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The Pensions Brief

At a glance...

Issues affecting all schemes

HM TREASURY AND HMRC PUBLISH DRAFT LEGISLATION FOR FINANCE BILL 2021

On 21 July 2020, HM Treasury and HMRC published draft legislation for the Finance Bill 2021, including amendments relating to collective money purchase schemes

FINANCE BILL 2020 RECEIVES ROYAL ASSENT AND ADDITIONAL CLAUSE CONFIRMING PROTECTED PENSION AGE

New clause confirming individuals re-employed in response to pandemic will not lose protected pension age

PENSIONS REGULATOR PUBLISHES 2019/20 ANNUAL REPORT AND ACCOUNTS

The Pensions Regulator has published its latest annual report and accounts, summarising its activities over the past year

Issues affecting DB schemes

SAFEWAY V NEWTON EQUALISATION LITIGATION

The Court of Appeal has handed down its judgment on the issue of retrospective levelling down of Normal Pension Age

REGULATIONS GIVING PPF CREDITOR RIGHTS COME INTO FORCE

Regulations have come into force enabling the PPF to exercise creditor rights during a moratorium or restructuring plan

EXTENSION OF PAYMENT TERMS FOR PPF LEVY PAYERS

The PPF has set out details of how levy payers affected by COVID-19 may apply for an extension of payment terms

Issues affecting DC schemes

PLSA CALL FOR EVIDENCE ON DC SCHEME DECUMULATION

The PLSA has published a call for evidence on DC decumulation, focusing on how schemes support members in respect of their decumulation decisions

Action required

Follow development and keep under review

Issues affecting all schemes

Draft Finance Bill 2021

On 21 July 2020, HM Treasury and HMRC published draft legislation for the Finance Bill 2021.

The key pensions aspect of the draft legislation addresses collective money purchase schemes and, in particular, proposes amendments to the Finance Act 2004 to enable collective money purchase schemes to operate as registered pension schemes.

The proposed changes to the Finance Act 2004 intend to reflect the unique status of collective money purchase benefits and arrangements, which are not currently reflected in the existing benefit categories under the Finance Act 2004.

The technical consultation on the draft legislation will run until 15 September 2020, with the intention that the Finance Bill 2021 will be introduced into Parliament in the following autumn Budget.

Action

For noting.

Finance Bill 2020 receives royal assent and additional clause confirming Protected Pension Age

On 22 July 2020, the Finance Bill 2020 received royal assent. Prior to that, a new clause was added to the Bill to prevent individuals that had been re-employed as a consequence of the COVID-19 pandemic from losing their protected pension age. This followed a previous announcement by HMRC of a temporary concession for members with protected pension ages where they were re-employed for reasons connected to the pandemic.

The new clause confirmed this temporary concession by amending paragraph 22 of Schedule 36 to the Finance Act 2004 by inserting a new re-employment condition. The new provision will have retrospective effect from 1 March 2020 and sets out that any individual who returns to work will not lose their protected pension age if:

- They were re-employed during the "coronavirus period" (defined as 1 March 2020 to 1 November 2020, although this period can be extended by regulations to any date prior to 6 April 2021); and
- The only or main reason for the re-employment was to respond to public health, social, economic or other effects of COVID-19.

The Finance Bill 2020 received royal assent on 22 July 2020 and became the Finance Act 2020. Key changes made by the Finance Act 2020 include the following changes to the annual allowance provisions:

- A reduction in the minimum tapered allowance from £10,000 to £4,000 and the simplification of a formula used to calculate the reduced annual allowance; and
- An amendment to the definition of "high-income individual" so that the tapering of the annual allowance kicks in where adjusted income for the tax year is higher than £240,000 (the previous threshold had been £150,000) and whose threshold income for that year is £200,000 (previously £110,000).

Action

For noting.

Pensions Regulator publishes 2019/20 annual report and accounts

The Pensions Regulator has published its annual report and accounts for 2019/20.

The report highlights the Regulator's performance against 18 of its own key performance indicators, with 12 of the 18 metrics being met. Two of the key metrics were affected by COVID-19, which required the Regulator to pause certain regulatory initiatives and introduce additional workstreams.

Some notable activities highlighted in the report include the following:

- The authorisation and supervision of 38 master trusts;
- The completion of the roll-out of automatic-enrolment duties, with focus now moving towards ensuring that the early adopters re-declare their ongoing compliance together with tougher compliance and enforcement activity;
- Extension of the Regulator's regulatory reach with the use of a wider range of proactive and targeted regulatory interventions, including a new supervisory approach for the most crucial schemes (covering around two-thirds of UK scheme membership);
- The use of targeted communications to inform trustees of DC schemes of the Regulator's expectations concerning default investment strategies reviews; and
- The Determinations Panel making 85 determinations and exercising 119 powers over the year (an increase from 71 determinations and 107 powers exercised in 2018/19). In the majority of cases the standard procedure was used, with only three cases being heard by the Panel under the special procedure.

Action

For noting.

Issues affecting DB schemes

Safeway v Newton Equalisation Litigation

The Court of Appeal handed down its judgment on the final outstanding issue in the Safeway v Newton case.

The case related to an attempt to equalise the normal pension ages of men and women in the Safeway Pension Scheme. The normal pension age under the Scheme had previously been 60 for women and 65 for men. The Scheme issued a written announcement notifying members that the normal pension age under the Scheme would be changed to 65 for both men and women from 1 December 1991, but the Scheme's trust deed and rules were not amended until 2 May 1996 by a deed that was said to apply retrospectively to 1 December 1991. The court held that the announcement was an invalid amendment of the Scheme, so the key question was whether the subsequent deed had retrospective effect to level down the members' pension rights.

The case went through various stages of the court procedure, before returning to the Court of Appeal following the decision of the European Court of Justice in October 2019 which held that EU law prohibited retrospective levelling down of pension rights to equalise normal pension ages unless exceptional circumstances applied.

The final issue before the Court of Appeal was whether the Barber window was closed by section 62 of the Pensions Act 1995 as an effective measure implementing Article 119 (the then EU equal treatment rule). The Court of Appeal held that section 62's coming into force was sufficient to close the Barber window, as it gave members an immediate right to enforce the terms of the equal treatment rule, which was a "full implementation of the Article 119 right". The Court of Appeal held further that once section 62 had operated to close the Barber window, the level of members' benefits was a matter of domestic law, and it was then acceptable to reduce the level of members' benefits by levelling down. On that basis, the deed of amendment had retrospective effect to 1 January 1996 when section 62 came into force.

Action

The judgment will be helpful for a limited number of schemes that attempted to equalise retrospectively under their trust deed and rules between 1 January 1996 and 6 April 1997 (when section 67 Pensions Act 1995 – protection of subsisting rights came into force).

Regulations giving PPF creditor rights come into force

The Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) Regulations 2020 came into force on 7 July 2020.

The Regulations enable the Board of the PPF to exercise the creditor rights of the trustees of pension schemes during a moratorium or where a restructuring plan is proposed in relation to an employer of a PPF-eligible scheme.

The Corporate Insolvency and Governance Act 2020 introduced the ability for financially distressed companies to enter into a moratorium or to propose a restructuring plan with effect from 26 June 2020. Neither moratoriums or restructuring plans are qualifying insolvency events and so the provisions of the Pensions Act 2004, which under usual circumstances would trigger the start of an assessment period (and the involvement of the PPF) would not apply.

However, the Regulations provide that:

- During any period in which a moratorium is in force in relation to a company, LLP or charitable incorporated organisation that is (or was at any time during the moratorium) the employer of an eligible scheme, certain creditors' rights of the trustees are to be exercised by the PPF, to the exclusion of the scheme trustees, although the PPF must consult with the trustees before exercising those rights; and
- If a restructuring plan is proposed in respect of a company or LLP that is the employer of an eligible scheme, the PPF may exercise certain rights usually exercisable by the trustees, as if it were a creditor of that company, in addition to the exercise of the rights by the trustees. It is worth noting that the rights to vote in a meeting summoned under section 901C of the Companies Act 2006 are to be exercised by the PPF to the exclusion of the trustees, although the PPF must consult the trustees before exercising this right.

Action

For noting.

Extension of payment terms for PPF levy payers

The PPF has introduced new easements for levy payers affected by COVID-19.

PPF levy invoices are normally payable within 28 days of receipt. While the PPF cannot normally extend levy payment terms, it has announced that organisations financially affected by COVID-19 may apply for an extension of the payment terms. The PPF has confirmed that it cannot properly assess whether interest can be waived until the levy has been paid, but its intention is to waive interest on late payment provided that the levy invoice is paid within 90 days.

Organisations wishing to apply for an extension of payment terms will need to complete an online notification form within 28 days of receiving the levy invoice. The form should clearly explain how COVID-19 has negatively impacted the scheme or business.

The PPF has also announced that levy payers will be able to elect to receive their levy invoice electronically, starting with the 2020/21 invoices to be issued this autumn. Levy payers will need to opt-in to receive an electronic invoice.

Action

Organisations or schemes financially affected by COVID-19 may want to consider applying for an extension of levy payment terms.

Issues affecting DC schemes

PLSA call for evidence on DC scheme decumulation

On 28 July 2020, the PLSA published a call for evidence on DC decumulation, i.e. the stage in a member's pension where the fund value is used to provide a retirement income.

In the document, the PLSA has focused on the need to address and mitigate the key risks that pensions freedoms currently pose to pension savers and schemes.

As part of its own proposals, the PLSA has suggested the creation of a new statutory obligation requiring schemes to support their members in respect of decumulation decisions, including a new set of standards on the provision of support and guidance to schemes on how best to provide it.

The PLSA has also highlighted the need to provide further support to savers who do not engage with or understand their retirement options.

Action

For noting.

Mayer Brown news

Upcoming events

- Trustee Foundation Course

  15 September 2020

  8 December 2020

- Trustee Building Blocks Classes

  17 November 2020 – DB funding and investment

Due to the COVID-19 restrictions, our events will be hosted via telephone/video conference until further notice. We will provide further details nearer the time of each event.

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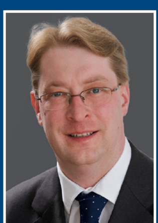
For more information about the Pensions Group, please contact:



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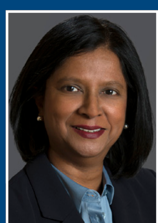

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Dates to note over the next 12 months

21 August 2020

RPI consultation closes

2 September 2020

End of first part of tPR consultation on DB Funding Code.

1 October 2020

Further requirements on the content of the SIP and the annual report and on website disclosure come into force.

6 October 2020

Annual allowance deadline for schemes to provide members with pension savings statements for the 2019/20 tax year.

31 December 2020

Annual allowance deadline for schemes to include details of tax due under "scheme pays" in scheme's AFT return (2018/19 tax year).

31 January 2021

Send annual event report to HMRC.

Early 2021

Expected consultation on tPR's code of practice on trustee knowledge and understanding.

31 March 2021

Submit scheme returns.

Key:

Important dates to note

For information

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