21 March 2011

At a glance

LEGISLATION
- PPF: Sharing of compensation
- Pre-A-Day rights: Pension commencement lump sums and protected pension ages
- Harmonised interest and late filing penalty regimes
- The Pensions Increase (Review) Order 2011
- The Pensions Increase (Modification) Regulations 2011

HM REVENUE & CUSTOMS
- Changes to Pension Schemes Online

HM TREASURY
- Budget 2011

NATIONAL ASSOCIATION OF PENSION FUNDS
- Derivatives regulation: NAPF publishes Position Paper

PENSION PROTECTION FUND
- New board members appointed

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
HMRC: HM Revenue & Customs
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

LEGISLATION

PPF: Sharing of compensation

The Pensions Act 2008 provides for compensation payable from the PPF to be included in a member's shareable rights and therefore be subject to a pension sharing or attachment order following divorce proceedings or the dissolution of a civil partnership.

Various regulations implementing these provisions have been laid before Parliament and will come into force on 6 April 2011:

- *The Pension Protection Fund (Pension Compensation Sharing and Attachment on Divorce etc) Regulations 2011*

  The Compensation Sharing Regulations implement the Pensions Act 2008 provisions to enable the courts to make pension compensation sharing orders and attachment orders in relation to PPF compensation in proceedings of divorce, dissolution of a civil partnership or in cases of annulment. They also facilitate the sharing of pension compensation in Scotland pursuant to a qualifying agreement.

  Among other things, these regulations: set out information and implementation requirements; provide for revaluation and increases to compensation; allow the PPF Board to recover charges in respect of pension compensation sharing costs; and extend the cap to pension compensation credit members.

- *The Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2011*

  The Charges Regulations apply where a pension sharing or pension attachment order was made before the PPF Board assumed responsibility for an occupational pension scheme and the order was not implemented by the scheme's trustees before the scheme transferred to the PPF.

  The Regulations set out the costs which may be charged to the parties to the sharing or attachment order and the circumstances in which the Board may recover the costs of implementing a pension sharing order, or complying with a pension attachment order.

- *The Divorce and Dissolution etc. (Pension Protection Fund) Regulations 2011*

  These Regulations cover:

  - the approach to changes of circumstances affecting orders for attachment of pension compensation (for example, a remarriage), including the giving of notices, the person to whom the PPF Board should make a payment and the circumstances when the Board is discharged from liability under those orders; and

- a period of suspension during which pension compensation sharing orders and the variation of such orders cannot take effect, to allow for the possibility of appeal.

Further information can be found in the Explanatory Memorandum which accompanies these Regulations.

In addition, on 16 March 2011, the DWP published the Government's response to its consultation on the Compensation Sharing Regulations and the Charges Regulations, setting out the main points made by respondents alongside the Government's response.

Pre-A-Day rights: Pension commencement lump sums and protected pension ages

Before 6 April 2006 (A-Day), some individuals had a right to a lump sum greater than 25% within a specific pension scheme. Such rights are protected, subject to a number of conditions.

In addition, prior to A-Day some individuals had an irrevocable right to take their benefits from an age less than the current normal minimum pension age (NMPA) of 55. Again, such rights may be protected, subject to an individual meeting certain conditions.

The Taxation of Pension Schemes (Transitional Provisions) (Amendment) Order 2011 provides that where an individual is entitled to either: a tax free lump sum from their pension scheme of more than 25% of their fund value; or a protected pension age, the scheme administrators have up to six months to arrange for payment of the associated benefits.

The Order also enables a person who is between age 50 - 54, who has become entitled to a pension and who wishes to change to another pension type or who had not started taking it before 6 April 2010, to commence taking it on or after 6 April 2010 without incurring an extra tax charge. It also ensures that where the person became entitled to a tax free lump sum before 6 April 2010 but it is not paid until after this date, it can be paid tax free.

The Registered Pension Schemes (Transfer of Sums and Assets) (Amendment) Regulations 2011 supplement the Order by removing an unintended tax charge where a person, aged between 50 - 54 who started drawing a pension before 6 April 2010, changes their pension provider after this date but before they are 55.

The Order and Regulations will come into force on 6 April 2011.

Further information can be found in the Explanatory Memorandum which accompanies the two instruments.

Harmonised interest and late filing penalty regimes

Three Orders have been laid before Parliament in connection with the new harmonised interest regime and the new penalty regimes for late filing of returns and late payment of tax introduced by the Finance Act 2009:

- The Finance Act 2009, Schedules 55 and 56 (Income Tax Self Assessment and Pension Schemes) (Appointed Days and Consequential and Savings Provisions) Order 2011 (SI 2011/701);

- The Finance Act 2009, Sections 101 to 103 (Income Tax Self Assessment) (Appointed Days and Transitional and Consequential Provisions) Order 2011 (SI 2011/702); and

- The Finance (No. 3) Act 2010, Schedules 10 and 11 (Income Tax Self Assessment and Pension Schemes) (Appointed Days) Order 2011 (SI 2 011/703).

The instruments bring the new regimes into force, in relation to payments to be made to or by HMRC, and in relation to returns due to be made HMRC in connection with Income Tax Self Assessment. They also bring into effect and make clarifications to the late filing penalty regime for Pension Scheme Returns.

The Orders generally come into force on 1 April 2011. Further information can be found in the Explanatory Memorandum which accompanies the Orders.

The Pensions Increase (Review) Order 2011

This Order, which will come into force on 11 April 2011, makes provision for the annual increase of many public sector pensions, including ministerial and parliamentary pensions, the pensions of civil servants, teachers, and NHS workers.

The Order provides for an increase of 3.1% from 11 April 2011 for all "official pensions", except for those which have been in payment for less than a year (which will receive a pro-rata increase). The increase is equal to the percentage increase in the Consumer Prices Index (CPI) in the twelve months to the preceding September.

Since 1987, the increase of official pensions has taken effect from the first Monday of the tax year.

Further information can be found in the Explanatory Memorandum which accompanies the Order.

The Pensions Increase (Modification) Regulations 2011

The pro-rata calculation referred to in connection with the Pensions Increase (Review) Order (above), applies to pensions which began during the "base-period". This is defined in section 59(7) of the Social Security Pensions Act 1975 as "the period ending with the coming into force of that direction and beginning with the coming into force of the last previous such direction". The Direction is made by the Secretary of State for Work and Pensions under section 151 of the Social Security Administration Act 1992.

In 2010, no such direction was made, reflecting the fact that the percentage increase in the applicable index (then the Retail Prices Index (RPI)) to September 2009 was negative. This meant that the pro-rata increase in public service pension payments would be based on a factor of 1/24th not 1/12th and the period would extend back to the direction made in 2009. All pensions coming into payment during that period would consequently receive a smaller than expected increase.

These Regulations therefore re-define the "base period" to specify that it begins on 12 April 2010. The pro-rata increase will therefore only apply to those pensions coming into payment during the year before the 2011 direction and be based on a factor of 1/12.

The Regulations come into force on 10 April 2011.

Further information can be found in the Explanatory Memorandum which accompanies the Regulations.

HM REVENUE & CUSTOMS

Changes to Pension Schemes Online

As previously reported (see 7 Days dated 14 February 2011 and 13 December 2010), HMRC is updating its Pensions Schemes Online service, to introduce a number of improvements to the system which will be implemented on 6 April 2011.

HMRC has issued a News Release setting out some of the main changes to its reporting requirements. HMRC notes that the service will be unavailable for a few days immediately before 6 April 2011, to allow the changes to be made.

HM TREASURY

Budget 2011

The Chancellor of the Exchequer, George Osborne, will make his second Budget Statement on 23 March 2011 at 12:30pm.

We will be reviewing the Budget and, if there is any relevant information on pensions, will publish an Alert.

NATIONAL ASSOCIATION OF PENSION FUNDS

Derivatives regulation: NAPF publishes Position Paper

The European Commission has been working since the beginning of the financial crisis to address the most urgent of the risks associated with the over-the-counter (OTC) part of the derivatives market.

As a result, the Commission proposed a Regulation to introduce a reporting obligation for OTC derivatives, a clearing obligation for eligible OTC derivatives, measures to reduce counterparty credit risk and operational risk for bilaterally cleared OTC derivatives, common rules for central counterparties (CCPs) and for trade repositories, and rules on the establishment of interoperability between CCPs. It is intended that the Regulation (once adopted) would apply from the end of 2012.

The NAPF has published a Position Paper on the Commission's proposed Regulation, in which it notes that the need to post collateral - a central feature of the model proposed in the Regulation - will reduce pension schemes' investment returns, further increasing the cost for corporate sponsors of providing for their employees' pensions. It also states that the proposed Regulation will also reduce pension schemes' opportunities for risk mitigation while introducing new risks, including risks to the safety of scheme assets.

In its Position Paper, the NAPF asks for pension schemes to be allowed access to the "non-financial counterparty" exemption which is available to their corporate sponsors; a fairer division of the costs of central clearing, so that pension schemes are not subsidising more active and less credit-worthy participants; and adequate arrangements to ensure the safety of pension scheme assets put up as collateral.

PENSION PROTECTION FUND

New board members appointed

The PPF has announced that Arnold Wagner OBE and Baroness Diana Warwick will be joining its Board as non-executive directors.

Arnold Wagner retired from his role as Director of Human Resources, Smiths Group plc in October 2009. Before that, he was Director of Personnel at Bunzl plc.

Baroness Warwick is currently the Chair of the Human Tissue Authority. Before that, she was Chief Executive of Universities UK for 14 years where she led a body representing the executive heads of 130 universities, both nationally and internationally.

The PPF has also extended Christopher Hughes's contract by an extra year. He has been a Non-Executive Board member at the PPF for the last six years.

PPF Press Release