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SO7

### 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

**HMRC:** HM Revenue & Customs

**NEST:** National Employment Savings Trust

**PPF:** Pension Protection Fund

**TPR:** The Pensions Regulator

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## HM TREASURY

### Chancellor's autumn statement: Responding to the report of the Office for Budget Responsibility

The Office for Budget Responsibility (OBR) has today published its "[Economic and fiscal outlook](#)". This sets out forecasts for the economy and the public finances (albeit without specific reference to pensions). The report also contains an assessment of whether the Government is likely to achieve its fiscal mandate and offers a preliminary view on the long-term sustainability of the public finances.

The report notes that the UK economy has recovered more strongly since the spring than the interim OBR expected at the time of the "emergency budget" on 22 June 2010. In addition, the OBR's central forecast is that the economy will continue to recover from the recession but at a slower pace than in the recoveries of the 1970s, 1980s, and 1990s.

The Chancellor, George Osborne, this afternoon [responded](#) to the OBR report, announcing a [Growth review](#) (which is intended to ensure that all Government Departments are doing everything they can to help the country grow and recover from recession) and a plan for [Corporate Tax reform](#). In conjunction with this, the Treasury has published a [revised estimate](#) of the fiscal impact of the Spending Review 2010, based on the OBR's November Economic and fiscal outlook.

Unlike the autumn pre-budget reports under Labour, the Chancellor's statement today does not announce a new wave of budgetary reforms. This may be due in part to the timing of the statement, as it follows in the wake of the Emergency Budget on 22 June 2010 and the Spending Review on 20 October 2010 and precedes the planned Budget on 23 March 2011.

## NATIONAL EMPLOYMENT SAVINGS TRUST

### NEST charges announced

On 24 November 2010, NEST Corporation, the trustee body of the new national pension scheme, announced the charging level for NEST.

NEST will charge 0.3% annually on a member's funds under management, with a charge on contributions of 1.8%. This charge on contributions is designed to cover the initial set-up costs of NEST.

The figure of 1.8% is 0.2% lower than the 2% originally proposed by Labour in March 2010 (see 7 Days dated [22 March 2010](#)) and is described as "significantly lower [...] than most of NEST's target market can achieve today."

Employers will be able to use NEST for automatic enrolment purposes from 2012.

[NEST Press Release](#)

[NEST Briefing Note](#)

## THE PENSIONS REGULATOR

### Guidance on employer debt finalised

Between July and September 2010, TPR [consulted](#) on updated guidance for trustees of DB multi-employer schemes.

The guidance covers the law relating to debts arising under section 75 of the Pensions Act 1995 for multi-employer schemes as at April 2010. It sets out TPR's expectations of trustees when faced with an employer departing the scheme, as well as the responsibilities of trustees who are seeking to ensure that support for the scheme does not deteriorate.

The guidance summarises the mechanisms which can be used to modify the amount of the section 75 debt payable by an employer (for example, using scheme apportionment arrangements and withdrawal arrangements) or, in certain circumstances, to prevent such a debt arising when an employer departs from a multi-employer scheme (such as the new restructuring and de minimis restructuring tests).

It is worth noting that that some of the content only relates to employers' departures from schemes that occur after 5 April 2010. This means that the potential impact on schemes of the judgment in the *Pilots*<sup>1</sup> case has not been included, although TPR does acknowledge its potential impact on earlier employer departures.

TPR's [response](#) to the consultation was published on 23 November 2010, alongside the final [guidance](#).

TPR has also published a number of updated [forms](#) for multi-employer schemes, including its application for approval of a proposed approved withdrawal arrangement

### Single Equality Scheme

TPR is consulting on its "[Single Equality Scheme](#)" for 2010/13. This scheme will replace the 2007/10 scheme and disability action plan, both of which were published in May 2007.

The scheme sets out TPR's objectives and priorities for all aspects of equality and diversity - both in the workplace and in its external work with customers.

The consultation closes on 9 February 2011.

## CASES

### Vasil Ivanov Georgiev v Tehnicheski universitet – Sofia, filial Plovdiv (ECJ: 18 November 2010)

In this case, the [ECJ ruled](#) that a Bulgarian national law which provides for the compulsory retirement of university professors at age 68, and for the extension of employment contracts beyond the age of 65 only by means of fixed-term contracts, was capable of being justified. It also considered that the delivery of quality teaching and the optimum allocation of posts between staff from different age groups within the university were potential legitimate aims.

<sup>1</sup> Pilots National Pension Fund v Taylor (June 2010)

### **Background**

The Framework Directive on Equal Treatment in Employment and Occupation (the Framework Directive)<sup>2</sup> prohibits direct and indirect discrimination on grounds of age. However, under Article 6(1) of the Framework Directive, Member States “may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives and if the means of achieving that aim are appropriate and necessary.”

Similarly, the Framework Agreement on Fixed-Term Work<sup>3</sup> was designed to prevent less favourable treatment of workers on fixed-term contracts (compared to permanent employees) unless that treatment can be objectively justified.

### **Facts**

Mr Georgiev (G) began work as a lecturer at the Technical University of Sofia, Plovdiv Branch (the University) in 1985. The retirement age at the university was age 65. However, for lecturers, employment could be extended for up to two additional years, or three years in the case of professors.

G’s employment contract was terminated with effect from 6 February 2006 as he had reached the retirement age of 65. He was, however, authorised to continue working and a new contract was agreed for an initial period of one year, and later extended for a further year. In January 2007, G was appointed to the post of professor and in January 2008 his contract was extended for a further year.

In 2009 (the year in which G attained age 68), his employment was terminated in accordance with the Bulgarian Labour Code.

G brought two actions before his national court in which he sought to establish that the clause which limited his fixed-term contract to one year was null and void and that his contract should be reclassified as one of indefinite duration. He also challenged the University’s decision to terminate his contract once he reached age 68.

As a result, several questions on the application of the Framework Directive were referred by the Bulgarian court to the ECJ:

- Can national law prevent contracts of indefinite duration for professors after the age of 65?
- Can professors who have reached the age of 68 be compulsorily retired?
- If there is a conflict between the Framework Directive and existing national legislation, should the national legislation be disapplied?

Both the University and the Bulgarian government submitted that the national legislation pursued a social policy aim which was linked to the training and employment of teaching staff. They also contended that the aim was linked to the application of a specific labour market policy which takes account of the specific situation of the staff in the discipline concerned, the needs of the university establishment under consideration and the professional abilities of the person covered. It did not, however, specify the aim of that national legislation and, in essence, merely stated that it pursued the type of aim referred to in the Framework Directive.

<sup>2</sup> Council Directive 2000/78/EC

<sup>3</sup> Annexed to Council Directive 1999/70/EC

**Decision**

The Court held that the Bulgarian national legislation which:

- permitted a compulsory retirement age of 68; and
- only permitted working beyond age 65 by means of fixed-term one-year contracts which were renewable at most twice;

was not in contravention of the Framework Directive, provided that the legislation pursues a legitimate aim which is linked, among other things, to employment and labour market policy. This aim could, for example, be “the delivery of quality teaching and the best possible allocation of posts for professors between the generations” where the legislation makes it possible to achieve that aim by appropriate and necessary means.

In addition, the ECJ confirmed that it was for the Bulgarian court to determine whether these conditions were satisfied. The Court also confirmed that, under the principle of direct effect, in a dispute between an individual and a public institution (the University), if the national legislation did not meet the conditions of the Directive, the national court must decline to apply that legislation.

The case has been remitted to the Bulgarian court.

**Comment**

Given the current review which is underway in the UK of the default retirement age of 65, cases which consider the objective justification for compulsory retirement are of increasing interest for employers.

While it will be up to the Bulgarian national court to determine whether the University's practices can be objectively and reasonably justified by a legitimate aim, the case is useful in helping to build up a collection of potentially legitimate aims.