

8 October 2012

At a glance

DEPARTMENT FOR WORK AND PENSIONS

- Consultation: the Occupational Pension Schemes (Miscellaneous Amendments No.2) Regulations 2013

CASES

- Olympic Airlines Pension Scheme v Olympic Airlines

FINANCIAL REPORTING COUNCIL (FRC)

- Annual Report and Accounts for 2011/2012
- Exposure Draft

FINANCIAL SERVICES AUTHORITY (FSA)

- Consultation on changes to the Listing Rules

GOVERNMENT ACTUARY'S DEPARTMENT

- Annual report and accounts 2011/12

NATIONAL ASSOCIATION OF PENSION FUNDS (NAPF)

- NAPF Council

OFFICE FOR NATIONAL STATISTICS (ONS)

- Consultation on options for improving the Retail Prices Index

THE PENSIONS REGULATOR

- Automatic enrolment: Get the facts

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

FAS: Financial Assistance Scheme

GMP: Guaranteed Minimum Pension

HMRC: HM Revenue & Customs

NEST: National Employment Savings Trust

PPF: Pension Protection Fund

TPR: The Pensions Regulator

DEPARTMENT FOR WORK AND PENSIONS

Consultation: the Occupational Pension Schemes (Miscellaneous Amendments No.2) Regulations 2013

This [consultation](#) asks for views on changes to regulations which affect DB workplace pension schemes. The amendments will:

- introduce a limited power for the trustees of schemes which provide bridging pensions to modify their schemes' rules to take account of the impact of changes to State Pension Age; and
- make various minor and technical amendments regarding indexation as a consequence of the switch to using the Consumer Prices Index rather than the Retail Prices Index, and measures in the Pensions Act 2011.

Please see our Alert "Consultation on draft legislation – bridging pensions" dated 8 October 2012.

FINANCIAL REPORTING COUNCIL (FRC)

Annual Report and Accounts for 2011/12

The FRC has published its [Annual Report and Accounts](#) for 2011/12.

Exposure Draft

On 3 October 2012, the FRC issued an [Exposure Draft](#) of amendments to the proposed accounting standard draft FRS 102.

The FRC anticipates finalising the draft FRS in early 2013 and for it to be effective for accounting periods beginning on or after 1 January 2015. The FRC also hopes to finalise its draft FRSs 100 and 101 later this year, enabling subsidiaries and parent entities to take advantage of the reduced disclosure framework for 31 December 2012 year ends should they choose to do so.

The proposed amendments relate to the accounting for multi-employer pensions and service concession arrangements, and are only likely to affect a small proportion of entities applying UK accounting standards.

The amendment for multi-employer pensions relates to accounting in specific circumstances where there is an agreement to fund a deficit in a multi-employer pension

plan. This is proposed following evidence of diversity in practice in the application of FRS 17 Retirement benefits. In making this proposed amendment, the FRC also notes the current requirements of paragraph FRS 17.9(b)(v), which requires disclosure of any implications for an employer of a deficit in a multi-employer scheme. Entities participating in multi-employer DB schemes will need to give careful consideration to compliance with this requirement where they have agreed a schedule of funding for a deficit. More details are available in the [technical note](#).

The second amendment relates to accounting, by grantors, for service concession arrangements. This amendment is proposed in response to feedback from respondents and sets out proposed accounting requirements for grantors.

In view of the limited scope of these amendments, the FRC is inviting comments over a 60 day period, ending on 3 December 2012.

[Press release](#)

FINANCIAL SERVICES AUTHORITY (FSA)

Consultation on changes to the Listing Rules

On 2 October 2012, the FSA issued a [consultation](#) on proposed changes to the Listing Rules. The Listing Rules set out the requirements for companies listed in the UK and are the responsibility of the United Kingdom Listing Authority (UKLA), operating under the FSA.

The proposals falls under two headings:

Free float provisions

The free float¹ requirements are set at an EU level and allow the FSA to consider a free float of below 25% if there is sufficient liquidity. The amount of shares in public hands potentially plays a role in giving shareholders sufficient power to counterbalance a dominant shareholder. However, the FSA does not believe that an increase in the free float requirement is a proportionate way to address the governance issues that have been raised in this context. The FSA proposes:

- detailing the circumstances where it might consider modifying the 25% free-float requirement for premium listings, indicating that any modification beneath 20% would be unlikely; and
- removing the requirement for a minimum absolute percentage free float within the standard segment, provided that sufficient liquidity is present.

Corporate governance

The FSA proposes to further strengthen the Listing Regime by adopting greater corporate governance requirements for companies with a dominant shareholder. The FSA will increase the tools available to independent shareholders to influence the governance of the companies in which they have invested. These proposals include:

- introducing the concept of a "controlling shareholder";

¹ "free float" means shares in public hands

- requiring an agreement is put in place to regulate the relationship between such a shareholder and the listed company; and
- ensuring that this agreement is complied with on an ongoing basis. This will ensure that the company is managed independently from that shareholder.

The FSA also recognises the important role that the independent directors play in these circumstances. Therefore it will also insist on a majority of independent directors on the board where a controlling shareholder exists and introduce a new dual voting procedure to allow independent shareholders to have more say in their appointment.

At the same time the FSA is making clear that certain types of company are incompatible with a premium listing including those with voting arrangements that have the potential to subvert or circumvent the investor protections that the premium listing provides.

[Press release](#)

[NAPF comment](#)

GOVERNMENT ACTUARY'S DEPARTMENT

Annual report and accounts 2011/12

GAD has published its [annual report](#) and [accounts](#) for 2011/12.

NATIONAL ASSOCIATION OF PENSION FUNDS (NAPF)

NAPF Council

Lord Hutton, a former Secretary of State for Work and Pensions, is one of four high-profile joiners to the policymaking councils at the NAPF.

Lord Hutton has been elected by NAPF members to a vacant place on the Retirement Policy Council (RPC), which is one of two bodies through which the NAPF develops policy. Recent topics covered by the RPC include state pension reforms, GMP Equalisation and EU Solvency II-type rules.

The other high-profile pensions experts elected to the NAPF's councils are:

- Richard Butcher, Managing Director at Pitmans Trustees (Retirement Policy Council);
- Kerrin Rosenberg, CEO at Cardano Risk Management (Investment Council); and
- John Walbaum, Partner at Hymans Robertson (Investment Council).

[Press release](#)

OFFICE FOR NATIONAL STATISTICS (ONS)

Consultation on options for improving the Retail Prices Index

The Retail Prices Index (RPI) measures changes over time in the costs of goods and services that people buy. The ONS is [consulting](#) about aspects of the methodology used to calculate RPI:

- the formulae used in parts of the calculations; and
- the measurement of private housing rental prices.

Differences between RPI and the Consumer Prices Index (CPI) estimates of inflation are due in part to different formulae used in the indices. This is known as the "formula effect". The National Statistician is seeking views on the following options for RPI:

- no change;
- change one particular approach for averaging changes in prices for clothing – it is for the clothing category that the difference between the CPI and RPI formulae has the greatest effect;
- change one particular approach for averaging changes in prices for all categories – this would reduce the formula effect although some difference between CPI and RPI would remain; or
- change the RPI so its formula align fully with those used in CPI – this would remove the formula effect although there would remain differences between the estimates because of the different coverage, weights and scope used.

The consultation closes on 30 November 2012.

THE PENSIONS REGULATOR

Automatic enrolment: Get the facts

On 2 October 2012, TPR released new [research](#) which shows that levels of understanding of automatic enrolment amongst business advisors are largely unchanged since autumn 2011.

According to the research, 85% of IFAs understand the reforms, compared to 57% of HR professionals, 54% of accountants, 49% of payroll and 29% of bookkeepers.

Earlier research by TPR suggests that 92% of all employers will look to these groups for support in complying with the new duties.

The latest research also shows that intermediaries, such as accountants and IFAs, believe employers will leave seeking advice as late as possible and underlines the need for them to be in possession of the facts to support their clients.

Although TPR estimates that it will take the average large or medium employer about 18 months to plan and get ready for their staging date, according to its July 2012 survey of employer awareness, more than half of employers (60%) with more than 250 employees believe it will take less than a year to introduce the necessary changes to their business. Just over a quarter of these employers (28%) believe it will take less than three months to be ready. In addition, 13% of companies with staging dates in the next 18 months have done nothing to prepare for automatic enrolment. TPR warns that leaving it to the last minute runs the risk of making preparations more costly.

Press release

CASES

Olympic Airlines Pension Scheme v Olympic Airlines

Olympic Airlines ("OA"), a Greek company, went into liquidation in 2009. OA's UK operation had a DB scheme (the "Scheme") with a section 75 debt in excess of £15 million.

The PPF provides compensation to members of eligible DB pension schemes, when there is a "qualifying insolvency event" in relation to the employer, and where there are insufficient assets in the pension scheme to cover the PPF level of compensation. The trustees of the Scheme applied for a UK court order for the winding up of OA so that this would be the "qualifying insolvency event" for the purposes of PPF entry.

Facts

As a Greek company, OA was subject to Greek law. This meant that its liquidation was not a "qualifying insolvency event" and did not trigger PPF entry for the Scheme. The trustees applied to the court to wind up OA so that there would be a "qualifying insolvency event" and the members of the Scheme would be eligible for PPF compensation.

EU insolvency law allows secondary insolvency proceedings to be brought which run in parallel with the main proceedings. Secondary proceedings may be issued in the Member State where the debtor has an "establishment", i.e. "any place of operations where the debtor carries out a non-transitory economic activity with human means and goods".

OA carried on business in England from its head office in London. In addition, it had premises in Manchester and a ticket office at Heathrow. On 17 June 2012 the liquidator informed the trustees of the Scheme that the employment of UK staff would be terminated and OA's contributions to the Scheme in respect of them would cease with effect from 14 July 2010. On 2 July 2010 the liquidator wrote to all 27 employees of OA terminating their employment with effect from 14 July 2010. The services of the General Manager, the financial and purchasing manager and an accounts clerk were retained on an ad hoc basis.

On 20 July 2010, the trustees presented a petition to wind up OA based on the debt it owed to the Scheme under section 75 of the Pensions Act 1995. It is not clear why, but OA opposed the petition on the basis that it was already being wound up in Greece, where its main interests are situated. It contended that it did not have an "establishment" in the UK for the purposes of EU Insolvency law.

Decision

The court was satisfied that, at the date of the petition, OA had an "establishment" in the UK. Therefore, the court had jurisdiction to order its winding up in England.

Comment

This case demonstrates the potential pitfalls of the strict PPF entry requirements. Had the court been unable to find an "establishment" in the UK, PPF entry would have been precluded, despite the Scheme's having paid the PPF levy over many years.