Sackers extra

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At a glance

LEGISLATION
- Pensions Act 2011

DEPARTMENT FOR WORK AND PENSIONS
- Consultation on draft levy regulations

FINANCIAL REPORTING COUNCIL
- Sharman Panel recommendations published

HM REVENUE & CUSTOMS
- HMRC guidance on obtaining a pension scheme tax reference

HM TREASURY
- Government offer on public service pensions

NATIONAL EMPLOYMENT SAVINGS TRUST
- NEST publishes auto-enrolment guide for employers

PENSION PROTECTION FUND
- PPF releases annual report

THE PENSIONS REGULATOR
- DC Trust: A presentation of scheme return data
- TPR issues report on the Polestar Pension Scheme

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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)
BIS: Department for Business, Innovation and Skills
CPI: Consumer Prices Index
DB: Defined benefit
DC: Defined contribution
DWP: Department for Work and Pensions
FAS: Financial Assistance Scheme
HMRC: HM Revenue & Customs
NAPF: National Association of Pension Funds
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
RPI: Retail Prices Index
TPR: The Pensions Regulator

LEGISLATION

Pensions Act 2011

The Pensions Act 2011 received Royal Assent on 3 November 2011.

Among other things, the Act provides for:

- equalisation of State Pension Age between men and women by 2018, rising to 66 for both sexes by October 2020, including the much debated delay in the introduction of this increase by six months;
- the ability for schemes which specify RPI for calculating pension increases or revaluation in deferment to continue to use this measure without providing a CPI underpin, subject to certain conditions being met;
- amendment of section 251 of the Pensions Act 2004 so that it applies only to payments made to employers under section 37 of the Pensions Act 1995 (essentially, a payment of surplus from an ongoing scheme), with the deadline for trustees to take action to preserve power(s) to pay surplus to employers from an ongoing scheme extended to 6 April 2016; and
- certain changes to the automatic enrolment regime, following the independent review of automatic enrolment and the National Employment Savings Trust[1].

The Act also includes a new definition of “money purchase benefits”, which excludes benefits which could give rise to a funding deficit. This follows the DWP’s announcement, in the wake of the decision in the *Bridge Trustees* case[2], that it would legislate to ensure that benefits which could create a funding deficit may not be classified as “money purchase”. This change is intended to be retrospective, with the main definition of “money purchase benefits” (set out in the Pension Schemes Act 1993) being amended with effect from 1 January 1997.

For more information, please see our Alert: “Better late than never? The Pensions Act 2011” (dated 3 November 2011).

DWP Press Release

[1] Making automatic enrolment work – a review for the Department for Work and Pensions (dated 27 October 2011)

[2] Please see our Alert: “Bridge too far? DWP set to legislate” (dated 28 July 2011)

DEPARTMENT FOR WORK AND PENSIONS

Consultation on draft levy regulations

The DWP has today (7 November 2011), published a consultation on the draft Occupational and Personal Pension Schemes (Levies - Amendment) Regulations 2012. If adopted, these regulations would make changes to the rates of the general levy and the PPF administration levy for 2012/13 onwards (it is intended that the regulations will come into force on 1 April 2012).

General levy on occupational and personal pension schemes

The general levy provides for all of the administration costs of the Pensions Ombudsman and the Pensions Advisory Service. It also covers some of TPR's administration costs, although it excludes TPR's costs in relation to compliance with the new automatic enrolment duties as these are met by the Government.

PPF administration levy

This levy, which is payable by schemes eligible for the PPF, provides for the administration costs of the PPF in respect of both the PPF and the Fraud Compensation Fund. (The PPF's costs in respect of FAS are met by the Government.)

The rates of the general levy and the PPF administration levy are set out in regulations and are reviewed annually. Both levies are payable by eligible pension schemes and calculated based on the number of members in the pension scheme. The rates for both levies have remained unchanged since 2008/09. After the review of the rates for 2012/13, the Secretary of State proposes to reduce the rates of both levies, with the general levy due to be reduced by at least 12%.

The consultation closes on 30 January 2012.

FINANCIAL REPORTING COUNCIL (FRC)

Sharman Panel recommendations published

The Sharman Panel of Inquiry (the Panel), which was established at the invitation of the FRC to consider "*Going Concern and Liquidity Risks: Lessons for companies and auditors*", published its preliminary report and recommendations on 3 November 2011.

The Panel's key recommendations, on which it will now consult, are that the FRC should:

- establish protocols with BIS and other regulatory authorities that will enable it to take a more systematic approach to learning lessons relevant to the scope of its functions when significant companies fail, through assessing the underlying circumstances;

- harmonise and clarify the common purpose of the going concern assessment and disclosure process in the accounting standards and the UK Corporate Governance Code;

- require the going concern assessment process to focus on solvency risks as well as liquidity risks, whatever the business, including identifying risks to the entity's business model or capital adequacy that could threaten its survival, over a period that has regard to the likely evolution of those risks given the current position in the economic cycle and the dynamics of its own business cycles. It should also include stress tests of liquidity and solvency;

- move away from a model where the company only highlights going concern risks when there are significant doubts about the entity's survival, to one which integrates the directors' going concern reporting with the directors' discussion of strategy and principal risks; and
- move away from the three category model for auditor reporting on going concern to an explicit statement in the auditor's report that the auditor is satisfied that, having considered the assessment process, they have nothing to add to the disclosures made by the directors about the robustness of the process and its outcome.

The NAPF, as a representative of investors, is among those to have contributed to the Inquiry.

The Panel intends to issue a final version of its recommendations in February 2012, in the light of responses received and further discussions held between now and the end of the consultation period on 31 December 2011.

FRC Press Release

HM REVENUE & CUSTOMS

HMRC guidance on obtaining a pension scheme tax reference

HMRC has published a flowchart which sets out the process for obtaining a pension scheme tax reference number, in the event that this information is not known.

HM TREASURY

Government offer on public service pensions

Following discussions with trade unions, on 2 November 2011 the Chief Secretary to the Treasury, Danny Alexander, set out details of a new offer to workers on public service pensions.

The revised offer includes:

- an accrual rate of 1/60ths (up from 1/65ths originally proposed);
- no changes for anyone within ten years of their retirement age on 1 April 2012; and
- possible protection for those who are close to ten years from retirement age (subject to further discussions).

To date, we understand that offer has been rejected by the unions and that they will press ahead with plans for industrial action on 30 November 2011.

HM Treasury Press Release

NATIONAL EMPLOYMENT SAVINGS TRUST

NEST publishes auto-enrolment guide for employers

On 1 November 2011, NEST Corporation published a guide for employers, setting out key considerations and actions on automatic enrolment, ahead of its introduction in 2012. It also explains how NEST can help with the new duty.

NEST Press Release

PENSION PROTECTION FUND

PPF releases annual report

The PPF has today (7 November 2011) published its Annual Report and Accounts for 2010/11.

The report reveals that as at 31 March 2011:

- the PPF had a surplus of £678 million over liabilities, representing an increase of £248 million from the previous year;
- the PPF was 105.1% funded, compared with 103.3% the previous year;
- 74,651 people had transferred to the PPF, an increase of 28,258 on 2010; and
- 170 schemes completed the assessment process during the year - ahead of the PPF's target of 135 for the year.

According to the PPF, these figures mean that the probability of it achieving "financial self-sufficiency" by its target date of 2030 increased from 83% at 31 March 2010 to 87% in 2011. (Self-sufficiency for the PPF means a level of assets of 10% in excess of its liabilities.)

Alongside its annual report, the PPF published its Long-Term Funding Strategy Update (the Strategy Update). This is the first formal review since the PPF published its long-term funding strategy in August 2010.

The Strategy Update takes account of:

- the new pension protection levy framework which is due to take effect in 2012/13; and
- the switch from RPI to CPI as the measure of increases for PPF compensation.

PPF Press Release

THE PENSIONS REGULATOR

DC Trust: A presentation of scheme return data

TPR has published its latest annual statistics release on data relating to occupational trust-based DC pension schemes and memberships (including DC memberships of hybrid schemes which have both DB and DC sections). The publication is intended to provide a high level snapshot (as at 1 September 2011) of the current occupational DC pension scheme landscape, based on data from 45,000 schemes.

TPR issues report on the Polestar Pension Scheme

TPR has issued a report in relation to the Polestar Pension Scheme, following the trustees' announcement to members that the scheme is to be wound-up. The scheme had come to the attention of TPR following a 2006 clearance application.

The trustees engaged fully with TPR throughout a period of changes to the sponsoring employer's group. TPR notes that it "will continue to engage with trustees in cases where the ability to fund a scheme is so weak that there is little or no reasonable change of paying the benefits promised under the scheme".

TPR Press Release