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NEXT ISSUE

The next issue of 7 Days will be published on 4 January 2009

With best wishes for Christmas and the New Year from all at Sackers

SO7

Abbreviations

DB: Defined benefit
DC: Defined contribution
DWP: Department for Work and Pensions
HMRC: HM Revenue & Customs
LGPS: Local Government Pension Scheme
PPF: Pension Protection Fund
PPI: Pensions Policy Institute

DEPARTMENT FOR WORK AND PENSIONS

Working Paper No. 74: Workplace pension market model

The DWP's latest working paper examines the impact of the 2012 pension reforms on the workplace personal pensions market.

The key aim of the research was to understand "how different levels of charges and charging structures impact the profitability of serving different market segments".

The report sets out details of a model which has been developed by Charles River Associates for the DWP, which focuses on the underlying approach to developing the model. The model is designed to assess whether or not it is profitable for private sector providers to offer a new pension to a particular type of firm; it is not looking at whether it is worth continuing to offer, or to expand, existing pensions.

Research Report 623: Employer attitudes to collective defined contribution pension schemes

Shared risk pension arrangements, including collective DC schemes, were considered as part of a consultation on pension scheme risk sharing which took place during the summer of 2008. In its response to that consultation, the Government indicated that it would undertake further work on the detail of how collective DC schemes might operate in the UK.

The DWP has now published findings from qualitative research with 45 employers, which examines their attitudes to and understanding of potential collective DC schemes.

The findings show that employers recognised that the aim of collective DC schemes was to provide a more predictable level of retirement income without transferring the financial risks and liability to employers (in other words, to provide a middle ground between DB and DC schemes).

However, the employers considered that collective DC schemes would not offer greater security for members than pure DC schemes as pensions would not be guaranteed. Similarly, employers were of the view that such schemes would be unlikely to provide a level of pension comparable to a DB scheme. When compared with contract-based DC schemes, there were also additional costs associated with collective DC schemes to consider, such as a trustee board and professional advisers.

The general consensus amongst the employers surveyed was therefore that they would be unlikely to consider switching to a collective DC scheme, "unless the running costs and trustees' liabilities were commensurate with its ability to deliver longer term stability and greater financial return".

DWP Press Release

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HM REVENUE & CUSTOMS

Change to NMPA: Practical issues explained

Normal minimum pension age (NMPA) is the earliest age at which a member's pension benefits can be taken under a registered pension scheme without higher tax charges applying. In general, NMPA will increase from age 50 to 55 from 6 April 2010.

HMRC has now published guidance in Pension Schemes Newsletter 38 on some of the practical issues arising from the change in NMPA and, in particular, its approach to benefits coming into payment around 6 April 2010.

Under the Finance Act 2004, a pension cannot generally be "paid" before a member reaches NMPA if it is to be treated as an authorised payment for tax purposes. In the run-up to 6 April 2010, HMRC's interpretation of what this means in practice is crucial.

HMRC has confirmed that the critical point for determining whether or not a pension is paid is the date on which a member becomes "entitled" to the benefit. This will be when a member first has an actual (rather than a prospective) right to payment of a pension. (HMRC regards an actual right as being when a member has "the right to a benefit without having to fulfil any further conditions or take any further actions"). Whichever NMPA is applicable at that point (whether age 50 or 55) is then effectively frozen.

In practice, this means that a member who, before 6 April 2010, reaches NMPA and takes all steps needed under the scheme rules to bring their benefits into payment, should still retain the right to receive those benefits before age 55 even if they are not physically put into payment until after the change in NMPA.

For more information, please see our Alert - Changes to Minimum Pension Age: HMRC guidance.

LOCAL GOVERNMENT PENSION SCHEME

Guidance on Admitted Body Status

The Department for Communities and Local Government has published guidance on Admitted Body Status provisions in the LGPS when services are transferred from a local authority or other scheme employer.

The guidance explains the regulatory position provided for in the Local Government Pension Scheme (Administration) Regulations 2008 about how external providers, such as companies or third sector organisations, can be admitted to the LGPS. It also sets out the pension considerations that arise when employees transfer from a local authority to an external provider.

The guidance is aimed at local authorities in England and Wales. It also applies to contractors such as private and third sector companies and organisations, the employees of all those organisations, together with other interested parties.

The guidance makes it clear that pensions issues should not be seen in isolation from any tendering and procurement exercise.

PENSION PROTECTION FUND

Pension Protection Levy for 2010/11

On 18 December 2009, the PPF published its 2010/11 Pension Protection Levy Policy Statement and final levy determination.

The policy statement notes:

- that the Board of the PPF aims to collect an overall levy of £720 million;
- the levy scaling factor of 1.64;
- there is a new risk-based levy cap of 0.5 per cent of liabilities, which is designed to protect the most vulnerable 10 per cent of schemes;
- a change to the way probabilities of insolvency for foreign employers are calculated;
- changes to the requirements for certification of block transfers; and
- a deadline of 9 April 2010 for certification of deficit reduction contributions.

As part of this package, the PPF has also published the final levy determination for 2010/11. All documents associated with this (including final versions of the standard form contingent asset agreements) can be found on the PPF's 2010/11 Determination page.

PENSIONS POLICY INSTITUTE

Briefing Note 53: Could increases in State Pension Age be brought forward?

In October 2009, the Conservative Party announced at its annual conference that, if elected, it would set up a commission to investigate the possibility of bringing forward planned increases in the State Pension Age.

The PPI's latest briefing note looks at the effects of introducing the Conservative Party's proposal, on individuals and on state spending on pensions, as well as the wider implications for government finances.

The note concludes that the effect of the policy change would be to reduce spending on state pensions in the short term (of around £2 billion in 2017 and £3.5 billion in 2022). It also notes that any commission would need to balance the cost savings to the government against the impact on people in the most affected groups who may not be able to adjust their working patterns in the short-term in line with an increase in the State Pension Age.

CASES

Cemex UK Marine Ltd v MNOPF Trustees Ltd (High Court)

The High Court has recently ruled on the meaning of "employment cessation event" (ECE) in relation to a multi-employer DB pension scheme, on the basis of the employer debt regulations[1] as they applied to it before the employer debt legislation was revised in April 2008.

[1] The Occupational Pension Schemes (Employer Debt) Regulations 2005

Background

The Merchant Navy Officers Pension Fund (MNOPF) is an occupational DB scheme which provides benefits for officers of the Merchant Navy, employed by participating employers, including Cemex. The MNOPF is in deficit.

Under the MNOPF rules, eligibility is primarily limited to "Officers". The MNOPF is generally closed to new members, although the trustees have a discretion to admit new members.

Cemex always allowed its eligible employees to join the MNOPF. It does, however, also provide a separate pension scheme which some relevant potential members of MNOPF elected to join instead.

At the relevant time, Cemex ceased to have any employees who were active members of the scheme. It did, however, continue to employ a deferred member of the scheme (who subsequently became a pensioner member). Cemex also employed four Officers who were eligible for, but chose not to join, the scheme.

The trustees argued that an ECE had occurred on 28 November 2005 when Cemex's last active member of the MNOPF became a deferred member. By contrast, Cemex's position was that no debt had been triggered, as it had at all material times employed people who were eligible to join the scheme (even though they had chosen not to do so).

The judge was asked to determine whether an ECE had occurred when Cemex ceased to employ active members, in the light of ambiguity in the employer debt regulations which applied prior to 6 April 2008 (when the regulations were amended). There was no suggestion that Cemex would not fund the ECE if one were established.

High Court decision

The Court held there had not been an ECE because, as at the date in question, Cemex continued to employ a deferred member and other employees who were eligible to join the scheme.

Comment

This decision will be of interest to schemes in which an employer debt was, or may have been triggered before 6 April 2008. However, whether or not an ECE arose in a scheme will depend on the facts of each case.

From 6 April 2008, the definition of ECE in the employer debt regulations was changed so that a debt is triggered when an employer no longer employs active members.

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