Sackers extra

13 June 2011

At a glance

PENSIONS BILL 2011

- Date announced for second reading

DEPARTMENT FOR WORK AND PENSIONS

- Financial Assistance Scheme: Draft Regulations

HM REVENUE & CUSTOMS

- Removal of the requirement to annuitise at age 75: Further draft regulations

PENSION PROTECTION FUND

- Actuarial Panel established

THE PENSIONS REGULATOR

- Contribution notice in relation to Bonas Group Pension Scheme
- Auto-enrolment checklist for trustees

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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)
DB: Defined benefit
DC: Defined contribution
DWP: Department for Work and Pensions
ECJ: European Court of Justice
FAS: Financial Assistance Scheme
HMRC: HM Revenue & Customs
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

PENSIONS BILL 2011

Date announced for second reading

Having been introduced in the House of Lords in January 2011, the Pensions Bill received its first reading in the House of Commons on 27 April.

After some delay, 20 June 2011 has been announced as the date for the second reading in the House of Commons. Some commentators have suggested that the delay is a result of the Government reviewing its plans to accelerate the increase in the State Pension Age for women, following the comments made by the Pensions Minister, Steve Webb, that he would "reflect" on the proposals.

DEPARTMENT FOR WORK AND PENSIONS

Financial Assistance Scheme: Draft Regulations

The DWP is consulting on proposals to make changes to regulations governing FAS.

The Government has acknowledged that these regulations have been introduced as a result of the widely reported failure of the George & Harding Pension Scheme to meet the eligibility criteria for the PPF. In this case, although the scheme had paid levies and was winding-up with a deficit, the principal employer was not an "employer" for the purposes of the PPF eligibility rules and members' benefits were therefore not protected.

The changes proposed include:

- expansion of the qualifying conditions for FAS to enable certain pension schemes that are ineligible for the PPF (because they are not linked to an employer which meets the statutory definition of "employer") to become qualifying schemes for FAS;
- the ability to implement pension sharing orders during scheme wind-up by allowing for the calculation of assistance payments to pension credit members;
- removal of the age limit for payments to certain surviving disabled dependants;
- the facility to pay arrears of pension to the estates of members who have died between the calculation date and the transfer of assets; and
- alignment of the complaint system for FAS with that in place for the PPF, enabling the PPF Ombudsman to investigate complaints against the FAS scheme manager.

The Government is taking this opportunity to consolidate the twelve existing sets of regulations that govern FAS payments and administration and to simplify the FAS regulatory structure.

The consultation closes on 1 September 2011.

HM REVENUE & CUSTOMS

Removal of the requirement to annuitise at age 75: Further draft regulations

On 8 June 2011, HMRC added to the draft regulations relating to the effective requirement to annuitise by age 75 which are currently open for public comment.

HMRC has published three additional sets of draft regulations:

- The Registered Pension Schemes (Transfers of Sums and Assets) (Amendment No.2) Regulations 2011 make amendments to existing regulations which provide for transfers from a drawdown arrangement to another drawdown arrangement;
- The Registered Pensions Schemes (Relevant Annuities) (Amendment) Regulations 2011 contain minor consequential amendments to existing regulations; and
- The Registered Pension Schemes (Prescribed Manner of Determining Amount of Annuities) (Amendment) Regulations 2011 also contain minor consequential amendments to existing regulations.

Consultation on the draft regulations closes on 24 June 2011.

PENSION PROTECTION FUND

Actuarial Panel established

The PPF has set up a panel of actuarial firms to help carry out Section 143 valuations for schemes in a PPF assessment period, with the aim of saving time, reducing cost and improving the quality of section 143 valuations. Section 143 valuations are used to determine whether the Board of the PPF should assume responsibility for a scheme.

For the time being, the panel will only conduct valuations for schemes that are both underfunded and standard. For all other schemes such as marginal, over-funded or high-profile cases, the scheme actuary will still be expected to carry out the section 143 valuation.

PPF Press Release

THE PENSIONS REGULATOR

Contribution notice in relation to Bonas Group Pension Scheme

TPR has issued a contribution notice (CN) against Michel Van de Wiele (VdW) in relation to the Bonas Group Pension Scheme (the Scheme).

Background

Under the Pensions Act 2004, TPR has the power to issue a CN (provided it is reasonable to do so) where, in the preceding six years:

- there has been an act or deliberate failure to act which was designed to avoid or reduce a debt that would otherwise have fallen due from a company to a pension scheme; or

- with effect from 14 April 2008, an act or failure to act has detrimentally affected, in a material way, the likelihood of a scheme being able to pay members' benefits.

The CN can be aimed at parent and associated companies, directors or shareholders who were a party to that act (or failure to act) requiring them to pay to a scheme the amount which would otherwise have been paid.

Facts

The sponsoring employer of the Scheme, Bonas UK Limited (Bonas), was acquired by Belgian VdW in 1998. Bonas was operating at a significant loss and continued to do so. By the November 2005 valuation date, the Scheme had a £7.7 million deficit. Bonas itself was heavily financially supported by VdW to allow it to continue in business.

Towards the end of 2006, VdW put Bonas into administration and immediately afterwards the business and assets of Bonas were transferred to a new company (this type of arrangement is often known as a "pre-pack administration"). The liability of the Scheme remained with Bonas. At no point in the run-up to the pre-pack administration did VdW give the trustees of the Scheme any opportunity to negotiate as to the level of contributions to the Scheme, nor was TPR's guidance sought.

2010 Determination

TPR originally published its determination to issue a CN 29 June 2010.[1]

TPR's Determinations Panel (the DP) found that VdW had deliberately avoided telling the Trustees or TPR about the pre-pack administration so that it could walk away from the Scheme, taking the risk of a CN being sought by TPR rather than face the swift imposition of a financial support direction or a CN. The DP found that this was VdW's main purpose in refusing to engage with the Trustees and TPR.

The determination notice originally required a contribution of £5.089 million, on the basis that this represented the amount needed to fund the Scheme on the PPF basis. TPR considered that it was reasonable to impose a CN for this sum, particularly in view of the fact that the 'act' in question was the concealment by VdW from the trustees of the imminent administration of Bonas.

However, the CN was not issued at that time, as VdW referred the DP's decision to the Upper Tribunal.

June 2011: Confirmation of the Contribution Notice

Ultimately a full hearing did not take place before the Upper Tribunal because, on the facts of the case, TPR decided it would be appropriate to settle. The settlement reached between TPR and VdW is that a CN should be issued for £60,000, representing a significant reduction from the sum originally proposed.

In its report issued under section 89 of the Pensions Act 2004 (reports of the consideration given by TPR to the exercise of its functions in relation to a particular case), TPR notes that the Bonas case will not cause it to "change its approach to taking proper regulatory action in other cases" and that it "will be operating 'business as usual' in its approach to investigating and enforcing avoidance activity".

TPR Press Release

[1] See 7 Days dated 5 July 2010

Auto-enrolment checklist for trustees

Under workplace pension reforms introduced by the Government, employers will be under a duty (to be phased in from October 2012), to enrol employees automatically into a qualifying workplace pension scheme.

On 10 June 2011, TPR published a 5-step action checklist which gives trustees an overview of the steps they might need to take to ensure that their scheme is ready to be used for automatic enrolment. The checklist is designed to encourage trustees to find out when auto-enrolment will apply to their members, so that they can put in place a timetable for implementing any changes and consider how to communicate the changes to scheme members.

TPR notes that “[it] is anticipated that most schemes will not need to undergo substantial alterations in order to qualify”.

TPR Press Release