Bulletin for Pensions Managers

Welcome to the January/February 2017 issue of our Bulletin for Pensions Managers.

In this issue:

Pensions news

SPRING BUDGET

The main pensions-related announcements in the Spring Budget were as follows:

- The tax registration process will be amended for master trusts to align it with the new authorisation and supervision regime set out in the Pension Schemes Bill.
- A 25% charge on transfers to QROPS will be introduced for transfers requested on or after 9 March 2017, subject to certain exceptions.

For more information, see our legal update.

The Treasury has also confirmed that the proposed reduction of the money purchase annual allowance to £4,000 from 6 April will be going ahead.

Action

Schemes should ensure that they update their overseas scheme transfer procedures and associated member communications as a matter of urgency to reflect the introduction of the new transfer charge.

Action

If they have not already notified members of the reduction to the money purchase annual allowance, schemes offering money purchase or cash balance benefits should consider notifying members holding such benefits of the reduction now.

DWP GREEN PAPER – DB PENSION SCHEMES

The DWP has published a green paper on the security and sustainability of DB pension schemes. The paper aims to identify issues undermining confidence in the current DB pensions system in the UK, and to consider possible solutions.

The paper discusses a range of potential changes, including:

- additional Regulator powers;
- a power to suspend indexation in certain circumstances;
- a statutory override to enable schemes to move from RPI to CPI;
- a requirement for proactive compulsory clearance of certain corporate transactions;
- making it easier to separate underfunded schemes from struggling employers; and
- increased consolidation of DB schemes.

The comment period closes on 14 May. For more information, see our legal update.

Action

No action required.

DC BENEFITS – PENSIONS ADVICE ALLOWANCE

Regulations will come into force on 6 April that create a new type of authorised payment that can be made by a registered pension scheme from a member's DC pension pot to pay for retirement financial advice or its implementation.

The payment must be made directly to a regulated financial advisor, in respect of either the member or a beneficiary of the member. The payment must not exceed £500. Members can use the facility once in a tax year, but no more than three times in total. Schemes are not required to offer the allowance facility.

An accompanying consultation response has been published.

Action

Schemes with DC benefits should consider whether they wish to offer the allowance facility. If they do wish to offer it, a rule amendment may be required.

AUTOMATIC ENROLMENT – 2017/18 EARNINGS THRESHOLDS

The 2017/18 qualifying earnings band for automatic enrolment purposes has been set at £5,876 – £45,000. The earnings trigger remains unchanged at £10,000.

Action

Employers should ensure that their payroll administration processes are updated to reflect the new qualifying earnings band figures when they come into force.

AUTOMATIC ENROLMENT – EMPLOYER DUTIES

Regulations came into force on 6 March that introduced two new exceptions from the employer automatic enrolment duties for jobholders who hold fixed protection 2016 or individual protection 2016.

Further regulations will come into force on 1 April that simplify the automatic enrolment process for new employers who were not in existence when the automatic enrolment implementation timetable was set in April 2012.

The Regulator has also announced that it will start carrying out spot checks on employers to ensure that they are complying with their automatic enrolment duties.

Action

Employers should consider whether they wish to take advantage of the new exemptions from the automatic enrolment duties.

GENERAL PENSION SCHEME LEVY – 2017/18 RATE

The rate of the general levy payable by schemes with 500,000+ members has been reduced by 25% for 2017/18. The rate for other schemes remains unchanged. An accompanying consultation response has been published.

Action

Schemes with 500,000+ members may wish to factor the revised levy rate into their 2017/18 budget.

GMP EQUALISATION – CONSULTATION RESPONSE

The DWP has published a response to its consultation on a draft methodology for GMP equalisation and proposed changes to the GMP conversion legislation to facilitate equalisation.

The DWP intends to give further consideration to the consultation responses with the industry working group that designed the methodology. The DWP will then decide what changes might be necessary to the methodology, and what further amendments might be required to legislation to enable schemes to convert benefits more easily.

Action

No action required.

CONTRACTING-OUT – MISCELLANEOUS CHANGES

Regulations will come into force on 6 April that make a range of changes to the contracting-out legislation to make the post-abolition of contracting-out regime work better. These include giving HMRC a power to accept late payment of contributions equivalent premiums where these arise in connection with GMP reconciliation.

An accompanying consultation response has been published. The DWP has noted the particular issue regarding bulk transfers without consent of contracted-out rights to schemes that have never been contracted-out, and hopes to consult on any proposed changes by autumn 2017. Changes to the conditions that must be met when amending contracted-out benefits have been dropped for the time being.

The statutory increase to be applied to GMPs in payment for the 12 months from 1 October 2015 has been set at 1%.

Action

Schemes should ensure that they apply the required increase to GMPs in payment.

PAYMENT OF LUMP SUM DEATH BENEFITS TO A TRUST – PROVISION OF INFORMATION

Regulations came into force on 6 February 2017 that, among other things, set out the information that registered pension schemes must provide when certain lump sum death benefits are paid on or after 6 April 2016 to a trust.

Action

Schemes should check that the required information has been provided if any payments to trusts have been made since 6 April 2016. Schemes should also update their provision of information procedures for future payments.

PPF LEVY – SCHEMES WITHOUT A SUBSTANTIVE EMPLOYER

The PPF has launched a consultation on its proposed 2017/18 levy rule setting out the charging methodology for schemes without a substantive sponsor. The new charging methodology is based on a commonly used pricing model for valuing put options, which has been adapted to the PPF's particular circumstances. The consultation closed on 6 March.

Action

No action required.

PPF – LONG SERVICE COMPENSATION CAP

The increased PPF compensation cap for members with more than 20 years' service will come into force on 6 April.

Regulations and an order will also come into force on 6 April that make the necessary changes to secondary legislation to implement the increased cap. An accompanying consultation response has been published.

The standard PPF compensation cap for 2017/18 has been set at £38,505.61.

Action

No action required.

EU GENERAL DATA PROTECTION REGULATION – CONSENT

The ICO has published a consultation on draft guidance explaining the ICO's recommended approach to compliance with the GDPR, and what counts as valid consent for the purposes of the GDPR. The guidance also provides practical help to decide when to rely on consent, and when to look at alternatives. The consultation closes on 31 March.

Action

No action required.

PENSION SCAMS – ADDITIONAL REGULATOR MATERIALS

The Regulator has added a range of additional materials to its Scorpion campaign to help prevent pension scams. The new materials include videos for trustees and members, an online scam spotting tool, and a trustee checklist.

The Regulator has also published a blog on helping trustees stop pension scams.

Action

Trustees may wish to review the new trustee-focussed materials and the blog. Schemes may wish to make members aware of the new member-targeted materials.

EMPLOYER INSOLVENCY – REGULATOR BLOG

The Regulator has published a blog on protecting pensions when a business goes into insolvency.

Action

No action required.

PENSION SCHEMES NEWSLETTERS 84 AND 85

HMRC has published issue 84 and issue 85 of its Pension Schemes Newsletter. Among other things, these cover the Spring Budget, the new provision of information requirements in connection with the payment of lump sum death benefits to trusts, and HMRC's online annual allowance calculator.

Action

No action required.

COUNTDOWN BULLETINS 22 AND 23

HMRC has published issue 22 and issue 23 of its Countdown Bulletin. Among other things, these include Q&As on the GMP Checker.

Action

No action required.

Pensions finance

CORPORATE GOVERNANCE AND VOTING – PLSA GUIDELINES UPDATED

The PLSA has updated its Corporate Governance Policy and Voting Guidelines. Among other things, the updated guidelines include a stronger position on the re-election of remuneration committee chairs at companies with problematic executive pay practices, as well as emphasising the importance of boardroom diversity.

Action

Schemes may wish to check whether their investment managers follow the PLSA guidelines.

Pensions litigation

UNMARRIED PARTNERS – SURVIVORS' BENEFITS

The Supreme Court has held that a requirement under the Northern Ireland LGPS for a member's unmarried cohabiting partner to have been nominated by the member in order to be eligible for a survivor's pension is incompatible with the European Convention on Human Rights (ECHR). The decision is unlikely to have significant implications for private sector schemes as claims relating to incompatibility with the ECHR can only be brought against public authorities.

COMPROMISING PENSION DISPUTES

The Court of Appeal has held that s91 Pensions Act 1995 (which prohibits the surrender of benefits) does not apply to disputed pension rights. As such, s91 would not invalidate a settlement agreement under which, in return for £100 each, partners in a firm that were both employers and members of a scheme would give up additional benefits to which they had become entitled as a result of a High Court decision that certain deeds of amendment were invalid. The value of the benefits being given up varied between the partners, but the Court concluded that the nominal level of the monetary compensation did not matter – the real consideration was the agreement by both sides not to pursue the matter in further Court proceedings. However, the compromise did have to be entered into in good faith.

BREACH OF STATUTORY DUTY TO TAKE INVESTMENT ADVICE

The High Court has held that the former trustees of two occupational pension schemes that were allegedly used for pensions liberation had breached their statutory duties by failing to take "proper advice" as required by s36 Pensions Act 1995 before investing over £3.25m of the schemes' £4.3m assets under gilt option agreements with a company which had entered into a consultancy agreement with company A under which company A would retain 84% of the investment. The Court also held that s33 Pensions Act 1995 meant that the trustees could not reply on a provision in the scheme rules under which trustees were not personally liable for any acts or omissions. (Section 33 restricts the ability of trustees to limit their liability for breach of their statutory investment duties.)

PART-TIME WORKERS – PRO-RATING OF PENSION ENTITLEMENTS

The Employment Tribunal has held that a rule in a pension scheme which provided for the pro-rating of part-time workers' pension entitlements to reflect actual full-time years worked compared with potential full-time years worked did not amount to indirect sex discrimination. The Tribunal also held that, even if it was wrong in that conclusion, the rule could be objectively justified.

PENSIONS LIBERATION – DISCHARGE FROM SCHEME SANCTION CHARGE

The Upper Tribunal has rejected an appeal against the First-tier Tribunal's decision that a scheme administrator should be discharged from liability to pay a scheme sanction charge arising in connection with a pensions liberation scheme because the administrator reasonably believed that no unauthorised payment was being made. The Tribunal held that there had been no error in law in the First-tier Tribunal's decision.

OMBUDSMAN DETERMINATION – PAUSING TRANSFER REQUESTS

The Ombudsman has decided that the trustees of a scheme acted reasonably in pausing a member's transfer request when they became aware of potential proceedings by the employer against the member as a result of which some or all of the member's pension benefits might be forfeited.

Mayer Brown events

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

- **Trustee Foundation Course**
  16 May 2017
  12 September 2017
  5 December 2017

  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**
  13 June 2017 – DC governance
  14 November 2017 – 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.

- **Pensions Group Drinks Party**
  2 November 2017

  Our drinks party for clients and other industry contacts will be held at the Tower of London and will include a tour of the Crown Jewels.

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

2017

- Government review of automatic enrolment, including review of level and scope of DC charge cap
- Introduction of new valuation and risk warning requirements for transfers and conversions of safeguarded-flexible benefits

31 March 2017

Cap on early exit charges in DC personal pension schemes comes into force

1 April 2017

Abolition of NEST annual contributions cap and transfer restrictions

5 April 2017

- Lifetime allowance deadline for members to apply for individual protection 2014
- Deadline for passing trustee resolution to amend scheme GMP revaluation rules to reflect statutory requirements applying post-abolition of contracting-out

6 April 2017

- Reduction of money purchase annual allowance to £4,000
- Introduction of DC pensions advice allowance
- Introduction of increased PPF compensation cap for members with over 20 years' pensionable service

6 July 2017

Annual allowance deadline for employers to provide schemes with information to calculate pension input amounts incurred by members in pension input periods ending in the 2016/2017 tax year

31 July 2017

Annual allowance deadline for member requests for "scheme pays" (2015/2016 tax year)

30 September 2017

Automatic enrolment – end of transitional period for DB and hybrid schemes

October 2017

Cap on early exit charges in DC occupational pension schemes expected to come into force

6 October 2017

Annual allowance deadline for schemes to provide members with pension savings statements for the 2016/2017 tax year

31 December 2017

- End of transitional period during which 70%/30% split of combined investment and administration invoices can continue to be applied for VAT purposes
- Annual allowance deadline for schemes to include details of tax due under "scheme pays" in scheme's AFT return (2015/2016 tax year)

14 February 2018

Annual allowance deadline for schemes to pay tax due under "scheme pays" (2015/2016 tax year)

Key: Important dates to note | For information

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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, CAC 40, DAX, Hang Seng and Nikkei 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 and enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

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