



THE CHEVIOT TRUST

Pensions for the legal sector

PENSIONS UPDATE – MAY 2011

1. The Budget 2011

On 23 March 2011, the Chancellor delivered the Budget. The relevant headlines in respect of pensions were as follows:

- A Green Paper consulting on options for reform of the State Pension (see below).
- State Pension Age will increase to 66 in April 2020.
- The tax free annual allowance for pension saving is set at £50,000 from 6 April 2011 and the lifetime allowance will be £1.5 million from 6 April 2012. Individuals with pension tax charges above £2,000 will be able to elect for their liability to be met from their pension benefits – “scheme pays”.
- Legislation will be introduced under the Finance Bill 2011 to target arrangements intended to disguise remuneration or avoid restrictions on pensions tax relief. Measures will ensure that where a reward or loan is provided, via a third party, in connection with an individual’s employment, an income tax charge will arise and the employer will be required to account for PAYE.
- The Finance Bill 2011, which was published in full on 31 March 2011, also includes provisions to remove, from 6 April 2011, the effective requirement to annuitise by age 75.
- In spring 2011, the Government will consult on changing tax rules to limit the amount of tax relief available to employers when they make asset-backed contributions to their defined benefit pension schemes. Subject to consultation, new legislation will be included in the Finance Bill 2012.

Cheviot comment – View the [budget overview document](#) here.

2. Department for Work and Pensions (DWP) publishes consultation on state pension changes

On 4 April, the DWP published a public consultation paper, “A state pension for the 21st century”, on its proposals for simplifying the state pension system. The consultation seeks views on the most appropriate mechanism for determining future changes to state pension age and also on the simplification proposals which are:

- Speeding up transition to a two-tier flat rate pension; or
- Creating a single-tier flat rate pension above the Pension Credit standard minimum guarantee. (Probably in the region of £140 per week).

Cheviot comment – We will keep a watching brief. View the [consultation paper](#) here. The consultation period ends on 24 June 2011.

3. Plans halted allowing early access to pension savings

Following a consultation exercise conducted by HM Treasury, plans to allow individuals to withdraw part of their pension funds before retirement have been shelved. The reason cited was insufficient evidence that early access would promote pension saving.

The Government intends to conduct a review once the 2012 auto-enrolment reforms are implemented in full, and an assessment can be made on whether early access would reduce the anticipated level of employee opt-outs.

View the [consultation response](#).

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4. HMRC clarifies “scheme pays” policy

HM Treasury’s consultation document examining the options for individuals to meet annual allowance tax charges from their pension benefits - the so-called “scheme pays” policy ended on 7 January 2011. HMRC and HM Treasury have published a summary of the responses. The summary confirms the following elements of the Government’s policy in this area:

- annual tax charges will be paid at the point at which they arise.
- a scheme will be required to offer the “scheme pays” facility where a member’s savings in that scheme exceed the annual allowance for the relevant year; and
- schemes will not be able to charge for offering this facility.

Cheviot comment – The eligibility threshold for members wishing to use this facility will be a tax charge of only £2,000, which could be a significant administrative burden. Scheme rules may need amending to offer the “scheme pays” facility to members. Adjusting pension benefits to reflect the amount of tax paid from the scheme will be a straightforward for defined contribution schemes. However, defined benefit schemes will find making such adjustments more complicated. We will keep a watching brief. View the [summary of consultation responses](#) or [draft legislation](#) here.

5. DWP factsheet on the abolition of DC contracting-out

The DWP has published an employer and trustee fact sheet, aimed at assisting in planning for the abolition of contracting-out on a defined contribution basis. The fact sheet outlines the changes planned for 6 April 2012.

Cheviot comment – Protected Rights already built up will become ordinary money purchase benefits, easing administration. We have already started communicating the change to members. View the employer [fact sheet](#) or the trustee [fact sheet](#) here.

6. The Pensions Regulator (TPR) publishes statement on member records and the statutory audit

In February 2011, TPR published a statement for trustees highlighting the limited role their scheme’s statutory auditor can play in monitoring compliance with member record-keeping requirements. New record-keeping targets were set by TPR in June 2010 which must be complied with by the end of 2012. View the [statement](#) here.

To accompany this statement, TPR has also published a brief prompt sheet reminding trustees about their record-keeping obligations and a further statement “5 simple steps for trustees to improve scheme administration”, urging schemes to make greater efforts to engage with service providers and advisers, in order to improve administration.

Cheviot comment –The administration team have spent a great deal of time ensuring member records are held in accordance with the record-keeping guidance and reported positive results to the Trustee Board. Administration is a running agenda item at the quarterly full Trustee Board meetings. View the [prompt sheet](#) and the [statement](#) here.

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7. Recent Cases

Test-Achats - the Court of Justice of the European Union (ECJ) signals the end of gender-based risk pricing in relation to annuities

On 1 March 2011, the ECJ handed down its judgment in *Association Belge des Consommateurs Test-Achats ASBL and others* case (Case C-236/09). The Court ruled that gender-based pricing in insurance contracts is unlawful. The ruling will have a fundamental impact on the insurance industry in the EU, including the cost of purchasing pension annuities, where differential pricing between men and women based on actuarial factors is widespread.

The ECJ has allowed a transitional period so that gender based pricing will be invalid from 21 December 2012.

Cheviot comment – There will be uncertainty in the insurance market for some time as a result of this decision. It is likely that the decision will require the European Commission to clarify the position with regard to other potential areas of discrimination, particularly age and disability. This might be done through a Protocol setting out exactly what insurers will be able to do in terms of differentiating the risks posed by different categories of policyholders.

Pension scheme trustees considering a buy-out exercise may wish to seek advice in relation to any policy purchase in the transitional period between now and 21 December 2012. It is likely that insurance will become more expensive in general.

Individuals looking for an annuity should be aware that, although the ruling should lead to improved rates for women, it will lead to worse rates for men. It will also affect women who are dependent on joint annuities purchased by husbands or male partners.

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