Sackers extra

15 March 2010

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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
HMRC: HM Revenue & Customs
HMT: HM Treasury
NICs: National Insurance Contributions
PPF: Pension Protection Fund
S2P: State Second Pension
SERPS: State Earnings Related Pension
TPR: The Pensions Regulator

Legislation

The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010

Following consultation between 17 September and 29 November 2009, the Government has today laid before Parliament regulations which amend the Occupational Pension Schemes (Employer Debt) Regulations 2005 (the Employer Debt Regulations) and make some consequential amendments. (For more information on the consultation, please see our Alert dated 23 September 2009: Once more unto the employer debt breach.)

The regulations introduce two easements – a general easement and a "de minimis" easement - which can be used when businesses restructure. The aim of these new measures is to reduce the circumstances in which a corporate restructuring (namely an internal reorganisation) will trigger a debt in a defined benefit pension scheme. A number of changes have been made to the regulations as a result of the consultation process.

In addition, a large number of the technical issues on the Employer Debt Regulations generally which were proposed in the 2009 consultation have been removed from this batch of regulations for further consideration.

The regulations are due to come into force on 6 April 2010.

Further information can be found in the explanatory memorandum which accompanies the Order, and in the DWP's response to the consultation, which was also published today.

The Occupational Pension Schemes (Levy Ceiling) Order 2010

Section 175 of the Pensions Act 2004 requires the PPF to set a levy for DB occupational pension schemes (and the DB element of hybrid schemes) to fund the compensation it will pay to scheme members if their employer becomes insolvent and the scheme has insufficient assets to enable it to provide benefits up to the protected PPF level.

The levy ceiling has been uprated by affirmative Order by 0.9%, in line with the increase in the general level of earnings. The Levy Ceiling Order therefore specifies the levy ceiling figure to be imposed on the pension protection levy for the financial year beginning 1 April 2010 as £871,183,684.

Further information can be found in the explanatory memorandum which accompanies the Order.

The Pension Protection Fund (Pension Compensation Cap) Order 2010

This Order provides for the level of the PPF compensation cap to be increased to £33,054.09 (up from £31,936.32) from 1 April 2010. This figure is based on a 3.5% increase in average earnings in the 2008/09 tax year.

When applying the new compensation cap to members whose PPF entitlement is restricted to 90% of benefits (i.e. people below their scheme's normal retirement age), the maximum level of compensation payable to an individual at age 65 will be £29,748.68.

Further information can be found in the explanatory memorandum which accompanies the Order.

The Pension Protection Fund (Miscellaneous Amendments) Regulations 2010

Following a DWP consultation which took place between 26 October 2009 and 15 January 2010 (reported in 7 Days on 2 November 2009), these regulations amend existing provisions governing the payment of pension compensation by the Board of the PPF and the collection of the pension protection levy.

Changes made by these regulations include:

- the raising of the minimum age at which a person can apply for early payment of pension compensation from age 50 to age 55 (unless an individual has a "protected pension age");
- removal of the notice period of six months for an application for early payment of pension compensation and the requirement for an applicant to provide the address of their pension scheme and the name and address of their pension scheme's employer;
- modification of the calculation of pension compensation for active members of career average revalued earnings (CARE) schemes to reflect the way in which pension benefits are calculated in those schemes;
- provision to enable the PPF Board to charge interest when the pension protection levy is paid late. Interest will be charged at 5% above the Bank of England base rate accruing on a daily basis from the 29th day after the issue of a pension protection levy invoice; and
- provision for a waiver of the interest by the PPF Board in specific circumstances.

The regulations relating to the payment of interest will come into force on 1 April 2010 to coincide with the start of the levy year, while the amendments relating to pension compensation will come into force on 6 April 2010.

Further information can be found in the explanatory memorandum which accompanies the regulations.

The Occupational Pension Schemes (Contracting-out) (Amount Required for Restoring State Scheme Rights) Amendment Regulations 2010

The Occupational Pension Schemes (Contracting-out) (Amount Required for Restoring State Scheme Rights) Regulations 1998 set out the detailed method of calculation which must be used when working out the premium payable to reinstate a person into the additional state pension (for example, where a contracted-out occupational pension scheme winds-up underfunded).

These regulations make technical changes to the existing actuarial tables used for ascertaining the cost of restoring a pension scheme member's rights to additional state pension where they have been contracted-out. The revised tables take into account the gradual rise in state pension age from 65 to 68 over the period from 2024 until 2046.

The regulations will come into force on 6 April 2010.

Further information can be found in the explanatory memorandum which accompanies the regulations.

The Registered Pension Schemes etc (Information) (Prescribed Descriptions of Persons) Regulations 2010

HMRC has powers to require information or documents to be provided and to carry out inspections. Following a review of HMRC's powers across the range of its responsibilities, many of these powers have been consolidated and brought into line with each other.

Schedule 36 to the Finance Act 2008 contains powers for HMRC to require information and documents from a taxpayer or third party to require information from a third party for the purpose of checking on another person's tax position where that person's identity is not known.

Paragraph 34B of Schedule 36 makes special provision in relation to requirements for information about certain pension matters. This includes a requirement that where HMRC requires information from a third party, a copy of the notice requiring the information is given to the scheme administrator in relation to a registered pension scheme or the responsible person in relation to an employer-financed retirement benefits scheme. However, this does not apply where the third party is a person of a prescribed description.

These regulations therefore prescribe descriptions of persons for these purposes.

The regulations will come into force on 1 April 2010.

Further information can be found in the explanatory memorandum which accompanies the regulations.

The Registered Pension Schemes (Enhanced Lifetime Allowance) (Amendment) Regulations 2010

Under the Finance Act 2004, some individuals may have an enhanced lifetime allowance, provided that notice of intention to rely on the provisions that allow for this is given in accordance with regulations.

The Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006 contain provisions about the giving of intention notices, as well as administrative provisions in relation to compliance checks by HMRC. Following the recent review of HMRC's powers (referred to above), Schedule 36 to the Finance Act 2008 also now contains administrative procedures in connection with compliance checks. These Regulations therefore amend the 2006 regulations to refer to the procedural steps for compliance checks in Schedule 36.

The regulations will come into force on 1 April 2010.

Further information can be found in the explanatory memorandum which accompanies the regulations.

The Registered Pension Schemes and Overseas Pension Schemes (Electronic Communication of Returns and Information) (Amendment) Regulations 2010

Schedule 2 to the Registered Pension Schemes and Overseas Pension Schemes (Electronic Communication of Returns and Information) Regulations 2006 sets out various pieces of information in relation to pensions that may be sent by and to HMRC in electronic form.

These regulations amend the 2006 regulations to remove entries that are redundant following repeals and revocations made as a consequence of Schedule 36 to the Finance Act 2008. The regulations also make equivalent provision for information about pensions to be sent by and to HMRC by electronic means under that schedule.

Further information can be found in the explanatory memorandum which accompanies the regulations.

The Occupational Pension Schemes (Fraud Compensation Payments and Miscellaneous Amendments) (Amendment) Regulations 2010

The Fraud Compensation Fund (FCF) is a statutory fund which is managed by the Board of the PPF. The Pensions Act 2004 and regulations made under it provide the framework within which the PPF Board may make fraud compensation payments. (Before the PPF Board took responsibility for fraud compensation payments, they were administered by the Pensions Compensation Board under provisions in the Pensions Act 1995.)

Fraud compensation payments may be considered where the assets of a scheme have been reduced and the PPF Board considers that there are reasonable grounds for believing that the reduction was attributable to dishonesty (including intent to defraud).

The regulations allow the PPF Board to make fraud compensation transfer payments from the FCF to the PPF and set out how fraud compensation transfer payments are calculated. Fraud compensation transfer payments can be made in circumstances where:

- no application by the trustees or managers of an eligible pension scheme has been made for fraud compensation prior to the PPF Board assuming responsibility for the scheme; or

- such an application has been made, but was withdrawn before the PPF Board determined whether or not fraud compensation payments should be made to the trustees or managers.

Further information can be found in the explanatory memorandum which accompanies the regulations.

The Social Security Revaluation of Earnings Factors Order 2010

The Social Security Revaluation of Earnings Order is made each year to revalue historic earnings factors in line with the movement in average earnings. (Earnings factors are the formulae for converting flat-rate and earnings-related NICs into entitlement to flat-rate and earnings-related benefits, and for calculating earnings-related entitlement over the working life.)

This annual revaluation exercise allows earnings factors derived from historic earnings to be restated at current values as part of the calculation of new pensioners' entitlement to Additional Pension under both the SERPS and S2P. Earnings factors are also used to calculate the Guaranteed Minimum Pension for early leavers and retired persons in contracted-out salary-related schemes.

As average earnings in Great Britain increased by 1.2% between September 2008 and September 2009 (including bonuses and arrears), the Order provides for earnings factors for 2009/10 to be increased by that percentage, and for earnings factors for earlier tax years to be increased by percentages which reflect, in addition, the increases provided for by previous Orders.

Further information can be found in the explanatory memorandum which accompanies the Order.

The Occupational Pension Schemes (Levies) (Amendment) Regulations 2010 (Draft regulations)

Regulations came into force on 8 March 2010 which are designed to implement the European Commission's decision of 11 February 2009, that the partial exemption of the BT Pension Scheme from payment of a levy to the PPF, arising from the Crown guarantee, constituted an incompatible state aid (as reported in 7 Days on 8 February 2010). Those regulations remove the partial exemption from payment of the PPF levy and also enable schemes with a full Crown guarantee to become "eligible schemes", where retaining these provisions would give rise to incompatible state aid.

Draft Regulations have now been laid which remove an exemption from payment of the PPF administration levy where it gives rise to incompatible State aid and ensure that where that levy becomes payable part way through a financial year it is paid in full for that year.

Further information can be found in the explanatory memorandum which accompanies the draft regulations.

The Social Security Pensions (Low Earnings Threshold) Order 2010

S2P reformed SERPS from 6 April 2002. An important element of the reform is that, from 2002 onwards, earnings used to determine an additional pension that fall between the National Insurance Lower Earnings Limit and the Low Earnings Threshold (LET) are treated as being at the LET.

Each year, the Secretary of State is required to review changes in the general level of earnings and if it appears to him that the general level of earnings has increased during the review period, to make an Order to set the LET for the following year. This Order effects the annual uprating of the Low Earnings Threshold for 2008/09. The threshold is increased to £14,100 for 2010/11 (up from £13,900 for the 2009/10 tax year).

The Order will come into force on 6 April 2010.

Further information can be found in the explanatory memorandum which accompanies the Order.

Department for Work and Pensions

Contracting-out to be abolished from 6 April 2012

The DWP has confirmed that the option to contract-out of the additional State Pension into a DC pension scheme will be abolished from 6 April 2012. This was legislated for in the Pensions Acts 2007 and 2008, although the date for these provisions to come into force had not previously been confirmed.

Individuals who are contracted-out into a DC pension scheme will be automatically brought back into the additional State Pension from this date.

The DWP has published a fact sheet for employers which explains what changes are being made, how they can start planning for the changes, and a "Q&A" on the abolition of contracting-out.

HM Revenue & Customs

Guidance published on Special Annual Allowance Charge (Protected Pension Input Amounts) Order 2010

Following publication of the Special Annual Allowance Charge (Protected Pension Input Amounts) Order 2010 (on which we reported on 7 Days on 1 March and 8 March 2010) HMRC has published updates to the Registered Pension Schemes Manual (RPSM), on the operation of these regulations.

These updates are currently in PDF form but are expected to be included in HMRC's online version of the RPSM in due course.

HM Treasury

Budget 2010

The Chancellor, Alistair Darling, has announced that the 2010 Budget will take place on Wednesday 24 March at 12:30pm.

We will be reviewing any pensions developments in this Budget and will report on these in 7 Days on 29 March 2010.

Consultation: Solvency II and the Taxation of Insurance Companies

HMT and HMRC have published a joint consultation document about the impact of the EU Solvency II Directive on the taxation of insurance companies.

Solvency II is an EU-wide initiative which is currently scheduled to come into effect in 2012. The aim of Solvency II is "to introduce a modernised, risk-based approach to the regulation of insurance companies whilst at the same time ensuring appropriate protection for policyholders."

The consultation focuses on the implications of the Directive for the taxation of UK insurers and, in particular, invites comments on two areas as a direct response of Solvency II:

- the technical and transitional issues arising from a move to a new approach, based on statutory company accounts, to the calculation of trading profits for life companies; and
- the tax consequences of Solvency II on the general insurance industry, and Lloyd's of London, and in particular the impact on the reserves maintained and the treatment of claims equalisation reserves.

The consultation closes on 2 June 2010.

The consultation document notes that "in view of the Solvency II timetable, it is envisaged that legislation will be in the Finance Bill 2011".

Pension Protection Fund

PPF unveils new Statement of Investment Principles

On 10 March 2010, the PPF published its new Statement of Investment Principles (SIP), in accordance with its requirements under the Pensions Act 2004 and regulations made under the Act.

The SIP outlines the principles and policies governing determinations about investments made by or on behalf of the PPF Board in the management of the PPF's assets. The SIP will be reviewed annually "or when there is, or the Board anticipates that there might be, a significant change in relation to any matter contained in this Statement or to any of the matters which this Statement is required to cover by the Regulations".

Under the new SIP, the PPF will diversify its return-seeking assets, leading to less investment in listed equities in the short to medium-term and a new allocation to private equity and infrastructure investments and a more global approach generally.

The PPF's aim is to outperform its benchmarks during the year by 1.8%, rather than the current target of 1.4%. However, the PPF intends to maintain its low-risk approach to investments, so that at least 65% of the portfolio will remain invested in cash and bonds.

PPF press release

Guidance in relation to the PPF Board's power to modify relevant contracts

Under section 161 of the Pensions Act 2004 and regulation 2 of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006, when the PPF assumes responsibility for a scheme it has the power to disapply any term of a contract which has been entered into by that scheme, or to substitute a reasonable term or condition in its place, if it considers that term to be "onerous".

According to the Board of the PPF, industry concern that existing contracts might be disclaimed when a scheme transfers to the PPF has led some fund managers to insert an additional trigger event into termination clauses in their contracts. Such clauses would automatically trigger early termination of the contract on the transfer of a scheme to the PPF.

Given that such early termination will generally not be in the interests of either trustees or fund managers, in March 2009 the Board of the PPF published an open letter consulting on its proposed solution (which included draft standard wording for agreements between trustees and counterparties) to address these concerns is seeking to address this by providing.

On 9 March 2010, the PPF published its guidance for trustees and counterparties on the Board's approach, the proposed additional termination event wording and a draft of the deed which the Board will issue confirming that it will not exercise its powers to disclaim.

The guidance includes:

- an explanation of how the Board intends to use its power to disclaim onerous contracts;
- proposed standard wording to include in ISDA contracts between trustees and counterparties that specifies when an Additional Termination Event will arise; and
- a template of the Deed that the Board will issue to notify counterparties that it will not exercise its powers to disclaim any of the terms of the specified contract.