

23 January 2012

## *DWP reignites prospect of GMP inequalities exercise for all DB schemes*

### *At a glance*

The Department for Work and Pensions (DWP) has **launched** a consultation on a technical amendment to pensions legislation, the likely net effect of which is to force every occupational pension scheme in the land containing GMP liabilities to undertake a costly equalisation exercise leading to relatively small benefit adjustments for most members.

### *Key Actions*

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#### **Employers**

Consider lobbying the Government to reconsider this course of action as the work required of trustees and their advisers will be expensive and distract from their roles in safeguarding the employer's pensions promise.

Consider whether the announcement raises any new issues for exercises currently underway, such as buy-in, buy-out, enhanced transfer values or pension increase exchange.

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#### **Trustees**

Check scheme communications to ensure that the GMP inequality issue is appropriately mentioned, especially when members are being invited to take irrevocable actions.

Consider obtaining an initial indication from advisers as to the practicality and cost of undertaking the necessary work.

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#### **Scheme administrators**

Establish what records are available for undertaking an exercise to remove inequalities arising from GMPs and consider how reliable those records are. Consider undertaking a GMP reconciliation exercise and obtaining opposite sex GMP figures from NISPI.

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### *The Detail*

The DWP's consultation, which the Coalition Government has had on the cards for a year or more and which was signalled nearly two years ago by the then Labour

Government, [amends](#) current legislation to remove the need to identify an opposite sex comparator before equalising for the effect of the GMP rules. Instead, matters proceed on the basis of a notional comparator.

The Coalition Government, despite significant representations made to it to the contrary, believes that it is necessary for such a change to UK legislation to be made, in order to reflect developments in jurisprudence at the European Court of Justice (ECJ). It points in particular to the [Allonby case](#) heard at the ECJ in 2004. In so doing, it has explicitly rejected arguments made to it that it should sponsor a test case in order to establish whether there is an obligation to adjust scheme benefits for GMP inequalities.

The Government is also amending the separate equal treatment rule that applies to the Pension Protection Fund (PPF) as it believes that the same case law applies equally to PPF compensation.

The DWP has also published a [possible method](#) for equalising overall scheme benefits to take account of the GMP rules. It does not intend to oblige schemes to use it and if published, it would not be the legal advice on how to equalise or be the definitive way forwards, but schemes would know that the method had been considered by a wide range of pensions professionals.

The methodology proposed requires calculations for an “opposite sex notional comparator” – ie resulting in what the member would get under the scheme rules and the relevant legislation if they were being treated as a member of the opposite sex. The member’s entitlement is then taken to be the higher of the amount payable to the member in their own sex and that payable to their opposite sex notional comparator. Importantly, this comparison must be undertaken each time the pension in payment is recalculated (ie generally annually).

If, under the applicable rules, the opposite sex notional comparator would be entitled to a pension earlier than the member, the pension due to the opposite sex notional comparator would be put into payment at that earlier age. At each payment date thereafter the pension paid should be the higher at that date of the amount that would have been paid to the member and the amount that would have been paid had they been a member of the opposite sex. The DWP sets out in its paper a number of illustrative examples.

Consultation closes on 12 April 2012. There is no stated timescale for the regulations to be laid before Parliament.

#### **Comment**

*It is hugely disappointing that on such a costly issue for defined benefit schemes, the DWP has not spelt out in the clearest of terms why it feels compelled to act. Many pensions lawyers have in the past suggested that there is no need to adjust scheme*

*benefits to allow for GMP inequalities. From the information released with the consultation, there would seem no reason for them to change their view.*

*As to method, the DWP's proposal gives members the best of both worlds on a year on year basis, along the lines of what the PPF intends to do – complex to administer and more expensive than just paying the benefit with the higher present value.*

*In practice, once the position is finalised, the end result may be that more employers consider Pension Increase Exchange (“PIE”) exercises to remove the additional complexities the DWP's proposals introduce.*

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