

**19 September 2011**

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**SO7**

**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

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## DEPARTMENT FOR BUSINESS, INNOVATION AND SKILLS

### Kay Review of equity investment

The Kay Review was first announced in June 2011. Headed by Professor John Kay, the independent review team is to examine investment in UK equity markets and its impact on the long-term performance and governance of UK quoted companies. Professor Kay launched the Review's [call for evidence](#) on 13 September 2011.

The review's principal focus will be to ask how well equity markets are achieving their core purposes:

- to enhance the performance of UK companies by facilitating investment and enabling effective governance and decision making in support of long-term profitability and growth; and
- to enable investors to benefit from this corporate activity in the form of returns from equity investment.

The review will assess to what extent equity market participants are excessively focused on short-term outcomes to the detriment of these core purposes, and if so, what actions might be taken to address this. It will therefore seek to examine the incentives, motivations and timescales of all participants in the equity markets - from end investors, through pension funds, advisers, fund managers, and the markets, to company boards - and the relationships between them.

The consultation closes on 18 November 2011.

[BIS Press Release](#)

## HM REVENUE & CUSTOMS

### Pension Schemes Services Guidance

HMRC's Pension Schemes Services (PSS) division is in the process of improving its guidance. As part of this project, content on the HMRC website is being re-designed.

Changes include:

- links to all permanent and draft guidance can now be found on one page: Pension Schemes Guidance;
- where guidance has been incorporated into the Registered Pension Schemes Manual (RPSM) or is out of date it has been removed;
- all guidance relating to the pre 6 April 2006 tax rules has been removed from the HMRC website. This guidance can still be accessed via The National Archives [website](#);
- all frequently asked questions (FAQs) relating to the pre 6 April 2006 rules and mandatory e-filing have been removed as they are out of date.

## HM TREASURY

### Chancellor's Autumn Statement

The Chancellor has confirmed that the Office for Budget Responsibility will publish its next economic and fiscal outlook on 29 November 2011, together with the Chancellor's Autumn Statement.

### Finance Bill 2012

The Exchequer Secretary to the Treasury has [announced](#) that the Finance Bill will be published on 6 December 2011, together with draft explanatory notes and tax impact and information notes.

It was also announced that responses to consultations on the measures to be included in the Bill will be published on the same date, for example, the tax treatment of employer asset-backed contributions.

The draft clauses of the Bill will be open to consultation until 10 February 2012.

## THE SMITH INSTITUTE

### Report: Policy solutions for the under-pensioned

The Smith Institute, an independent think tank, has published a [report](#) on the pensions policy "perspectives from key players in the sector".

Among other things, the report (which includes an introduction by Rachel Reeves MP, the Shadow Pensions Minister) looks at:

- ways to inspire trust and confidence in pension saving;
- fair pay and pensions; and
- ways of engaging young people.

## CASES

### **Prigge and others v Deutsche Lufthansa AG (ECJ)**

The ECJ has ruled that a provision in a collective agreement which provided for the employment of a pilot to terminate, without notice, at the end of the month in which their 60<sup>th</sup> birthday falls is contrary to the age discrimination provisions of the Equal Treatment Directive<sup>1</sup> (the Directive).

#### ***Background***

Mr Prigge was employed as a pilot by Deutsche Lufthansa (Lufthansa). Pursuant to a collective agreement, his employment contract terminated when he reached the age of 60.

He brought proceedings in Germany to challenge the validity of this provision. The case went to the Federal Labour Court (the Court) on appeal. The Court asked the ECJ to rule on whether the Directive rendered the age-limit of 60 for Lufthansa pilots invalid.

#### ***The Directive***

Based on the Directive, Lufthansa argued that retirement age could be justified in one of three ways:

- public security (under Article 2(5));
- the age limit was a genuine and determining occupation requirement (under Article 4);  
or
- the difference in treatment was objectively and reasonably justified (Article 6).

To meet the test under Articles 4 or 6, the retirement age would both need to be a legitimate aim and set in a proportionate way.

#### ***Public Security***

Whilst the ECJ considered that measures to avoid aeronautical accidents could be measures to ensure public security within the meaning of Article 2(5) and therefore it could fall within this exception, Article 2(5) has to be interpreted strictly. This means that Article 2 only permits measures which are *necessary* to achieve public security objectives. The age limit was not necessary as other national and international legislation fixed the age at which pilots may no longer carry out their commercial activities at age 65.

#### ***Objective Justification***

The ECJ found that although the possession of particular physical capabilities could constitute a “genuine and determining occupational requirement” within the meaning of Article 4(1) and the possession of such capabilities is related to age, the measure in question was not proportionate as other legislation fixed the age limit at 65.

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<sup>1</sup> Council Directive 2000/78/EC

Finally, aims which may be considered legitimate for the purposes of Article 6(1) are social policy objectives. An aim such as air traffic safety does not constitute a legitimate aim within the meaning of that provision.

Therefore the ECJ concluded that the setting of a retirement age of age 60 could not be justified and was age discrimination.

***Comment***

This case illustrates that, should an employer wish to use a compulsory retirement age it should have regard to industry practice and any applicable legislation. Lufthansa struggled to demonstrate that their provision was “necessary” when national and international legislation allows commercial pilots to continue working until age 65, subject to certain restrictions.