Pensions law @ a glance

Pinsent Masons

29 January 2010

Pensions law @ a glance is a free publication from the Pinsent Masons LLP Pensions Group. It summarises important legal issues from the past month that affect pension schemes. Do forward this publication to your colleagues or let us know their email address so we can send them a copy direct.

This month's pensions law @ a glance is edited by Nicola Bumpus. It does not constitute legal advice. You should take specific legal advice before acting on any of the topics covered.

If you would like more detail on these or other current legal topics, please contact your usual Pinsent Masons LLP adviser or email pensionslaw@pinsentmasons.com.

Some of the articles include links to further information via a hyperlink. Just click on the link to go direct to the relevant website page.

CONTENTS

	Page
LEGISLATION	1
Government makes announcement on GMPs and equalisation	1
Revaluation rate for deferred pensions set	1
Draft disclosure regulations issued	1
Agency Workers	1
PENSIONS REGULATOR	2
Recovery plans can reflect post-valuation developments	2
Changes to Regulator’s trustee register criteria	2
PENSION PROTECTION FUND AND FINANCIAL ASSISTANCE SCHEME	3
PPF finalises levies for 2010/11	3
PPF 2010 compensation cap published	3
New Financial Assistance Scheme regulations – transfer of scheme assets to Government	3
HMRC	4
HM Revenue & Customs’ interpretation of changes to normal minimum pension age	4
PERSONAL ACCOUNTS (NEST)	4
Government publishes new employer duties and auto enrolment requirements	4
PINSENT MASONS	5

LEGISLATION

Government makes announcement on GMPs and equalisation

Angela Eagle, the Minister for Pensions and the Ageing Society, made a statement last week in which the Government concluded that trustees should act as if existing UK legislation "requires equalisation in respect of differences resulting from guaranteed minimum pensions (GMPs)". This is the case even if there is no real comparator (that is an individual of the opposite sex who performed comparable work and who was treated more favourably). In essence, the Government now believes that UK legislation is out of step with European requirements relating to equalisation. Amendments to the UK legislation will be introduced where parliamentary time allows. There is no expected date for this yet.

Our comment: This statement from the Government leaves more questions unanswered than answered. The announcement was made in the context of the Financial Assistance Scheme but we believe that it is intended to cover all schemes - both ongoing schemes and those in winding up. However, there is no guidance on how trustees should actually implement GMP equalisation. Many trustees of schemes in winding up are already tackling this question. Until the Government gives more details, we suggest that trustees of ongoing schemes should adopt a watching brief.

Revaluation rate for deferred pensions set

The DWP has published its latest revaluation order. There was a negative RPI figure last year, and so the revaluation percentages are lower than those last year. Since a deferred pension cannot be reduced as a result of revaluation, for those members who left work during 2009 the revaluation percentage has been set at zero.

Draft disclosure regulations issued

The DWP has issued draft regulations and a response to last year's consultation on disclosure. It has, however, dropped the idea of adopting an overarching disclosure principle.

Under the draft regulations:

- schemes will not be required to change the form of their current Statutory Money Purchase Illustrations. Instead, they will be allowed to produce shorter, simpler statements;
- the time limit for providing basic information to new members will be reduced to 1 month (from the current 2 months) from October 2012. This is in line with the new disclosure requirements for personal accounts; and
- schemes will be able to provide disclosure information either by email or via a website. Members will be able to opt out if they do not wish to receive information in this way.

Apart from the change in respect of information for new joiners, the changes are expected to take effect from October 2010. The Government is still considering whether to bring all the disclosure requirements within one set of regulations.

Our comment: It looks as if the idea of principles-based legislation has now been dropped for good. The Government had planned to try this approach in relation to the disclosure regime before deciding whether to adopt it in other areas as well. However, the consultation last year revealed that it was unpopular and could cause uncertainty. As a result the current detailed approach will, instead, be retained.

Agency Workers

The regulations relating to agency workers have now been finalised and will come into effect on 1 October 2011. As expected, an employer will not need to offer agency workers membership of its occupational pension scheme. However, the personal accounts regime will apply.

Employers not interested in collective DC schemes

In June 2008 the DWP issued a consultation on two risk-sharing models which are not currently allowed by legislation. One of these was the collective DC scheme. These are DC schemes into which the employer pays a fixed contribution into a collective fund. The rate of pension is calculated as in a career average scheme, but without a guarantee. Inflation protection can be reduced if the amount in the collective fund is insufficient.

The DWP said that it would be carrying out research to find out to what extent employers might be interested in offering these schemes. Research published has shown that employers are not interested in switching to this type of scheme. They are seen as more expensive and would not necessarily deliver greater security and financial return for employees.

PENSIONS REGULATOR

Recovery plans can reflect post-valuation developments

The Pensions Regulator has updated its technical queries relating to scheme funding to cover those schemes with an effective valuation date around 31 March 2009. The deficits of many of these schemes will have dropped recently because the actual return on their assets has far outstripped the return built into the technical provisions.

Schemes are allowed to take into account post-valuation developments when setting their recovery plans. Normally, trustees should be cautious of doing so as this is unlikely to be in the best interests of members. However, the conditions of March/April 2009 were so extreme that as a result the Regulator considers it may be reasonable to take some of the increase in asset values into account in the recovery plan.

The Regulator acknowledges that not all trustees will want to take these increases into account. The overriding consideration should be whether the recovery plan is reasonably affordable. As a result, the Regulator expects any asset increases the trustees decide to take into account to be reflected in the length of the recovery plan rather than the level of employer annual payments.

Changes to Regulator's trustee register criteria

The Pensions Regulator maintains a register of trustees which it uses when appointing independent trustees to pension schemes. The Regulator is proposing to strengthen the criteria it uses to assess whether trustees are suitable to be included in the register.

The Regulator will change how it assesses whether a trustee has:

- **'sufficient relevant experience'** – there is a new requirement for corporate trustee bodies to have a minimum three years' experience as a trustee. This is in addition to the requirement for individual key persons to have at least five years' experience;

- **'sound administrative and accounting procedures'** – new applicants and those currently on the register must have their procedures and controls independently assessed by an accountant; and

- **'adequate indemnity insurance cover'**.

Our comment: These changes will affect trustees currently on the register (as well as new applicants) – they will need to re-submit applications once the new criteria are published. The Regulator's consultation ends on 12 March. The new criteria and application forms are expected to be published on 12 April.

PENSION PROTECTION FUND AND FINANCIAL ASSISTANCE SCHEME

PPF finalises levies for 2010/11

The PPF has published its levy policy statement and determination for 2010/11. Key points made are:

- the PPF proposes to collect £720 million in levies (a relatively modest increase from £700 million for 2009/10);
- the cap on the pension protection levy will be reduced from one to 0.5 per cent of liabilities, to protect the most vulnerable 10 per cent of schemes. This is intended to be a temporary move which reflects the current economic conditions;
- there will be a new approach to assigning failure scores to overseas companies;
- there is a new levy practice guide which gives guidance on how PPF discretions will be exercised; and
- schemes wishing to certify deficit reduction contributions, contingent assets and block transfers for 2010/11 and 2011/12 should do so through the Pensions Regulator's Exchange system. The deadline for submitting deficit reduction contributions will be 9 April 2010 due to the Easter dates this year. Schemes must update Exchange with levy related information by 31 March 2010. Certification of contingent assets must also take place by this date. The latest version of the contingent asset guidance can be found here.

Our comment: Proposals for the future development of the levy (from the earliest of 2012/13 onwards) are currently being discussed. The next consultation in this area is expected to be published in early 2010.

PPF 2010 compensation cap published

Draft regulations have been issued setting the Pension Protection Fund (PPF) compensation cap from 1 April 2010 at £33,054.09.

New Financial Assistance Scheme regulations – transfer of scheme assets to Government

The 2007 Young Review recommended that residual assets in schemes that qualify for the Financial Assistance Scheme (FAS) should be absorbed by the Government. These assets would partly fund improvements to the FAS so that it pays benefits comparable to those paid by the PPF. These draft regulations deal with this transfer. They include:

- restrictions on FAS qualifying schemes from providing members with transfers out, winding-up lump sums and trivial commutation payments before the transfer;
- an obligation on FAS schemes to obtain a valuation of assets and liabilities and members' asset shares; and
- provisions identifying those schemes and members whose assets will transfer to the Government, and arrangements for the transfer.

The Government has also produced draft guidance to accompany the regulations. This guidance includes the valuation process and equalisation in respect of GMPs.

HMRC

HM Revenue & Customs' interpretation of changes to normal minimum pension age

The normal minimum pension age is the earliest age at which pensions and lump sums may normally be taken as authorised payments under a registered pension scheme. It is currently set at 50 but rises to 55 from 6 April 2010.

HM Revenue & Customs' Newsletter 38 confirms its interpretation of the change in the law. Where a pensioner has reached age 50 and his pension entitlement arose before the law changes (ie the benefit crystallisation event date is before 6 April 2010), it makes no difference if the pension does not actually start being paid until after the date of the change (for example where the pension is paid in arrears).

The newsletter also confirms that individuals who reach age 50 between 2 and 5 April 2010 inclusive (ie over the Easter bank holiday period) can be treated as though their pension entitlement arose on their actual birthday, even if the bank holiday means their benefit crystallisation event is in practice postponed until 6 April 2010.

PERSONAL ACCOUNTS (NEST)

Government publishes new employer duties and auto enrolment requirements

A package of regulations has been issued giving more details about the 2012 pension reforms. In essence, these reforms will require all employers to enrol jobholders automatically in a qualifying pension scheme or in the Government's own personal accounts scheme, which has now been rebranded as National Employment Savings Trust (NEST). Employees have the right to opt out. Employers will be required to contribute to their employees' pensions savings.

The recent changes were designed to help small and start-up businesses and include:

- businesses employing 120,000 staff start auto-enrolment in October 2012 with smaller businesses phased in over the next three years;
- start-up businesses created from 2012 will be given until 2016 to start enrolling staff; and
- employer contributions will be phased in from 1% in 2012 to 2% in 2016 and the full 3% by 2017.

New regulations set out the practical arrangements employers will need to make for auto-enrolment, including arrangements under which individuals can opt out and the minimum standards schemes must reach to be used by employers for auto-enrolment. New employees will need to be enrolled in a scheme within one month of starting their job (an increase from the original 14 days). The employee has a further month to opt out. The current 19-day period during which employers must pay contributions into the pension scheme has been extended for new joiners; employers need not pay contributions until the end of the second month, which would simplify matters if a member opts out.

PINSENT MASONS

Client events

A full list of our 2010 Pensions Network and other client events is available here.

Please Note:

If you do not wish to continue receiving pensions law @ a glance, please e-mail us on pensionslaw@pinsentmasons.com or speak to your usual Pinsent Masons LLP adviser.

National Head of Pensions
Alastair Meeks

London	Birmingham	Leeds	Manchester
Christopher Berkeley	Simon Laight	Jacqui Timmins	Stephen Scholefield

© Pinsent Masons LLP 2010

Should you have any questions please contact your usual Pinsent Masons adviser who will be able to assist you further.

This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.

LONDON DUBAI BEIJING SHANGHAI HONG KONG SINGAPORE

OTHER UK LOCATIONS: BIRMINGHAM BRISTOL EDINBURGH GLASGOW LEEDS MANCHESTER

T 0845 300 32 32

Pinsent Masons LLP is a limited liability partnership registered in England & Wales (registered number: OC333653) and regulated by the Solicitors Regulation Authority. The word 'partner', used in relation to the LLP, refers to a member of the LLP or an employee or consultant of the LLP or any affiliated firm who is a lawyer with equivalent standing and qualifications. Singapore location in association with MPillay. A list of members of the LLP, and of those non-members who are designated as partners, is displayed at the LLP's registered office: CityPoint, One Ropemaker Street, London, EC2Y 9AH, United Kingdom. We use 'Pinsent Masons' to refer to Pinsent Masons LLP and affiliated entities that practise under the name 'Pinsent Masons' or a name that incorporates those words. Reference to 'Pinsent Masons' is to Pinsent Masons LLP and/or one or more of those affiliated entities as the context requires. For important regulatory information please visit: www.pinsentmasons.com

www.pinsentmasons.com