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

STOP PRESS!

ECJ decision due 1 March 2011

We understand that the judgment of the ECJ in the case of *Association Belge des Consommateurs Test-Achats ASBL and others* (Case C-236/09) is due to be published tomorrow, 1 March 2011.

We will be preparing an Alert on the judgment as soon as it is available.

LEGISLATION

The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011

Currently it is lawful for an employer to dismiss an employee aged 65 or over by reason of retirement. This is known as the default retirement age (DRA). However, the DRA is to be removed from legislation from 6 April 2011, subject to transitional provisions.

Draft regulations have now been published relating to the forthcoming abolition of the DRA. The regulations are designed to repeal and amend provisions in both the Equality Act 2010 and the Employment Rights Act 1996 which provide for dismissal by reason of retirement.

Transitional provisions

Although the Government has previously indicated that the DRA will be phased out from 6 April 2011, and abolished completely on 1 October 2011, the draft regulations provide that the legislative amendments will not apply where:

- notification to retire has been given under the Employment Equality (Age) Regulations 2006 (the Age Regulations) before 6 April 2011; and
- the person will reach age 65 (or their normal retirement age if higher) between 6 April and 30 September 2011.

Potentially, this means that retirements under the current rules may continue until April 2012 as the Age Regulations permit employers to give a minimum of six months notice but no more than twelve months notice of retirement. However, the way the provision is drafted seems to preclude employers from using the transitional period to retire those employees who are already over age 65.

Insurance exemption

The draft regulations also include an amendment to the Equality Act 2010, permitting employers to withdraw or refuse to offer “insurance or a financial related service” to employees aged 65 or over (or over state pension age if greater). However, the way in which the exemption is framed is not helpful to pension schemes as:

- the exemption is available only if the cover is provided by the employer to the employee direct, and does not refer to trustees holding insurance; and
- it refers only to insurance, meaning that schemes which self-insure death benefits are not covered.

As this exemption mirrors other similar exemptions under the Equality Act 2010, it seems unlikely that the exemption will be amended.

The regulations are due to come into force on 6 April 2011.

Further information can be found in:

- the explanatory memorandum which accompanies the regulations;
- our Alert: The bell tolls for the default retirement age dated 17 January 2011; and
- updated ACAS guidance on the abolition of the DRA.

DEPARTMENT FOR WORK & PENSIONS

DWP Fact sheet: Automatic enrolment and workplace pension reform

The Pensions Bill 2010-11 is currently progressing through Parliament and will reach Committee Stage in the House of Lords on 1 March 2011.

As part of this process, this DWP has published an information pack for Peers, containing a series of fact sheets and an annex for clarification on specific parts of the Bill. The fact sheet on automatic enrolment and workplace pension reform provides a useful overview of the reforms, which will start to be phased in from October 2012.

The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011: Government response to consultation

The DWP has published its response to consultation on draft regulations which are due to come into force on 6 April 2011.

The consultation proposed a number of minor amendments to regulations governing occupational and personal pension schemes, including:

- a change to the notification requirements where a "listed change" is proposed in a multi-employer scheme that would only affect members who work for that proposing employer - the regulations exempt the proposing employer from having to notify the other employers in the scheme of the proposed listed change;
- an increase, with effect from 31 March 2011, in the maximum fraud compensation levy on occupational pension schemes that can be raised by the Board of the PPF in respect of each financial year; and
- an amendment to the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 to reflect the replacement of actuarial guidance note GN16 (transfers without consent) with principles based guidance.

An amendment to the Occupational Pension Schemes (Contracting-out) Regulations 1996 to reflect the replacement of GN28 (adequacy of benefits for contracting-out) with principles-based guidance as the guidance which the Board for Actuarial Standards provides for actuaries needing to certify that a scheme meets the reference scheme test, has been withdrawn from this package of miscellaneous amendment regulations. The amendment has been deferred, pending further consideration of the consultation responses, and is expected to be included in a separate set of regulations later in the year.

Subject to the deletion noted above, and some minor drafting changes, the regulations will be laid before Parliament and will generally come into force on 6 April 2011.

For further background to this consultation, please see 7 Days dated 18 October 2010.

HM REVENUE & CUSTOMS

Pensions: Reduction of the Annual Allowance

On 23 February 2011, HMRC published a number of amendments to its draft guidance on the reduced annual allowance (AA) for pension savings (originally published on 14 October 2010).

The updates include:

- updated guidance in relation to Pension Input Periods ending in the tax year 2011/12; and

- a new statement confirming that there will be no further changes to the special AA rules introduced in Finance Act 2009. These rules are due to be repealed and will no longer apply to pension savings made after 5 April 2011.

Disguised remuneration: Frequently asked questions

On 9 December 2010, the Government published, for consultation, draft provisions aimed at tackling arrangements used for the purpose of disguising remuneration in order to avoid or defer income tax or national insurance contributions (NICs). Such arrangements are also used to save beyond the AA and the Lifetime Allowance (LTA).

As a result of the consultation process, HMRC identified a number of areas where the Government recognises the need to make refinements to the legislation. On 21 February 2011, it published a FAQ document to provide answers to common questions received by HMRC, to clarify policy intention in a number of areas where the application of the draft legislation has raised concerns with external commentators, and to explain areas where the Government intends to make amendments.

Due to the volume of responses received, HMRC has not yet published answers to all questions asked during the consultation process, but it intends to publish further FAQs in due course.

Countdown bulletin: Abolition of contracting-out on a DC basis

HMRC has published the first issue of "Countdown Bulletin" - its newsletter about the abolition of contracting-out on a DC basis.

The bulletin, which will be issued on a bi-monthly basis, is designed to give a comprehensive update picture as to how abolition will be implemented and how HMRC's processes will be changing from 2012.

Included in this first edition are:

- general background to the abolition of DC contracting-out;

- details of current action that schemes should be taking;
- an overview of what will happen after April 2012; and
- some important dates to note.

Future editions of the bulletin will include a Q&A section, to allow concerns to be "aired and shared". Queries should be submitted to the NISPI technical team.

HM TREASURY

Hutton final report: Publication date announced

In June 2010, John Hutton, the former Labour Secretary of State for Work and Pensions, was appointed to examine the future of public sector pensions as chair of the independent Public Service Pensions Commission.

Following an interim report published in October 2010, the Treasury has today (28 February 2011) announced that Lord Hutton will publish his final report on 10 March 2011, setting out his recommendations to the Government on pension arrangements that are sustainable and affordable in the long term, fair to both the public service workforce and the taxpayer and consistent with the fiscal challenges ahead, while protecting accrued rights.

For more information, please see our Alert: "Hutton Report - the Future of Public Sector Pensions" dated 7 October 2010.

NATIONAL EMPLOYMENT SAVINGS TRUST

NEST News: February 2011

NEST has published the first edition of NEST News for 2011, which includes updates on:

- the launch of the NEST phrasebook;
- NEST's newly appointed fund managers; and
- the current selection process for appointing NEST's panel of retirement income providers.

THE PENSIONS REGULATOR

Improving pension scheme administration

Continuing its current focus on administration issues in pension schemes, on 24 February 2011, TPR published a joint statement with NISPI (National Insurance Services to the Pensions Industry) explaining that the two organisations will be working more closely together in 2011 to improve administration standards.

NISPI is part of HMRC and deals with occupational pension schemes and Appropriate Personal Pension Schemes that are contracted-out. When a scheme ceases to contract-out – for example when it winds-up – a data reconciliation process needs to be carried out between the scheme and HMRC's records to ensure that members receive the correct pension benefits.

TPR notes that trustees should make it clear to their scheme administrators that they expect them to engage actively with NISPI to complete any wind-up process as quickly and costeffectively as possible. It advises schemes to make use of NISPI's 'Shared Workspace' web-based tool which figures show can result in wind-ups being completed up to 30% more quickly.

TPR Press Release

NISPI Business Update