

Pensions law – the week in review

23 February 2009

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1 LEGISLATION

1.1 The Occupational Pension Schemes (Contracting-out) (Amendment) Regulations 2009

Following the publication (on 5 February 2009) of the Government's response to the consultation on draft regulations relating to the conversion of Guaranteed Minimum Pensions (GMPs) into scheme benefits¹, the final draft regulations have been laid before Parliament.

One of the conditions which must be met before conversion can take place is that the post-conversion benefits are "actuarially at least equivalent to the pre-conversion benefits", as certified by the scheme actuary. These regulations therefore specify how actuarial equivalence is to be determined, broadly requiring trustees to take advice from the scheme actuary and decide what assumptions will be used.

The regulations also prescribe the circumstances in which, and the periods during which, survivors' benefits must be provided post-conversion. These circumstances and periods are the same as the requirements applicable to survivors' benefits in existing GMP legislation.

Subject to approval by each house of Parliament, the regulations will come into force on 6 April 2009.

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

http://www.opsi.gov.uk/si/si2009/draft/pdf/ukdsi_9780111474310_en.pdf

http://www.opsi.gov.uk/si/si2009/draft/em/ukdsiem_9780111474310_en.pdf

1.2 The Pension Protection Fund (Pension Compensation Cap) Order 2009

The draft Pension Protection Fund (Pension Compensation Cap) Order 2009 was published on 23 February 2009 and provides for the level of the Pension Protection Fund (PPF) compensation cap to be increased to

¹ For more information, please see 7 Days dated 9 February 2009 and our Sackers Extra Alert: "GMP Conversion - the facts" dated 9 September 2008

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£31,936.32 (up from £30,856.35) from 1 April 2009. This figure is based on a 3.5% increase in average earnings in the 2007/08 tax year.

When applying the new compensation cap to members whose PPF entitlement is restricted to 90% of benefits (i.e. people below their scheme's normal retirement age), the maximum level of compensation payable to an individual at age 65 will be £28,742.69.

To view the draft order and explanatory notes, please click on the links below.

http://www.opsi.gov.uk/si/si2009/draft/pdf/ukdsi_9780111474266_en.pdf

http://www.opsi.gov.uk/si/si2009/draft/em/ukdsiem_9780111474266_en.pdf

2 DEPARTMENT FOR WORK AND PENSIONS (DWP)

2.1 Response to Consultation: Pension Protection Fund (Miscellaneous Amendments) Regulations 2009

Between 19 December 2007 and 12 February 2008, the Government undertook a consultation on draft Regulations which proposed a number of amendments relating to the Pension Protection Fund (PPF). These regulations proposed changes to the Pension Protection Fund (Entry Rules) Regulations 2005, the Pension Protection Fund (Compensation) Regulations 2005 and the Pension Protection (Valuation) Regulations 2005.² It was originally intended that the Regulations would come into force in April 2008.

Some time has elapsed since the consultation closed, but the DWP has today (23 February 2009) published its response to this consultation. The response summarises some of the comments received and notes that the regulations will contain some additional amendments to those originally proposed, including:

- the ability for death benefits and contribution refunds to be treated as if they had been paid before the commencement of a PPF assessment period; and

² For further details, please see 7 Days dated 7 January 2008

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- a requirement for the Board of the PPF to pay 90% of certain transfer payments and contribution refunds to members of a pension scheme that has entered the PPF (broadly, those to which a member became entitled before the assessment date but which have not been paid by the date the pension scheme enters the PPF).

According to the DWP, the final regulations and accompanying explanatory memorandum “will shortly be laid before Parliament and soon after will come into force, subject to Parliamentary approval.”

To view the consultation response, please click on the link below:

<http://www.dwp.gov.uk/consultations/2007/ppf-2009-response.pdf>

3 HM REVENUE & CUSTOMS (HMRC)

3.1 Notional Earnings Cap for 2009/10

The Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 set out transitional provisions for schemes in place at A-Day (6 April 2006). Under one of the transitional provisions, HMRC agreed to publish details of a notional earning cap each year until 2011.

On 19 February 2009, HMRC confirmed that the notional earnings cap for 2009/10 will be £123,600.

For further details, please follow the link below to HMRC's announcement:

<http://www.hmrc.gov.uk/pensionschemes/earns-cap-0910.htm>

3.2 Lifetime allowance protection notifications guidance (updated)

As reported in 7 Days on 12 January 2009, HMRC has published guidance on notifications for Lifetime Allowance (LA) protection purposes, together with an amended version of the relevant form (APSS200) and related completion notes. The guidance is aimed at assisting those who are seeking LA protection (either primary or enhanced) in the run up to the deadline for registering for protection.

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Although the deadline is technically 5 April 2009, because this is a Sunday, HMRC are allowing individuals until midnight (the end of the day) on 6 April 2009 to submit their forms.

Following comments which HMRC has received on this guidance, it has added a link to the completion notes in the guidance itself.

To access the guidance, please follow the link below:

<http://www.hmrc.gov.uk/pensionschemes/life-allow-pn.htm>

3.3 New tables for determining the “annual amount” when calculating the maximum income withdrawal from unsecured pension funds

Registered pension schemes can pay a pension to a member (or a dependant of a deceased scheme member) in a number of forms, including “income withdrawal” in respect of money purchase arrangements. Income withdrawal permits an individual to take an annual income from their pension fund of between 0% and 120% of the “annual amount” of a comparable lifetime annuity. The Government Actuary’s Department (GAD) publishes tables for HMRC which allow schemes to calculate this annual amount, with separate tables for men, women and children (up to age 23).

The tables, which are based on a correlation of the age and gender of the individual with the relevant gilt yields, have been revised to reflect recent falls in gilt yields.

Please click on the links below to view HMRC’s announcement and the new tables (together with instructions on how to use them):

<http://www.hmrc.gov.uk/pensionschemes/drawdown-tables-brief.htm>

<http://www.hmrc.gov.uk/pensionschemes/gad-tables.htm>

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3.4 Money laundering - annual registration fee

HMRC has published a revised annual registration fee for businesses which are registered under the Money Laundering Regulations 2007.

Occupational pension scheme trustees (both individual trustees and directors and secretaries of trustee companies) are generally excluded from the need to register because occupational pension schemes are specifically recognised as a low risk area. However, any persons who are required to register should be aware that the annual registration fee has increased to £120 (from £95).

A copy of HMRC's notice can be accessed by clicking on the link below:

<http://www.hmrc.gov.uk/mlr/ml-annual-reg.htm>

4 PENSION PROTECTION FUND (PPF)

4.1 PPF appoints new Chief Operating Officer (COO)

The PPF has appointed David Heslop as the new COO of the PPF and member of the PPF board.

Taking over from Derek Cribb who has acted as interim COO for nearly 18 months, Mr Heslop will head up the PPF's finance, legal, human resources, IT, organisational effectiveness and pension protection levy administration functions.

Trained as an actuary, Mr Heslop held a number of senior executive posts within Norwich Union. He is also a Fellow of the Royal Statistical Society, Institute of Actuaries and Securities and Investment Institute.

To view the PPF's press release, please click on the link below:

<http://www.pensionprotectionfund.org.uk/news-details.htm?id=7011>

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5 THE PENSIONS REGULATOR (TPR)

5.1 TPR's statement to employers who sponsor defined benefit schemes

Recognising that these are difficult times, TPR has issued a statement to employers who sponsor defined benefit schemes on the impact of the current financial conditions.

In this statement, TPR notes that:

- the current funding regime is flexible enough to cope with the economic downturn;
- where a sponsor company is under financial pressure there is potential to renegotiate previously agreed recovery plans to repair pension deficits;
- trustees should be in a position to understand what is “reasonably affordable” for their sponsor; and
- it will be pragmatic in its application of the scheme funding system and will look for outcomes which are in the best interests of both the scheme and the sponsor.

For more details, please see our latest Alert dated 18 February 2009.³

The statement and TPR's press release can be accessed by clicking on the links below:

<http://www.thepensionsregulator.gov.uk/pdf/StatementToEmployersFeb2009.pdf>

<http://www.thepensionsregulator.gov.uk/mediaCentre/pressReleases/pn09-02.aspx>

³ Available from the client area of our website or from your usual Sackers' contact

6 CASE UPDATE

6.1 Heyday decision expected 5 March 2009

Following publication last September of the opinion of the Advocate General (AG) in the highly anticipated Heyday case⁴, the diary of the European Court of Justice (ECJ) shows that delivery of the Court's judgment in this case has been provisionally scheduled for 5 March 2009.

The Heyday case challenges provisions under The Employment Equality (Age) Regulations 2006 which allow employers to dismiss workers aged 65 or over, provided the reason for dismissal is retirement and is not otherwise discriminatory. The arguments centre on whether the UK has properly implemented the age discrimination requirements of the European Framework Directive on Equal Treatment in Employment and Occupation, and whether the so-called default retirement age of 65 is, of itself, discriminatory.

The AG found that the UK's default retirement age may "in principle" be objectively justified under the Directive. However, the ECJ is not bound to follow the AG's opinion, so the Court's judgment is eagerly awaited.

For further details of the AG's opinion, please refer to 7 days dated 29 September 2008 and to our Alert: "Default Retirement Age - Here to stay?" dated 26 September 2008.⁵

⁴ The Incorporated Trustees of the National Council on Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform

⁵ Available from the client area of our website or from your usual Sackers' contact