In This Issue

Consultation - equalisation of Guaranteed Minimum Pensions (GMPs)

As mentioned in our stop press last month, the Government has published a consultation covering various contracting-out issues where clarity is required following the abolition of defined benefit contracting-out in April 2016.

The most material of these issues relates to the consultation for equalising pensions for the effect of inequalities caused by GMPs. The consultation proposes a new method for the equalisation of GMPs but makes it clear that it is only a proposal and would not be mandatory. Importantly it also makes it clear that no legal confirmation is being given that the proposal will meet the equalisation requirements (which derive from European law).

The proposed method involves a one-off calculation and actuarial comparison of the different benefits between a man and woman. Once this has been calculated, the greater of the two benefits is converted into an ordinary scheme benefit.

In order to carry out this calculation a comparison would be made between the future expected cash flows for the member in respect of the period of contracted-out pensionable service from 17 May 1990 to 5 April 1997 and those of an opposite sex comparator. When this has been carried out, if the opposite sex comparator has the greater discounted value of expected cash flow, then that greater value is adopted.

As mentioned above, the consultation's approach involves converting GMPs, once they have been equalised, into ordinary scheme benefits. Various conditions exist in relation to the conversion of GMPs which are set out in legislation. The consultation also sets out some proposed changes to legislation to help facilitate the conversion of GMPs to ordinary scheme benefits including, for example, the requirement to consult with members being replaced with a requirement to notify members both before and after the conversion takes place.

The consultation makes it clear that some issues remain outstanding in relation to GMP equalisation and states that these issues continue to remain under consideration by the working group which came up with the proposals in the current consultation.

While we understand that this method would be less expensive to implement than previous approaches it remains costly and complex. Many schemes and employers may wish to continue to monitor developments and reassess the position in the light of the outcome of the consultation.

The DWP consultation, which ends on 15 January 2017, can be found by clicking here.

In addition to the DWP's consultation, HMT is separately consulting on how to treat GMPs for affected members of public service pension schemes. The consultation sets out the options being considered for members who have accrued a GMP and reach State Pension Age after December 2018. Three policy options are set out in the consultation and are broadly:

- case-by-case calculations;
- extension of the current interim solution; and
- conversion of the GMP to scheme benefit.

HMT will also consider any alternative solutions that are put forward by respondents to the consultation.

The HMT consultation, which ends on 20 February 2017, can be found by clicking here.

Article published on early exit charges from occupational pension schemes

Jeanette Holland, Head of Baker McKenzie's Pensions team in London and Professional Support Lawyer Sarah Hickling examine the Government's announcement that early exit charges for those accessing the pension freedoms from an occupational pension scheme will be capped or banned. This article was first published in LexisPSL on 1 December 2016. This article can be viewed by clicking here.

Review of the automatic enrolment earnings trigger and qualifying earnings band for 2016/17

The DWP announced a review of automatic enrolment which is aimed at encouraging more work place saving. At the same time the Government has confirmed that the earnings trigger for automatic enrolment will remain at £10,000 for 2017/18. In addition, a proposal will be put before Parliament in the New Year for the upper limit of the qualified earnings band to be £45,000 and for the lower band to be £5,876.

The review can be viewed by clicking here.

Tata Steel to consult on closure of BSPS

Tata Steel has guaranteed jobs in Port Talbot for five years and has also pledged to invest £1bn in its UK business. However, as part of this agreement Tata Steel is beginning a consultation on changes to the British Steel pension scheme ("BSPS") which include closure to future accrual and future pension provision being made through a defined contribution scheme with maximum contributions of 10% from the company and 6% from employees.

Members of the unions involved with Tata Steel will need to vote on the deal in the New Year although the deal already has the backing of union leaders and trustees of the BSPS.

Draft of the Finance Bill 2017 published

HMT has published draft legislation and explanatory notes for the Finance Bill 2017 which implements changes outlined in the Chancellor's Autumn Statement. The Bill is open for comment until 1 February 2017 and is likely to receive Royal Assent in the summer of 2017. Most of the measures in the Bill will have retrospective effect from the start of the new tax year on 6 April 2017.

As expected, the Bill provides for a new income tax exemption to cover the first £500 worth of pensions advice provided to an employee in a tax year in relation to advice on pensions and also on general financial and tax issues relating to pensions. In addition, it provides for the reduced money purchase annual allowance restricting the amount of tax relieved contributions an individual can make to £4,000 per year if they have already flexibly accessed their pension savings.

The draft legislation and explanatory notes can be viewed by clicking here.

Pension Scams consultation published

HMT and the DWP have jointly published a consultation on pension scams following the Government's stated commitment in the Chancellor's Autumn Statement to protect people from them and to pursue those who perpetrate them. The consultation closes on 13 February 2017.

The consultation identifies three areas where the Government intends to legislate:

- **a ban on cold calling** - it is proposed that any breach of this would result in a fine of up to £500,000.
- **measures to clarify the law to allow pension schemes to block pension transfers that look like a scam** - the consultation proposes that the statutory right to transfer should exist only where the receiving scheme is a personal pension scheme operated by an FCA authorised firm or where there is a genuine employment link to the receiving pension scheme. A further alternative to this is that the member who requests the transfer provides a discharge letter to the trustees of the transferring scheme which could be accompanied by a statutory cooling off period.
- **measures to allow only active companies to register a pension scheme** in contrast to the situation now where single-member occupational pension schemes require no registration with the Regulator and can be set up using a dormant company as the sponsoring employer - this is intended to make it harder for pension schemes to be registered for fraudulent purposes.

These proposals are generally welcome. Trustees have, in the past, found themselves in the difficult position of having a statutory obligation to make a transfer where they believe this may be a scam. Legislation to allow trustees to prevent a transfer where the receiving scheme is neither operated by an FCA regulated firm or connected with a member's employment should prove a useful tool to reduce such scams.

The consultation can be found by clicking here.

Overseas pension schemes and tax relief

HMRC has published a consultation on the draft Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes) (Amendments) Regulations 2017 together with a draft explanatory memorandum and also guidance. The draft regulations relate to the conditions that must be met for a pension scheme to be:

- an overseas pension scheme; or
- a recognised overseas pension scheme

in order to receive UK tax relief for contributions or to make a transfer tax free. The proposed changes would, among other things, remove the requirement for schemes to designate 70% of funds that have received UK tax relief to provide the member with an income for life. The changes would also enable benefits to be paid before age 55 if the payment would be an authorised payment if paid by a registered pension scheme. **These relaxations are welcome changes and mirror the flexibilities now available in the UK pensions regime.**

The consultation ends on 1 February 2017 and the regulations would come into force on 6 April 2017.

The draft regulations and explanatory memorandum can be found by clicking here and the guidance can be found by clicking here.

IORP II adopted

On 8 December the Council of the European Union adopted the second IORP Directive which revises a previous directive on the activities and supervision of "Institutions for Occupational Retirement Provision". It will come into force 20 days after it has been published in the Official Journal of the European Union and Member States will then have two years to implement its provisions into national law. **The impact of Brexit in terms of implementation is currently unknown and will depend on a number of factors. As such, the IORP Directive should be considered as likely to be applicable (at least for a short time) in the UK.** The four specific objectives of the IORP Directive are:

- clarifying cross-border activities of workplace pensions;
- ensuring good governance and risk management;
- providing clear and relevant information to members and beneficiaries;
- ensuring that national regulators have the necessary tools to supervise workplace pensions effectively.

Regulator focuses on record keeping

The Regulator has announced via a press release that it will ask trustees to report on record-keeping in their scheme return. The Regulator has stated that "by adding record-keeping measures to the scheme return, we will be able to target our interventions more specifically at those failing in their duties."

To help trustees with this the Regulator has launched a quick guide to record keeping and will be providing more educational products throughout 2017.

A link to the announcement can be found by clicking here and a link to the quick guide can be found by clicking here.

Consultation on the General Levy published

The DWP has published a consultation on The Occupational and Personal Pension Schemes (General Levy) (Amendment) Regulations 2017. The general levy is set each year by the Secretary of State for Work and Pensions and is levied on occupational and personal pension schemes. It is intended to cover the cost of running the Regulator, Pension Ombudsman and Pension Advisory Service. The consultation seeks views on the proposed rates of the levy for the financial year 2017/18 onwards. Comments on the proposals should be submitted by 18 January 2017.

The levy rates were reduced by 13% for 2012/13 and have been held at the same level since then. **The Government believes that it will have a surplus at the end of the levy year 2016/17 and as such it is seeking views on whether or not it should alter the levy rates from 2017/18 in order to take account of the surplus**. Three options are set out in the consultation as follows:

- make no change to the levy;
- reduce the levy rates to eliminate the surplus;
- reduce the levy rates for very large schemes only (schemes with more than 500,000 members) so that their levy would be 25% less than the rates for smaller schemes (meaning schemes with 10,000 - 499,999 members) in order to eliminate the surplus whilst maintaining the levy rates freeze for smaller schemes.

The consultation can be found by clicking here.

The Pensions Regulator publishes its annual report

The Regulator has published the first edition of what will be its annual report on all private defined benefit occupational pension schemes registered with it. It is intended to build upon the information published in the Purple Book which has been jointly published by the Regulator and the Pension Protection Fund for the last ten years.

To view the annual report click here.

Pension Schemes Bill 2016/2017 - changes proposed

The Pension Schemes Bill 2016-17 (the "Bill") has now received its second sitting in the House of Lords. The revised version of the Bill makes some changes in relation to master trusts, one of which relates to the procedure for authorisation applications. The extent to which the Bill will apply to some categories of master trusts such as industry-wide schemes is likely to be established by regulations. The automatic transfer of small pots will now be dealt with through the Pensions Dashboard which is currently intended to be introduced in full by 2019.

The Bill is expected to receive Royal Assent next year.

The amended Bill can be found by clicking here.

Investments - new EMIR rules for OTC derivatives

In last month's newsletter we advised that the margin rules for OTC derivatives contracts were nearing conclusion. They have now been published in the Official Journal of the EU which sets the timetable for implementation. The rules will enter into force on Monday **4th January 2017** (i.e. the twentieth day following that of its publication in the Official Journal of the European Union). **Variation margin** (VM) requirements will apply in two stages: **4th February 2017** for those counterparties with more than EUR 3 trillion aggregate average notional of non-centrally cleared OTC derivatives and **1st March 2017** for all other in-scope counterparties. **Initial margin** (IM) requirements are being phased-in: applying to the first category of in-scope entities from **4th February 2017** and being fully applied by 1st September 2020. Product specific phase-in relief from the VM requirements is available for FX forwards and single stock equity index and index options. For more details on the Margin rules, phase-in timetable and exemptions please click here.

FCA publishes asset management market study

The FCA has published its interim report into the asset management industry. The report finds that price competition is weak in a number of areas and highlights concerns about the way the investment consulting market operates. The FCA is now consulting on a range of remedies to address the concerns identified in the report as well as its proposal to make a market investigation reference to the Competition and Markets Authority on investment consulting services. Responses to the interim report must be submitted by 20 February 2017 and the final report, following consideration of the responses, is expected to be published in Q2 2017.

Further information can be found by clicking here.

Comments from our Pensions Disputes Group

Civil Partnerships - European Court finds no discrimination

In *Parris v Trinity College Dublin*, the European Court found that Dr Parris, a member of the Trinity College pension scheme (the "Scheme"), did not suffer discrimination on grounds of sexual orientation or age because his civil partner was not eligible to receive a survivor's pension.

Dr Parris retired from the Scheme in 2010 at the age of 63 when he and his partner had been in a relationship for more than 30 years. In 2008 Dr Parris entered into a Civil Partnership in the UK with his partner which was recognised in Ireland in 2011 when this was possible under Irish law. Against that background, Dr Parris complained that the Scheme rules did not provide a survivor's pension for those who married or entered into a civil partnership after age 60 and as such this was discriminatory on the grounds of age and sexual orientation.

The European Court held that the rules of the Scheme were not discriminatory on the grounds of sexual orientation as they applied equally to opposite sex and same sex couples. In addition, the Court held that it is a matter for each member state whether it wished to recognise same sex marriages and, if so, when. This meant that the timing of Ireland's decision to recognise same sex partnerships in 2011 could not lead to a breach of the EU's discrimination laws. The Scheme was also not discriminatory on the grounds of age because EU law allowed pension schemes to fix the age from which retirement benefits would be paid.

The European Court did not address the question of retrospective effect, which means that it is still not clear whether pensionable service prior to any change in the law must be taken into account when calculating survivor's benefits. This issue is likely to be addressed by the Supreme Court in the UK which is due to hear two appeals involving the treatment of pension scheme benefits and the retrospective effect of the relevant legislation. These cases are *Innospec* and *Walker* and for more information on these cases please see our updates in February 2014 and October 2015.

The judgment can be viewed by clicking here.

Contact us

If you wish to discuss any of these issues further, please contact your usual Baker McKenzie lawyer.

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