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July/August 2014

Bulletin for Pensions Managers

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

In this issue:

Pensions news

DC REFORMS: CONSULTATION RESPONSE

The DWP has published a response to its consultation on the 2014 Budget proposals to give individuals unrestricted access to their DC and cash balance benefits from age 55. The key points of the response are summarised below – for more details, please see our client alert.

DC REFORMS: THE NEW BENEFIT FLEXIBILITIES

- There will be a permissive statutory override to ensure that all schemes are able to offer the new flexibilities, but are not required to do so.
- Provision will be put in place to prevent "salary recycling".

HMRC has published a draft Taxation of Pensions Bill. Among other things, it provides for the following in respect of members with DC or cash balance benefits (together **"DC members"**):

- From 6 April 2015, schemes will be able to pay a new type of authorised cash lump sum, an "uncrystallised funds pension lump sum", comprising all or part of a DC member's uncrystallised benefits. 25% will be tax-free and the remainder will be taxed at the member's marginal rate.
- From 6 April 2015, DC members will be able to designate their benefits as flexi-access drawdown funds and will be able to make as many uncapped withdrawals as they wish from those funds.
- The existing rules about capped drawdown and the minimum income requirement for flexible drawdown will not apply to benefits designated for flexi-access drawdown.
- DC members who took capped drawdown before 6 April 2015 will be able to re-designate their funds as flexi-access drawdown funds with the scheme administrator's consent.
- Funds held by DC members who took flexible drawdown before 6 April 2015 will be automatically converted into flexi-access drawdown funds.
- The current rule which says that a lifetime or a short term annuity generally cannot decrease while in payment will not apply to new annuities purchased from 6 April 2015.
- Trustees and managers of schemes will have a statutory power to offer flexi-access drawdown and uncrystallised funds pension lump sums without needing to amend their scheme rules.
- From 6 April 2015, the age from which DB and DC benefits can be exchanged for cash under the small lump sum rules will be lowered from 60 to 55, as will the age at which DB benefits can be exchanged for a trivial commutation lump sum. It will no longer be possible for DC benefits to be exchanged for a trivial commutation lump sum.
- The annual allowance will reduce to £10,000 for future DC pension saving where a member takes an uncrystallised funds pension lump sum or accesses funds under flexi-access drawdown. There are complicated rules on how this DC annual allowance will interact with DB savings and the standard annual allowance of £40,000, and on how it will apply to savings under hybrid schemes.

The draft Bill is accompanied by a draft explanatory note and draft guidance. The consultation closed on 3 September 2014.

Action

Trustees and employers of DC schemes cannot make definite plans for April 2015 until the finalised Bill is published, but they may wish to start considering now whether they want to offer members any of the new flexibilities.

DC REFORMS: THE GUIDANCE GUARANTEE

- The guidance will be provided by independent organisations to ensure that there are no conflicts of interest.
- The FCA will be given statutory responsibility for setting standards for the guidance and for monitoring compliance – it has published a consultation on draft standards which closed on 22 September 2014.
- The guidance service will be funded via a levy on FCA-regulated financial services firms.
- Pension providers and trustees will have a statutory duty to make members aware of their right to impartial guidance and to direct them to the guidance service as they approach retirement.

The Pension Schemes Bill that is currently going through Parliament will be amended to provide for the guidance guarantee.

Action

No action currently required.

DC REFORMS: DB TO DC TRANSFERS

- Transfers from private sector DB schemes to DC schemes will not be banned, but will be subject to safeguards including a requirement for members wishing to transfer to obtain independent financial advice from an FCA-authorised financial adviser. The Government has published a factsheet on the safeguards.
- The Government plans to consult on allowing direct withdrawal of benefits in lump sum form from DB schemes.
- Transfers from unfunded public service DB schemes to DC schemes will be banned.
- Transfers from funded public service DB schemes to DC schemes will be permitted, subject to safeguards.

Action

Trustees of DB schemes may wish to let members know that transfers to DC schemes will not be banned.

Action

Trustees of DB schemes should consider what changes to transfer processes may be required to reflect the new safeguards for transfers to DC schemes.

DC REFORMS: OTHER CHANGES

- Normal minimum pension age will rise from 55 to 57 in 2028 and will then remain 10 years below state pension age. This change will be dealt with in the next Parliament (depending on the results of the 2015 General Election).
- The current 55% tax charge on funds held in drawdown products at death or uncrystallised after age 75 will be reduced.

Action

No action currently required.

FINANCE ACT 2014

This Act has received Royal Assent. It provides for, among other things:

- the drawdown and commutation limit changes announced in the 2014 Budget;
- transitional changes to allow members retiring between 19 September 2013 and 6 April 2015 (or who retired prior to 19 September 2013 if they cancelled their annuity contract on or after 19 March 2014) to benefit from the DC flexibilities being introduced from April 2015;
- the 2014 individual protection regime; and
- the new HMRC powers to combat pensions liberations announced in the 2014 Budget.

Action

Trustees should check whether the new drawdown/commutation 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 of DC schemes should consider whether they need to make any changes to their retirement processes and/or their scheme rules in light of the transitional changes.

Action

Trustees should notify members of any scheme changes.

PPF ENTRY RULES: CHANGES FOR OVERSEAS EMPLOYERS

Regulations came into force on 21 July 2014 that amend the PPF entry criteria so that certain employers whose centre of main interests is in an EEA member state other than the UK can, in certain very limited circumstances, undergo an insolvency event for the purposes of PPF entry. The regulations have been passed to solve the loophole identified in the *Olympic Airlines* case. The regulations cease to have effect on 21 July 2017.

Action

No action required.

SAME SEX PARTNERS: REVIEW OF SURVIVOR BENEFITS

The Government has published a review of survivor benefits in occupational pension schemes. The review concludes that full equalisation of survivor benefits would cost £2.9 billion for public sector schemes and £0.4 billion for private sector schemes. The Government will now consider the issues arising in connection with equalisation before making a decision on any changes to the current law.

Action

No action required.

NEW DEFINITION OF MONEY PURCHASE BENEFITS: REGULATOR STATEMENT

The Regulator has published a statement on the new definition of money purchase benefits. If, despite the scheme's current or historic treatment as a money purchase scheme, the scheme offers benefits that fall outside the new definition, the trustees must notify the Regulator immediately.

Action

Schemes that have ceased to be wholly money purchase under the new definition should ensure that they notify the Regulator.

BULK TRANSFERS AND THE ANNUAL ALLOWANCE: REVISED DRAFT LEGISLATION

HMRC has published a draft order for comment. This order is designed to ensure that the annual allowance (**"AA"**) regime operates as intended and, among other things, contains provisions dealing with the interaction of benefit transfers and the AA.

A previous draft of these provisions (published for consultation in 2012) suggested that where a transfer payment is not equivalent to the value of the transferred benefits, the "shortfall" would count as an accrual by the member for AA purposes. This would have applied to all underfunded transfers including "mirror image" transfers. The provisions have now been re-drafted with the intention that they should not apply to mirror image transfers.

The draft order is accompanied by a draft explanatory memorandum and draft amendments to the RPSM. The consultation closed on 27 August 2014.

Action

No action required.

CONTRACT-BASED WORKPLACE DC SCHEMES: INDEPENDENT GOVERNANCE COMMITTEES

The FCA has published a consultation on proposed rules for the independent governance committees that all contract-based workplace DC pension schemes will be required to have from April 2015. The consultation closes on 10 October 2014.

Action

No action required.

SHARED PARENTAL LEAVE: DRAFT REGULATIONS

Various sets of draft regulations covering shared parental leave and pay have been laid before Parliament and are due to come into force in December 2014. Further regulations are expected in due course.

Shared parental leave will be available in respect of babies due/placed for adoption on or after 5 April 2015.

Action

Schemes may need to review their rules on maternity, paternity and adoption leave to ensure that they cater also for shared parental leave, including the consequential abolition of additional paternity leave.

GAD: BROAD COMPARABILITY UNDER THE NEW FAIR DEAL POLICY

GAD has published announcements setting out:

- the actuarial assumptions that it will use when carrying out broad comparability assessments under the new Fair Deal policy; and
- changes to the passport certificate system for broad comparability in light of the new Fair Deal policy.

GAD has also announced that, from 24 July 2014, all existing broad comparability certificates for the Principal Civil Service Pension Scheme (**"PCSPS"**) have ceased to be valid for transfers of employment which take place after that date. GAD is now accepting applications for broad comparability assessments against the PCSPS which take into account the 2015 reforms to the PCSPS.

Action

Employers expecting to enter into a TUPE transfer under which members of the PCSPS will transfer will need to factor GAD's announcements into their planning.

TREASURY: BANKING REFORM AND PENSIONS

The Treasury has published a consultation on draft regulations that will restrict the types of multi-employer schemes and pension liability sharing agreements that banks which are "ring-fenced" under the Financial Services (Banking Reform) Act 2013 can participate in. The consultation closes on 15 October 2014.

Action

No action currently required.

INDIVIDUAL PROTECTION 2014: APPLICATIONS OPEN

Applications can now be made for individual protection. Applications must be made online by 5 April 2017.

HMRC has published a lifetime allowance checking tool to help individuals decide whether to apply, and detailed guidance.

Action

Schemes may wish to notify members of the availability of individual protection. They should also:

- prepare to provide benefit valuations for members who request them in order to obtain individual protection; and
- ensure administration processes are updated to record those members holding individual protection.

FRS 102: PROPOSED AMENDMENTS

The FRC has published a consultation on draft amendments to FRS 102 to clarify issues relating to accounting for DB schemes. The consultation closes on 21 November 2014. FRS 102 becomes mandatory from 1 January 2015.

Action

No action required.

LEHMAN BROTHERS: FSD SETTLEMENT

The Regulator has reached a settlement with the six Lehman Brothers companies which were issued with an FSD in 2010. Under the settlement, an amount will be paid to the Lehman Brothers scheme which is expected to buy out members' benefits in full. The parties have agreed to discontinue the proceedings to appeal the 2013 decision in *Re Storm Funding*. The Regulator has published a s89 report on the settlement.

Action

No action required.

CERTIFICATES OF RESIDENCE: NEW PROCESS

HMRC has announced that, from 4 August 2014, the process for applying for a certificate of residence for a registered pension scheme has changed. Requests which are not made using the new process may be rejected.

Action

Scheme administrators should ensure that they use the new process when applying for certificates of residence in future.

HMRC: PENSIONS NEWSLETTERS 63 AND 64

HMRC has published issues 63 and 64 of its Pensions Newsletter. The issues cover, among other things:

- an update on individual protection 2014 and fixed protection 2014;
- a summary of the implications of HMRC's new policy on scheme registration for relief at source; and
- a summary of the draft Taxation of Pensions Bill and the transitional provisions in the Finance Act 2014 in relation to the new DC flexibilities.

Action

No action required.

HMRC: COUNTDOWN BULLETIN ISSUE 2

HMRC has published issue 2 of its Countdown Bulletin, its newsletter about the end of contracting-out. Among other things, the Bulletin contains responses to issues that were raised at the DWP/HMRC Pension Industry Conference in May.

Action

No action required.

PENSIONS LIBERATION: REVISED LEAFLETS

The Regulator has published revised versions of its Scorpion campaign leaflets on pensions liberation.

Action

Schemes that use any of the leaflets, e.g. that include the transfer pack insert in their member transfer packs, should ensure that they use the revised versions.

DC SCHEMES: GUIDE TO EMPLOYEE COMMUNICATIONS

The Regulator has published a guide for employers on talking to their employees about DC schemes.

Action

No action required, but employers with DC schemes may find the guide useful when preparing employee communications.

Pensions finance

FIDUCIARY DUTIES OF INVESTMENT INTERMEDIARIES: LAW COMMISSION REPORT

The Law Commission has published a report on its review of the fiduciary duties of investment intermediaries. The review focused on pensions, and considered in particular the extent to which trustees can (or must) consider factors beyond the maximisation of financial returns, such as social and environmental impacts and ethical standards, when exercising their investment powers.

The Commission has also published guidance for pension trustees on their duties when setting an investment strategy, as well as a summary of its report.

Action

Trustees may wish to review the Commission's guidance.

Pensions litigation

PENSION RIGHTS ON A PUBLIC SECTOR OUTSOURCING

The High Court has held that a member of the Principal Civil Service Pension Scheme ("**PCSPS**"), whose active membership ceased when her employment was transferred to a private contractor, should have been able to retain the lower normal pension age offered to active members. Under the rules of the PCSPS, this entitlement was lost when a member resigned.

The judge held that the Pensions Ombudsman had erred in law in misconstruing the term "resignation" under the PCSPS rules as including any termination of service before pensionable age. There was no indication in the rules that this was the intention, particularly since, if "resignation" was intended to cover any termination of pensionable service prior to pensionable age, there would be no need for the PCSPS rules dealing with other forms of termination such as retirement on medical grounds.

RELIANCE ON INCORRECT INFORMATION

The Deputy Ombudsman has decided that trustees who gave a member incorrect information about his normal pension age (**"NPA"**) were estopped from calculating his pension on the basis that he had retired early when he chose to retire at the incorrect NPA. The Deputy Ombudsman ordered the trustees to pay the member's pension as if he had been entitled to retire at the incorrect NPA.

OMBUDSMAN: PENSIONS LIBERATION COMPLAINTS

The Ombudsman has issued a further update on the pensions liberation complaints that it is handling. The Ombudsman hopes to be able to publish its decisions in these cases this autumn.

In its 2013/2014 Annual Report, the Ombudsman said that it had received 52 complaints about pensions liberation. The majority relate to blocked transfers, and all concern personal rather than occupational pension schemes.

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**

  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**

  1 October 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

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
- Deadline for schemes which have ceased to be wholly money purchase following introduction of the new definition of "money purchase benefits" to appoint a scheme actuary

31 October 2014

Deadline for updating information used by Experian to calculate insolvency risk scores for PPF levy purposes

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)

31 March 2015

Deadline for schemes which have ceased to be wholly money purchase following introduction of the new definition of "money purchase benefits" to submit first s179 valuation to PPF

1 April 2015

Schemes which have ceased to be wholly money purchase following introduction of the new definition of "money purchase benefits" become eligible for the PPF

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

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