

Pensions Radar



December 2009

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.

New "listed change" for consultation regulations

Changing the definition of pensionable earnings in a DB scheme is set to become a "listed change", requiring prior consultation with affected members for any employer in the scheme which employs at least 50 people.

Financial support directions "look back" to be 24 months

The "look back" period that applies to the issue by the Pensions Regulator of financial support directions (FSDs) is extended to 24 months from 6 April 2010, with gradual increases between 6 April 2009 and that date. Any party connected to or associated with a scheme employer within this prior period is potentially at risk of an FSD.

Minimum retirement age raised to 55

The minimum retirement age permitted by HMRC will increase from 50 to 55, except for those with protected pension ages. Scheme rules must be amended by 5 April 2011 (when the transitional period for amending scheme rules in the light of the Finance Act 2004 ends – see below) to reflect this, or to provide that unauthorised payments may not be made, if this has not already been done.

Pensions tax rate changes

These changes are all designed to reflect the new 50% income tax band that will apply from 6 April 2010 to earnings over £150,000.

The "anti-forestalling" special annual allowance charge (see below) will be increased from 20% to a rate based on the individual's personal tax position.

The tax rate for short service refund lump sums will be 20% on the first £20,000 and 50% on the excess (currently 20% on the first £10,800 and 40% on the excess).

The tax rate for lump sum payments made from an employer-financed retirement benefit scheme (EFRBS), other than to an individual, will increase from 40% to 50%.

State Second Pension reduced for higher earners

The State Second Pension's 20% accrual rate on "Band 3" earnings (i.e. earnings between the Upper Earnings Threshold (currently £31,800) and the Upper Accrual Point (£40,040)) will be reduced to 10% (i.e. the same accrual rate as for "Band 2" earnings).

Age-related rebates for those using a personal pension to contract out will be reduced to reflect this change.

Disclosure of information regime to be reformed

A partially principles-based disclosure of information regime is set to apply in place of the current regime.

Employer debt regulations

Amendments to the employer debt regulations are expected to come into force. There have been proposals to facilitate corporate restructuring and to make technical amendments regarding the operation of the regulations in practice.

Key date

6 April 2010

6 April 2010 (and earlier)

6 April 2010 and
5 April 2011

6 April 2010

6 April 2010

6 April 2010

6 April 2010(?)

State pension age for women to increase gradually to 65	2010 to 2020
By April 2020, men's and women's state pension ages will both be 65. Women's state pension age will increase gradually from 60 to 65, starting in April 2010. This may affect, for example, schemes that provide bridging pensions or that feature state pension offsets.	
Equality Bill	Spring 2010
The Equality Bill is due to be enacted, replacing and consolidating existing equality laws. Much of the detail will be contained in subsequent regulations.	
Missing members aged 75 or over	1 June 2010
Trustees will be able to pay lump sums of up to £2,000 to or in respect of members aged 75 or over who had previously been untraceable for at least five years, without making an unauthorised payment. The lump sum must be paid within 12 months of discovering the member's whereabouts or learning of the member's death (or by 1 June 2010 if later).	
Unexpected receipts for former members	1 June 2010
Trustees will be able to make lump sum payments of up to £2,000 to members where the scheme has received an unexpected payment following the transfer out of a member or an annuity purchase, without making an unauthorised payment. The lump sum must be paid out within six months of the receipt (or by 1 June 2010 for receipts before 1 December 2009).	
Compulsory retirement at age 65	2010
The Government will review age discrimination legislation that currently allows employers to require their employees to retire at age 65 (or later).	
Investment regulations amended	23 September 2010
The investment regulations will be amended to end transitional provisions permitted under the EU IORP directive. Those transitional arrangements provide 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.	
Additional paternity leave to be available	3 April 2011
It is proposed that additional paternity (or adoption) leave of up to six months will be available to new fathers by reducing the mother's additional maternity leave correspondingly. Up to three months would be paid, by "additional statutory paternity pay" in place of maternity pay.	
Transitional tax regulations cease to apply	5 April 2011
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 the new tax regime became discretionary. Schemes still relying on these transitional regulations must be amended before they cease to apply. 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.	
Surplus refunds	5 April 2011
Trustees' transitional power to amend their scheme regarding the payment of surplus to employers will cease to apply. Such an amendment may be needed to allow a payment of surplus to an employer to be made after 5 April 2011.	

High earners' tax relief on pension contributions to be restricted

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

The Government will restrict or remove higher rate tax relief for pension contributions for individuals with taxable income of £150,000pa or more with effect from 6 April 2011. For those with taxable income of £180,000pa or more, only basic rate (20%) tax relief will be available. For those with taxable income between £150,000 and £180,000, there will be a tapering of relief down to 20%.

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; probably 30% in 2010/11) is charged on the individual to take back the benefit of higher rate tax relief in certain circumstances.

"Solvency II" Directive implementation

2012(?)

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

DC contracting-out abolished

April 2012(?)

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. It remains to be seen what (if any) restrictions will continue to apply in respect of protected rights held by schemes.

Basic state pension re-linked to earnings

April 2012(?)

This date is not confirmed, but the Government has for a long time been stating its commitment to reinstate the earnings link for the basic state pension. In the meantime, the Government is informally committed to 2.5% pa increases as a minimum. This commitment was reaffirmed in the April 2009 Budget and December 2009 Pre-Budget Report.

Personal Accounts and automatic enrolment

1 October 2012

The automatic enrolment requirement of the Pensions Act 2008 will take effect but with some transitional provisions. The Personal Accounts scheme will also begin. Stakeholder designation and access obligations will be abolished.

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 to preservation. It may affect preservation requirements in the UK, depending on its final language.

State pension age (for men and women) to increase gradually to 68

2024 to 2046

Between 2024 and 2046, state pension age for both men and women will increase gradually from 65 to 68.

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.

Judgment to clarify "money purchase" benefits

The Court of Appeal's judgment is awaited in the case of *Bridge Trustees v Yates*, which concerns the nature (DC or DB) of benefits under the Imperial Home Décor pension scheme. This may give greater clarity about the meaning of "money purchase" benefits.

VAT for fund management

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

Risk sharing schemes

Following its June 2008 consultation and December 2008 response, the Government is expected to make a further announcement about allowing new forms of risk-sharing including collective DC arrangements, reflecting increasing longevity in DB scheme benefit design, and the possible abolition of the indexation requirement for cash balance schemes.

Data protection

New powers to impose fines for serious contraventions of data protection law (e.g. lost data due to inadequate security procedures) are expected to be implemented by secondary legislation in 2010, but no firm date has been announced. The Coroners and Justice Act 2009 will strengthen the Information Commissioner's enforcement powers, particularly relating to on-site inspections. Once again, no firm implementation date has been announced.

Statutory maternity and adoption pay period to be extended to 12 months

The periods for statutory pay will coincide with the periods of ordinary and additional leave.

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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