TRAVERS SMITH

What's happening in Pensions

Issue 36 *November 2012*

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Scheme funding

Pensions Regulator report

The Pensions Regulator has published *"The defined benefit regime: Evidence and analysis"*. For scheme valuations with effective dates between 22 September 2011 and 21 September 2012, the Regulator concludes that, if its assumptions prove correct:

- *"About 25% of schemes would not need to amend their recovery plans.*
- *About 30% of schemes would remain on track to meet their long-term liabilities with a three-year extension to their existing recovery plan and 10% increase in contributions.*
- *About 20% of schemes could remain on track with a three-year extension to their existing recovery plan, a 10% increase in contributions and making use of further flexibilities in the funding regime, such as allowing for greater investment outperformance in their recovery plan.*
- *About 25% of schemes would need to make maximum use of the flexibilities available in the funding framework because of the affordability challenges for their sponsoring employers."*

Press release:
http://www.thepensionsregulator.gov.uk/press/pn12-29.aspx

EU IORP directive review

The European Insurance and Occupational Pensions Authority (EIOPA) has launched a quantitative impact study to support its advice to the European Commission on the review of the EU's IORP directive on (among other things) DB scheme funding. As previously reported (see **WHiP Issue 32**), EIOPA is proposing a "holistic balance sheet" approach for DB pension schemes and their sponsoring employers.

Nine European countries will be taking part in the study. For the UK, the Pensions Regulator will be using aggregate DB pension scheme data to run the study. The study runs until 17 December 2012. The new draft EU directive is currently expected in the summer of 2013 but this timetable seems tight.

Quantitative impact study:
http://www.legislation.gov.uk/uksi/2012/1811/contents/made

CPI and RPI

Consultation on RPI changes

The Office for National Statistics (ONS) is consulting on four possible options regarding the way the Retail Prices Index (RPI) is calculated. One option is to leave it unchanged; any of the other three would bring the RPI measure of inflation closer to that of the Consumer Prices Index (CPI).

Consultation:
http://www.ons.gov.uk/ons/rel/mro/news-release/national-statistician-consults-on-changes-to-retail-prices-index/nsconsultrpinr1012.html

The proposals are to:

- change the approach to averaging changes in prices for clothing (where the difference between the CPI and RPI formulae has the greatest effect);
- change the approach to averaging changes in prices for all items where there is no information about precise expenditure (which includes clothing but also includes other items); or
- change the RPI so that its formulae align fully with those used in the CPI (but there would remain differences between the estimates produced by each because of the different coverage, weights and scope used).

The changes would reduce the actuarial value of liabilities for schemes that still have RPI-linked revaluation and/or indexation, subject to the particular provisions of the scheme's rules.

If a scheme invests in index-linked gilts, such changes would also reduce the value of its assets. According to the ONS, five index-linked gilts remain (all issued before July 2002, with maturity dates ranging from 2013 to 2030) which contain clauses that give holders the right to redeem them early if, in the opinion of the Bank of England, a fundamental change materially detrimental to the interests of holders is made. If this applies, the Chancellor of the Exchequer must also consent to the change in order for it to take effect. The position with non-Government index-linked bonds will depend on their governing documentation.

The consultation closes on 30 November 2012. A response is expected in January 2013 and implementation starting in March 2013. This consultation is separate from the consultation on the introduction of a new measure of inflation, CPIH (see **WHiP Issue 34**).

Inflation figures

The September 2012 CPI and RPI figures have been published. The September annual increase figures are used for increases to state pensions (but with an underpin) and other benefits, and for minimum revaluation and indexation requirements. Scheme rules also often specify September as the month for measuring annual inflation.

Press release:
http://www.ons.gov.uk/ons/rel/cpi/consumer-price-indices/september-2012/stb---consumer-price-indices---september-2012.html

The CPI increase is down to 2.2% and the RPI increase is down to 2.6%. For September 2011, they were 5.2% and 5.6% respectively.

Pension Protection Levy 2013/14

Press release:
http://www.pensionprotectionfund.org.uk/news/pages/details.aspx?itemID=288

The Pension Protection Fund has published its draft Pension Protection Levy Determination for the 2013/14 levy year. The draft contingent assets appendix and other appendices have also been published. The final documents are expected to be published in December.

The levy estimate is £630 million. This is 15% higher than the 2012/13 estimate of £550 million but is roughly equal to what the PPF ultimately expects to collect for 2012/13. The increase is less than the 25% maximum that some had expected and which would have been justified based on increased scheme deficits and the decreased use of contingent assets. The PPF suggests that about a quarter of schemes can expect a change of more than 20% (up or down) in their levy.

Stakeholder pensions

Commencement order:
http://www.legislation.gov.uk/uksi/2012/2480/contents/made

The stakeholder pension designation requirements were ended for all employers from 1 October 2012. If an employer is currently deducting employees' contributions and paying them into its stakeholder scheme, it must continue to do so for those employees. It does not, however, need to offer to do this for any other employees or new recruits.

If an employee now asks the employer to stop such arrangements, the employer must tell the employee that it will no longer be required by law to deduct contributions and pay them to the scheme but that the employee may pay into the scheme him/herself (if the scheme allows it).

The changes would also seem to mean that employers are not obliged to agree to any request by the employee to change the level of his or her contributions.

Automatic enrolment

Earnings trigger and qualifying earnings band

The Government is consulting on the automatic enrolment earnings trigger and qualifying earnings band figures that will apply for 2013/14. It proposes that the earnings trigger remains aligned with the income tax (PAYE) personal allowance and that the qualifying earnings band figures remain aligned with the lower and upper earnings limits for National Insurance Contributions.

Consultation:
http://www.dwp.gov.uk/consultations/2012/ae-thresholds-2013-2014.shtml

Note that, due to taxation changes being implemented from 6 April 2013, the UEL is due to fall from £42,475 to £41,450 and the personal allowance is due to increase substantially, from £8,105 to £9,205.

The proposals would mean that the following figures would apply:

	Current 2012/13 figures	Proposed 2013/14 figures
Earnings trigger	£8,105	£9,205
Qualifying earnings band	£5,564 to £42,475	£5,720 (estimated) to £41,450

For more detail on automatic enrolment, please see our **briefing note**.

Pensions Regulator codes of practice on contributions

The Pensions Regulator is consulting on updates of its Codes of Practice 5 (contributions to occupational DC schemes) and 6 (payments to personal pensions) in the light of automatic enrolment. It will also be producing new contributions guidance, aimed at employers who are new to paying pension contributions.

Press release:
http://www.thepensionsregulator.gov.uk/press/pn12-27.aspx

The law requires occupational pension scheme trustees and personal pension providers to report any material failure to pay contributions. The Regulator will expect them to check incoming contributions. This includes obtaining sufficient information from employers to demonstrate that amounts paid are reconciled with amounts due. Where contributions have not been paid, the Regulator expects three reminders to be issued, at least one by telephone.

One current measure of a material non-payment that should be reported (that a payment is outstanding for 90 days) would be replaced by the trustees (or providers) concluding that the employer is unwilling to pay. If non-payment has continued for 120 days, they may assume that this is the case and should then report it.

The consultation closes on 6 December 2012.

"Pot follows member"

The Government has published a report on the estimated impacts of automatic transfers of small DC deferred pots to a member's new employer's scheme, compared to transfers to an aggregator scheme. The figures support the Government's preference for the former approach. Please see **WHiP Issue 35** for background.

DWP report:
http://statistics.dwp.gov.uk/asd/asd1/adhoc_analysis/2012/aggregator_scheme_ad_hoc_release.pdf

The NAPF, TUC, Which? and Age UK have said, in a letter to the Daily Telegraph, that whilst they support automatic transfers the Government's preferred approach is *"impractical and risks reducing individuals' retirement income"*, for example because higher charges might apply. They urge the Government to consider alternative models for automatic transfers.

Letter to the Daily Telegraph:
http://www.telegraph.co.uk/comment/letters/9611001/Pension-pot-transfers.html

Record-keeping

The Pensions Regulator has published a progress checklist for trustees and FAQs about measuring data, to help trustees and administrators meet the December 2012 deadline for attaining record-keeping standards (see **WHiP Issue 19**).

Press release:
http://www.thepensionsregulator.gov.uk/press/pn12-26.aspx

Miscellaneous amendment regulations

Draft regulations have been published for consultation, proposing the following legislative changes from 6 April 2013. We will be responding to the consultation, which closes on 14 November 2012.

Consultation:
http://www.dwp.gov.uk/consultations/2012/occ-pen-misc-regs-2013.shtml

- **Bridging pensions**

  Trustees will be given a limited power to amend bridging pension rules which were already in place on 5 May 2010:

  - Rules that require bridging pensions to end at a specified age of 60 to 65 can be amended so that they instead end at state pension age.

- Rules that require bridging pensions to end at state pension age can be amended so that they end at age 60 (for a woman) or 65 (for a man).

The statutory power is intended for use by schemes with restrictive amendment powers. The employer must consent and such an amendment (if achieved by using the statutory power) will be a "listed change" requiring consultation of affected active members.

There is no power included to amend scheme rules (if required) to adjust the levels of pension before and after the 'step down' date. The consultation says that the draft regulations will not allow amendments to bridging pensions already in payment but there is nothing in the regulations to that effect.

The Finance Bill 2013 will include provisions amending the Finance Act 2004 to allow bridging pensions to be paid after age 65 without an unauthorised payment being made.

- **Indexation and pension credit benefits**

  Amendments to pension sharing on divorce regulations will allow schemes to use CPI instead of RPI to increase pension credit pensions in payment. They will also remove the requirement for a cash balance scheme to secure limited price indexation when it buys an annuity to secure pension credit benefits.

- **Indexation and transfer value rights**

  Members who left pensionable service before 1 January 1986 entitled to uncapped RPI revaluation have no statutory right to a transfer value. Amendments to the transfer value regulations will ensure that this remains the case if the scheme moves from RPI to CPI for revaluation (if it remains uncapped).

VAT on investment management fees

The Wheels (Ford) CIF case (see **WHiP Issue 29**) has been heard by the European Court and a decision is awaited. The case concerns whether VAT should be payable by DB pension scheme trustees on investment management fees. Investment services provided to collective investment schemes are not subject to VAT but HMRC argues that this exemption does not apply to occupational pension schemes.

Flexible drawdown pensions

HMRC has updated its Employment Income Manual to cover the tax treatment of drawdown pensions paid to an individual who is temporarily resident outside the UK.

HMRC EIM updates:
http://www.hmrc.gov.uk/manuals/eimanual/updates/eimupdate031012.htm

US FATCA tax law

As expected (see **WHiP Issue 35**), the Government has entered into an agreement with the United States government regarding the implementation of the US Foreign Account Tax Compliance Act as regards UK entities that invest in the US. The agreement is in final form but will not come into force until ratified by both governments.

HM Treasury press release:
http://www.hm-treasury.gov.uk/press_82_12.htm

The annex describing exempt financial institutions, previously blank, now includes:

- registered pension schemes;
- pension schemes established in the UK covered by the UK-US double taxation convention; and
- pension schemes where annual contributions do not exceed £50,000 and benefits cannot be accessed before age 55 (or on grounds of serious ill-health).

HMRC subsequently published a consultation (closing on 23 November 2012) on implementation of the agreement.

HMRC consultation:
http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_PROD1_032308

Public Service Pensions Bill

The Public Service Pensions Bill, containing the Government's reforms of public service pension schemes, was published on 13 September 2012.

Bill home page:
http://services.parliament.uk/bills/2012-13/publicservicepensions.html

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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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