

## Pensions law – the week in review

28 September 2009

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- R (on the application of Age UK) v Secretary of State for Business, Innovation and Skills (Heyday)

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**1 ASSOCIATION OF CONSULTING ACTUARIES (ACA)**

**1.1 ACA publishes second pension trends survey - “Pension reform: a pig in a poke?”**

The ACA published its second survey on pension trends on 24 September 2009. The survey report is based on the views of over 300 employers of all sizes who responded to questions on a wide range of topical issues, including emerging views on Personal Accounts and pension reform.

The report indicates that the majority of employers (59%) plan to review their existing pension arrangements ahead of the introduction of the new automatic enrolment obligation, scheduled to come into effect from 2012.

Other trends emerging from the survey are that:

- 41% of smaller employers (defined as those with 249 employees or fewer) will consider closing their existing pension arrangement in favour of offering personal accounts to all employees, and that 54% “are likely” to reduce pension benefits to off-set the costs of automatic enrolment if they opt to automatically enrol all employees into an existing scheme;
- 1/3 of all employers have budgeted for the increased costs arising from the reforms; and
- there is little support for the introduction of flexibility to enable pension scheme members to draw benefits early in order to meet the costs of major lifetime events, such as deposits on residential property, children’s education and sudden illness (56% of employers opposed this suggestion).

The ACA’s press release and the survey can be accessed by clicking on the links below:

[ACA Press Release](#)

[Pension Trends Survey No.2](#)

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## **2 BOARD FOR ACTUARIAL STANDARDS (BAS)**

### **2.1 New actuarial reporting standard - final version published**

The BAS has issued its standard on reporting actuarial information (which will be known as “TAS R”), the first in a series of new principles-based standards.

The premise for this standard is to help to ensure that “users of actuarial information can place a high degree of reliance on the information’s relevance, transparency of assumptions, completeness and comprehensibility.” This includes communicating any uncertainty inherent in the information.

The new standard includes disclosure requirements for assumptions, methodologies, calculations, risks and uncertainties. Other principles based standards which will follow are to include generic standards on actuarial data and modelling, as well as targeted standards on actuarial work for pensions and insurance.

TAS R will take effect in April 2010.

The BAS press release and the new standard can be accessed by clicking on the links below:

<http://www.frc.org.uk/bas/press/pub2108.html>

[Actuarial Standard TAS R](#)

## **3 DEPARTMENT FOR WORK AND PENSIONS (DWP)**

### **3.1 “Workplace pension reform - Completing the picture”: Consultation on employer compliance regime**

The DWP’s final consultation on regulations to deliver automatic enrolment was published on 24 September 2009.

It is the third in a series of three consultations seeking views on the proposed regulations to be made under powers contained in the Pensions Act 2008. The consultation covers:

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- arrangements for implementing the reforms, including measures to manage the burdens on business, such as allowing employers to phase in contributions gradually over time;
- elements of the employer duty requirements not covered in the March 2009 consultation<sup>1</sup>, including pay reference periods; voluntary joining for individuals not eligible for automatic enrolment; re-enrolment of eligible individuals; requirements on employers to maintain membership of a qualifying pension scheme; changes to the “19 day rule”<sup>2</sup>; and modifications to when postponement can be used for “high quality” schemes;
- the quality requirements for pension schemes, including self-certification for defined contribution (DC) schemes; and
- powers to enforce compliance with the requirements on employers.

The current DWP proposal is that the regulations will begin to come into force from October 2012. The DWP envisages that the reforms will be implemented in stages, splitting employers into 25-30 groups according to their size, and requiring each group to start automatic enrolment on an assigned date over three years from October 2012 to October 2015. Generally, larger employers will be expected to start automatically enrolling their employees before smaller ones.

In total, the consultation covers six sets of draft regulations, including (for information rather than consultation) amended automatic enrolment regulations. More detail on the automatic enrolment regulations is contained in the DWP’s consultation response on the same - please see 3.3 below for more information.

This consultation will close on 5 November 2009. The DWP has set a short consultation period (6 weeks instead of the usual 12) because “elements of the employer compliance regime and the personal accounts

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<sup>1</sup> For more information on the March 2009 consultation, please refer to 7 Days dated 16 March 2009

<sup>2</sup> The prescribed period in which an employer must pass on any employee contributions deducted to a scheme’s trustees or managers

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scheme will be delivered by external suppliers and we need to provide as much certainty as possible about what they need to deliver as soon as possible. Finalising the regulations earlier will avoid potential costs associated with changing the proposals at a later date.” The DWP also considers that all stakeholders, but employers in particular, will benefit from early certainty.

The DWP’s press release, consultation document and associated impact assessment can be accessed by clicking on the links below:

<http://www.dwp.gov.uk/newsroom/press-releases/2009/september-2009/dwp037-09-240909.shtml>

<http://www.dwp.gov.uk/docs/workplace-pension-reform-completing-the-picture-consultation240909.pdf>

<http://www.dwp.gov.uk/docs/workplace-pension-reform-ia-sept09.pdf>

### **3.2 Consultation on the use of default options in workplace personal pensions (WPPs) and the use of group Self Invested Personal Pensions (SIPPs) for automatic enrolment**

A further DWP consultation (also issued on 24 September 2009) covers draft guidance on:

- the use of default options in WPPs<sup>3</sup> used for automatic enrolment; and
- the use of group SIPPs for automatic enrolment.

For both elements, the draft guidance explains the terms of the Pensions Act 2008 and the employer duty of automatic enrolment. For WPPs, it explains the ongoing process for default options, including design, implementation and governance. For Group SIPPs, the draft guidance focuses on the importance of choosing an appropriate product for the automatic enrolment vehicle, given that it will not be possible to require individuals to make an active choice during the automatic enrolment process.

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<sup>3</sup> The consultation describes WPPs as an umbrella term which includes group personal pensions, group self-invested personal pensions and stakeholder pensions

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The DWP proposes that compliance with the guidance will be monitored from the commencement of the employer duty of automatic enrolment (scheduled for 2012).

The consultation will close on 17 December 2009.

The consultation document can be accessed by clicking on the link below:

<http://www.dwp.gov.uk/docs/workplace-personal-pensions-default-options-consultation240909.pdf>

### **3.3 Response published to consultation on draft automatic enrolment regulations**

The DWP has published the long-awaited response to its March 2009 consultation on automatic enrolment.

The draft Pensions (Automatic Enrolment) Regulations 2009 cover (among other things) the practical arrangements by which employers will be required to:

- automatically enrol workers into a WPP;
- provide a jobholder's personal data to the scheme to achieve active membership;
- provide enrolment information to the jobholder, including arrangements by which an individual can opt out of pension saving; and
- give enrolment information to existing members of qualifying schemes and individuals affected by postponement.

Although the DWP found that there is broad support for the reforms and the introduction of automatic enrolment, general industry reaction to the consultation was that the procedures set out in the draft regulations were unduly prescriptive and burdensome and the timeframes suggested unfeasibly short. Consequently, the DWP plans to simplify the processes, lengthen the timescales for the joining window and align the processes for WPPs and occupational pensions. It says that it is "satisfied that we have

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redesigned the processes to meet stakeholder concerns without compromising our headline policy intentions or undermining protection for individuals.”

Changes under the revised proposals include:

- extending the joining window from 14 days to one month (from and including the automatic enrolment date) for both trust and contract based schemes;
- limiting the information required to be provided by employers and restricting requirements so that they focus on information that is required to provide scheme benefits;
- make more information available to employers to enable them to signpost information about pensions and savings for retirement;
- extend the window within which information must be provided to active members of qualifying schemes from 30 days to two months from and including the notional automatic enrolment date; and
- change the opt-out period from 30 days to one month to ensure consistency in the way time periods are defined.

The consultation response can be accessed by clicking on the link below:

<http://www.dwp.gov.uk/docs/pae-regulations-2009-govt-response-sept09.pdf>

### **3.4 Consultation on the draft Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2010**

The DWP is also consulting on regulations which will make a number of minor amendments to regulations governing occupational and personal pension schemes which are necessary to:

- add a new listed change on which employers are required to consult affected members - where the definition of “pensionable earnings” is to be changed. This is because such a change “can have a

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significant impact on pension benefits and members should have the opportunity to have their views heard about such a proposed change”;

- implement some minor policy changes; and
- make an outstanding consequential amendment.

The consultation will close on 18 December 2009.

The consultation document can be accessed by clicking on the link below:

<http://www.dwp.gov.uk/docs/consultation-occ-pen-misc-regs-2010.pdf>

### **3.5 Applications invited for first chair of the Personal Accounts scheme**

The DWP has announced the start of its search for the position of chair of the trustee corporation, the body which will run the Personal Accounts scheme.

The appointment will be made by the Secretary of State for Work and Pensions, which is supported in the recruitment exercise by Hays Executive. The deadline for applications is 30 October 2009.

The DWP's press release can be accessed by clicking on the link below:

<http://www.dwp.gov.uk/newsroom/press-releases/2009/september-2009/dwp036-09-240909.shtml>

### **3.6 Pension Service website to close**

The Pension Service website will close on 25 September 2009. DirectGov will replace The Pensions Service website as the place to find all government information for individuals about pensions, retirement and later life and the content has already been made available via DirectGov. Corporate information about The Pension Service has moved to the [About DWP](#) section of the DWP website. [Businesslink](#) will replace the Pension Service site as the place for employers to find all government information about pensions, retirement and later life from September 2009.



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Anyone who tries to visit The Pension Service site after it has closed will find a landing page which will signpost them to the relevant information on DirectGov, businesslink.gov.uk, or the DWP main site.

This work forms part of the DWP's wider long-term plan to move its customer-facing online information onto DirectGov. Following the Varney review, all government departments are required to do this by 2011.

More information can be found on the DWP and Pension Service websites, by clicking on the links below:

<http://www.dwp.gov.uk/newsroom/top-stories/>

[The Pension Service](#)

### **4 CASES**

#### **4.1 R (on the application of Age UK) v Secretary of State for Business, Innovation and Skills (Heyday)**

The High Court's decision in the highly anticipated Heyday case was published on 25 September 2009. It confirms that the default retirement age of 65 is here to stay - for now.

#### *Background*

The case hinged on Heyday's challenge to the legality of the provisions of the Employment Equality (Age) Regulations 2006 (the Regulations) which allow employers to dismiss employees aged 65 or over by reason of retirement. The arguments centred on whether this is contrary to the European framework Directive dealing with age discrimination.<sup>4</sup>

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<sup>4</sup> Council Directive of 27 November 2000 (2000/78/EC) establishing a general framework for equal treatment in employment and occupation

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In March 2009, the European Court of Justice (ECJ) concluded that the Directive gives Member States the option to permit such differences in treatment under national legislation provided that they are “objectively and reasonably justified by a legitimate aim, such as employment policy, or [the] labour market”. However, it considered that Member States would need to meet “a high standard of proof” to establish the legitimacy of the aim relied on to justify the measure.<sup>5</sup> It therefore fell to the High Court to decide whether these tests were met.

### *Decision*

Mr Justice Blake concluded that adopting a default retirement age was not “a disproportionate way of giving effect to the social aim of labour market confidence”. However, the Government has already announced<sup>6</sup> that it is bringing forward the promised review of the default retirement age by a year, to 2010. And, in a strong steer to this review, the judge commented that “the case for advancing the [default retirement age] beyond [the] minimum age of 65 at least would seem to be compelling”.

In reaching his decision, the judge drew a distinction between having a default retirement age and imposing a mandatory one. He also recognised (as the ECJ had before him) that age discrimination is very different from other types of discrimination, as everyone will grow older and face decisions about retirement.

### *Comment*

Although the default retirement age of 65 is here to stay for now, this is not the end of the story. Whether it remains (and in what form) will depend on the outcome of the Government’s review in 2010. Set against the backdrop of a radically changed economy and the fact that people are quite simply living longer, the judge made no secret of his view that a default age of 65 would no longer make sense.

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<sup>5</sup> For more information, please see our Alert - “Heyday: The ECJ decides” dated 6 March 2009

<sup>6</sup> Announced in the DWP’s consultation “Building a society for all ages”, published on 13 July 2009. For more information please see 7 Days dated 20 July 2009

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Sackers will be producing an Alert on the decision which will be available from the client area of our website or from your usual Sackers contact.

More information is also available in our press release, which can be accessed by clicking on the link below:

[http://www.sackers.com/whats\\_new/documents/Heydaypressrelease.pdf](http://www.sackers.com/whats_new/documents/Heydaypressrelease.pdf)



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