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Pensions law – the week in review
20 July 2009

AT A GLANCE

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1 LEGISLATION

1.1 The Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009

As we reported in 7 Days on 22 June 2009[1], these regulations will enhance assistance for those FAS qualifying members whose schemes will not be transferring assets to Government. The regulations have now come into force - on 10 July 2009.

A further package of regulations is expected to be consulted on in detail later this year and laid before Parliament at the end of 2009. It will deal with taking the remaining FAS scheme assets into Government and making payments associated with them.

The regulations and accompanying explanatory memorandum can be accessed by clicking on the links below:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091851_en.pdf

http://www.opsi.gov.uk/si/si2009/em/uksiem_20091851_en.pdf

2 DEPARTMENT FOR WORK AND PENSIONS (DWP)

2.1 Building a society for all ages: Choice for older people

As part of the Government's plan for "Building Britain's Future"[2], the DWP has published a consultation report, "Building a society for all ages" in which it sets out the Government's strategy and proposals for "initial practical steps to begin to meet the challenges and opportunities of our ageing society".

The consultation includes an announcement that the Government intends to bring forward its promised review of the default retirement age from 2011 to 2010.

[1] Please refer to this edition for further information
[2] More information on the overall strategy can be found at the Government's Building Britain's Future website: http://www.hmg.gov.uk/buildingbritainsfuture.aspx

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Although a retirement age of 65 has been common for many businesses for some time, the introduction of the Employment Equality (Age) Regulations in 2006 provided for a default retirement age which allows employers to retire employees at age 65. The regulations also introduced a new statutory right for individuals to request postponement of retirement beyond age 65. Employers must consider such requests.

In its "Opportunity Age" report[3], the Government announced its intention to "consign fixed retirement ages to the past". Now, in the light of the "very different economic circumstances today – for businesses, and for individuals coming up to retirement – in comparison to 2006 when the age regulations came into force", the Government has decided that an earlier review is needed.

As part of this review, the Government intends to "look at many issues including the needs of business and individuals in the prevailing economic climate, and the need for employers to manage the structure of their workforce." It will work with representatives of employers, such as the Confederation of British Industry, as well as representatives of employees and older people's organisations such as the trade unions, Age Concern, Help the Aged and older people's forums.

If the outcome of the review is that the default retirement age is no longer appropriate, we can expect changes to the existing legislation to effect this. The Government has indicated that changes will not be implemented until 2011 on the basis that this will "give employers sufficient time to prepare, and employees time to consider what impact the new circumstances would have on their plans".

The consultation will close on 12 October 2009.

The DWP press release and the report can be accessed by clicking on the links below:

http://www.dwp.gov.uk/newsroom/press-releases/2009/july-2009/dwp011-09-130709.shtml

http://www.hmg.gov.uk/media/33830/fullreport.pdf

[3] DWP (2005) *Opportunity Age*: *Meeting the challenges of ageing in the 21st century*

2.2 Publication of DWP working paper on "The Pensions Advisory Service: Findings from user testing of the website"

The DWP has published research (in Working Paper 71) on the findings from individual users' experiences of the Pensions Advisory Service (TPAS) website.

TPAS is an independent non-profit organisation that provides free information, advice and guidance to members of the public on a wide range of pensions matters. The service is free to the general public and sustained by a nationwide network of volunteer advisers who in turn are supported by technical and administration staff. All advisers at TPAS are pensions professionals with experience in the pensions industry. The working paper examines the TPAS website, which provides comprehensive information and guidance on issues relating to pensions.

Overall, the experience was positive, with participants supporting the comprehensive nature of the site. However, the site was deemed to be dated in terms of design, and some participants found it difficult to navigate.

The DWP's press release and working paper 71 can be accessed by clicking on the links below:

http://www.dwp.gov.uk/newsroom/press-releases/2009/july-2009/dwp012-09-140709.shtml

http://research.dwp.gov.uk/asd/asd5/WP71.pdf

2.3 Publication of DWP research reports on current practices in the workplace personal pension market and industry responses to the workplace pension reforms

The DWP has published two reports in which it outlines the findings of research on current practices in the workplace pensions markets as well as industry attitudes and likely responses to the proposed workplace pensions reforms, including automatic enrolment and the Personal Accounts scheme, which are due to take effect during 2012.

The reports are based on qualitative research which was carried out during July and August 2008[4], including interviews with UK pension providers and intermediaries (including employee benefit consultants). The studies were commissioned as part of a programme of research and analysis carried out by the DWP to inform policy development, implementation and estimation of the likely impacts of the workplace pension reforms.

Research report 591 sets out details of "Current practices in the workplace personal pensions market". It looks in particular at charging structures and levels, investment funds and group self-invested personal pensions. Among other things, the findings indicate that:

- the cap on stakeholder pension scheme charges has led to the adoption of the same charging structure and levels by the rest of the workplace personal pension market, to enable it to compete with stakeholder arrangements;
- internal fund management charges typically come within the annual management charge, but externally managed funds can incur additional charges (ranging, on average, from between 0.5% - 2.5% of the value of the fund annually); and
- group personal pensions tend to provide access to a wider range of funds than stakeholder pensions (generally 50-350 funds compared to 20-100).

The conclusions set out in research report 592 on "Pensions industry responses to the workplace pension reforms" include:

- providers are positive about the idea of automatic enrolment, as they see this as boosting the number of pension savers, but some think that overall saving would not increase, due to concerns around employers levelling down contributions;

[4] By RS Consulting on behalf of the DWP

- there is recognition amongst providers that the Personal Accounts scheme is designed to complement existing provision, not to replace it (although there were concerns about competing with Personal Accounts on charges); and

- there is no evidence from this research to suggest that providers see the reforms as an opportunity to expand their business in relation to workplace personal pensions, and no evidence that they plan to compete with Personal Accounts for the same segments of the market.

The DWP's press release and the research reports can be accessed by clicking on the links below:

http://www.dwp.gov.uk/newsroom/press-releases/2009/july-2009/dwp013-09-140709.shtml

http://research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep591.pdf

http://research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep592.pdf

3 NATIONAL ASSOCIATION OF PENSION FUNDS (NAPF)

3.1 NAPF elects chairmen of Investment and Retirement Policy Councils

Ray Martin and Joy Moore have been elected as the Chairmen of the NAPF's two main policy making councils.

Ray Martin will take over from Arno Kitts as head of the investment council. Martin is Vice-President of pensions at DHL. He has spent over 23 years working in various pension roles for companies such as Diageo, ICI, AstraZeneca, Rexam and Scottish & Newcastle. He has been on a number of trustee boards in the UK as well as on pension boards in Belgium and the Netherlands. Martin is a current member of the NAPF's Investment Council and has previously chaired the benefits Committee. He has also been Vice Chairman of the European Federation for Retirement Provision.

Joy Moore will replace Ruth Goldman as head of the Retirement Policy Council. Moore has been head of pensions for RWE Npower plc since 2002 and has responsibility for developing strategy and policy for the company, as well as providing secretariat and compliance services to the trustees.

Both Martin and Moore will take office at the NAPF's AGM on 16 October 2009.

The NAPF's press release can be accessed by clicking on the link below:

NAPF Press release - 15 July 2009

4 THE PENSIONS REGULATOR (TPR)

4.1 Trustee Knowledge and Understanding: TPR publishes revised code and scope guidance

Between October and December 2008, the Pensions Regulator consulted on its draft revised code of practice on trustee knowledge and understanding (TKU) and updated scope guidance.[5]

23 responses were received by TPR[6], and most were supportive of the TKU regime. The report states that since its implementation of TKU in 2006, it has "become embedded in normal trustee activities" and that respondents noted a positive change to the confidence with which trustees approach their responsibilities.

Although a number of views were expressed on different aspects of the code and scope guidance, and suggestions were made for further improvements, TPR received no evidence to suggest that fundamental change was needed to the text on which it consulted.

TPR is now reviewing the Trustee toolkit to ensure that it reflects the revised scope guidance. It expects to have completed this work by autumn 2009.

The draft revised code has been laid before Parliament and is expected to come into effect later this year.

[5] For more information, please see our Sackers Extra Alert: TKU – Updating the Knowledge (dated 15 October 2008), available from the client area of our website or from your usual Sackers contact
[6] Sackers response to this consultation (dated 31 December 2008) is available in the client section of our website

TPR's press release, revised code and consultation report can be accessed by clicking on the links below:

http://www.thepensionsregulator.gov.uk/whatsNew/pn09-10.aspx

http://www.thepensionsregulator.gov.uk/pdf/TKUcode2009.pdf

http://www.thepensionsregulator.gov.uk/pdf/TKUconsultationreport2009.pdf

4.2 2008/09 Annual report and accounts

TPR's audited annual report and accounts for 2008/09 were laid before Parliament on 14 July 2009.

TPR notes that, as a risk-based regulator, it recognises "the need to learn and improve as we refine our approach in light of our regulator experience and the economic context". The annual report highlights some of the steps taken by the Regulator in the past year, both before and during the downturn, including:

- improved understanding of the clearance process, which has led to a proportionate decrease in the number of applications;
- the publication of the first edition of the Orange Book in December 2008 (containing analysis of recovery plans and clearance);
- a 25% decrease in the number of schemes in wind-up (94% of all schemes in wind-up now have two-year winding-up proposals);
- the consultation on and subsequent launch of record-keeping guidance;
- improvements in the levels of governance in areas on which TPR has focused, such as conflicts of interest, relations with advisers and understanding of DC risks; and
- an overall improvement in longevity assumptions, following a robust debate on longevity in scheme funding plans and the publication of revised proposals in September 2008.

The report also makes reference to the Regulator's new statutory objective to maximise employer compliance with their duties under the Pensions Act 2008 (in particular in relation to auto-enrolment). TPR states that it intends to make this system "as straightforward as possible for employers to engage with" and that its current focus is to "put in place the necessary operational capacity and to target our communications on the intermediaries that employers rely on for help and advice, ensuring that they are able to advise employers in the run-up to 2012."

TPR's press release and the 2008/09 annual report and accounts can be accessed by clicking on the links below:

http://www.thepensionsregulator.gov.uk/whatsNew/pn09-09.aspx

http://www.thepensionsregulator.gov.uk/pdf/AnnualReportAccounts20082009.pdf

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