Sackers extra

19 December 2011

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7 DAYS: NEXT EDITION
- 3 January 2012

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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: Court of Justice of the European Union
HMRC: HM Revenue & Customs
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

LEGISLATION

Employer Debt: Flexible Apportionment Arrangements

The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2011 (the Regulations) were laid before Parliament on 15 December 2011.

The Regulations amend The Occupational Pension Schemes (Employer Debt) Regulations 2005 with effect from 27 January 2012, to introduce a new Flexible Apportionment Arrangement (FAA), which is designed to assist with the management of employer debts.

Currently, a debt calculation is triggered where an employer has "ceased to employ at least one person who is an active member" of the pension scheme, where another employer with DB liabilities continues to employ at least one active member (known as an "employment cessation event" or ECE).

When the regulations come into force, it will be possible use an FAA to avoid triggering an ECE, provided certain conditions are satisfied. Under an FAA there is no need to calculate or to estimate the amount of a debt, as it is the liability (rather than the debt itself) that is apportioned.

FAAs were the subject of a consultation over the summer[1], to which the Government has now published a response.

For more information, please see our "Flexible Apportionment Arrangements" (dated 16 December 2011) and the explanatory memorandum which accompanies the Regulations.

State Second Pension: Flat rate accrual to start in 2012/13

The Pensions Act 2007 put in place legislation to reform the State Second Pension, with a view to creating a flat-rate top-up to the Basic State Pension by 2030.

The Social Security Pensions (Flat Rate Introduction Year) Order 2011 introduces a flat rate accrual element to the State Second Pension (S2P) with effect from 6 April 2012. This will replace the 40% accrual band on earnings between the lower earnings limit and the low earnings threshold (LET). To begin with, this will run concurrently with the existing 10% accrual rate on earnings between the LET and the upper accrual point. However, the 10% band will eventually be abolished so that S2P accrues entirely on a flat-rate basis.

[1] Please see our Alert: Employer debt revisited (dated 30 June 2011)

DEPARTMENT FOR WORK AND PENSIONS

Consultation on transfers and the abolition of short service refunds

On 15 December 2011, the DWP published a consultation which addresses the proposed abolition of short service refund of contributions from DC pension schemes as well as options for addressing the proliferation of small pension pots.

Short service refunds

Currently, occupational DC scheme members can receive a refund of their pension contributions if they leave a scheme within two years of joining. Although a right to a transfer payment exists after three months' membership, the default position is a refund of member contributions. This is often paid as a result of member inertia.

Keen to maximise pension savings, the Government plans to abolish short service refunds for occupational DC schemes at the earliest opportunity. Subject to the Parliamentary timetable, this could be as soon as 2014.

Small pension pots

In a bid to avoid "poor outcomes for individuals and inefficiency for the pensions industry", the Government wants to encourage individuals to consolidate their pension savings over their working lives, to reduce the risk of small pots becoming "lost" or "stranded".

Three options are proposed:

- minor changes to the current system to make member initiated transfers easier and less expensive;
- a transfer system which allows easy consolidation of small, dormant pension pots into an "aggregator scheme"; and
- a system where small pension pots follow individuals from job to job.

The Government favours the second and third options, which it sees as being more likely to overcome the ongoing problem of lack of engagement with pensions.

The consultation closes on 23 March 2012. For more information, please see our Alert: Government consults on small pension pots (dated 19 December 2011).

DWP Press Release

Automatic enrolment: Review of earnings thresholds

A further consultation published by the DWP on 15 December 2011 seeks views on the automatic enrolment earnings thresholds for 2012 / 2013.

Starting in 2012, employers will be required to enrol their “eligible jobholders” into a qualifying pension scheme. Contributions will be payable once an eligible jobholder earns more than a minimum threshold and, in DC schemes, will be paid on "band earnings" (subject to certification requirements).

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Under the Pensions Act 2011, the Government is required to review the automatic enrolment earnings trigger and the lower and upper limits of the qualifying earnings band each tax year. This consultation sets out the Government's approach and proposals for the first annual review of the figures.

The Government notes that it has taken account of the recommendation in the independent review "Making automatic enrolment work"[2], that automatic enrolment thresholds should be aligned wherever possible with figures that are already in use by employers each year for other payroll functions. As such, it considers that the evidence points to thresholds of:

- £8,105 for the automatic enrolment earnings trigger to align with the PAYE threshold;
- £5,564 for the lower limit of the qualifying earnings band to align with the NICs LEL; and
- £39,853 for the upper limit of the qualifying earnings band.

The consultation closes on 26 January 2012.

FINANCIAL REPORTING COUNCIL (FRC)

Developments in Corporate Governance

On 14 December 2011, the FRC published its first analysis of the implementation of the UK Corporate Governance Code for listed companies and the UK Stewardship Code for investors.

Among other things, the report considers how the changing pensions landscape, with the continued move from DB to DC, has an influence on the structure and functioning of the market. It also notes that a wide range of UK pension funds have signed up to the Stewardship Code.

FRC Press Release

Pensions levy 2011/12

The FRC collects an annual levy from pension schemes as part of arrangements agreed by HM Treasury for funding the FRC's responsibilities for actuarial standards and regulation. For this purpose, TPR provides the FRC with the information needed to calculate the amount of the levy for individual schemes.

The FRC's work includes:

- setting standards for the actuarial information used by trustees, corporate sponsors, scheme members, and insurance companies, in making decisions;
- seeking the views of users including the pension and insurance sectors and other regulators in designing its standards with the specific intention of ensuring the information that they lead to is useful to decision-makers; and
- overseeing the activities of the Actuarial Profession in regulating its members – covering education and training, continuing professional development, ethical and

[2] For more information, please see our Alert: NEST comes home to roost! (dated 28 October 2010)

conduct standards, compliance and discipline; and conducting independent disciplinary arrangements which cover public interest cases involving actuaries.

The levy currently applies to all schemes with 1,000 or more members at the rate of £3.15 per 100 members (the same as in 2010/11).

FRC Fact Sheet: Pensions levy 2011/12

HM REVENUE & CUSTOMS

Abolition of DC contracting-out: Countdown Bulletin

HMRC has published the latest edition of its Countdown Bulletin – its newsletter for the run-up to the abolition of DC contracting-out in April 2012.

Issue 5 of the Bulletin includes information on:

- how late payment rebates and recoveries will be made after April 2015;
- confirmation for Contracted-Out Mixed Benefit Schemes (COMBs) that no notice of intention or consultation requirements will be required for existing contracted-out members of the money purchase section of a COMB scheme – the current COMB certificate will remain valid for the one salary related element; and
- a general "Q&A" section.

HM TREASURY

Government accepts Vickers' recommendations

The Independent Commission on Banking was established by the Government in June 2010 to consider structural and related non-structural reforms to the UK banking sector to promote financial stability and competition. Chaired by Sir John Vickers, the ICB published its final report and recommendations on 12 September 2011.

The ICB's recommendations can be divided into three main areas:

- the structural separation of retail and investment banking services;
- loss absorbency (including capital requirements and depositor preference); and
- competition.

In a statement to the House of Commons today (19 December 2011), the Chancellor, George Osborne, confirmed that the Government agrees with the ICB's recommendations and, in the Government's response, outlines how it intends to legislate with a view to creating "a stable banking sector that supports lending to businesses and families, and removes the implicit taxpayer guarantee in the event of a bank failure".

The Government plans to implement the ICB's advice in stages with the full package of reforms completed by 2019. It aims to put all necessary legislation in place by the end of this Parliament and will publish a White Paper in spring 2012 to set out further detail on how the recommendations will be implemented.

HM Treasury Press Release

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NATIONAL ASSOCIATION OF PENSION FUNDS

NAPF Annual Survey 2011

The NAPF Annual Survey aims to provide an overview of the key indicators of workplace pensions including membership, benefits, scheme rules, asset allocation, contributions, costs, and governance.

The 2011 survey, which was published on 15 December 2011, indicates that:

- 23% of pension schemes are now closed to both new staff and future contributions from existing members – up from 17% in 2010 and 3% in 2008;
- of those schemes which are closed to new members but still open to existing staff, 30% expect to close completely in the next five years;
- 11% intend to keep their existing DB structure but will make it less generous;
- total contributions to DC schemes from both employers and employees have remained stable at around 12% over the past five years; and
- 33% of trustee boards were chaired by an independent or professional trustee.

NAPF Press Release

PENSION PROTECTION FUND

Final levy determination for 2012/13 published

The PPF has published its final levy determination for 2012/13, confirming the levy estimate for the year as £550 million – the lowest it has ever set.

The PPF has also confirmed the new levy framework for 2012/13, which is now set for the next three years. Among the key features of the new framework are:

- inclusion of investment risk in the levy calculation for the first time. Schemes with liabilities of £1.5 billion or more will have to make their own assessment of investment risk. This will be optional for other schemes, which should consider (with their advisers), the value of doing their own assessments;
- strengthened certification requirements for Type A contingent assets, for new and existing contingent assets. Trustees will be required to establish and certify that a Type A guarantor could be expected to meet its full commitment under the contingent asset if called upon to do so as at the date of the certificate; and
- measurement of insolvency risk by placing sponsoring employers into one of ten levy bands (replacing the table of insolvency probabilities, based on D&B Failure Scores of 1 to 100), based on their average monthly D&B failure score over the preceding year (rather than as at a given date).

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In addition, the following dates have been confirmed for the 2012/13 levy year:

- scheme return information to be used in the calculation of the levies: 30 March 2012 (5pm);
- certification/re-certification of contingent assets: 30 March 2012 (5pm);
- certification of deficit-reduction contributions made up to and including 31 March 2012: 10 April 2012 (5pm); and
- certification of full block transfers that have taken place up to and including 31 March 2012: 29 June 2012 (5pm).

Guidance on contingent assets, block transfers and bespoke investment risk calculations have also been published in final form alongside the levy determination.

PPF Press Release

PENSIONS POLICY INSTITUTE (PPI)

Discussion Paper: The impact of opting-out of private pension saving at younger ages

Ahead of the introduction of automatic enrolment in 2012, the PPI has today (19 December 2011) published a discussion paper (commissioned by Prudential), which is based on a series of case studies which consider the financial impact of individuals opting-out of workplace pension saving in the early stages of their working lives.

While the examples used in the report are hypothetical, and the outcomes dependent on the outcomes used to construct them, they have been designed to highlight generic issues that can occur from opting-out of pension saving.

Briefing Note: The implications of ending the effective requirement to annuitise by age 75

Briefing Note 61 from the PPI summarises the main findings of a recent PPI research report, which estimates that the number of people who might be able to take advantage of the new flexible options for accessing private DC pension savings and explores the possible impact of this policy change on low, median and high earners.

Findings from the report include:

- in 2010, the majority of people aged between 55 and 75 would not have had large enough private pension pots or sufficient other income and assets to be able to bear the longevity risks associated with capped drawdown and would not have been able to meet the minimum income requirement of £20,000 per annum for flexible drawdown; and
- while there is no regulatory restriction on the size of pension pot a person needs to enter income drawdown, many independent financial advisers recommend that people need a pension pot of a minimum of between £100,000 and £250,000 as well as other income and assets in order to ensure people can bear the investment and longevity risks associated with drawdown.

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THE PENSIONS REGULATOR

June Mulroy to leave TPR in 2012

TPR has announced that June Mulroy, Director for DC Governance and Administration, will leave TPR in the new year.

June Mulroy joined TPR in 2005 as it transitioned from the Occupational Pensions Regulatory Authority to The Pensions Regulator. She spent six years as TPR's director for business delivery, with responsibility for TPR's casework teams dealing with the funding of DB pensions, as well as governance and administration issues in DB and DC schemes. Her responsibilities also included the operation of the clearance regime.

TPR Press Release

7 DAYS: NEXT EDITION

3 January 2012

7 Days will resume after a break for the festive period.

With best wishes for Christmas and the New Year, from all at Sacker & Partners LLP.

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