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## At a glance

### PRE-BUDGET REPORT

- Pensions provisions

### LEGISLATION

- The Occupational Pensions (Revaluation) Order 2009
- The Local Government Pension Scheme (Miscellaneous) Regulations 2009

### ASSOCIATION OF BRITISH INSURERS

- New standards for pre-retirement wake-up packs

### COMMITTEE OF EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS SUPERVISORS

- Financial Stability Report 2009

### DEPARTMENT FOR WORK AND PENSIONS

- Update on flexible retirement
- Response to Authorised Payments consultation published

### NATIONAL ASSOCIATION OF PENSION FUNDS

- Trustee PensionsConnection launched

### THE PENSIONS REGULATOR

- Consultation on independent trustee register
- TPR warning on transfer incentive exercises

### CASES

- Arjo Wiggins Limited v Henry Thomas Ralph (High Court)

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### Abbreviations

**ABI:** Association of British Insurers

**CEIOPS:** Committee of European Insurance and Occupational Pensions Supervisors

**DC:** Defined contribution

**DWP:** Department for Work and Pensions

**GAD:** Government Actuary's Department

**HMRC:** HM Revenue & Customs

**HMT:** HM Treasury

**NAPF:** National Association of Pension Funds

**PBR:** Pre-Budget Report

**PO:** Pensions Ombudsman

**TPR:** The Pensions Regulator

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## PRE-BUDGET REPORT

### Pensions provisions

The Chancellor, Alistair Darling, delivered his pre-budget report [speech](#) on 9 December 2009.

The [PBR](#) contains a number of key measures affecting pensions.

#### *Tax relief on high earners from 2011*

As announced in the 2009 Budget, from April 2011, tax relief on pension savings will be restricted for individuals with an income of £150,000 or more. Relief will be tapered away so that for those earning over £180,000 it will be worth 20% - the same as for a basic rate tax payer.

The Government is now formally [consulting](#) on how it will implement this restriction. Significantly, in assessing whether a person has hit the £150,000 gross income threshold, it intends that both individual and employer contributions to a pension scheme will be taken into account. But to provide certainty for individuals and reduce administrative burdens for schemes, there will be an income floor on the tax relief restriction, so that it only applies where the individual's income (excluding employer pension contributions) is £130,000 or more.

#### *Transitional anti-avoidance measures*

The 2009 Budget also announced measures to prevent those potentially affected by the 2011 restrictions from making significant additional contributions in the interim. These measures, known as "anti-forestalling", were introduced from 22 April 2009 and apply where individuals whose income is £150,000 or more change the pattern of their normal, regular, ongoing pension savings. Where this is the case and pension savings exceed a special annual allowance of £20,000 (or up to £30,000 for those who have paid "infrequent money purchase contributions") a tax charge will apply.

The PBR extends these provisions, with effect from 9 December 2009, so that individuals with an income of £130,000 or more will also now be caught if they change the pattern of their normal, regular, ongoing pension savings from that date. This move is designed to bring the transitional provisions into greater alignment with the 2011 proposals.

#### *In other pensions news*

- The basic state pension will increase by 2.5%, meaning a weekly increase of £2.40 for an individual who receives the full basic state pension - to £97.65 per week.
- The Government "reaffirms its commitment" to the private pension reforms which include automatic enrolment and Personal Accounts. However, there have been suggestions that these reforms will not be brought into force fully until 2017.

For more information, please see our Alert: [Pensions and the Pre-Budget Report](#). Further information is also available from HMRC in its Pre-Budget Report Notes [18](#) and [19](#).

## LEGISLATION

### The Occupational Pensions (Revaluation) Order 2009

This [Order](#), which will come into force on 1 January 2010, specifies the percentage to be used for revaluing deferred pensioners' benefits in accordance with section 84 (and Schedule 3) of the Pension Schemes Act 1993.

The percentage for the revaluation period 1 January 2009 to 31 December 2009 is 0%. (Although the relevant inflation percentage was negative, no revaluation percentage may be less than zero.)

More information can be found in the [Explanatory Memorandum](#) which accompanies the Order.

### The Local Government Pension Scheme (Miscellaneous) Regulations 2009

Following a [consultation](#) which took place between 28 November 2008 and 20 February 2009, the latest Local Government Pension Scheme (LGPS) amendment [regulations](#) have been laid before Parliament.

The amendments "are necessary to make some corrections and to correct certain cross-references, to clarify detailed aspects of the Scheme's extant provisions [...] to provide clearer definitions, to revise the Scheme in consequence of taxation changes and to introduce some new provisions."

The regulations, which are due to come into force on 31 December 2009, are part of an ongoing programme of modernisation of the LGPS. For instance, in [7 days](#) dated 7 December 2009, we reported on the new LGPS (Management and Investment of Funds) Regulations 2009.

More information can be found in the [Explanatory Memorandum](#) which accompanies the regulations.

## ASSOCIATION OF BRITISH INSURERS

### New standards for pre-retirement wake-up packs

The ABI has published updated [guidance](#) to help pension providers deliver further improvements to the "wake-up" packs which are sent to savers with DC pension policies as they approach their retirement.

The packs include details of the right to shop around using the Open Market Option (OMO), and set out information on the different types of annuity available.

The revised guidance incorporates feedback received during customer testing of the wake-up packs and their impact on consumers' understanding of the OMO and key retirement options. The updates include:

- clear prompts for customers about the importance of reading the pack;
- greater emphasis on the importance and benefits of shopping around;
- a clear timeline for taking benefits; and

- new standards to improve the OMO transfer processes.

[ABI Press Release](#)

## COMMITTEE OF EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS SUPERVISORS

### Financial Stability Report 2009

CEIOPS has published its second half-yearly [Financial Stability Report](#) for the occupational pensions and insurance sector. The report covers developments in the (re)insurance and occupational pension fund markets for the periods 2007 and 2008. It also includes observations and an outlook for 2009 and beyond.

CEIOPS' findings show that the global financial crisis has affected occupational pensions across the European Union, primarily in their capacity as institutional investors. The report notes that although sharp drops in the equity markets and increasing credit spreads had put their investment portfolios under strain in 2008, the subsequent recovery of these markets has helped mitigate their losses.

As has been seen from the Pensions Regulator in the UK, policy responses from supervisors in the light of the downturn have focused on the flexibilities within the existing framework.

[CEIOPS Press Release](#)

## DEPARTMENT FOR WORK AND PENSIONS

### Update on flexible retirement

In October 2007, the DWP issued a consultation on "Flexible Retirement and Pension Provision", seeking views on the application of the Employment Equality (Age) Regulations 2006 in relation to pension provision in the context of arrangements for flexible retirement.

The DWP's response to this consultation was published on 16 December 2008 together with two alternative sets of draft regulations. Under these draft regulations two options were put forward under which certain (very limited) practices would have been permitted, without the need to objectively justify age discrimination on a scheme-by-scheme basis.

In its [response](#) to the 2008 consultation which was published on 10 December 2009, the DWP has concluded, in the light of evidence submitted during the consultation process, that "flexible retirement arrangements have been successfully set up within the current framework". It will not therefore implement either of the proposals put forward in 2008.

However, given the wide range of responses which it received, the DWP considers that "there remains significant uncertainty" around the interaction between the anti-age discrimination legislation and flexible retirement practices generally. It will therefore "consider the prospects for further general guidance on occupational pension schemes and age discrimination", although as yet it has given no indication of when it might do so.

### Response to Authorised Payments consultation published

The DWP has also published its [response](#) to the consultation which took place between 19 August and 29 September 2009 on [The Occupational and Personal Pension Schemes \(Authorised Payments\) Amendment Regulations 2009](#).

As we reported in 7 Days on [9 November 2009](#), these regulations came into force on 1 December 2009. The regulations made consequential amendments to DWP legislation to

ensure that the administrative easement measures of the Registered Pension Schemes (Authorised Payments) Regulations 2009 are fully reflected in corresponding legislation.

## NATIONAL ASSOCIATION OF PENSION FUNDS

### Trustee PensionsConnection launched

The NAPF has launched a new service which is designed to help pension scheme trustees meet the demands of running their scheme.

Trustee PensionsConnection is a free service which is exclusive to NAPF members. Membership benefits include:

- a specialist website, which includes online polls, surveys, presentations and a discussion forum;
- invitations to regular meetings with key industry speakers;
- quarterly newsletters, featuring latest news, views and interviews;
- free subscriptions to *NAPFnews* and *Policywatch*, the NAPF's fortnightly pensions e-newsletter; and
- a free place for pension fund trustees at the NAPF Annual Conference and Exhibition.

## THE PENSIONS REGULATOR

### Consultation on independent trustee register

TPR is required by law to compile and maintain a register of independent trustees who satisfy certain conditions. TPR uses the register to appoint independent trustees to schemes, usually to ensure that the scheme is properly administered and that members' benefits are protected when the employer is insolvent.

Having operated the register for four years, TPR is now reviewing the way in which it assesses the conditions for joining and remaining on the register. It is proposing a number of changes to the criteria it uses to assess whether applicants "have sufficient relevant experience, sound administrative and accounting procedures, and adequate indemnity insurance cover". TPR has therefore published a consultation document on the proposed new criteria which are designed to improve standards across trustees on the register.

### TPR Press Release

### TPR warning on transfer incentive exercises

In a speech to the NAPF Annual Trustee Conference, TPR chair, David Norgrove has called for greater scrutiny of transfer incentive exercises.

Mr Norgrove said that: "Trustees should start from the presumption that such exercises and transfers are not in member interests. If a company is willing to encourage the transfer, the company's gain is likely to be the member's loss."

Mr Norgrove also said that while there may be circumstances in which individuals make a transfer based on sound rationale and advice, TPR will consider using its anti-avoidance powers where behaviour surrounding transfers is "particularly concerning".

TPR notes that the effect of the current economic climate on pension scheme deficits has led many employers to review the form of pension provision offered to employees, which in

turn has led to increased activity in the de-risking and liability management markets. It also notes that since regulatory guidance on inducements was published in January 2007, transfer incentives or enhanced transfer exercises have become more prominent.

[TPR Press Release](#)

## CASES

### **Arjo Wiggins Limited v Henry Thomas Ralph (High Court)**

The High Court has ruled that the Pensions Ombudsman must abide by the same time limits as are imposed on the courts.

#### *Background*

Mr Ralph (R) worked for Wiggins Teape Ltd (now Arjo Wiggins Ltd) (the Employer) between 1959 and January 1986 when he was made redundant. He had been a member of the Wiggins Teape pension scheme (a DB scheme) (the Scheme) but decided to transfer his benefits to an insurance company shortly before he left this employment. The decision to transfer was made on basis that greater benefits were predicted from the insurance company than could be expected from the Scheme.

R complained to his Employer in April 2006 and then in July 2007 to the Pensions Ombudsman. He claimed that he had been given negligent advice by his Employer's pensions department in 1986 and that if he had been given proper advice, he would not have transferred his benefits but would have remained a member of the Scheme. The PO upheld the complaint and directed the Employer to pay the cost of restoring R to the Scheme or pay for equivalent benefits.

The Employer appealed against the PO's decision.

#### *High Court Decision*

The Employer's appeal succeeded as R's claim had been out of time. It was both outside the three year time limit for making complaints and referring disputes set out in the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996, and would have been time barred under the Limitation Act 1980 if it had been made through the courts.

Although the judge considered that the PO has power to investigate and determine a complaint that would be dismissed on the ground of limitation if brought in court<sup>1</sup>, this did not constitute statutory authority to refuse to give effect to a valid limitation defence.

#### *Comment*

This decision will be welcomed by trustees and employers alike, given the difficulties involved in investigating a complaint which is based on acts or omissions which occurred many years previously.

However, it should be noted that in cases of "pure maladministration" (i.e. where no legal rights have been infringed), there is no applicable limitation period.

<sup>1</sup> Regulation 5