

CURRENT PENSIONS ISSUES

AUTUMN 2008

Barnett Waddingham

*Please contact your Barnett Waddingham consultant if you would like to discuss any topics in more detail.
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.

PPF Levy for 2009/10

The Pension Protection Fund (PPF) has published details of its annual levy for 2009/10, which were under consultation until 23 October. The total levy to be collected in 2009/10 is estimated to be £700 million - similar to the 2008/9 total. The proposed calculation methodology has also not changed significantly so, barring any significant changes in your scheme, next year's levy should be similar to this year's.

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). Once the final determination has been published by the PPF (expected in November), employers should be able to get a very good idea of what their levy will be. The PPF has said it will not change the "scaling factor" at the last minute like they did last year.

However, schemes or employers may still reduce their 2009/10 levy by putting in place contingent assets by 31 March 2009 (in a form acceptable to the PPF) 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.

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

Pensions Bill – Personal Accounts

Under the current Pensions Bill, from 2012, employers will have to automatically enrol all employees aged over 21 into, and to contribute to, a "qualifying workplace pension scheme".

Employers will not be compelled to establish their own scheme. Instead the *Personal Accounts Delivery Authority* ("PADA") will offer access to Personal Accounts (which the government describes as "a simple, low-cost pension saving scheme") where a qualifying scheme is not available.

The Department for Work and Pensions (DWP) has proposed amendments to the current Pensions Bill to stop employers trying to force or encourage employees to opt-out of the new Personal Accounts arrangements in 2012.

Transfer values – Regulator Guidance

New regulations governing the calculation of 'cash equivalent' transfer values came into effect on 1 October 2008. From this date, pension scheme trustees are responsible for setting the assumptions used to calculate transfer values. The Pensions Regulator has issued guidance for trustees on their website: www.pensionsregulator.gov.uk.

Under previous legislation, the Scheme Actuary was responsible for determining the assumptions underlying transfer calculations (in accordance with actuarial guidance 'GN11'). From 1 October 2008, GN11 no longer applies and the framework for transfer value calculations is set out in regulations.

Trustees are now responsible for the calculation basis, which should use 'best estimate' (or more cautious) assumptions, and be based on actuarial advice.

It is still possible to reduce transfer values if the scheme does not have sufficient assets to pay all transfer values in full, provided an 'insufficiency report' has been prepared by the Scheme Actuary. The Regulator expects trustees to take the sponsoring company's financial strength ("covenant") and length of any Recovery Plan into account when deciding whether to reduce transfer values.

When issuing transfer quotations, trustees must tell members that help is available from the Financial Services Authority and the Pensions Advisory Service. Trustees must also recommend that the member seeks independent financial advice. The Regulator's guidance also suggests that it would be 'good practice' to disclose the assumptions underlying the calculations to the member.

Further details can be found in our August 2008 information sheet, available on our website (www.barnett-waddingham.co.uk).

Conflicts of Interest

The Pensions Regulator has published its final guidance for trustees on identifying, monitoring and managing conflicts of interest. In the guidance, the regulator states that trustees should:

- Understand the importance of conflicts of interest
- Identify any conflicts of interest
- Evaluate, manage or avoid conflicts of interest
- Manage adviser conflicts
- Agree a policy or procedure for identifying, monitoring and managing conflicts of interest. An example is included in the guidance.

From 1 October 2008, trustees who are also directors of the sponsoring employer have additional responsibility under the Companies Act 2006 relating to avoidance of conflicts of interest. Trustees who are directors should confirm that they have met the relevant requirements noting that legal advice may be required.

To obtain a copy of the Regulator's guidance, visit their website: www.pensionsregulator.gov.uk

Contracting Out I – GMP conversion

Under draft regulations published by the Department for Work and Pensions (DWP), contracted-out schemes will soon be able to simplify their benefit structures by converting Guaranteed Minimum Pensions ('GMPs') into ordinary scheme benefits. These regulations are expected to take effect in April 2009 and could result in significant reductions in scheme administration costs. The conversion must be carried out on an 'actuarial equivalence' basis – i.e. benefits will have to be at least as valuable after conversion as before.

When converting GMPs, trustees will have to obtain actuarial advice on the conversion terms, get the consent of the scheme's sponsoring employer and consult with affected members. Trustees will have to ensure that conversion is fair as the Pensions Regulator will have the power to 'unpick' conversions which have not been carried out properly.

Contracting Out II – Abolition of COMP Schemes

In April 2012, contracting out on a defined contribution basis (so-called Contracted-Out Money Purchase Schemes, or 'COMPs') will effectively be scrapped. Schemes will no longer be able to contract out of the state second pension (S2P) in this way.

Before the DWP's announcement, there had been concern that existing 'protected rights' (built up from contracting-out rebates) would still have to be separately identified because rules require benefits provided from protected rights to include entitlement to a surviving spouse's pension. However, the DWP has relented and this requirement will also be abolished in 2012.

News in brief

- **Refund of Pension Scheme Surplus:**
The DWP has issued an 'informal discussion paper' on refunding pension scheme surpluses to employers.

Currently, trustees must be satisfied that a refund is "in the members' best interests" and that the scheme has enough assets to secure members' full benefits with an insurance company. The DWP is considering lowering this trigger point - for example to allow schemes to pay a refund where they are fully funded on their Statutory Funding basis.

- ***Winding Up:***

In March this year, the Regulator (together with the DWP and the PPF) issued a statement asserting that pension scheme trustees should be able to complete the 'key' activities of winding-up within a two-year period. They have now issued a good practice guide on winding-up for trustees. The Regulator has also launched three new modules on its www.trusteetoolkit.com website, covering winding-up and transfer to the PPF.

- ***Scheme Funding – mortality assumptions:***

In an earlier consultation, the Pensions Regulator proposed the introduction of an additional "trigger" relating to mortality assumptions in scheme funding valuations. The Regulator recently announced, however, that for valuations with an effective date in September 2008 or later, mortality assumptions will only be considered after a case is flagged for further scrutiny by existing triggers (for example in relation to the length of Recovery Plan or size of Technical Provisions).

- ***Pensions Regulator publications:***

The Regulator has recently issued a number of other items for trustees to consider. These include a set of good practice principles for trustees and employers when writing to pension scheme members; "Making Pension Fund Choices – Think Before You Choose", to help members of DC schemes make investment choices; and a consultation on the "importance of good record keeping" in which they set out good practice guidelines for pensions administration and data handling.

- ***Rising Inflation:***

The annual increase in the Retail Prices Index (RPI) hit 5% in July 2008, for the first time in 17 years.

- ***New Pensions Minister:***

Rosie Winterton has been appointed as the new "Minister of State for Pensions and the Ageing Society", replacing Mike O'Brien.

"ON THE BACKBURNER"

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

A-Day (Lifetime Allowance) Protection – A reminder!

On 6 April 2006, "Pensions Simplification" removed complicated service and salary related limits on retirement benefits and introduced a new "Lifetime Allowance" (LTA). The LTA (£1.65m in 2008/09) limits the amount of pension savings that an individual can have and still benefit from tax relief. Benefits in excess of the LTA are subject to a penal rate of taxation of up to 55%. The Revenue has put in place transitional arrangements for individuals likely to be affected by the LTA, provided benefits are registered by 5 April 2009. As it will take time for pension providers to produce the necessary information, you should act now if you are likely to be affected.

The maximum tax free lump sum was also changed, to 25% of the value of benefits (up to the LTA). Individuals who were previously entitled to a higher lump sum should also consider whether to register for transitional protection.

Equitable Life

In a report laid before both Houses of Parliament, Ann Abraham, the Parliamentary Ombudsman, has called on the Government to apologise to Equitable Life policyholders and to establish and fund a compensation scheme. The Government's response is expected later this year.

Pensions Bill

At the time of writing, the current Pensions Bill has reached the final report stage in the House of Lords. There may still be several changes to the Bill as it enters the Parliamentary 'ping-pong' stage – bouncing back and forward between the Houses of Commons and Lords. As well as the clauses relating to Personal Accounts (see above), the Bill as it



stands will change other aspects of pensions law, including:

- extending the powers of the Pension Regulator - in particular in relation to issuing Contribution Notices. Further details can be found in the Summer 2008 edition of *Current Pensions Issues*.
- reducing the cap on minimum revaluation of pensions in deferment from 5% pa to 2.5% pa. Deferred pensions must be inflation-proofed up to this cap. The revised limit will apply for pensions accrued after the clause is enacted (as yet, this date is unknown).
- The treatment of contracted-out pension rights following divorce is to be simplified (from an as yet unspecified date) and it will also be possible for PPF compensation to be shared with an ex-spouse on divorce.

Barnett Waddingham Seminars 2008/9

Barnett Waddingham is running a series of free seminars on current pensions topics. The seminars are held monthly in or near our offices in Amersham, Bromsgrove, Cheltenham, Glasgow, Leeds, Liverpool and London.

Forthcoming topics include:

- Pensions Benefits for Senior Executives (November 2008)
- IAS19 and FRS17 update (January 2009)
- How to manage investment risk (February 2009)
- Selling Pensions Liabilities (March 2009)
- Scheme Funding (April 2009)
- Raising Standards in Pensions Administration (May 2009)

For further details, visit our website:

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