SQUIRE SANDERS

PENSIONS HOT TOPICS

Spring 2014

Issues Stemming from the Budget 2014

1. Increases to small lump sums

The following changes came into effect on 27th March 2014: the trivial commutation lump sum limit increased from £18,000 to £30,000 (such a lump sum can be paid where the value of an eligible member's pension rights in *all* registered pension plans does not exceed this limit); the 'small pot' amount that can be paid to a member as a lump sum (irrespective of rights from other registered pension plans) has increased from £2,000 to £10,000. Trustees should check whether their pension plan rules allow members to take advantage of the relaxations to the limits.

2. Drawdown

From 27th March 2014, the capped income drawdown limit has increased from 120% to 150% of an equivalent annuity. The amount of eligible income that a member must receive each year in order to meet the "minimum income requirement" for flexible drawdown has decreased from £20,000 to £12,000. Some members may seek to draw down benefits as an interim measure pending further flexibilities from April 2015 (see No. 3). Pension plan rules that do not currently allow drawdown should be revisited to see whether flexibility is desired and could be incorporated.

For more information on the Budget 2014 changes see HM Treasury document: Freedom and Choice in Pensions and our publication: Budget 2014: a Pensions Revolution.

3. Flexibilities in DC from April 2015

From April 2015, members will have a greater choice about how they access their DC pension savings from age 55. It will be possible to take the entire pension pot as a lump sum – with amounts above the tax free limit incurring tax at the member's marginal income tax rate. It will no longer be necessary for members to purchase an annuity. Income drawdown will no longer be subject to a cap or the requirement to have a minimum amount of guaranteed pension income before selecting income withdrawal.

4. Supporting member choices

The Government wants individuals with DC benefits who are approaching retirement to be offered free, impartial, good quality, face-to-face guidance to help them make informed choices. The Financial Conduct Authority, working closely with a number of parties, will develop the framework for this and a £20 million development fund has been made available. The Government will also work with the FCA to explore the extent to which regulated advice could be made more affordable and how such advice can be accessed by individuals at key decision points throughout their retirement.

5. Transfers from DB schemes

We may see an increase in transfer requests from DB to DC pension plans from members wishing to take advantage of DC flexibilities. The Government intends to ban transfers from public service pension schemes to DC plans except in very limited circumstances and is also considering whether there should be restrictions on transfers from private sector DB plans to DC plans. Employers who are considering de-risking exercises may wish to act promptly in case their options are limited in the future. Trustees should ensure their transfer terms and general approach remains appropriate.

6. Pensions liberation update

Trustees must continue to keep a watching brief on pensions liberation. New legislation announced in the Budget 2014 will give HMRC more powers to help prevent pensions liberation including the ability to refuse to register a pension plan or to deregister a plan in some circumstances. Separately, the Pensions Ombudsman is investigating a large number of complaints from members regarding the transfer of benefits where pensions liberation is suspected. An industry working group is currently working on a code of practice on pensions liberation. Where liberation is suspected, trustees should seek legal advice.

7. More questions?!

Behind the main headlines of the Budget are some key issues that will be subject to consultation over the coming months. These issues include: should legislation override pension plan rules to ensure that individuals can take advantage of increased DC flexibilities? Should any of the DC flexibilities be extended to DB plans? How are hybrid pension plans affected? Also, should the minimum retirement age increase to as high as five years below state pension age? Trustees and employers should keep an eye on developments and consider whether to respond to the consultation.

DWP Command Paper

8. Quality requirements for trusts

New quality standards are to apply across all workplace DC pension plans. In trust based plans, the trustees will already satisfy many of the key requirements but new duties will be introduced. It is proposed that trustees will need to provide a clear, independently audited annual statement that they have met specific governance requirements set out in legislation. There will also be an increased focus on compliance with trustee knowledge and understanding requirements. The Government requests comments on quality standards for trust based plans by 15 May 2014.

9. Quality requirements for contract based plans

From April 2015, the Government proposes that it will be mandatory for contract based DC workplace pension plans to have an Independent Governance Committee that will act in the interests of members. The terms of reference of the committees will be set out in Financial Conduct Authority rules. The main focus of each Committee will be to assess the value for money that members receive. The Committees will make recommendations direct to providers; they will be able to make their recommendations public and will be able to escalate problems to the FCA.

10. Default charge cap

From April 2015, a charge cap on the default funds of DC plans used for automatic enrolment will be set at 0.75% of funds under management. The cap will cover all member-borne charges and deductions but will exclude transaction costs. The existing ban on consultancy charges will be extended to all such qualifying schemes. In 2017, the Government will re-examine the cap and consider whether some or all transaction costs should be included within it. In line with existing Pensions Regulator requirements, trustees of all pension plans should be aware of the charging structure in their pension plan.

In summary, the *Command Paper* is concerned with improving value for money, quality standards and transparency in both trust and contract based DC workplace pensions, with particular emphasis on reducing member-borne charges in qualifying schemes. See our publication: *DC Pensions up in the air* for further comments.

Employment Issues

11. TUPE relaxations

Employers should be aware of legislation that was amended on 6 April 2014 to relax pensions obligations following a TUPE transfer. Where the transferring employees were provided with a money purchase occupational pension plan, and the transferee employer will also provide a money purchase plan, the transferee now has the option to match the pension contributions that the transferor paid prior to the transfer (rather than matching employee contributions up to a cap of 6%).

See our publication: *TUPE - pension protection relaxations*.

12. Holiday pay – tribunal activity

Some trade unions are claiming that the practice of calculating an employee's holiday pay on his basic wages (for contractual hours) only is inconsistent with EU Law. A number of employment tribunal cases are considering whether overtime, commission or bonuses should be included in the calculation of holiday pay. Although this argument is not likely to be settled conclusively for some time, employers and trustees should be aware of the potential impact on pension contributions and benefits where the plan rules include variable payments in the calculation of pensionable pay.

International Matters

13. Scottish independence

With the referendum on Scottish independence looming, there are numerous outstanding questions regarding state pensions and the regulation of the private pensions system that will undoubtedly receive further attention in the coming months. A key point for employers to note is that if an independent Scotland were to gain EU membership any UK occupational defined benefit pension plan with Scottish members would become a cross border scheme and subject to the current requirement that such plans must be fully funded at all times.

14. IORP Directive Mk II

The requirements of the European Commission's draft 'IORP Directive Mk II' are expected to be implemented in the UK by the end of 2016. The proposals include a requirement for annual EU-harmonised benefit statements to be sent to members, increased governance standards, and the requirement for those who run a pension plan to have adequate professional qualifications, knowledge and expertise. It was announced last year that the Solvency II funding proposals for pensions would be 'postponed'. The current requirement for cross border schemes to be fully funded at all times is retained.

Completing the Picture...

15. Pension Protection Fund update

The PPF will issue a consultation at the end of May 2014 setting out how the new 'PPF specific' insolvency risk model will work, how the existing ratings will change and how levies may be affected. The new risk scores will not be used by Experian until 1 October 2014 – this means that the 2015/16 levy will be based on a six month (rather than a 12 month) averaging period. The PPF has confirmed that the risk scores should be available from the end of May 2014 to give pension plans time to understand the new system.

See the PPF leaflet: *Information for schemes on the move to Experian*.

16. Money purchase definition

The new statutory definition of "money purchase benefits" is expected to come into force in July 2014. This could affect all pension plans that provide any DC benefits at all including DB plans with money purchase AVC arrangements. The effect of the legislation is that some benefits that were intended to be money purchase may not be treated as such – which could have implications on winding up, funding and on various administrative practices. Employers and trustees should be poised to consider the effect of the new legislation and act quickly.

See our publication: *Be ready for money purchase mayhem!*

17. Disclosure of information amendments

The disclosure of information requirements, governing the pensions information that should be provided to members and other interested parties, were updated with effect from 6 April 2014. Trustees can simplify some of the information provided to new members (if they wish). Trustees of DC plans can also amend the assumptions used in statutory money purchase illustrations to make these more relevant to member circumstances. Note that there is a new requirement for trustees of DC pension plans to provide specific information to members who are invested in 'lifestyling' funds.

18. Same sex marriages

The first marriages of same sex couples took place on 29 March 2014. We recommend that trustees and employers ensure that their pension plans meet at least the minimum legal requirements for same sex spouses and consider the extent to which equal survivors' benefits should be provided to same and opposite sex spouses. In all cases, legal advice should be sought in relation to rule amendments. A Government review, to be published by 1 July 2014, may impact on the minimum survivor benefits that must be provided to same sex spouses.

See our publication: *Same sex marriages*

Further Information

For more information about any of our hot topics please contact any of the lead partners listed or your usual contact in the Squire Sanders pensions team.

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