

30 August 2010

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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

GAD: Government Actuary's Department

HMRC: HM Revenue & Customs

NEST: National Employment Savings Trust

PPF: Pension Protection Fund

TPR: The Pensions Regulator

LEGISLATION

Equality Act 2010¹

On 3 July 2010, the Government announced that the first wave of implementation of the Equality Act 2010 (the Equality Act) will go ahead from 1 October 2010 to pave the way for the implementation of landmark provisions to protect disabled people from discrimination and to tackle the gender pay gap.

The provisions coming into force from that date include:

- the basic framework of protection against direct and indirect discrimination, harassment and victimisation in services and public functions; premises; work; education; associations, and transport;
- application of the European definition of indirect discrimination to all protected characteristics;
- the introduction of a new concept of "discrimination arising from disability", to replace protection under previous legislation lost as a result of a legal judgment; and
- the use of hypothetical comparators for direct gender pay discrimination.

Further information on the new provisions can be found on the Government Equalities Office [website](#).

Today (31 August 2010), three sets of regulations were laid before Parliament which are designed to replicate existing equality provisions - these are detailed below.

The Equality Act (Age Exceptions for Pension Schemes) Order 2010

The Employment Equality (Age) Regulations 2006 (the Age Regulations) implemented the age strand of the EU framework directive for equal treatment in employment and occupation², making it unlawful for pension schemes to discriminate against members or prospective members. The Age Regulations also made exceptions for a number of age-related rules and practices that were considered necessary for the proper operation of occupational and personal pension schemes.

When the Equality Act comes into force on 1 October 2010, it will replicate the non-discrimination provisions contained in the Age Regulations. As the Age Regulations are due to be repealed from that date, this Order appears on first reading to replicate the exemptions in the Age Regulations. These exemptions set out the rules, practices, actions and decisions which occupational pension schemes may use without breaching the non-discrimination rule as well as those relating to contributions by an employer to a personal pension scheme. For example, the Order allows schemes to set a minimum or a maximum age for admission, or a minimum level of pensionable pay for admission to a scheme.

¹ For more information, please see our News: "[A new age of equality](#)" dated June 2010

² Council Directive 2000/78/EC

We will be analysing the Order in more detail and will write again regarding any changes from the current exemptions.

Further information can be found in the [explanatory memorandum](#) which accompanies the Order.

The Equality Act 2010 (Sex Equality Rule) Exceptions Regulations 2010

The Equality Act will also replace the equal treatment rule in sections 62-66 of the Pensions Act 2005, which requires men and women to be treated equally in terms of the provision of occupational pensions. Those sections will be revoked from 1 October 2010 and replaced with an analogous sex equality rule.

These [regulations](#) are designed to replicate the matters which are excepted from the equal treatment rule under The Occupational Pension Schemes (Equal Treatment) Regulations 1995, namely in relation to the equalisation of benefit in bridging pensions and indexation, and the use of gender specific actuarial factors.

Further information can be found in the [explanatory memorandum](#) which accompanies the regulations.

The Equality Act 2010 (Disability) Regulations 2010

The Disability Discrimination Act 1995 (DDA) provides protection for disabled people in a number of fields, including employment, and access to goods, facilities and services. In general, the protection of the DDA has been carried forward to the disability provisions of the Equality Act, although the Equality Act has been designed to improve upon and harmonise the original disability provisions.

In this third set of Equality Act [regulations](#), various technical provisions relating to the definition of disability and the duties to make reasonable adjustments for disabled people are consolidated and applied.

Further information can be found in the [explanatory memorandum](#) which accompanies the regulations.

Guidance

Guidance connected with the new equality regulations will be published as part of the Government's general guidance on the Equality Act. Until then, existing guidance (such as the original Department of Trade and Industry [guidance](#) on the impact of the Age Regulations on pension schemes) remains in place.

The Local Government Pension Scheme (Miscellaneous) Regulations 2010

On 1 April 2008, the new Local Government Pension Scheme ("the 2008 Scheme") was introduced, replacing earlier arrangements under the Local Government Pension Scheme Regulations 1997 ("the 1997 Scheme").

These [regulations](#) make a number of reforms to the 1997 and 2008 Schemes, and form part of the ongoing programme of modernisation of the Local Government Pension Scheme (LGPS).

Alongside a number of technical amendments which are designed to clarify policy intention, the changes made by these regulations include:

- the extension of the rights of individuals who have been awarded a share of retirement benefit following their divorce from an LGPS scheme member;

- clarification of the eligibility criteria for ill-health early retirement pensions and some modifications to the ill-health framework; and
- the removal of the Secretary of State's role in determining any question which might arise between parties relating to the construction of an admission agreement or the rights and obligations under that agreement. This is on the basis that the terms of admission agreements remain a matter for discussion and agreement between the parties, so reference to the Secretary of State is not needed.

The regulations will come into force on 30 September 2010.

Further information can be found in the [explanatory memorandum](#) which accompanies the regulations.

ASSOCIATION OF CONSULTING ACTUARIES (ACA)

Survey on auto-enrolment and NEST

The ACA has conducted a [survey](#) of 210 large private and public sector employers to inform its response to the DWP's current review of auto-enrolment and NEST (the National Employment Savings Trust).

Published on 31 August 2010, the ACA notes that many of the country's largest employers are beginning to consider the impact of proposals to introduce a duty on employers to enrol employers automatically into a qualifying workplace pension scheme.³ Subject to the DWP review, the duty is scheduled to come into force from 1 October 2012.

Key findings from the survey include:

- 42% of employers say they are "likely" or "highly likely" to level down benefits to meet the additional cost of newly pensioned employees;
- whilst 75% of employers support the principle of auto-enrolment, 70% feel the auto-enrolment regulatory regime "appears complex";
- 64% say the new rules requiring employers to re-enrol those who opt-out on a rolling three-year basis should be removed;
- 73% want minimum pension contributions to be based on a percentage of basic pay, rather than full earnings as provided for in the Pensions Act 2008; and
- over 60% say that employers with fewer than five employees should be exempt from auto-enrolment.

The DWP is due to report on its conclusions and recommendations by 30 September 2010. Meanwhile, the ACA is carrying out a separate survey of smaller firms and expects to report on the results of this survey soon.

[ACA Press Release](#)

³ For more information, see our Newsletters: [The Road to 2012: Will your scheme qualify?](#) (dated April 2010) and [The Road to 2012: Building the foundations for new pensions saving](#) (dated October 2009)

DEPARTMENT FOR WORK AND PENSIONS

DWP Survey: Employers' attitudes and likely reactions to the workplace pension reforms

Ahead of the planned workplace pension reforms (see ACA report above), on 24 August 2010, the DWP published its [report](#) of a quantitative survey into employers' attitudes and likely reactions to the reforms. The report describes the main findings of the survey which was carried out in 2009 and, where possible, makes some comparisons with the findings of an earlier survey conducted in 2007.

The report indicates that more than half of all employers (56%), and most eligible individuals (64%), support plans for automatic enrolment into a workplace pension scheme from 2012.

According to the DWP's report, most employers already making pension contributions of 3% or more (the minimum employer contribution that will need to be made in respect of eligible workers following the introduction of the reforms) expect to maintain or increase their level of contribution when they have to provide pensions for all their staff. In contrast to the ACA's findings, 94% of employers who currently contribute at least 3% say they will maintain or increase levels for existing members and 81% say they will offer existing contribution levels or higher to non-members and new employees.

[DWP Press Release](#)

GOVERNMENT ACTUARY'S DEPARTMENT

Public consultation on review of contracted-out rebates

On 23 August 2010, GAD launched a [public consultation](#) on the proposed assumptions for deriving contracted-out rebates for the period 2012 to 2017.

As GAD explains in its [press release](#), the "contracted-out rebate" is the effective reduction of National Insurance contributions for the members of pension schemes which are contracted-out of the State Second Pension (S2P). The contracted-out rebate is set by the Secretary of State for Work and Pensions, having considered the Government Actuary's advice on the cost of providing benefits of equivalent actuarial value to the S2P forgone by workers who are contracted-out.

The Government Actuary is required to produce a report on the DB contracted-out rebate at least every five years in order to identify changes in the factors affecting the appropriate level of the rebate. It has been the Government Actuary's practice to recommend a DB rebate based on appropriate actuarial assumptions. The Secretary of State can then set the rebate percentage having considered the Government Actuary's advice.

The present review will be conducted using a different approach to that used previously. GAD notes that rather than making a recommendation for the DB rebate, the Government Actuary will set out three alternative approaches for calculating the rebate, suggesting a rebate value for each. The purpose of this approach is to allow the Secretary of State to take a decision on the appropriate rebate, with a good understanding of the range of possible values which might be adopted.

Given the expected abolition of DC contracting-out, the consultation focuses on the rebate for DB schemes.

LAW COMMISSION

Consultation on criminal liability in regulatory contexts: pensions aspects

On 25 August 2010, the Law Commission (the Commission) published a [consultation](#) on criminal liability in regulatory contexts.

The consultation sets out the Commission's case for reducing the scope for criminal law to be used in regulated fields, including pensions. The Commission notes that criminal sanctions should only be used to tackle serious wrongdoing and that it is disproportionate for regulators to rely wholly on the criminal law to punish and deter activities that are merely "risky".

In the pensions context, the consultation considers the offences of providing false or misleading information to the PPF or Pensions Regulator contained in the Pensions Act 2004.

The Commission proposes that:

- regulatory authorities should make more use of cost-effective, efficient and fairer civil measures to govern standards of behaviour, such as 'stop' notices, enforcement undertakings and fixed penalties;
- a set of common principles should be established to help agencies consider when and how to use the criminal law to tackle serious wrongdoing; and
- existing low-level criminal offences should be repealed where civil penalties could be as effective.

The Commission estimates that by turning to civil penalties for minor breaches, regulators could reduce costs to themselves and the criminal justice system by £11 million a year.

The consultation closes on 25 November 2010.

[Law Commission Press Release](#)

[Consultation overview](#)

PENSION PROTECTION FUND

PPF publishes long-term funding strategy

To fulfil its wider statutory objectives, the PPF needs to have sufficient funds to pay compensation to the members of the eligible DB or hybrid occupational pension schemes which transfer to the PPF. In order to achieve this target, the PPF has revealed in its first [long-term funding strategy](#) (published on 25 August 2010), that it aims to be financially self-sufficient by 2030.

The PPF estimates that in around 20 years time, the level of risk to the PPF from future insolvencies will have reduced substantially, as there will be fewer eligible schemes and the risks posed by the remaining eligible schemes will be much lower. By then, the PPF aims to have only limited exposure to interest rate, inflation and other market risks, and to have built up a reserve or entered into agreements with third parties to protect itself against other risks such as increased life expectancy.

It is intended that the funding target will be met by a combination of investment returns, proceeds from the assets of schemes brought into the PPF and the annual pension protection levy from eligible pension schemes.

In terms of the levy, this will continued to be collected “having due regard to fairness and affordability”. However, the PPF considers that there may be potential to reduce the levy further down the line. The strategy document notes that “as the level of risk in the eligible defined benefit universe shrinks over time, it might be desirable for the PPF levy to reduce proportionally.”

PPF Chief Executive, Alan Rubenstein, said: “This strategy makes public the work we have been doing behind-the-scenes since we opened our doors for business more than five years ago.

“We think it is important that we expose our plans so we can show how we intend to ensure we have the financial resources needed to pay existing levels of compensation to current and future members of the PPF – and become self-sufficient by the time the level of risk to the PPF from future insolvencies has reduced substantially.”

[Factsheet on the PPF's long-term funding strategy](#)

[PPF Press Release](#)