

Pensions Radar

September 2010

Pensions Radar is a quarterly listing of expected future changes in UK law affecting work-based pension schemes. Please speak to your usual Travers Smith contact if you would like to know more about any topics.

Investment regulations amended

The investment regulations have been amended to end transitional provisions permitted under the EU IORP directive. Those transitional arrangements provided exemptions relating to collective investment schemes, AVCs and certain qualifying insurance policies. Also, employer-related investment in an account with a person who has permission to accept deposits, which is currently unlimited, will become subject to the 5% limit.

Disclosure of information

Some information may be disclosed to members by email or website but they must first be given the option to receive hard copies. Basic scheme information must be provided within one month (previously two months).

Equality Act 2010 in force

The Equality Act 2010 is designed to consolidate and replace existing equality legislation and is not intended to change the law. Age and sex equality orders made under the Act specify exemptions to the relevant non-discrimination principles that are intended to replicate those under existing legislation.

Payments to employers

Trustees must pass a resolution to avoid running the risk of losing existing powers to make payments to employers. Such a resolution may be needed to allow a payment of surplus to an employer (and possibly other payments) to be made at any time after 5 April 2011. Three months' written notice must first be given to members and employers.

CPI to be the measure of inflation for revaluation and pension increases

CPI will replace RPI as the measure of inflation for the purposes of minimum requirements for the revaluation of deferred pensions and increases to pensions in payment. It is not clear whether (and, if so, how) schemes with rules that currently refer to RPI are expected or able to switch to CPI. It is possible that some schemes will have to pay the better of RPI and CPI increases.

Additional paternity leave to be available

Additional paternity (or adoption) leave of up to six months will be available to new fathers by reducing the mother's additional maternity (or adoption) leave correspondingly. Up to three months would be paid, by "additional statutory paternity pay" in place of maternity pay. This is subject to the outcome of a Coalition Government review.

Transitional tax regulations cease to apply

This is a key deadline, with potentially serious financial consequences if it is missed.

When the new tax regime came into force on A Day (6 April 2006), transitional regulations temporarily modified existing approved schemes so that some features of the old tax regime would continue to apply (e.g. old Inland Revenue limits and the earnings cap) until the scheme was amended and the regulations were disapplied. The regulations also had the effect that benefits that would be unauthorised payments under

Key date

23 September 2010

1 October 2010

1 October 2010

5 January 2011 (notice)
5 April 2011 (resolution)

2011

3 April 2011

5 April 2011

the new tax regime became discretionary. Schemes still relying on these transitional regulations must be amended before they cease to apply. This is especially the case where schemes rely on pre-6 April 2006 Inland Revenue limits and the earnings cap to restrict benefits.

Any reference to a pre-A Day requirement in relation to HMRC (or Inland Revenue) approval in a scheme's amendment power may be disregarded until 5 April 2011. Schemes should be amended by then to remove any such reference, using the new statutory power for trustees to amend by resolution if necessary.

Reduced annual allowance

The Government is redesigning the Finance Act 2010's provisions that would have restricted higher rate tax relief for high earners' pension savings. The proposal is to reduce the annual allowance to between £30,000 and £45,000. The level of the lifetime allowance is also under review. Depending on the final proposals, redundancy and ill health enhancements might trigger an annual allowance charge on some individuals.

Because this change is not effective until 6 April 2011, high earners might try to make large pension contributions before then so as to get greater tax relief. The Government therefore included "anti-forestalling" provisions in the Finance Act 2009, whereby 20% tax (2009/10; 30% in 2010/11) is charged on the individual to take back the benefit of higher rate tax relief in certain circumstances. This can apply to any individual with gross taxable income (not including employer-funded pension savings) of £130,000pa or more.

6 April 2011 (with anti-forestalling measures in place from 22 April 2009)

Compulsory annuitisation to be abolished

The Government intends to end the requirement for individuals with DC pots to have secured a pension by age 75. Instead, they may take an unsecured pension with capped drawdown even after age 75. Drawdown without a cap will be permitted for individuals who can demonstrate that they have adequate pension savings. The restrictions on taking pension commencement, trivial commutation and value protection lump sums after reaching age 75 will be removed.

6 April 2011

Transitional provisions, extending the period for securing a pension to the day before the individual's 77th birthday, apply to those reaching age 75 on or after 22 June 2010.

Compulsory retirement at age 65

The Government is proposing to phase out the default retirement age of 65 for age discrimination purposes. There will be a transitional period for retirements before 1 October 2011 that are initiated before 6 April 2011. Employers may still operate a compulsory retirement age if this can be objectively justified.

6 April 2011

Basic state pension increases changed

A "triple guarantee" will increase basic state pensions annually by the highest of increases in national average earnings, the retail prices index and 2.5%. From 6 April 2012, the consumer prices index will replace the retail prices index in this formula.

6 April 2011 and 6 April 2012

DC contracting-out abolished

It will no longer be possible to contract out of the State Second Pension on a money purchase basis. This applies to both occupational and personal pension schemes. There will be a particular impact for defined benefit schemes that are contracted-out on a money purchase basis. Restrictions in respect of protected rights will cease to apply but schemes' protected rights rules may need to be amended. It is proposed that transfers from schemes contracted-out on a salary-related basis to DC schemes (which would include most enhanced transfer value exercises) will not be permitted.

6 April 2012

Automatic enrolment and NEST

The automatic enrolment requirement of the Pensions Act 2008 is due to take effect but with transitional provisions. The National Employment Savings Trust (NEST) will also be available to all employers. Stakeholder designation and access obligations will be abolished. This is subject to the outcome of the Coalition Government's review.

1 October 2012

"Solvency II" Directive implementation

The EU's "Solvency II" directive is not expected to affect UK occupational pension schemes directly, but it may affect the cost of buying annuities and deferred annuities. In the meantime, the EU's "IORP" directive is being reviewed, with possible consequences for the funding of UK defined benefit pension schemes.

By 31 October 2012 (but deadline might be put back to 31 December 2012)

Record-keeping deadline

December 2012

The Pensions Regulator will expect trustees to have attained specified standards for member record-keeping and to have addressed any problems with member data.

EU "Portability" directive may come into force

1 July 2013

This directive is still in draft form and there has been difficulty in agreeing its terms due to the very different stances of EU member states as regards preservation. It may affect preservation requirements in the UK, if it is ever agreed and depending on its final language.

State Second Pension (S2P) fully flat-rate

By 2030

Leading up to (approximately) 2030, S2P is gradually changing from being earnings-related and will become fully flat rate.

The following are expected developments for which there is no fixed date.

State pension ages to be raised

The Coalition Government intends to increase state pension age to 66 not sooner than 2016 for men and 2020 for women. Under the previous Government's legislation, women's state pension age will be 65 by April 2020 and state pension age for men and women will increase gradually from 65 to 68 between 2024 and 2046. These changes may affect, for example, schemes that provide bridging pensions or that feature state pension offsets.

Public sector pensions

An independent commission, chaired by John Hutton, is reviewing the long-term affordability of public sector pensions.

Employer debt regulations: further amendments

The Government is considering comments raised on the employer debt regulations and may issue further amending regulations.

VAT for fund management

The challenge by the NAPF to HMRC's VAT treatment of pension schemes' investment management fees is to be progressed.

MNTs

50% MNT/MND requirement perhaps to be imposed.

Pensions Radar is not a substitute for proper legal advice. If you wish to discuss any topics, please speak to your usual contact in the Travers Smith Pensions team or to one of the Pensions partners: Paul Stannard, Peter Esam, Philip Stear and Andrew Block.

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