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)
CPI: Consumer Prices Index
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
RPI: Retail Prices Index
TPR: The Pensions Regulator

LEGISLATION

Finance No. 3 Bill 2010-11

The Finance Bill undergoes its third (and final) reading in the House of Lords today (18 July 2011). The Bill is expected to receive Royal Assent later today or tomorrow, ahead of the Parliamentary summer recess.

We will publish an Alert once the Bill receives Royal Assent.

Pensions Bill 2010-11

The latest version of the Pensions Bill was published on 15 July 2011, together with a mark-up showing the latest changes.

In connection with the switch from RPI to CPI for increases to pensions in payment and in deferment, the changes made to the Bill include amendments to the proposed easement for schemes with pension increase rules which specify RPI. Such schemes will not need to provide a CPI underpin and, as announced in the DWP's recent consultation response, the easement conditions have been amended to ensure that they do not act as a "disincentive to business mergers and acquisitions" (for example, where a bulk transfer is made an underpin would not be required if RPI increases have been continuously provided).

In addition, the Bill ensures that CPI does not act as an underpin for schemes that revalue deferred pensions by reference to RPI.

The Bill also introduces changes to the "test scheme" used for measuring whether an occupational pension scheme meets the criteria to be a "qualifying scheme" for automatic enrolment purposes. The test scheme is expanded to cover schemes which offer drawdown arrangements.

Royal Assent?

Given that the current Parliamentary session is drawing to a close, it is likely that the Pensions Bill will now receive Royal Assent in the autumn.

Abolition of DC Contracting-out: amending regulations finalised

Two statutory instruments have been finalised in relation to the abolition of DC contracting-out which will take effect from 6 April 2012 (the Abolition Date):

- The Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) (No.2) Order 2011
- The Pensions Act 2007 (Abolition of Contracting-out for Defined Contribution Pension Schemes) (Consequential Amendments) (No. 2) Regulations 2011

These instruments amend or repeal references to "contracted-out money purchase schemes", "appropriate personal pension schemes" and "protected rights" in existing legislation. As such schemes will no longer be contracted-out on a DC basis, the related legislation will be redundant or retained for a transitional period only following the Abolition Date.

Both instruments had previously been published in draft (see 7 Days dated 23 May 2011). Further information can be found in the explanatory memorandum which accompanies the Order and Regulations.

DEPARTMENT FOR WORK AND PENSIONS

The switch from RPI to CPI: Revised impact assessment

In connection with the switch from RPI to CPI for increases to pensions in payment and revaluation in deferment, the DWP has published a further revised impact assessment.[1] This follows earlier impact assessments published in February 2011 and December 2010.

The latest impact assessment comes in the wake of the Government's confirmation (and amendments to the Pensions Bill - see above) that it will not require schemes which have RPI written into their rules to apply a CPI underpin.[2]

The impact assessment notes that overall "the impact of the policy is now estimated to be a little lower than previously estimated". The total immediate impact of the change is estimated to result in a reduction in the value of existing liabilities of affected pension schemes of £74bn.

Automatic enrolment: Pensions language guide

The DWP has published a pensions language guide to automatic enrolment.

The guide is designed to help provide "simple, consistent language about a very complex subject". It builds on work done to date by NEST, TPR and others to help promote understanding of pensions.

HM TREASURY

Whole of Government Accounts

For the first time, the Treasury has published an unaudited summary of the Whole of Government Accounts (WGA) for the year 2009-10.

The Government made available key balance sheet analysis to the Office for Budget Responsibility (OBR) to enhance its analysis of the sustainability of the public finances in the first Fiscal Sustainability Report (see further below).

[1] See 7 Days on 14 February 2011 for details of the earlier impact assessments

[2] For more information, see our Alert: No surprises: the RPI/CPI consultation response

The WGA notes that public service pensions form a significant part of the Government's total liabilities, with a total net liability of £1,133 billion as at 31 March 2010 on an unaudited consolidated basis. The pension liability increased by £331.3 billion in the year ended 31 March 2010, largely reflecting a decrease in the rate at which future payments are discounted to reflect their present value.

The WGA also notes that the state pension makes up one of the largest elements of social benefit, at £69.5 billion.

HM Treasury Press Release

OFFICE FOR BUDGET RESPONSIBILITY (OBR)

Fiscal sustainability report

The OBR was created in 2010 to provide independent analysis of the UK's public finances. As part of this role, the Budget Responsibility and National Audit Act 2011 requires the OBR to produce "an analysis of the sustainability of the public finances" once a year. The Fiscal sustainability report is the first such analysis.

The report notes that the main pressures on public finances arise from age related spending, including state pension costs as well as health spending and social care. These are, however, partially offset by a fall in gross public service pension payments from 2% to 1.4% of GDP. This reflects the decision to up-rate pensions in payment by CPI rather than RPI, the current pay freeze and planned workforce reductions.

Fiscal sustainability report: supporting documents

PENSIONS OMBUDSMAN

2010/11 Report and Accounts

The Pensions Ombudsman (incorporating the Pension Protection Fund Ombudsman), has published its annual report and accounts for the year ended 31 March 2011. 2010/11 was the twentieth year of the operation of the Pensions Ombudsman's Office.

Some key points from the report indicate that:

- as in previous years, ill-health early retirement was the source of the largest number of complaints completed in the year (13%);
- there were no new areas of complaint. The report notes that it is too early for complaints resulting from incentivised transfers or changes in the public sector to come through;
- there was a slight decrease against the previous year in the numbers of enquiries (3066, down 16%) and cases taken on for investigation (915, down 4%). The previous year's figures had been unusually high, however, so 2010/11 represented a shift back to normal levels;
- over 40% of cases were dealt with by investigators without needing to be referred to the Ombudsman or Deputy Ombudsman, demonstrating continuing efforts to resolve cases early and proportionately;

- over a third of complaints decided by an ombudsman were upheld in whole or part;
- expenditure was £2.68m, representing a budget underspend of 12%, largely due to public sector financial constraints introduced in 2010; and
- productivity was maintained notwithstanding a shortage of staff.

PENSION PROTECTION FUND

FAS Delivery Model: Update

Sue Rivas, head of FAS, has written a letter to pensions professionals (including trustees, administrators and data providers of FAS qualified schemes), on the FAS delivery model in anticipation of the closure of the FAS Operational Unit on 26 July 2011.

Among other things, the letter sets out updated contact details for schemes which need to provide information to FAS, as well as a reminder of the correct format for sending this information.

THE PENSIONS ADVISORY SERVICE

Report and Accounts for 2010/11

TPAS has published its annual report and accounts for the year ending 31 March 2011.

TPAS notes that it dealt with 12% more written enquires and 54% more visits to its website compared with 2009/10, while telephone calls and written disputes were down.

Customers generally remain satisfied with the services provided by TPAS, as confirmed by Independent research commissioned by the DWP.

TPAS Press Release

THE PENSIONS REGULATOR

Settlement in Great Lakes case

TPR has decided not to proceed with a full Determinations Panel hearing following agreement of a comprehensive funding package in respect of pension promises made to around 1,270 current or former employees in the chemicals industry.

Background

The Great Lakes UK Limited Pension Plan (the Plan) is a hybrid occupational pension scheme incorporating a closed DB section, and a smaller open DC section. As at 30 June 2009, the Plan had a buy-out deficit of approximately £95 million.

The principal employer of the Plan is Chemtura Manufacturing UK Limited (CMUK) - a solvent, trading, UK business. CMUK is part of the Chemtura Group. Chemtura Corporation (CMUK's ultimate parent) and a number of other entities in the group filed for Chapter 11 bankruptcy protection in the US but emerged from Chapter 11 in November 2010 after a financial restructuring.

Regulatory action

Following an approach from the Plan trustees in June 2009, TPR began an investigation. As a result, TPR considered that proceedings should be issued in relation to a number of entities with the Group, including Chemtura Corporation and CMUK (together, the Target Companies).

TPR issued a warning notice to the Target Companies on 22 December 2010 that it may issue an FSD. The matter was due to be heard by TPR's Determinations Panel in June 2011.

However, after further funding negotiations, an improved funding package was offered by CMUK and Chemtura Corporation. The package (agreed by the trustees in May 2011), provided for:

- CMUK to make cash contributions of £60 million over 3 years, starting with an initial contribution of £30 million (which has now been paid). It is anticipated that these payments will eradicate the Plan's current deficit within this period;
- further contributions to be paid by CMUK in respect of possible additional liabilities connected with equalisation, if necessary; and
- a guarantee and security agreements, entered into by entities in the Chemtura Group, including Chemtura Corporation, providing protection to the Plan in relation to any further Plan liabilities.

Having considered the revised funding package, TPR decided it would no longer be appropriate for the matter to proceed to the Determinations Panel. This is because TPR found the funding package to be broadly equivalent to what might have been achievable if an FSD had been issued.

Report under s.89 of the Pensions Act 2004

TPR Press Release