23 July 2012

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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
GMP: Guaranteed Minimum Pension
HMRC: HM Revenue & Customs
NAPF: National Association of Pension Funds
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

LEGISLATION

Finance Act 2012

The Finance Act 2012 received Royal Assent on 18 July 2012.

It brings into force legislation on employer-asset backed contributions to occupational pension schemes, aimed at clamping down on arrangements that deliver excessive tax relief.[1]

The Registered Pension Schemes (Authorised Payments) (Amendment) (No.2) Regulations 2012

Before 6 April 2012, money purchase pension rights built up through contracted-out contributions, (known as "protected rights"), were subject to legislative conditions in the Pension Schemes Act 1993 as to how and when they could be paid out as benefits. Since contracting-out through a money purchase pension scheme has been abolished from 6 April 2012, those legislative conditions have been repealed. Rights which were formerly 'protected rights" are no longer subject to those conditions and can be treated the same as other pension rights provided through ordinary contributions, subject to the rules of the scheme.

The pensions tax legislation allowed schemes paying a short service refund lump sum to hold back protected rights where this was a requirement of "other legislation". As this "other legislation" has been repealed from 6 April 2012, where schemes continue to hold back the former "protected rights" when making a refund because their own rules require this, they will not be able to take advantage of the exception in the tax rules described above. The payment would then be an unauthorised payment and, as such, subject to tax charges.

These regulations, which come into force on 8 August 2012, amend the pensions tax legislation for short service refund lump sums so that certain pension schemes whose rules still apply the repealed conditions to individuals' pension rights can continue to pay short service refund lump sums without them being unauthorised payments.

Explanatory memorandum

[1] Please see our Alert: "Employer Asset-Backed Contributions: The final piece of the ABC jigsaw?" dated 20 July 2012

DEPARTMENT FOR BUSINESS INNOVATION AND SKILLS

Kay Review: Final Report

On 23 July 2012, Professor John Kay published the Final Report of his independent review to examine investment in UK equity markets and its impact on the long-term performance and governance of UK quoted companies. The Review's principal concern was to ask how well equity markets are achieving their core purposes: to enhance the performance of UK companies and to enable savers to benefit from the activity of these businesses through returns to direct and indirect ownership of shares in UK companies.

Executive Summary

In the executive summary, Professor John Kay concludes that "short-termism is a problem in UK equity markets, and that the principal causes are the decline of trust and the misalignment of incentives throughout the equity investment chain". This decline in trust and confidence has led to the increased use of intermediaries, which has exacerbated the problem as the "time horizons used for decisions to hire or review investment managers are generally significantly shorter than the time horizon over which the saver, or the corporate sponsor of a pension scheme, is looking to maximise a return".

Pension Funds

The Review notes, as background, pension funds have had a changing role in equity markets:

"Both life insurance companies and pension funds traditionally placed funds principally in fixed interest securities, both government and corporate, and secondarily in property. From the 1960s, these institutions substantially increased their equity exposure. At the same time, the coverage of occupational pension schemes among UK employees was greatly extended. By the 1990s, UK insurance companies and pension funds were the most important holders of UK equities, accounting for around half of the total. More recently, regulation of pension and life funds, and the maturity of pension funds, has led both pension trustees and insurers to reduce their exposure to equity markets."

There are a number of recommendations – but two have particular resonance for pension fund trustees:

- The Stewardship Code (which governs shareholder engagement, typically a low priority for pension scheme investors) should be developed to incorporate a more expansive form of stewardship, focussing on strategic issues as well as questions of corporate governance.

- The Law Commission should be asked to review the legal concept of fiduciary duty as applied to investment to address uncertainties and misunderstandings on the part of trustees and their advisers.

DEPARTMENT FOR WORK AND PENSIONS

Webb: Change your job, take your pension with you

The Government expects the introduction of automatic enrolment to lead to the proliferation of dormant DC pension pots. With this in mind, on 15 December 2011, the DWP issued a consultation seeking views on proposals to improve transfers and deal with small pension pots.[2] It has now published its response.

The Government's preferred option for dealing with small pots is a system of automatic transfers to the new employer's scheme. We will publish an Alert with further details on the proposals shortly.

Press release

The Occupational Pension Schemes (Miscellaneous Amendment) Regulations 2013

On 20 July 2012, the DWP issued a consultation asking for views on two changes to regulations which affect DB workplace pension schemes. These are:

- to clarify the policy intention in relation to schemes that have ceased to contract out and wish to make a change to their scheme rules;
- to allow bulk transfers of scheme membership of contracted-out schemes to formerly contracted-out schemes without member consent, and to allow both contracted-out and contracted-in schemes to make bulk transfers of scheme membership to schemes which did formerly apply to employment with the same employer, but now no longer do so.

The DWP is also proposing a change to regulations to ensure that the bulk transfer of accrued rights without member consent provisions are the same for pension schemes within and outside the European Economic Area. This reinstates the position which existed prior to the change of the definition of an occupational pension scheme in 2005, which inadvertently removed this option.

We will publish an Alert with further details on the proposals shortly.

The consultation closes on 13 September 2012.

HM TREASURY

New infrastructure investment and exports plan

On 18 July 2012, the Chancellor of the Exchequer and Chief Secretary to the Treasury unveiled a new UK Guarantees scheme which is intended to dramatically accelerate major infrastructure investment and provide major support to UK exporters.

Under UK Guarantees, the Government will aim to ensure that where major infrastructure projects are struggling to access private finance because of adverse credit conditions, these projects can go ahead.

Commenting on the plans, Alan Rubenstein, Chief Executive of the PPF, said:

[2] Please see our Alert: "Government consults on transfers and small pension pots" dated 19 December 2011

"Both we and the NAPF welcome today's announcement by the Government that they will introduce guarantees for major UK infrastructure projects. This should give investors, including pension funds, the confidence to provide the financial support that such projects need.

The announcement should also provide further encouragement to pension fund investors to support the Pensions Investment Platform, which both our organisations are working hard to establish.

We remain on track to launch the platform as planned in January 2013 and today's announcement provides a welcome boost."

NAPF press release

PPF press release

Response to the consultation on the Test-Achats decision

On 2 March 2011, in the Test-Achats case[3], the ECJ ruled that, with effect from 21 December 2012, an exemption in a European Directive (the "Gender Directive") which permits insurers to use sex as a determining factor in their assessment of risk, where it is based on "relevant and accurate actuarial and statistical data", will no longer be valid.[4]

Following the judgment, on 30 June 2011, Mark Hoban, Financial Secretary to the Treasury, provided a written statement to the House of Lords, explaining how the UK government interprets, and intends to implement this decision. The Government's view is that the judgment only applies to new contracts for insurance and related financial services entered into on or after 21 December 2012.

Consultation

On 8 December 2011, the Treasury published a consultation on how insurers could use gender as a risk factor in the light of the ECJ ruling. Among other things, the consultation asked for views on some of the key issues arising from the judgment, such as the scope of indirect discrimination.

The Treasury has now published its response to the consultation. The response confirms how the law will be changed to implement the Test Achats decision.

In relation to pensions and annuities, the Government:

- notes that there is some confusion in the industry on whether annuities purchased using money from an occupational pension scheme or a work-based pension scheme are covered by the Gender Directive. Guidance from the European Commission suggests that where an annuity purchased using funds held in a work-based pension scheme is purchased without the involvement of the employer or the scheme, the purchase would fall within the scope of the Gender Directive and therefore would be subject to the ECJ judgment;

- acknowledges the concerns of some respondents that the judgment will result in a two tiered annuity market and that such a market will be detrimental to consumers and industry. However, the Government does not feel there is sufficient evidence at this stage to justify extension of the requirement to provide gender-neutral pricing of annuities to work-based pension arrangements as well as personal pensions. Any such proposal would require further consultation. For now, it intends to keep this

[3] Association belge des Consommateurs Test-Achats ASBL (Case C-236/09)

[4] Please see our Alert: "Is it the end of the road for sex based actuarial factors?" dated 2 March 2011

issue under review and will monitor the impact of the judgment on the annuities market.

- will work with the industry to determine how the drawdown tables published by the Government Actuary's Department should be modified as a result of the judgment. A separate statement on this will be published in due course, prior to 21 December 2012.

NATIONAL EMPLOYMENT SAVINGS TRUST

Annual accounts published

On 19 July 2012, NEST published its Corporation annual report and accounts and the Scheme accounts for 2011/12.

Highlights from the Corporation report and accounts include:

- NEST was open for business to its first volunteer employers during the year. By 31 March 2012, NEST had around 100 registered employers, over 800 members and net assets of around £500,000. These volunteer firms have allowed the scheme to test and further improve its new systems and business operations with low volumes in readiness for the onset of automatic enrolment; and

- NEST received notifications from a number of large employers with their duty dates in the year 2012/13 of their intention to use NEST and agreed partnership arrangements with many of the existing private pension providers.

Highlights from the Scheme accounts include:

- an explanation of NEST’s governance structure;

- an investment report including insights on NEST's approach to managing risk and fund performance.

Press release

PENSIONS OMBUDSMAN

2012 Corporate Plan

The Pensions Ombudsman and the PPF Ombudsman have published their corporate and business plan for April 2012 to March 2015.

PENSION PROTECTION FUND

New actuarial factors published

The PPF has issued new actuarial factors for commutation and annualised values of lump sums which are effective from 1 August 2012. No change has been made to the early retirement factors as these are still considered to be broadly cost neutral.

The PPF has also issued a note providing some general information on the calculation of the factors.

THE PENSIONS ADVISORY SERVICE (TPAS)

Annual Review 2011/2012

On 20 July 2012, TPAS published its annual review for 2011/12. The report highlights the growing demand for information and guidance on pensions.

Press release

THE PENSIONS REGULATOR

Statement on incentive exercises

Following the publication of an industry "code of good practice" on incentive exercises, TPR has reviewed and replaced its incentives guidance with a short principles-based statement. The statement focuses on the overarching principles published in its December 2010 guidance.[5]

TPR's chief executive Bill Galvin said:

"[TPR] welcomes the industry's bid to drive up standards. This is important because any transfer out of a [DB] scheme poses a significant risk to members who may not be equipped to make an informed decision, and such offers won't be in most members' best interests.

For those employers that decide to undertake such an exercise, the industry code sets out the good practice principles that should be applied. If conflicts are appropriately managed, trustees are engaged throughout the exercises, and the principles in the industry code are followed, then exercises should fulfil and be consistent with our principles."

We will publish an Alert with further details on the statement shortly.

Press release

Automatic enrolment: don't leave it too late

On 17 July 2012, TPR issued a press release to draw attention to research which indicates business are underestimating the time it will take to get ready for automatic enrolment.

TPR is communicating with employers as their staging date approaches. Large businesses are being targeted now, with smaller companies scheduled to start receiving information on their duties from 2013. However, materials which can assist businesses with their preparations are available on TPR's website now.

[5] Please see our Alert: Guidance on incentive exercises / annuities legislation - the pre-Christmas flurry" dated 13 December 2010