MAYER • BROWN

March/April 2014

Bulletin for Pensions Managers

Welcome to the March/April 2014 issue of our Bulletin for Pensions Managers. This issue covers developments to the end of April 2014.

In this issue:

Pensions news

BUDGET 2014: GENERAL

The March Budget announced a raft of important changes affecting pension schemes. Some of these are already in force, while others are likely to come into force over the next year or, in some cases, in the more distant future.

BUDGET 2014: COMMUTATION AND DRAWDOWN LIMITS HAVE ALREADY CHANGED

With effect from 27 March 2014:

- the small pots ("de minimis") commutation limit increased from £2,000 to £10,000;
- the trivial commutation limit increased from £18,000 to £30,000;
- the number of small personal pension pots that can be commuted increased from two to three;
- the minimum income requirement for flexible drawdown reduced from £20,000 to £12,000; and
- the capped drawdown limit increased from 120% to 150% of an equivalent annuity.

These changes apply to both DB and DC schemes (although drawdown is only available in respect of DC benefits).

Action

Trustees should check whether the new limits apply automatically under their scheme rules. If not, trustees (and employers) will need to decide whether to amend their rules to take advantage of the new limits.

Action

Trustees should notify their members of any changes to the commutation/drawdown limits that apply to their scheme.

BUDGET 2014: EXTENSION OF ANNUITY PURCHASE PERIOD

The Treasury has announced that people taking a pension commencement lump sum (**"PCLS"**) from a DC pension scheme prior to April 2015, including those who have recently taken a PCLS, will be given 18 months rather than six months to decide what they want to do with the rest of their DC pot.

HMRC has produced online guidance for members affected by this announcement.

Action

Trustees of DC schemes will need to consider whether they need to make any changes to their retirement processes and/or their scheme rules in light of this announcement.

BUDGET 2014: PENSIONS LIBERATION

The Finance Act 2014 will give HMRC new powers to combat pensions liberation. HMRC will be given the power to refuse to register a scheme or to de-register an existing scheme if:

- the main purpose of the scheme is not to provide authorised benefits (this will have effect from 20 March 2014); and/or
- the scheme administrator (for Finance Act 2004 purposes) is not a "fit and proper person" to administer the scheme (this will have effect from 1 September 2014).

HMRC will also have related powers to request information and/or enter business premises to inspect documents. HMRC has published a guidance note on the new powers.

Action

No action required.

BUDGET 2014: ABOLITION OF RESTRICTIONS ON TAKING DC BENEFITS

From April 2015, the current statutory restrictions on how members of DC schemes can take their benefits will be removed. Members will be able to draw down the entirety of their pot – i.e. the requirement to annuitise will effectively be removed. The 25% tax-free cash amount will remain available, and the remainder of the amounts drawn down will be taxed at the individual's marginal rate even if the entire pot is withdrawn.

The Treasury has issued a consultation on various related questions including:

- whether a statutory override should apply so that the new flexibility is available to all members irrespective of the provisions of their scheme rules;
- whether transfers from private sector DB schemes to DC schemes should be banned – there will be a ban on transfers from public sector schemes to DC schemes; and
- whether normal minimum pension age should be increased to 57 by 2028 and then increase with state pension age so that it is always 10 years less than state pension age.

Action

No action currently required, but:

(1) trustees of DB schemes may wish to make members aware now of the possibility that transfers from DB to DC schemes may be banned in future; and

(2) trustees and employers will need to give careful consideration to the consultation response once it is published in order to assess the impact for their scheme.

BUDGET 2014: AT RETIREMENT GUIDANCE FOR DC MEMBERS

From April 2015, members of DC schemes (both contract-based and trust-based) will have to be offered guidance at retirement. The guidance must be free, impartial and face-to-face, and the FCA will work with the Regulator and the DWP to develop standards.

The Treasury is consulting on related questions including whether:

- there should be different standards for contract-based and trust-based schemes; and
- the guidance should be provided by a third party.

Action

No action currently required, but trustees and employers of DC schemes will need to give careful consideration to the consultation response once it is published in order to assess what new obligations the "guidance guarantee" will place on them.

BUDGET 2014: OTHER CHANGES

The Government will consult on options to simplify the rules relating to the taxation of dependants' pensions, and will explore whether to amend or abolish the tax restrictions that prevent individuals aged over 75 from claiming tax relief on pension contributions.

Action

No action currently required.

PENSIONS ACT 2014

The Pensions Act 2014 has now received Royal Assent. Accompanying explanatory notes have also been published.

Action

No action required.

FINANCE (NO 2) BILL 2013/2014

The Finance (No 2) Bill 2013/2014 has been published. Among other things, the Bill makes provision for:

- the changes to the commutation and drawdown limits announced in the Budget – Budget Resolutions were passed on 25 March 2014 to bring these limits into force with effect from 27 March 2014 under the Provisional Collection of Taxes Act 1968;
- the new powers to be given to HMRC to combat pensions liberation; and
- the individual protection regime for the 2014 reduction in the lifetime allowance.

Action

No action required.

NEW MONEY PURCHASE DEFINITION: REGULATIONS FINALISED

The regulations implementing the new statutory definition of "money purchase benefits" have been finalised and are expected to come into force in July. A consultation response has also been published.

The regulations extend the easements contained in the consultation draft to an extent which means that very few schemes will need to revisit past decisions. The new definition nonetheless will have a significant impact going forwards for some schemes with benefits that are recategorised under the new definition. See our legal update for more information.

Action

The implications of the regulations depend heavily on the particular circumstances of the scheme in question. Trustees should therefore take advice on how the new definition will affect their scheme.

DWP: CHARGES CAP AND DC QUALITY STANDARDS

The DWP has published a response to its July 2013 consultation on the possible introduction of a charges cap and quality standards in DC schemes. The response announces that:

- From April 2015 new minimum quality standards will apply for all DC workplace schemes, whether trust-based or contract-based. Schemes will have to report annually on how the standards have been met. Contract-based schemes will be required to have an Independent Governance Committee.
- From April 2015 a 0.75% cap on charges in default funds in automatic enrolment qualifying schemes will apply. The cap excludes transaction costs. The Government will review the cap level and the exclusion of transaction costs in 2017.
- From April 2015 the ban on consultancy charging will be extended to all automatic enrolment qualifying schemes (consultancy charging is already banned for agreements entered into from 10 May 2013).
- From April 2015 schemes will have a new duty to consider and report on costs and charges. Later, the Government will introduce requirements for full standardised disclosure of all administration charges and transaction costs.
- From April 2016 active member discounts and member-borne adviser commissions will be banned in all automatic enrolment qualifying schemes.

Action

Trustees and employers of DC schemes will need to consider the extent to which the reforms will affect their scheme and start planning accordingly.

TUPE PENSION PROTECTION: MISCELLANEOUS AMENDMENTS

Regulations came into force on 5 April 2014 which clarify that, where an employer chooses to meet the TUPE pension protection requirements by making contributions to a DC scheme, it can either:

- match the employee's contributions up to 6%; or
- match the transferring employer's contributions if the transferring employer was required to make contributions and they were only in respect of money purchase benefits.

Action

No action required, but employers involved in TUPE transfers should bear the pension protection changes in mind when determining how best to comply with their obligations in respect of pensions under TUPE.

SCHEME ADMINISTRATION: MISCELLANEOUS AMENDMENTS

Regulations came into force on 5 April 2014 which:

- create an exception from the statutory auditor independence requirements for schemes with at least 500 employers; and
- clarify that trustees can obtain a statutory discharge when purchasing annuities that allow members to take a pension commencement lump sum.

Action

Trustees of schemes with more than 500 employers may wish to consider whether to take advantage of the exception from the independent statutory auditor requirements.

DRAFT IORP II DIRECTIVE

The EC has published the draft revised IORP Directive (known as "**IORP II**"), together with accompanying annexes and FAQs. The IORP Directive is the principal piece of EU legislation governing occupational pension schemes.

As previously announced, IORP II does not introduce any new solvency rules for schemes and, contrary to press rumours, does not remove the cross-border funding requirements. It does however:

- introduce various new governance-related requirements, including a more stringent "fit and proper" test for anyone running a scheme (e.g. trustees);
- introduce a requirement to provide a pension benefit statement that is standardised at EU level – IORP II would require these statements to be printed in large type on at most two A4 pages, (though it takes five pages itself just listing the information and warnings they must include);
- remove obstacles to cross-border pension provision including introducing a pension fund transfer procedure; and
- modify the investment restrictions for occupational pension schemes to encourage investment in assets with a long-term economic profile.

Assuming the draft is adopted, the UK would need to implement it by 31 December 2016.

Action

No action currently required, but employers and trustees should monitor the progress of the draft. The more stringent "fit and proper" test could potentially mean that it will no longer be possible to have non-professional pension scheme trustees.

GMP EQUALISATION AND CONVERSION

The DWP has responded to enquiries about when the GMP conversion guidance will be published as follows:

"The Government's view remains that pension schemes must ensure that equal pension benefits are paid to men and women, including equalising for the effect of the Guaranteed Minimum Pension (GMP).

We are working closely with industry representatives on this issue, and have made good progress on potential ways forward. We want to work through the complex issues in play in detail with industry colleagues, so that we can develop proposals that meet the Government's objectives and address the concerns of stakeholders.

We do understand that schemes are waiting for GMP conversion guidance. But we think it is important that we develop fully considered proposals, and we will publish guidance when this critical work is completed."

Action

No action required.

REGULATOR: GUIDANCE FOR DC SCHEMES

The Regulator has updated its regulatory guidance for DC schemes to reflect the coming into force of the new disclosure requirements, and to include a new section on the reforms announced in the Budget.

The Regulator has also published a statement to help trustees and their advisers understand the impact of the 2014 Budget.

Action

No action required, but trustees and employers of DC schemes may wish to review the updated guidance and statement.

REGULATOR: DB COSTS COMPARISON TOOL

The Regulator has published research showing how DB schemes of different sizes are impacted by administration and other running costs. The Regulator has also developed a charges checklist and a web tool to help trustees assess how the costs of their scheme compare with those of a typical scheme of a similar size.

Action

No action required, but trustees of DB schemes may wish to consider using the charges checklist and web tool to help assess whether the level of charges they are paying is reasonable.

REGULATOR: AUTOMATIC ENROLMENT

The Regulator has updated its series of guidance notes on automatic enrolment to reflect various changes to the automatic enrolment regime that came into force in April 2014, including the extension of the joining window from one month to six weeks, and the new earnings trigger and qualifying earnings band.

The Regulator has also published its first s89 report on automatic enrolment non-compliance. The report highlights key lessons to help employers avoid non-compliance.

Action

No action required, but employers, in particular those with 2014 staging dates, may wish to review the updated guidance notes and the s89 report.

REGULATOR: ONLINE PORTAL FOR REPORTING CONTRIBUTION PAYMENT FAILURES

The Regulator has launched an online portal where trustees and scheme administrators can report material contribution payment failures.

Action

No action required, but trustees/administrators may wish to use the portal when reporting payment failures in future.

REGULATOR: REFUSAL TO MODIFY SCHEME TO ALLOW EMPLOYER SURPLUS PAYMENT

The Regulator's Determinations Panel has rejected an application to modify the rules of a scheme to allow the scheme surplus to be paid to the employer. The Regulator can modify a scheme to permit a payment to the employer if the scheme is being wound up and its liabilities have been fully discharged. The scheme did not contain an employer surplus payment power and the amendment power prevented such a rule from being introduced. Members' benefits had been bought out in full and augmented, and the Regulator's case team supported the application.

However, the scheme provided that any surplus was to be used to augment members' benefits up to Revenue limits, and the Panel felt that the plain English definition of "liability" was wide enough to include this obligation. As it did not have sufficient information to determine whether there would be any assets remaining after this obligation had been complied with (since the augmentation already effected had been below Revenue limits), it rejected the application.

Action

No action required.

REGULATOR: THEMATIC REVIEW OF RECORD-KEEPING

The Regulator has published a report detailing the main findings of its thematic review of scheme record-keeping and has announced that it has opened seven case investigations into record-keeping following the review.

Action

No action required.

PPF: NEW VALUATION ASSUMPTIONS

The PPF has introduced new assumptions to be used for s143 and s179 valuations with an effective date on or after 1 May 2014. The PPF has also updated its guidance on s143 and s179 valuation assumptions.

Action

Trustees should ensure that the new assumptions are used for future valuations.

HMRC: GUIDANCE FOR MEMBERS

HMRC has updated its online guidance for members on the lifetime allowance to include a section on individual protection 2014. It has also produced new guidance for members on split pension input periods.

Action

No action required, but trustees may wish to make members with queries about the annual or lifetime allowances aware of HMRC's guidance.

HMRC: PENSIONS NEWSLETTER 61 AND 62

HMRC has published issues 61 and 62 of its Pensions Newsletter. Issue 61 covers the Finance Bill 2014 and the reforms announced in the Budget 2014.

Issue 62 covers, among other things, HMRC's position on whether, where annuity payments are backdated to the date on which the member would have been entitled to a pension under the scheme rules, the backdated payments are authorised payments.

Action

No action required.

HMRC: COUNTDOWN BULLETIN ISSUE 01

HMRC has published issue 1 of its Countdown Bulletin, a series of bulletins providing updates on activities linked to the end of contracting-out.

Action

No action required, but trustees and employers preparing for the abolition of contracting-out may find it useful to read the Bulletin.

SCHEME ACCOUNTS: NEW DRAFT SORP

The Pensions Research Accounts Group has published a new draft statement of recommended practice for pension scheme accounts for consultation. The new draft reflects the pensions-related provisions of FRS 102 and will apply for scheme years starting on or after 1 January 2015. The consultation closes on 16 July 2014.

Action

No action required, but trustees should ensure that the finalised SORP is followed when accounts for scheme years from 1 January 2015 are prepared.

LABOUR: MANIFESTO PROMISE TO CUT PENSIONS TAX RELIEF

The Labour Party has announced that its election manifesto will contain a pledge to cut tax relief on pension contributions for individuals earning over £150,000.

Action

No action required.

Pensions finance

EU FINANCIAL TRANSACTION TAX: UK CHALLENGE FAILS

The Court of Justice of the European Union has rejected the UK's legal challenge to the financial transaction tax that 11 EU member states are proposing to introduce.

Action

No action required.

Pensions litigation

ATP PENSIONSERVICE V SKATTEMINISTERIET: VAT ON DC INVESTMENT MANAGEMENT SERVICES

The ECJ has held that a DC pension scheme can fall within the definition of "special investment fund" if:

- the scheme is funded by the members;
- the scheme's funds are invested using a risk-spreading principle; and
- the members bear the investment risk.

The management of "special investment funds" is exempt from VAT. As such, the decision raises the hope that investment management services provided to DC schemes are exempt from VAT. For more information, please see our client alert.

IBM UNITED KINGDOM HOLDINGS V DALGLEISH: EMPLOYER DUTIES

The High Court has held that IBM breached its duty of good faith in making a package of changes which included the closure of its two DB schemes to future accrual. The judge held, among other things, that:

- member communications and statements to the trustees in connection with two previous benefit change projects had created "reasonable expectations" among the members that, among other things, the schemes would remain open to accrual in the long term unless there was a significant change in economic and financial circumstances; and
- IBM's business case for the proposed changes was not sufficient to justify going against those expectations.

The judge also held that IBM had breached its duty of good faith in conducting the consultation process in a way that was not "open and transparent".

We understand that IBM intends to appeal the decision.

BRIGGS V GLEEDS: ESTOPPEL BY REPRESENTATION

The High Court has held that a series of deeds of amendment dating back over more than 20 years were invalid as they had not been executed in accordance with the statutory execution requirements applicable to a partnership. The employer (a partnership) had claimed that the consultants who prepared the deeds had impliedly represented that they could be executed in the same way as for a limited company, giving rise to an "estoppel by representation" which would have stopped the trustees and members from challenging the validity of the deeds. Although the judge agreed that a mis-statement about the legal effect of a document could give rise to an estoppel by representation, he held that on the facts no such estoppel arose.

APPEALING OMBUDSMAN DECISIONS: HIGH COURT LEAVE NOW REQUIRED

Rules have come into force which introduce a requirement for parties (including members) wishing to appeal against a decision of the Pensions Ombudsman or the PPF Ombudsman to obtain leave to do so from the High Court. The new requirement applies to appeals filed on or after 6 April 2014.

Action

Trustees and/or employers wishing to challenge an Ombudsman's ruling will need to ensure that leave to appeal is obtained.

Mayer Brown events

If you are interested in attending any of our events, please contact Katherine Dixon (kdixon@mayerbrown.com) or your usual Mayer Brown contact. All events take place at our offices at 201 Bishopsgate, London EC2M 3AF.

- **Trustee Foundation Course**

  16 September 2014
  9 December 2014

  Our Foundation Course aims to take trustees through the pensions landscape and the key legal principles relating to DB funding and investment matters, as well as some of the specific issues relating to DC schemes, in a practical and interactive way.

- **Trustee Building Blocks Class**

  17 June 2014 – risk management and the importance of internal controls – **FULLY BOOKED**
  18 November 2014 – topic to be confirmed

  Our Building Blocks Classes look in more detail at some of the key areas of pension scheme management. They are designed to be taken by trustees who have already taken our Foundation Course.

Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Bulletin.

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Dates to note over the next 12 months

10 June 2014
New Regulator code of practice and policy on DB scheme funding expected to be published

30 June 2014
PPF levy deadline for certification of full block transfers

July 2014
New definition of "money purchase benefits" expected to come into force

1 July 2014
Deadline for Government review of differences in survivors' benefits provided by occupational pension schemes for opposite sex and same sex couples in legal relationships

31 July 2014
Annual allowance deadline for member requests for "scheme pays" (2012/2013 tax year)

1 September 2014
New "fit and proper person" test for scheme registration/deregistration comes into force

6 October 2014
Annual allowance deadline for schemes to provide active members who have exceeded the annual allowance in the 2013/2014 tax year with information about last 3 years' pension savings

31 December 2014
Annual allowance deadline for schemes to include details of tax due under "scheme pays" in scheme's AFT return (2012/2013 tax year)

14 February 2015
Annual allowance deadline for schemes to pay tax due under "scheme pays" (2012/2013 tax year)

6 April 2015
- Restrictions on drawdown of DC pots (i.e. requirement to annuitise) removed
- Requirement for all DC schemes to offer at retirement guidance to members comes into force
- Quality standards for all workplace DC schemes come into force
- Cap on charges in default funds in DC qualifying schemes comes into force
- Ban on consultancy charging in all DC qualifying schemes comes into force
- Duty on trustees of all workplace DC schemes to report on charges comes into force

Key: Important dates to note | For information

About Mayer Brown

Mayer Brown is a global legal services organisation advising clients across the Americas, Asia and Europe. Our presence in the world's leading markets enables us to offer clients access to local market knowledge combined with global reach.

We are noted for our commitment to client service and our ability to assist clients with their most complex and demanding legal and business challenges worldwide. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest banks. We provide legal services in areas such as banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; US Supreme Court and appellate matters; employment and benefits; environmental; financial services regulatory & enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

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