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)
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

DEPARTMENT FOR WORK AND PENSIONS

Automatic enrolment: Consultation on European Employers

The DWP has today (20 February 2012) launched a consultation on a further set of draft regulations relating to auto-enrolment.

This consultation seeks views on proposals to exempt employers who employ individuals who work both in the UK and in other EU Member States from having to automatically enrol individuals who are subject to the social and labour laws of Member States in the European Economic Area, other than the UK, which are relevant to the field of occupational pension schemes.

The consultation closes on 2 April 2012. It is intended that the regulations will come into force on 1 July 2012.

EUROPEAN COMMISSION

European Commission White Paper pension reform plans

The European Commission published a White Paper on pensions on 16 February 2012. This follows the Commission's pensions Green Paper[1] in July 2010.

The Commission's "Agenda for Adequate, Safe and Sustainable Pensions", puts forward policy initiatives which are designed to support EU Member States in the reform of their pension systems. In particular, the measures proposed by the White Paper aim to help people (who are able to) to work longer and save more for their retirement. As well as aiming to raise the average age at which people retire (to reflect increases in life expectancy), the Commission wants to encourage complementary private retirement savings and protect them, including when people change jobs and have to switch to other occupational pension schemes.

Annex 1 to the White Paper sets out a number of EU initiatives towards achieving these goals. It also confirms that in 2012 the Commission is to present a proposal for a review of the EU Pensions (or "IORP") Directive[2], in which it aims to "maintain a level playing field with Solvency II and promote more cross-border activity". This follows the recent work carried out by EIOPA to provide advice to the Commission ahead of the review (see further below).

EU Commission Press Release

EU Commission Q&A on the Pensions White Paper

[1] Sackers' response to the EU Green Paper consultation is available on our website

[2] Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision

EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

EIOPA publishes final advice on the IORP Directive Review

Following a consultation in 2011, EIOPA has provided advice to the European Commission to assist with its forthcoming review of the Pensions Directive. Among other things, the advice covers the definition of "cross-border activity", the scope of prudential regulation and the governance of pension schemes. More controversially, it also addresses how the minimum capital and solvency requirements for the insurance sector under Solvency II might be applied to pension schemes.

Despite overwhelming objections during the consultation period from the pensions industry in the UK and elsewhere in Europe that the Solvency II requirements are inappropriate for occupational pensions, this remains the main focus of EIOPA's advice to the Commission. As noted above, the next stage will be for the Commission to present its proposal for a review of the Pensions Directive later this year.

In the meantime, the NAPF has joined forces the Confederation of British Industries and the Trades Union Congress in writing a letter to four members of the European Commission to express their concerns about the review of the Directive, in particular the potential damage to pension provision, jobs and investment.

EIOPA Press Release

NAPF Press Release

Sackers Press Release

FINANCIAL REPORTING COUNCIL (FRC)

FRC to consult on Actuarial Standards for Pension Incentive Exercises

The Board for Actuarial Standards (BAS) (an operating body of the FRC) has announced that it will consult on bringing actuarial work on pension incentive exercises into the scope of its technical actuarial standards (TASs). The consultation will also consider whether the TASs should include specific principles to be followed when providing actuarial advice on incentive exercises.

The move is one of several initiatives being undertaken by regulators and industry groups to address concerns expressed by the Pensions Minister, Steve Webb, that members of DB schemes may be overly influenced by financial incentives being offered, without appreciating the value of the benefits they are giving up. The DWP is widely expected to publish code of practice on incentive exercises in the spring.

BAS Press Release

HM REVENUE & CUSTOMS

Employer Bulletin: February 2012

In the February edition of its Employer Bulletin, HMRC reminds employers of:

- the change in the Annual Allowance to £50,000 (from £255,000) from the 2011/12 tax year and the requirement for employers with DB schemes to provide information to the pension scheme's administrators (or trustees) about their employees' pensionable pay, benefits and service by 6 July after the end of the tax year (with an extension to 6 July 2013 for the first tax year following the change);

- the forthcoming abolition of contracting-out on a DC basis from 6 April 2012, including a "Q&A" on practical issues arising from this change;

- the alignment of state pension age for men and women and the impact for National Insurance contributions payable by women; and

- the introduction of automatic enrolment from October 2012.

PENSION PROTECTION FUND

PPF Bulletin: Issue 10

Issue 10 of the PPF Bulletin was published today (20 February 2012). The latest round-up of PPF news includes:

- levy deadline dates and other key information to ensure PPF levy bills are accurate;

- an update from the PPF's Investment Team; and

- some key PPF statistics.

PPF Press Release

CASES

Alexander Forbes Trustee Services v John Doe & Richard Roe

The High Court recently ruled that DC benefits were outside the winding-up priority order under the version of section 73 of the Pensions Act 1995 in force when two schemes went into winding-up. This meant that they could only be used to provide members' DC benefits and not for the purpose of cross-subsidising DB benefits in a hybrid scheme.

Background

This case concerns two underfunded hybrid schemes which went into winding-up in June 2000 and March 2003 respectively. In both schemes, DC and DB benefits were provided from the same fund.

The Court was asked to consider the applicable order of priority on wind-up, in particular whether members' DC pots could be diverted for the benefit of the DB members. The key issue for each scheme was whether, when DC assets and liabilities were taken out of the priority order under section 73 by regulation 13 of the Occupational Pension Schemes (Winding Up) Regulations, the DC assets should then be used to meet the DC liabilities only or if they were subject to the priority order in the schemes' rules.

As the schemes had begun to wind-up before the PPF came into operation, the DC members would not be eligible for compensation from FAS.

Decision

The Court held that the schemes' DC benefits were outside the winding-up priority order.

In reaching this conclusion, the Court looked at section 73 as it applied when the schemes went into winding-up, as amended by regulation 13. The judge considered these provisions to form "a complete code regarding the rights to the fund enjoyed by the relevant money purchase members".

The judge went on to say that "The decision is a just one […] Money purchase members would be outraged at the prospect of benefits which were at least in general terms supposed to be provision for themselves being applied to make up a shortfall for the significant number of those guaranteed a pension under the defined benefit part of the Scheme. This is an injustice which it is most unlikely that the draftsman of the act and regulations was contemplating." He also held that it would be "an absurd exercise" for members' DC pots to be diverted back for the benefit of the schemes' DB members.

Comment

Unusually, fictional defendants were used in this case rather than representative beneficiaries. This was permissible because the issue before the Court was a pure point of law which did not involve issues specific to different types of member which could potentially change the outcome. However, the judge criticised the use of fictional defendants and suggested that in future courts may eventually dispense with representative defendants altogether, making test cases more cost effective.