TRAVERS SMITH

What's happening in Pensions

Issue 51 *April 2015*

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April 2015 decumulation and transfer changes

Pension Schemes Act 2015

The Pension Schemes Bill has received Royal Assent and is now the Pension Schemes Act 2015.

> **Pension Schemes Act 2015:**
> **http://www.legislation.gov.uk/ukpga/2015/8/contents/enacted**

The most significant aspect of the Act is the rewriting of transfer value legislation with effect from 6 April 2015. If an individual has more than one category of benefits (money purchase, cash balance or defined benefits), the new legislation gives a statutory right to transfer one or two categories of benefits without also having to transfer the other(s). This enables an individual whose scheme does not offer a flexible decumulation option to transfer his or her DC benefits to an arrangement that does.

There are significant new disclosure of information requirements in relation to flexible benefits and the new transfer rights: see below.

The Act also:

- introduces new definitions of "defined benefits scheme", "shared risk scheme" (a.k.a. defined ambition) and "defined contributions scheme" and then applies various pieces of legislation differently to these different categories of scheme (though with little impact expected in practice for most schemes); and
- introduces a new statutory framework for "collective benefit schemes" (a.k.a. collective DC schemes, under which defined benefits are targeted but not promised).

See **WHiP Issue 47** for more detail. These two aspects require commencement orders before they come into force.

New disclosure of information requirements

<u>Regulations</u>

> **Regulations:**
> **http://www.legislation.gov.uk/uksi/2015/482/contents/made**

The 2013 disclosure of information regulations have been amended to add new disclosure requirements about DC benefits and "signposts" to the free "Pension Wise" guidance service (see **WHiP Issues 48**, **49** and **50**).

The requirements apply at various specific times, as summarised below. More details can be found in the Pensions Regulator's draft guide – see below. In the following summary, **"flexible benefits"** means any money purchase or cash balance benefits (regardless of what, if any, flexible options the scheme offers).

- **Basic scheme information**
  The information that must be provided to every member (usually via the scheme booklet) must now include:
  - information about whether drawdown is an option for flexible benefits;
  - a statement as to the transferability of flexible benefits; and
  - a statement that independent advice may be needed before safeguarded benefits (broadly DB rights) can be converted to flexible benefits or transferred out in order to access flexible benefit options (see below).

  The statement that the value of a pension derived from flexible benefits depends on various factors must now also mention any cost of exercising a transfer right, any charges payable, and the age at which the member accesses the benefits.

  Scheme booklets need to be amended to reflect the new requirements, or an announcement or addendum can be issued to every member with flexible benefits.

- **When flexible benefits become accessible and are being considered**
  Certain information must be given to members with flexible benefits who will reach normal minimum pension age (normally age 55) within four months, have already done so as at 6 April 2015, or meet the Finance Act ill-health condition.
  - If they request information about what they may do with their flexible benefits or inform the trustees that they are considering or have decided what to do with them, information including the following must be given in writing within two months (unless it has already been given in the previous 12 months):
    - a statement of the options available for their flexible benefits;
    - statements about the transferability of benefits in order to access flexible options, also saying that these may differ as regards charges, tax treatment, etc;
    - a copy of Pensions Regulator guidance (not yet published) on features of flexible options or a statement giving materially the same information;
    - information about the Pension Wise guidance service;
    - an estimate of the cash equivalent of flexible rights that are transferrable (or would be if the member stopped accruing) and various accompanying pieces of information;
    - how the member may access information about any non-flexible benefits (broadly DB rights); and
    - statements that there may be tax implications associated with accessing flexible benefits; that pension income is taxable; and that the tax rate depends on the level of income from that and other sources.
  - Where the trustees and the member communicate about what the member may do with his/her flexible benefits, specified information about Pension Wise must be given within 20 days. If the member has not been given the other information listed above in the previous 12 months, he/she must also be given a statement that he/she may request information about his/her flexible benefits, the opportunity to transfer and the options available under the scheme rules, and that the information may help the member to decide what to do.

    This information may be given verbally unless the member asks for it in writing. It need not be given if the member tells the trustees that he/she has, in the last 12 months, accessed Pension Wise or received independent financial advice or where the information requirement outlined above applies or has applied in the last two months.

- **Approaching retirement age**
  The same information as listed above must be given to a member with flexible benefits at least four months before normal retirement age unless it has already been given in the previous 12 months. In that case, the member must be reminded that the information has already been given and must again be given the information mentioned above about Pension Wise and the cash equivalent.

- **When benefits are about to be paid**
  When being given details of flexible benefits about to be paid, an individual must be reminded about Pension Wise.

Pensions Regulator guide to communicating

Press release:
http://tpr.gov.uk/press/pn15-12.aspx

The Pensions Regulator has published a draft essential guide to communicating with members about DC pension flexibilities. This is designed to cover the new disclosure of information requirements (see above), including the signposting of Pension Wise.

FCA draft rules:
http://www.fca.org.uk/news/ps15-04-retirement-reforms-and-the-guidance-guarantee

It also addresses the so-called "second line of defence" risk warnings. The regime proposed for occupational pension schemes is less onerous than the rules for contract-based pension providers proposed by the FCA and, importantly, is not compulsory. Trustees are encouraged to provide five generic risk warnings (examples are given), covering annuities, flexi-access drawdown, UFPLSs taken in stages, UFPLSs in respect of the member's whole entitlement, and pension scams. The Regulator suggests that the best time to do this is when the member is required to make a final decision about the form of his/her retirement benefits or about transferring out of the scheme in order to access them in a form not offered by the scheme.

In contrast to the proposed FCA rules, there is no need to make any enquiries about the member's circumstances; in fact the Regulator recommends that tailored risk warnings should not be given, to avoid the risk of giving advice. In other words, all of the risk warnings can and should be given to any member who has flexible benefits.

The Regulator goes on to recommend that trustees ask members to sign a statement to confirm whether or not they have received Pension Wise guidance or regulated advice, and to confirm that they have read the generic risk warnings. It suggests that this be done at the same time as the risk warnings are given. Example declarations are given and it is suggested that these are included in existing documents that members are asked to sign and return in order to have their benefits paid, secured or transferred.

DB to DC transfers or conversions

Regulations on independent advice

Regulations:
http://www.legislation.gov.uk/uksi/2015/742/contents/made

Regulations have been made prescribing the requirements for "appropriate independent advice" that a member or survivor must now take before transferring safeguarded (broadly DB) benefits with a transfer value of more than £30,000 to a DC arrangement (or converting them to DC in the same scheme). Unfortunately, the FCA rules for giving such advice will not be in place until June. This may cause confusion during the intervening two month period when the new law applies but advisers have no rules with which they are required to comply.

These regulations also include new disclosure of information requirements relating to the transfer or conversion of safeguarded benefits. Where an individual:

- makes a written request for information as to how to carry out a transfer or conversion or how to apply for a statement of entitlement to a cash equivalent transfer value;
- applies for a statement of entitlement; or
- otherwise makes a written request for a valuation of safeguarded benefit rights,

the trustees must within one month give a written explanation about the independent advice requirement.

When trustees are required to provide a statement of entitlement to a transfer value, or there is no requirement but trustees have agreed or offered to carry out a transfer or conversion, they must provide certain information. This information differs depending on whether the £30,000 or under exemption from the independent advice requirement applies.

The regulations also fill in detail about the situations when the employer is required to arrange or pay for the advice. These are broadly where an employer is encouraging, persuading or inducing a member or survivor to request a transfer out of DB rights in order to access flexible benefit options, or a conversion of such benefits into flexible (DC) benefits.

Pensions Regulator guidance

TPR guidance:
http://tpr.gov.uk/doc-library/db-dc-transfers-conversions.aspx

The Pensions Regulator has published guidance to help DB scheme trustees deal with requests for DB to DC transfers and conversions.

The guidance outlines the new statutory transfer regime as it applies to DB benefits, covering the procedure, time limits and information requirements. It also sets out steps that trustees should take to comply with the requirement (where applicable) to check that independent financial advice has been taken.

There are also sections on the potential impact of transfers on scheme funding, being alert to potential pension scams, and applications to the Regulator for more time to complete a transfer.

HMRC reporting and information requirements

HMRC Newsletters 67 and 68 include information for scheme administrators on the taxation and reporting of flexible benefit payments.

HMRC guidance notes, updated to reflect the April 2015 changes, set out very briefly the requirements for pension schemes to report to HMRC and the information that administrators must give to members under pensions tax legislation.

Statutory powers to amend

Regulations give trustees new statutory powers, with employer consent, to modify scheme rules by resolution:

- to provide for the new flexible options or conversion of non-money purchase benefits into money purchase (NB the free-standing trustee power to offer flexible benefit options still exists (see our briefing note **"DC decumulation changes"**); and
- to ensure that they are not required by their scheme rules to make a DB to DC transfer where the requirement for independent advice applies but that advice has not been obtained (or its provision checked).

Effect on state benefits

The Government has published a short fact sheet on how the new pension flexibilities could affect future entitlements to state benefits.

ABI campaign

The Association of British Insurers has launched a campaign aimed at helping consumers to understand their pension choices.

HMRC Newsletters:
https://www.gov.uk/government/publications/hm-revenue-and-customs-pension-schemes-newsletters

HMRC guidance notes:
https://www.gov.uk/business-tax/pension-scheme-administration/latest

Regulations:
http://www.legislation.gov.uk/uksi/2015/493/contents/made

Government fact sheet:
https://www.gov.uk/government/publications/pension-flexibilities-and-dwp-benefits

ABI press release:
https://www.abi.org.uk/News/News-releases/2015/03/ABI-launches-campaign-to-help-consumers-understand-their-pension-choices

Budget announcements

The Chancellor of the Exchequer gave his final Budget statement of the last Parliament on 18 March 2015. The Finance Act 2015 was processed by Parliament and received Royal Assent in a matter of days. Its only pension-related provisions concerned the new flexible options for death benefits from annuities (see **WHiP Issue 49**).

The key pensions points from the Budget were as follows.

Lifetime allowance

The Chancellor proposes to reduce the lifetime allowance from £1.25 million to £1 million from 6 April 2016. As for previous reductions, there would be transitional protections – expected to be fixed and individual protection. From 6 April 2018, the lifetime allowance would be increased annually in line with CPI increases.

These changes are to be included in a Bill in the next Parliament. We may have a different Government by then but Labour has also proposed to reduce the lifetime allowance in the same way.

Selling rights to annuity income

The Government had a few days earlier announced proposals to allow individuals (but not schemes) to sell rights to annuity income to a third party in exchange for cash, a drawdown facility and/or a flexible annuity, without the current 55% to 70% tax charge applying. A call for evidence was published on Budget day: submissions are requested by 18 June 2015.

The right would be subject to protections similar to those in place for the April 2015 reforms, to help avoid bad decisions, and the money purchase annual allowance would apply. Payments to the individual would be subject to income tax. The annuity provider would have to agree and could not be the purchasing party.

HM Treasury Budget page:
https://www.gov.uk/government/topical-events/budget-2015

HMRC Budget page:
https://www.gov.uk/government/collections/budget-2015-hm-revenue-and-customs

Announcement:
https://www.gov.uk/government/news/pension-freedoms-to-be-extended-to-people-with-annuities

Call for evidence:
https://www.gov.uk/government/consultations/creating-a-secondary-annuity-market-call-for-evidence

DC charges cap and governance requirements

Regulations

New regulations applicable from 6 April 2015 introduce a charges cap on certain DC funds and impose new DC governance requirements. Please see our briefing note "**DC charges and governance**" for details.

After a very brief consultation, the Government laid further regulations to amend these regulations. The amendment is intended to exclude from the charges cap any arrangement which would otherwise be a "default arrangement" but which is only receiving AVCs. This is designed to reflect the original policy intention. Our briefing note reflects that expected change.

Government guidance

The Government has published guidance for trustees on the DC charges cap as it applies to occupational pension schemes. Whilst it avoids any difficult questions of interpretation, it does usefully cover in detail the tests to be applied for checking DC arrangement

Regulations:
http://www.legislation.gov.uk/uksi/2015/879/made

Amending regulations:
http://www.legislation.gov.uk/uksi/2015/889/contents/made

Guidance:
https://www.gov.uk/government/publications/the-charge-cap-guidance-for-trustees-and-managers-of-occupational-schemes

charges against the cap.

Call for evidence on transaction costs

The Government and FCA have issued a joint call for evidence on improving reporting (including to trustees and independent governance committees) and disclosure of information (including to members and employers) about transaction costs for occupational and workplace personal pension schemes. They ask for comments by 4 May 2015.

Call for evidence:
http://www.fca.org.uk/static/documents/discussion-papers/dp15-02.pdf

Pension scams

Code of good practice

Code of good practice:
http://www.combatingpensionscams.org.uk/

The Pension Liberation Industry Group has published a voluntary code of good practice on combating pension scams, including "pension liberation" transfers. The code includes guidance for trustees on the due diligence process to be undertaken when considering transfer requests, and examples of communications that may be issued to members at various stages of the transfer process. The Pensions Regulator has referred trustees to the code (see below).

The code sets out three principles in relation to transfer requests and pension scams:

Principle 1: "*Trustees, providers and administrators should raise awareness of pension scams for members and beneficiaries of their scheme.*"

An example is sending members material such as the Pensions Regulator's guidance (the "scorpion" materials – see below) alongside transfer information.

Principle 2: "*Trustees, providers and administrators should have robust, but proportionate processes for assessing whether a receiving scheme may be operating as part of a pension scam, and for responding to that risk*."

The code contains useful examples of the due diligence steps for trustees and administrators to consider in relation to transfer requests, including lists of questions to ask depending upon the type of receiving scheme.

If suspicions are raised during the due diligence process the code recommends that trustees consider carefully whether or not the member has a statutory right to a transfer – this may depend upon complex technicalities and so the trustees may wish to seek legal advice.

If the member does have a statutory right, then the trustees will need to decide whether or not to make the transfer in the knowledge that there is a risk that it might be a scam, or to refuse the transfer and risk censure from the Pensions Regulator or the Pensions Ombudsman. This is a difficult question for trustees and whilst the code set outs the consequences of each course of action, it does not provide further guidance for trustees.

If there is no statutory transfer right, trustees must consider whether the member nevertheless has a right to transfer under the scheme rules, or if the trustees have a discretion to make a transfer.

Principle 3:– "*Trustees, providers and administrators should generally be aware of the known current strategies of the perpetrators of pension scams in order to inform the due diligence they need to undertake and refer to the warning flags as indicated in the Regulator's Guidance, FCA alerts and Action Fraud*."

The code sets out some typical features of current pension scams.

New Pensions Regulator "scorpion" materials

TPR press release:
http://www.thepensionsregulator.gov.uk/press/pn15-15.aspx

The Pensions Regulator has refreshed its campaign against pension scams, including its "scorpion" action pack for trustees/administrators/advisers and its member leaflet and booklet. These now cover potential scams against those aged 55 and over, following the introduction of the new flexible decumulation options, as well as pension liberation transfers.

The action pack refers trustees to the industry code of good practice (see above) and indicates that where trustees need more time to carry out the due diligence steps outlined in the code in respect of a transfer request, this may be a relevant factor when the Regulator considers a request for an extension of the statutory time limit.

FCA "ScamSmart" web page:
http://scamsmart.fca.org.uk/

The FCA has also launched "ScamSmart", a campaign warning those aged 55 and over to be alert to investment scams that will be targeting them.

VAT on services provided to pension schemes

HMRC brief:
https://www.gov.uk/government/publications/revenue-and-customs-brief-8-2015-deduction-of-vat-on-pension-fund-management-costs/revenue-and-customs-brief-8-2015-deduction-of-vat-on-pension-fund-management-costs

HMRC has published a new policy paper on the potential for using tripartite agreements (ie, contracts between the service provider, trustees and employer) to enable employers to reclaim VAT on the cost of services provided to their occupational pension schemes, under HMRC's new VAT policy for pension schemes (see **WHiP Issue 49**). We are considering the implications and will report on our conclusions in a future briefing note.

HMRC has confirmed that employers and schemes may continue to comply with the previous HMRC rules until 31 December 2015.

Automatic enrolment: Simplification amendments

Consultation response:
https://www.gov.uk/government/consultations/workplace-pensions-automatic-enrolment-simplifying-the-process-and-reducing-burdens-on-employers

Regulations:
http://www.legislation.gov.uk/uksi/2015/501/contents/made

TPR detailed guidance:
http://www.thepensionsregulator.gov.uk/doc-library/automatic-enrolment-detailed-guidance.aspx

The Government has laid regulations simplifying various aspects of the automatic enrolment regime. The changes closely follow the consultation proposals (see **WHiP Issue 49**). They took effect from 1 April 2015.

These changes are aimed at the smaller employers who have yet to undertake automatic enrolment. They should also, however, benefit larger employers when they undertake automatic re-enrolment every three years.

The Pensions Regulator has updated its detailed guidance to reflect the changes.

Excepted workers

Exceptions are made to the employer duties for certain categories of jobholder, including those listed below. In all these cases, the requirement to enrol becomes a discretion. This will enable employers to enrol these individuals if they wish, for example if they find it easier to enrol all their jobholders. If workers are enrolled under this discretion, all the law then applies as if the enrolment had been required.

- **Jobholders who are about to leave employment**
  Jobholders who are in a notice period following resignation or dismissal, or who have given notice of retirement will not have to be enrolled or re-enrolled. They will not have a statutory right to opt into a qualifying scheme or to join a registered pension scheme. This exception will not apply on the expiry of a fixed-term contract.
- **Jobholders who have left a scheme before the automatic enrolment date**
  Previously, a contractually enrolled jobholder (ie, one enrolled before the automatic enrolment requirement applies to him or her) who leaves a qualifying scheme may have to be automatically enrolled or if he or she then has an automatic enrolment date (eg, reaches age 22, has trigger earnings, or the employer's staging date arrives). Now, any such person who has, by his or her own act or omission, left a qualifying scheme within 12 months before the automatic enrolment date will not have to be enrolled.
- **Jobholders with tax protections**
  Jobholders who the employer has reasonable grounds to believe benefit from primary protection, enhanced protection, fixed protection 2012, fixed protection 2014 or individual protection will not have to be automatically enrolled or re-enrolled. (Some, though not all, of these protections are lost if the member has further accrual.) Statutory rights to opt into a qualifying scheme or join a registered pension scheme will still apply but all the requirements for employers to give the workers information about those rights will not.

Information requirements

The requirements for employers to give information to jobholders are simplified. The intention is that the workforce can be given fewer, less complicated communications. Employers will still be able to choose to comply with the existing requirements, if they wish (see our briefing note "**Automatic enrolment**").

These simplified requirements reflect the Government's intention that workers should know the following as a minimum:

- whether they are being automatically enrolled and, if so, the date of joining; information about the scheme being used; employer and employee contribution rates and tax relief; the right to opt-out and how to exercise it; when the opt-out period expires; and confirmation that their contributions would be refunded on opt-out;
- if they meet the necessary requirements, that they can opt in; or that they can ask to join a scheme if they do not have qualifying earnings; and
- if their enrolment is being postponed, that they will be enrolled on a specified date but, in the meantime, they can opt in or ask to join a scheme.

It should now be possible to use only three standard communications:

- one to all employees at the employer's staging date and individually when a new worker joins;

- one to all workers if the employer decides to postpone automatic enrolment; and
- one to each worker when he or she is automatically enrolled, re-enrolled or enrolled following opting in or joining.

All the information can be included in one communication to all workers, if the employer wishes. Of course, it should then be made clear which aspects apply to which workers.

The Government is working with the Pensions Regulator to review the existing information letter templates and with the Regulator and HMRC to update their literature on automatic enrolment.

Alternative quality requirements for DB schemes
The abolition of contracting-out in April 2016 has led the Government to review the criteria for DB schemes to be "qualifying schemes" and so used to satisfy an employer's automatic enrolment duties.

Schemes will no longer be able to qualify by virtue of being contracted-out but there will be four new sets of criteria that a DB scheme can meet, based on the funding cost and the scheme's definition of pensionable earnings (as well as the existing "test scheme" comparison option which is based on, among other features, an accrual rate of at least 1/120^{ths}).

Section 75 and Scheme funding: MNRPF case

Case report:
http://www.bailii.org/ew/cases/EWHC/Ch/2015/448.html

In *Merchant Navy Ratings Pension Fund Trustees Limited v Stena Line Limited and others*, the High Court ruled that the trustee of the Merchant Navy Ratings Pension Fund (MNRPF) can implement its proposed new funding regime requiring former employers to contribute towards the deficit. It has also held that the scheme became a "frozen scheme" for the purposes of employer debt and scheme funding legislation when DB accruals ceased, notwithstanding that members benefited from more favourable revaluation increases while they remained in relevant employment. The judge also gave some guidance on trustee duties in relation to scheme funding.

Background
The MNRPF is an industry-wide CARE pension scheme and has had 240 participating employers over the years. In the late 1990s, it was found to have a deficit. In 2001, it was closed to future accrual and members were offered a new DC scheme. Accrued benefits in the MNRPF continued to enjoy higher rates of revaluation than early leavers' deferred pensions for so long as members remained in relevant employment.

The 40 remaining employers at that time (the "current employers") and (voluntarily) ten of the former employers agreed a funding programme that was expected to eliminate the deficit by 2006 but which proved to be inadequate.

The MNRPF rules give the trustee a unilateral power of amendment. In 2010, Stena Line obtained a High Court ruling (see **WHiP Issue 20**) that the rules give the trustee power to require former employers to pay contributions. That ruling was upheld by the Court of Appeal in 2011 (see **WHiP Issue 27**).

The funding regime
It is important to note that the Court's consideration of the proposed funding regime was based on the MNRPF scheme rules, not scheme funding legislation.

The judge (Asplin J) confirmed that it is a proper use of the trustee's unilateral power of amendment to introduce the new funding regime. Former employers will now be called upon to make good their share of the overall deficit, based on the value of benefits earned by members whilst in pensionable service with them.

The "frozen scheme" question
The Court ruled that the MNRPF became a "frozen scheme" when all members stopped accruing pensionable service in 2001, even though some members continued to enjoy a higher rate of revaluation whilst they remained in relevant employment. This affects, for example, the questions of when statutory debts are triggered under section 75 of the Pensions Act 1995, which employers have statutory funding obligations, and potentially even eligibility for PPF entry.

This part of the judgment suggests that schemes which have terminated DB accrual but retain a final salary link for members who remain in relevant employment are also frozen schemes. However that question was not specifically addressed and so could be open to argument in a future case.

Trustees' approach to scheme funding
In her judgment, the judge gave some guidance for trustees making decisions about the funding of pension schemes. Trustees must make decisions which aim to ensure that

members are paid their promised benefits. There is no duty as such for trustees to act in the best interests of members in this context. So they are not normally obliged to set risk-free funding targets or to require each employer to pay the most that it can afford. The interests of the employers can be relevant factors to take into account when deciding on a particular funding regime.

IBM case: remedies decision

Case report:
http://www.bailii.org/ew/cases/EWHC/Ch/2015/389.html

IBM trustee summary:
http://smartpensionsuk.co.uk/index.php/139/1342/trustee-update-project-waltz-legal-proceedings-20-february-2015

Following the decision last year in *IBM United Kingdom Holdings Limited v Dalgleish* (see **WHiP Issue 46**), in which IBM was found to have breached its duty of good faith towards DB scheme members, the judge (Warren J) has now issued his judgment on the applicable remedies for affected scheme members.

Subject to an expected appeal, the remedies granted were as follows. In some cases, individual members are entitled to have IBM's actions unwound or to financial compensation (but not both).

- Agreements that salary increases would not be pensionable were, on the specific facts of this case, not enforceable and members could opt to have them treated as void. Therefore, members were entitled to keep salary increases that they had been awarded and have them treated as pensionable.
- Notices that purported to terminate DB accrual were again, on the specific facts of this case, voidable at the instance of each affected member. IBM would therefore need to serve fresh notices in order to terminate pensionable service (and would also have to carry out a further consultation process). Alternatively, members could claim damages for their financial loss.
- Affected members could claim damages in respect of the improperly curtailed opportunity to retire early on certain favourable terms. That policy should continue to be applied to all members who left service before 31 March 2014, that being the date when the Court held that their reasonable expectations of continuation of the policy would end. Thereafter, IBM could adopt a new policy.
- Whilst voluntary redundancy could amount to retirement with the employer's consent for the purposes of the scheme rules, compulsory redundancy did not.
- In respect of IBM's failure to consult properly, members were entitled to remedies for breach of contract, extending to injunctive relief (ie, they could require IBM not to implement the change in question in respect of them) and/or monetary damages.

For more detail, there is a good summary produced by the IBM scheme trustee.

Abolition of contracting-out: power to amend

Consultation response:
https://www.gov.uk/government/consultations/occupational-pension-schemes-abolition-of-defined-benefit-contracting-out

Regulations:
http://www.legislation.gov.uk/uksi/2015/118/contents/made

The Government has laid regulations concerning the statutory unilateral power for employers to amend future service benefits and/or member contribution rates under contracted-out schemes to reflect the increased employer National Insurance contributions payable when contracting-out is abolished in April 2016. The power is exercisable from 6 April 2015. There is no exception to the requirement to consult members on any such changes.

There is nothing in the legislation to stop an employer from using a scheme power, normally with the trustees' consent, to reduce benefits and then making further reductions using its unilateral statutory power: the Government therefore suggests that, before giving consent, trustees should get the employer to confirm in writing that it will not do this.

Please see our briefing note **"State pension reform and the end of contracting-out"** for more on this subject.

Pension scheme investment law

Consultation:
https://www.gov.uk/government/consultations/changes-to-the-law-on-investments-in-occupational-pension-schemes

The Government is consulting until 24 April 2015 on changes to the 2005 pensions investment regulations following the Law Commission's report on fiduciary duties of investment intermediaries (see **WHiP Issue 47**). Any changes would be made in 2016, with a consultation response later in 2015.

The Government asks for views on distinguishing in the investment regulations between financial and non-financial factors. It asks whether trustees should be required to state their policy on (a) how they evaluate long-term risks, including from ESG (environmental, social, governance) and other factors which may be financially material to the performance over their investments; and (b) determining whether and in what circumstances it would be appropriate to make investment decisions on the basis of non-financial factors. It welcomes views in particular on whether amendments could be made in such a way as to provide appropriate clarity for trustees regarding their legal duties on this point.

The Law Commission recommended that trustees should be encouraged to consider whether and how to engage with companies to promote their long-term success, either directly or through their investment managers, and recommended including a specific requirement for the statement of investment principles to contain a statement of the trustees' policy (if any) on stewardship. The Government asks whether the most appropriate way to implement the Law Commission's recommendation would be to require trustees to comply with the requirements in the Stewardship Code or to explain why they have not done so.

Employer debt regulations: schemes for non-associated employers

The Government has issued a call for evidence on whether the employer debt rules affecting multi-employer DB schemes for non-associated employers should be amended. Some aspects of the current regime cause difficulties for employers such as charities participating in multi-employer schemes for non-associated employers. Submissions are requested by 22 May 2015.

Call for evidence:
https://www.gov.uk/government/consultations/employer-debt-in-non-associated-multi-employer-defined-benefit-pension-schemes

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If you wish to discuss any points arising from this note, please speak to your usual contact in the Travers Smith Pensions team or to one of the Pensions partners: Paul Stannard, Peter Esam, Philip Stear, Susie Daykin and Daniel Gerring.

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