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

Pensions White Paper

The Pensions White Paper "The single tier pension: a simple foundation for saving" was published on 14 January 2013. It confirms that a flat rate state pension of £144 per week (at today's prices) will be introduced from 2017, at the earliest. All individuals with a National Insurance Contributions ("NICs") record of 35 years will be eligible for the flat rate state pension.

Key points are as follows:

- there will be a process of transition to the flat rate state pension. As part of this transition, some people will receive a top-up to the flat rate pension;
- as a consequence of the abolition of DB contracting-out, members of contracted-out DB schemes will have to pay higher NICs and sponsors will lose the contracting-out rebate; and
- there will be a review of the state pension age every five years, starting from the next Parliament (i.e. after 2015).

For further details, please see our Alert: "Pensions White Paper" dated 15 January 2013.

Government publishes draft Bill on Single Tier pension reforms

On 18 January 2013, the Government published the Pensions Price 2013 on the plans to reform the state pension, following the publication of the White Paper.

The draft Pensions Bill contains significant reforms to both the state pension system and bereavement benefits. These include:

- amendments to the timetable for increasing SPA to 67, bringing it forward by eight years to begin in 2026 and end in 2028;
- a framework of periodic reviews to consider future increases in SPA;
- some details on the abolition of contracting-out for salary-related occupational pension schemes including regulation-making powers;
- a number of amendments in relation to private pensions legislation. These include technical amendments to the Pensions Act 2004 and the Pensions Act 2008,

designed to improve operational processes for TPR and to correct anomalies in relation to the automatic enrolment duties for employers and TPR"s penalty powers. There is also a power to ban the practice of providing incentives to encourage individuals to transfer their pension benefits from a salary-related occupational pension scheme to an alternative arrangement.

Protected persons

Some former nationalised industries, now in the private sector, are limited in their ability to change pension scheme rules by legislation made at the time of privatisation. The legislation is specific to a number of industries and is collectively referred to as the "Protected Persons Regulations" (PPRs). In broad terms, the PPRs require the new private sector employer to continue to provide pension benefits for employees who were employed at the time of privatisation which are at least as good as those they were receiving in the public sector, and prevents the employer or the scheme from making changes which reduce future pension accruals or increase employee contributions.

Alongside the draft Bill, the DWP has issued a consultation on the PPRs. It invites views from stakeholders as to whether or not employers should be permitted to change the pension scheme rules which apply to protected persons in order to make adjustments for the additional National Insurance costs which employers face as a result of the end of DB contracting out, following the introduction of the single-tier state pension.

The consultation closes on 14 March 2013.

NEST: Proposals for amendments to the NEST Order

On 30 October 2012,[1] the DWP issued a consultation on proposals to make a range of amendments to the NEST Order 2010, to ensure that NEST operates efficiently and to align the statutory framework for NEST with changes to automatic enrolment legislation. They included:

- changes to the definition of minimum contributions;
- removal of the requirement for self-enrolling members to sign the NEST Member Terms and Conditions;
- amendments to the definition of "self-employed";
- updated entry dates for some enrolments;
- amendments to the rules governing how NEST determine a member’s default retirement age;
- the introduction of some flexibility for members to take their money out of NEST after age 75;
- simplified processes when a member dies before taking their money out; and
- the ability for members to stop their contributions through their employers as well as directly through their NEST online account.

[1] Please see 7days dated 5 November 2012

On 15 January 2013, the Government published its response to the consultation which confirms that, bar some minor technical changes, the above proposals will be implemented.

Subject to Parliamentary approval, the NEST (Amendment) Order 2013 will come into force on 1 April 2013.

OFFICE OF FAIR TRADING (OFT)

Workplace pensions market study

On 17 January 2013, the OFT launched a market study to examine whether DC workplace pension schemes are set up to deliver the best value for money for savers.

With the introduction of automatic enrolment significantly increasing the number of people in DC arrangements, the OFT has decided to take a forward look now to see whether competition will work in the best interests of these savers to deliver low cost, high quality pension schemes.

The market study will focus on value for money and the size of pension pot savers end up with at retirement. It will look at the following:

- how pension providers compete with one another and how the market may develop over time;
- whether there is sufficient pressure on pension providers to keep charges low, and the extent to which information about charges is made available to savers;
- whether smaller firms face difficulties in making pension decisions in the interests of their employees;
- whether smaller firms receive appropriate help and advice in setting up and maintaining workplace pension schemes; and
- barriers to switching between schemes and a potential lack of ongoing employer engagement in setting up and managing pensions.

THE PENSIONS REGULATOR

Three new non-executive directors

On 16 January 2013, the DWP announced the appointment of three new non-executive directors to TPR.

David Martin and Graham Mayes have been appointed from 1st February 2013. Ann Berresford will take up her post when her current appointment, as a non-executive director of the PPF, ends. After eight years of service on the board, Alan Pickering and Chris Swinson will be stepping down.

CASES

Walker v Innospec Limited and others (Employment Tribunal)

An Employment Tribunal has concluded that an occupational pension scheme's failure to provide civil partners with survivor's benefits equal to those of a surviving spouse was unlawful discrimination.

Background

The Civil Partnership Act 2005 came into force on 5 December 2005, enabling same sex couples from entering into a civil partnership. On the same date an exemption was introduced to allow occupational pension schemes to exclude civil partners from certain benefits accrued prior to the Act coming into force. As a result, pension schemes are required, as a minimum to provide civil partners with the following:

- (if applicable) contracted-out survivors' benefits relating to service on or after 6 April 1988 (the date that contracted-out benefits for widowers were introduced); and
- all other survivors' benefits relating to service on or after 5 December 2005.

But quite separately, section 61 of the Equality Act 2010 also requires every occupational pension scheme to have a non-discrimination rule read into it. The rule prohibits "a responsible person" (broadly, the trustees, managers or any participating employer) from discriminating against, harassing or victimising a member or a person who could become a member of the scheme.

Facts

Mr Walker joined the Innospec Pension Scheme (the "Scheme") on 2 January 1980. He and his partner registered a civil partnership on 23 January 2006. On 1 August 2006, the Scheme was amended to take account of civil partnerships to the extent required by law.

On the death of a pensioner, the Scheme provided for a 2/3rds spouse's pension. However, as permitted by statute, for civil partners this benefit is only paid in respect of service on or after 5 December 2005.

Mr Walker calculated that, in the event of his death, his partner would be entitled to around £500 per annum. If he was married to a woman of the same age as his partner, on his death she would be entitled to a pension of approximately £41,000 per annum.

Mr Walker brought a claim against his employer and the trustees of the Scheme. He argued that the Scheme had breached the Equality Act section 61 non-discrimination rule by treating him and his civil partner less favourably than a married person in the same situation because of their sexual orientation.

Decision

The Tribunal concluded that the respondents both directly and indirectly discriminated against Mr Walker. It considered that the trustees and employer should have interpreted section 61 of the Equality Act as requiring the Scheme to provide the same survivors' benefits to spouses and civil partners.

[2] Directive 2000/783

Furthermore, the Tribunal found that the exemption which permits pension schemes to pay survivors' benefits to civil partners only in respect of service on or after 5 December 2005 is incompatible with the EU Equal Treatment Directive.[2]

Comment

This is a surprising decision. Although there is EU case law which indicates that equal survivors' benefits should be paid to civil partners,[3] the Scheme's survivors' benefits comply with current UK legislation.

In our experience, many schemes provide equal benefits to civil partners in any case, but those that do not need not rush to make changes. Employment Tribunal decisions are only binding on the parties involved and we understand the decision may be appealed.

In the recent response to the consultation on same sex marriage,[4] the Government indicated that it would treat same sex married couples in the same way as civil partners in relation to state and occupational pensions.

[3] See our Employment Unit Focus

[4] See 7days dated 17 December 2012