Sackers extra

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S07

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
GMP: Guaranteed Minimum Pension
HMRC: HM Revenue & Customs
LTA: Lifetime Allowance
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

PENSIONSEUROPE

Preliminary results of the Quantitative Impact Study (QIS)

On 9 April 2013, the European Insurance and Occupational Pensions Authority ("EIOPA"), the EU technical level body for pensions and insurance supervisors, published its preliminary assessment of the quantitative impact upon the funding of DB schemes of applying its advice on the 'holistic balance sheet' ("HBS") approach.[1]

The preliminary results showed large variations; both between IORPs within countries and between IORPS of participating countries.

On 14 May 2013, PensionsEurope published a position paper on the preliminary results of the QIS. Echoing EIOPA's findings, PensionsEurope states that this report and the QIS as a whole cannot serve as a basis for an IORP II Directive proposal (at least in relation to the solvency requirements) as it cannot be considered a full assessment of a comprehensive supervisory framework. In addition, it reiterates its statement that the HBS is not a workable tool for IORP supervision.

Based on the preliminary results of the QIS, PensionsEurope concludes that it will be impossible to come up with a proposal for a revised IORP Directive in the timeframe indicated by the European Commission. Furthermore, PensionsEurope calls for further rounds of QISs if the European Commission decides to proceed with these plans. In its opinion, these upcoming QISs should be simpler, and focused on specific topics. Additionally, alternative concepts to the HBS approach should be investigated and thoroughly tested in future studies.

Press release

HM REVENUE & CUSTOMS

Draft Statutory Instrument - The Registered Pension Schemes (Provision of Information) (Amendment) Regulations 2013

[1] See 7days dated 15 April 2013

HMRC has published for external comment a draft Statutory Instrument (together with a draft Explanatory Memorandum) that makes a number of amendments to the Registered Pension Schemes (Provision of Information) Regulations 2006 (the "Regulations").

The draft regulations amend the Regulations to set out the specified information that must be provided to scheme administrators and HMRC where an individual relies on fixed protection 2014 ("FP2014"). FP2014 was introduced to protect individuals affected by the reduction to the LTA from £1.5 million to £1.25 million from the tax year 2014-15. Individuals with FP2014 have an LTA of the greater of £1.5 million and the standard LTA.

Changes are also to be made to require information to be reported by individuals and scheme administrators in connection with certain overseas transfers and to require scheme administrators to report when a pension savings statement is given to a scheme member where their savings exceed the annual allowance in that scheme.

Any questions or comments on the draft Statutory Instrument should be sent by email to Pensions Policy by 14 June 2013.

HMRC has also issued a Tax Information and Impact Note which accompanies the draft regulations.

Pensions Newsletter 57

On 14 May 2013, HMRC issued its fifty-seventh newsletter. The newsletter includes information on:

- changes to the annual and lifetime allowance;
- pension liberation;
- trivial commutation and other similar payments;
- improvements to pensions guidance; and
- pension scheme registration.

PENSIONS POLICY INSTITUTE (PPI)

The implications of the Coalition Government's reforms for the public service pension schemes

On 17 May 2013, the PPI published an independent assessment of the impact of the Coalition Government's proposed reforms to the four largest public service pension schemes; the NHS, Teachers, Local Government and Civil Service pension schemes.

Under the Government's proposed reforms:

- the pension benefit will be linked to the member's average salary;
- the "normal pension age" is due to increase in line with State Pension Age; and
- member contributions are set to increase.

Niki Cleal, PPI Director, said "the PPI's analysis suggests that the combined impact of the Coalition Government's proposed reforms is to reduce the average value of the pension benefit for all members of the NHS, Teachers, Local Government and Civil Service pension schemes from 23% of a member's salary before the reforms, to 15% of a member's salary after the reform, a reduction in the average value of the pension benefit… of more than a third. Nevertheless, even after the Coalition's proposed reforms the benefit offered. remains more valuable, on average, than the pension benefit offered by DC schemes that are now most commonly offered to employees in the private sector, into which employers typically contribute around 7% of a DC scheme member's salary".

Chris Curry, PPI Research Director added, "the reforms will also reduce net government expenditure on unfunded public service schemes from around 1.1% of GDP by 2065 under the current system to around 0.8% of GDP in the reformed system; a reduction of around a quarter".

Press release

PENSION PROTECTION FUND

Strategic Plan 2013/16

On 20 May 2013, the PPF unveiled its strategic objectives for the next three years. They are aimed at reflecting a mature organisation which is experienced in managing risk and able to meet the challenge of significant growth and change.

In its Strategic Plan for 2013/16, the PPF also sets out its vision for 2016 which describes how the PPF will be equivalent in size to one of the five largest pension funds in the country, with 500,000 members, assets of £22 billion and on course to meet its long-term funding target.

The PPF's updated strategic objectives are to:

- meet its funding target through prudent and effective management of its balance sheet;
- deliver excellent customer service to its members, levy payers and other stakeholders; and
- pursue its mission within a high calibre framework of risk management.

Press release

THE PENSIONS REGULATOR

DC Scheme Returns

TPR has published additional information to help trustees/managers complete scheme returns for DC schemes.

It has issued two separate guides, one for schemes which have between 2 and 11 members and one for schemes with 12 or more members.

CASES

Hogan and others v Minister for Social and Family Affairs (CJEU, 25 April 2013)

In this recent decision, the CJEU found that Ireland has failed to properly transpose the requirements of the EU Insolvency Directive (the "Directive") into its national law.

Background

Article 8 of the Insolvency Directive requires Member States to ensure that the necessary measures are taken to protect the pension benefits of current and former employees under the employer's occupational scheme, in the event of the employer's insolvency.

Facts

Mr Hogan brought the case along with other former employees (the "claimants") of Waterford Crystal Limited ("Waterford").

Waterford was declared insolvent at the beginning of 2009 and its occupational pension schemes were wound up on 31 March that year. The pension schemes' deficit was approximately EUR 110 million.

The claimants' actuary estimated that the claimants would receive between 18 and 28% of their benefits. Ireland's actuary was a little more optimistic, putting the percentage between 16 and 41%.

The claimants therefore argued that Ireland had failed to correctly transpose Article 8 of the Directive into national law.

The Irish High Court stayed proceedings to refer several questions on the interpretation of the Directive to the CJEU.

CJEU decision

Among other matters, the CJEU ruled that Ireland had failed to properly transpose the Directive. Furthermore, its failure to put adequate measures in place, following Robins, to ensure members of occupational schemes would receive in excess of 49% of the value of their accrued pension benefits constituted a serious breach of its obligations and, as such, could entitle the claimants to damages.

Comment

Hogan is a follow-up to the decision of the CJEU in *Robins* in 2007. The *Robins* case followed the collapse of Allied Steel and Wire where more than 800 staff who lost their jobs and most of their pension when the firm folded in 2002. They argued that the UK had not properly transposed Article 8.

The CJEU found that correct transposition of Article 8 requires an employee to receive, in the event of the insolvency of his employer, at least half of the pension benefits they have accrued to date. By the time judgment was delivered, the UK had put the PPF and Financial Assistance Scheme (FAS) in place.

Under the current system, in the UK the PPF pays members over the scheme's normal pension age, those who retired on ill-health and those in receipt of survivor's benefits receive 100% of their benefits. However, other early retirees and deferred members are only entitled to 90% of their accrued benefits excluding pre-1997 increases and, subject to a "compensation cap" (currently £34,867.04, but which equates to £31,380.34 once the 90% has been applied). Therefore some members may find that, once this cap is applied, they receive less than 50% of the benefits they had accrued by the date of their employer's insolvency. This means that the UK may also at risk of claims that it has failed to put sufficient measures in place, to safeguard at least 49% of a member's benefits.