

LEGISLATIVE UPDATE

FEBRUARY 2015

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.

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GOVERNMENT

(www.gov.uk)

AUTO-ENROLMENT

Response to consultation on automatic enrolment earnings trigger and the qualifying earnings band the Government has confirmed that the new earnings thresholds for auto-enrolment in tax year 2015/2016 will be:

- £10,000 for the auto-enrolment earnings trigger;
- £5,824 for the lower limit of the qualifying earnings band
- £42,385 for the upper limit of the qualifying earnings band

GOVERNANCE AND CHARGE CAPS – FINAL PROPOSALS

The Department for Work and Pensions (DWP) issued a consultation paper in October 2014 (see November's legislative update) on draft regulations concerning the governance of workplace pension schemes providing money purchase benefits (WPPs), as well as the introduction of a 0.75% charge cap on default funds offered by WPPs which are "qualifying schemes" for auto-enrolment purposes.

The Government response to the consultation has now been published. The bulk of the original proposals remain unchanged, but the Government has made some minor revisions in light of concerns raised during the industry consultation. For example the definition of "default arrangement" (Reg 3) has been changed. Defined benefit (DB) schemes offering money purchase additional voluntary contributions (AVCs) are not covered unless the AVC fund is also designated as the default fund for other workers of the same employer.

Subject to Parliamentary approval, it is intended that the majority of the new regulations will come into force on 6 April 2015.

Although these regulations apply only to occupational WPPs, employers and providers who offer contract-based WPPs should be aware of the separate requirements for independent governance committees for contract-based schemes (IGCs), which need to be established by 6 April 2015. Helpfully, the DWP has worked closely with the FCA and the Pensions Regulator in developing the new minimum governance standards for occupational WPPs, and the intention is that these standards will be consistent with the requirements for IGCs, where appropriate. More information on IGCs can be found below.

PENSION WISE

HM Treasury has unveiled Pension Wise: a free and impartial service to the public intended to explain the new pension options available from F-Day (6 April 2015).

The aim is to enable the visitor to discover the options for their pension pot, how to shop around and what to look out for with taxes and fees. It also talks about how to avoid pension scams and planning for longevity.

Pension Wise offers a six-step process:

1. Check the value of your pension pot
2. Understand what you can do with your pension pot
3. Plan how long your money needs to last
4. Work out how much money you'll have in retirement
5. Watch out for tax
6. Shop around for the best deal

STREAMLINING AUTO-ENROLMENT

DWP has launched a new consultation on draft regulations which make technical changes to automatic enrolment.

In summary, the DWP says the measures will:

- introduce an alternative quality requirement for defined benefits (DB) pension schemes;
- simplify the requirements on employers regarding the provision of information about automatic enrolment to their employees; and
- create exceptions to the employer duties so that an employer is not required to enrol an employee into a workplace pension in certain situations.

The third objective is narrow in scope. It is designed to minimise the risk of individuals with lifetime allowance tax protection, for example enhanced protection or fixed protection 2012/2014, being auto-enrolled and consequently losing their protection. Three other categories of worker who arguably should not be auto-enrolled are also covered:

- those who are leaving the employment and their notice period spans the auto-enrolment date;
- those who cancel scheme membership (eg following contractual enrolment) before being auto-enrolled; and
- those who have been paid a Winding up Lump Sum (WULS) within the last 12 months, ceased to be employed, and then re-employed.

The Regulations turn the employer enrolment duties into a power, giving the employer the choice as to whether to enrol the worker. If the employer finds it easier to auto-enrol all eligible employees, they can; the employee can always opt out.

TAX

(www.hmrc.gov.uk)

HMRC NEWSLETTER 66

Summarises the April 2015 money purchase pension flexibility changes and explains that normal PAYE rules will apply to flexible pension payments. Details are given for administrators on how the PAYE rules will apply in different circumstances.

The Newsletter also contains a reminder that annual allowance statements for the 2013-14 year should have been issued to members contributing more than £50,000 per year.

HMRC NEWSLETTER 67

Provides further information on money purchase pension flexibility, building on Newsletter 66.

The newsletter also provides a link to draft legislation intended to provide that payments of annuities to beneficiaries can be made tax free on the death of an individual, subject to certain conditions. The changes broadly mirror those made previously by the Taxation of Pensions Act 2014 in respect of drawdown funds.

PENSIONS LIBERATION

On 4 February 2015, HMRC issued a Pension Liberation Newsletter. In this newsletter HMRC sets out:

- Its views on member responsibilities under the new pension freedoms
- A roundup of the steps that they have previously taken to help combat pension liberation fraud.

LEGISLATION

(www.legislation.gov.uk/)

PENSION SCHEMES BILL 2015

The Bill received Royal Assent in March 2015. Significant areas of focus include:

- Changes to when members can transfer their rights. Members with money purchase benefits will have a right to transfer them right up to the point at which they start to receive benefits. There will also be a right to transfer different categories of benefit (principally, DB and DC) separately and scheme rules must not prevent this.
- Pension scheme members with final salary or certain other benefits with guarantees attaching, worth over £30,000, who want to transfer or convert them to money purchase flexible benefits will need to take independent financial advice. Schemes should not make the transfer until they have checked that members have received the relevant advice.

TAXATION OF PENSIONS ACT 2014

This is the legislation that creates the new money purchase flexibilities.

We summarised the content of the Taxation of Pensions Bill in previous legislative updates and there have been no significant changes. The legislation will come into force on 6 April 2015 and schemes have to consider now which, if any, of the new DC flexibilities they intend to offer.

REGULATOR

(www.pensionsregulator.gov.uk)
(www.fca.org.uk/)

GOVERNANCE

The Financial Conduct Authority (FCA) published its final rules for independent governance committees (IGC), which all providers of workplace personal pension schemes are required to establish by 6 April 2015.

Role and duties

The primary role of an IGC will be to assess the ongoing value for money of its provider's workplace personal pension schemes, with a particular focus on default investment funds and member-borne costs and charges. Workplace personal pension schemes include group personal pension plans, stakeholder schemes and group SIPPs.

In discharging their role, IGCs will be under a duty to act solely in the interests of active and deferred members of relevant schemes. The final rules make clear that this covers all deferred members of relevant schemes and not just those who become deferred from April.

The FCA has decided not to extend the role of IGCs to cover value for money in decumulation at this stage. However, it has said that it will review this in 2017.

Powers of IGCs

Where an IGC has concerns about the value for money of a relevant scheme operated by its provider it will be able to escalate its concerns to the provider's Board. Providers will be required to take reasonable steps to address any concerns raised by their IGC or to explain to the IGC, in writing, why they do not intend to do so. If an IGC is not satisfied with the provider's response it will have the power to escalate its concerns to:

- the FCA, and/or
- relevant scheme members and employers.

An IGC can also go public with its concerns. However, in its final rules the FCA has said that an IGC should notify it first of any concerns that it has before it raises those concerns with scheme members or employers or goes public with them.

Composition

IGCs will be required to have a minimum of 5 members with the majority (including the Chair) being independent of the provider. The final rules also contain a new quorum requirement, which will mean that for an IGC to be quorate at least 3 members must be present with the majority of those present being independent.

DRAFT GUIDANCE ON DB TO DC TRANSFERS

In light of provisions in the Pension Schemes Bill (see above), the Pensions Regulator is consulting on draft guidance for trustees of DB schemes on managing member requests for transfers from DB to DC arrangements. It is intended to help trustees ensure they have appropriate processes in place to manage transfer requests. Trustees will need to consider what action to take when the final version is published.

The draft guidance says that trustees can support members in a number of ways, including: by providing information on finding appropriate advisers and informing members that advice should explain benefits being given up when compared to any future options and will depend on the member's circumstances.

In addition, the guidance acknowledges that whilst *"it is likely to be in the best financial interests of the majority of members to remain in their DB scheme"* it is not *"the trustee's role to second-guess the member's individual circumstances and choice to transfer benefits. Nor is it their role to prevent a member from making decisions which the trustees might consider to be inappropriate to the member's circumstances"*.

MISCELLANEOUS

HORTON V HENRY (HIGH COURT)

The Insolvency Act 1986 provides that *“the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including... any payment under a pension scheme”*.

The member was adjudged bankrupt in December 2012. His assets at that date included a SIPP and three other personal pension policies.

The trustee in bankruptcy applied to the court asking for it to order the member to crystallise his pension rights and to exercise his elections in the manner desired by the trustee. The question was whether the member would become “entitled” to a payment under an uncrystallised pension, even though he was not in receipt of any payments.

An earlier case of *Raithatha v Williamson* held that a bankrupt did become “entitled” to a payment under a pension scheme where, under the rules, he would be able to receive the payment merely by asking for it.

The judge accepted that this case could not be distinguished from *Raithatha*. However, he declined to follow that case and instead, held that the word ‘entitled’ in the Act referred to a pension in payment under which definite amounts had become contractually payable. There was no obvious wording which would give the court power to decide how a bankrupt was to exercise the different elections open to him under an uncrystallised personal pension. Nor was there any obvious route by which a trustee in bankruptcy could be said to have that power.

Indeed, to say that a trustee in bankruptcy could decide how the bundle of contractual rights inherent in a personal pension was to be exercised was not easy to reconcile with the intention of the Welfare Reform and Pensions Act 1999 to remove pensions in general from a bankruptcy estate.

The member was not entitled to payment under his pensions *“merely by asking for payment”*. A variety of options were available to him. Only after he had made such elections could he become entitled to any payment. There was no power for the court or the trustee to require the member to elect in any particular way.

It is hoped that the conflicting decisions in these cases will be resolved in an appeal of the *Horton* case.

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