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Essential pensions news

Updater

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Essential pensions news covers the latest pensions developments each month

Pension Protection Fund announces levy estimate for 2017/18

Of interest to all schemes providing defined benefits is the publication on September 22, 2016 by the Pension Protection Fund (PPF) of its consultation document on changes to the pension protection levy for 2017/18.

The document sets out a proposed mechanism for stakeholders to notify Experian, the PPF's insolvency risk services partner, where the move to new UK accounting standard FRS 102 may cause an artificial movement in their rating.

The PPF also reiterates its position on schemes that have no sponsoring employer and proposes an approach for calculating risk-based levies where such schemes do exist.

David Taylor, General counsel of the PPF, commented: *"2017/18 marks the final year of the current triennium – the period over which we aim to keep rules stable. We have delivered on that commitment to stability, while addressing issues raised by stakeholders – particularly the potential impact of moving to new accounting standards."*

The consultation document also states that the amount the PPF expects to collect in 2017/18 will be set at £615m, which is unchanged from the level of last year's levy estimate.

The consultation closes on October 31, 2016, following which the PPF will finalise the rules and publish the levy determination in December 2016. It will also consult on the new levy triennium around the end of the year.

View the consultation document.

HM Treasury publishes consultation on amending definition of financial advice

Of general interest is the consultation launched by HM Treasury on amending the UK definition of financial advice in order to minimise industry uncertainty over what constitutes "regulated advice". There is currently a definition of "advising on investments" in regulations and a definition of "investment advice" in the relevant Directive. The former definition is wider in scope than the latter.

The Treasury's proposal is to make the definitions consistent, and to clarify the distinction between guidance and advice. The consultation sets out the intention to amend the regulatory wording, so that consumers receive "regulated advice" only when they are offered a personal recommendation for a specific product.

The consultation closes on November 15, 2016.

DWP consults on valuing pensions for the advice requirement

Of interest to schemes offering what the consultation describes as "safeguarded-flexible benefits" are the proposed amendments to regulations aimed at simplifying the pension valuation process that determines which members have benefits in excess of £30,000 and are therefore required to take financial advice before accessing their savings flexibly under the new pension freedoms.

The consultation is concerned specifically with the type of benefit falling within section 74(c) of the Pension Schemes Act 2015, which are defined contribution in nature but offer some form of guaranteed annuity rate (GAR) on the member's pension income. The proposal is that, when carrying out a transfer value calculation, providers should treat benefits with a GAR as equal to the actual transfer payment to which the member has a statutory right.

The consultation paper sets out proposed amendments to the Pensions Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 and comments are invited by November 7, 2016.

The proposed changes aim to

- Simplify the process for determining who is required to take financial advice
- Introduce tailored risk warnings which explain the likely impact of surrendering potentially valuable guarantees and highlight to the member the value of the benefits being given up
- Provide for transitional arrangements where members have requested a transfer value in the run-up to these regulations coming into force.

View the consultation paper.

DWP consults on overseas pension transfers and the advice requirement

Of general interest is another DWP consultation relating to awareness that the advice requirement may create difficulties for members who are resident overseas and wish to transfer safeguarded pension benefits to an overseas scheme. The advice requirement applies whether the transfer is to a UK pension scheme or a non-UK pension scheme. The call for evidence seeks to gather information on how the advice requirement is working for overseas members and explores whether the safeguard should be retained, and whether the current process should be changed.

The advice requirement means that members with safeguarded benefits of over £30,000 must take advice from an independent financial adviser authorised by the Financial Conduct Authority (FCA).

This call for evidence seeks views on

- How members with safeguarded pension benefits transfer their pensions overseas
- How this has been affected by the introduction of the advice requirement
- Whether an alternative safeguard could be developed that would give this group a comparable degree of protection to that provided by advice from an FCA authorised adviser.

The deadline for responses to this consultation is December 23, 2016.

Comment

As the advice requirement operates as a safeguard against pension fraud, abolishing it for transfers involving overseas schemes seems ill-advised. The potential alternatives are problematic, as it is difficult to see how advice “equivalent” to FCA-authorised advice could be either defined or monitored.

View the consultation.

HMRC publishes Pension schemes newsletter no.81

Of general interest is the latest issue of HMRC’s pension schemes newsletter on September 27, 2016.

This issue includes the items below

- Tax treatment of serious ill health lump sums – the Finance Act 2016 (which came into force on September 16, 2016) replaces the 45 per cent tax charge on serious ill-health lump sums paid to individuals who have reached age 75 with tax at the individual’s marginal rate. HMRC provides details of how to report such payments while updates to the real time information reporting system are made.

- Information about the new lifetime allowance (LTA) online service - HMRC notes that from the launch of the service on July 28, 2016, it has received 17,453 applications for various protections from the LTA charge. The figures for each type of protection are

  - 617 Individual Protection 2014 (IP2014)
  - 4,867 Individual Protection 2016 (IP2016)
  - 11,969 Fixed Protection 2016 (FP2016).

- Individuals are now able to view their protection details from their Personal Tax Account page and save the summary page as a PDF to provide to their scheme administrator to confirm their LTA protection. HMRC is also working to introduce an amend function so that scheme members who have IP2014 or IP2016 can amend their protection details online.
- Annual allowance (AA) calculator – this assists scheme members in working out how much AA they have used and how much more they can contribute without incurring an AA charge. The new calculator includes the transitional AA rates for 2016/16 and will help members to check whether they need to declare an AA tax charge on their self-assessment return for the 2015/16 tax year. A link to the calculator is provided.
- HMRC reports that Pension Wise is seeking annuitants who are considering selling or assigning their annuity when the new secondary market opens in April 2017 for a series of pilot telephone and face-to-face appointments. Those interested can register online to participate in the pilot exercise.

View the Newsletter.

Government to set up single body for money advice and pension guidance

Of general interest is HM Treasury's announcement on October 9, 2016 that the Government intends to set up a single financial guidance body to deliver debt advice together with money and pensions guidance.

In March 2016, the Government consulted on setting up a two-body delivery model for Government-sponsored guidance, which included replacing the Money Advice Service with a new, streamlined money guidance body, and bringing together the Pensions Advisory Service and Pension Wise into a new pension guidance body.

As a result of concerns raised by industry and consumer finance groups, the Government has decided that a single body would be better able to respond to the different financial guidance needs of consumers, making it easier for them to get access to the help they need to make effective financial decisions.

HM Treasury explains that the next steps will involve consulting on the best way to design a single body model, so legislation to create new public financial guidance bodies will not be included in the forthcoming Pensions Schemes Bill.

View the press release.

Comment

This is a welcome announcement, as a single outlet for financial advice and pensions guidance is likely to be simpler for individuals. However, setting up such a body it is unlikely to be a straightforward task, and it is important that the strengths of the various merging bodies are not lost once they are amalgamated.

Work and Pensions Committee publishes Pensions Regulator's and PPF's submissions to DB inquiry

Of interest to schemes providing defined benefits is the publication by the Work and Pensions Committee of the House of Commons (the Committee) of the submissions it has received

for the purpose of its inquiry into the roles of the PPF and Pensions Regulator (TPR) in the regulation of such schemes. Submissions had been requested by September 23, 2016.

The published submissions include those made by the PPF and Regulator themselves, with both bodies seeking more interventionist powers.

TPR's proposals

The most notable proposal made by TPR is for tighter regulation, including a mandatory clearance regime for certain corporate transactions.

Seeking clearance is currently voluntary, but TPR suggests it may be appropriate to make clearance mandatory where a corporate action significantly weakens the scheme sponsor and the scheme is not sufficiently funded. As its anti-avoidance powers are designed to operate retrospectively to seek redress and although they act as a powerful deterrent, they cannot prevent avoidance activity on the part of employers prepared to take the risk. TPR notes that the proposed requirement for mandatory clearance in certain circumstances has the potential to be a significant burden on employers and to have an impact on corporate activity. As a result, it recognises that any such a proposal would require further discussion and engagement with stakeholders, following which it should only be taken forward in a targeted and proportionate way.

According to TPR, clear criteria as to when approval should be sought would be necessary. This could include circumstances where the action weakens the scheme sponsor, not just the sale/purchase of a business but in circumstances including where support (covenant) for the scheme is weakened through corporate activity such as dividend payments, change of control, share buy-backs and loans.

If the scheme is sufficiently well-funded, then the additional burden of requiring approval from TPR may be unnecessary. For such measures to work, TPR believes that enhanced requirements on employers to engage with trustees and provide them with the relevant information when required would also be needed. This would allow them time to come to an agreement over any required mitigation for the scheme.

Among other things, TPR also calls for

- Enhanced information-gathering and investigatory powers
- Greater flexibility in setting valuation periods (including requiring more frequent valuations for higher risk schemes)
- Clarification of the statutory funding regime to enable it to specify an appropriate level of funding in particular cases.

The PPF's proposals

The PPF's submission suggests that

- additional restrictions may be needed on the permitted length of recovery plans in underfunded schemes, particularly where a sponsoring employer has a strong covenant, and to avoid plans that are "back-end loaded" where schemes have large deficits

- there may be a case for TPR to be given additional powers to wind up schemes, at the request of the trustees or PPF

- the amounts specified in contribution notices and financial support directions issued by TPR could be substantially increased to include a "fine" element, and that the process for issuing these notices could be streamlined.

Next steps
The Committee is currently continuing to hear oral evidence from a range of industry figures and pension professionals. We will report further as more evidence is published.

Comment
The possibility of the introduction of mandatory clearance is of some concern.

TPR has previously stated that it would be disproportionate to introduce a compulsory requirement for advance clearance to be sought in respect of all corporate activity, and we agree with this view. The introduction of a blanket clearance requirement could make it more difficult to complete transactions quickly where a defined benefit pension scheme is involved, which could have an adverse effect on the economy. In addition, although TPR acknowledges that the current system is imperfect, it simply does not have adequate resources to review every corporate transaction that takes place.

Government scraps plans for secondary annuities market

The Government has announced that it will not proceed with plans to introduce a secondary annuities market, which was due to become operational from April 2017. Simon Kirby, Economic Secretary to the Treasury, said: "Allowing consumers to sell on their annuity income was always dependent on balancing the creation of an effective market with making sure consumers are properly protected. It has become clear that we cannot guarantee consumers will get good value for money in a market that is likely to be small and limited. Pursuing this policy in these circumstances would put consumers at risk - this is something that I am not prepared to do."

Comment
This scheme was announced in 2015 following the implementation of the DC pension flexibilities, and was a means by which savers could escape being locked into previously agreed annuity deals.

While some retirees may be disappointed that they are now saddled with a product they would not have bought had the pension freedoms applied earlier, it is likely that many annuitants would not have been able to achieve value for money had they been able to cash in their policies in 2017 as originally planned.

While some organisations may have already put time and effort into plans to implement annuity sales, many others had already stated their unwillingness to take part, citing as reasons significant risks of poor outcomes for consumers.

HMRC publishes Countdown bulletin no. 20

Of interest to previously contracted-out schemes is the latest issue of HMRC's Countdown Bulletin.

This issue includes

- Reconciliation of active members closure scan – HMRC intend to close automatically all open periods of contracted-out employment held on their records. The scan will run over the Christmas period (December 2016) and details of all the members identified by the scan, will be shared to enable schemes to reconcile their active members.

- Financials – from November 2016, HMRC will introduce a process to reconcile scheme financial information. Administrators will be required to complete an authority form, which HMRC will provide online.
- GMP checker – actions to be taken by administrators if error messages are received.
- DWP policy – HMRC propose to consult on a set of miscellaneous, minor and technical amendments to clarify pension regulations relating to former contracted-out schemes.
- As part of this consultation, the Government will also publish details of a review into how the transitional arrangements for the abolition of defined contribution contracted-out schemes have worked in practice.
- GMP conversion – a working group of representatives from the DWP and leading practitioners from across the pension industry has been working to develop guidance for GMP conversion. According to HMRC, the working group is now finalising its proposals and guidance will be published once this work is completed.

View the bulletin.

Court of Appeal rules that pension funds not in payment are safe from bankrupt's creditors

In our August 2016 briefing, we examined in detail the conflicting High Court decisions relating to whether a bankrupt member's undrawn pension benefits could be the subject of an Income Payments Order (IPO), and thus be available to meet the member's liabilities to creditors.

On October 7, 2016, in its judgment in Horton v Henry [2016], the Court of Appeal (CA) dismissed the appeal of a trustee in bankruptcy against the High Court's decision that a bankrupt's unexercised rights to draw his personal pension did not represent income to which he was entitled. In doing so, the CA upheld the first instance decision that the trustee had no power to compel the bankrupt to bring his pensions into payment.

However, legislation does allow a trustee in bankruptcy to claw back "excessive" pension contributions made by the bankrupt where such contributions have unfairly prejudiced the bankrupt's creditors.

Comment

In rejecting the trustee's appeal, the CA has now provided clarification on the law on pensions and bankruptcy, which is particularly welcome in the light of the DC flexibilities which have applied since April 2015. The law had been left in an unsatisfactory state as a result of conflicting High Court decisions.

The CA has confirmed that a trustee in bankruptcy cannot compel a bankrupt to draw down his unelected pension to satisfy an IPO. Only pension benefits which are in payment may be subject to the IPO regime and a member's uncrystallised pension funds remain out of reach for IPO purposes if he is made bankrupt.

View the judgment.

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