor of the Exchequer, George Osborne, has announced that the single-tier pension[3] will be introduced in 2016, a year earlier than originally planned.

This announcement was made during an interview with the BBC on 17 March 2013. Steve Webb, the Pensions Minister, has issued a Written Ministerial Statement saying that he will make a further statement "shortly".

NATIONAL ASSOCIATION OF PENSION FUNDS (NAPF)

Guide to help pension trustees select good stewards

On 12 March 2013, the NAPF published a guide to help pension trustees assess the stewardship abilities of their prospective investment managers.

The one-page document, "Quizzing Fund Managers" was launched on "Ownership Day", an initiative by the UK Sustainable Investment and Finance Association to raise awareness of the benefits of active ownership in investment management.

[2] Please see 7days dated 14 January 2013

[3] Please see our Alert: "Pensions White Paper" dated 15 January 2013

The document highlights questions trustees should consider when selecting and subsequently reviewing their investment managers, including:

- what codes of conduct or principles have you signed up to?
- how are non-financial risks incorporated into investment decisions?
- are you able to demonstrate the effectiveness of your stewardship activities?

The document is drawn from the NAPF's Stewardship Policy, which was published in 2012[4] to help pension fund trustees fulfil their stewardship (ownership) responsibilities. The policy set out three actions that can be expected of pension funds as the owners and providers of capital. These included:

- the incorporation of stewardship criteria into manager selection;
- the monitoring of their activities to gain a greater understanding of their stewardship approach; and
- ensuring they are aligned to and adhering to the pension funds' policy.

PENSIONS POLICY INSTITUTE (PPI)

Current Director to step down

Niki Cleal is to step down as the Director of the PPI around the time of its AGM on 5 June 2013.

Press release

PENSION PROTECTION FUND (PPF)

Further information for eligible last man standing pension schemes with Type A contingent assets where the guarantor is an employer

Since the levy year 2012/13, trustees of schemes with Type A contingent assets must certify that they "have no reason to believe that each certified guarantor, as at the date of the certificate, could not meet its full commitment under the contingent asset as certified". This aims to ensure that the reduction in risk provided by the contingent asset justifies the corresponding reduction in the PPF levy.

On 15 March 2013, the PPF published an updated version of its guarantor strength guidance[5] and FAQs.

The revised approach only affects last man standing pension schemes where the guarantor is a scheme employer and brings their treatment into line with other schemes.

The deadline for certification / recertification of contingent assets is 5pm on Thursday 28 March 2013. Therefore, employers with and trustees of last man standing schemes who decided not to certify / re-certify Type A contingent assets based on the PPF's previous guidance should speak to their usual contact at Sackers as soon as possible.

[4] Please see 7days dated 26 November 2012

[5] Please see our Alert: PPF: "Assessment of Guarantor Strength & the Impact of Insolvency" dated 5 March 2013

Guidance on FAS overpayments

The PPF has published guidance to explain the action it will take where a member of FAS has received an overpayment.

PPF Appoints New Chief Investment Officer

On 13 March 2013, the PPF announced the appointment of a new Chief Investment Officer to oversee its investment portfolio which is currently worth more than £13 billion.

Barry Kenneth joins the PPF from Morgan Stanley where he is a Managing Director and Head of UK Fixed Income Institutional and Pensions Coverage. He is expected to take up his new role in June 2013.

PPF Appoints New Head of Restructuring and Insolvency

On 14 March 2013, the PPF announced that, in July 2013, Malcolm Weir will replace Richard Favier OBE as Head of Restructuring and Insolvency.

Malcolm Weir is currently Head of Corporate Insolvency at Barclays Corporate and has lengthy experience in restructuring, reorganisation and corporate recovery.

THE PENSIONS REGULATOR

New DC executive director joins regulator

On 12 March 2013, TPR confirmed the appointment of Andrew Warwick-Thompson as executive director for DC, governance and administration with effect from April 2013.

Mr Warwick-Thompson joins TPR most recently from Aon Hewitt where he was a partner in the international retirement and investment practice and responsible for global DC and investment solutions. He has more than 25 years' experience in the financial services industry, spanning pensions, insurance and asset management, both in the UK and internationally.

He will be responsible for overseeing TPR's DC programme, which is seeking to ensure that schemes are run to a standard that can materially improve outcomes for members. Mr Warwick-Thompson's portfolio will also include a number of other areas of increasing responsibility or focus for TPR, including:

- governance standards in public service pensions; and
- TPR's efforts, alongside other agencies, to disrupt the increase in pension liberation fraud.

THE PENSIONS ADVISORY SERVICE (TPAS)

TPAS chief executive to step down in the summer

On 14 March 2013, TPAS announced that its chief executive, Marta Phillips OBE CA, will be stepping down in the summer.

The TPAS Board will shortly begin its search for a successor.