Sackers extra

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Abbreviations commonly used in 7 Days

ACA: Association of Consulting Actuaries
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
HMRC: HM Revenue & Customs
NAPF: National Association of Pension Funds
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

LEGISLATION

Public Service Pensions Act 2013

The Public Service Pensions Bill received Royal Assent on 25 April 2013.

The Public Service Pensions Act provides for changes to be made to public-sector pension scheme benefit structures, in light of recommendations by the Independent Public Service Pensions Commission (the Hutton Report[1]) and negotiations since then between the government, trade unions and industry bodies.

ASSOCIATION OF CONSULTING ACTUARIES (ACA)

ACA Chairman calls for early decision to make Limited Price Indexation optional to help preserve more DB schemes

On 26 April 2013 Andrew Vaughan, Chairman of the ACA, called for the Government to make Limited Price Indexation (LPI) of pensions in payment by DB schemes optional from 2016.

The call has been made following the Government's decision to move forward the end of contracting-out to 2016 alongside the implementation of the single-tier State pension. Mr Vaughan welcomed the DWP's announcement (see below) that the private pensions "red tape challenge" was continuing to examine this idea.

DEPARTMENT FOR WORK & PENSIONS

DWP examines changes to pension regulations

On 25 April 2013, the Pensions Minister unveiled a set of measures aimed at easing the administrative and regulatory burden on employers.

The DWP has examined the regulations covering private pensions, following input from pension providers, businesses and consumers, as part of the Government's "Red Tape Challenge".

Key outcomes of the DWP's "Red Tape Challenge" work include:

- simplifying disclosure of information rules, to harmonise requirements across different schemes and extending the use of electronic communication, such as email or websites;[2]

[1] Please see our Alert: "Hutton recommends new career average scheme" dated 10 March 2011

[2] Please see our Alert: "Disclosure Consultation 2013 - Third time Lucky?" dated 20 February 2013

- a new statutory objective for TPR which "better balances" the need to protect members' benefits with the need for sponsoring employers to be able to grow in a sustainable way;
- more work to see how the current processes relating to employer debt that cause difficulties for charities and other participating in multi-employer schemes could be improved; and
- considering whether to make indexation for future accruals discretionary as part of ongoing work to encourage risk sharing through new "Defined Ambition" pensions.

Command Paper on Automatic transfers: consolidating pension savings

The introduction of automatic enrolment is expected to lead to the proliferation of dormant, often small, DC pension pots.

Having considered several options,[3] the Government intends to address this with a system of automatic transfers to a new employer's scheme. On 23 April 2013, it published a Command Paper providing more detail on its proposals.

Key points are as follows:

- Initially, DC pension pots of up to £10,000 will be eligible for automatic transfer.
- The Government is considering ways of identifying dormant pots which are eligible for transfer.
- People who wish to transfer their pots voluntarily will still be able to do so.
- Short service refunds from DC occupational pension schemes will be withdrawn in 2014.

For further details, please see our Alert: "Automatic Transfers for DC Pension Pots" dated 25 April 2013.

Press release

EUROPEAN COMMISSION

Consultative document: Consumer Protection in third pillar retirement products

On 25 April 2013, the European Commission published a consultative document on consumer protection in third-pillar retirement products which are, broadly, personal pension schemes.

The Commission has identified that there are no specific EU provisions that adequately address consumers' needs.

Some Member States have introduced their own requirements, resulting in market fragmentation and unequal levels of consumer protection. The Commission considers a common approach would help deal with possible divergences in the national regulatory regimes, thus avoiding further fragmentation in terms of consumer information and protection standards.

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

The purpose of this document is to identify the specific problems encountered by consumers in third pillar retirement products and whether voluntary codes coordinated at EU level or certification schemes could improve consumer protection.

The results of the consultation will be taken into account in a broader initiative aimed at developing a genuine, consumer-friendly Single Market for personal pension schemes.

EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

Survey of EU practice on default investment options

EIOPA has published a survey of EU practice on default investment options.

Findings included:

- multiple investment options are quite common in both occupational and personal pension schemes;
- default investment options are used only in about 50% of Member States;
- the use of lifestyling options is very rare. If used, these features are mostly provided by an Institution for Occupational Retirement Provision or a pension provider voluntarily, with no specific requirement in legislation;
- supervisors tend to get involved only where multiple investment choices or default options are a legal requirement, which means infrequently; and
- although exact figures for the number of members that use default options are not available, there is a strong indication that, where default options are offered, the take up is very high.

EIOPA believes that well designed default options and any de-risking solutions contained in them as well as supervisory involvement pitched at the right level, are crucial determinants of the adequacy and protection of members' retirement incomes in defined contribution schemes. Therefore, EIOPA intends to continue its work in this area.

HM REVENUE & CUSTOMS

Pension liberation - the cost of accessing or unlocking your pension early

On 14 February 2013, TPR and HMRC launched a joint information campaign for consumers and pensions professionals as part of an ongoing multi-agency crackdown on companies claiming to be able to release pensions cash as a loan or lump sum before the law allows.[4]

[4] See 7days dated 18 February 2013

HMRC has now published guidance regarding pension liberation fraud.

The guidance includes information on:

- how pension liberation arrangements work;
- what happens if you agree to access your pension early;

- the cost of pension liberation; and
- how to protect your pension.

For information on how pension scheme trustees should respond to the rise in pensions liberation schemes, please see our Alert: "Pension Liberation - what trustees need to know" dated 19 April 2013.

HOUSE OF COMMONS

Work and Pensions Committee Report published

The House of Commons Work and Pensions Committee published a Report on Improving governance and best practice in workplace pensions on 25 April 2013.

Background

The Work and Pensions Committee (the Committee) is one of the departmental select committees - it is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Work and Pensions and its associated public bodies.

The Report considers what more the Government could do to make saving in workplace pensions as straightforward as possible for employees, and how the Government, regulators, the pensions industry, and employers can tackle the barriers to pension scheme members participating as equal partners in pension saving. It also considers how good governance can be used to protect and achieve the best pension outcomes for employees.

Key Recommendations

Regulatory Oversight and Governance

- The Committee has recommended that Government should reassess the case for establishing a single body with sole responsibility for regulating workplace pensions to ensure that there can be no gaps in regulation. At the moment responsibility for regulating workplace pensions is split between the Pensions Regulator (to regulate trust-based schemes) the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (with responsibility for contract-based schemes and providers).
- If the current structure remains in place, the Committee would "strongly urge" the FCA to adopt a pensions specific regulatory strategy and to set up a well-resourced team dedicated solely to proactively regulating contract-based schemes.
- The Committee believes that establishing governance committees for contract-based schemes could increase the effectiveness of governance in these schemes. The Committee recommends that the Government and the regulators investigate ways of assisting employers to set up governance committees.

Maintaining Value for Members

- Charges have come under particular scrutiny in the Report, with the Committee recommending that the Government reviews capping for auto-enrolment schemes bi-annually starting in 2014 and that active member discounts and "member-borne" consultancy charges are abolished "if significant progress is not made in the very near future by the industry towards ending them".

- Likewise, the Committee is concerned that members are still not achieving full value for their savings when they convert them into annuities. The Committee has recommended that the pension provider should automatically supply a "comprehensive breakdown" of the different rates available, with the possibility of separating the functions of providing saving vehicles and annuity provision if this is not effective.

Reform Agenda

- The Committee has recommended that the Government, the regulators and the industry work together to agree on a communications format based on NEST's communications which it singles out as being "simple" and "easy to understand".

- The Committee has welcomed the work the Government announced earlier in the week on automatic transfers but wishes to ensure that there is no danger of the member being transferred automatically into a scheme with poor governance and high charges.

- Finally, the Committee is concerned that the current focus of Defined Ambition, which may be an option for only a small minority of employees, may detract from ensuring that DC provision is fit for purpose.

FINANCIAL CONDUCT AUTHORITY (FCA)

New rules for the platforms industry

Currently, providers of investment products, such as investment managers, generally pay a rebate to some platforms in order to have their products included on a platform. This rebate comes from the annual management charge (AMC) which is paid by the investor to the fund manager. As a result, some platforms are able to give the impression that they are offering a free service, which means that the investor may not understand the true cost of the service provided by the platform.

It can be difficult for investors to compare prices and products available on different platforms. There is also a risk that these payments could lead to product bias in the investment market, as products offered by providers who are unwilling or unable to pay a rebate to the platform from their product charges may not have their products available to the investors using that platform.

The FCA is making changes which are aimed at ensuring that investors can make fully informed choices if they wish to use a platform and understand what they are paying for the service the platform provides. These changes include:

- making the cost of the platform service clear to investors by ensuring that the platform service is paid for by a platform charge which is disclosed to and agreed by the investor; and

- banning cash rebates for non-advised platforms to prevent these payments being used to disguise the costs of the platform charge.

These rules will come into force on 6 April 2014 but platforms will have two years to move existing customers to the new explicit charging model. At the end of the two year transitional period (6 April 2016) platforms will have to charge their customers a platform charge for both new and existing business.

LAW COMMISSION

Law Commission to review the Fiduciary Duties of Investment Intermediaries

In July 2012, John Kay published his Final Report on UK Equity Markets and Long Term Decision Making. The Report concluded a year-long review, commissioned by the Department for Business Innovation & Skills (BIS), tasked with considering the functioning of UK equity markets (the Kay Review). The Report identified widespread concern about how fiduciary duties were interpreted in the context of investment. In particular, some stakeholders felt:

- it was not clear who in the investment chain was subject to fiduciary duties and what those duties were;
- their fiduciary duties required them to maximise returns over a short timescale, precluding consideration of long-term factors which might impact on company performance; and
- their obligations were entirely defined and limited to their contractual obligations or required no more than a duty of care.

Accordingly, one of the Report's recommendations was that 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.

On 22 November 2012, the Government published its response to the Report in which it stated it supported the Kay Review's analysis and conclusions. As a result, BIS and the DWP jointly commissioned the Law Commission to review the fiduciary duties of investment intermediaries.

The Law Commission started work on this project in March 2013 and expect to open a consultation by October 2013. It intends to publish a report with recommendations to Government by June 2014.

NATIONAL EMPLOYMENT SAVINGS TRUST

NEST sets out expectations on corporate governance through UK voting policy

On 29 April 2013, NEST published its UK voting policy. The policy sets out NEST's views as to how it expects UK corporates to act and how NEST intends to be an effective steward.

At this stage of NEST's development, the voting policy will be used to:

- hold its fund managers to account on the decisions they make;
- set expectations on how NEST believes companies should behave;

- direct engagement with the companies NEST invests in; and
- take part in wider debate on corporate governance with regulators and government.

Press release

NEST's response to their consultation on rule changes has been published. As well as changes included in the draft National Employment Savings Trust (Amendment) Order, the following changes which are not dependent on the changes to the Order will be made in April 2013:

- The proposal to allow the Trustee to deduct tax charges payable on authorised payments after the age of 75 will be extended to encompass the tax charge on serious ill-health payments after age 75 as well as retirement benefits after age 75.
- The proposal to automatically increase a members benefit age to 105 if the member exceeded their benefit age without taking retirement benefits will be amended to increase the benefit age to 75, before again increasing to 105 if the member doesn't take their benefits at 75.
- The proposal to amend the payment of death benefits, where a member of NEST dies after age 75, has been amended to clarify that such payments are made in accordance with the relevant tax law provisions.

PENSIONS EUROPE

PensionsEurope welcomes Swedish Pensions Association as new member

On 22 April 2013, Tjänstepensionsförbundet, the Swedish Occupational Pension Fund Association, joined PensionsEurope.

PENSION PROTECTION FUND

Late retirement factors

The PPF has published actuarial factors to be used in calculating compensation taken late.

A person entitled to, but not yet in receipt of, compensation from the PPF may be entitled to postpone payment of compensation past normal pension age.

The Pension Protection Fund and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2013 (which are effective from 30 April 2013) permit the postponement of PPF compensation and any separate lump sum in specified circumstances up to age 75.

Survivors and dependants will not be able to postpone their payments.

THE TAKEOVER PANEL

New rights for pension scheme trustees

The Takeover Code (the "Code") has been developed to reflect the collective opinion of those professionally involved in the field of takeovers as to appropriate business standards and as to how fairness to shareholders and an orderly framework for takeovers can be achieved.

In July 2012, the Code Committee (the "Committee") of the Takeover Panel issued a consultation on changes to the Code. The proposed amendments were aimed at providing the trustees of the target company's pension scheme (the "Scheme") and the parties to the offer with an opportunity to and framework for expressing and debating their views on the effect the offer would have on the Scheme. The Committee has now published the responses to the consultation and confirmed the changes which will be made.

In brief, with effect from 20 May 2013, pension scheme trustees will have the right to receive information on a takeover bid and to have their opinion on such a bid made available to shareholders. We will be publishing an Alert with further details shortly.