

Pensions law – the week in review

19 January 2009

AT A GLANCE

FINANCIAL REPORTING COUNCIL

- Professional Oversight Board to consult on review of requirements for actuaries

HM REVENUE & CUSTOMS

- The Pensions Schemes (Application of UK provisions to relevant non-UK schemes) Regulations (Amendment) Order
- Self Assessment Tax Return for Pension Schemes (SA970)
- Pension Schemes Newsletter 36

HM TREASURY

- The Prudential Regulation of the Equitable Life Assurance Society: The Government's response to the Report of the Parliamentary Ombudsman's investigation

PENSIONS INSTITUTE

- Discussion Paper: Mortality-Linked Securities and Derivatives

THE PENSIONS REGULATOR

- TPR promotes Pensionwise

PERSONAL ACCOUNTS DELIVERY AUTHORITY

- Procurement process launched

**Pensions law – the week in review
19 January 2009**

1 FINANCIAL REPORTING COUNCIL (FRC)

1.1 Professional Oversight Board to consult on review of requirements for actuaries

The Professional Oversight Board (the Board), which is an operating body of the FRC¹, has announced that it will consult on “additional quality assurance requirements” for both individual actuaries and actuarial firms. The announcement was made in tandem with the publication of a summary of responses to the FRC’s discussion paper on “Monitoring and scrutiny of actuarial work”.²

The Board concluded that since the publication of the Morris Review in March 2005³, there has been enhanced independent scrutiny of actuarial advice, but only limited monitoring of compliance with professional standards. The Board considers that in the pensions field, the actuarial profession should “enhance the scope and application of compliance review through professional quality assurance requirements on individual actuaries or their firms.” However, there are no immediate plans to develop strategies for external monitoring.

To view the FRC’s press release and summary of responses to the discussion paper, please click on the links below:

<http://www.frc.org.uk/pob/press/pub1852.html>

<http://www.frc.org.uk/images/uploaded/documents/20090109Monitoringfeedbackanalysis.pdf>

¹ The FRC is the UK’s independent regulator responsible for promoting confidence in corporate reporting and governance

² See 7 Days dated 26 May 2008 for background information on the discussion paper

³ See 7 Days dated 21 March 2005

Pensions law – the week in review 19 January 2009

2 HM REVENUE & CUSTOMS (HMRC)

2.1 The Pensions Schemes (Application of UK provisions to relevant non-UK schemes) Regulations (Amendment) Order

A draft Order has been published by HMRC which covers the lump sums that a relevant non-UK scheme pays in respect of a member (who has received UK tax relief in respect of their membership) who has given notice to HMRC that a benefit crystallisation event is to be treated as occurring on the date specified in the notice. The draft Order provides for such lump sums to be taxed in the same way as equivalent payments by registered pension schemes.

HMRC has also published draft amendments to the Registered Pension Schemes Manual (RPSM) to cover the changes proposed in the draft Order.

To view the draft Order and draft RPSM amendments, please click on the links below:

Draft Order: <http://www.hmrc.gov.uk/pensionschemes/rnuk-regs.pdf>

Draft RPSM amendments: <http://www.hmrc.gov.uk/pensionschemes/rnuk-guidance.pdf>

2.2 Self Assessment Tax Return for Pension Schemes (SA970)

HMRC has today (19 January 2009) issued a reminder to trustees of pension schemes who need to complete a self assessment return in relation to taxed investment income, any taxable income or chargeable gains.

The self assessment return (SA970) is not available to complete online and so trustees who have received a paper SA970 return should complete it and send it to HMRC Pension Schemes Services. HMRC has not issued self assessment returns for all schemes. Therefore, if any trustees have not received a return but have taxed investment income, any taxable income or chargeable gains to declare, SA970 can be obtained by clicking on the second link below.

Pensions law – the week in review 19 January 2009

HMRC reminder notice: <http://www.hmrc.gov.uk/news/sa970.htm>

Note on tax return and access to form: <http://www.hmrc.gov.uk/businesses/fagsa970.htm>

2.3 Pension Schemes Newsletter 36

HMRC's 36th pension schemes newsletter (published on 12 January 2009) explains the tax implications for an individual of moving their pension fund to an Australian qualifying recognised overseas pension scheme (QROPS).

Such a transfer is treated as a contribution to the Australian QROPS under Australian tax rules, therefore Australian tax charges may arise. The Newsletter looks at the circumstances in which the payment by a QROPS of any Australian tax charges arising as a consequence of a transfer from a registered pension scheme can make the individual liable to an unauthorised payment charge. It also clarifies the interaction between the UK and Australian tax legislation.

To view the newsletter, please click on the link below:

<http://www.hmrc.gov.uk/pensionschemes/ps-newsletter36.htm>

3 HM TREASURY

3.1 The Prudential Regulation of the Equitable Life Assurance Society: The Government's response to the Report of the Parliamentary Ombudsman's investigation

Following the publication in July 2008 of the Parliamentary Ombudsman's report into the prudential regulation of the Equitable Life Assurance Society (Equitable Life)⁴ from 1988 to 1 December 2001, the Government published its response (Response) to the report on 15 January 2009.

In her report, the Ombudsman made ten determinations of maladministration against the former Department of Trade and Industry, the Government Actuary's Department, and the Financial Services Authority, in

⁴ See 7 Days dated 21 July 2008

Pensions law – the week in review 19 January 2009

relation to their regulation of Equitable Life and upheld the general complaint that there was regulatory failure for more than a decade in the period before Equitable Life closed to new business in 2000.

The Government has accepted some (but not all) of the Ombudsman's findings and considers that Government action is merited as a result of the maladministration. It notes that the Response "takes into account need to balance the interests of the taxpayer with those of policyholders, and that the financial difficulties in the summer of 2000 were ultimately precipitated by the Society's own actions." Consequently, the Government intends to set up a scheme to provide ex-gratia payments for those who have been most disproportionately affected by the events at Equitable Life.

The Government has asked the Rt Hon Sir John Chadwick (former Lord Justice of the Court of Appeal) to advise the Government on the matters relevant to the impact suffered by current and former Equitable Life policyholders. The Response sets out the terms of reference for Sir John's advice, including:

- the extent of relevant losses suffered by different classes of policyholder in respect of each case of maladministration accepted by the Government;
- the proportion of those losses which it would be appropriate to apportion to the public bodies investigated by the Ombudsman (as opposed to the actions of Equitable Life and other parties);
- the classes of policyholders which have suffered the greatest impact as a result of maladministration; and
- factors arising from this work which the Government might wish to take into account when reaching a final view on determining whether disproportionate impact has been suffered.

In both the Response and the statement made to the House of Commons by Yvette Cooper, Chief Secretary to the Treasury, the Government has apologised to policyholders "on behalf of public bodies and successive governments responsible for the regulation of Equitable Life between 1990 and 2001, for the maladministration we believe has taken place."

Pensions law – the week in review 19 January 2009

To view the Government's response, Treasury press release and the statement to the House of Commons, please follow the link below:

http://www.hm-treasury.gov.uk/equitablelife_govt_response.htm

4 PENSIONS INSTITUTE (PI)

4.1 Discussion Paper: Mortality-Linked Securities and Derivatives

The PI has published a discussion paper⁵ which examines the way in which pension schemes can use capital market solutions for managing longevity risk.

In this paper, authors Enrico Biffis⁶ and David Blake⁷ aim to provide an overview of the recent developments in capital markets which are aimed at overcoming the difficulties encountered in managing the risk of mortality improvements, as well as creating a liquid market in mortality-linked securities and derivatives.

To view the discussion paper, please click on the link below:

<http://www.pensions-institute.org/workingpapers/wp0901.pdf>

5 THE PENSIONS REGULATOR (TPR)

5.1 TPR promotes Pensionwise

TPR is promoting Pensionwise, its free programme for employers who offer occupational trust-based pension schemes with defined contribution arrangements.

The online programme is divided into six topics:

- administration;

⁵ Discussion Paper PI-0901

⁶ Imperial College Business School

⁷ The Pensions Institute, Cass Business School

Pensions law – the week in review 19 January 2009

- member communications;
- retirement choices;
- charges;
- investment choices; and
- Exchange (TPR's on-line facility for submitting information, such as the Scheme Return and Pension Protection Fund levy information).

TPR describes Pensionwise as providing a step-by-step guide to what employers need to know and do in relation to their scheme, presenting each topic in “bite-sized chunks of information which take about 10 minutes to read.”

To register for Pensionwise, please click on the link below:

<https://pensionwise.tpr.gov.uk/>

6 PERSONAL ACCOUNTS DELIVERY AUTHORITY (PADA)

6.1 Procurement process launched

On 15 January 2009, PADA announced the launch of its procurement process for scheme administration services for personal accounts.

The scheme administration services to be procured include:

- employer participation: provision of scheme information, receipt of employer data and agreement of payment schedules;
- enrolment: automatic enrolment, opt-in, enrolment of the self-employed;

Pensions law – the week in review
19 January 2009

- collection and reconciliation: contributions from employers and members, contributions limit, handling late payments;
- cash management: refunds, aggregating contributions, updating unit prices to member records;
- accessing pension savings: retirement options; purchasing annuities; trivial commutation; and
- administration of account: updating member and employer records; complaint handling; divorce and dissolution of civil partnerships.

As a public body, PADA is procuring services for the personal accounts scheme via the public sector procurement processes. This means that services are bought through “fair and open competition in accordance with European Union procurement directives.”

PADA is expected to make an announcement on the award in the summer of 2010.

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

<http://www.padeliveryauthority.org.uk/documents/press-release-01-2009.pdf>



Solicitors specialising in pensions law

Sacker & Partners LLP
29 Ludgate Hill
London EC4M 7NX
Tel 020 7329 6699
Fax 020 7248 0552

enquiries@sackers.com
www.sackers.com

Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on the basis of this document alone. For specific advice on any particular aspect you should consult the usual Solicitor with whom you deal. © Sacker & Partners LLP January 2009