

CURRENT PENSIONS ISSUES

WINTER 2008/9

Barnett Waddingham

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Alternatively, visit our website at www.barnett-waddingham.co.uk.*

"ON THE BOIL"

In this section, we discuss topics that are new or have changed since the last edition.

Pensions Act 2008

The Pensions Bill 2007 received royal assent on 27 November 2008, becoming the Pensions Act 2008. The majority of the new legislation in the Act relates to compulsory pension provision and the introduction, from 2012, of 'Personal Accounts'.

The Act also contains clauses relating to an extension of the Pensions Regulator's powers and a reduction in the cap on statutory minimum revaluation of pensions in deferment, as well as changes to some State Pension benefits. Further details on these clauses are set out below.

Inflation Protection for Deferred Pensions

The Pensions Act 2008 reduces the statutory minimum rate of revaluation for deferred pensions with effect from 6 April 2009.

Legislation requires certain defined benefit pensions to be protected against inflation when a member leaves a pension scheme before retirement. The protection is currently capped at 5% pa over the period of deferment. This cap will be reduced from 5% to 2.5% pa for members who leave the scheme after 6 April 2009, but only in respect of benefits built up after this date.

Whether this change applies automatically to a scheme will depend on the wording in its Trust Deed and Rules. Trustees and companies should review their scheme's documentation to establish the extent of any automatic change and discuss whether they wish the change to take effect. Where the relevant parties wish to make the change and it is not going to happen automatically, further regulations have been drafted which may allow trustees to amend their scheme's rate of revaluation by written resolution. In any case, legal advice should be sought before acting.

The Pensions Regulator I – Extended Powers

Clauses contained in the Pensions Act 2008 extend the Pensions Regulator's "anti-avoidance" powers. Further details on these changes are set out in the Summer 2008 edition of *Current Pensions Issues*.

The most significant change to the anti-avoidance powers is the introduction of a new test for issuing a Contribution Notice (CN). The Regulator has published a consultation paper and draft Code of Practice setting out the circumstances in which it expects to use new powers relating to the "material detriment" test for issuing a CN where "acts or failures to act detrimentally affect a pension scheme in a material way". The new powers will come into effect when the Code of Practice (under consultation until 6 February 2009) is finalised.

The Department for Work and Pensions (DWP) has also published draft regulations (also under consultation until 6 February 2009) extending the "look-back" period for issuing a Financial Support Direction (FSD) from 12 to 24 months. The extension will be phased in over the year to 5 April 2010. In addition, the Regulator will be able to impose an FSD on a group of connected companies rather than being restricted to one single business entity.

The Pensions Regulator has reissued its guidance documents on clearance and abandonment to reflect the extension of its powers.

Foster Wheeler – Equalisation

The High Court handed down its verdict in the case of Foster Wheeler Limited v Hanley and Others on 28 November 2008. The judgement related to compliance with sex-equalisation legislation, and could have significant funding implications for some pension schemes.

In particular, the Court ruled that it was not possible to impose a new equalisation solution based on paying a "split" pension where part of a member's benefits were payable from age 60 and the remainder from age 65.

The Court's judgement also reinforced previous rulings that, where a member has accrued some benefits with a retirement age of 60 (for example), the member has the right to take *all* their benefits at age 60. A requirement for Trustee/Employer consent in a scheme's rules cannot be used to prevent retirement at age 60 in these circumstances. An appeal is expected later this year.

The Pensions Regulator II – Publications

The Pensions Regulator has published an updated analysis of recovery plans and clearance applications, covering the period to September 2007. The Regulator also describes its expectations for recovery plans drawn up in the next year, particularly following recent investment market events. Further details on the analysis can be found in our information sheet on our website.

The Regulator has also published, jointly with the PPF, the third version of the *Purple Book*. The Purple Book 2008 analyses data relating to 93% of PPF-eligible schemes (6,898 schemes). New chapters have been added this year focusing on PPF compensation payments and risk reduction.

Finally, following an earlier consultation (July 2008), the Pensions Regulator has published final guidance on record keeping. The guidance describes an approach the Regulator considers good practice for measuring the existence of suitable member data and is aimed at trustees, providers and administrators.

Debt on Employer Regulations

The DWP has launched an informal consultation on possible changes to section 75 of the Pensions Act 1995 which imposes a "buyout" debt when a company ceases to participate in a multi-employer scheme. The DWP is considering introducing flexibility where employers are "undertaking a corporate restructuring – so long as the employer covenant was strong before... and there is no detrimental effect / weakening of that covenant following the restructuring".

The DWP will consult formally and more widely "in due course", with a view to bringing amending legislation into effect in October 2009.

Investment "Turmoil"

2008 saw some quite extraordinary events in financial markets. Despite the Government's measures aimed at averting a prolonged recession, some commentators suggest that debt levels and continuing lack of credit in the wholesale money markets mean a gloomier outlook.

In light of recent falls in asset values, trustees should continue to monitor and review their pension scheme's investment and funding risks. Trustees should also continue to closely monitor the covenant of their sponsoring employer. Further details can be found in the information sheets on our website.

PPF Levies

The Pension Protection Fund (PPF) has finalised details of its annual levy for 2009/10, including the scaling factors that will apply. The total levy to be collected in 2009/10 is estimated to be £700 million – similar to the 2008/9 total.

Schemes' 2009/10 levies will be based on D&B failure scores and asset and liability valuations at 31 March 2008 (the same date as used for the 2008/9 levy). However, 2009/10 levies may still be reduced by putting in place contingent assets (in a form acceptable to the PPF) by 31 March 2009 or making deficit reduction contributions (which must be certified by 7 April 2009). Details of contingent assets already in place must be re-certified to the PPF by 31 March 2009.

The PPF is also consulting on proposed changes to the structure of risk-based levies from 2011/12 to reflect the long-term risks posed by schemes and achieve a "fairer" distribution of levies. The proposed levy formula will incorporate "long-term" insolvency risk posed by employers and investment risk (both measured over a 5-year horizon). Investment risk will be measured using information about schemes' asset allocations and the PPF's measure of the relative riskiness of asset classes.

The PPF have said that they are expecting an approximately 50:50 split between schemes whose levy increases and those whose levy decreases. The schemes that are likely to see the greatest increase in their levy under the new proposals are those with strong employers, high funding levels and "riskier" investment strategies.

To join in our debate on the impact of the PPF on your scheme or company, or for further information, visit: www.thelevyforum.co.uk.

News in brief

- **Notifiable Events Framework:** The DWP intends to simplify the Notifiable Events Framework so that it will no longer be necessary to inform the Pensions Regulator of certain events. The Pensions Regulator also intends to

amend the funding test associated with the Framework (schemes that are well-funded and well-run need not report certain events). The changes, if implemented, are expected to come into effect later in 2009.

- **SAPS Mortality:** The Continuous Mortality Investigation (CMI) (part of the Actuarial Profession) has finalised the mortality tables based on their study of data from Self-Administered Pension Schemes (SAPS). See the Spring 2008 edition of *Current Pensions Issues* for further details about the study.
- **Pre-Budget Report:** The 2008 Pre Budget Report was published in November, containing several measures of interest to pension schemes. In particular, the Lifetime Allowance (LTA) and the Annual Allowance, which limit the maximum tax advantages available in terms of pension and contributions, will be frozen at £1.8million and £255,000 respectively for five years from 2010.
- **Financial Assistance Scheme (FAS):** Regulations have been enacted which extend coverage of the FAS to schemes which had previously fallen between the FAS (because the scheme wind-up started after 6 April 2005) and the PPF (because the sponsoring employer became insolvent before 6 April 2005). The DWP has also drafted further regulations enabling the FAS to pay early retirement pensions to individuals in serious ill health.
- **Trivial Commutation:** HMRC has confirmed that it intends to introduce changes from April 2009 which will allow "trivial" commutation on a scheme basis (ie without needing to check the member's other pension arrangements) where the total payment to the member does not exceed £2,000.
- **Equitable Life:** The government has issued an apology to policyholders who lost money when the insurer Equitable Life nearly collapsed in 2000. A compensation scheme will, following a review led by Sir John Chadwick, provide ex-gratia payments to those worst affected.



"ON THE BACKBURNER"

In this section, we discuss some topics that are not yet resolved or remain unchanged since the last edition.

Lifetime Allowance – Another Reminder!

The deadline for registering pre A-Day (6 April 2006) benefits for transitional protection from the LTA is 5 April 2009. Individuals who may be affected should take action now, taking into account the freezing of the LTA (see News in Brief, above) from 2010.

Automatic Enrolment and Personal Accounts

Under the Pensions Act 2008, employers will have to automatically enrol employees into a qualifying pension scheme or give access to the government's low cost saving scheme (*Personal Accounts*). The requirements are expected to be phased in from October 2012.

In the meantime, the Personal Accounts Delivery Authority (PADA) has published *Key Facts* and *Myth Buster* documents with further details about Personal Accounts, compulsory pension provision and automatic enrolment. They can be found on PADA's website: www.padeliveryauthority.org.uk

Risk Sharing

The DWP has published a response to its June 2008 consultation on risk sharing pension arrangements. The DWP has confirmed that it does not intend to pursue "conditional indexation" as an option, but will "work with industry" to consider how collective defined contribution schemes might be introduced.

The Government will also look in more detail at current risk sharing practices and will consider introducing flexibility for defined benefit schemes to adjust accrual in light of longevity experience.

FEBRUARY 2009

This bulletin is a summary of some recent developments and not a comprehensive description. Although we try to ensure its accuracy, Barnett Waddingham LLP accepts no liability for any errors or omissions it may contain. Readers should take professional advice in relation to their own circumstances and / or refer to the original source material as appropriate



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