

Equalising GMPs

It appears likely that schemes will soon be required to equalise any Guaranteed Minimum Pension (GMP) benefits accrued by members during contracted-out service between 17 May 1990 and 5 April 1997, according to a Government statement. Amending legislation will be drafted "when Parliamentary time allows". In the meantime, trustees and scheme sponsors should be aware of the Government's view that the legislative requirement to provide equal pension benefits to men and women extends to GMPs.

Since the European Court ruling in the case of Barber vs Guardian Royal Exchange in May 1990, schemes have been required to provide equal benefits regardless of gender. However, despite further cases dealing with equalisation issues it has not been clear whether or how the requirement extends to GMPs. In particular GMPs were intended to broadly replicate State pension benefits which themselves were payable from different retirement ages (ie 60 for women, 65 for men).

The Minister for Pensions and the Ageing Society (Angela Eagle) presented a written statement to parliament concluding that, as a result of a review of legislation and case law on equalisation:

"...where a scheme member has accrued entitlement to a guaranteed minimum pension after May 1990, European law requires that any inequality in scheme rules which results from the legislative provisions governing GMPs should be removed, whether or not a person can show that a comparator exists.

The Government intends to bring forward amending legislation when Parliamentary time allows. However, in the meantime, it is the Government's opinion that, in order



Angela Eagle:
The Minister
for Pensions
and the
Ageing Society

to ensure full compliance with European law, trustees and others should act as if existing domestic legislation requires equalisation in respect of differences resulting from GMPs whether or not real comparators exist."

The statement follows draft guidance issued by the Department for Work and Pensions (DWP) that requires schemes eligible for the Financial Assistance Scheme (FAS) to equalise GMPs, even if no actual "comparator" (someone of the opposite sex doing work of equal value) exists. This approach is similar to that adopted by the Pension Protection Fund (PPF) for calculating its compensation; however the DWP has said the guidance "should not be treated as guidance on how to equalise scheme benefits generally".

The Government statement fails to recognise the fact that GMP equalisation is much easier for schemes which are winding up (on entering the PPF or FAS for example), when a one-time test can be applied. It is far from clear how schemes providing ongoing benefits should equalise (because it will not be possible to know in advance whether the male or female GMP is better) and, until some further guidance is given on this, schemes may be unwilling to act.

TPR: Record- Keeping

The Pensions Regulator (tPR) has published a consultation report aimed at trustees and administrators setting out standards for member administration records. Schemes that fall short will be required to take steps to improve performance. The consultation follows tPR's good practice guidance issued in January 2009 and subsequent review of how schemes have responded.

The report describes a "stronger regulatory approach" with evidence of poor record-keeping possibly leading to the Regulator taking enforcement action against the trustees and/or administrator. TPR warns that "any contact with the Regulator... could result in the scheme being asked to demonstrate compliance".

TPR's review concluded that, whilst the original guidance was "generally well-received... there is no evidence of marked improvement in administration practices". TPR has also published a bite-sized e-learning module to complement the updated guidance.

Disclosure Requirements to be Updated

The DWP has published a consultation document setting out proposed amendments to the disclosure of information requirements for occupational, personal and stakeholder pension schemes.

The key changes set out in draft regulations include:

- From 1 October 2010, Statutory Money Purchase Illustrations (SMPIs) may be shorter and simpler.
- From 1 October 2010, schemes will be able to fulfil certain disclosure requirements electronically unless a member requests otherwise in writing.
- From 1 October 2012, the time limit for the provision of basic information to new members of occupational pension schemes is to reduce from 2 months to 1 month.

The DWP's original proposal to replace many of the statutory disclosure deadlines with a requirement to provide information within a "reasonable period" has now been dropped.

Auto-enrolment Delayed

The DWP has published a response to its final consultation on "Workplace Pensions Reforms: Completing the Picture". Under the new regime, starting from 2012, employers will have to automatically enrol employees into a qualifying workplace pension scheme, or the National Employment Savings Trust (NEST). Employees may then opt out of the arrangement.

Only the largest employers (with more than 120,000 employees) will have to auto-enrol staff in October 2012. Smaller companies will be required to comply later, possibly not until September 2016.

The DWP is proposing that the minimum contribution requirements for qualifying defined contribution (DC) arrangements are phased in over three stages; the "first transitional period", the "second transitional period" and finally the "steady state".

As a result of the consultation, the implementation of the second and third of these stages has been put back by one year to October 2016 and October 2017 respectively.

Minimum contribution requirements to DC schemes will eventually be 8% of qualifying earnings for each employee, with the employer paying at least 3%. Around 1% of earnings will be paid in the form of tax relief from the government. Introduction of these minimum contribution levels will be phased as follows:

- October 2012 - October 2016 - minimum of 2% of qualifying earnings with at least 1% from the employer.
- October 2016 - October 2017 - minimum of 5%, with at least 2% from the employer.
- From October 2017, minimum of 8%, with at least 3% from the employer.

PPF Levies: Update

The PPF has issued a policy document setting out changes to the way in which insolvency risk is to be factored into PPF risk-based levies from 2011/12. The changes will affect employers' D&B failure scores and insolvency probabilities from 31 March 2010 and will result in stronger employers bearing proportionately more of the burden of the risk-based levy.

Employers and trustees should be aware of the following upcoming deadlines:

30 March 2010	<ul style="list-style-type: none">• providing information to D&B to affect employers' failure scores for 2011/12 levy
31 March 2010	<ul style="list-style-type: none">• certification of contingent assets for 2010/11 levy;• updating Exchange with levy-related information to affect 2011/12 levy
9 April 2010	<ul style="list-style-type: none">• certification of deficit reduction contributions for 2010/11 levy
30 June 2010	<ul style="list-style-type: none">• final certification of full bulk transfers that have taken place up to and including 31 March 2010

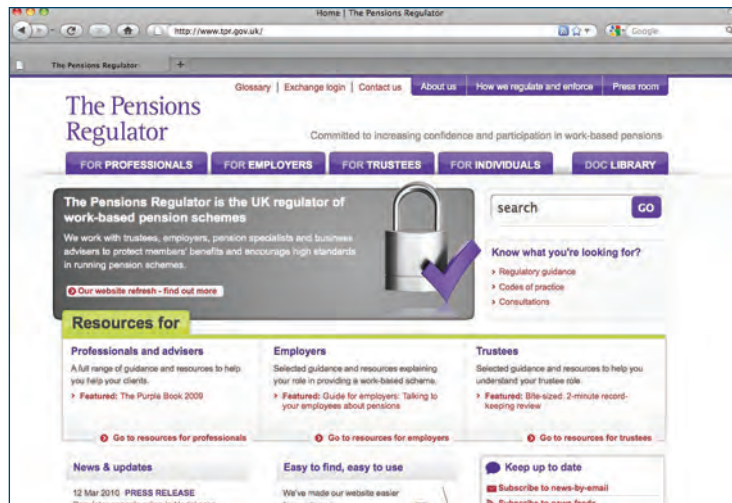
Pensions Regulator: Latest News

Managing the Risks of Securities Lending

TPR has issued a statement expressing concern about the risks from the practice of "securities lending". Securities lending is commonly used to enhance returns on assets by charging a premium to other investors for borrowing the securities. The statement forms part of the Regulator's campaign to promote good governance and administration of pension schemes.

The Regulator is not suggesting that pension schemes should not lend securities. However, trustees should be aware whether their fund managers engage in securities lending and, where they do, understand and control the risks involved. In particular, tPR suggests that trustees should ensure that they:

- are aware of whether fund managers are lending assets on their behalf
- understand arrangements in place between the scheme, fund manager and borrower
- are fully aware of the risks of securities lending and of the nature of the collateral covering these risks, and
- have appropriate controls in place to monitor the appropriateness of these arrangements.



Flexibility in Recovery Plans

TPR has posted a new Frequently Asked Question (FAQ) on its website on the subject of whether favourable experience after the effective date of the last actuarial valuation can be allowed for in Recovery Plans. Many schemes with a valuation date around March 2009 have seen significant subsequent reductions in their deficits due to a recovery in financial markets over the latter part of 2009.

Legislation permits schemes to take account of improvements since the valuation date when setting a Recovery Plan. However, tPR says that trustees should:

- "in normal circumstances... be cautious about taking account of upward fluctuations as this may not be in members' best interests"
- be able to justify the date and assumptions chosen to certify schedules of contributions
- ensure that Statements of Funding Principles explicitly set out this approach
- use the upturn to shorten recovery periods rather than reduce payments
- consider carrying out a review earlier than the next valuation if conditions subsequently worsen, and
- consider taking account of post-valuation deterioration at future valuations.

Fourth "Purple Book" Published

TPR and the PPF have jointly published the fourth edition of their Purple Book - an analysis of financial data relating to PPF-eligible schemes.

The publication focuses on schemes' financial positions at the end of March 2009. The data and analysis contained in the Purple Book 2009 relates to 97% of all PPF-eligible schemes by number (6,885 schemes) and 99% by total liabilities.

The analysis shows that, on the basis used by the PPF to calculate the risk-based levy, the aggregate funding

position had worsened from a surplus of £12.3bn at 31 March 2008 to a deficit of £200.6bn a year later (reflecting the falls in equity markets over that period). Reductions were also seen in the funding position under Scheme Funding and full buy-out measures.

The number of contingent assets certified to the PPF has increased as trustees look to protect the funding positions of their schemes and employers act to reduce their levies. The proportion of schemes' investments held in equities decreased over the year.

News in Brief

Normal Minimum Pension Age

The Normal Minimum Pension Age is increasing from 50 to 55 on 6 April 2010. Her Majesty's Revenue and Customs (HMRC) has published a guide to help individuals understand the change. Benefits paid to a member under the age of 55 after this date are likely to be an unauthorised payment unless the member is retiring on the grounds of ill-health, started to receive their benefits before 6 April 2010 or had a pre-existing right to take benefits before age 55.

FAS update

Revised legislation has been issued which allows for the transfer of pension scheme assets to the Government where a scheme is eligible for entry to the Financial Assistance Scheme. The DWP has now issued a consultation on draft guidance relating to the transfer, including aspects of the required actuarial valuations.

PPF Contingent Assets Guidance

The PPF has issued revised contingent assets guidance on its website (www.ppf.gov.uk). The PPF will take account of the same types of contingent asset arrangements for 2010/11 levies as in previous years.

From the 2010/11 levy year the PPF also requires that, for all new contingent assets, certification is accompanied by "evidence that the corporate benefit of entering into contingent asset agreements has been considered and established".

Employer Debts - Cemex Ruling

The High Court has interpreted the meaning of "employment cessation event" in the Employer Debt Regulations 2005 as part of a ruling in the recent Cemex UK Marine v MNOFP Trustees case. As a result, an employer who previously thought they had triggered a debt under section 75 of the Pensions Act 1995 before 6 April 2008 might still be held liable in the future, even if the "debt" was discharged.

A further recent case (concerning the Pilots' National Pension Fund) is expected to shed further light on this ruling. In the meantime, employers and trustees might wish to discuss the issue with their legal advisers, particularly where an employment cessation event is believed to have occurred in relation to their pension scheme before 6 April 2008.

PPF Levies BT Pension Scheme

In February 2009 the European Commission decided that the partial exemption of the BT Pension Scheme from payment of a levy to the PPF, arising as a result of the existence of a Crown Guarantee, constituted "incompatible state aid" and must cease.

New regulations enacted in March 2010 remove the partial exemption. Schemes with a full or partial Crown Guarantee could now become liable to pay a PPF levy, although the DWP says it is "not aware of any pension schemes [other than BT] ... that have a Crown guarantee and could be affected".

Hot Topics Seminar

In the penultimate one of our current series of free seminars, we will be looking at some current pension issues, including actual and proposed changes to legislation. We will cover topics including the proposed changes to the way the PPF calculates its levies, recent developments in mortality projections and GMP equalisation. We will also take a look at the major political parties' pension policies ahead of the forthcoming general election.

The seminar will run at several locations throughout the UK between 14 and 28 April 2010:

Amersham

Thursday 22 April - 5.15pm*

Birmingham

Thursday 15 April - 8.45am**

Cheltenham

Wednesday 14 April - 5.15pm*

Glasgow

Wednesday 21 April - 8.45am**

Leeds

Thursday 22 April - 8.45am**

Liverpool

Tuesday 27 April - 8.45am**

London

Wednesday 28 April - 5.15pm*

*Refreshments served from 5pm and after the seminar. **Breakfast served from 8.15am

To book your place, or for further information, please email seminars@barnett-waddingham.co.uk or visit our website: www.barnett-waddingham.co.uk/about/events/seminar-programme-200910/

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