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Test-Achats – EU guidelines on implementing unisex insurance pricing

The European Commission has adopted guidelines intended to help the insurance industry implement the unisex pricing of insurance from 21 December 2012.

The European Court of Justice ruling in the Test-Achats case (see LCP's News Alert) requires insurers to treat male and female customers equally in terms of insurance premiums and benefits from 21 December 2012.

The new guidelines offer practical guidance on a number of issues. For example, they clarify that the ruling applies only to new contracts, in particular to contracts concluded as from 21 December 2012. They also give specific examples of what is considered a "new contract" to ensure a comprehensive application of the unisex rule at EU level from the same date.

In addition, the guidelines provide examples of gender-related insurance practices which are compatible with the principle of unisex premiums and benefits, and which will therefore not change because of the Test-Achats ruling. These practices include reserving, reinsurance pricing, medical underwriting and targeted marketing.

Helpfully, the Commission clearly states its view that EU law does not require occupational pension schemes (which are governed by a different directive than insurers for equality purposes) to implement unisex pricing, although they will be indirectly affected where they enter into annuity or life insurance contracts with insurers.

Comment

We seem to be reaching a satisfactory conclusion on the effect of Test-Achats on occupational pension schemes. In particular the Commission's confirmation that gender based pricing will not be imposed on schemes is welcome – there had been a concern that Test-Achats was the thin end of the wedge. However, it is not completely clear that the ECJ will agree with the Commission's view if a case is ever brought before it.

Pensions Act 2011 – commencement provisions

An Order has been laid before Parliament commencing certain aspects of the Pensions Act 2011. The most significant of these brought into force by the Pensions Act 2011 (Commencement No. 1) Order 2011 (SI 2011/3034) are set out below.

From 1 January 2012, indexation on Pension Protection Fund (PPF) compensation is set by reference to the general level of prices, determined in such manner as the Secretary of State may decide (which has been decided as being by reference to the Consumer Prices Index).

From 3 January 2012, provisions including the following came into force:

- The requirement for the Secretary of State to review the earnings trigger and qualifying earnings band for auto-enrolment purposes each tax year – the DWP is consulting on the proposals for the 2012/13 tax year (see Pensions Bulletin 2011/53).
- Use of the Consumer Prices Index instead of the Retail Prices Index for statutory indexation and revaluation purposes, along with the removal of cash balance benefits from the scope of statutory indexation.
- A refinement of the powers of the PPF Board – this includes permitting the Board not to require full PPF entry valuations to be carried out when it is clear to the Board that the scheme is underfunded.
- Minor changes to the financial support directions and contribution notices legislation to assist the Pensions Regulator in the timing of its duties.

The Order also provides for the abolition of certain additions to the Basic State Pension from 6 April 2012.

Finally, as two months have now passed since Royal Assent, the amendments to the surplus payment provisions of the Pensions Act 2004 (see Pensions Bulletin 2011/03) have come into force. These extend, until 6 April 2016, the transitional power for trustees to pass a resolution to confirm or amend powers in their scheme rules to make payments out of surplus to the employer.

Workplace pensions – challenging times

The Association of Consulting Actuaries (ACA) has finalised its 2011 survey of pension trends, previously issued in interim form last September (see Pensions Bulletin 2011/37).

Some of the more interesting findings from the survey in relation to defined benefit schemes are:

- 91% are now closed to new entrants and 37% to future accrual of benefits;
- one in five have switched to CPI benefit indexation in the past year;
- combined employer and employee contributions average 27%;
- 31% of employers say they expect it will take at least 11 years to remove their scheme deficits;
- one in four employers are looking to buy-out or buy-in all of their DB liabilities within five years; and
- 28% of employers expect to offer enhanced transfer values (ETVs) to manage their scheme liabilities over the next three years, and a further 8% expect to offer pension increase exchanges (PIEs).

The ACA has also published a statistical supplement to accompany the survey.

Technical Memorandum 1 – BAS publishes new version

The Board for Actuarial Standards (BAS) has published version 2.0 of Technical Memorandum 1 (TM1). TM1 sets out the calculation approach in statutory money purchase illustrations (SMPIs) which must be provided to those with money purchase benefits on an annual basis.

The changes to TM1, which follow consultation (see Pensions Bulletin 2011/15), include:

- restructuring it to make it shorter and easier to follow with some guidance now included in an accompanying document;
- updating the mortality assumptions to better reflect current market practice; and
- text which emphasises that providers of SMPIs must take proper account of potential investment returns when setting the long-term investment assumption used in their projections.

Version 2.0 of TM1 is effective for SMPIs with an illustration date on or after 6 April 2012, although providers may continue to use the previous version for SMPIs issued before 21 December 2012.

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