LEGISLATIVE UPDATE

NOVEMBER 2014

Our legislative updates help to keep you informed about recent changes to pensions law, regulation and guidance. These changes may affect you, your pension scheme or your scheme members.

Keeping up to date on these changes from time to time can help you when reviewing your pension arrangements. This will allow you to be confident that your pension scheme will continue to meet your needs and is capable of delivering value for money and a good outcome for your employees.

SCOTTISH WIDOWS

NOVEMBER 2014

Government (www.gov.uk)

BETTER WORKPLACE PENSIONS: PUTTING SAVERS' INTERESTS FIRST

The Department for Work and Pensions (DWP) has responded to its consultation on Defined Contribution (DC) governance (see May 2014's legislative update) including a set of draft regulations which are intended to come into force in April 2015.

Planned timetable for implementation:

GOVERNANCE

From April 2015:

- New minimum governance standards will be introduced across workplace money purchase pension schemes and the money purchase sections of other schemes (except where the only money purchase benefits are those provided by Additional Voluntary Contributions).
- Providers of workplace personal pensions will have new duties to establish Independent Governance Committees (IGC) to oversee the value delivered by the schemes they supervise, including the design and performance of the default arrangement; standards of administration; and the value of costs and charges.
- Trustees and managers of occupational schemes will have new duties to ensure that default arrangements are designed in members' interests and kept under regular review, that core financial transactions are processed promptly and accurately and that they assess the value of transaction costs and charges borne by scheme members.
- There will also be new independence requirements for master trusts, which must have a minimum of three trustees, the majority of whom, including the chair, must be independent and these independent trustees will be subject to limited terms.
- Trustees must also appoint a chair who will be responsible for signing off an annual Chair's Statement on how the minimum governance standards have been met. This statement will also describe how trustees have the relevant knowledge and understanding to run the scheme effectively.

TRANSPARENCY

From April 2015:

- Trustees and IGCs, as part of their duties under the minimum governance standards, must assess and report on costs and charges, including transaction costs incurred by funds.
- DWP will work with the Financial Conduct Authority (FCA) on appropriate regulations and rules with regard to the disclosure and publication of costs and charges, including transaction costs.

CHARGES

The charge measures will apply to workplace money purchase schemes and the money purchase benefits accrued in non-money workplace purchase schemes.

From April 2015:

- A charge cap will be introduced in the default arrangements of qualifying schemes, set at 0.75% of funds under management, or equivalent to 0.75% for schemes with combination charge structures. This will cover all Member-Borne Deductions (MBDs), excluding transaction costs, and costs resulting from pension sharing, complying with court orders and scheme wind-up.
- Any Active Member Discount (AMD) structures in qualifying schemes must not result in the level of charges faced by members who cease contributing going over the default arrangement charge cap.
- Between April 2015 and April 2016, any commission payments must be counted as Member Borne Deductions for the purposes of the charge cap.
- Member-borne payments for advice to employers in the form of consultancy charges will be banned in all qualifying workplace personal pension schemes from April 2015.
- The DWP will consult in 2015 on regulations to ban commission charges in occupational schemes used as qualifying schemes from April 2016.

From April 2016:

- Member-borne adviser commission will be banned from qualifying schemes.
- AMDs will be banned from qualifying schemes.

In 2017:

- The level of the default arrangement charge cap will be reviewed, to see whether a) the level should be lowered and b) whether it should include some or all transaction costs.

GUIDANCE ON "FIT AND PROPER PERSON" TEST

Tax (hmrc.gov.uk)

From 1 September 2014, HMRC can refuse to register a scheme if a scheme administrator (usually the trustees) is not a fit and proper person. It may also de-register an existing scheme if this requirement is not met. As part of the process for registering a scheme, an administrator will have to complete a declaration that they are a fit and proper person. Where HMRC has doubts, it now has additional information gathering powers.

HMRC has published a list of factors that may lead to it deciding that a scheme administrator is not a fit and proper person, including where the scheme administrator:

- does not have sufficient knowledge of the pensions and pensions tax legislation or does not employ an adviser with this knowledge.
- has previously been involved in pension liberation
- has previously been the scheme administrator of, or otherwise involved with, a pension scheme which has been de-registered by HMRC.
- has been involved in tax fraud or has a criminal conviction relating to finance, corporate bodies or dishonesty.
- has been the subject of adverse civil proceedings relating to finance or dishonesty/misconduct.
- employs as an adviser a person who has been involved in pension liberation or tax avoidance.
- has been removed from acting as a trustee of a pension scheme by the Regulator or a Court and/or has been disqualified from acting as a company director or is bankrupt.

CHANGES TO SPECIAL LUMP SUM DEATH BENEFIT CHARGE

Under current rules, a special 55% tax charge is payable by the recipient on many lump sum death benefits, in particular where the member was over age 75 or where the benefit was from DC funds and the member had already received drawdown benefits from those funds.

From April 2015, there will be no tax charge on lump sum or drawdown benefits where a member with unused DC funds dies below age 75. They will be able to pass on such funds to nominated beneficiaries. The beneficiaries can take the funds as a lump sum or an income from the scheme, free of income tax provided that such benefits are allocated within two years of the scheme administrator being notified of death.

Anyone who dies with unused DC pension funds at or over the age of 75 will also be able to nominate a beneficiary to pass their pension to. The nominated beneficiary will be able to access the pension funds flexibly, at any age, and pay tax at their marginal rate of income tax.

In those cases where a special tax charge still arises (for example where a lump sum is payable after age 75), the rate will reduce from 55% to 45% in tax year 2015/2016 and will be taxed at the individual's marginal rate thereafter.

TAXATION OF PENSIONS BILL

Legislation (www.legislation.gov.uk)

This Bill will implement the new flexible DC regime. In addition to the provisions summarised in August 2014's update, the Bill contains the following amendments:

- The serious ill health lump sum charge for over 75s will be 45% (reduced from 55%).
- The trigger level of lump sums received by a member in a 12-month period for the purposes of invoking the lump-sum recycling rules is being reduced from £10,000 to £7,500.
- Additional changes are made to the protected minimum pension age provisions so that if a member with a protected low pension age transfers benefits in payment, future pension payments under age 55 will be authorised payments.

DRAFT SHARED PARENTAL LEAVE REGULATIONS 2014

These Regulations are intended to come into force on 1 December 2014 and will apply where the expected week of childbirth is after 5 April 2015. Eligible employees will be able to share up to 50 weeks of shared parental leave and up to 37 weeks of statutory shared parental pay.

Parents can take leave consecutively or concurrently, and in several different chunks.

The intention appears to be that shared parental leave will be pensioned in the same way as maternity leave. So in very broad terms, paid shared parental leave will have to be pensioned as though the member was working normally but the member will only need to pay contributions based on what he or she is actually earning.

POLICYHOLDER PROTECTION

The Prudential Regulation Authority is consulting on proposed changes to policyholder protection under the Financial Services Compensation Scheme. Amongst other things, it proposes increased protection for policyholders in the event of an insurer failing in certain circumstances. For example the protection given to annuities could rise from 90% to 100%.

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