ALLEN & OVERY

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Pensions: what's new this week

Welcome to your weekly update from the Allen & Overy Pensions team, bringing you up to speed on all the latest legal and regulatory developments in the world of occupational pensions.

Stop press: Updated COVID-19 guidance | PPF: important levy update; contingency | planning | GMP rectification: new PASA guidance | Finance Bill published | Annual | uprating orders | Box Clever: ITV refused permission to appeal | Auto-enrolment: offshore workers | Brexit: updated guidance for cross-border schemes

Stop press: Updated COVID-19 guidance

The Pensions Regulator (TPR) has issued updated COVID-19 guidance including important news for pension schemes, employers and administrators. In recognition of the severity of the current situation for some schemes and sponsors, the guidance sets out unprecedented additional flexibility from TPR in some aspects of its activity, allowing it to focus on supporting employers, schemes and savers. All other regulatory initiatives will go on hold for the time being.

The updated guidance includes specific information for DB trustees where the sponsoring employer is at risk and has asked to reduce or suspend deficit repair contributions (DRCs). TPR also recognises that some technical breaches may occur as a result of under-resourcing due to the pandemic and states that it will take a proportionate and risk-based approach towards enforcement decisions.

Click here to read our briefing, and for further information or support, please contact your usual Allen & Overy adviser.

PPF: important levy update; contingency planning

The Pension Protection Fund (PPF) has published an update on this year's levy processes in light of COVID-19. In particular, the PPF has asked that no hard copy documents be sent (all documents should be emailed); it will also accept electronic signatures on documents. The PPF has also said that it understands that key individuals might not be able to finalise documents because they are unwell or in self-isolation – documents submitted late should include an explanation of the reasons for the delay; the PPF will consider the circumstances and accept the documents where this is reasonable.

The PPF has also published a policy statement (and press release) on the insolvency risk scoring model to be used for invoices from 2021/22, following its recent consultation (see WNTW, 6 January 2020). The PPF had encouraged schemes and employers to engage with their scores following the move to a new provider, to check that any difference in scores did not reflect incorrect information, particularly in cases where accounts data is self-submitted. In these cases, to give schemes as much time as possible to self-submit accounts data to Dun & Bradstreet, the cut-off date for April 2020 (only) has been extended to 30 April 2020.

In light of the disruption caused by COVID-19, the PPF has also reminded trustees of its existing guidance on contingency planning for employer insolvency.

GMP rectification: new PASA guidance

The PASA GMP equalisation working group has published new guidance on 'When to rectify', setting out factors to help trustees consider whether to undertake rectification as soon as GMP reconciliation is complete, or to defer and combine this with GMP equalisation. The guidance sets out a four-step process to assist trustees in making this decision:

- understanding the data (for example, the number of members in scope for rectification and the extent to which these members are also in scope for GMP equalisation);
- understanding the nature and timing of the task (such as how and when to rectify benefits, and how this fits in with work required for GMP equalisation);
- understanding the impact on members (including the impact of any delay); and
- considering and documenting the scheme's position on other relevant factors (including trustee duties, past practice, costs, capacity, and member communications).

The guidance states that trustees should generally complete the rectification and implement changes to pensions as soon as possible for those pensioners with no post 17 May 1990 GMP accrual.

Finance Bill published

Following the recent Budget, the government has laid the Finance Bill before Parliament. The Bill includes a provision amending the Finance Act 2004 to change the operation of the tapered annual allowance from the 2020/21 tax year onwards (for more details on the proposals, see WNTW, 16 March 2020). The explanatory notes are available here.

Annual uprating orders

The annual uprating order for guaranteed minimum pensions (GMPs) will come into force on 6 April 2020. Under the order, the GMP element of an individual's occupational pension entitlement attributable to earnings factors for the tax years 1988/89-1996/97 must be increased by 1.7%

A separate order sets out increases to various social security benefits and pensions, including state pensions – this will be of interest to schemes operating a bridging pension/state pension offset.

Box Clever: ITV refused permission to appeal

TPR has published a press release following the Supreme Court's refusal to allow ITV plc and four related entities permission to appeal in the long-running litigation over the issue of financial support directions (FSDs) in relation to the Box Clever pension scheme. These entities have six months to put financial support in place for the scheme. You can read about the Court of Appeal's decision in WNTW, 24 June 2019.

Auto-enrolment: offshore workers

The government has published two draft orders (here and here) to preserve auto-enrolment treatment for offshore workers and persons working on vessels. This is because of 'sunset clauses' in the existing legislation which would apply from 1 July 2020. The draft orders must be approved by Parliament; if so, they will apply from 30 June 2020.

Brexit: updated guidance for cross-border schemes

TPR has updated its no-deal Brexit guidance for cross-border schemes to cover the transition period. TPR has said that it will issue further guidance in the coming months on steps to be taken by trustees to prepare for any changes after the end of the transition period, and has advised that trustees should periodically check this guidance for updates, as well as checking with the relevant EU member state regulator.

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