



PENSIONS NEWS

JULY 2015

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INTRODUCTION

Welcome to DLA Piper's Pensions News publication in which we report on developments in pension 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 July 2015 including the following.

- **DC flexibility reforms:** the publication of a consultation about pension transfers and early exit fees; the final form of two sets of regulations supporting recent changes to the taxation of death benefits in respect of annuities; and the FCA's recommendations policy in relation to the providers of the Pension Wise service.
- **Summer Budget 2015:** the pensions announcements in the Budget including the tapered annual allowance; changes to the lifetime allowance; a consultation on tax relief; the taxation of death benefits; and the timing for the implementation of legislation to enable the development of a secondary annuities market.
- **The end of contracting-out:** the response to consultation and final form regulations about how to administer accrued contracted-out rights; and HMRC's latest Countdown Bulletin.
- **The Pensions Regulator:** a quick guide to the DB funding code; reports and an updated strategy and policy about compliance and enforcement in the context of automatic enrolment; the results of the latest annual survey about perceptions of the Regulator; and the Annual Report and Accounts for 2014/15.

- **Legislation:** an updated version of the draft IORP II Directive.
- **HMRC:** following its temporary suspension in June, the publication of the updated List of Recognised Overseas Pension Schemes.
- **Other news:** Annual Reports and Accounts for 2014/15 for the Pensions Ombudsman Service, The Pensions Advisory Service, and the Pension Protection Fund.

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.



DC FLEXIBILITY REFORMS

TRANSFERS AND EARLY EXIT FEES

Background

On 17 June it was announced that the Treasury will take action designed to strengthen people's rights to access their pensions flexibly and removing any unjustifiable barriers to doing so, and that this would take the form of a consultation, to be launched in July, looking in particular at early exit penalties and transfer processes.

Correspondence between the Economic Secretary to the Treasury and the Financial Conduct Authority (FCA) dated 17 June confirmed that the FCA will support the consultation exercise by gathering evidence in relation to exit fees and charges and by assessing the process and timing barriers which may face consumers seeking to transfer.

Evidence gathering

On 1 July the Pensions Regulator and the FCA both made announcements about work being completed to gather evidence to inform the Government consultation.

- The Regulator issued a Statement explaining that it has commenced work on a survey on the prevalence of exit fees and charges and the transfer process in occupational DC schemes, and that it expects to publish the results of the survey later in the summer.

- The FCA reported that it has sent all pension and retirement income providers a request for data which asks for information about: options offered by pension providers to consumers seeking to access their pension savings; advice requirements for consumers seeking to transfer out of pensions/into decumulation products; the treatment of insistent clients; transfer procedures; and exit charges.

Government consultation

On 30 July HM Treasury published the Government consultation and also launched an online survey.

Early exit charges

The consultation explains that by early exit charges it means a situation where an individual wishes to transfer out of, or otherwise access, their pension before the scheme's agreed retirement date and the scheme applies a penalty for this early exit. It asks for views on the prevalence of such fees, considers what is meant by unfair or excessive, and looks at options to reduce exit charges. Three options have been identified – a cap on all early exit fees; a flexible cap in certain circumstances; and a voluntary approach to restricting early exit fees and charges. As well as seeking views on these options, the Government states that it is interested in alternative policy approaches to address the issue of excessive exit fees.

Transfers

The consultation is concerned with transfers where the flexibilities apply, for example, transfers of flexible benefits and those moving from schemes with safeguarded benefits.

The consultation does not set out any firm proposals for changes to the process, but rather it seeks views about how the transfer process could be made quicker and smoother, whilst acknowledging that the desire for the process to be as quick and smooth as possible needs to be balanced against the need to ensure that trustees and providers have sufficient time to carry out due diligence to ensure that members do not become victims of pension scams and that members understand the implications of the decisions they are taking.

The consultation sets out universal principles that the Government has developed which should apply to switching from one product to another (for example, when switching utility providers) which include, for example, that the process should be efficient with effective redress mechanisms if things go wrong.

The Government is keen to understand whether and how these principles could apply to pension transfers. It also notes that the Government is keen to understand the scope for a timely and efficient standard process for transfers and welcomes views on how this might work in practice and whether this could be done on a voluntary basis with industry, backed by industry commitments, and/or through rules, regulations and legislative change.



Financial advice

The consultation explores issues and concerns in relation to the provision and need for financial advice when making certain transfers. Consultation questions look at the impact of the legal requirement to receive independent advice on the process for transferring safeguarded benefits and how the process for seeking that advice could be made quicker, smoother and clearer.

Next steps

The consultation closes on 21 October and the Government response is due to be published in the Autumn.

Whilst there are no firm proposals for change in the consultation, trustees should be aware of the potential for future change, in particular to the statutory transfer process.

REGULATIONS – ANNUITIES

Background

The Finance Act 2015 gave effect to the following changes to the taxation of death benefits which were announced in the Autumn Statement 2014 and applied from April 2015.

- If an individual dies under the age of 75 with a joint life or guaranteed term annuity, beneficiaries can receive any future payments from such policies tax free if no payments had been made to the beneficiary before 6 April 2015.
- Where the individual was over 75, the beneficiary pays tax at marginal rate or at 45% if the funds are taken as a lump sum (although it is intended that lump sums will be taxed at marginal rate from 6 April 2016).

In March 2015 two sets of draft regulations were published which make amendments to support these changes, and in July 2015 those regulations were made in final form. They come into force on 1 September 2015 but the amendments take effect from different dates as noted in the following summary.

Final form of regulations

The Registered Pension Schemes (Transfer of Sums and Assets) (Amendment No. 2) Regulations 2015 will have effect for the tax year 2015/16 and subsequent years. They ensure that nominees' or successors' annuities are treated in the same way as dependants', nominees' and successors' short-term annuities, so that they may only be transferred to another nominees' or successors' annuity respectively. If transferred to any other type of annuity or pension arrangement, the sums or assets transferred will be treated as unauthorised payments.

The Registered Pension Schemes (Provision of Information) (Amendment No. 2) Regulations 2015 will have effect for the tax year 2015/16 or, in the case of a regulation concerning transfers, in respect of transfers on or after 6 April 2015. The amendments made by these regulations include:

- new requirements on insurance companies which are transferring sums and assets funding an annuity to another insurance company to provide appropriate information so that the receiving insurance company can ensure that the correct tax treatment is applied to future payments; and
- amendments to reporting requirements in connection with the payment of death benefits that are tested against the lifetime allowance to include any purchase of a beneficiaries' annuity which will be subject to Benefit Crystallisation Event 5D which was introduced by the Finance Act 2015.

PENSION WISE – RECOMMENDATIONS POLICY

The Financial Conduct Authority sets standards for the designated providers of Pension Wise (TPAS and Citizens Advice) and is required to monitor their compliance with those standards. Where the standards have been breached, the FCA may make recommendations to the designated providers and the Treasury where appropriate. In March the FCA published a consultation in relation to its recommendation policy looking both at the recommendation process and when the FCA might make a recommendation.



On 3 July the FCA published the response to its consultation and also made its policy available on its website. The FCA reports that responses to the consultation were supportive of the proposed policy with no changes suggested other than requesting clarification of a number of issues. In the final version, the issues in respect of which clarifications or additions have been made include: redress; the period for responding to recommendations; contesting recommendations; consideration of information received as part of the monitoring process; and the role of the FCA Board. It has also been clarified that the FCA does not intend to deal with individual complaints but will work with the Parliamentary and Health Service Ombudsman to ensure an appropriate degree of consumer protection.





SUMMER BUDGET 2015

On 8 July 2015 the Chancellor delivered the Summer Budget 2015 which included a number of announcements in relation to pensions. In this section of Pensions News, we focus largely on the annual allowance, lifetime allowance, consultation on tax relief and changes to the taxation of death benefits, but also set out a summary of other elements of the Summer Budget relating to pensions.

TAPERED ANNUAL ALLOWANCE

The Conservative Party manifesto contained a proposal to reduce tax relief on pension contributions for people earning more than £150,000, with the reduction being used to pay for proposed changes to inheritance tax. Further detail about this change was set out in the Summer Budget and in draft guidance from HMRC published on the same day. Draft provisions to give effect to these changes were included in the Finance Bill published on 15 July. It is proposed that the changes will apply from 6 April 2016 and we set out below an overview of the key elements of the proposals. It should be noted that these provisions remain subject to change as the Bill progresses through Parliament.

Who will the tapered annual allowance apply to?

The tapered annual allowance will apply to those who have an “adjusted income” for a tax year of more than £150,000. The “adjusted income” includes the value of any pension saving.

However, to ensure this measure is focused on the higher and additional rate tax payers who currently gain the most benefit from pensions tax relief, another criteria to be met for the tapered annual allowance to apply will be that the person’s threshold income is more than £110,000. Threshold income does **not** include the value of pension savings. However, anti-avoidance provisions are included so that salary sacrifice arrangements and certain other arrangements to receive pension contributions rather than salary made on or after 9 July 2015 will be included in the calculation.

How will the taper operate?

The taper operates so that for every £2 of adjusted income over £150,000 the person’s annual allowance is reduced by £1. This is subject to a maximum reduction of £30,000 so that the lowest the annual allowance will be is £10,000.

For those to whom the money purchase annual allowance applies, the reduction operates differently. Because the money purchase annual allowance is already £10,000, it is proposed that the taper will be applied to the alternative annual allowance which is, broadly speaking, the £30,000 annual allowance which applies to DB savings. This part of the annual allowance could therefore reduce to zero with the money purchase annual allowance remaining at £10,000.

Anti-avoidance provisions

The Finance Bill includes anti-avoidance provisions which, in summary, apply to arrangements:

- the main purpose, or one of the main purposes, of which it is reasonable to assume is to reduce the amount of the reduction to the annual allowance; and
- that involve either reducing adjusted income or threshold income or both, with the reduction being redressed by an increase in adjusted income or threshold income for a different tax year.

Where these conditions are met the arrangements are ignored for the purposes of calculating the reduction to the annual allowance.

The impact on Pension Input Periods

Pension savings are currently measured over “pension input periods” (PIPs) which can, but do not have to, be aligned with tax years. A person’s pension saving for a tax year will be the saving in PIPs that end in that tax year.

From 6 April 2016 the level of a person’s annual allowance will depend on the amount of their income in a tax year, and therefore from 6 April 2016 it will also be necessary to align PIPs with tax years. Provision is therefore made in the Finance Bill so that current legislation which allows PIPs to be nominated will cease to apply and from 6 April 2016 PIPs will have to be aligned with tax years.



Transitional rules

Changes to PIPs

In order to facilitate the transition to PIPs aligned with tax years, the Finance Bill makes provision so that:

- any PIPs which were open on 8 July (the day of the Budget announcement) end on that day; and
- the next PIP will run from 9 July 2015 to 5 April 2016.

This change could cause some individuals to breach the annual allowance even though they had structured their PIPs to try to ensure this would not happen. For example:

- somebody may have set their PIPs to run from 1 July to 30 June each year and saved £40,000 in the PIP ending 30 June 2015 and from 1 to 8 July might already have saved £40,000 in the PIP due to end on 30 June 2016;
- had no changes been made to PIPs, this would not have breached the annual allowance because the £40,000 saved in the PIP ending 30 June 2015 is tested against the annual allowance for 2015/16 and the £40,000 saved between 1 and 8 July 2015 would have fallen in the PIP ending 30 June 2016 and been tested against the annual allowance for 2016/17;
- however, the changes to PIPs would mean that the £40,000 saved from 1 to 8 July 2015 now falls within a PIP that ends on 8 July 2015 and therefore also falls to be tested against the annual allowance for 2015/16.

Two mini tax years

Transitional provisions are therefore needed and these take the form of dividing the 2015/16 **tax year** into two mini tax years for the purpose of the annual allowance:

- the pre-alignment tax year which runs from 6 April 2015 to 8 July 2015; and
- the post-alignment tax year which runs from 9 July 2015 to 5 April 2016.

The annual allowance will be £80,000 for the pre-alignment tax year, and nil for the post-alignment tax year. However, if any of the £80,000 for the pre-alignment tax year is unused, it can be carried forward to the post-alignment tax year up to a maximum of £40,000. The general rules on carry forward of unused annual allowance for the previous three tax years will also continue to apply, although in the post-alignment tax year, the carry forward from the pre-alignment tax year should be used first.

If the money purchase annual allowance applies, the position is more complex but the same general principles apply so that the annual allowance will be £20,000 for the pre-alignment tax year but up to £10,000 of that can be carried forward to the post-alignment tax year which will have a nil annual allowance. The amount that can be carried forward for the alternative annual allowance will either be limited to £30,000 or £40,000 depending on what the chargeable amount was in the pre-alignment tax year.

Calculating the pension input amount for 2015/16

For DC arrangements, the calculation of the pension input amount for each mini tax year is in accordance with the current rules.

However, special provision is made about how to calculate the pension input amount for DB savings for PIPs ending in 2015/16. To help scheme administrators the Finance Bill removes the need to value pension savings on 8 July and potentially other dates. Instead, a combined pension input amount is calculated for all PIPs ending in 2015/16 (subject to some adjustments made to the standard calculation method) and the Bill then provides a formula to use to allocate that between the pre-alignment and post-alignment tax years.

There are some modifications to the way that this operates in certain circumstances, for example, where the individual became a deferred member during the combined period.

Carry forward

Existing provisions on carry forward will continue to apply and the two mini tax years will essentially be treated as one year for the purpose of ascertaining the three years from which unused annual allowance can be carried forward. Looking ahead, where the taper applies, the carry forward will be the unused tapered amount.



Trustees will need to ensure that their schemes are ready to be administered in line with the final form of the provisions on the tapered annual allowance and the transitional provisions. Whilst employers and trustees cannot give advice to members on this issue, they may want to consider including a brief summary in the next pensions newsletter providing an overview of the proposals and suggesting that members who are concerned about the impact of these changes consider seeking independent financial advice.

LIFETIME ALLOWANCE

It was announced in the March 2015 Budget that from 6 April 2016 the lifetime allowance will reduce to £1 million and transitional protection will be introduced, and that from 6 April 2018 the lifetime allowance will be indexed annually in line with CPI.

This point was reiterated in the Summer Budget 2015 and a newsletter subsequently published by HMRC on 21 July provided some further detail about this aspect of the Budget announcements.

HMRC states that legislation will be included in the Finance Bill 2016 and there will be two protection regimes which will have the same conditions as the previous fixed and

individual protection regimes. That is, for the new fixed protection individuals must have no benefit accrual on or after 6 April 2016 and for the new individual protection must have savings of at least £1 million on 5 April 2016.

However, HMRC states that the notification process will be different because individuals will not need to notify it in advance where they want to rely on fixed protection, or have three years to apply for individual protection. Instead, HMRC is considering options around removing the deadlines for applying for these protections and will discuss this informally with stakeholders so that it can publish full details later this summer.

In the newsletter HMRC also states that, in the meantime, pension providers and employers should consider what communications they need in advance of 6 April 2016 to individuals who may be affected.

CONSULTATION ON TAX RELIEF

The changes in relation to the annual allowance and the lifetime allowance were not the only references to pensions tax relief in the Summer Budget. The Chancellor also stated that the Government wants to make sure that the right incentives are in place to encourage saving into pensions in the longer term. A consultation was therefore launched on 8 July (closing on 30 September) about whether there is a case for reforming pensions tax relief to strengthen incentives to save, or whether it would be best to keep the current system.

The consultation document states that increasing longevity and changes in pension provision provide the context for considering whether there is a case for reforming pensions tax relief, and sets out information about the current system, which can broadly be characterised as Exempt-Exempt-Taxed, and the cost of pensions tax relief. It then goes on to set out principles which the Government believes any proposed reform would need to meet in order to constitute a viable alternative to the current system. The principles are that any reform should:

- be simple and transparent;
- allow individuals to take personal responsibility for ensuring they have adequate savings for retirement;
- build on the early success of automatic enrolment in encouraging new people to save more; and
- be sustainable, with the consultation noting that any proposal for reform should be in line with the Government's long-term fiscal strategy.

The consultation also sets out some of the issues and competing objectives, such as macro-economic implications and the treatment of DB and DC pensions, that the Government will need to be mindful of when considering the options for reform.

The consultation does not include any specific proposals but rather the Government is interested in views on the various options that have been suggested ranging from



a fundamental reform (such as moving to a system that is Taxed-Exempt-Exempt and providing a Government top-up on contributions) to less radical changes (such as retaining the current system and altering the lifetime and annual allowances) as well as options in between. It is made clear that the conclusion of the consultation may be that maintaining the current system is the most effective method of achieving the aims.

TAXATION OF DEATH BENEFITS

Background

In April 2015 changes were made to the taxation of lump sum death benefits so that, broadly speaking, the position for DC savings where the funds were uncrystallised or in a drawdown account when the member or beneficiary died became as follows:

- if the individual was under 75 at the date of death, the remaining DC savings can be passed on tax free (provided the lump sum payment is made within the period of two years beginning with the earlier of the date that the scheme administrator first knew of the death or could first reasonably be expected to have known of it); and
- if the individual was 75 or over at the date of death, the special lump sum death benefits charge applies but the rate is 45% (compared to 55% before 6 April 2015).

In September 2014 when these changes were first announced, the Government expressed the intention that the 45% tax rate would be changed to the recipient's marginal tax rate from 2016/17. This change was reiterated in the Summer Budget and the Finance Bill contains draft provisions to give effect to this change.

Lump sums subject to tax

It is proposed that the amendments in the Finance Bill will apply to lump sum death benefits paid on or after 6 April 2016. The Bill sets out a list of lump sum death benefits that will be subject to tax. This covers defined benefits lump sum death benefits, uncrystallised funds lump sum death benefits, drawdown pension fund lump sum death benefits and flexi-access drawdown fund lump sum death benefits:

- paid in respect of a member (or, in relation to drawdown, a dependant, nominee or successor as applicable) who was under 75 at the date of death but where the lump sum is not paid within the period of two years beginning with the earlier of the date that the scheme administrator first knew of the death or could first reasonably have been expected to have known of it; or
- paid in respect of a member (or, in relation to drawdown, a dependant, nominee or successor as applicable) who was aged 75 or over at the date of death.

The list also covers annuity protection lump sum death benefits and pension protection lump sum death benefits paid in respect of a member who was aged 75 or over at the date of death.

The applicable rate of tax

The Finance Bill also states that the way that those payments are taxed will depend on the recipient.

- If the recipient is a “non-qualifying person” the existing 45% special lump sum death benefits charge will continue to apply. A non-qualifying person is essentially somebody who is not an individual or, who is an individual but acting in their capacity as a trustee or personal representative, a director of a company, a partner in a firm, or a member of a limited liability partnership. However, where the individual is a “bare trustee” they will **not** fall within the definition of a non-qualifying person. A bare trustee is somebody acting as a trustee where the beneficiaries are absolutely entitled or would be so were it not for the fact they are a minor or lacking legal capacity.
- If the recipient is somebody other than a non-qualifying person, the normal rules in relation to income tax and pension will apply, essentially meaning that the recipient will be subject to tax at their marginal rate.



A note on DB schemes

Whilst these changes are made in the context of the DC flexibilities, it is notable that they also apply to lump sums paid from DB schemes. An additional change is made in relation to defined benefit lump sum death benefits which aligns the position with that for lump sums from uncrystallised DC funds or drawdown funds. Currently if such a DB lump sum is paid outside of the two year period, it will be an unauthorised payment. However, the changes mean that from 6 April 2016 a payment made outside of the two year period would no longer be unauthorised although it would be subject to tax as described above.

As for the changes in relation to the tapered annual allowance, the detail of these provisions is only in draft form at this stage and may therefore be subject to change. One point that was not made in the previous announcement about these changes is that the current position is, subject to the change to the two year period for DB lump sums, effectively preserved for cases where payments are made to non-qualifying persons, and this could be relevant, for example, where trustees are proposing to pay a lump sum to a trust.

SECONDARY ANNUITIES MARKET

In the March 2015 Budget it was announced that from April 2016 the Government will change the tax rules to allow people who are already receiving income from an annuity to sell that income to a third party, subject to the agreement of the annuity provider. The consultation closed on 18 June but a full response to the consultation has not yet been published.

The Summer Budget states that the Government will set out plans for a secondary annuities market in the Autumn but it agrees with respondents to the consultation that implementation should be delayed until 2017 to ensure there is a robust package to support consumers in making their decision.

PENSION WISE

The Government also announced that it is extending access to Pension Wise to those aged 50 and above, and is launching a comprehensive nationwide marketing campaign to further raise awareness of the service.

LOCAL GOVERNMENT PENSION SCHEME

In the Summer Budget it was announced that the Government will work with LGPS administering authorities to ensure that they pool investments to significantly reduce costs, while maintaining overall investment performance. It also states that:

- local authorities will be invited to come forward with their own proposals to meet common criteria for delivering savings; and

- a consultation to be published later in 2015 will set out those detailed criteria as well as backstop legislation which will ensure that administering authorities that do not come forward with sufficiently ambitious proposals are required to pool investments.

UNFUNDED EMPLOYER FINANCED RETIREMENT BENEFIT SCHEMES

The Government announced in the Summer Budget that it will consult on tackling the use of unfunded employer financed retirement benefit schemes (EFRBS) to obtain a tax advantage in relation to remuneration.

An HMRC newsletter published on 21 July stated that HMRC will consult informally with stakeholders on this issue with stakeholder meetings expected to take place during the summer. HMRC does not give a definite timescale as to when further details will be published although it does note that legislation will potentially be included in the Finance Bill 2016.

SALARY SACRIFICE

Employers who have arrangements in place so that member contributions are made via salary sacrifice may also be interested to note that the Summer Budget states that salary sacrifice arrangements are becoming increasingly popular and the cost to the taxpayer is rising, and that the Government will actively monitor the growth of these schemes and their effect on tax receipts.



THE END OF CONTRACTING-OUT

RESPONSE TO CONSULTATION AND REGULATIONS

Whilst contracting-out on a defined benefit basis will be abolished in April 2016 when the single tier state pension is introduced, accrued contracted-out rights will continue to exist. This means that in advance of April 2016 DB schemes will need to ensure that they are ready to administer those rights in accordance with the appropriate statutory requirements.

In May 2014 the DWP published a consultation about this issue, and in July the response to that consultation and the final form of the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2015 (“**Regulations**”) were published.

An overview of the Regulations

Many provisions of the existing regulations about administering contracted-out rights – the Occupational Pension Schemes (Contracting-out) Regulations 1996 (“**Existing Regulations**”) – will be revoked and replaced by the Regulations. The Regulations aim to ensure that members’ existing entitlements are preserved and make provision to ensure the appropriate operation of formerly contracted-out schemes.

For example, the Regulations cover issues including the following:

- restrictions on the alteration of accrued rights;
- restrictions on the circumstances in which contracted-out rights can be paid as lump sums;
- the payment of GMPs to widows, widowers and surviving civil partners;
- revaluation of GMPs; and
- suspension and forfeiture of GMPs.

Whilst the general position is that the Regulations mirror certain requirements of the Existing Regulations, it will be important for schemes to ensure they have regard to any changes to the existing requirements on administering contracted-out rights.

- For example, one of the circumstances in which the Existing Regulations state that a scheme may provide for forfeiture of any payment of a GMP is where it has been at least six years since payment became due and a claim has not been made for it, but in the Regulations the period is eight years.
- As reported further below, in some cases, the provisions of the Existing Regulations have been replicated for now but amendments may follow.

Savings Order

The Pensions Act 2014 (Savings) Order 2015 was also made in July. This Order preserves certain provisions of the Pension Schemes Act 1993 relating to contracting-out until 6 April 2019. The purpose of this is to require or allow schemes and HMRC to carry out necessary tasks relating to a period of contracted-out employment which occurred before 6 April 2016.

Likewise, the Regulations do not revoke all of the provisions of the Existing Regulations and some provisions will remain in force until 6 April 2019. For example, provisions relating to the issue, variation and surrender of contracting-out certificates remain in force to enable HMRC to issue certificates relating to a period before 6 April 2016 and to deal with any variation or surrender of certificates which is to take effect before that date.

Further consultation and regulations

The Regulations will not be the only legislative changes that schemes will have to consider. The response to consultation highlights some particular areas which will be the subject of further consultation and regulations.

- A consultation is expected later this year on consequential changes, for example, to the regulations that deal with the transfer of contracted-out rights, and the disclosure regulations.



- Some respondents thought that the wording of the draft version of the Regulations about the alteration of scheme rules in relation to post-6 April 1997 contracted-out rights provided more generous benefits and a higher level of protection than the Existing Regulations. The DWP recognises that it did not fully explain the changes proposed in the draft version and the policy behind them and therefore the terms of the Existing Regulations have been replicated in the Regulations but the DWP plans to re-consult on proposed amendments in due course.
- Various issues were raised about when a GMP can be paid as a lump sum, for example, how certain provisions on trivial commutation fit with the way trivial commutation is dealt with in HMRC legislation. Given the technical nature of issues raised, this is another area in respect of which the DWP has replicated the requirements of the Existing Regulations for now, but will consider the points raised and consult on appropriate changes in due course.
- There was some concern from respondents that if a DC scheme is contracted-out on a DB basis operating a Reference Scheme Test underpin and the scheme rules simply refer to the relevant legislation, that the draft version of the Regulations would not preserve this underpin. The DWP states that it initially thought that saving certain provisions of the Pension Schemes

Act 1993 would be sufficient but the issue is more complex and therefore the DWP needs more time to develop a solution. For now, and until the DWP is able to resolve the matter, certain provisions of the Pension Schemes Act 1993 are being preserved but the DWP will revisit this issue.

Other rule amendments

As well as looking at the requirements for administering accrued contracted-out rights, the May 2014 consultation stated that the Government was considering whether a statutory power should be provided to enable trustees to modify their scheme rules by resolution to take account of the legislative changes. A consultation question asked what changes trustees will be obliged to make to ensure their scheme rules continue to have the same effect as a result of the abolition of contracting-out and the introduction of the single tier state pension.

The DWP reports that generally responses focused around wanting a power to modify scheme rules which make reference to Basic State Pension or integrated schemes (which the response states are also known as “bridging pensions” or “clawback pensions”). Respondents who have integrated their benefit structure with the State scheme wanted to ensure that members do not gain or lose out as a result of the changes to State Pension.





The DWP has concluded that a statutory power to modify scheme rules to reflect the reform of State Pension is **not** required. The DWP notes that:

- for those who reach State Pension age on and after 6 April 2016 the Basic State Pension will be replaced by the new State Pension; and
- for those who reach State Pension age before 6 April 2016 the value of the Basic State Pension will remain and will be published each year after abolition in annual uprating orders and this will be the amount of Basic State Pension to be taken into account.

The fact that a Basic State Pension figure will continue to be produced beyond 6 April 2016 is useful and may help to limit the extent of the amendments that need to be made to scheme rules that incorporate this definition into the benefit structure.

Trustees will need to consider whether any rule amendments will be needed to reflect the requirements that will apply from 6 April 2016 about administering accrued contracted-out rights, as well as the fact that no further contracted-out rights will accrue from 6 April 2016, and that for those who reach State Pension age on and after 6 April 2016 the Basic State Pension will be replaced by the new State Pension. Trustees will also need to ensure that any necessary updates are made to their administrative processes and member communications.

There are other issues that employers and trustees will also need to consider and address in advance of the end of contracting-out, such as whether any benefit changes will be made to offset the increased National Insurance cost and reconciling GMP data with HMRC records. We will be issuing a further Pensions Alert which brings together the key considerations on the different aspects of the end of contracting-out in one place.

OTHER PUBLICATIONS

July 2015 also saw the following other publications being issued in respect of the introduction of the new State Pension and the end of contracting-out in April 2016.

Countdown Bulletin

HMRC published the latest in its series of Countdown Bulletins, with this edition being an ad hoc bulletin to give responses to the remainder of the queries raised during two pension conferences HMRC held in April and May 2015. A number of questions were asked about active member lists and the plan for reconciling active members. The answer states that following the closure scan in December 2016 all schemes will receive lists of their active members as at 5 April 2016, but no decision has been made yet on how this information will be provided. HMRC states that it will be consulting on this and future editions of the Countdown Bulletin will provide more detail.

The Bulletin also provides a further update about the GMP Micro Service which will be introduced from April 2016. This will be an online self-service facility which will provide GMP and contribution/earnings information for scheme members. The update states that HMRC has almost completed its discovery work into the service and is about to start the development phase and expects to have a 'minimum viable product' by October 2015 which will be tested by a small number of customers. More information will be provided in future bulletins.



GMP Working Group

In the June edition of Pensions News we reported that the Pensions Administration Standards Association had announced the members of its GMP Working Group. This Group will identify, agree and implement a set of industry standards and guidance that will allow HMRC and scheme administrators to effectively complete GMP and Scheme Reconciliation Service reconciliations in readiness for the end of contracting-out. The Group issued its first piece of guidance in June which was a call to action and step-by-step guide as to why schemes should reconcile membership and GMP data with HMRC.

A press release issued on 14 July also emphasises the importance of reconciling data. It contains a warning from the Working Group to trustees to check GMP data ahead of de-risking projects and flexible access. It notes that schemes which are embarking on exercises such as bulk trivial commutation exercises, or are offering flexible access to DC benefits with an underpin, and allow members to take their benefits without checking and reconciling GMP data in advance, could store up problems for the future. It goes on to state that trustees may not be protected by a member discharge where benefits have been calculated incorrectly and that correcting problems in the future will be complicated and expensive, “so the advice to schemes is to take their GMP data seriously now, in relation to their current dealings with members”.

DWP fact sheet

The DWP published a fact sheet entitled “*The new State Pension Transition and Contracting-Out*” which explains the effect on the new State Pension of someone previously having been contracted-out.

The DWP states that it is aware that where people have been told about contracting-out they have struggled to see how the rules are applied to them. This note therefore describes:

- how contracted-out amounts are treated in the transition from the current scheme to the new State Pension and how National Insurance records up to 2015/16 are valued to create a Starting Amount;
- how contracted-out pensions are revalued from the point that someone leaves their contracted-out employment until they reach their State Pension age; and
- the effect that the ending of the current scheme has on the uprating of additional State Pension and the Contracted-out Deduction.





THE PENSIONS REGULATOR

DB FUNDING CODE

On 7 July, as part of an ongoing communications campaign, the Regulator published a new “quick guide” to its code of practice on funding defined benefits. The Regulator explains that the guide:

- is to help employers understand how the code applies to them;
- emphasises the benefits of trustees and employers working collaboratively together in an open and transparent way, understanding the long-term plans for the business and the pension scheme and managing the associated risks accordingly; and
- highlights the need for trustees to manage risk when setting investment and funding strategies which reflect both the employers’ appetite for risk and ability to fund the scheme now and in the future.

The guide has sections on the employer’s role, working together, managing risks, a balanced approach to reaching funding targets, and key messages for trustees and employers undertaking valuations in 2015. The Regulator states that it thought that the guide would be a useful reminder ahead of its forthcoming guidance on assessing and monitoring the employer covenant.

AUTOMATIC ENROLMENT – COMPLIANCE AND ENFORCEMENT

Annual Report

On 23 July the Regulator published its third annual report about the impact of automatic enrolment and its role in increasing participation in workplace pension schemes. The report looks at awareness, understanding and engagement, completed declarations of compliance, pension schemes used for automatic enrolment, compliance and enforcement, opt outs, and forthcoming trends and challenges.

The section on compliance and enforcement reports on the number of times that the Regulator has used its powers to issue compliance notices, fixed penalty notices, escalating penalty notices, statutory demands, unpaid contributions notices, and statutory inspection notices. It also explains that:

- employers who receive one of the Regulator’s statutory notices have the option to ask for a review of the notice; and
- over 500 employers have asked for a review to date, and in the majority of cases the Regulator has revoked a notice issued as the vast majority of applicants no longer employ any workers due to their circumstances changing.

Quarterly Bulletin

At the end of July the Regulator published its latest quarterly bulletin about automatic enrolment compliance and enforcement designed to help employers, their advisers and the pensions industry as a whole understand the type of compliance and enforcement interventions that follow the Regulator’s educative and enabling communications and support. The bulletin reports that in the period 1 April to 30 June 2015, the Regulator:

- issued 5 information notices, whereby the Regulator can demand documents or any other information relevant to the exercise of its functions;
- made 5 uses of its power to inspect premises;
- issued 119 compliance notices;
- issued 50 unpaid contributions notices; and
- issued 68 fixed penalty notices, whereby the Regulator can issue a penalty of £400 for failure to comply with a statutory notice or some specific employer duties.

The bulletin also has a section on lessons learned from the Regulator’s casework which refers to lessons concerning the need to understand contractual relationships in order to identify who is a worker, the need to assess staff regardless of the length of employment, and the need to assess the automatic enrolment earnings threshold by looking at a



pay reference period. In relation to each of these lessons the Regulator gives examples of cases, for example, an employment business that assumed it did not have any duties because the workers were issued zero hour contracts, and an employer that assumed that 'casual' workers were not eligible for automatic enrolment.

Updated strategy and policy

At the same time as publishing the bulletin, the Regulator published updated versions of its compliance and enforcement strategy and policy. These documents detail the Regulator's approach to identifying, deterring, preventing and tackling non-compliance and reflect lessons learned about the particular compliance challenges for small and micro employers. As well as reflecting updates to the legislation and the change in referring to declarations of compliance (rather than registration), amendments made since these documents were published in 2012 include the following.

- In relation to cases where an employer voluntarily brings a minor breach to the Regulator's attention and is already taking (or has taken) appropriate action the strategy previously referred to providing assistance and instruction which would normally be put in writing. The strategy now states that in these circumstances the Regulator may consider it appropriate to issue an informal warning letter (rather than use its statutory powers).

- The policy previously stated that where an employer has complied with the spirit of the law but due to some procedural mistakes may have caused minor technical breaches, the Regulator would probably view the breach as not having been made deliberately and reflect this in its response. The policy now states that in these circumstances, the Regulator will consider whether a breach has occurred deliberately or not and reflect this in its response.
- In the section setting out the type of enforcement powers that may be used by the Regulator in order to achieve the compliance outcome of restoration:
 - additional text is added which explains that the Regulator would normally expect that, as a minimum: automatic enrolment for eligible jobholders be backdated to the date they first became eligible jobholders; and non-eligible jobholders be given a short opportunity (of no less than 14 days) to retrospectively 'opt in' as far back as the date they first became non-eligible jobholders;
 - additional text notes that enforcement action may not be appropriate in relation to backdating entitled workers who wish to join a scheme, and those who left employment between the staging date and the date the duties were complied with;

- updated text sets out the circumstances where the Regulator will require contributions to be backdated, including circumstances where the employer will be required to pay the workers' contributions as well as their own.
- Additional information is provided about the statutory review process for challenging an enforcement decision and the form to use to apply by post or e-mail for a review of a notice or penalty has also been updated.
- The section of the policy which looks at the Regulator's prosecution policy has been updated in relation to the consideration of whether a prosecution is required in the public interest.

PENSION SCAMS

On 20 July the Regulator issued a press release reporting that, in support of Scams Awareness Month, it has added the following new information to its website as part of its ongoing 'scorpion' campaign alerting retirement savers to the risks:

- an infographic poster explaining typical pension scammers tactics and ways in which members can scamproof their savings; and
- a video in which the Regulator's chief executive talks about how members can protect themselves and how the Regulator is working with other government organisations to disrupt scamming activity.



On 27 July a press release was issued stating that a multi-agency task force is warning savers to be vigilant of the threat of pension scams. This also refers to Scams Awareness Month noting that a number of organisations have joined forces to highlight the problem of pension scams and have released five top tips for staying safe. It also reports that the Pensions Regulator is investigating nine cases of suspected pension scams.

PERCEPTIONS TRACKER

Background

On 28 July the Regulator published the results of its eleventh annual survey, the main objective of which is to understand how effectively the Regulator is perceived to be fulfilling its statutory objectives from the perspective of its principal audiences. In addition, the survey this year sought to understand awareness and experiences in relation to pension scams and to understand the perceptions of those the Regulator engaged with regarding DB recovery plan cases.

The survey consisted of telephone interviews with 563 respondents which took place in August 2014 and March and April 2015. The respondents to the survey included lay trustees, employers, pension professionals (scheme managers, in-house administrators, professional trustees, lawyers, actuaries, auditors and third party administrators), and non-pension professionals (independent financial advisers/employee benefit consultants and accountants).

Findings

Findings of the survey include the following.

- 77% of respondents considered the Regulator's performance over the last 12 months to be 'very good' or 'good', which is an increase from 69% in 2014 and significantly higher than all waves of research since 2010.
- The rating among in-house audiences (meaning lay trustees, employers, pension managers and in-house administrators) was significantly higher than in 2014 and it is this group, employers in particular, which has driven the improvement in the overall perception of the Regulator. 75% of employers rated the Regulator's performance as 'very good' or 'good' compared to 52% in 2014.
- Respondents were asked to rate the Regulator's effectiveness in carrying out key areas of its remit, such as improving standards in scheme governance and administration (in respect of which 86% rated the Regulator as effective), protecting the benefits of members of DB schemes (80%), protecting the benefits of members of DC schemes (74%), and maximising employer compliance with the automatic enrolment duties (71%). Ratings remained in line with previous years, with the exception of strengthening the funding of DB schemes, for which the proportion giving a rating of effective dropped from 78% to 66%.
- Two new ratings were included in the survey relating to the Regulator's new statutory objective to minimise any adverse impact on the sustainable growth of an employer. 65% agreed that the Regulator takes into account the needs of the scheme and the employer in a balanced way, and 76% agreed that the Regulator supports schemes to have a strong and ongoing employer. When looking just at DB schemes where the Regulator opened a recovery plan case, the figures were 63% and 78% respectively.
- The Regulator sets itself a target of 70% average agreement that it meets the PACTT 'Better Regulation' Principles (to be Proportionate, Accountable, Consistent, Transparent and Targeted). The Regulator exceeded this target with an average rating of 72% which is in line with the 2014 and 2013 survey result of 73%. The report explains that lay trustees, employers and pension professionals all met the target in 2015 with average scores of 75%, 72% and 73% respectively, and that whilst in 2014 the employer ratings were lower than the overall average, in this latest survey the score increased and now meets the target.
- In relation to pension scams, findings included that:
 - of relevant audiences (that is, lay trustees, in-house administrators, pension scheme managers and third party administrators), 20% had experience of pension scams;



- among relevant audiences who were aware of pension scams, 67% discuss the subject at trustee meetings and 44% have added pension scams to their risk register;
- 36% of relevant audiences reported that the scheme has suspected members' transfer requests were associated with pension scam activity; and
- schemes that had been suspicious of pension scam activity typically withheld or delayed members' transfer requests due to such suspicions (80%), and in 19% of cases suspicions had **not** led to a member's transfer request being refused.

ANNUAL REPORT AND ACCOUNTS

On 2 July the Pensions Regulator published its Annual Report and Accounts for 2014/15 which detail the Regulator's work in 2014/15 including the following.

- The Determinations Panel made determinations in ten cases, all concerning DC schemes and covering various issues connected with the removal and appointment of trustees.
- In terms of the formal exercise of delegated powers, there were 49 instances in respect of DC, 49 in respect of DB, 2,169 in respect of automatic enrolment, and 550 in respect of "Fast Flow". (Fast Flow is an approach developed in relation to regulatory tasks that are

typically low risk and of high volume and frequency, whereby they are allocated to teams resourced and specifically trained to carry them out, rather than being allocated to teams also responsible for more complex regulatory issues.).

- In relation to automatic enrolment, the Regulator:
 - responded to 674 whistleblower reports and reviewed 1,362 suspected instances of non-compliance; and
 - issued penalty notices totalling £193,000 of which £60,000 has been collected and £47,000 has been written off.
- The Regulator reviewed its existing cases to be sure that it was targeting the most important risk areas and securing the right outcomes. This resulted in reduced case volumes from over 900 in July 2014 to 372 at the end of the year meaning that the Regulator is well placed to be able to manage rising volumes of increasingly detailed high-risk casework, while still engaging with a large number of schemes each year.
- The Regulator has continued to strengthen its analysis of structures and transactions that may undermine support to DB schemes, and in terms of structures, the Regulator's key focus remains on asset-backed contributions.





In addition the Report notes some of the planned activities that have been moved including the following.

DC principles and quality features

In December 2011 the Regulator set out six principles for good design and governance of workplace DC schemes, and the publication of 31 quality features followed. These principles and quality features are reflected in the DC code of practice and accompanying guidance. In February 2014, the Regulator set out its expectation that trustees should assess schemes and produce an annual governance statement explaining the extent to which the scheme has embedded the DC quality features, with the first statement to be published at the end of the 2014/15 scheme year. It has not been clear how this requirement for an annual governance statement interacts with the new statutory requirement introduced in April 2015 for an annual report about compliance with the statutory governance standards.

It is therefore notable that the Annual Report and Accounts state that, in view of the announcement of significant structural changes to the legal framework for DC schemes, compliance with and measurement against the six principles was not actively promoted. In light of the implementation of the statutory governance standards and charge controls, the Regulator decided that it was inappropriate for it to drive awareness and understanding of its quality features as it would confuse its audiences, and

the Key Performance Indicator in relation to awareness of the features was therefore withdrawn. The Regulator states that it has not altered its stance that the DC code and quality features remain relevant but the focus needed to shift to the incoming legislative requirements.

The Regulator has previously stated that it intends to publish more detailed guidance on the charges and governance regulations and to update the DC code to reflect the April 2015 legislative changes, and in June reported that it has begun the process of updating the DC code. It will be interesting to see what the updated code says about reporting compliance with the principles and underlying features.

Trustee knowledge and understanding code

The Regulator had planned to undertake a consultation on revisions to this code during 2014/15. However, it is reported that the Regulator has now started a more fundamental review of its approach to achieving high standards of governance and administration in occupational schemes including TKU, and revisions to this code will now follow this review in 2016.





LEGISLATION

IORP II

In March 2014 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.

The changes to the current Directive in the draft version of IORP II covered issues such as the knowledge requirements for those running schemes, risk management, and the introduction of annual Pension Benefit Statements for members, standardised at EU level, providing simple and clear information about the individual's pension entitlements. Suggested amendments to the draft version of IORP II were subsequently published by the Council of the European Union.

A further development took place in July when the European Parliament's Committee on Economic and Monetary Affairs published a draft report on IORP II together with some amendments, including the following.

Solvency

In May 2013 the European Commission had announced that provisions on solvency would not feature in its proposals for IORP II. However, when the draft was published in March 2014 accompanying FAQs reported that EIOPA was carrying out detailed technical work in the area of solvency. A consultation paper on solvency issues followed from EIOPA in October 2014 and the response and the launch of a quantitative assessment on solvency followed in May 2015. This solvency work is being completed by EIOPA on its own initiative although it is planning to deliver advice to the European Commission in March 2016.

It is notable that the Committee has proposed that a new recital be added to the draft IORP II Directive essentially stating that: the further development at Union level of solvency models, such as the holistic balance sheet is not realistic in practical terms and not effective in terms of costs and benefits; and that no quantitative capital requirements, such as Solvency II or holistic balance sheet models derived therefrom should therefore be developed at the Union level with regard to institutions for occupational retirement provision as they could potentially decrease the willingness of employers to provide occupational pensions.

Funding

Currently the IORP Directive requires cross-border schemes to be fully funded "*at all times*". Subsequent Council amendments to IORP II had proposed replacing this with a requirement to be fully funded at "*the start of every new cross-border activity*" but the draft text of IORP II was subsequently returned to the original wording of full funding "*at all times*".

The Committee draft replaces this with proposed new text that will apply to all institutions, not just those that are cross-border and which states that an "*institution's technical provisions shall be fully funded, in respect of the total range of pension schemes operated, at the moment the institution starts operating a new or additional scheme*". The accompanying Explanatory Statement to the draft amendments states that it is believed that to facilitate more cross-border activity where it is needed, an institution's technical provisions should be fully funded at the moment when it starts operating a new or additional scheme, and that this should not only be limited to 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 previous drafts of IORP II extended the scope of these provisions to those who have key functions and the Committee draft further extends its scope to cover, where applicable, persons or entities employed to carry out certain functions in accordance with Article 33 (which deals with outsourcing. The Committee draft frames the “requirement to be fit” as that knowledge and experience is collectively adequate to enable a sound and prudent management of the institution and to properly carry out key functions. The differences here compared to the initial draft of IORP II is the reference to assessing knowledge and experience collectively and that a reference to professional qualifications is removed. However, like the initial draft of IORP II, the Committee version of the requirement to be fit does not refer to the knowledge and experience of advisers.

Pension Benefit Statement

The March 2014 draft of IORP II included a new requirement for annual Pension Benefit Statements for members, standardised at EU level, and set out detailed provisions about the information that must be included in the Statement. The Council draft made some amendments to this. However, the Committee draft goes further by removing the detailed prescriptive requirements and replacing them with general guiding principles for the Pension Benefit Statement.

Delegated acts

The initial draft IORP II had contained a number of provisions so that delegated acts could be made containing further provision, including on Pension Benefit Statements. Given that pension policy is primarily a matter for Member States, the Committee believes that delegated acts are not justified in this Directive and therefore the Committee draft removes these provisions. In addition, given these changes, the Committee also proposes that EIOPA should not be able to adopt guidelines or recommendations in the context of this Directive.

Timing

The Committee draft amends the timing so that Member States would have 18 months after the date that the Directive enters into force to reflect certain provisions in national law.

The action that will need to be taken by UK schemes will depend on the final form of the IORP II Directive and how it is transposed into national law, but it is worth schemes noting that further changes may be on the horizon. We would expect that the Committee’s proposed recital stating that no provision be made on solvency will be welcomed by sponsoring employers and trustees of occupational pension schemes, as will the removal of the prescriptive requirements for Pension Benefit Statements.

However, one area of potential concern in the Committee draft is the proposed new wording that would require an institution’s technical provisions to be fully funded at the moment the institution starts operating a new or additional scheme. At this stage it is not clear exactly what this would mean for schemes in practice, and therefore if this amendment is retained, it will be important to understand what constitutes a new or additional scheme.



CORPORATE DIRECTORS

The Small Business, Enterprise and Employment Act 2015 includes a new requirement, not yet brought into force, for all company directors to be natural persons. This requirement could have an impact on any pension schemes which have a company in place as a trustee and one or more of the directors of that company are themselves corporate entities.

However, there is also a regulation-making power in the Act which provides that exceptions can be made to the new requirement. In a consultation on possible exceptions issued in November 2014, the Department for Business Innovation & Skills stated that it is minded to allow corporate directors of corporate trustees to continue. The response to the consultation on possible exceptions is still awaited.

On 17 July an update was issued about the timing of these measures which states that they will come into force in October 2016.

If an exception for corporate directors of trustee companies is enacted then schemes should not need to take any action in relation to this issue. However, given that the response to consultation has not been published and legislation as to the final position on exceptions has not been made, it would be useful for schemes with a corporate director of a trustee company to be aware of this issue and the proposed timing.

AUDITED ACCOUNTS

Following the publication of a draft version for comment in March 2015, on 16 July the Registered Pension Schemes (Audited Accounts) (Specified Persons) (Amendment) Regulations 2015 were laid before the House of Commons.

These regulations relate to an amendment which was made to DWP legislation in 2014. That amendment provided an exemption for very large trust-based multi-employer schemes with 500 or more employers from the prohibition on sponsoring employers being the scheme's auditor.

The amendment was made because such schemes found it difficult to find someone to act as a statutory auditor who met the independence requirements. These latest regulations make amendments to the tax legislation which are intended to mirror those in the DWP regulations.

The regulations come into force on 1 September 2015 but have effect from 6 April 2014.



HMRC

LIST OF OVERSEAS SCHEMES

Background

To be an authorised payment, a transfer from a registered pension scheme must be a “recognised transfer” which, broadly speaking means that the transfer must be to another registered pension scheme or to a qualifying recognised overseas pension scheme (QROPS). In order to be a QROPS a scheme must not be a registered pension scheme and must meet four incremental definitions – it must be a pension scheme, an overseas pension scheme, a recognised overseas pension scheme (ROPS), and finally a qualifying recognised overseas pension scheme.

In connection with this, HMRC publishes a list of certain overseas schemes, but on 17 June HMRC temporarily suspended the list because an issue had arisen from the introduction on 6 April 2015 of a new test that schemes must meet to be a ROPS. The test is the ‘Pension Age Test’ which essentially sets a limit for the earliest age from which benefits can be paid to the member. HMRC had become aware that there were pension schemes that had appeared on previous lists but that do not meet this test.

Re-published list

When the list was suspended HMRC stated that it would return in an updated form by 1 July. On 1 July HMRC published the List of Recognised Overseas Pension Schemes notifications. The list is stated to contain pension schemes that have told HMRC that they meet the conditions to be a ROPS and have asked to be included on the list.

The list states that HMRC cannot guarantee that the schemes are ROPS or that any transfers to them will be free of UK tax and that “It is your responsibility to find out if you have to pay tax on any transfer of pension savings”.

It also states that:

- HMRC will usually pursue any UK tax charges (and interest for late payment) arising from transfers to overseas entities that do not meet the ROPS requirements even when they appear on this list, including where taxpayers are overseas, and that HMRC will also charge penalties in appropriate cases; and
- tax relief is given on pensions to encourage saving to provide benefits in later life, and accessing benefits (directly or indirectly) before age 55 will result in a liability to UK tax charges in all but the most exceptional circumstances. HMRC states that suitable professional advice should therefore be sought including from a regulated financial adviser.

These changes to the list and the notes about its status demonstrate the importance of completing appropriate checks (beyond simply checking the list) before making a transfer to an overseas scheme to ensure that the transfer will be an authorised payment.



OTHER NEWS

PENSIONS OMBUDSMAN SERVICE – ANNUAL REPORT AND ACCOUNTS

On 2 July the Pensions Ombudsman Service (POS) published its Annual Report and Accounts 2014/15 which looks at the work of both the Pensions Ombudsman and the Pension Protection Fund Ombudsman. Points of particular note include the following.

Pensions Ombudsman

- 1,281 new investigations were taken on which is 21% more than 2013/14 and 22% more than planned. 207 of these new investigations arose from two groups of cases that are unlikely to form part of a long term trend – 177 were about pension liberation and 30 about a particular scheme.
- 970 cases were completed but because not as many investigations were completed as were taken on, there was a significant increase in work in hand from 720 cases at the start of the year to 1,031 at the year end. Of these 169 relate to pension liberation and not all of them will require full investigation.

- 22% of investigations ended because the complaint was resolved or withdrawn; in 20% of cases the investigator's decision or opinion was accepted; 29% of cases were determined following the investigator's decision/opinion; 27% of cases were determined formally; and 2% were discontinued.
- In terms of the outcome of cases determined by an ombudsman – 22% were upheld; 16% were partly upheld; and 62% were not upheld.
- The report sets out the top 15 most common topics of closed investigations. The top 5 were: missing, late or incorrect benefits (17.9%); misquotations/misinformation (13.9%); transfers (9.7%); ill-health (8.0%); and death benefits (7.3%).
- The report also sets out the top 15 most common topics of new investigations. The top 5 were: missing, late or incorrect benefits (14.8%); pension liberation (13.8%); failure to provide information/act on instructions (12.5%); misquotation/misinformation (11.1%); and ill-health (9.4%).

- In terms of appeals from PO decisions to the courts, there were 7 new cases in the year; 9 cases were heard/settled/withdrawn during the year; and there were 4 cases remaining at year end.

PPF Ombudsman

- 14 new cases were accepted for investigation in the year and 18 investigations were completed.
- Of the cases in hand at 31 March 2015, 2 related to PPF maladministration, 6 to PPF reviewable matters, and 7 to Financial Assistance Scheme appeals.

Looking ahead

- In the coming year, the POS predicts that it will take on over 1,300 new investigations compared to 915 five years ago. The Report states that the POS is finding it hard to keep pace with the demand for its services within existing resourcing levels, and the net effect is that it is taking it longer to deal with cases and the carry forward caseload is increasing.



TPAS – ANNUAL REPORT AND ACCOUNTS

On 2 July The Pensions Advisory Service published its Annual Report and Accounts for the year ending 31 March 2015. Some points of note in the Report include that:

- the number of dispute resolution cases increased slightly to just over 5,000 – TPAS suspects that the increase in complaints is probably due to both the increased interest in pensions together with the fact that a number of pension schemes have been carrying out audits, resulting in mistakes being discovered;
- in 2014/15 the number of complaints against schemes that TPAS accepted for investigation was 2,607 (an increase of 17% on 2013/14), and TPAS closed 2,437 cases (an increase of 15%).

PENSION PROTECTION FUND

Annual Report and Accounts

The PPF's 2014/15 Annual Report and Accounts were published on 16 July, with points of note including the following.

- As at 31 March 2015, the funding level calculated on an actuarial basis was 115.1% (compared to 112.5% as at 31 March 2014).

- As at 31 March 2015, the likelihood of the PPF meeting its target of being financially self-sufficient by 2030 was 88% (compared to 90% as at 31 March 2014).
- During 2014/15, the PPF issued 53 review decisions in response to levy appeals (the same as in the previous year) – in 28 of these cases, the scheme was found to be levied correctly, and in 25 cases, the PPF agreed with some or all of the scheme's appeal. In 12 cases, the applicants further appealed the review decision to the Reconsideration Committee.
- The PPF issued 9 review decisions in relation to other levy related reviewable matters, and in 3 cases the applicants further appealed the review decision to the Reconsideration Committee.
- The PPF issued 35 review decisions in relation to non-levy related reviewable matters (primarily related to individuals' compensation) during 2014/15. In 7 cases the applicants further appealed the review decision to the Reconsideration Committee.

Funding strategy

Following the publication of the Annual Report and Accounts, on 27 July the PPF published its Funding Strategy update providing further detail on its progress towards its funding target and how the risk environment influences this progress. The update reports that the fall from 90% to 88% probability of success of meeting the target of being financially self-sufficient by 2030 is predominantly due to a marked deterioration in scheme funding levels over the year, combined with an increase in average employer insolvency probabilities. Nevertheless, the PPF continues to believe that it is on track to achieve its funding strategy over the long term.



ON THE HORIZON

- **Equalisation for GMPs.** It had previously been expected that guidance on conversion of GMPs would be published in spring 2014 but, as at the end of July 2015, this had not been published. An HMRC Bulletin on the end of contracting-out issued in July 2014 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. A further Bulletin published in June 2015 stated that industry representatives and the DWP have been examining alternative approaches and are intending to re-consult on revised regulations in this Parliament.
- **DC reform guidance.** The Regulator intends to publish more detailed guidance on the charges and governance regulations which came into force on 6 April 2015 and to update its DC code of practice to reflect the April 2015 legislative changes. In June the Regulator reported that it has begun the process of updating the code and is discussing with the industry how it can make the code shorter and simpler to apply.
- **Pensions Tax Manual.** In March HMRC published a draft version of the Pensions Tax Manual (PTM) which will replace the current Registered Pension Schemes Manual. The PTM is currently in draft form and HMRC intends to incorporate comments on it with a view to the guidance being updated in summer 2015.
- **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, the hearing for which took place at the end of June 2015.
- **DB guidance.** On 22 May 2015 when the Regulator published its annual defined benefit funding statement, it reported that in the coming months, it plans to publish additional practical guidance on an integrated approach to managing risk, covenant assessment and setting an investment strategy to complement the Code of Practice.
- **Short service refunds.** Short service refunds will be withdrawn from money purchase schemes from 1 October 2015.
- **Consultation on DC flexibilities.** A consultation was published on 30 July 2015 which looks at options to address any excessive early exit penalties, and whether the process for transferring pensions from one scheme to another can be made quicker and smoother to help people make use of the new freedoms. The consultation closes on 21 October and the Government response is expected in autumn 2015.
- **The end of contracting-out.** The response to consultation and final form regulations about how to administer accrued contracted-out rights were published in July 2015. However, a number of areas are identified which will be the subject of further consultation/regulations – consequential amendments to the legislation on transfers of contracted-out rights and the disclosure regulations; payment of GMPs as lump sums; scheme alterations in respect of post-1997 contracted-out rights; and the Reference Scheme Test underpin.
- **Review of consumer price statistics.** Following the report of an independent review, a public consultation on the consumer price statistics was published in June 2015. In Autumn 2015, the UK Statistics Authority will publish a summary of the responses received and the Board of the Authority will consider the report carefully, alongside any advice from the Authority's regulatory function, before it issues its final response in early 2016.
- **Transparency of DC charges.** The April 2015 measures on charges include some reporting requirements in relation to charges and transaction costs. The DWP intends to build on this and on 2 March published a joint Call for Evidence with the FCA which closed for comments on 4 May 2015.
- **Solvency.** Following its October 2014 consultation on further work on solvency of IORPs, on 15 May 2015 EIOPA published the feedback to the consultation



and launched a quantitative assessment on solvency for occupational pension funds. The outcomes of the assessment will support EIOPA in further developing its advice to the European Commission on EU solvency rules for IORPs, which EIOPA expects to deliver in March 2016.

- **Transfers guidance.** In the response to consultation on the DB to DC transfers guidance, the Regulator stated that it will review its guidance on transfers in 2016 in light of experience and agrees that, through this process, the consolidation of material will be beneficial to trustees and their administrators.
- **Investment regulations.** A consultation in relation to some amendments to the investment regulations following recommendations made by the Law Commission in July 2014 closed in April 2015. It is expected that any changes to the legislation arising from the consultation would be made in 2016.
- **DC charges.** From April 2016, it is proposed that member-borne commission payments and Active Member Discounts will be banned from DC qualifying schemes.
- **End of contracting-out.** The reform of state pension which will result in the end of contracting-out is due to take effect in April 2016.
- **Defined ambition.** During the progress of the Pension Schemes Act 2015 through Parliament it was stated that it is envisaged that the provisions of the Act on Defined Ambition and collective schemes will be available in time for the end of contracting-out in April 2016.

- **Tapered annual allowance.** The Summer Budget announced that from 6 April 2016 a tapered annual allowance will apply to those with adjusted income over £150,000 and threshold income over £110,000. Transitional provisions are also introduced in connection with this change. The draft legislation to give effect to these changes is in the Finance Bill which was published on 15 July 2015.
- **Lifetime Allowance.** In the March 2015 Budget it was announced that the Lifetime Allowance will be reduced from £1.25 million to £1 million from 6 April 2016 and transitional protection will be introduced. HMRC is considering options around removing the deadlines for applying for these protections and will publish full details later in summer 2015.
- **Consultation on tax relief.** On 8 July 2015 the Government issued a consultation about whether there is a case for reforming pensions tax relief to strengthen incentives to save or whether it would be best to keep the current system. The consultation closes on 30 September 2015.
- **Flexibility for existing annuity holders.** In the March 2015 Budget it was announced that from April 2016 the Government will change the tax rules to allow people who are already receiving income from an annuity to sell that income to a third party, subject to the agreement of the annuity provider. In the Summer Budget 2015 the Government stated that it agrees with

respondents to the consultation that implementation should be delayed until 2017. The Government will publish further details of its plans in autumn 2015.

- **Automatic transfers.** The system of automatic transfers is intended to be launched in October 2016. Following the publication of a framework document in February, further detail and a consultation are expected to be published later in 2015.
- **IORP II.** The draft updated IORP Directive published in March 2014 proposed that Member States would have to transpose the new IORP Directive into national law by 31 December 2016. An updated draft published in September 2014 deleted this date and did not replace it with a new date. A further draft published in December 2014 stated that Member States would have two years after the entry into force of the Directive to transpose it into national law, and this was amended to 18 months in a draft published in July 2015.
- **DC charges.** In 2017 it is proposed that the measures on DC charges and governance standards will be reviewed, in particular, the level of the charge cap and the question of whether any transaction costs should be included in the cap.
- **Lifetime Allowance.** In the March 2015 Budget it was announced that the Lifetime Allowance will be indexed annually in line with inflation from 6 April 2018.



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