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SO7

Abbreviations commonly used in 7 Days

Alert/News: Sackers Extra publications (available from the client area of our website or from your usual contact)

DB: Defined benefit

DC: Defined contribution

DWP: Department for Work and Pensions

ECJ: European Court of Justice

FAS: Financial Assistance Scheme

GMP: Guaranteed Minimum Pension

HMRC: HM Revenue & Customs

NEST: National Employment Savings Trust

PPF: Pension Protection Fund

TPR: The Pensions Regulator

LEGISLATION**Pensions Act 2008 (Commencement No. 13) Order 2012**

This Order brings into force certain provisions of the Pensions Act 2008 which give effect to the introduction of automatic enrolment duties. The provisions come into force, in so far as they are not already, on 30th June 2012.

The Pensions Act 2011 (Commencement No. 3) Order 2012

This Order brings into force certain provisions of the Pensions Act 2011 which relate to automatic enrolment. The provisions come into force, in so far as they are not already, on 30th June 2012 and 23rd July 2012.

The Pension Protection Fund (Miscellaneous Amendments) Regulations 2012

These Regulations make a number of consequential amendments following the Pensions Act 2011 changes to the pension protection fund provisions of the Pensions Act 2004. These Regulations amend:

- the Pension Protection Fund (Multi-employer Schemes)(Modification) Regulations 2005;
- the Pension Protection Fund (Entry Rules) Regulations 2005;
- the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005;
- the Pension Protection Fund (Valuation) Regulations 2005;
- the Pension Protection Fund (Provision of Information) Regulations 2005;
- the Pension Protection Fund (Reference of Reviewable Matters to the PPF Ombudsman) Regulations 2005;
- the Occupational Pension Schemes (Fraud Compensation Payments and Miscellaneous Amendments) Regulations 2005; and
- the Pension Protection Fund (Closed Schemes) Regulations 2007.

ACTUARIAL PROFESSION

New president of Institute and Faculty of Actuaries (I&F)

On 25 June 2012, Philip Scott took office as president of the I&F. He replaces Jane Curtis, who was President from June 2011 to June 2012.

Press release

Conflicts of Interest package

In July 2010, the I&F tasked a Working Party with seeking, via a discussion paper, the views of actuaries, users of actuarial advice and regulators, on the I&F's existing provisions on conflicts of interest.

A second, targeted round of discussions with users of actuarial advice and other regulators was undertaken, between March and July 2011, for the purpose of obtaining a fuller account of users' views and to provide the I&F with sound and rounded evidence on which to base its future policy.

These discussions resulted in the publication of the Consultation Paper on 10 October 2011.¹

On 29 June 2012, the I&F published a feedback document, setting out both the responses received to its recent consultation and its final proposals for new provision in relation to conflicts of interest. In short, the document comprises:

- a brief introduction to the Conflicts of Interest Working Party's October 2011 Consultation Paper on Conflicts of Interest;
- a summary of the feedback received in response to the Consultation Paper;
- the finalised proposals for the conflicts of interest regulatory material; and
- an explanation of where and why the proposals have been modified following the consultation process.

At the same time, the I&F has issued a guide for actuaries on conflicts of interest and a note for pension scheme trustees.

DEPARTMENT FOR BUSINESS INNOVATION & SKILLS

Government strengthens reporting framework for directors' pay

The Government is consulting on draft regulations on what companies must disclose in pay reports.

These regulations will fully replace existing rules and are designed to create a robust framework within which directors' pay is set, agreed and implemented. The revised regulations are intended to:

¹ See 7days dated 10 October 2011

- streamline company disclosure requirements so that reports are focussed on making the link between pay and performance crystal clear;
- introduce a new requirement to report the total pay directors received for the year as a single figure; and
- ensure shareholder engagement is sustained over the long term.

To support the new shareholder voting regime, remuneration reports will in future be split in two parts:

- a forward-looking policy report, which will be subject to the binding shareholder vote - once approved, the company will only be able to make payments within the limits it allows; and
- a report on how the policy was implemented, which will be subject to an annual advisory vote.

The Government invites comments on the draft regulations by 26 September 2012.

[Press release](#)

DEPARTMENT FOR WORK AND PENSIONS

Automatic enrolment: career average schemes as qualifying schemes

The Government intends to allow career average revalued earnings (CARE) schemes to be used as qualifying schemes for the purposes of auto-enrolment, so long as they provide for the accrued rights to benefits under the scheme to be revalued at, or above, a prescribed minimum rate at any time when the jobholder's pensionable service is continuing.

Revaluation can be achieved either by the scheme providing for guaranteed revaluation or providing for funded discretionary revaluation. The minimum required by regulations is the increase in CPI capped at 2.5%. As currently drafted, the Automatic Enrolment Regulations² do not allow a CARE scheme that has a mix of guaranteed revaluation below the minimum rate and a discretionary power to revalue at a higher rate to meet the minimum to qualify. Therefore, on 30 April 2012, the DWP published a [consultation](#) on proposals to amend the regulations to allow schemes which provide for a mix of guaranteed and discretionary increases to qualify, provided that the revaluation is funded for and included in the statement of funding principles.³

On 2 July 2012, the DWP published its [response](#) to the consultation. In the response, the Government confirmed it will take forward the proposed amendments. This will allow for further flexibility for schemes to meet the original policy intention to allow good quality CARE schemes to qualify while protecting the interests of workers. The Government proposes to amend the regulations as quickly as possible and before the onset of the employer duties for those organisations that are likely to be affected.

The DWP has also published a revised version of the [regulations](#) and an [explanatory memorandum](#).

² The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (SI 2010/772), regulation 36

³ See [7days](#) dated 30 April 2012

HM REVENUE & CUSTOMS

Contracting out forms updated

Following the ending of contracting out on a DC basis from 6 April 2012, HMRC has revised its contracting-out [forms](#) and their completion notes.

NATIONAL ASSOCIATION OF PENSION FUNDS (NAPF)

Pension Quality Mark gets ready for auto-enrolment with new standard on charges

The Pension Quality Mark (PQM) is adapting to changes sparked by auto-enrolment by setting up a new standard for pension schemes that use new types of charge.

Previously, only DC pension schemes that used annual management charges (AMCs) were able to apply for PQM. The new standard continues to require that a scheme's charges total 1% or less for both active and deferred members, but opens the PQM up to schemes that have different arrangements, such as flat-rate charges or contribution charges.

To receive the PQM, such schemes will have to demonstrate that their charges are better than or equal to a 1% AMC for scheme members on half average earnings (£13,000 a year). This will ensure scheme charges are good value for people on lower incomes.

[Press release](#)

Automatic enrolment leaflets

The NAPF has published [leaflets](#) for employers and HR professionals which explain:

- what auto-enrolment is and what employers will need to do;
- what the pension scheme options are, and how to pick one;
- which employees will be eligible for auto-enrolment;
- whether employers will need to change their approach to pensions; and
- how the costs of auto-enrolment can be managed.

PENSIONS POLICY INSTITUTE (PPI)

The changing landscape of pension schemes in the private sector in the UK

On 27 June 2012, the PPI published new [research](#) that examines the changing landscape of pension schemes in the private sector in the UK.

The report examines the main factors that have played a role in shaping recent trends in private sector pension provision. It also highlights how employers are responding to the challenges of providing workplace pensions and considers the future of pensions in the private sector in the UK.

[Press release and executive summary](#)

PENSIONS OMBUDSMAN

Annual Report and Accounts 2011/12

On 28 June 2012, the Pensions Ombudsman and the PPF Ombudsman published their [Annual Report and Accounts](#).

THE PENSIONS REGULATOR

Workers' pensions protected as automatic enrolment laws come into force

TPR issued a [press release](#) on 29 June, reminding employers that new laws came into effect on 1 July 2012 prohibiting employers from inducing or offering incentives to their staff or prospective employees to abandon retirement saving.

The changes mark the start of workplace pensions reform and new duties which will eventually see all UK employers automatically putting certain staff into a pension scheme and making contributions. Whilst many of the duties do not come into force until October 2012 (depending on an individual employer's staging date), the rules on inducements are in force now for all employers.

CASES

The Trustees of the Lehman Brothers Pension Scheme v the Pensions Regulator⁴ and LB Re Financing No 1 LTD and 36 others

This decision is another step in the ongoing Lehmans litigation. The Upper Tribunal dismissed an application to strike out a reference by the trustees of the Lehman Brothers Pension Scheme (the Trustees) challenging TPR's decision not to issue a financial support direction (FSD) to certain Lehman's group companies.

Background

On 15 September 2008 Lehman Brothers Holdings Inc. filed for Chapter 11 bankruptcy protection in the United States. On the same date, the UK company Lehman Brothers Limited (LBL), went into administration. As at 1 January 2007, the buy-out deficit in the UK DB scheme, the Lehman Brothers Pension Scheme, was approximately £150m.

On 24 May 2010, TPR issued a warning notice of an FSD against 74 companies in the Lehman Brothers group (the Group) requiring support of the Scheme. TPR relied on the statutory ground that the principal employer of the Scheme, LBL, was "insufficiently resourced" on 15 September 2008.

On 13 September 2010 (just one day before the end of the 2 year look back period allowed by statute), TPR issued a FSD against only 6 companies in the Group.

The Trustees made a reference to the Tribunal, challenging TPR's decision not to issue an FSD to the Targets.

Decision

⁴ Reference number:
FS/2010/0029-31

The Upper Tribunal concluded that the trustees had the right to make a reference to the Tribunal (as they were "directly affected" by the determination made by TPR). In addition, TPR's decision not to issue an FSD against the Targets was capable of forming the subject matter of a reference to the Tribunal.

More controversially, the court held that it was possible for the Tribunal to direct TPR to include the Targets in the FSD, even though the time limit for TPR to issue an FSD had passed. The Tribunal has jurisdiction to consider TPR's determination (which was made within the prescribed period) and, as such, to decide that certain companies should be added or removed from its remit. The judges concluded that the extension of an FSD to additional companies did not amount to a fresh determination. Similarly, the judges explained, a direction by the Tribunal for TPR to increase the amount required by a contribution notice would not amount to a new determination to issue a contribution notice.

Comment

The Upper Tribunal noted that who is "directly affected" by a determination is a matter for TPR on a case by case basis. However, they were satisfied that, on the facts, the Trustees were "directly affected" and, as such capable of making the reference. Unsurprisingly, they concluded that those who seek to argue that trustees are not "directly affected" by a determination to issue an FSD or contribution notice "will have a heavy burden to discharge".

But the decision that the Tribunal may direct TPR to extend an FSD to additional companies despite being out of time to issue a determination may surprise some. However, following changes made by the Pensions Act 2011, TPR is now only required to issue its warning notice, rather than its final determination within the prescribed period.

But note that proceedings remain stayed pending the final determination of the Supreme Court action regarding the status of an FSD in an administration.⁵

⁵For a summary of the Court of Appeal decision please see [7days](#) dated 17 October 2011