



This is a round-up of topical issues in March, April and May 2009

### Regulator issues “Risk Alert”

The Pensions Regulator issued a statement [“Alert to risks in the economic downturn”](#) on 20 April 2009 to all those involved in the running of pension schemes to alert them to potential risks. The statement looks at:

- the risk of dishonesty and fraud (eg members being encouraged to access their pension savings through “trust-busting” or “pension liberation” activities) and
- behaviours that unacceptably increase risks to members’ benefits, the PPF and all levy-paying schemes, such as the avoidance of employer debt, inappropriate transfers for individuals from under-funded schemes that would not subsequently have the resources or adequate employer support, as well as employer-related self-investment and poor practice associated with transfer incentive exercises.

The statement reminds trustees, employers and advisers of their whistle-blowing duties. It also encourages trustees to contact the Regulator if they are worried.

**ACTION:** Trustees should familiarise themselves with the alert, check that their “internal controls” processes are up to date and be vigilant.

### Regulator issues “Material Detriment” Code of Practice

The Pensions Regulator issued [Code of Practice No 12](#) on 5 May 2009, which is currently before Parliament for approval. This differs slightly from the original draft and confirms the circumstances in which the Regulator would expect to issue a contribution notice under the material detriment test to be where:

- the scheme is transferred out of the UK’s jurisdictions

- the sponsoring employer is transferred out of the UK’s jurisdictions or is replaced with an entity that does not fall within those jurisdictions
- the sponsoring employer’s support for the scheme is removed, substantially reduced or becomes nominal
- liabilities of the scheme are transferred to another scheme or arrangement where this leads to a significant reduction of the sponsor support or funding to cover those liabilities
- the scheme is operated in such a way that creates, or is designed to create, a financial benefit for the employer or some other person and inadequate account has been taken of members’ interests, including where risks to members are increased.

**ACTION:** Employers (in particular) should familiarise themselves with the Code if they are thinking about any of the types of restructuring covered by it.



## Deferred pension revaluations - It's not too late

The Pensions Act 2008 has reduced the statutory rate of revaluation of deferred pensions. Statutory revaluations remain geared to price inflation, but the cap has been reduced from 5% pa to 2.5% pa for service after 6 April 2009.

A reduction in the cap could be expected to reduce the cost of future benefit provision, particularly if the rate of price inflation is expected often to be above 2.5% pa. However, it would create another tranche of benefit, adding to administrative and communication complexities.

**ACTION:** It is not too late for employers to decide whether to take the opportunity to reduce the cost of benefit provision (for future accrual). If interested, they should ask their lawyers to advise what actions (including obtaining trustee agreement) will be required to reach the desired position.

## All change, all change!

[The Occupational, Personal and Stakeholder Pensions \(Miscellaneous Amendments\) Regulations 2009](#) and [The Pensions Regulator \(Miscellaneous Amendment\) Regulations 2009](#) were laid before Parliament on 16 March 2009. As their name suggests, they make minor changes to various sets of regulations.

The changes effective from 6 April 2009 include:

- Clarification of the member-nominated trustee requirements (see page 1 of [News Round-Up for December 2008 / January 2009](#))
- Creation of a power enabling the Regulator to impose civil penalties on employers who fail to consult over scheme changes without reasonable excuse (see page 3 of [News Round-Up for December 2008 / January 2009](#)).

- Simplification of “notifiable events” (see page 2 of [News Round-Up for December 2008 / January 2009](#))

**ACTION:** Trustees and employers should note the changes.

## Trivial commutation rules to be relaxed

The DWP had intended to extend with effect from 6 April 2009 the circumstances in which occupational pensions can be commuted on the grounds of triviality in line with HMRC regulations. However, HMRC’s Authorised Payments regulations were not laid before Parliament until 8 May 2009 and, although they will come into force on 1 June 2009, they will not relax the treatment of trivial pensions until 1 December 2009.

Genuine benefit payment errors (eg overpayments) are also now easier to correct.

**ACTION:** Trustees may wish to ask their scheme’s administrator how many pensions it will be possible to commute on such grounds and what administrative cost savings would be achieved.



### ECJ backs Advocate General in Heyday case

The European Court of Justice (ECJ) started hearing the “Heyday” case in July 2008. Heyday, part of Age Concern, is challenging the UK Government’s decision to allow employers to compulsorily retire employees when they reach the age of 65. Heyday claims this runs contrary to the European Union’s Directive 2000/78/EC which requires equal treatment in employment and occupation.

The Advocate General opined in September 2008 that it was appropriate for the UK Government to specify an age at which employees can be retired compulsorily, provided it is objectively and reasonably justified. The ECJ’s formal ruling, given on 5 March 2009, confirmed this view. It will now be for the UK’s High Court to decide whether having a default retirement age of 65 is objectively and reasonably justified.

**ACTION:** Employers should continue to monitor the case.

### DWP consults over draft automatic enrolment regulations

The DWP published [draft regulations](#) for consultation on 12 March 2009 detailing employers’ duties as regards automatic enrolment come 2012. Two further consultations are to cover:

- the constitution and rules of the Personal Accounts Scheme (see below)
- autumn 2009 – the remaining elements of employers’ duties (including re-enrolment and opt ins, the phasing-in of certain duties, qualifying schemes criteria and certification) and employment safeguards and elements of the compliance regime, including information to be passed to the Pensions Regulator, sanctions and penalties.

See [our response](#) to the consultation.

**ACTION:** Employers should start thinking about the impact the introduction of Personal Accounts will have on them and the design of their pension arrangements.

### PADA consults

The Personal Accounts Delivery Authority (PADA) and the DWP jointly published a [consultation paper](#) on 28 April 2009 regarding the operation and rules of the Personal Accounts Scheme. The consultation runs until 20 July 2009.

PADA issued a discussion paper [“Building personal accounts: designing an investment approach”](#) on 7 May 2009 to support consultation.

**ACTION:** Employers with strong views on how Personal Accounts should operate may wish to respond to the consultations.

For further information please get in touch with your usual HamishWilson consultant or contact us by calling 0870 160 5700 or by sending an e-mail to: [enquiries@hamishwilson.com](mailto:enquiries@hamishwilson.com).

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