

## Pensions law – the week in review

26 October 2009

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**1 DEPARTMENT FOR WORK AND PENSIONS (DWP)**

**1.1 Consultation on the Pensions Regulator (Contribution Notices) (Sum Specified following Transfer) Regulations 2010**

On 14 April 2008, the DWP announced plans to increase powers of the Pensions Regulator (TPR) which can be used to require employers to provide contributions to a pension scheme if their actions could threaten the security of members' pensions. This announcement culminated in a number of extensions to TPR's original anti-avoidance powers under the Pensions Act 2004.

The present consultation contains draft regulations which provide for implementation of one of the extensions announced last year. They set out how TPR must calculate the amount to be specified in a contribution notice issued where:

- the grounds for issuing a contribution notice<sup>1</sup> have been met; and
- the accrued rights of two or more members are transferred to another workplace pension scheme to which section 75 does not apply.

This follows amendments that have already been made<sup>2</sup> to allow TPR to issue a contribution notice where a transfer has been made and it would have been possible for TPR to issue a contribution notice if the transfer had not taken place. TPR is now able to direct support following a transfer, and to issue the notice in relation to either the original or the new scheme (or to both where appropriate), thereby ensuring that the funds from a contribution notice follow the member to whom those funds relate. It also allows TPR to issue a contribution notice where the transfer itself is the act or forms part of a series of acts. These changes are designed to ensure that transfers will not be an obstacle to issuing a contribution notice.

The draft regulations are intended to provide for a calculation that offers equivalent protection to members who have been the subject of a block transfer to those who remain in the original defined benefit (DB)

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<sup>1</sup> Under section 38 of the Pensions Act 2004

<sup>2</sup> By the Pensions Act 2008

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scheme (the existing method for calculating the amount is based on DB funding rules and the relevant deficit in a DB scheme).

The grounds for issuing a contribution notice are not altered by these regulations.

The consultation will close on 11 December 2009.

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

<http://www.dwp.gov.uk/docs/consultation-pen-reg-cont-notice-sum-spec-regs.pdf>

### **1.2 Personal Accounts: Summary of responses published to consultation on draft Scheme Order and Rules**

In April 2009, the DWP, together with the Personal Accounts Delivery Authority, issued a joint consultation document setting out proposals on the legal framework for the Personal Accounts scheme.<sup>3</sup> The DWP has today (26 October 2009), published a summary of the responses received relating to this consultation.

The Personal Accounts scheme is to be set up as a trust based, DC occupational pension scheme and will be governed by a scheme order and rules (akin to a traditional workplace pension scheme's trust deed and rules). The scheme order establishes the scheme, appoints the trustees (a trustee corporation) and sets out the criteria for eligibility, and member/employer participation. The rules will then deal with more of the detail, including administrative provisions, and the requirements for member and employer contributions.

The consultation sought views on various aspects of the scheme order and rules, including:

- the composition and function of the members' and employers' panels;
- indemnity and insurance provisions;

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<sup>3</sup> For more information on the consultation, see 7 Days dated 4 May 2009 and Sackers' response to the consultation (available from the client area of our website or from your usual Sackers contact

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- how to raise awareness of the scheme with employers and prospective members; and
- the duties on the trustee corporation to accept members and admit employers.

Following its analysis of the responses received, the DWP proposes to make a number of minor amendments to help clarify understanding. Its overall policy approach, however, remains unchanged.

The DWP's summary of responses to the consultation can be accessed by clicking on the link below:

<http://www.dwp.gov.uk/docs/draft-scheme-order-and-rules-government-response.pdf>

### **1.3 DWP Research Report 599: Attitudes to age in Britain 2004-08**

The DWP has published a new research report on attitudes in Britain towards age and ageing.

The authors<sup>4</sup> note that one of the important challenges related to Britain's ageing population is "how to respond to people's assumptions and expectations about age and ageing", on the basis that such "attitudes have important implications for individual well-being, for age equality and for social cohesion." They state that understanding attitudes to age is essential for the development of appropriate strategies for an ageing population.

The report includes the following key findings:

- there are large differences in perceptions of the age when "old age" begins, but on average, respondents considered that youth ends at age 45 and old age begins at 63;
- 48% of respondents considered age discrimination to be a serious issue, with 26% reporting having experienced ageism;

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<sup>4</sup> Dominic Abrams, Tiina Eilola and Hannah Swift

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- age discrimination is expressed differently towards younger and older people and may cause difficulties for both groups. Stereotypically, older people are viewed as warmer and more moral but less competent, whereas younger people are considered to be more capable, but less warm and less moral;
- nearly 25% of respondents believe that those over age 70 take out more from the economy than they put in. More younger respondents perceived that the over 70s pose more of a threat economically, materially and symbolically than older respondents did; and
- attitudes to old age were more positive in the regions. In the regions, where there are higher proportions of people over age 65, respondents reported less indirect prejudice and more comfort with having a boss over age 70. London was found to have the smallest proportion people over age 65.

The DWP's press release, together with the research report and its appendices, can be accessed by clicking on the links below:

<http://www.dwp.gov.uk/newsroom/press-releases/2009/october-2009/dwp048-09-201009.shtml>

<http://research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep599.pdf>

[http://research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep599\\_appendices.pdf](http://research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep599_appendices.pdf)

## **2 HM TREASURY**

### **2.1 Statement on Equitable Life**

On 15 October 2009, the High Court handed down its decision<sup>5</sup> in the application for judicial review brought by the Equitable Members Action Group (EMAG) on grounds that the Government had failed to put forward cogent reasons for its rejection of certain of the Parliamentary Ombudsman's findings of maladministration

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<sup>5</sup> For more details of the High Court's decision, please see 7 Days dated 19 October 2009

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and injustice in her report into the collapse of the Equitable Life Assurance Society. The High Court upheld EMAG's challenge in relation to three of the findings of maladministration.

Subsequently on 20 October 2009, Lord Myners, Financial Services Secretary to the Treasury, presented to the House of Lords the written statement of the Chief Secretary to the Treasury, Liam Byrne, setting out the Government's response to the High Court's decision.

In this statement, the Government accepts, "in the interests of speed and their wish to act fairly for policyholders", the findings of maladministration and injustice which were confirmed by the Court. These relate predominantly to the failure to ask and resolve questions arising from Equitable Life's regulatory returns for 1990-96, in particular in relation to policies around interest and bonus rates. They also relate to the failure of the Government Actuary's Department (GAD) to ask for the necessary information from Equitable Life in order to ensure proper scrutiny of the company.

This will expand the scope of the work that is being done by Sir John Chadwick, as it brings forward the start date of the findings he is considering from July 1995 to July 1991, but it is not expected to delay the completion of this work.

The Government has stated that it remains committed to introducing a fair ex gratia payment scheme as soon as possible and has confirmed that it will extend the scope of the compensation scheme which is being set up to assist those policyholders who were most disproportionately affected.

The Treasury statement can be accessed by clicking on the link below:

<http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/91020-wms0001.htm#09102042000056>

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### **3 INSTITUTE OF DIRECTORS (IoD)**

#### **3.1 Roadmap for retirement reform**

The IoD has launched its “Roadmap for Retirement Reform 2009” in which it sets out “how the UK retirement system requires a radical transformation in order to produce a simplified and durable regime for the 21st century.”

The paper analyses some of the key problems facing the British pensions systems, in particular the issues raised by increasing longevity, as well as the complexity of both the state and private systems.

The IoD puts forward three proposals to address these issues, with a view to re-engaging both employees and employers in long-term saving:

- an increase in the state retirement age to 70;
- the abolition of means testing and the state second pension, replacing it with a universal basic state pension at or above the level of the pension credit; and
- simplification of the private pensions system, to create a simple, flexible structure that employers are able and willing to engage with.

The paper notes that there are 1.3 million people over the age of 65 who are already in full or part-time employment. 78% of IoD members say that they plan to continue working after age 65.

The paper can be accessed by clicking on the link below:

[http://www.iod.com/intershoproot/eCS/Store/en/pdfs/policy\\_paper\\_rrr09.pdf](http://www.iod.com/intershoproot/eCS/Store/en/pdfs/policy_paper_rrr09.pdf)

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### **4 OFFICE FOR NATIONAL STATISTICS (ONS)**

#### **4.1 2008-based national population projections**

The latest ONS projections indicate that the UK population is expected to increase by over four million, to 65.6 million in 2018 (from 61.4 million in 2008), and to 71.6 million in 2033.

The number of people aged 85 and over is projected to more than double over the next 25 years, from 1.3 million in 2008 to 3.3 million by 2033. Despite the forthcoming increases in state pension age, the population of people of state pensionable age (SPA) is projected to rise by 32% over the next 25 years from 11.8 million in 2008 to 15.6 million in 2033. The working age population, however, is only projected to rise by 14%, from 38.1 million in 2008 to 43.3 million in 2033. This would result in a decline in the ratio of people of working age to people over SPA from 3.23 in 2008 to 2.78 in 2033.

The ONS statistics can be accessed by clicking on the link below:

<http://www.statistics.gov.uk/pdfdir/pproj1009.pdf>

### **5 PENSIONS OMBUDSMAN**

#### **5.1 New Deputy Pensions Ombudsman appointed**

Jane Irvine has been appointed as Deputy Pensions Ombudsman (and Deputy Pension Protection Fund Ombudsman).

Jane has a background in arbitration and dispute resolution and is Chairman of the Scottish Legal Complaints Commission. From 2006 to 2008 she was the Scottish Legal Services Ombudsman (which was abolished in favour of the commission she now chairs). She also sits on the disciplinary board of the Faculty and Institute of Actuaries and from January 2010 she will be its Chairman.



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Jane is expected to take up her new duties in mid-November. This part time appointment follows the splitting of the previous job into two roles: the Deputy Pensions Ombudsman, who will deal with determining complaints; and the Casework Director, who will deal with the management of investigations and staff.

The Pensions Ombudsman's press release can be accessed by clicking on the link below:

<http://www.pensions-ombudsman.org.uk/News/>

### **6 PENSIONS POLICY INSTITUTE (PPI)**

#### **6.1 Report on retirement income and assets in the UK**

The PPI has published the third in a series of research reports on the future of retirement income and assets in the UK. These reports are aimed at providing independent evidence to inform debate about the role of different types of assets in funding retirement.

The latest report in this series, "How can pensions and financial assets support retirement?"<sup>6</sup>, considers the role that state and private pensions and other financial assets are likely to play in supporting retirement incomes today and in the future.

The report notes that state and private pensions currently provide the majority of retirement income for most pensioners (on average, around 60% of retirement income). Given the reforms on the horizon for both state and private pensions, in particular the introduction of automatic enrolment into workplace pensions, this figure looks set to increase.

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<sup>6</sup> Sponsored by J.P. Morgan Asset Management

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According to the report, should opt-out rates be in line with Government expectations<sup>7</sup> after the introduction of automatic enrolment, the proportion of people with private pension savings after 2012 could rise from around 40% of the working age population today (around 14 million people) to around 21 million people (approximately 60% of the UK working-age population), once the private pension savings reforms are fully implemented.

The PPI's press release and the report can be accessed by clicking on the links below:

[PPI Press Release](#)

[Report - Retirement income and assets: How can pensions and financial assets support retirement?](#)

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<sup>7</sup> DWP Factsheet: People benefitting from private pension reform: explanation of participation estimates  
<http://www.dwp.gov.uk/docs/factsheet-impact-reforms-sept09.pdf>



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