Bulletin for Pensions Managers

Welcome to the September/October 2017 issue of our Bulletin for Pensions Managers. This issue broadly covers major developments to the end of October 2017.

In this issue:

Pensions news

DATA PROTECTION – UK LEGISLATION

A Bill has been laid before Parliament that:

- repeals the Data Protection Act 1998;
- sets new standards for protecting personal data, in accordance with the European General Data Protection Regulation (**"GDPR"**); and
- preserves existing tailored exemptions in the Data Protection Act 1998.

Accompanying explanatory notes have been published.

The Pensions Regulator has also published a blog post on what schemes need to know about the GDPR.

Action

Trustees should already be taking action to prepare for compliance with the GDPR which comes into force on 25 May 2018.

PPF – THIRD LEVY TRIENNIUM AND 2018/19 LEVY

The PPF has published a document combining its policy statement on the Third Levy Triennium and a consultation on draft rules and guidance for the 2018/19 levy. The 2018/19 levy estimate has been set at £550m, just over 10% lower than the 2017/18 estimate.

Among other things, the document confirms that:

- The PPF will amend its standard form contingent asset documentation. New contingent assets for 2018/19 will need to be executed using the revised documentation, but existing contingent assets will not need to be re-executed until 2019/20. The PPF has consulted on drafts of the revised documentation, and expects to publish the finalised documentation in January.
- A requirement will be introduced for trustees wishing to certify Type A contingent assets (group company guarantees) to obtain a guarantor strength report if the expected levy saving is £100,000 or more.

Action

Trustees and employers wishing to enter into a new contingent asset for 2018/19 should defer executing the necessary documentation until the revised standard form documentation is finalised.

Action

Trustees wishing to certify a Type A contingent asset should consider whether the new requirement to obtain a guarantor strength report will apply to them.

Action

Trustees wishing to recertify an asset-backed contribution (ABC) arrangement should note that there has been some relaxation of the need to obtain a certificate of title where the ABC asset is real estate.

NEW MONEY LAUNDERING OBLIGATIONS – HMRC GUIDANCE

HMRC has published guidance confirming that schemes that have incurred an applicable tax liability[1] in the 2016/17 tax year will need to register with the Trust Registration Service (**"TRS"**) and provide certain information relating to the scheme, the trustees and the employers, as well as a description of the class of persons who are beneficiaries or potential beneficiaries under the scheme.

1 A liability to pay income tax, capital gains tax, inheritance tax, stamp duty land tax, stamp duty reserve tax or land and buildings transaction tax on the scheme's income or assets.

Whether or not schemes are required to register with the TRS, they will separately need to keep records of information relating to the trustees, the employers, the members and other beneficiaries, and the scheme's advisers. The information that HMRC believes must be held under these record-keeping requirements is wider than the information that must be provided to HMRC via the TRS. Some of this information must be disclosed on request to certain specified persons and law enforcement authorities.

We will shortly be publishing a guide to the new trustee record-keeping and provision of information obligations.

Action

Trustees should confirm with their advisers whether their scheme has incurred an applicable tax liability in the 2016/17 tax year. If the scheme has, the trustees should ensure that they register with the TRS by the applicable deadline (5 January 2018 or 31 January 2018, depending on the tax liabilities incurred, and whether the scheme is already registered with HMRC for self-assessment), and provide the required information via the TRS by 31 January 2018.

Action

Trustees should separately check that they hold the necessary records in relation to the trustees, the employers, the scheme's members and beneficiaries, and the scheme's advisers.

DC BULK TRANSFERS WITHOUT MEMBER CONSENT – PROPOSED NEW RULES

The Government has published a consultation on draft regulations changing the rules governing bulk transfers of DC benefits without member consent to, among other things:

- remove the actuarial certification requirement for "pure" DC to DC transfers (i.e. where there are no guarantees or other options attaching to the benefits);
- remove the scheme relationship condition for pure DC to DC transfers; and
- introduce a requirement for trustees making a pure DC to DC bulk transfer to a scheme other than an authorised master trust to obtain the advice of a "suitably qualified professional" who is independent of the receiving scheme.

The consultation closes on 30 November, and the regulations are intended to come into force on 6 April 2018.

Action

No action currently required, but schemes considering a DC bulk transfer without consent may wish to wait until the changes come into force before making the transfer.

SAFEGUARDED-FLEXIBLE BENEFITS – NEW VALUATION AND RISK WARNING REQUIREMENTS

The Government has published guidance for trustees on the new requirements for transfers/conversions/ lump sum payments of safeguarded-flexible benefits that will come into force on 6 April 2018 in relation to:

- valuation of the benefits for the purposes of determining whether the requirement to take appropriate independent advice applies; and
- provision of personalised risk warnings.

Safeguarded-flexible benefits are DC benefits with some form of guarantee.

The guidance also covers the transitional requirements that apply in relation to members who are affected by the valuation methodology changes.

Action

No action required, but trustees of schemes providing safeguarded-flexible benefits may find the guidance useful.

SCHEME RETURN – 2017 CHECKLISTS

The Pensions Regulator has published checklists setting out the new information that trustees will need to provide in the DC scheme return and the DB/hybrid scheme return.

The Regulator has also published an example DC scheme return and an example DB/hybrid scheme return.

Action

No action required, but trustees should ensure that they submit their scheme return by the relevant deadline.

EMPLOYEE/MEMBER SUPPORT ON FINANCIAL MATTERS – GUIDANCE

The Pensions Regulator and the Financial Conduct Authority have published a joint guide on what support employers and trustees can provide to employees/ members on financial matters without needing FCA authorisation.

Action

No action required, but trustees and employers may find the guide helpful.

21ST CENTURY TRUSTEESHIP CAMPAIGN LAUNCHED

The Pensions Regulator has launched a "21st Century Trusteeship" campaign to raise standards of scheme governance. Measures to be taken as part of the campaign include:

- targeted emails to direct trustees, scheme managers, employers and advisers to a new page on the Regulator's website with specific and relevant content setting out clear standards that the Regulator expects schemes to meet;
- signposting to supporting resources, including guidance and practical tools to help trustees raise their scheme governance standards; and
- extra content on the Regulator's website, covering key governance themes.

Action

No action required.

BAN ON COLD CALLING – LEGISLATION TO BE LAID IN 2018

The Government has confirmed that draft legislation to implement the ban on pensions cold calling will be published for consultation in early 2018 and then laid before Parliament as soon as Parliamentary time allows.

The Pensions Regulator has also published a blog post on the evolution of pension scams and on pension cold callers.

Action

No action required.

NEST – PROPOSED RULE CHANGES

The Government has published a consultation on proposed changes to the rules governing NEST which would, among other things:

- allow participating employers to contractually enrol their employees;
- clarify that individuals can join NEST via a bulk transfer with consent; and
- give NEST the power to close members' pension accounts that have zero funds if certain conditions are met.

The consultation closed on 27 November. The proposed changes are intended to come into force on 1 April 2018.

Action

No action required.

COUNTDOWN BULLETINS 28, 29 AND 30 – "END OF CONTRACTING-OUT" STATEMENTS

HMRC has published issue 28, issue 29 and issue 30 of its Countdown Bulletin.

Among other things, issue 30 announces that HMRC will not now send "end of contracting-out" statements to members once the GMP reconciliation process is completed in December 2018.

Action

No action required.

PENSION SCHEMES NEWSLETTERS 91 AND 92

HMRC has published issue 91 and issue 92 of its Pension Schemes Newsletter.

Action

No action required.

AUTOMATIC ENROLMENT – FIRST CRIMINAL CONVICTIONS

The Pensions Regulator has announced the first criminal conviction of an employer for failure to comply with the employer automatic enrolment obligations.

Action

No action required, but employers should ensure that they are complying with their automatic enrolment duties.

Pensions finance

EMPLOYER RECOVERY OF VAT ON PENSION SCHEME SERVICES – UPDATED GUIDANCE

HMRC has updated its VAT Input Tax manual to set out its finalised position on employer recovery of VAT charged on services provided to occupational pension schemes. Among other things, this confirms:

- the indefinite extension of the concession allowing employers to recover 30% of the VAT charged on combined administration and investment services; and
- that the other options for improving employer recovery of VAT charged on pension scheme services (e.g. tripartite agreements and VAT grouping) will continue to be available, subject to the potential regulatory and/or tax issues that these may raise.

For more information, please see our legal update.

Action

Employers should consider what approach to VAT recovery they wish to take in light of the updated guidance and may need to take legal/tax advice in this respect. Trustees should take legal/tax advice on any proposals made by the employer.

VAT ON PENSION FUND MANAGEMENT SERVICES – POLICY CHANGE

HMRC has published a brief announcing that, with effect from 1 April 2019, pension fund management services provided by regulated insurance companies will cease to be exempt from VAT.

We understand that HMRC accepts that not all fund management services provided by insurance companies will cease to be treated as exempt. However, the dividing line between those services that will continue to be exempt, and those that will become subject to VAT, is still to be clarified.

For more information, please see our October and November legal updates.

Action

DB schemes will need to consider the extent to which their fund management services are provided by regulated insurance companies and will therefore be affected by revocation of the VAT exemption.

Action

Fund management services provided to DC pension schemes benefit from a separate VAT exemption so no action is required by DC schemes.

DC CHARGES AND INVESTMENT DISCLOSURE – PROPOSED NEW REQUIREMENTS

The Government has published a consultation on draft regulations introducing a range of new charges and investment disclosure requirements for DC schemes, and draft accompanying statutory guidance. Among other things, the draft regulations:

- expand the information on charges and transaction costs that trustees must include in the scheme's annual DC governance statement;
- introduce a requirement for DC schemes to publish certain information on charges and transaction costs and the default arrangement(s) on a website;
- introduce a requirement for DC schemes to prepare a document containing certain information in relation to pooled funds in which member assets are invested; and
- require additional information to be included in money purchase benefit statements.

The consultation closes on 7 December, and the regulations are intended to come into force on 6 April 2018.

Action

No action currently required.

DC VALUE FOR MEMBERS ASSESSMENT – REGULATOR REVIEW

The Pensions Regulator has announced the launch of a review into whether trustees of DC schemes are carrying out adequate assessments of the costs and charges paid by members. The review will consider the explanation of the value for member assessments made by 100 small and micro schemes in their chair's annual governance statements. A report on the review's findings will be published by summer 2018.

Action

No action required.

INVESTMENT – DEADLINE FOR OBTAINING AN LEI

From 4 January 2018, investment managers that are subject to the reporting requirements under MiFID II must not execute trades in financial instruments on behalf of a client who is eligible for a legal entity identifier (**"LEI"**), but does not have one. Pension schemes are not under an obligation to obtain an LEI, but are eligible to obtain one. As such, schemes that do not have an LEI after 3 January may not be able to access financial services to undertake trades.

Action

Trustees should ask their investment consultant to confirm:

- whether their scheme already has an LEI; and
- if not, whether the scheme's investment managers will be able to continue to manage their assets after 3 January if the scheme does not obtain an LEI.

Pensions litigation

RETROSPECTIVE EQUALISATION – COMPLIANCE WITH EU LAW

The Court of Appeal has referred the question of whether EU law prohibits retrospective equalisation of normal pension ages to the Court of Justice of the European Union.

PART-TIME WORKERS – PRO-RATING OF PENSION ENTITLEMENTS

The Employment Appeal Tribunal has rejected an appeal against the Employment Tribunal's decision that a rule in a pension scheme which provided for the pro-rating of part-time workers' pension entitlement to reflect actual full-time years worked compared with potential full-time years worked did not amount to indirect sex discrimination.

COMPENSATION FOR NON-FINANCIAL LOSS CAUSED BY MALADMINISTRATION – SUITABLE LEVELS

The High Court has increased an award by the Deputy Pensions Ombudsman of £500 compensation for non-financial loss caused by a scheme's maladministration in providing incorrect information to a member to £2,750.

The Court held that, given the multiple instances of maladministration, the lengthy period over which they occurred (six years), and the number of opportunities on which, and ease with which, the correct position could have been established, an award above the top of the "normal" band of £1,600 was merited.

LATE PAYMENT OF LUMP SUM – LOSS OF INVESTMENT OPPORTUNITY

The Deputy Pensions Ombudsman has directed a scheme to compensate a member for lost investment opportunity where the scheme took nearly a year to pay the member's pension commencement lump sum.

Mayer Brown events

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

- **Trustee Foundation Course**
  5 December 2017
  27 February 2018
  15 May 2018
  11 September 2018
  11 December 2018

  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**
  12 June 2018 – topic to be confirmed
  13 November 2018 – 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.

The View from Mayer Brown – Pensions Podcasts

Every month Richard Goldstein, a partner in our Pensions Group in London, places a spotlight on key developments that could affect your scheme in a podcast. Just 10-15 minutes long and available on iTunes, the podcasts provide a quick and easy way to stay on top of current issues in pensions law.

Listen to or subscribe to The View from Mayer Brown Pensions Podcasts via iTunes here:

Subscribe via iTunes

Please note – subscribing above will only work on a device with iTunes installed. Alternatively, if you don't have iTunes, you can access the podcasts via our website.

A Global Guide to Retirement Plans & Schemes

We have recently launched the latest in our series of global guides, *A Global Guide to Retirement Plans & Schemes*.

The Guide provides an overview of the laws relating to the regulation of retirement plans and schemes in 50 key countries. Each chapter provides a general outline of the country's social security system and the main rules governing employer-sponsored retirement plans/schemes.

The Guide draws on the input of lawyers from across our global Employment & Benefits Group, as well as our network of best friend law firms. It is available via the Mayer Brown website as an eBook/web reader and as an interactive PDF.

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

31 December 2017

Annual allowance deadline for schemes to include details of tax due under “scheme pays” in scheme’s AFT return (2015/16 tax year)

5 January 2018

Deadline for schemes that are not already registered with HMRC for self-assessment and that have incurred an income tax or CGT liability in the 2016/17 tax year to register with the TRS

31 January 2018

- Deadline for schemes that are not already registered with HMRC for self-assessment and that have incurred an IHT, SDLT, SDRT or LBTT liability in the 2016/17 tax year to register with the TRS
- Deadline for schemes that are registered with HMRC for self-assessment and that have incurred an income tax, CGT, IHT, SDLT, SDRT or LBTT liability in the 2016/17 tax year to register with the TRS
- Deadline for schemes that have incurred an income tax, CGT, IHT, SDLT, SDRT or LBTT liability in the 2016/17 tax year to provide information on the scheme’s trustees, employers, and beneficiaries to HMRC via the TRS

14 February 2018

Annual allowance deadline for schemes to pay tax due under “scheme pays” (2015/16 tax year)

5 April 2018

Deadline for passing trustee resolution to remove protected rights provisions from scheme rules

6 April 2018

- Automatic enrolment - 2% employer contributions required for DC schemes
- CPI indexation of lifetime allowance to be introduced
- Introduction of new valuation requirements for transfers/ conversions of safeguarded benefits and new risk warning requirements for transfers/conversions and lump sum payments of safeguarded-flexible benefits
- New costs and charges disclosure requirements for DC schemes expected to come into force
- New rules on DC bulk transfers without consent expected to come into force
- New HMRC powers to register and de-register master trusts and schemes with dormant sponsoring employers expected to come into force

21 May 2018

Deadline for implementation of the Portability Directive into UK law

25 May 2018

EU General Data Protection Regulations comes into effect

6 July 2018

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 2017/18 tax year

31 July 2018

Annual allowance deadline for member requests for “scheme pays” (2016/17 tax year)

October 2018

Roll-out of new authorisation and supervision framework for master trusts expected to start

6 October 2018

Annual allowance deadline for schemes to provide members with pension savings statements for the 2017/18 tax year

Key: Important dates to note | For information

About Mayer Brown

Mayer Brown is a global legal services organization advising clients across the Americas, Asia, Europe and the Middle East. 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, 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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