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Ask a question

If you have any questions please contact:

Anne-Marie Winton, Partner
T +44 (0)20 7524 6143
a.winton@nabarro.com

Judith Clixby, Knowledge Lawyer
T +44 (0)20 7524 6733
j.clixby@nabarro.com

The Pensions team

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CPI: DWP consultation on draft PPF/FAS regulations

Following the recent government announcements that the Consumer Price Index (CPI) will be replacing RPI as the basis for calculating inflation linked statutory revaluation and pension increases for all occupational pensions and for PPF and FAS compensation, the DWP has issued a consultation on draft regulations aimed at bringing this change into effect in relation to the PPF and FAS. Consultation closes on 3 November 2010.

Unfortunately, the draft regulations do not clarify any of the grey areas we identified in our July briefing *CPI change: is it retrospective?*

The draft regulations are intended to make the following changes:

- accrued pensions are to be revalued by reference to RPI for periods before 31 March 2011 and by reference to CPI after that, under both PPF and FAS rules;
- from April 2011, increases to the FAS cap will be made by reference to CPI;
- FAS indexation will be measured against CPI from 1 January 2012.

The corresponding change to PPF indexation (also from 1 January 2012) has to be made by an amendment to primary legislation. This is intended to be done in a Pensions and Savings Bill to be introduced in the autumn.

The draft Regulations do not refer specifically to CPI but to “the general level of prices in Great Britain estimated in such manner as the Secretary of State thinks fit, as published by the Secretary of State from time to time”. This approach is intended to allow flexibility, should it be needed later.

Changes are proposed to the provisions relating to section 143 valuations, used to determine whether the PPF will assume responsibility for a pension scheme by identifying whether it is able to secure benefits above PPF compensation levels. Where a scheme enters a PPF assessment period before the change to CPI, but its valuation is not carried out until after that date, the actuary will be able to undertake a valuation on the CPI basis if he considers it likely that the scheme will be able to buy out the CPI liabilities. This issue will be kept under review.

The draft Pension Protection Fund (Pension Compensation Sharing on Divorce etc.) Regulations 2010, intended to allow for the sharing of PPF compensation, are also to be amended to reflect the change to CPI.

Abolition of DC contracting out: consultation

The DWP has issued consultation on draft consequential amending legislation relating to the abolition of DC contracting out from 6 April 2012. Consultation closes on 19 October 2010.

Points of interest include:

- confirmation that schemes will not have to track protected rights; they will be treated the same as any other money purchase benefit;

Further reading

[DWP consultation](#)

[Nabarro CPI briefing](#)

“If the draft Regulations come into force the Government expects to announce that the CPI will be the measure that will be used as the general level of prices for FAS and PPF purposes from the date that the Regulations come into force.”

DWP consultation document

[DWP consultation: abolition of DC contracting-out](#)

- a contracted-out deduction to survivors' SERPS; survivors will be treated as if they had received a 50% pension in relation to any period in which the earner was contracted-out on a money purchase basis;
- contracting-out certificates for COMBS will remain valid for the salary-related sections;
- there will be a disclosure requirement of minimum information which must be provided to all affected members;
- although the effective end date for all protected rights is 6 April 2012, for ease of scheme administration there will be a transitional period of three years to allow adjustments to be made to minimum payments.

One apparent anomaly in the consultation is the statement that transfers from DB contracted-out schemes to DC schemes will no longer be possible. It is not clear why this restriction, if intentional, is to be imposed.

Abolition of default retirement age: consultation

BIS and the DWP have jointly issued a consultation document on the Government's proposals to abolish the default retirement age (DRA) of 65. Consultation closes on 21 October 2010.

The main proposal is abolition of the DRA from 1 October 2011, with transitional arrangements applying from 6 April 2011, and removal of the associated statutory retirement procedures e.g. the duty on employers to give a minimum of six months' notice of retirement to employees. Employers wishing to have a compulsory retirement age for their workforce from this date will be able to do so only if they can objectively justify it as a proportionate means of achieving a legitimate aim. Transitional arrangements will apply for the period until 1 October 2011 where retirements have already been initiated before 6 April 2011.

In the *Seldon* case, which concerned the compulsory retirement of a partner in a law firm, the Court of Appeal concluded that, to be objectively justifiable, the aim of a compulsory retirement policy must be within or consistent with the Government's social policy objectives and that the Government's social policy objective in setting a DRA to allow younger people to have a better chance of employment and better promotion prospects is legitimate and justifiable. On that basis, at least in relation to the retirement of partners, succession planning and the creation of congenial and supportive culture can be 'legitimate aims' for this purpose.

For further details of the consultation on the abolition of the default retirement age and also the *Seldon* case, see our recent [Employment briefing](#).

Other key proposals are:

- as announced in the Coalition Statement and Emergency Budget, to re-establish the link between earnings and the state basic pension, and from April 2011 introducing the 'triple guarantee' whereby pensions will rise by the highest of earnings, prices or 2.5%; this is to be discussed in greater depth in subsequent consultations;
- to examine how employers and employees might be encouraged to discuss potential flexible retirement arrangements and options for flexible working; one question is whether guidance or a code of practice on flexible retirement options would be of use.

There is nothing express in the consultation about occupational pension schemes. As long as the current age discrimination exemptions remain in

place, then the main developments are likely to be more postponed pensioners and flexible retirement with related benefit design and funding issues. This may be one good reason for schemes to think hard before removing any maximum service provisions.

New UK Stewardship Code: guidance for institutional investors

Our recent Corporate briefing gives details of the Financial Reporting Council's UK Stewardship Code, which sets out good practice for institutional investors on engagement with investee companies. The briefing looks at the principles contained in the Stewardship Code and their implications for institutional investors.

[Nabarro Corporate briefing: UK Stewardship Code](#)

The Stewardship Code ties in with Myners Principle 5, Responsible ownership, the first limb of which is that "Trustees should adopt, or ensure their investment managers adopt, the Institutional Shareholders' Committee Statement of Principles on the responsibilities of shareholders and agents".

London

Lacon House,
84 Theobald's Road,
London WC1X 8RW
T +44 (0)20 7524 6000
F +44 (0)20 7524 6524

Sheffield

1 South Quay,
Victoria Quays,
Sheffield S2 5SY
T +44 (0)114 279 4000
F +44 (0)114 278 6123

Brussels

209A Avenue Louise,
1050 Brussels, Belgium
T +32 2 626 0740
F +32 2 626 0749

Alliance firms

France

August & Debouzy
Gilles August
T +33 (0)1 45 61 51 80
www.august-debouzy.com

Germany

GSK Stockmann + Kollegen
Rainer Stockmann
T +49 (30) 20 39 07 - 0
www.gsk.de

Italy

Nunziante Magrone
Gianmatteo Nunziante
T +39 06 695181
www.nunziantemagrone.it

Nabarro LLP

Registered office: Lacon House, 84 Theobald's Road, London, WC1X 8RW.

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