TRAVERS SMITH

What's happening in Pensions

Issue 22 ***October 2010***

Payments to employers

In June, we issued a briefing note "**Payments to employers: looming deadline**", concerning section 251 of the Pensions Act 2004. That section prohibits payments from a pension scheme to the employer in accordance with the scheme's rules unless the trustees resolve to preserve or modify those rules before 6 April 2011. It also requires the trustees to give three months' notice to members and employers if they intend to pass a resolution.

Section 251 was meant to apply only to payments from surplus while a scheme is continuing. However, because of poor drafting, it might extend to payments to employers for administrative purposes, in respect of liens over members' benefits, and at the end of a winding-up in surplus. We therefore suggested that most trustees would wish to preserve any such existing powers and therefore issue notices by the beginning of January 2011 and pass a resolution before 6 April 2011.

The Government has now informed us that it intends to amend section 251 so that it would apply only to payments of surplus from an ongoing scheme. Whilst this is welcome news, it has come rather late in the day. (We raised the issue with the Government over two years ago.) It is possible that the Government will not be able to amend the law before the 6 April 2011 deadline and it seems very unlikely that this will be done before the deadline at the beginning of January for the issuing of notices. It is also possible that the amendments will not ultimately be made: they require the approval of Parliament and there is always the possibility that the Coalition Government will collapse or that the Bill containing the amendments is not approved, perhaps because it also contains other legislation that is more controversial.

Trustees therefore need to consider whether to press on with issuing notices and passing resolutions (to the extent that they have not already done so) or to wait until December and see what happens in the meantime. We are contacting clients who have already consulted us about section 251, to help them make decisions about how best to proceed. Please speak to your usual Travers Smith contact if we have not already discussed this with you.

Source: Letter from DWP, 14 October 2010

Reduced annual and lifetime allowances

HM Treasury web page:
http://www.hm-treasury.gov.uk/consult_pensionsrelief.htm

HMRC web pages:
http://www.hmrc.gov.uk/pensionschemes/annual-allowance/index.htm

The Government has confirmed its proposal to reduce the annual and lifetime allowances (see **WHiP Issue 20**) but with a number of tweaks. The new regime will replace the previous Government's "high income excess relief charge" proposals and will bring an end to the special annual allowance regime. Whilst everyone (not just high earners) will be subject to the new regime, the individuals most likely to be affected are those with high earnings and/or large pensions. From the perspective of trustees and employers, there will be new requirements to provide information.

The 2011 Finance Bill will contain the relevant legislative changes: some draft clauses and HMRC guidance have been published. Key details of the new regime are as follows.

Annual allowance

The amount of tax-efficient pension savings that an individual may make is restricted by the annual allowance (AA) and its associated tax charge. It applies across all registered pension schemes (DC or DB, occupational or personal) of which the individual is a member.

The AA will be reduced from its current level of £255,000 to £50,000. This figure will not be increased until at least 2016/17. The reduced AA will apply from 6 April 2011 but will affect pension savings made on or after 14 October 2010 if they relate to a "pension input period" ending after 5 April 2011.

Pension input periods are normally a year. Each pension input period end date is set by either the scheme or (for a DC arrangement only) the member. Pension input periods will not (as originally proposed) be aligned with tax years and they may still be shorter than a year.

Pension savings made before 6 April 2011 will continue to be subject to the special annual allowance charge as well – this is the "anti-forestalling" measure designed to prevent high earners boosting their pensions before they became subject to the new regime (see **WHiP Issue 12**).

There are different rules for calculating an individual's total pension savings and checking them against the annual allowance depending on whether the arrangement concerned is DC or DB.

DC arrangements
Calculating the value of an individual's pension savings for a DC arrangement is relatively straightforward. It is the total of all contributions made or credited in a pension input period ending in the relevant tax year for all registered pension schemes of which the individual is a member. Investment returns are not taken into account.

DB arrangements
Calculating the amount of pension savings to a DB scheme is more complicated. Contributions are irrelevant: what counts is the value of the accrual. The amount of annual pension accrued by an individual in a pension input period is calculated by deducting the member's annual pension figure at the start of the period (plus a revaluation allowance) from that at the end. The same calculation is done to the opening and closing values of any separate pension commencement lump sum. The resulting figure is multiplied by a factor to produce a capital value representing the individual's pension savings in that pension input period.

The factor used to calculate the capital value for AA purposes under the new regime will be 16 (it is 10 under the current regime). So a £1,000 increase in a member's accrued pension will be valued as a £16,000 pension input. No account is taken of the member's age nor of other elements of the member's pension benefits such as normal pension age, dependants' pensions or pension increases.

The new AA charge will not apply to deferred pensioners, so long as their benefits:

- are not increased by reference to ongoing service and/or salary; and
- are revalued by no more than the rate specified in scheme rules in force on 14 October 2010 or, if none is specified, the annual CPI increase.

There will be anti-avoidance measures, designed to protect against practices that increase benefit values without amounting to a pension input, such as bringing forward normal retirement ages.

Transitional provisions
For those individuals who are already in a pension input period that will end after 5 April 2011, transitional rules will effectively apply the new AA regime as if the pension input period start date were 14 October 2010, alongside the current AA regime (for the whole of the pension input period, even though it will end after 5 April 2011) and also alongside the special annual allowance regime.

General
There will be exemptions from the AA charge for members who die or who commute their full benefit in circumstances of serious ill health. Members who retire early due to ill health might be exempted: the Government is considering ways of tackling tax avoidance issues in this regard. Otherwise, there will be no exemption for the year that benefits come into payment (as there is at present). This means that members who retire early on favourable terms could have large pension inputs for the period in which they retire.

It will be possible for individuals to carry forward any unused AA from any of the previous three years (including from a notional £50,000 AA for tax years before 2011/12 if the individual was a member of a registered pension scheme in the relevant tax year(s)).

"Spikes" in accrual could cause the AA charge to affect individuals who are not high earners at all. The carry forward facility could therefore be useful for:

- final salary scheme members with long service who have large pay increases;

- members who benefit from enhancements on redundancy or other early retirement; and
- members who sacrifice significant bonus payments for a pension contribution.

The carry forward facility is not limited to these situations and can be used whenever pension input exceeds the AA.

Accounting for the AA charge will remain wholly the responsibility of the individual. The carry-forward of any unused AA will be automatic, so individuals on incomes below £100,000 who are not already subject to self-assessment will not have to complete a tax return to benefit from it.

Tax relief will continue to be available at the individual's marginal income tax rate (including the 50% rate where applicable) but the tax charge on pension savings above the AA (currently 40%) will be charged at a marginal rate intended to reflect the rate at which tax relief would have applied.

This is only a summary of key provisions. There are other aspects not covered here that will be relevant to, for example, cash balance schemes, contracted-out schemes, overseas schemes and transfers.

Issues for trustees and employers

The Government will consult on options for individuals with very significant increases in pension savings to pay the AA charge out of their pension: this will involve trustees reducing the member's benefits and paying the charge for the member either at the time the charge applies or when the benefits are crystallised (this is being consulted on). Alternatively, or in addition, schemes may offer options to smooth spikes in accrual within the scheme over future pensionable service, but not beyond. There will be no option to unwind pension savings to avoid the AA charge.

There will be new obligations on trustees and employers to provide information: draft regulations will be published in early 2011. In particular:

- where an individual has pension savings in a scheme above the AA, the trustees must notify the individual of his or her pension input amount for the relevant tax year and the three previous years, within six months of the end of the relevant tax year;
- individuals may request their pension input amount, which must be provided (free of charge once a tax year) within three months of the request and six months from the end of the relevant tax year; and
- employers must provide information to DB scheme trustees about employees' pensionable remuneration and length of service by 6 July each year.

The above deadlines for 2012 are extended by 12 months (i.e. to 2013) to allow new systems to be put in place. For 2011/12, individuals will have to estimate their pension savings and then confirm the figures to HMRC later.

Action (of a currently unspecified nature) will be taken to ensure that EFRBS (non-registered pension schemes) will not offer a tax-efficient alternative to pension savings above the AA or to other forms of remuneration. Further details should be made available later this year.

Lifetime allowance

The lifetime allowance (LTA) is the maximum amount of pension savings that an individual may build up over his or her lifetime without incurring a tax charge. The LTA will be reduced from £1.8 million to £1.5 million but probably not until 6 April 2012. There is a consultation on this proposal, closing on 29 October 2010.

The Government suggests that the factor for converting the annual pension figure to a capital value for the purposes of the LTA may remain as 20 (i.e. a £20,000 annual pension is given a capital value of £400,000) and the tax charges on pension savings exceeding the LTA will be kept at the same rates (25% plus income tax on savings paid out as a pension; 55% on lump sums).

Primary and enhanced protections will continue to apply and there will be measures to ensure that the reduction need not retrospectively affect those with either form of protection. It is suggested that individuals may be allowed to keep an LTA of £1.8 million if they make no further pension savings. There may also be measures to protect those whose pension savings are already above the LTA.

The limit for trivial commutation is currently set at 1% of the LTA figure. It is proposed that the two figures be de-linked, so that the trivial commutation limit can remain at £18,000.

CPI instead of RPI

> **Press release:**
> http://www.statistics.gov.uk/cci/nugget.asp?ID=19

Key inflation figures published

The official price inflation statistics for September 2010 show that the annual increase was 4.6% for the retail prices index (RPI) and 3.1% for the consumer prices index (CPI). The September figures are particularly important because they are used for orders specifying the minimum statutory revaluation requirement. Those orders also set the minimum requirement for increasing pensions (and GMPs) in payment. The September price inflation figures are also used for increases to state pensions and other state benefits.

As previously reported (see **WHiP Issue 21)**, the Government will, from 2011 onwards, be using CPI as the measure of price inflation for the order that sets out the minimum percentage figures for revaluing deferred pensions and increasing pensions in payment. This will automatically mean that increases (in deferment and in payment) to public sector pensions (including benefits for past service) will be lower than if RPI were still used. Some private sector schemes will automatically switch to CPI for pension increase and/or revaluation purposes next year but this depends on the particular scheme rules, which will often require careful analysis.

The basic state pension is now increased each year by the highest of price inflation, earnings inflation and 2.5% (the so-called "triple guarantee"). The April 2011 increase to the basic state pension (and the lower earnings limit, which is linked to it) will continue to use RPI as the measure of price inflation but this will switch to CPI for the April 2012 increase and thereafter.

Possible legislation allowing rule amendments

It has been reported that the Government will soon consult on legislation allowing trustees (probably with employer consent) to move from RPI to CPI for revaluation and indexation purposes notwithstanding a restrictive amendment power and section 67 of the Pensions Act 1995 (concerning the protection of subsisting rights). If this happens, we will of course report on it.

> **ASB information sheet:**
> http://www.frc.org.uk/images/uploaded/documents/UITF%20Information%20Sheet%2090.pdf

Accounting for the change

Separately, the Urgent Issues Task Force of the Accounting Standards Board has issued a draft abstract "*Accounting implications of the replacement of the Retail Prices Index with the Consumer Prices Index for Retirement Benefits*". It provides guidance to those preparing and auditing accounts as to the impact on employers' accounts of the change from RPI to CPI. It notes that the key to the accounting is whether the benefit obligation is changed (whether automatically or by rule amendment). This makes sense but the current difficulty is that for many schemes it is not yet known if the benefit obligation is changing.

Comments are requested by 10 November 2010.

> **GAD Statement:**
> http://www.gad.gov.uk/Documents/Staff%20Transfers/RPI_LPI/Update_note-31_August_2010.pdf

Public sector outsourcing

The Government Actuary's Department has issued a statement on the effect of the change from RPI to CPI (see **WHiP Issue 21** and above) on broad comparability certificates for the purposes of public sector outsourcing. Schemes with a current certificate that wish to move to CPI will need testing for a new certificate but schemes will be able to continue with RPI increases under their existing certificates.

State pension age

> **Spending Review:**
> http://www.hm-treasury.gov.uk/spend_index.htm

In its Spending Review report on 20 October, the Government announced an acceleration in the raising of state pension age (SPA). The acceleration is particularly pronounced for women.

- Women's SPA is already rising gradually from 60 to 65. This started in April 2010 and was to have been completed by April 2020. It is now intended that, starting in April 2016 (when women's SPA will already have risen to 63), it will rise to 65 faster – completing this by November 2018 instead of April 2020. Women currently aged between (roughly) 55 and 57 will not be affected by this new change.
- Under existing legislation, SPA for both men and women is due to rise from 65 to 68 starting in 2024 and ending in 2046. It is now intended that the rise to age 66 will occur sooner, in steps from December 2018 to April 2020. There is no mention of any timetable for further increases but it is noted that these will be considered.

Pension Protection Fund

> **2010/11 levy guide:**
> http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/Levy_Guide_1011.pdf

Pension protection levy 2010/11

The PPF has started issuing pension protection levy invoices for 2010/11 and has published a guide to the 2010/11 levy to accompany these. The guide includes a section on the new power (see **WHiP Issue 17)** to charge interest on late levy payments.

Pension protection levy 2011/12

The Pension Protection Fund has published consultation documents on the 2011/12 pension protection levy. These include a draft appendix and guidance on contingent assets. The PPF aims to collect a total levy of £600 million (down from £720 million in 2010/11). The reduction is mainly due to the move from RPI to CPI in calculating PPF compensation: CPI increases are assumed, over the long term, to be 0.5% per annum lower than RPI increases.

Press release:
http://www.pensionprotectionfund.org.uk/news/pages/details.aspx?itemID=188

2011/12 levy pages:
http://www.pensionprotectionfund.org.uk/levy/1112_determination/Pages/11-12Determination.aspx

The consultation closes on 4 November 2010. The final levy determination and accompanying documents are expected later this year. We will report in more detail then.

Pension protection levy 2012/13

The PPF has announced a proposed new structure for calculating the pension protection levy for the 2012/13 levy year and thereafter. The proposals, on which comments are welcome until 20 December 2010, are as follows.

Press release:
http://www.pensionprotectionfund.org.uk/news/pages/details.aspx?itemID=189

- Barring exceptional circumstances, the PPF intends to fix levy rules for three years at a time.
- The new formula will give more weight to a scheme's funding level and will for the first time take account of investment risk, these being matters that are more in the levy payers' control.
- To increase stability, the PPF proposes to use average measures for underfunding and insolvency risks (averaged over five years and 12 months respectively) so that temporary changes in the scheme's funding level or an employer's insolvency risk score would not disproportionately affect the scheme's levy bill.
- Dun & Bradstreet failure scores of 1 to 100 will be grouped into six bands. Levy rates would then vary depending on the band rather than the specific failure score. A consequence of this is that credit for a "Type A" guarantee will only be given if the guarantor is in a higher band than the scheme's sponsoring employer. If the score is better but in the same band, there will be no credit given.

HMRC

Protected pension commencement lump sums

HMRC has published a draft statutory instrument relating to protected pension commencement lump sums ("PPCLS"). These are pension commencement lump sums that exceed the Finance Act 2004's 25% limit, to which members were entitled before A-day.

HMRC statement:
http://www.hmrc.gov.uk/pensionschemes/lump-sums.htm

One of the requirements for a PPCLS is that the individual must become entitled to all of his or her pensions under the scheme (except those in payment before 6 April 2006) on the same date. There is an issue for DB members with DC AVCs in that it is difficult to coordinate the start date for the pension deriving from those with the DB pension start date set by the scheme rules.

The new order will allow up to three months between the member's pension start dates before the protection is lost. It also provides that the protection is preserved if the member dies in the mean time. Effect is to be backdated to 6 April 2006.

Updates to the Registered Pension Schemes Manual

HMRC has published a number of updates to its Registered Pension Schemes Manual. The key changes:

RPSM Updates:
http://www.hmrc.gov.uk/manuals/rpsmmanual/updates/rpsmupdate041010.htm

- relate to the reduction of the income threshold for the special annual allowance from £150,000 to £130,000 (see **WHiP Issue 17**);
- flag up that some references to age 75 in the manual are no longer relevant, as a result of the proposed abolition of the requirement to secure a pension by age 75 and the transitional provisions in the Finance (No.2) Act 2010 (see **WHiP Issue 20**);
- confirm that payments made by trustees for distress and inconvenience, whether pursuant to a determination of the Pensions Ombudsman or based on what he might be expected to order, are scheme administration member payments and as such are authorised payments; and
- confirm that dependants' pension entitlements may be commuted for triviality when they arise or at any time thereafter. It is also noted that one of the requirements for such a "trivial commutation lump sum death benefit" is that the payment must

extinguish the dependant's entitlement to any form of authorised death benefit under the scheme, so any lump sum death benefit which is payable to the dependant in question should be paid before the trivial commutation is processed.

Lehman Brothers Pension Scheme: Financial support direction

Determination:
http://www.thepensionsregulator.gov.uk/press/pn10-16.aspx

Reasons:
http://www.thepensionsregulator.gov.uk/press/pn10-17.aspx

The Pensions Regulator Determinations Panel has decided that a financial support direction in respect of the Lehman Brothers Pension Scheme will be issued against six Lehman Brothers companies. These are the US parent Lehman Brothers Holdings Inc, the three main UK operating companies and two intermediate UK holding companies. All but one of these companies are undergoing insolvency proceedings (the one exception had been sold out of the group in May 2009 i.e. after the Lehman Brothers insolvency).

The Panel determined that an FSD should not be issued against 38 other companies, partly due to a lack of evidence as to their circumstances, in particular their connection with the scheme employer and the main operating companies.

As preliminary matters, the Panel decided that:

- the trustees (advised by Travers Smith) were "directly affected parties" who were entitled to be heard in the FSD proceedings, and whose evidence should be accepted;
- that, in the time available to them, the target companies did have a fair opportunity to respond and make meaningful and focused representations, "but only just": the Panel thought that the responses had been prepared to a high standard and most of the evidence was not disputed. However, the Regulator was criticised for not serving warning notices on all targets immediately after it had decided to issue them and for failing to disclose some relevant documents to the target companies; and
- there was no requirement for the Regulator to specify the particular financial support it was seeking against the targets (and in what proportions) in order for an FSD to be made, nor for the Panel to do so in its determination.

It was not disputed that the scheme's sponsoring employer, Lehman Brothers Limited, was a service company or that the targets were within the scope of the Pensions Act 2004's FSD provisions. The only matter for substantive consideration was whether it was reasonable to issue an FSD on the targets.

The Regulator's report of the determination was as follows:

"The scheme was left without a means of ongoing support when the US parent company, Lehman Brothers Holdings Inc (LBHI), filed for bankruptcy in the US on September 15, 2008.

This triggered the insolvency of a number of UK subsidiaries, including Lehman Brothers Limited (LBL), a service company which was the sponsoring employer of the pension scheme. At the time of the group's collapse, it is estimated that the deficit in the scheme calculated on a buy-out basis was £148m.

The Pensions Regulator's Determinations Panel (DP) has set out that it would be reasonable to issue a Financial Support Direction (FSD) against LBHI and the three main operating companies within the UK together with two intermediate UK holding companies.

The DP concluded that LBHI and the UK operating companies had strong associations with LBL. They also benefited from this relationship, including from the provision of staff and back-office services provided via LBL. LBL employed approximately 4,400 people, of which approximately 2,000 were seconded to other Lehman group companies.

The DP found that the US parent, acting as group treasurer, was the source of employer contributions to the pension scheme and guarantor of LBL's liabilities to the pension scheme."

There are 28 days (from 29 September 2010 – the date on which the Panel's reasons were given to the parties) for the parties to appeal the determination to the Upper Tribunal for fresh consideration.

Separately, the administrators of affected Lehman Brothers and Nortel companies in the UK are applying to the High Court for directions on whether liability arising pursuant to an FSD or contribution notice imposed after the company entered administration is a provable debt or administration expense (or neither). If it is, the insolvent companies will have to accept creditors' claims in respect of the FSDs and any subsequent contribution notice. The contrary argument is that the claims cannot be accepted because they arose after the companies had entered administration.

Rule amendment declared void by Pensions Regulator

Determination notice:
http://www.thepensionsregulator.gov.uk/docs/DN1727060.pdf

The Pensions Regulator's Determinations Panel has, for the first time, exercised its power under the Pensions Act 2004 to declare the retrospective element of a scheme rule amendment void, for failing to satisfy the requirements of section 67 of the Pensions Act 1995 relating to the protection of subsisting rights.

The determination related to a pension scheme sponsored by East Lancashire Coachbuilders. The scheme is in a PPF assessment period following the employer's insolvency. Before the insolvency, the rules had been amended to reduce the ongoing rate of accrual. This was done by a deed that was dated 31 May 2007 but which purported to take effect from 6 April 2007. The retrospective amendment was made without obtaining members' consents or an actuarial equivalence certificate, as required under section 67.

Under section 67, this made the amendment, to the extent it was retrospective, voidable by the Regulator. The trustees and the PPF did not know whether the amendment would be voided by the Regulator without asking, so they applied to the Regulator for a determination to help them work out what the scheme benefits were.

The Panel determined that the amendment was indeed voidable and that, to secure clarity in determining the scheme's benefits, it should be declared void.

Sex-based factors for insurance and annuities

Press release:
http://europa.eu/rapid/pressReleasesAction.do?reference=CJE/10/93&type=HTML

Advocate General's opinion:
http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-236/09

In *Association Belge des Consommateurs Test-AchatsASBL*, an Advocate General of the Court of Justice of the European Union, Juliane Kokott, has advised the Court to make a ruling declaring that part of a 2004 EU directive allowing sex-based actuarial factors in insurance policies is incompatible with the EU's general anti-discrimination principle and should be declared invalid.

The Advocate General's role is to advise the Court how it should decide the case. Advocate Generals' opinions are accepted more often than not but there are notable exceptions. If the Court follows the Advocate General in this case, there will be very significant consequences for insurance and annuity premiums and the benefits deriving from such policies. The same reasoning could also be logically applied to prohibit the use of sex-based actuarial factors in occupational pension schemes.

This case was brought by a Belgian consumers' association. It argues that insurance premiums and benefits deriving from insurance contracts should be equal as between men and women, citing in support the EU's overarching anti-discrimination principle. A 2004 EU directive allows EU member states to exempt, under national laws, insurance premiums and benefits deriving from them from the prohibition on sex discrimination. Very many, including the UK, have done so.

The Advocate General's opinion is that the 2004 directive should be declared invalid for infringing the overarching anti-discrimination principle. She has said that the exception in the directive was not based on any clear biological differences between men and women but was based merely on statistical associations with particular genders. She also noted that the European Commission seems to have changed its mind, without explanation, about whether insurance should be exempted.

If the Advocate General's opinion is followed by the Court, the exemption would cease to apply and insurers would have no exemption from the anti-discrimination requirement (even if one has been transcribed into national law). The Advocate General also advised, however, that the ruling should only apply to future premiums and benefits deriving from them, and that insurers should be allowed a three year period to reformulate their premiums and policy benefits for compliance with EU law.

We will report in due course on the Court's ultimate decision in this case.

Public sector pensions

Report:
www.hm-treasury.gov.uk/indreview_johnhutton_submissions.htm

Evidence:
www.hm-treasury.gov.uk/indreview_johnhutton_submissions.htm

The Independent Public Service Pensions Commission, chaired by Lord Hutton, has published its interim report on public sector pension provision.

The interim report concludes that the most effective way of making short-term savings is to increase member contributions. For the long term, both final salary and pure DC options are rejected: the final report will consider options including:

- a career average DB scheme, perhaps with a normal pension age linked to longevity factors;
- a notional or collective defined contribution scheme; and

- a hybrid scheme.

It will also consider options for protecting benefits accrued up to the date of change.

The Government has also published evidence submitted to the Commission.

As part of its Spending Review on 20 October, the Government confirmed that it will accept the findings in the interim report. It will wait for the final report before firming up the details but it has announced that:

Spending Review:
http://www.hm-treasury.gov.uk/spend_index.htm

- it will commit to a form of defined benefit pension provision (this seems likely to mean replacing final salary accrual with career average for future service);
- it will seek "progressive changes" to the level of member contributions (except for members of the armed forces): these are intended to start rising in April 2012 and to reach the increased level by 2014/15; and
- there will be public consultations on:
    - the discount rate used for the funding of public sector schemes; and
    - the continuation of the "Fair Deal" policy. (This provides that Government bodies which outsource functions to the private sector must require the contracting firm to provide "broadly comparable" benefits for the transferred staff.)

Equality Act 2010

Commencement order:
http://www.opsi.gov.uk/si/si2010/uksi_20102317_en_1

As expected (see **WHiP Issue 21**), the provisions of the Equality Act 2010 applicable to pension provision were brought into force on 1 October 2010.

Already, flaws have been found in the order that provides age discrimination exemptions for pension provision (see **WHiP Issue 21**). Amending regulations have therefore been issued. They provide:

Amending regulations:
http://www.opsi.gov.uk/si/si2010/uksi_20102285_en_1

- an exception for rules, practices, actions or decisions relating to pre-1 December 2006 pensionable service; and
- for the length of service exception to be moved and amended, so that it applies to employer contributions as well as to practices by occupational pension schemes.

Automatic enrolment

DWP announcement:
http://www.dwp.gov.uk/policy/pensions-reform/workplace-pension-reforms/

The body tasked with reviewing automatic enrolment (see **WHiP Issue 20**) has submitted its (unpublished) report to the Pensions Minister, who will announce the Government's intentions for automatic enrolment "later in the Autumn".

It has been reported that the Pensions Minister is likely to accept the recommendations, which are said to be that:

- employers should not have to enrol new workers into a qualifying scheme until they have worked for three months, to help reduce administration in respect of short-term employees;
- there should be no exemption for small employers; and
- the minimum income requirement for automatic enrolment should be increased to £7,500 but minimum contributions should be based on earnings above £5,000. (We presume that these are 2006/7 earnings figures which will need to be uprated.)

Source: Financial Times, 6 October 2010

The Government confirmed, in its Spending Review report on 20 October, that automatic enrolment and the NEST scheme would be going ahead in 2012. However, no further details were announced.

Spending Review:
http://www.hm-treasury.gov.uk/spend_index.htm

Breach of trust in failing to collect contributions

Determination:
http://www.pensions-ombudsman.org.uk/determinations/docs/2010/aug/26791.doc

In the case of *Mr AJ McCann*, two trustees of the SureStock Pension Scheme were found by the Deputy Pensions Ombudsman to have committed a breach of trust in failing to ensure that contributions from the employer (with which they were very closely connected) were paid to the scheme. There was no exoneration clause in the scheme rules and the Deputy Ombudsman considered that they had not acted reasonably and so should not be entitled to protection under section 61 of the Trustee Act 1925. (That section allows a Court (and by extension the Ombudsman) to relieve a trustee from personal liability for a breach of trust if it appears that the trustee has acted honestly and reasonably and ought fairly to be excused.)

The two trustees were therefore ordered jointly and severally to make the missed contributions to the scheme personally and each to compensate Mr McCann £250 for distress and inconvenience. A third trustee was not found personally liable: he had been made redundant and thereafter was blocked in his attempts to discharge his responsibilities as a trustee.

New EU pensions supervisory body

From January 2011, the new European Insurance and Occupational Pensions Authority (EIOPA) will replace the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS). It will be based in Frankfurt and will have powers to take action if EU law is not complied with.

Press release:
http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/434&format=HTML&aged=0&language=EN&guiLanguage=en

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If you wish to discuss any points arising from this note, 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.

Travers Smith LLP
10 Snow Hill
London EC1A 2AL
T: +44 (0)20 7297 3000
F: +44 (0)20 7295 3500

www.traverssmith.com