Sackers extra

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At a glance

LEGISLATION
- The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010
- The Taxation of Pensions Schemes (Rates, etc) Order 2010
- The Pension Schemes (Transfers, Reorganisations and Winding Up) (Transitional Provisions) (Amendment) Order 2010

ASSOCIATION OF BRITISH INSURERS
- ABI reports quicker open market transfers

ASSOCIATION OF CONSULTING ACTUARIES
- ACA launches Retirement Income Manifesto

BOARD FOR ACTUARIAL STANDARDS
- Consultation on changes to Statutory Money Purchase Illustration rules

DEPARTMENT FOR WORK AND PENSIONS
- Research Report No. 630: Charging levels and structures in money purchase pension schemes

HM REVENUE & CUSTOMS
- Pension Schemes Newsletter No.40
- New forms published

NATIONAL ASSOCIATION OF PENSION FUNDS
- "The Long Weekend": NAPF film to encourage pension saving
- Pension Scheme Asset Pooling: new "Made Simple" guide
- Six steps to save workplace pensions

NATIONAL EMPLOYMENT SAVINGS TRUST
- NEST charging structure announced

PENSION PROTECTION FUND
- Pension Protection Levy Steering Group paper
- PPF and CBI publish tips for levy reduction

CASES
- Carson and others v the United Kingdom

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Abbreviations commonly used in 7 Days

ABI: Association of British Insurers
ACA: Association of Consulting Actuaries
Alert/News: Sackers Extra publications (available from the client area of our website or from your usual contact)
BAS: Board for Actuarial Standards
DB: Defined benefit
DC: Defined contribution
DWP: Department for Work and Pensions
HMRC: HM Revenue & Customs
NEST: National Employment Savings Trust
NI: National Insurance
PADA: Personal Accounts Delivery Authority
PPF: Pension Protection Fund
TPR: The Pensions Regulator

LEGISLATION

The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010

These regulations set out the some of the practical arrangements of the 2012 pension reforms, in particular underpinning the automatic enrolment objectives of the Pensions Act 2008.

Among other things, the regulations outline:

- the process and time limits for employers to achieve active membership for jobholders;
- the information requirements between employers, pension schemes and jobholders;
- arrangements for employers who already operate a higher quality scheme to postpone automatic enrolments for up to three months;
- the time limits for re-enrolment of eligible jobholders who have opted out, or are otherwise currently not saving in NEST or a qualifying pension arrangement; and
- additional scheme quality requirements for DB, hybrid and non-UK schemes.

The regulations are due to come into force on 1 October 2012.

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

The Taxation of Pensions Schemes (Rates, etc) Order 2010

This order amends the rate of the tax charge on short service lump sum refunds and benefits received under employer financed retirement benefit schemes (EFRBS) when the recipient of the benefit is not an individual, in order to reflect the introduction of the 50% additional tax rate from 6 April 2010.

The order is due to come into force on 6 April 2010.

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

The Pension Schemes (Transfers, Reorganisations and Winding Up) (Transitional Provisions) (Amendment) Order 2010

This order amends The Pension Schemes (Transfers, Reorganisations and Winding-up) (Transitional Provisions) Order 2006 to allow some pension rights, built up under occupational pension schemes before 6 April 2006 and which are already protected by the Transfer and Winding Order, to be exempted from the tax charges that would normally apply if the rights were exercised after that date. The protection is maintained in certain circumstances when the pension rights are transferred from one pension scheme to another.

The order is due to come into force on 24 March 2010.

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

ASSOCIATION OF BRITISH INSURERS

ABI reports quicker open market transfers

According to the ABI, more customers are benefitting from quicker processing times for pensions and annuity changes.

The “Options” transfer initiative has seen the addition of new pension providers and an increased volume of transfers for the end of 2009. Participating pension and annuity providers took an average 11 days to complete Open Market Option transfers in Q4 2009, compared to a pre-Options average of 31 days.

The Options scheme, launched by Origo in December 2008, is designed to speed up the exchange of information and funds between pension and annuity providers. Origo provides e-commerce standards and services to the UK's life, pensions, investment and mortgage sectors. The company is owned by 17 leading UK life assurance groups, and works with product providers, lenders, financial advisers, portals and software companies “to collaborate on identifying and addressing cost and efficiency issues that they cannot tackle in isolation”.

More information can be found in the Options Performance Report for Q4 2009.

ASSOCIATION OF CONSULTING ACTUARIES

ACA launches Retirement Income Manifesto

The ACA has launched a six point Retirement Income Manifesto, which it hopes will persuade political parties, in the run-up to the General Election, to “buy into” measures which are designed to reinvigorate private sector retirement savings.

For the new Parliament, the manifesto calls on the Government to:

- establish a standing Independent Retirement Income Commission;
- encourage employers to offer high quality workplace retirement income schemes by making legislative changes to allow greater design freedom for “middle way” schemes;
- allow all private and public sector retirement income schemes to link the age at which retirement benefits are paid (without reduction) automatically to improvements in longevity;

- provide greater incentives for retirement income savings by allowing early access to, for example, the tax free lump sum currently only available on retirement;

- reform annuity rules by allowing greater flexibility so annuities can be purchased with variable levels of benefits through term, including allowing full commutation (subject to tax) of pensions in excess of a level which is clearly sufficient to ensure that an individual will not be eligible for means-tested benefits; and

- allow all retirement income schemes to have the ability to require either (a) DC deferred members to transfer benefits on leaving an employer to one of a number of centralised schemes (possibly including NEST) to hold and ultimately pay such benefits or (b) that DB members' benefits be bought out in a non-profit deferred annuity in each member's name.

The ACA considers that "the alarming decline in private pension savings can be reversed if a coherent strategy is adopted by the incoming Government, which should take regular advice from a new standing Independent Retirement Income Commission".

BOARD FOR ACTUARIAL STANDARDS

Consultation on changes to Statutory Money Purchase Illustration rules

The BAS has issued a consultation paper on possible changes to the rules on how calculations should be carried out for pension projections in statutory annual statements for money purchase pension schemes.

The consultation considers whether the current rules could be enhanced in order to help pension scheme members understand their benefit statements and, as a result, improve their retirement savings plans. The paper also considers whether the assumptions used in pension projections should be reviewed. These assumptions include the maximum rate at which funds can be assumed to accumulate (currently 7% per annum).

Chairman of the BAS Jim Sutcliffe said: "Several million people receive statutory money purchase illustrations every year. When the National Employment Savings Trust comes into force in 2012 the number will be even greater. It is vital that these illustrations are understandable as they contain important information about how much people have already saved towards their pensions and what they might receive at retirement."

BAS Press Release

DEPARTMENT FOR WORK AND PENSIONS

Research Report No. 630: Charging levels and structures in money purchase pension schemes

The DWP has published the findings of quantitative research which explores the charging levels and structures in money purchase pension schemes, in both trust-based occupational schemes and contract-based workplace personal pensions.

The research was undertaken to understand the current charging levels and structures in advance of the pension reforms planned for 2012. The main findings from the report can be divided into four key headings:

- schemes with overall charges:

  - 73% of trust-based schemes have a single overall charge, rather than a charge broken down into separate elements;

- schemes without overall charges:

  - 21% of trust-based schemes break down their charges into specific elements with specified charges covering, among other things, fund management, administration, account set-up and intermediary commission;

- additional charges:

  - the most common additional charge (seen in 25% of schemes) is levied on members who transfer funds to other schemes; and

- who pays the charges in trust-based schemes:

  - of schemes with an overall charge, in 77% of cases the employer pays for some or all of the charges whereas in 19% of cases only the employee contributes;

  - in schemes without specified charges, the employer is most likely to pay some (46%) or all (36%) of the charge, but in 14% of cases the responsibility falls solely on the employee.

DWP Press Release

HM REVENUE & CUSTOMS

Pension Schemes Newsletter No.40

In Pension Schemes Newsletter No. 40, HMRC sets out how it proposes to handle the application of the Scheme Sanction Charge from 6 April 2010 and for the years up to and including the tax year ended 5 April 2010.

HMRC has proposed a new process which is designed to make it easier for pension scheme administrators (i.e. the trustees in the case of most trust-based schemes) to obtain the 25% deduction against the scheme sanction charge.

From 6 April 2010, if trustees have to make an unauthorised payment and they want to obtain certainty about the amount of scheme sanction charge, they will be able to ask the member to complete a mandate giving the trustees authority to withhold from the authorised payment an amount equivalent to the tax (and, if applicable, any surcharge) that the member will have to pay via their Self Assessment tax return.

The newsletter explains this new process, and includes a Q&A section for trustees.

New forms published

HMRC has also published a new form R63M (Repayment Request for Registered Pension Schemes), together a supporting schedule, which will come into effect on 6 April 2010.

Form R63M and the supporting schedule are used to calculate the amount of tax to request back from investment income received.

NATIONAL ASSOCIATION OF PENSION FUNDS

"The Long Weekend": NAPF film to encourage pension saving

The NAPF has unveiled a new film which is designed to help employees understand how important it is to save for their future, and how their company pension scheme can be part of that.

The 15 minute film is aimed at those employees who either have no pension saving or who might need to save more. The Long Weekend will be available to all employers to put on their intranet sites or to show to groups of employees. Companies will be offered the option of tailoring the film to include information on their own scheme.

NAPF Press Release

Pension Scheme Asset Pooling: new "Made Simple" guide

The NAPF has published the latest in its "Made Simple" series, with a guide on asset pooling. The new guide is designed to assist pension funds which are looking to achieve a better return on their investments by pooling their assets with other investors.

"Asset Pooling Made Simple" outlines the main benefits of asset pooling, the key areas which need to be considered before implementing a pooling strategy and describes the key pooling structures for UK pension schemes.

NAPF Press Release

Six steps to save workplace pensions

Like the ABI (see above), the NAPF has also called on politicians to take steps to fix the UK pensions system.

In his recent inaugural address to the NAPF investment conference as Investment Council Chairman, Ray Martin set out the six key actions which the NAPF believes politicians should take:

- reverse the Government's decision to withdraw higher rate tax relief on pension contributions;
- simplify the 2012 reforms to help employers comply;
- change TPR's objectives so that it has a duty to encourage the creation of an environment in which pension provision can flourish;
- ensure that accounting standards are fit for purpose and give transparency to investors while recognising the long-term nature of liabilities;
- issue more long-dated and index-linked gilts to enable pension funds to better match their liabilities; and
- put simplicity at the heart of pensions policy, both in State and workplace pension provision.

NAPF Press Release

NATIONAL EMPLOYMENT SAVINGS TRUST

NEST charging structure announced

Angela Eagle, Minister for Pensions and the Ageing Society, has set out the Government's plans for financing the NEST.

The Government expects NEST to achieve the Pensions Commission's ambition of low cost scheme using a combination charge. This is initially expected to have two elements:

- a charge of 0.3% of the total value of a member's funds under management each year, known as an annual management charge (AMC). This is the charge structure used by Stakeholder pension schemes; and

- a charge of around 2% on each contribution into the fund. This is known as a contribution charge.

In a communication to stakeholders, PADA Chief Executive, Tim Jones, explained that "over time, an AMC has a much bigger impact than a contribution charge on the level of charges paid. This is because an AMC is taken on the whole fund each year and as the size of the fund grows so does the amount taken via an AMC. In contrast, the contribution charge is only levied on new money coming into the pot. This is why a relatively low AMC at 0.3% plus around 2% on each contribution is broadly comparable with 0.5% AMC."

NEST is intended to be self-financing in the long-term, through the charges paid by its members. However, there will be a gap between its costs and revenues before it is fully established. To bridge this funding gap, the Government intends to provide NEST with a loan, in line with its commitment that the scheme be established at nil cost to taxpayers.

PADA has published a briefing note which examines the combination charge level proposed for NEST and explains why it delivers low charges for NEST members. It also includes indicative examples to illustrate how the charge will work.

DWP Press Release

PADA Press Release

PENSION PROTECTION FUND

Pension Protection Levy Steering Group paper

The independent Steering Group, set up by the PPF in 2009 to help develop proposals for the long-term future of the pension protection levy, has published a paper setting out its ideas. The group was formed as a result of industry response to the PPF's Consultation on the Future Development of the Pension Protection Levy, which was published in November 2008. (For background to the consultation, please refer to 7 Days dated 3 August 2009 and 24 November 2008.)

The paper sets out the principles that the Steering Group considers might be applied to designing a new levy. The Steering Group's view is that to be fairer to stakeholders, the levy needs to be more predictable (i.e. more proportional to changes in scheme risk) so that risk reduction by a scheme is reflected in a lower levy. Suggestions for achieving greater fairness, with schemes paying a levy that reflects their own risk characteristics which should be externally benchmarked, include:

- employer covenant: measured to a degree of accuracy supportably by evidence;

- scheme funding;
- investment strategy; and
- the benefits of risk reduction, such as contingent assets and deficit reduction contributions.

In his introduction to the paper, PPF Chief Executive and Chairman of the Steering Group, Alan Rubenstein, notes that the paper does not represent an official view from the PPF or any of the organisations that members of the Steering Group are drawn from, nor does it constitute a final conclusion on what the PPF's future policy on the levy should be. The PPF's proposals will be set out in a formal consultation document once the Steering Groups' ideas have been discussed by the PPF's Board.

An additional paper setting out the analysis provided by the PPF supporting the steering group's work has also been published. Full details can be found on the PPF website.

PPF Press Release

PPF and CBI publish tips for levy reduction

In conjunction with the CBI, the PPF has published information for pension schemes, advisors and trustees on ways that a scheme's levy can be reduced.

"How to Reduce Your Pension Protection Levy" provides information about how the levy is calculated and suggests ten actions which a scheme can take to decrease the amount of levy it pays.

Schemes are also reminded to make sure they provide TPR and Dun & Bradstreet with up-to-date and accurate scheme data before the data deadline on 31 March 2010, for use in the 2011/12 levy.

PPF Press Release

CASES

Carson and others v the United Kingdom

The Grand Chamber of the European Court of Human Rights (ECHR) has confirmed the ECHR's 2008 decision that expatriate pensioners who live in countries which do not have a reciprocal agreement with the UK for cost of living increases to state pension benefits are not entitled to increases on the State pension they receive from the UK.

Background

Carson is a British national who emigrated to South Africa in 1989, becoming resident there in 1990. Between 1989-1999 she paid additional National Insurance Contributions on a voluntary basis in order to maintain her entitlement to a full UK State retirement pension. In 2000, she became eligible for the State pension, including a basic State pension of £67.50 per week. The entitlement has, however, been frozen at this level ever since. Had her basic pension been up-rated in line with inflation, the basic pension she would now be receiving would be worth £95.25 per week.

Under bilateral agreements with countries including US and EU members, the Government uprates the pensions of the British people who retire there. However, in other countries (including South Africa, Australia, Canada, Hong Kong, New Zealand and Trinidad & Tobago), State pensions are frozen at the rate at which they were first paid abroad.

In 2002, Carson brought judicial review proceedings to challenge the Government's failure to index-link her pension. She argued that under the European Convention on Human Rights (the Convention), the entitlement to index-linking amounted to a right to receive an uprated State pension (under Article 1 of Protocol 1 - Protection of property), and as such should be protected. In addition, this was a right which should be protected against discrimination (under Article 14 of the Convention - Prohibition of discrimination).

The claim was rejected by the High Court in the UK (in 2002), the Court of Appeal in 2003 and the House of Lords in 2005. Carson then took her claim to the ECHR, together with 12 other British Nationals (variously living in South Africa, Canada and Australia) whose pensions had also been frozen. The ECHR rejected their claim in November 2008, subsequent to which they lodged an appeal with the Grand Chamber of the ECHR.

Decision of the ECHR Grand Chamber (16 March 2010)

A majority of the Grand Chamber of the ECHR has also now rejected the appeal.

The applicants argued that they were in a “relevantly similar position” to UK pensioners with the same employment and NI records but now living either in the UK or in countries party to a reciprocal agreement providing for up-rating of their State pension benefits. However, the Grand Chamber found these arguments to have misconceived the relationship between NI contributions and the State pension.

The Grand Chamber considered that, unlike private pension schemes where premiums are paid into a specific fund and where those premiums are directly linked to the expected returns, NI contributions are not exclusively linked to retirement pensions but form a source of part of the revenue which pays for a range of social security benefits, including the National Health Service. The payment of NI contributions alone was therefore insufficient to place the applicants in a relevantly similar position to other pensioners, regardless of their country of residence.

The Grand Chamber also considered that social security benefits, including State pensions, are part of a social welfare system which exists to ensure certain minimum standards of living for UK residents. Agreeing with Lord Hoffman’s judgment in the House of Lords, the Grand Chamber considered that “it would be extraordinary if the fact of entering into bilateral arrangements in the social security sphere had the consequence of creating an obligation to confer the same advantages on all others living in all other countries”, as to do so would “undermine the rights of States to enter into reciprocal agreements and their interest in so doing.”

Comment

In the Grand Chamber, the dissenting judges’ view was that the applicants were in a relatively similar situation to UK pensioners, the only difference being their place of residence, based on the fact that the State pensions awarded were based on the same general rules, which included the NI contributions paid by these individuals. They also considered that pensioners residing outside the UK should be entitled to some form of protection from currency depreciation.

The Government will no doubt breathe a sigh of relief that the Grand Chamber followed the earlier decisions - on some estimates this decision has saved it at least £500 million a year in additional pension payments.

ECHR Press Release

For further background on this case, please see 7 Days dated 24 November 2008.