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EUROPEAN PENSIONS DIRECTIVE - UPDATE

1 INTRODUCTION

The Pensions Act 2004 transposed a number of the provisions of the European Pensions Directive ("the Directive") into UK law. This Alert identifies some unexpected effects of the Directive on the activities of UK pension schemes from 22 September 2005.

2 KEY POINTS

- Life cover only members – can schemes continue to have this category of member? See section 3 on this important issue.
- Cross border schemes – it will come as a relief to many schemes that the provisions on secondment may be relaxed. See section 4.
- Stakeholder schemes – employers who have not designated a scheme should check which exemption they are relying on because providing life cover only under an occupational pension scheme will no longer count. See section 5.

3 LIFE COVER ONLY MEMBERS

The key concern, which has taken the pensions industry by surprise, is that it may no longer be possible for occupational pension schemes to have life cover only members as a separate category of membership.

There is a potential problem because of the (somewhat ambiguous) wording of the Pensions Act 2004 which is a straight lift from the relevant part of the European Directive. An occupational pension scheme can only carry out

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activities which are "retirement-benefit activities". Taken on a narrow interpretation, the wording means that occupational pension schemes can only provide life cover in respect of individuals to whom a retirement benefit is intended to be paid and not as a stand-alone benefit. This could be a problem regardless of whether life cover is being provided to those in a waiting period, to those who opt-out of active membership or as a general class of membership under an occupational pension scheme.

Unsatisfactory as it may seem, our conclusion is to "watch this space" even though the changes ostensibly apply from 22 September 2005. Having spoken to the DWP, we suggest that schemes should not take any action now as discussions are ongoing with the various industry bodies who are aware of the issue.

4 CROSS BORDER SCHEMES

We covered the draft Cross-Border Regulations in a recent Sackers Extra Alert¹. We now have further news on two of the issues we highlighted.

- Schemes with "seconded workers" are likely to be regarded as a cross-border pension scheme (with the need to be "fully funded at all times"). "Seconded workers" are currently defined as people usually located in the UK and who provide services in the EU but outside the UK and intend to return to work for the same employer in the UK. Secondments under 12 months are excluded from this definition. But the DWP have indicated that they are looking at this issue and it is likely that the exclusion will be re-drafted so that secondments of up to 5 years and pre-existing secondees are excluded.
- In contrast, the DWP's current thinking is that Anglo-Irish Schemes **will** be caught by the new cross-border rules.

¹ See our Sackers Extra Alert "Cross Border Schemes" dated 28 September 2005

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5 STAKEHOLDER SCHEMES

Since 1999, all employers must offer all employees access to a stakeholder pension scheme, unless an exemption applies. One of these exemptions meant that an employee who was a member of a life assurance only scheme (or who had life assurance only membership of an occupational pension scheme) did not need to be offered access to a stakeholder scheme.

But the changes to the definition of occupational pension scheme referred to in section 3 above also affect this exemption. The risk-free approach for employers with employees in this position would be to designate a stakeholder scheme. As employers have 3 months to designate a stakeholder from the date that the Stakeholder Regulations first apply to them, an employer affected should have until 22 December 2005 to get its house in order.

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