Sackers extra

15 November 2010

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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
HMRC: HM Revenue & Customs
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

LEGISLATION

Disclosure Regulations published

On 8 November 2010, the Occupational, Personal and Stakeholder Pension Schemes (Disclosure of Information) (Amendment) Regulations 2010 (the Regulations) were laid before Parliament.

Disclosure was first identified as an area for potential reform in the Deregulatory Review in 2007. However, as a result of consultation, plans to deregulate disclosure requirements were withdrawn. For more information, please see our Alerts: "Deregulation of disclosure requirements left out in the cold?" dated 14 January 2010 and "Fresh approach to disclosure regulation" dated 16 March 2009.

The final version of the Regulations now simply formalise the requirements for electronic communications between pension schemes and their members. They also reduce the information which needs to be included in Statutory Money Purchase Illustrations.

The Regulations will come into force on 1 December 2010.

Further information can be found in the Explanatory Memorandum which accompanies the Regulations, and in the DWP's consultation response which was published on 12 November 2010.

Please look out for our Sackers Extra News on the Disclosure Regulations.

DEPARTMENT FOR WORK AND PENSIONS

EU Pensions Green Paper: Consultation closed today

In July 2010, the European Commission launched a consultation "Towards adequate, sustainable and safe European pension systems" (see 7 Days dated 12 July 2010 for more information). The consultation closed today, 15 November 2010.

The EU Commission's aim has been to collate views as to whether, and how, the EU pensions framework should be adjusted in order to provide the best support for Member States, to ensure they achieve their agreed goal of adequate and sustainable pensions for EU citizens. The consultation was prompted by, among other things, the increasing strain on pensions systems around the EU as a result of increasing longevity.

However, while the EU Commission aims to support Member States in their efforts to ensure sustainable pension systems in the long-term, it has caused alarm by reigniting the debate in relation to the application of Solvency II (in particular the solvency standards which apply to insurance companies) to occupational pensions. The Commission suggested in the Green Paper that "the Solvency II approach could be a good starting point, subject to adjustments to take account of the nature and duration of the pension promise, where appropriate." It also goes on to state that "the suitability of Solvency II for pension funds needs to be considered in a rigorous impact assessment, examining notably the influence on price and availability of pension products."

The DWP is one of a number of organisations to have responded to the consultation, with the Coalition Government welcoming the debate, "as a timely contribution to the debate on the challenges of an ageing society". However, on the proposed application of insurance-style solvency standards, Minister for Pensions, Steve Webb said: "We fully support creating a robust and sustainable single market for insurance, but we don't believe the new capital solvency requirements should be applied to occupational pensions." As the DWP notes in its press release, "in the UK the employer's covenant already places a legal obligation on employers to pay into pension schemes, this is enforced by the Pensions Regulator and the Pension Protection Fund offers protection in the event of an employer becoming insolvent."

Sackers has also responded to the consultation.

DWP Business Plan

The Prime Minister has published business plans which set out the work of Government for the next four years.

The plans include financial information, structural reform plans and departmental priorities and are described as marking "the start of a major change in the way government works and will bring about a power shift in favour of increased Government accountability directly to the public".

Included in these plans is a business plan for the DWP. In relation to pensions, the plan sets out the DWP's progress towards the Government's stated aims of:

- providing decent State pensions;
- encouraging employers to provide high quality pensions and make automatic enrolment and higher pension saving a reality; and
- phasing out the default retirement age to allow more flexibility around retirement.

Prime Minister's Office Press Release

FINANCIAL SERVICES AUTHORITY

FSA proposes changes to its handbook to cover workplace pension reforms

Under planned workplace pension reforms, from October 2012 employers will be required to enrol eligible employees automatically into a qualifying pension arrangement and contribute to it. Employers will be able to choose the type of pension arrangement they use for this purpose and will be able to make use of the new National Employment Savings Trust (NEST).

Following confirmation that the reforms will go ahead (for more information, please see 7 Days dated 1 November 2010), the Financial Services Authority (FSA) has published a consultation paper outlining proposed changes to its Conduct of Business sourcebook.

As the reforms will change the pension landscape significantly, the FSA needs to ensure consumers remain adequately protected. It is also working to make sure that interactions between FSA and DWP rules do not create unnecessary barriers within the workplace pension market.

The FSA's policy proposals broadly fall into two categories:

- the use of group personal pensions (GPPs) for automatic enrolment (including confirmation that when automatic enrolment is used to fulfil an employer's statutory obligation, the Distance Marketing Directive (DMD) does not apply[1]); and
- protecting consumers in the changing pension landscape.

The consultation closes on 9 February 2011.

FSA Press Release

FSA Newsletter

For more information on the workplace pension reforms, please see our Newsletters:

- "The Road to 2012 - Will your scheme qualify?" (April 2010); and
- "The Road to 2012: Building the foundations for new pensions saving" (October 2009).

HM REVENUE & CUSTOMS

Finance Bill 2011: Publication date announced for draft clauses

On 9 November 2010, the Government announced in a written ministerial statement that it will publish the draft clauses planned for Finance Bill 2011 on 9 December 2010.

Also on 9 December, it will publish updates or formal responses to some of the consultations which took place over the summer and autumn, including a response to the consultation on the removal of the requirement to annuitise by age 75 to which Sackers responded.

HMRC Update

Pensions Schemes Newsletter No. 42

HMRC published its latest Pension Schemes Newsletter on 11 November 2010.

Topics covered in Newsletter 42 include:

- *the Pensions Industry Stakeholder Forum*: a new working group with a focus on operational (rather than policy) issues which is designed to be the main route of engagement between HMRC and representatives bodies. The group will comprise HMRC's pensions senior management and pension industry representatives, including the Association of Pension Lawyers; the National Association of Pension Funds and the Society of Pension Consultants;
- *restriction of pensions tax relief:* a reminder that HMRC has published draft legislation covering the reduced annual allowance as well as draft guidance for individuals. The Newsletter also reiterates the HMRC's intention to look more closely at cases where contributions stop being paid to registered pension schemes and start being paid to employer financed retirement benefit schemes (EFRBs) instead.

[1] The DMD (Directive 2002/65/EC) prohibits inertia selling of distance contracts, which means that a lack of response cannot be taken as consent. The automatic enrolment process is built on the premise of inertia selling - automatically putting people into pension saving unless they say otherwise.

NATIONAL EMPLOYMENT SAVINGS TRUST

NEST confirms administration contract with Tata Consultancy Services

NEST Corporation, the trustee body of NEST, announced on 12 November 2010 that it has confirmed its long-term contract for the administration of NEST until 30 June 2020 (with the option to extend the contract for up to five additional years).

The contract with Tata Consultancy Services (TCS) covers all aspects of scheme administration, including web-based enrolment, record keeping, contribution collection and details of each individual's pension pot.

Lawrence Churchill, Chair, NEST Corporation, said: "This is the first of a series of announcements that NEST will make over the coming months, as we complete our preparations for accepting business from volunteer organisations from the second quarter of next year."

In the NEST Press Release, the Pensions Minister, Steve Webb, confirmed that the Government is "on track" to deliver the workplace pension reforms from 2012.

PENSION PROTECTION FUND

Purple Book 2010 Published

On 11 November 2010, the PPF and TPR jointly published the fifth edition of the Purple Book.

The Purple Book highlights trends in DB pension schemes and focuses on the previous financial year ending in March 2010. It looks in particular at how risks have changed over the previous year. The current edition has a greater focus on data than in previous years, given the amount of data now accumulated.

Schemes in the PPF assessment period have been removed, in order portray more accurately the risks for schemes still in the DB pension scheme universe and which are not built into the PPF balance sheet.

The Purple Book is based on 6,596 schemes, representing 96.3% of schemes which are eligible for the PPF and 99.8% of estimated eligible liabilities. It also contains information on the status of DB parts of hybrid schemes.

PPF Press Release

PPF Publishes Updated Statement of Investment Principles

The PPF has updated its Statement of Investment Principles (SIP) as part of the continuing development of its investment strategy.

As the PPF explains in its Press Release, the main changes to the SIP mean an extension of the PPF's hedging strategy to include the potential use of bond repurchase agreements, and securities lending. This activity remains in line with the PPF's general low-risk approach to asset management.

THE PENSIONS REGULATOR

Statement on employer related investments (ERI)

On 10 November 2010, TPR published a statement on the ERI restrictions which apply to occupational pension schemes.

Key points:

- Set in part against the backdrop of recent changes in legislation, TPR's statement is aimed at trustees, employers and their advisers involved in scheme funding negotiations and decisions about investment strategy.
- Occupational pension schemes are subject to a general rule that no more than 5% of their assets can be invested in sponsoring employers.
- Prior to 23 September 2010, there was a limited exception to the general rule where a scheme invested in certain types of collective investment scheme (CIS). This meant that trustees did not have to 'look through' to see whether the underlying assets of the CIS were invested in a sponsoring employer.
- TPR's statement sets out some considerations for trustees who, despite best efforts, find themselves at risk of being in breach of the complex legislative requirements.

If you have any questions or concerns about TPR's statement, please speak to your usual Sackers' contact.

For more information, please see our Alert: "Employer related investments - TPR's statement" dated 10 November 2010.

TPR Press Release