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Pensions law – the week in review

29 June 2009

AT A GLANCE

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1 LEGISLATION

1.1 The Pensions Act 2004 (Commencement No.13) Order 2009

The 13th Commencement Order of the Pensions Act 2004 (relating to section 134(2)(d) of that Act) has been published.

Section 134(2)(d) allows the Board of the Pension Protection Fund (PPF) to give directions to a relevant person (generally the trustees or employer in relation to a scheme) regarding the exercise of that person's powers during a PPF assessment period. The Commencement Order brought this section into force from 23 June 2009 for the purpose of conferring the power to make regulations, and from 21 July 2009 for all other purposes.

A copy of the regulations can be accessed by clicking on the link below:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091542_en.pdf

2 BOARD FOR ACTUARIAL STANDARDS (BAS)

2.1 Consultation on proposals for new actuarial standard

The BAS has published a consultation paper which sets out its proposals for a technical actuarial standard on pensions.

One of the key objectives of the proposed standard is to ensure that actuarial information provides the best possible support to trustees, sponsors and others who use the information to make decisions.

The consultation covers such areas as:

- the principles underlying the selection of discount rates used to value pension sharing liabilities;
- whether prudent estimates of pension scheme liabilities should be accompanied by best estimates of the same liabilities; and

- the content of the report produced after regular scheme funding reviews of pension schemes.

When the consultation is complete, the BAS intends to issue an exposure draft of a principles-based standard that will apply to actuarial work in pensions.

The consultation will close on 18 September 2009.

The press release and consultation paper can be accessed by clicking on the links below.

http://www.frc.org.uk/bas/press/pub2015.html

http://www.frc.org.uk/images/uploaded/documents/BAS%20Pensions%20CP%20final.pdf

3 COMMITTEE OF EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS SUPERVISORS (CEIOPS)

3.1 Half-year report on financial stability

CEIOPS has published its half-year report on the financial conditions and financial stability of the insurance and occupational pension fund sector in the European Union / European Economic Area.

Perhaps unsurprisingly, the findings indicate that "the financial turmoil has had a significant impact on the pension fund sector", with "sharp drops in the equity markets and increasing credit spreads [putting] their investment portfolios under severe strain". However, pensions have fared comparatively better than many other parts of the financial sector due, in part, to the long-term nature of their liabilities.

CEIOPS' press release and half-year report can be accessed by clicking on the links below:

CEIOPS Press Release

http://www.ceiops.eu/media/files/publications/reports/CEIOPS-Spring-Financial-Stability-Report-2009.pdf

4 OFFICE FOR NATIONAL STATISTICS (ONS)

4.1 Pension Trends report updated

The ONS has recently updated two chapters of its "Pension Trends" report (which looks at changes in pension provision over time).

The revisions to Chapter 5 (on State pensions) show that more men than women receive the full Basic State Pension (BSP). In September 2008, 34% of female pensioners (2.3 million women) received 60% of full BSP or less, compared with 2% of male pensioners (fewer than 0.1 million men).

Chapter 6 (on private pensions) indicates that in 2007:

- 7.9 million active members of occupational pension schemes belonged to defined benefit schemes (around two-thirds of whom were in the public sector, with the remaining third in the private sector);
- approximately 25% of active members of private sector occupational schemes were in defined contribution schemes; and
- funded public sector schemes accounted for 23% of active membership of occupational pension schemes and unfunded public sector schemes accounted for 37% of active membership.

The revised chapters can be accessed by clicking on the links below:

http://www.statistics.gov.uk/cci/nugget.asp?id=2239

http://www.statistics.gov.uk/cci/nugget.asp?id=2240

5 PENSION PROTECTION FUND (PPF)

5.1 Early announcement on the 2010/11 levy

The PPF has announced that it will set a pension protection levy estimate of £700 million, indexed to wages, for 2010/11. This is in line with its August 2007 commitment to keep the levy estimate stable for 3 years.

By making the announcement earlier in the year than usual, the PPF is hoping to help ease the continuing economic uncertainty faced by employers and pension schemes which have to pay the PPF levy. The actual levy estimate will be confirmed when the ONS publishes wages indexation figures in September.

Schemes will be able to work out their individual levies when the PPF announces the levy scaling factor (the mechanism used to calculate bills) this autumn.

To access the press release, please click on the link below:

http://www.pensionprotectionfund.org.uk/news-details.htm?id=7177

6 THE PENSIONS REGULATOR (TPR)

6.1 Statement on scheme funding and the employer covenant

Since Autumn 2008 TPR has issued several statements in relation to the impact of the current economic downturn[1]. On 23 June 2009, TPR published a further statement emphasising the importance of prudent funding levels for pension schemes and stating that, where sponsors are in difficulty, flexibility is available in recovery plans.

TPR is running a series of national workshops to explain its approach to scheme funding valuations and the importance of the employer covenant through the economic downturn. For those who cannot attend, this

[1] For further information, please see our Alert, “TPR – Your Flexible Friend” dated 18 February 2009, which is available from the client area of our website.

statement aims to provide a consolidated summary of this approach. TPR highlights the following key points:

- Economic and financial conditions have resulted in cash constraints for many employers in the short term, and for some, greater uncertainty about longer term prospects;
- The current regulatory framework and approach to scheme funding is sufficiently flexible to cope with these conditions;
- Technical provisions are the scheme-specific funding standard which pension schemes must target and TPR's requirement (in line with the Pensions Act 2004) is that they are set prudently; however there is flexibility in setting a recovery plan to repair a deficit to meet the funding objective;
- At the current time, FRS17 is unlikely to represent an adequate level of prudence without further adjustment;
- Any risk margin in the assumptions for setting technical provisions must take account of the extent to which the employer covenant can support them;
- Technical provisions should not be compromised to make a recovery plan appear affordable; the size of the deficit does not necessarily dictate the annual contributions needed to the pension scheme to repair it, these must be determined with reference to what is reasonably affordable for the employer;
- Assessing the employer covenant is complex and requires openness and cooperation between trustees and their sponsoring employers. Trustees should be clear about the questions they need to have answered by sponsoring employers and advisers, and should address any conflicts of interest and issues of confidentiality; and
- Where employers are cash constrained, trustees should look at the widest range of flexibility in recovery plans, mindful of their duties to secure member benefits; these can include lengthening recovery plans, step-up payments, back-end loading of recovery plans, and further security through

the use of contingent assets and the distribution of profits fairly between creditors and equity providers.

A copy of the press release can be accessed by clicking on the link below:

http://www.thepensionsregulator.gov.uk/whatsNew/pn09-07.aspx

A copy of the statement on scheme funding can be accessed by clicking on the link below:

http://www.thepensionsregulator.gov.uk/pdf/EmployerCovenantStatementJune2009.pdf

7 DETERMINATION

7.1 Pension Protection Fund Ombudsman: The Iveco Limited Pension Fund for Senior Staff

The Trustees of the Iveco Limited Pension Fund for Senior Staff (the Fund) requested a review of the Fund's PPF levy on the grounds that the method of its calculation was "unsupportable" in that it led to an "absurd" result.

Facts

Iveco Limited (Iveco) paid £17 million into the Fund in December 2005.

In its accounts, Iveco claims a multi-employer exemption under FRS17 in respect of its pension schemes. This means its liability to its pension scheme does not appear on its balance sheet.

For this reason, there was nothing to offset the payment into the Fund against and it therefore appeared to create a negative cash flow. This led Dun & Bradstreet (D&B) to down-rate Iveco which, in turn, meant it was liable to pay a higher risk-based pension protection levy.

Determination

In his conclusion, the Deputy Pension Ombudsman stated that he could "understand why [Iveco] feels so aggrieved that, in acting responsibly towards its scheme, it has been 'penalised' because D&B scored it down on the evidence of its balance sheet". However, as the Board of the PPF had calculated the risk-based levy correctly, in accordance with the provisions of the PPF Determination, it was not required to take any action.

SACKER & PARTNERS

Solicitors specialising in pensions law

Sacker & Partners LLP
29 Ludgate Hill
London EC4M 7NX
Tel 020 7329 6699
Fax 020 7248 0552

enquiries@sackers.com
www.sackers.com