

Pensions law – the week in review

16 March 2009

AT A GLANCE

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THE PENSIONS REGULATOR

- Chairman of the Determinations Panel re-appointed

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1 LEGISLATION

1.1 The Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009

Following a consultation which was launched on 8 December 2008, The Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009 have now been published in final form.¹ These regulations seek to make a number of (unconnected) amendments to regulations governing occupational, personal and stakeholder pensions in order to:

- help occupational pension schemes wind-up more quickly and efficiently;
- enable trustees to take full advantage of changes to existing statutory requirements on increasing pensions in payment and revaluing accrued rights, by allowing trustees to amend their rules by resolution (these provisions have been amended from the draft so that employer consent is required to such a change, and to clarify the circumstances in which the rate of revaluing/increasing pensions can be reduced);
- tidy up some out of date legislation;
- make it easier to apply the scheme funding requirements in specific situations;
- incorporate provisions of the EU Pensions Directive relating to investments in the sponsoring employer into UK legislation;
- provide a power for the Pensions Regulator to impose a financial penalty on a person who has not complied with certain requirements to consult about future changes to a pension scheme; and

¹ For more details, please see our Alert: "When draft regulations are born!" dated 10 December 2008 (available from the client area of our website or from your usual Sackers contact)

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- make it easier for members of occupational pension schemes with benefits payable as a result of a pension sharing order to take a pension before normal benefit age in line with other scheme benefits.

Other than the investment provisions, these regulations will come into force on 6 April 2009.

The regulations and accompanying explanatory memorandum can be accessed by clicking on the links below:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090615_en.pdf

http://www.opsi.gov.uk/si/si2009/em/uksiem_20090615_en.pdf

1.2 The Pensions Regulator (Miscellaneous Amendment) Regulations 2009

Currently the Regulator has the power to look back at the actions of an employer, or someone who is connected or associated with the employer, requiring that the recipient put in place appropriate financial support for an occupational pension scheme, where the sponsoring employer of the scheme is a service company or is “insufficiently resourced”. The “look back” period is currently 12 months, ending on the date on which the determination to issue the FSD is made.

The Regulator carried out an operational review and found this period to be insufficient. Following consultation on these regulations (first published in draft on 15 December 2008²), the final version (published today) confirms that the lookback period will be 24 months. There will also be a staged increase in the look back period from 12 to 24 months, until the transition date of 6 April 2010, when the full 24 months will apply.

The regulations also make changes to the notifiable events regime, by removing three of the events which previously triggered a requirement to notify. Those events are:

² For more information, please refer to 7 Days dated 15 December 2008

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- two or more changes in the holders of any key scheme post within the previous 12 months;
- any change in the employer's credit rating, or the employer ceasing to have a credit rating; and
- two or more changes in the holders of any key employer posts within the previous 12 months.

The regulations will come into force on 6 April 2009.

To view the regulations and accompanying explanatory memorandum, please click on the links below:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090617_en.pdf

http://www.opsi.gov.uk/si/si2009/em/uksiem_20090617_en.pdf

1.3 The Guaranteed Minimum Pensions Increase Order 2009

Following the publication in January of this Order in draft³, the final Order specifies the amount by which the guaranteed minimum pension element of an individual's occupational pension entitlement must be increased, with effect from 6 April 2009.

To access a copy of the Order, please follow the link below:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090477_en.pdf

1.4 The Pensions Act 2008 (Abolition of Safeguarded Rights) (Consequential) Order 2009

The Pensions Act 2008 provides for the abolition of safeguarded rights (pension credit benefit derived from contracted-out rights). This Order makes consequential amendments to remove safeguarded rights from various sets of regulations.

³ For more information, please refer to 7 Days dated 2 February 2009

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To view the Order and accompanying explanatory memorandum, please follow the links below:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090598_en.pdf

http://www.opsi.gov.uk/si/si2009/em/uksiem_20090598_en.pdf

For more information, please see our Alert: "Pensions Act 2008 - The Road to 2012".⁴

1.5 The Social Security Benefits Up-rating Regulations 2009

As we explained in 7 Days on 9 February 2009, this Order, which has been today published in final form sets out the 2009/10 rates for all social security benefits and includes details of the basic state pension. It incorporates the increase (announced in the Pre-Budget Report on 24 November 2008) in the basic state pension for a single person to £95.25 (from £90.70) per week and to £152.30 for a couple (up from £145.05). This represents a 5% increase, in line with the increase in the Retail Prices Index from 1 October 2007 to 30 September 2008.

This change will come into force on 6 April 2009.

http://www.opsi.gov.uk/si/si2009/draft/pdf/ukdsi_9780111472798_en.pdf

http://www.opsi.gov.uk/si/si2009/em/uksiem_20090607_en.pdf

1.6 The Social Security Revaluation of Earnings Factors Order 2009

The Social Security Revaluation of Earnings Factors 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 National Insurance contributions into entitlement to flat-rate and earnings-related benefits, and for calculating earnings-related entitlement over the working life.)

⁴ Available from the client area of our website or from your usual Sackers contact.

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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 State Earnings-Related Pension Scheme and the State Second Pension. 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 3.1% (including bonuses and arrears), the Order provides for earnings factors for 2008/09 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.

To view the Order and explanatory memorandum, please follow the links below:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090608_en.pdf

http://www.opsi.gov.uk/si/si2009/em/uksiem_20090608_en.pdf

2 BOARD FOR ACTUARIAL STANDARDS (BAS)

2.1 Appointment of new chairman

Jim Sutcliffe, FIA, has been appointed to be the next Chairman of the BAS. He will also act as a Director of the Financial Reporting Council.

<http://www.frc.org.uk/press/pub1888.html>

3 DEPARTMENT FOR WORK AND PENSIONS (DWP)

3.1 Attitudes towards investment choice and risk within the personal accounts scheme: Report of a qualitative study

This DWP research report was conducted with individuals who would be eligible for automatic enrolment into the personal accounts scheme. It considers:

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- individuals' understanding of, and appetite for, financial risk in general and in relation to saving for retirement;
- responses to, and preferences for, potential investment fund choices; and
- the likelihood of individuals making an active choice of investment funds within the personal accounts scheme.

To access a copy of the report, please follow the link below:

<http://www.dwp.gov.uk/asd/asd5/rports2009-2010/rrep565.pdf>

3.2 Consultation: The Pensions (Automatic Enrolment) Regulations 2009 and the Pensions Regulator (Delegation of Powers) Regulations 2009

On 12 March 2009, the DWP published a consultation on two sets of draft regulations relating to the personal accounts provisions of the Pensions Act 2008⁵:

The draft Pensions (Automatic Enrolment) Regulations 2009 set out the practical arrangements for automatic enrolment of eligible employees (defined as “jobholders” under the Act) into qualifying pension arrangements, including the procedure for opting out. They are currently scheduled to come into force in 2012.

The draft Pensions Regulator (Delegation of Powers) Regulations 2009 are intended to enable the Pensions Regulator to delegate certain specified compliance powers in relation to the personal accounts regime to external public and private bodies. They are intended to come into force in the autumn of 2009.

The consultation document can be accessed by clicking on the link below:

<http://www.dwp.gov.uk/consultations/2009/pensions-auto-enrol-regs2009.pdf>

⁵ For further details, please see our Alert, “Pensions Act 2008: the Road to 2012” dated 5 December 2008

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3.3 Consultation: Review of Disclosure of Information Requirements applying to Occupational, Personal and Stakeholder Pension Schemes

In the 2007 Deregulatory Review of Private Pensions⁶, Ed Sweeney and Chris Lewin recommended that the DWP explore a “principles-based” approach to regulation and suggested that this should be piloted in relation to the disclosure of information requirements which apply to occupational pension schemes.

Since then, the Government has considered the proposal and commissioned a working group to look into the issues further.

This consultation sets out the results of a review of the disclosure of information requirements which apply to occupational and personal pension schemes and puts forward proposals for reform. The general intention is to streamline and, where possible simplify the requirements, and to make provision for information to be provided “within a reasonable period”, rather than setting out specific time limits.

For more information, please see our Alert: “Fresh approach to disclosure regulation” dated 16 March 2009.⁷

To access the consultation document, please follow the link below:

<http://www.dwp.gov.uk/consultations/2009/pen-scheme-disclosure-reqts-consultation.pdf>

4 NATIONAL ASSOCIATION OF PENSION FUNDS (NAPF)

4.1 Publication of "Hedge Funds Made Simple"

On 12 March 2009, the NAPF published its latest Made Simple Guide, Hedge Funds Made Simple.

⁶ For further details, please see our Alerts, “Deregulatory review – the simple life?” dated 27 July 2007 and “Action and Reaction: MNTs and the Deregulatory Review” dated 26 October 2007

⁷ Available from the client area of our website or from your usual Sackers contact

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The new guide aims to provide a clear, easy to understand explanation of the main features of hedge funds as an investment for UK pension funds.

To read the NAPF's press release, please follow the link below:

[NAPF press release](#)

4.2 Responsible Investment Guidance updated

The NAPF has also issued new guidance on responsible investment. Their aim is to update the NAPF Social Responsibility guidance, published in 2005, and to assist investors, principally pension funds, in developing their policies in this area.

To access the press release and Responsible Investment Guide, please follow the links below:

[NAPF press release](#)

[NAPF: Responsible Investment Guide](#)

5 PENSION PROTECTION FUND (PPF)

5.1 No change to s.143 and s.149 valuation assumptions

The PPF has issued the following alert:

“s143 & s179 Valuation Assumptions

The Board of the Pension Protection Fund has confirmed that it will not, for the time being, be adjusting its valuation assumptions in respect of s143 and s179 valuations.

This follows meetings during the fourth quarter of 2008 with most of the insurance companies presently active in the bulk annuity buy-out business. Legislation states that the PPF's assumptions should reflect insurance company buy-out price assumptions.

The Board has taken this decision partly because of the difficulty of drawing any firm conclusions from a market that had suddenly become thinner and significantly more volatile. It was also partly because any increase in discount rates (which would be small in any case) might have to be fairly quickly reversed if expected price increases materialised.”

For more information, on this decision, please refer to the FAQ on the Section 179 and Section 143 FAQs page of the PPF website. This can be accessed via the link below:

[PPF: FAQs on s.143](#)

[PPF: FAQs on s.179](#)

6 THE PENSIONS REGULATOR

6.1 Chairman of the Determinations Panel re-appointed

The Secretary of State has agreed to the re-appointment of John Scampion CBE as Chairman of the Pensions Regulator's Determinations Panel for a period of four years from 6 April 2009.

Mr Scampion has already served as Chairman of the Determinations Panel for the last four years.