DLA PIPER

PENSIONS NEWS

SEPTEMBER 2014

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INTRODUCTION

Welcome to DLA Piper's Pensions News publication in which we report on recent developments in pensions legislation, guidance and case law, as well as keeping you up to speed on what to look out for in the coming months.

This edition brings you the developments from September 2014 including the following.

- **Budget reforms:** the announcement that the 55% death benefits tax charge on pension funds held in a drawdown product at death or uncrystallised after age 75 will be abolished in April 2015.
- **The Pensions Regulator:** information on new questions in the DB scheme return; and the publication of the Staff Determinations procedure which applies to cases where a decision is made by the executive arm of the Regulator.
- **Department for Work and Pensions:** an announcement about the removal of the NEST restrictions, which also gives some indication on the possible timescale for the introduction of the system for automatic transfers.
- **Legislation:** the coming into force of certain provisions of the Pensions Act 2014; the progress of the Pension Schemes Bill through Parliament and the publication of notices of amendments; and amendments to the draft updated IORP Directive.
- **HMRC:** the coming into force of a statutory requirement for scheme administrators to be fit and proper for the role and the publication of HMRC guidance about this requirement; and the latest Pension Schemes Services newsletter.
- **Public service pension schemes:** a Policy Note about the NHS Pension Scheme and Fair Deal; and an update to the Directions on valuations and the employer cost cap.
- **Other News:** the Annual Review of the Pensions Advisory Service; and the Pension Protection Fund's latest Technical News publication.

If you would like to know more about any of the items featured in this edition of Pensions News or how they might affect you, please get in touch with your usual DLA Piper pensions contact or contact Cathryn Everest. Contact details can be found at the end of this newsletter.

BUDGET REFORMS

SPECIAL LUMP SUM DEATH BENEFITS TAX CHARGE

Introduction

HM Treasury's March consultation on the Budget reforms noted that, under the current legislation, pension funds held in a drawdown product at death or uncrystallised after age 75 are taxed at a rate of 55% and stated that this may be too high once the flexibility reforms are introduced in April 2015. The response to the consultation issued in July reported that discussions with a wide range of stakeholders had confirmed this view but that, given any changes in this area have the potential for unforeseen and unintended consequences, the Government would consider the options for altering the rate and would confirm its intention in the 2014 Autumn Statement.

Confirmation of the Government's intentions in this area has in fact been published sooner than that, with an announcement made on 29 September that this 55% tax rate will be abolished.

The relevant types of lump sums

There are two types of lump sum under the Finance Act that are relevant here.

- An uncrystallised funds lump sum death benefit
  - This type of lump sum can be paid if a member has uncrystallised funds in a money purchase arrangement when they die.
  - Uncrystallised funds means sums and assets that have not been applied for purchasing a scheme pension, lifetime annuity, dependant's scheme pension or dependant's annuity and have not been designated as available for the payment of a drawdown pension.
  - In order to be an authorised payment, the Finance Act also requires that the lump sum does not exceed the value of the uncrystallised funds immediately before the payment is made.
- A drawdown pension fund lump sum death benefit
  - This type of lump sum can be paid if a member had funds designated to a drawdown account and available for the payment of a drawdown pension in the form of income withdrawal.
  - In order to be an authorised payment, the lump sum cannot exceed the value of the fund immediately before the payment is made.

A recap on the current position

Before looking at the proposed changes, it is worth providing a recap on the current tax position in relation to these lump sums. In the summary below, the tax position refers to the Finance Act and **not** the inheritance tax position, although the general position is that inheritance tax will not apply if the lump sum is paid at the discretion of the scheme trustees or provider.

If the individual is under 75 at the date of death

An uncrystallised funds lump sum death benefit will be tax free (up to the lifetime allowance) provided the lump sum is paid within two years of the earlier of the date that the scheme administrator first knew of the member's death or could first reasonably be expected to have known of it.

A drawdown pension fund lump sum death benefit will be subject to the special lump sum death benefits charge of 55%.

If the individual is 75 or over at the date of death

An uncrystallised funds lump sum death benefit and a drawdown pension fund lump sum death benefit will be subject to a special lump sum death benefits charge of 55%.

If the benefits are paid other than as a lump sum

If the benefits are not paid as a lump sum but instead are allocated to a dependant's drawdown pension fund and then used to pay a dependant's drawdown pension, or are used to purchase a dependant's annuity or dependant's scheme pension, income tax will be payable by the recipient. It is also notable that these options will only be authorised payments if the recipient is a dependant as defined in the Finance Act.

In contrast, the Finance Act does not impose any restrictions on the recipient of an uncrystallised funds lump sum death benefit or a drawdown pension fund lump sum death benefit, although the rules of the scheme may do so.

The proposed changes

The position for all payments made after April 2015 from uncrystallised funds in a DC arrangement or in respect of individuals with a drawdown pension fund will be as follows. The announcement also notes that the lifetime allowance still applies.

If the individual is under 75 at the date of death

The announcement states that if the individual is below age 75 at the date of death, they will be able to give their remaining DC pension "*to anyone completely tax free*" as long as it is paid out in lump sums or taken through a flexi-access drawdown account. The announcement also notes that this does not apply to annuities or scheme pensions.

This is a change from the current position in that:

- the 55% tax charge will no longer apply to lump sums paid from drawdown funds;
- income tax will not apply if the funds are accessed through drawdown; and
- the recipients of drawdown no longer appear to be restricted to dependants.

If the individual is 75 or over at the date of death

The announcement states that if the individual is aged 75 or over at the date of death, they will be able to pass their DC pension to "*any beneficiary*" who will be able to draw down on it at their marginal rate of income tax or receive a lump sum payment taxed at 45%.

This is a change from the current position in that:

- a 45% rather than a 55% tax charge applies to lump sums; and
- the recipients of drawdown no longer appear to be restricted to dependants.

The Government also intends to make a further change so that from 2016/17, lump sums will be taxed at the marginal rate of income tax rather than at 45%.

Next steps

Draft legislation was not published alongside the brief announcement and a date for publication is not stated. The announcement states that the policy will be "scored" at the Autumn Statement (which will be given on 3 December) and is expected to cost around £150 million per annum.

The announcement is brief and it will therefore be interesting to see the detailed drafting in relation to changes to the legislation to see exactly how some aspects of these proposed changes are intended to operate. Some points in particular on which further clarity would be useful are:

- *whether it is correct that the recipients of drawdown will no longer be restricted to dependants as the drafting of the announcement suggests;*
- *the process for nominating recipients – the announcement refers to individuals being able to pass their DC pension to "any nominated beneficiary" and the reference to nominations suggests that these will be similar to the type of non-binding nominations currently used by pension schemes but a subsequent update to the list of key facts about the Budget reforms states that it will be possible for those with an unused pension to pass it on "to a person of their choice"; and*
- *whether it is intended to make changes to any of the other lump sum death benefits currently subject to the 55% tax charge.*

In the meantime schemes may find that they receive enquiries from members and potential beneficiaries about the changes and possibly requests to delay making payments of death benefits until after the reforms have been introduced in April 2015. We suggest that schemes consider seeking advice if they receive such requests.

THE PENSIONS REGULATOR

DB SCHEME RETURN

In September, the Regulator published a sample of the DB and hybrid scheme return dated December 2014 and a checklist said to set out important new information that will be needed before completing the DB scheme return for 2014.

The new items in the checklist are divided into three categories with explanations given as to why the information is required and what needs to be provided, as well as some guidance as to where the information might be found. Some of the key points made in the checklist in relation to each category include the following.

Financial assumption information for schemes in surplus

The Regulator states that it is now asking for financial assumptions used to calculate technical provisions (discount rates, discount rate structure, pay increase assumptions and inflation assumptions) for schemes which have declared a surplus as at the most recent valuation required under Part 3 of the Pensions Act 2004. This information is said to be consistent with that which the Regulator requires as part of a recovery plan submission for schemes which have declared a deficit at their most recent valuation date. The Regulator goes on to state that it needs this information to help better understand the overall risk landscape of UK DB schemes and to have consistent information for all schemes.

Value at Risk (VaR) information

The Regulator explains that a VaR calculation is a common method for assessing the size and likelihood of potential risks happening over a defined period of time, and that typically this is an estimate of the additional deficit which could arise over a period of time and with a certain level of probability.

The information sought includes, for example, the calculation of the VaR at the most recent valuation date. The Regulator states that some trustees will already calculate and use VaR measures to review and monitor risks within their scheme and that if trustees have not heard of these calculations, they should discuss it with their scheme actuary.

The checklist explains that if a scheme is not in a position to provide a VaR figure, the Regulator will assess the scheme's investment risk by reference to the allocation between different asset classes without any allowance for interest rate, inflation or other types of hedging that might be in place.

Asset-backed contribution (ABC) structures

When the Regulator published a guide in December 2013 on changes to the scheme return for January 2014, this included the introduction of some information on ABCs. However, this has now been expanded further, and the information relating to ABCs that will need to be provided is:

- the value of the scheme's interest in the ABC as at the most recent Part 3 valuation date or, if later, implementation;
- how the scheme's interest in the ABC has been funded;
- the type of assets underpinning/forming part of the ABC structure;
- whether or not existing guarantees or contingent assets have been surrendered by the trustee entering into the ABC arrangement;
- whether the assets or cash flows to the ABC come from within the employer group or not;
- annual payment information, either as a fixed or variable amount; and
- valuation of the asset underpinning the ABC where available including date, basis of valuation and whether the valuation was undertaken by a professional valuer.

STAFF DETERMINATIONS PROCEDURE

Following its May consultation, on 18 September the Regulator published "*Staff Determinations. Non-reserved functions procedure (under section 93 of the Pensions Act 2004)*" which sets out the procedure in cases where a decision is made by the executive arm of the Regulator rather than the Determinations Panel. Examples of the type of decision that the procedure relates to are issuing clearance statements and issuing improvement notices.

In the May consultation document, the Regulator stated that it was apparent that its procedures and the manner in which determinations are made by members of its staff have not always been clear to members of the regulated community and therefore it wanted to set out both what it does in these cases and how the decisions are made.

The procedure published for consultation was not intended to set out any significant change to the way the Regulator works but to provide more detail and promote greater clarity and transparency. The aim was that this greater clarity would assist and allow for a more effective and efficient interaction between the Regulator and the industry and, as a result, it was hoped that the cost and burden on business would be reduced.

The Regulator has not made any amendments to the procedure as a result of the consultation and therefore this has now been published in final form on the Regulator's website. The procedure is divided into the following main sections:

- introduction and definitions;
- preliminaries, which covers issues such as the carrying out of an investigation and considering third party requests;
- the standard procedure which looks at the warning notice, representations and steps following representations;
- the special procedure which will be used, for example, where the Regulator considers that there may be a need to exercise its functions immediately to protect the members' interests or scheme assets;
- withdrawal which looks at when a matter may be withdrawn and the effect of withdrawal;
- determinations and compulsory reviews which looks at decision-making, the giving of reasons and the determination notice, and special procedure determinations and compulsory reviews; and
- a general section which covers matters such as raising procedural issues, delegations to the Determinations Panel and the publishing of reports under section 89.

DEPARTMENT FOR WORK AND PENSIONS

NEST RESTRICTIONS

Background

In November 2012, the DWP published a Call for Evidence on the impact of the annual contribution limit and the restrictions on transfers on the National Employment Savings Trust (NEST). In July 2013 the DWP published the results of research and analysis to support the Call for Evidence and the formal Government response. The Government stated that:

- the contribution limit and the restrictions on bulk transfers would be removed from April 2017; and
- the right time to lift the restriction on individual transfers will be when the system of automatic transfers for small pots in money purchase pension schemes is introduced, although no definite date was given for when this will be.

It was also noted that because the restrictions were cited (although not integral to the case) when State aid for NEST was approved by the European Commission, the DWP would be seeking confirmation from the Commission that the removal of constraints from April 2017 remains consistent with the State aid rules.

September announcement

On 8 September, a Written Ministerial Statement was published in which the Minister for Pensions reported that:

- the European Commission has considered and approved the modifications to the State aid case for NEST;
- a short technical consultation on draft legislation will be commenced this autumn to remove the annual contribution limit and bulk transfer restrictions on 1 April 2017; and
- the Government retains the option to remove the individual transfer restrictions from 1 October 2015.

AUTOMATIC TRANSFERS

The Pensions Act 2014 places a duty on the Secretary of State to make regulations to establish a new system of automatic transfers of small pension pots. The purpose of this is to address an expected increase in the number of small pension pots as a result of the introduction of automatic enrolment.

The Act provides the framework for this system with much of the detail to follow in regulations although a Government White Paper from April 2013 gave indications of the intentions in relation to some aspects of the system, for example, stating that initially automatic transfers will only take place for "pure" money purchase benefits from one money purchase scheme to another, subject to a pot size limit of £10,000.

The date that the new system will be introduced has not yet been announced. An Impact Assessment from July 2012 assumed a 2015/16 start date but this was for the purposes of modelling only and it was stated that no decision had yet been taken on an implementation date.

However, the announcement in relation to the NEST restrictions (reported earlier in this newsletter) gives some indication on the possible timing of the introduction of this system. The Written Ministerial Statement in relation to the NEST restrictions states that the Government retains the option to remove the individual transfer restrictions from 1 October 2015 and the accompanying DWP press release refers to this as being to coincide with the introduction of automatic transfers.

LEGISLATION

PENSIONS ACT 2014 – COMMENCEMENT

On 4 September, a commencement order was made setting the date for the coming into force of specified provisions of the Pensions Act 2014 including the following provisions. The relevant appointed day is in brackets at the end of each bullet point.

Automatic enrolment

- The section which clarifies that where an employer's three yearly automatic re-enrolment date falls during a postponement period or the transitional period for DB schemes, the automatic re-enrolment duty will not apply to workers covered by the postponement period or the transitional period. (11 September 2014)
- The power for regulations to be made creating general exceptions to the duties. In relation to this power, the DWP has previously stated that there are four categories of worker in respect of whom it will consult on detailed proposals for exceptions: those with tax protected status; those who are on the brink of leaving employment; those who have given notice of retirement; and those who recently left a scheme having been contractually enrolled. As at the end of September, this consultation was still awaited. (11 September 2014)
- The section which closes a loophole previously identified in relation to the transitional provisions for DB and hybrid schemes that allow the automatic enrolment duty to be deferred until 1 October 2017. The amendments in this section ensure that the legislation reflects the policy intention that this transitional period is only available in cases where the worker is entitled, prior to the staging date, to membership of a DB scheme or the DB part of a hybrid scheme. (11 September 2014)
- The power to specify alternative quality requirements for DB schemes. This is in light of the upcoming end of contracting-out and the fact that it is seen as unnecessarily burdensome for schemes that previously met the higher standards of the contracting-out legislation to have to satisfy the complex test scheme standard. (12 September 2014)

Charges and quality standards

- The power to make regulations restricting charges or imposing requirements in relation to the administration or governance of the scheme. In a March 2014 response to consultation the Government set out its intention to set a cap on charges for default funds of DC qualifying schemes and to ban consultancy charges from all qualifying schemes from April 2015; and set out proposals to impose statutory governance standards for all DC schemes from April 2015. As at the end of September, draft regulations had not yet been published. (11 September 2014)

Trustee prohibition

- The section which makes provision so that if a person is prohibited by the Regulator from being a trustee, any corporate trustee of which that person is a director will also be prohibited from being a trustee. If that person leaves the board of the corporate trustee, the prohibition will be immediately lifted. (11 September 2014)

State pension

- The repeal of certain provisions in the Pensions Act 2008 which relate to consolidating the additional pension. The Explanatory Notes to the Pensions Act 2014 state that these provisions are not required as a result of the introduction of the new state pension. (1 October 2014)
- Provisions in relation to the new class (3A) of voluntary National Insurance contributions for the purposes only of making regulations. Current pensioners and those who reach pensionable age before 6 April 2016 will be able to use Class 3A National Insurance contributions to provide entitlement to additional pension (1 October 2014). It is also worth noting that a press release was issued by the DWP on 28 September in relation to Class 3A National Insurance contributions which states that the window for people to make their contributions for State Pension top-up will be 12 October 2015 until 5 April 2017 and that people can pre-register now via a webpage or phone number set out in the press release.

PENSION SCHEMES BILL

Introduction

The Pension Schemes Bill was introduced to Parliament on 26 June. The Bill introduces three distinct definitions of defined benefits scheme, shared risk scheme (which are Defined Ambition schemes) and defined contribution schemes, each of which is defined by reference to the degree of the "pensions promise" offered to members. This is intended to facilitate the development of models of Defined Ambition schemes. The Bill also makes provision (by defining 'collective benefits') to enable 'collective schemes' to be developed. This is not restricted to Collective DC schemes, with the intention being that collective benefits could be offered under a Defined Ambition or a DC scheme. There are also various regulation making powers in the Bill which can be used to specify further provision in relation to the treatment of collective benefits.

In relation to the April 2015 Budget reforms the Bill contains a power to enable a prohibition to be made on transfers out of unfunded public service pension schemes to DC schemes, and it is intended that the Government will bring forward amendments to the Bill to introduce the guidance guarantee and to introduce new safeguards in respect of individuals who wish to transfer out of their existing DB scheme to a DC scheme in order to access the new flexibilities.

Progress through Parliament

The Bill had its Second Reading in Parliament on 2 September 2014 at which the main principles of the Bill were discussed. The next stage of the Bill's progress through Parliament will be consideration by the House of Commons Public Bill Committee.

On 3 September, a call for evidence was added to the Parliament website stating that those with relevant expertise and experience or a special interest in the Bill, can submit views in writing to the House of Commons Public Bill Committee. This also states that the Committee is expected to meet for the first time on 16 October. The Committee stage is due to finish by 6 November.

Notices of amendments

On 11 September, the Government gave notices of amendments to the Pension Schemes Bill which cover areas including the following.

- A new power to make regulations which may impose a duty on managers of non-trust based schemes to act in members' best interests when taking specified decisions. This duty may apply to shared-risk schemes and DC schemes providing collective benefits. The proposed clause also specifies some other areas that the regulations may cover including that they may provide for the consequences of a manager breaching the duty to act in the best interests of members to be the same as the consequences of breaching a fiduciary duty owed by the manager to the members and, accordingly, for the duty to be enforceable in the same way as a fiduciary duty.
- Amendments in relation to pension sharing.
  - An amendment to allow schemes to increase beyond 65 the age at which a pension shared on divorce can first be put into payment but only if the scheme has a normal pension age above 65 for any benefits payable under the scheme.
  - Some of the amendments already contained in the Bill as it was laid before Parliament (in relation to revaluation and transfers) are proposed to be added to in order to reflect how they will apply in pension sharing cases.

IORP II DIRECTIVE – AMENDMENTS

Background

On 27 March the European Commission published proposals for revisions to the Directive on the activities and supervision of institutions for occupational retirement provision (IORP II Directive). The proposals were noted to have four specific objectives: (i) removing barriers for cross-border schemes; (ii) ensuring good governance and risk management; (iii) providing clear and relevant information to members and beneficiaries; and (iv) ensuring that supervisors have the necessary tools to effectively supervise schemes.

On 17 September the Council of the European Union published an updated version of the 27 March draft of the Directive (the first Presidency compromise). Amendments in the latest draft include the following.

Funding of cross-border schemes

The March draft did not propose any amendments to the requirement that cross-border schemes be fully funded at all times. However, amendments are proposed in the latest draft so that:

- the requirement to be fully funded "*at all times*" is replaced with a requirement to be fully funded at "*the start of every new cross-border activity*"; and
- the requirement for the home Member State to intervene if the full funding requirement is not met is replaced with a requirement that if full funding is "*not maintained in the normal course of cross-border activity*", the scheme will have to adopt a recovery plan which will also be disclosed to the competent authority of the host Member State.

This provides some relaxation of the onerous funding requirements on cross-border schemes, but the relaxation is somewhat limited given that there would still be a requirement for the scheme to be fully funded at the start of the cross-border activity.

Fit and proper management

The existing IORP Directive requires that the scheme is effectively run by persons of good repute "*who must themselves have appropriate professional qualifications and experience or employ advisers with appropriate professional qualifications and experience*".

The March draft of the Directive did not include the reference to advisers but stated that those who effectively run the scheme or have other key functions shall have professional qualifications, knowledge and experience "*adequate to enable them to ensure a sound and prudent management of the institution and to properly carry out their key functions*". This has now been replaced by a requirement that the professional qualifications, knowledge and experience be adequate "*in relation to the activities performed for the institution*".

The purpose of this latest amendment is not clear and on the face of it, it seems that it could simply replace the more specific wording in the March draft with general wording. The most significant points in relation to this part of the IORP II Directive therefore remain the fact that those who have "key functions" in relation to the scheme are brought within the scope of these requirements and that the requirement now focuses solely on the qualifications, experience and knowledge of the individuals running the scheme/having key functions and does not include a reference to their advisers.

Disclosure

Automatic enrolment

The updated draft includes a new disclosure requirement that specifically applies to those who have been automatically enrolled. This would require the scheme to "*promptly*" provide such members with information about their membership, investment options (if any), the system of governance, whether members bear the investment risks and historical series of investment returns obtained at least during the last five years.

Pension Benefit Statements

The March draft of the Directive included a new requirement for annual Pension Benefit Statements for members, standardised at EU level, providing members with simple and clear information about their individual pension entitlements. The March draft set out some detail of the information that must be included in this Statement as well as specifying that the Statement should be no longer than two pages of A4 paper.

The updated draft issued in September removes the requirement for the Statement to be no longer than two pages of A4 paper and replaces this with the more general requirement that the Statement "*shall be written in a concise way*". Some amendments have also been made to the provisions setting out the detail of the information to include in the Statement, for example, some amendments to the requirements about pension projections.

DC schemes

The March draft introduced a requirement for DC schemes to appoint a single depositary for the safe-keeping of assets and oversight duties. The updated draft instead refers to the appointment of "*one or more depositaries*".

Governance requirements

The updated draft makes some amendments to the governance requirements set out in the March draft. For example, there are updates to the new requirement in the March draft for schemes to carry out their own risk assessment as part of their risk management system and produce a "risk evaluation for pensions" documenting that assessment. The updates include: replacing the requirement to perform the evaluation "*regularly*" with a requirement to do so "*at least every three years*"; and adding into the Directive detail of areas the evaluation should cover, rather than empowering the Commission to adopt a delegated act.

Timing

The March draft contained a provision stating that Member States would have until 31 December 2016 to transpose the changes into national law. However, this date has been deleted from the updated draft and no new date has been added.

There are likely to be further rounds of amendments to the draft Directive before its final form is decided upon and therefore the points set out above could be subject to change. The key will be whether the final form of the updated Directive is compatible with domestic legislation or whether amendments will need to be made, for example, to trustee knowledge and understanding requirements or to disclosure requirements. With the date for transposing the Directive now removed from the draft, timing on this is uncertain. There is no action that schemes need to take at this stage but should note the areas in respect of which further changes are on the horizon.

HMRC

SCHEME ADMINISTRATORS

On 1 September, provisions in the Finance Act 2014 that effectively require the scheme administrator for Finance Act purposes (often the trustees) to be fit and proper for the role came into force. This measure is designed to combat pension liberation. The provisions give power to HMRC:

- to refuse to register a scheme or to de-register an existing scheme where it considers that the standards are not met; and
- to request information for the purpose of considering whether the requirement is met.

HMRC had previously issued draft guidance explaining the approach that it will take in making the assessment of whether a scheme administrator is 'fit and proper' and the final form of this guidance was published on 1 September.

The key point to note is that HMRC takes the view that people involved in setting up a pension scheme will have given proper consideration to the suitability of their scheme administrator to act in that capacity, and that consequently those scheme administrators are normally fit and proper persons, and HMRC assumes that all persons appointed as scheme administrators are fit and proper persons unless it holds or obtains information which calls that assumption into question.

The guidance sets out a non-exhaustive list of factors that may lead HMRC to decide that the scheme administrator is not a fit and proper person. Many of these factors will be unsurprising given the reason the requirement has been introduced. For example, factors that may lead HMRC to conclude a person is not fit and proper to be the scheme administrator include if the person has previously been involved in pension liberation or has been involved in tax fraud, abuse of tax repayment systems or other fraudulent behaviour including misrepresentation and/or identity theft.

Another factor included in this list is that the person does not have sufficient working knowledge of the pensions and pensions tax legislation to be fully aware and capable of assuming the significant duties and liabilities of the scheme administrator, or does not employ an adviser with this knowledge. The final form of the HMRC guidance includes a section that was not in the draft version about the meaning of the reference to employing an adviser with pensions knowledge.

This new section gives the example of an employer setting up a pension scheme and acting as scheme administrator. HMRC acknowledges that the employer may not have a detailed knowledge of pensions and pensions tax legislation and states that in this situation it would expect an adviser to be employed who does have such a working knowledge and will advise the employer or act on its behalf.

It goes on to address situations where it is the adviser who has been involved in pension liberation or tax avoidance and states that this may lead HMRC to decide that the scheme administrator is not a fit and proper person.

This new section ends with HMRC noting that scheme administrators must be satisfied that they will be able to properly fulfil the role of scheme administrator for the particular scheme and be able to demonstrate that if necessary.

PENSION SCHEME SERVICES NEWSLETTER

On 15 September, HMRC published Pension Schemes Services Newsletter Number 65 which covers issues including the following.

- A note that from the end of September 2014 the pension schemes content on the HMRC website is moving to the gov.uk website. Some changes are noted to have been made, for example, with some of the more complex subjects broken down into smaller parts and searches and search engines having been improved. For now, the Registered Pension Schemes Manual and the news items in relation to pension schemes will remain on the HMRC website.

- An update on Individual Protection which notes that the application form for Individual Protection was published on 18 August 2014 and reports that it will take up to three months before those who apply receive their certificate.
- A note that pension providers will soon be issuing annual allowance pension statements for the 2013/14 tax year. This is a reference to a requirement in the tax legislation for scheme administrators to provide "pension savings statement" (containing specified information about the member's savings and the annual allowance) to members who have exceeded the annual allowance. On the same day as the newsletter was published, HMRC added an update to its website containing links to the annual allowance checking tool that members can use to help them check whether they need to calculate their annual allowance tax liability even if they haven't received a pension statement; and the standard and enhanced pension savings annual allowance calculators that members can use if they already know that they need to calculate their annual allowance charge.

PUBLIC SERVICE PENSION SCHEMES

NHS PENSION SCHEME AND FAIR DEAL

In March 2014 the Department of Health published guidance on Fair Deal for contracting authorities, bidders and providers where the relevant public service scheme is the NHS Pension Scheme, which has two sections one of which applies to first generation transfers and one to retenders.

On 19 September, the Department of Health published a further document about the NHS Pension Scheme and Fair Deal – a Policy Note on the "*Application of new Fair Deal to ongoing contracts*". The Policy Note applies to circumstances other than the retender of existing contracts where employers and contracting authorities consider there is an opportunity for former public sector staff transferred out of the public sector under old Fair Deal, to return to the NHS Pension Scheme.

The Department of Health states that requests may be made by the employer to allow eligible staff to return to the NHS Pension Scheme under a Pension Direction to that employer; and that it will consider such requests on a contract-by-contract basis taking into account the impact on staff, procurement and value for money considerations, among other factors. Any requests from employer providers will need to be supported by the relevant contracting authorities.

The Policy Note:

- outlines the principles that apply in relation to future service and any savings arising; past service liability; and bulk transfers;
- sets out some of the points that independent sector employers and contracting authorities should consider while deciding to make an application or as part of the application process, such as, bulk transfer shortfalls, employee relations issues that could arise if the terms of the scheme have changed since the employees originally transferred out and any risk of procurement challenge; and
- states that the existing contract between the contracting authority and the provider will need to be varied to reflect the savings due to the contracting authority and to take account of the contractual provisions mentioned in Fair Deal guidance and therefore outlines the principles that need to be reflected in any agreement to vary an existing contract.

UPDATE TO DIRECTIONS ON VALUATIONS AND THE COST CAP

In March, HM Treasury published a Technical Note and Treasury Directions in relation to the next stage in the reform of public service pension schemes. These covered actuarial valuations and the employer cost cap mechanism, with the Technical Note setting out details of HM Treasury's policy in relation to the valuations and the cost cap and the Directions providing the legal framework for them. Amendments were previously made to the Directions in June and on 24 September HM Treasury published the Public Service Pensions (Valuations and Employer Cost Cap) (Amendment) (No. 2) Directions 2014 which came into force on 27 August 2014.

The changes made to the Directions include an amendment to ensure that the entire scheme is taken into account when setting the employer cost cap for local government workers in England and Wales. This is achieved by adding reference to some 2014 regulations relating to the new Local Government Pension Scheme (LGPS) for England and Wales. It had previously been thought that all provision for the LGPS would be in the 2013 regulations but this turned out not to be the case and, if the reference to the 2014 regulations had not been added, the preliminary valuation of the new scheme would only capture part of the benefits which make up the new pension arrangements for local government workers.

The other changes to the Directions clarify some points in relation to their application to the Judicial Pension Scheme.

OTHER NEWS

TPAS ANNUAL REVIEW

On 1 September, the Pensions Advisory Service (TPAS) published its Annual Review 2014. In this article we report on two sections of the Annual Review – those that relate to pension liberation and to complaints investigated by TPAS.

Pension liberation

TPAS states that a "*worrying*" feature of its work over the past 12 months was the number of calls and enquiries (974) received about pension liberation.

The Annual Review also reports on some of the features of pension liberation including the following.

- In many cases, the liberators offer a free pension review which is often legitimised by stating that it is a Government backed initiative, and once they have details of the individual's pension schemes, they may suggest there is a legal loophole, for example, in relation to early access.
- Adverts for "unlocking your pension fund" typically sit alongside payday loan adverts.
- Sometimes the targets are random but there are other signs that some liberators target a scheme or people who have just been made redundant.

Complaints investigated

Points in this section of the Review report include the following.

- TPAS judged that 2,221 complaints needed further investigation, which marks an increase of 12%.
- The main reasons for complaints included the following:
  - entitlement – 31%, meaning disputes relating to rights attributable to scheme rules, policy conditions and legal rights, as well as cases where the complainant believes they have an entitlement to a pension which the scheme has no record of or where the scheme cannot be found;
  - mistake or overpayments – 30%;
  - delays – 21% – further figures on these complaints include that 35% related to delays during transfer and 27% to delays taking retirement benefits; and
  - decision-making – 14%, with 70% of complaints about decisions relating to failed ill-health retirement applications and 13% to decisions on lump sum death benefits.
- In terms of the type of scheme, 46% of complaints related to DC schemes, 27% related to DB schemes and 27% related to public sector schemes.

NEWS FROM THE PPF

Technical News

In September the Pension Protection Fund published the latest version of its Technical News newsletter on topical issues including practical guidance for schemes in PPF assessment periods and Financial Assistance Scheme qualifying schemes.

This latest edition of Technical News includes articles on the following.

- The new definition of money purchase benefits. This article reports on the two main types of benefit likely to be affected by the change to the definition (cash balance benefits and internally annuitised benefits), the parts of the transitional regulations relevant to the PPF, when out of cycle section 179 valuations will be required, and the requirements for section 179 valuations for newly eligible schemes.
- A finance update which reports that the Pensions Research Accountants Group is due to issue a revised Statement of Recommended Practice later this year, which will make a number of substantial and important changes to pension scheme accounts to bring them in line with the new UK accounting standards issued by the Financial Reporting Council, particularly FRS102.

The PPF goes on to report on two of the most noticeable changes which it states relate to: a new requirement to assign a value to annuity policies held by the trustees which guarantee some or all benefits payable to members; and a requirement to make new disclosures on risks arising from financial instruments.

Reconsideration applications

Also in September, the PPF published an updated version of its guidance for actuaries undertaking valuations under section 152 of the Pensions Act 2004 and its Statement about how the Board of the PPF will make a funding assessment under section 152 of the Pensions Act 2004.

Section 152 relates to cases where the PPF has not assumed responsibility for a scheme because its funding position shows that it had sufficient assets to meet the PPF liabilities at the relevant time of the section 143 valuation, and the scheme makes an application to the PPF for reconsideration. As part of the reconsideration process, schemes must satisfy the PPF that reasonable steps have been taken to obtain a "protected benefits quotation" which is a quotation for one or more annuities which would provide PPF-level benefits or full scheme benefits.

The PPF may require a valuation of the scheme to be completed under section 152 and this document provides guidance for actuaries carrying out such a valuation. Where the PPF is of the opinion that a roll forward of the section 143 valuation may be sufficient to determine whether the scheme is underfunded, it may seek to make a section 152 funding assessment rather than a full valuation.

Updates to the document include: a reference to the new definition of money purchase benefits; reference to the requirement for the PPF's agreement to use approximations in the calculations of the value of the assets, the deletion of the overview section; and the re-ordering of some sections.

MONEY ADVICE SERVICE DIRECTORY

Following a consultation issued in June, the Money Advice Service has confirmed that its proposal to launch a new financial adviser directory is set to go ahead. The press release accompanying the response to consultation states that:

- the aim is to launch the new directory by April 2015 to coincide with the new retirement guidance service being introduced as part of the Budget reforms;
- the Money Advice Service is currently establishing an independent panel of consumer and industry representatives to set the criteria for inclusion;
- the panel will decide whether the directory should contain details only of retirement specialists or be opened up to include advisers covering all areas of regulated financial advice;
- the panel will also be asked to agree on how fees and charges can best be incorporated into the directory so that consumers can compare the costs of products and services more accurately; and
- the Money Advice Service looks forward to working with the advice community to help make consumers' transition from guidance to regulated advice as seamless as possible.

ON THE HORIZON

- **Exceptions to automatic enrolment duties.** A consultation was expected to be published in early 2014 but, as at the end of September, had not been issued.
- **Equalisation for GMPs.** It had previously been expected that guidance on conversion of GMPs would be published in the spring but, as at the end of September, this had not been published. An HMRC Bulletin on the end of contracting-out issued in July reported that the DWP understands that schemes are waiting for GMP conversion guidance but it thinks it is important to develop fully considered proposals, and guidance will be published when this critical work is completed.
- **Annual Allowance Order.** 27 August was the closing date for comments on a draft Order proposing technical improvements to the legislation on the annual allowance. The draft Order does not state a coming into force date.
- **DC reform.** The technical consultation on the draft legislation for the April 2015 DC reforms (the draft Taxation of Pensions Bill) closed on 3 September and the Bill is expected to be laid in the autumn. In September it was announced that the 55% tax charge on pension funds held in a drawdown product at death or uncrystallised after age 75 will also be abolished as part of these reforms.
- **Pension liberation.** The Pensions Ombudsman expects to be able to publish its decisions on cases concerning pension liberation in the autumn.
- **The end of contracting-out.** The consultation on draft regulations in relation to the power for employers to increase employee contributions or alter future accrual to offset increased national insurance contributions closed on 2 July. It is expected that these regulations will come into force in the autumn.
- **PPF Levy.** The PPF's consultation on its approach for the levy triennium of 2015/16 to 2017/18 closed on 9 July. A further consultation on the detailed rules and the Levy estimate will follow in the autumn.
- **Public service schemes.** The Regulator's consultation on the draft Code of Practice and regulatory strategy for public service pension schemes closed on 17 February 2014. It is anticipated that the Code will be laid before Parliament in the autumn.
- **VAT treatment of pension scheme administration and fund management services.** In the autumn, HMRC will publish guidance about how it will implement the judgments of the Court of Justice of the European Union in the *PPG* and *ATP* cases.
- **Guidance guarantee – levy.** The FCA will consult on draft levy rules in its annual fees policy consultation in October.
- **Guidance guarantee.** The FCA's consultation on the elements of the guidance guarantee for which it is responsible closes on 22 September and the FCA intends to publish a Policy Statement in late autumn.
- **Holiday pay cases.** Judgment is expected in October/November in cases concerning the treatment of overtime and certain other supplementary payments for the purposes of holiday pay. An Employment Tribunal hearing is expected in October on a case concerning commission and holiday pay. Whilst these cases concern employment law issues, the outcomes could have an impact on pension schemes that define pensionable pay to include these elements of variable pay.
- **Short service refunds.** It is intended that short service refunds will be withdrawn from money purchase schemes in 2014.
- **Review of survivor benefits.** The review of different treatment of survivor benefits under occupational pension schemes required to be completed under the Marriage (Same Sex Couples) Act 2013 has been published, although no date has been given for when the Secretary of State will announce whether or not any amendments will be made to the legislation. The Employment Appeal Tribunal's judgment in the *Walker v Innospec* case concerning the restrictions placed on benefits payable to civil partners is the subject of an appeal to the Court of Appeal, with a hearing due to take place on 23 or 24 February 2015.

- **Defined ambition.** The Pension Schemes Bill which contains provisions to enable the development of Defined Ambition schemes has been laid before Parliament and is expected to be made before the end of the Parliamentary session, although the date for it to be brought into force is not yet known.
- **DC regulation.** The Regulator expects trustees of occupational pension schemes to assess the extent to which their scheme complies with the DC quality features and publish a governance statement in relation to this assessment at the end of the 2014/15 scheme year.
- **DC scheme quality and charges.** Statutory quality standards for DC schemes, a cap on charges for default funds in qualifying schemes, a ban on consultancy charges in qualifying schemes and reporting requirements in relation to charges are proposed to come into effect in April 2015. (The consultation on the scheme quality standards closed on 15 May 2014.)
- **Automatic transfers.** The date for the introduction of a system of automatic transfers of small DC pension pots has not yet been announced. However, an announcement in September about the restrictions on NEST gave some indication when it stated that the Government retains the right to remove the NEST restrictions on individual transfers from 1 October 2015 to coincide with the introduction of automatic transfers.
- **DC charges.** From April 2016, it is proposed that member-borne commission payments and Active Member Discounts will be banned from DC qualifying schemes.
- **State Pension.** The reform of state pension which will result in the end of contracting-out is due to take effect in April 2016.
- **IORP II.** The draft updated IORP Directive published in March proposed that Member States would have to transpose the new IORP Directive into national law by 31 December 2016. However, an updated draft published in September deletes this date and does not replace it with a new date.
- **DC charges.** In 2017 it is proposed that the level of the charge cap will be reviewed, as will the question of whether any transaction costs should be included in the cap.

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