SLAUGHTER AND MAY

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ISSUE 17

Pensions and Employment: Pensions Bulletin

Legal and regulatory developments in pensions

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Find out more about our pensions and employment practice by clicking here.

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For more information, or if you have a query in relation to any of the above items, please contact the person with whom you normally deal at Slaughter and May or Rebecca Hardy.

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I. Stop Press!

Scope for increased VAT recovery: new HMRC bulletin extends transitional period.

Pensions Bulletin 15/14 summarised the current uncertainties around VAT recovery on pension scheme investment management and administration services.

On 26th October, 2015 HMRC published a new Brief (17/15) on the subject. The key point is that the existing "70:30" treatment allowing employers to recover 30% of the VAT on fees for investment management supplies to pension scheme trustees is extended by a year to 31st December, 2016.

Brief 17/15 is on HMRC's website. We will circulate a separate briefing shortly on the options HMRC proposes for maintaining or increasing VAT recovery on pension scheme investment management and administration costs.

II. Watch list

The Watch List is a summary of some potentially important issues for pension schemes which we have identified and where time is running out, with links to more detailed information. New or changed items are in **bold**.

No.	Topic	Deadline	Further information/ action
1.	Information to retiring DC members about the guidance guarantee	6th April, 2015	Template information available on request
2.	Information to transferring DB members about the requirement for independent financial advice	6th April, 2015	Pensions Bulletin 15/09
3.	Requirement to check that independent financial advice received before effecting DB transfers	6th April, 2015	Pensions Bulletin 15/11 **Action point**: Check transfer-out provisions in scheme rules. They will require amendment if they give members the right to transfer without taking independent financial advice
4.	New governance requirements for occupational schemes which have money purchase benefits in them (unless limited to AVCs)	6th April, 2015	Client note dated 24th February, 2015 (updated 2nd April, 2015) available from Lynsey Richards Note additional requirements for "relevant multi-employer schemes" - see Pensions Bulletin 15/08
5.	Cap on charges in default fund for auto-enrolment qualifying schemes	6th April, 2015	Client note dated 24th February, 2015 (updated 2nd April, 2015 to reflect exemption from charge cap for AVCs) - Pensions Bulletin 15/06) available from Lynsey Richards
6.	Abolition of refund of contributions for members of occupational schemes with at least 30 days' pensionable service who are just provided with money purchase benefits and who start pensionable service after 30th September, 2015	1st October, 2015	Pensions Bulletin 15/09 **Action point:** Scheme rules should have been amended where necessary to remove right to refund of contributions where member has at least 30 days' qualifying service but less than 2 years' qualifying service
7.	**VAT recovery changes**	**31st December, 2016**	**This Pensions Bulletin**
8.	Reduction in annual allowance for high income individuals **Note**: Up to £80,000 annual allowance for tax year ending 6th April, 2016	6th April, 2016	Summer Budget 2015 Supplement
9.	Reduction in Lifetime Allowance from £1.25 million to £1 million	6th April, 2016	Pensions Bulletin 15/05

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No.	Topic	Deadline	Further information/ action
10.	Members who intend to apply for Fixed Protection 2016 ("FP 2016") must stop accruing benefits	6th April, 2016	Pensions Bulletin 15/16 Think about communicating 6th April, 2016 reduction in LTA and possible protections highlighting necessity of ceasing accrual for FP 2016 As with FP 2012 and FP 2014, schemes may wish to add protective provisions to their trust deed and rules to prevent inadvertent loss of FP 2016. Please contact the person you usually deal with at Slaughter and May if you would like to add a protective provision to your scheme. The Deed of Amendment would need to be in place before 6th April, 2016
11.	Abolition of DB contracting-out: managing additional costs	6th April, 2016	Pensions Bulletin 15/16 Checklist available to clients on request. Planning for this should be well developed by now.
12.	Abolition of DB contracting-out: practicalities	6th April, 2016	Pensions Bulletin 15/16 Checklist available to clients on request. Planning for this should be well developed by now. Employers to notify affected employees of change in contracting-out status by 6th May, 2016. Schemes to notify affected members by 6th July, 2016. Change template contracts of employment for new joiners to remove references to contracted-out employment.
13.	Prohibition on Active Member Discounts in auto-enrolment qualifying schemes	6th April, 2016	Pensions Bulletin 14/16
14	Proposed ban on corporate directors **Note**: Unclear whether exemption will be available for independent corporate directors of trustee companies	1st October, 2016	Pensions Bulletin 15/07
15.	Automatic transfers of DC pots of £10,000 or less	Postponed indefinitely	This Pensions Bulletin
16.	Registration for Individual Protection 2014	Before 6th April, 2017	Pensions Bulletin 14/12

New Law

III. Pension Schemes Act 2015: Update

In a written ministerial statement dated 15th October, 2015 Baroness Altmann, Pensions Minister, said that "*the time is not right*" to implement the:

- defined ambition,
- collective benefits, and
- automatic transfers provisions,

in the Pension Schemes Act 2015.

She said "*The time is not right to ask the pensions industry to absorb the new swathe of regulation that would be needed to make such further reforms work effectively. The market needs time and space to adjust to the other reforms under way and these areas will be revisited once there has been an opportunity for that to happen*".

Comment: This announcement is not entirely unexpected: although Baroness Altmann was supportive of collective DC schemes prior to her appointment as Pensions Minister, we predicted that her support might waver when in office.

Collective DC has the advantage of:

- not exposing employers to the risks associated with DB plans, but
- offering members the prospect of better outcomes than they would achieve under conventional individual DC arrangements.

Given all the work done and the fact that the legislative framework in the Pension Schemes Act 2015 is already in place, clients with an interest in this area may wish to encourage the Government to press ahead with collective DC once the 6th April, 2015 flexibility reforms have bedded down. Innovation in this "third space" between DB and DC has advantages for:

- employers from a workforce planning perspective: employees who feel financially insecure will be less willing to retire, and
- employees in terms of the potential for higher levels of retirement income, with more certainty than income drawdown but less cost (and less certainty) than annuities.

IV. Abolition of DB contracting-out: More regulations

A. *Overview*

1. On 21st October, 2015, the DWP published for consultation a further order[1] making what it describes as "minor and technical" changes to existing secondary legislation to reflect the abolition of DB contracting-out on 6th April, 2016.

2. As well as consequential amendments, the draft deals with:

   – transfers between contracted out salary-related schemes ("**COSRS**"), and

   – amendments to the Disclosure Regulations 2013.

B. *Transfers*

1. Amendments to the Contracting Out (Transfer and Transfer Payment) Regulations 1996 ensure that, following the abolition of DB contracting-out, where a transfer takes place between 2 formerly contracted-out salary-related schemes, the contracted-out rights which are being transferred are protected.

2. Transfers of contracted-out rights will continue to be allowed from former salary-related contracted-out schemes to schemes that were never contracted-out, provided that the member accepts that the benefits provided by the receiving scheme may be in a different form and amount to those which would have been payable by the transferring scheme.

3. The circumstances in which trustees may apply to the Pensions Regulator for an extension to the time limit for paying a CETV are extended to include:

   – the fact that the scheme ceased to contract-out in the previous 12 months. This applies for 12 months from 6th April, 2016 , and

   – the fact that trustees have yet to reach an agreement with HMRC about contracted-out liabilities. This applies from 6th April, 2017 to 6th April, 2021.

C. *Disclosure*

1. The Disclosure Regulations 2013 are amended from 6th April, 2017 to remove the requirement to state in the basic scheme

[1] The Pensions Act 2014 (Abolition of Contracting Out for Salary Related Pension Schemes) (Consequential Amendments) Order 2016

information "*which relevant employment is, and which is not, contracted-out employment*".

2 According to the DWP, schemes will have by then notified members of any changes to contracted-out employment under the scheme by virtue of the existing requirement to notify affected members of "material" alterations to the basic scheme information. This must be done "*before, or as soon as possible after (and in any event within 3 months after)*" 6th April, 2016.

D. Remaining issues

1. Issues yet to be resolved include:

1.1 the position for DC schemes with a reference scheme underpin: the DWP says it will address this in its response to this latest consultation,

1.2 rule changes to former COSRs: this will be dealt with in a separate consultation exercise, and

1.3 interaction of the new contracting-out requirements with HMRC's trivial communication rules; this will also be dealt with in a separate consultation exercise.

The consultation paper, on which responses are invited by 16th November, 2015, is on the gov.uk website

Tax

V. 6th April, 2016 reduction in Lifetime Allowance: More on protections

A. Overview

1. HMRC's Pension Schemes Newsletter 73, published on 23rd October, 2015, has additional information on the protections that will be available against the 6th April, 2016 reduction in the Lifetime Allowance ("**LTA**") from £1.25 million to £1 million.

2. As expected, HMRC confirms that there will be 2 protection regimes available, Individual Protection 2016 ("**IP 2016**") and Fixed Protection 2016 ("**FP 2016**").

B. Applying for protection

1. There will be no application deadline for either protection but individuals will need to apply **before** they take any benefits on or after 6th April, 2016 as they will need the HMRC reference number in order to rely on the protection.

2. There will be a new online self-service system for pension scheme members to apply for protection. HMRC says this will be available for use from July 2016. Members will no longer receive an LTA protection certificate. Instead they will be given a reference number which they will need to keep.

3. HMRC says it will introduce an interim process for scheme members who want to take their benefits in the period between the new protection regimes becoming available (6th April, 2016) and the introduction of the new online self-service (July 2016). Affected members will be able to write to HMRC between April 2016 and July 2016. HMRC will check details of their protection and respond with the protection number in writing.

4. HMRC says it is also introducing an online service for **scheme administrators** to check the protection status of their scheme members. It is currently exploring options for this. It says it will continue to work with scheme administrators to ensure information about LTA protection reaches members.

Action point: FP 2016 requires cessation of accrual post-5th April, 2016. As with Fixed Protection 2012 and Fixed Protection 2014 schemes may wish to add protective provisions to their trust deed and rules to prevent inadvertent accrual post-5th April, 2016 (and hence loss of FP 2016). Please contact the person you usually deal with at Slaughter and May if you would like to add a protective provision to your scheme. The Deed of Amendment would need to be in place before 6th April, 2016

C. *Other issues*

1. Newsletter 73 asks administrators to remind members that they can apply for **Individual Protection 2014** to protect any pension savings built up before 6th April, 2014 up to an overall maximum of £1.5 million. The deadline for applying is 6th April, 2017. HMRC notes its online tool to help individuals decide whether to apply for IP 2014.

2. HMRC also asks administrators to remind members who have exceeded the annual allowance of £40,000 for 2014/2015 to declare this on their self-assessment tax return, the deadline for which is 31st January, 2016.

3. Newsletter 73 also notes that the time limit for the special temporary rules that allowed individuals to take pension commencement lump sums tax free before 6th April, 2015 and the associated taxable pension before 6th October, 2015 (i.e. outside the usual 6-month time limit) has now expired.

Action point: Schemes need to start thinking now about how to communicate to members the reduction in the LTA, and the protections available, highlighting in particular that, for FP 2016, benefit accrual must cease on or before 5th April, 2016.

HMRC's Newsletter 73 is on HMRC's website

Points in Practice

VI. 6th April, 2016 charges and governance requirements: Regulator guidance

The Pensions Regulator has published on its website guidance on the new DC governance standards and charge controls that took effect on 6th April, 2015.

New governance standards: Among other things, these require trustees to:

- explain how they possess, or have access to, sufficient knowledge and understanding to run the pension scheme effectively,
- ensure that core scheme financial transactions are processed promptly and accurately,
- meet new requirements for the scheme's default investment arrangements, where applicable, including putting in place a statement of investment principles,
- consider whether the costs and charges borne by members represent good value, and
- confirm that the standards have been met, and how, in an annual chair's statement, to be published in the scheme's annual report and accounts.

The first chair's statement needs to be included in the first Annual Report and Accounts relating to the scheme year ending on or after 6th July, 2015. But if the scheme year ended between 6th April, 2015 and 5th July, 2015, the chair's statement for that period should be included in the statement for the following year.

The Regulator notes that its existing DC Code of Practice continues to apply to schemes to the extent that it does not conflict with new legislation. It will be consulting on a revised code later in 2015. In 2016 it will consult on updated guidance to support the Code.

Comment (1): It is important to avoid the chair having to sign a chair's statement confessing to partial or non-compliance with the new governance requirements potentially leading to sanctions from the Regulator.

Comment (2): The Trustee Board chair may wish to avoid signing a statement of compliance without having the product reviewed from a legal standpoint. A false or incorrect statement is likely to lead to Regulator intervention, sanctions and reputational damage.

Action point: We suggest that schemes do a "dummy run" of the annual chair's statement on governance this year to identify possible areas of non-compliance so that these can be remedied ahead of the "real thing".

Comment (3): We can provide customised trustee training to clients on legal issues to help comply with the trustee knowledge and understanding requirements. Please get in touch with your usual pensions contact here for more information.

Charge controls on DC schemes: These apply only to schemes that are being used by employers to comply with their automatic enrolment duties ("**Qualifying Schemes**").

The requirement includes ensuring that no members' funds in a "default arrangement" are subject to charges in excess of the charge cap.

The definition of "default arrangement" is complex, and the Regulator suggests that schemes may wish to seek advice on whether the charge controls apply to their arrangements.

Comment: For detailed information on the new governance requirements see our:

- checklist for 6th April, 2015 changes, and
- briefing note on the DC charging and governance requirements,

both of which are available to clients on request.

VII. HM Treasury Financial Advice Market Review: Joint Treasury/FCA consultations

A. Overview

1. On 12th October, 2015, HM Treasury and the FCA launched joint consultations on

   1.1 public financial guidance, and

   1.2 the Financial Advice Market Review ("**FAMR**") generally.

2. The FAMR was launched on 3rd August, 2015 to examine how financial advice could work better for consumers building on the 6th April, 2015 pension reforms.

B. Public financial guidance

1. The consultation considers how the Government should structure the public provision of free-to-client impartial financial guidance ("**public financial guidance**"). This includes information and guidance directly funded by the Government, and that underwritten by statute and funded by levy.

2. Drivers for change include:

   2.1 the need to identify a long-term home for Pension Wise, and

   2.2 the scope to consider a more joined-up relationship between Pension Wise and TPAS.

3. The consultation notes that, for pensions, public financial guidance is only part of the picture: the Government believes that **providers** have a responsibility to make their customers aware of the implications of any decision they take with regard to their pension pot. Provision of adequate pensions advice by firms is a central pillar of the FAMR.

4. The Government notes that there is crossover in the provision of public financial guidance on pensions for decisions taken at retirement between Pension Wise, TPAS and the Money

Advice Service, particularly on web content. It believes there may be an opportunity to rationalise the delivery of statutory pensions guidance to make it easier for consumers to understand where to access information, noting that legislative change may be required to achieve this.

C. *FAMR call for input*

1. Alongside the consultation on public financial guidance, HM Treasury and the FCA published a call for input to FAMR. This focuses on "advice gaps" (i.e. where consumers cannot get the form of advice they want on a need they have, at a price they are prepared to pay).

2. The review proposes to focus initially on advice in relation to investing, saving into a pension, and taking an income in retirement, all sectors where the Government believers consumers could benefit most from increased access to advice. It will focus on consumers with some money but without large wealth.

The consultation on public financial guidance is here. The call for input on the FAMR is here. Comments on both are invited by 22nd December, 2015.

VIII. House of Commons Work and Pensions Committee report on pension freedoms, guidance and advice

This was published on 14th October, 2015.

The Committee noted:

- there is a shortage of information about the use being made of the new pension freedoms, making it very difficult to assess the progress of the reforms,

- the Government and regulators could do more to raise consumer awareness of pension scams. The Committee recommends greater anti-scam publicity and stricter reporting requirements for pension providers,

- despite the dearth of Pension Wise statistics, it is apparent that take up of its services has been lower than anticipated; the Committee recommends stronger signposting by pension providers and that Pension Wise gives more personalised guidance incorporating an enquirer's wider financial circumstances. The Committee urges the Government to come forward soon with a timetable for introduction of the "pensions dashboard", which would allow people to see all their pension savings in one place, and

- the Committee calls for clarification on the distinction between guidance and advice, the definitions of safeguarded benefits, and the protections in providing advice to insistent clients. It also expects to see a reduction in the use of jargon and complex pricing structures.

The report is here.

Forthcoming events

IX. Pensions Law Update Seminar

Our next Pensions Law Update seminar takes place on Wednesday, 18th November, 2015, between 9.30am and 1.00pm. Invitations have been sent out separately.

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