



ADDLESHAW GODDARD

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Pensions Update

Key Developments in Spring 2009



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Legislation

Budget/ Finance Bill

The Finance Bill 2008/09 was published at the end of April. In the Budget, the Chancellor announced plans to remove higher rate pensions tax relief for high earners with effect from April 2011. Click [here](#) for link to Pensions Update on the Budget. The Finance Bill 2008/09 contains the anti-forestalling provisions announced in the Budget.

Changes to pensions legislation take effect

The following previously announced changes to pensions legislation came into force on 6 April 2009:

- the reduction in the cap applicable to statutory revaluation of deferred pensions from 5% LPI to 2.5% LPI;
- the introduction of a power for trustees to make changes by resolution to reflect reduction in statutory revaluation cap, and previous reduction in the cap relating to statutory increases to pensions in payment;
- the abolition of safeguarded rights;
- the introduction of provisions allowing conversion of GMPs;
- the extension of the "look back" period for financial support directions from 12 months to 2 years (with phasing in);
- the removal of certain notifiable events; and
- the increase of the Upper Earnings Limit and the introduction of a new Upper Accrual Point for contracted-out benefits.

Authorised Payments Regulations laid before Parliament

The Registered Pension Schemes (Authorised Payments) Regulations 2009 have been laid before Parliament. These regulations provide for various payments which would currently be caught by the unauthorised payments regime to be authorised: for example, certain payments made in error; pension payments made following a member's death where the scheme administrator is unaware of the death; and certain payments not exceeding £2000 which represent otherwise "stranded pots", e.g. amounts which trustees receive in respect of a member after an annuity has already been secured for him. The regulations come into force on 1 June 2009. In the case of payments made in error (including pensions which continue to be paid after death), the regulations will apply to payments made on or after 6 April 2006. In other cases, they apply to payments made on or after 1 December 2009.



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Cases

ECJ judgment in Heyday case

The European Court of Justice (ECJ) has confirmed that UK legislation allowing employers to force employees to retire at age 65 could be lawful - but only if the UK can justify it to a high standard as a proportionate means of achieving a legitimate social policy aim. The Heyday case is being brought by Age Concern, who are alleging that the UK legislation allowing compulsory retirement at age 65 contravenes EU law. The ECJ judgment itself does not bring certainty for employers, as the case will now return to the High Court to decide whether the justification threshold is met.

DWP

Personal Accounts and Automatic Enrolment

Much of the detail about how the regime will work in practice is yet to be settled. The DWP has recently begun two consultation exercises (see below). A further one is planned in the Autumn to cover further aspects of the automatic enrolment process.

The first of the current consultations relates to two sets of draft Regulations, The Pensions (Automatic Enrolment) Regulations 2009 and The Pensions Regulator (Delegation of Powers) Regulations 2009

<http://www.dwp.gov.uk/consultations/2009/pensions-auto-enrol-regs2009.pdf>. (See below.) Responses must be provided by 3 June 2009.

The Pensions (Automatic Enrolment) Regulations 2009

These draft Regulations deal with the practical aspects of automatic enrolment, in particular the information that needs to be given to the trustees or scheme provider and the "jobholder", the time frames for providing information and enrolling a jobholder into the scheme, deducting contributions, refunds of contributions and the procedures for opting out.

The time periods have deliberately been made tight so that when a jobholder gets his first pay slip pension deductions have already been made. Although the detailed requirements will differ depending on the scheme type, what they have in common is that the jobholder must become an active member of the scheme within 14 days after their automatic enrolment date, with membership starting from their automatic enrolment date.

The draft Regulations allow an employer to postpone automatic enrolment into a scheme meeting certain criteria (but not the Personal Accounts Scheme – see below) for 90 days.

The Pensions Regulator (Delegation of Powers) Regulations 2009

The Pensions Regulator will be responsible for ensuring that employers comply with the Personal Accounts regime. These draft Regulations will allow the Regulator to delegate powers, for example issuing compliance notices, improvement notices and imposing a civil penalty. However as drafted the Regulator would be able to delegate its powers, not just in relation to compliance with the new requirements, but more generally. The Regulator will retain accountability for any functions it chooses to delegate.



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Personal Accounts Scheme - Draft Scheme Order and Rules

In the second of the current consultations, the DWP is consulting jointly with the Personal Accounts Delivery Authority (PADA) on the draft Scheme Order and Rules which will set up and determine how the scheme often referred to as the "Personal Accounts Scheme" is to be run <http://www.dwp.gov.uk/consultations/2009/draft-scheme-order-and-rules28april2009.pdf>. PADA is responsible for setting up the Personal Accounts Scheme which will effectively be a multi-employer, trust based, occupational pension scheme fulfilling the automatic enrolment scheme requirements. It will be available to employers who don't want to put in place their own pension arrangements. Consultation closes on 20 July 2009.

The Scheme Order will establish the Scheme in the same way a trust deed does for a trust based scheme. The draft Rules set out how the Scheme is to be operated and run by a trustee corporation with members' and employers' views being obtained through a member and an employer panel. The intention is that once a member becomes a member of the Personal Accounts Scheme (unless they opt out and are treated as never having become a member) they remain a member until benefits are secured with an insurer, irrespective of moving employment.

Consultation on Disclosure of Information requirements

The DWP has consulted on proposed changes to the disclosure of information requirements applicable to occupational, personal and stakeholder pension schemes. The intention is to move towards a more principles based approach rather than prescriptive, and to simplify and streamline the current requirements. The changes are relatively limited in scope. Key points include:

- a new overarching principle that members should be given sufficient information to allow them to understand the benefits to which they will be entitled and to enable them to make decisions in their own best interests;
- fewer specific time limits – instead requirements to provide information within "a reasonable period";
- simplification of the basic information requirements, with a focus on those required by the IORP Directive (the EU Directive regarding occupational retirement provision);
- simplified requirements for annual benefit statements; and
- allowing information to be provided electronically.

The consultation closed on 6 May.

HMRC

HMRC agrees approach on key areas affecting member-directed pension schemes

HMRC has clarified its approach to three key areas of particular relevance to member-directed pension schemes in the current recession, specifically:

- allowing scheme borrowing to remain over 50% of relevant fund value provided it is not increased, and allowing it to be restructured without a tax penalty provided there is no increase in the total amount borrowed;
- allowing commercial property leases where the scheme leases property to a connected party (e.g. scheme employer) to be re-negotiated provided it can be demonstrated that the re-negotiation is in scheme members' interests; and
- not making a tax charge based on value where a charging order over taxable property (e.g. residential property) is sought or enforced in relation to a loan which the scheme has made.



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The Pensions Regulator

Regulator's statement: "Alert to risks in the economic downturn"

The Regulator has published a statement regarding risks to schemes which may be increased as a result of the economic downturn. It lists examples of behaviours which unacceptably increase risks to members' benefits and the PPF. These include: avoidance of employer debt; inappropriate transfers from underfunded schemes, "employer-related self-investment" and "poor practice associated with transfer value incentive exercises". The content of this latest statement is unlikely to come as much of a surprise to employers or trustees. It does not alter the position as stated in the Regulator's previous statement to employers sponsoring DB pension schemes (covered in our Pensions Update 121 – click [here](#) for link) which is likely to be seen as the more important statement by most employers and trustees.

Regulator publishes corporate plan

The Regulator has published its three-year corporate plan. Key themes identified are:

- improving governance and administration;
- reducing risks to scheme members (both defined benefit and defined contribution); and
- preparing for its regulatory role in relation to the new automatic enrolment regime being introduced from 2012.

Regulator seeks to appoint consultant to advise on deficiencies in DC schemes' regulation

The Pensions Regulator has issued a tender notice for a consultant to review the risks surrounding defined contribution schemes and to propose a new regulatory framework for those schemes. The successful consultant will be expected to identify gaps in the current regulatory framework and propose a new regulatory framework for defined contribution schemes as appropriate. To date, many of the areas on which the Regulator has focussed have been specific to defined benefit schemes (e.g. "moral hazard" and scheme funding issues), but it appears that over the next three years we are likely to see the Regulator also focussing much more attention on defined contribution schemes than has been the case to date.

Miscellaneous

International Accounting Standards Board/ IAS 19

The IASB has voted against any change to the use in IAS 19 of the AA rated corporate bond discount rate until 2011 at the earliest. The IASB is currently undertaking the first phase of a two-phase project on pensions accounting. At its meeting of 18 March 2009, the IASB decided it will now look at discount rates as part of a wider review of pensions accounting with the US Financial Accounting Standards Board during the second phase. The IASB will seek views from the actuarial profession on the matter during phase one of the project, which is due for completion in 2011

If we can be of further assistance then please contact either your regular contact within the Pensions team, or alternatively, any one of the following:

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