SQUIRE PATTON BOGGS

PENSIONS HOT TOPICS

Winter 2014/15

Be Ready for April 2015

1. Statutory Transfer Rights

The Pension Schemes Bill 2014/15 will introduce a new statutory right for members to transfer a "category" of benefit – for example, allowing a member of a hybrid pension plan to transfer his DC benefits whilst retaining his DB benefits in the plan, or allowing a DB member to transfer his money purchase AVCs. Statutory transfer rights will also be extended to allow a member to transfer DC benefits up to and beyond his pension plan's normal pension age. These provisions are expected to apply from 6 April 2015. Trustees should update administration processes and member communications. Rule amendments may be appropriate.

Trustees should review transfer policies in anticipation of increased member interest and legislative change.

2. DB to DC Conversion

From 6 April 2015, trustees will be required to check that a member has received 'appropriate independent advice' before converting 'safeguarded benefits' (broadly speaking, DB benefits) into 'flexible benefits' (broadly speaking, DC benefits), either within the same pension plan, or by making an external transfer. Regulations will clarify the checks the trustees must carry out and the meaning of 'appropriate independent advice'. Following recent debate in the House of Lords we expect that the advice will only be necessary where the member's DB benefits are worth at least £30,000.

3. New DC Legislation

New legislation imposing charge capping measures and governance requirements will apply to occupational plans with an element of DC provision from April 2015. The governance requirements include: ensuring that default arrangements are designed in the interests of members (with regular reviews); processing financial transactions promptly and accurately; assessing the value of member-borne costs and charges; and producing an annual Chair's statement. Trustees should establish which aspects of the legislation apply to their pension plan. The Regulator will monitor compliance via extra questions on the scheme return.

The Financial Conduct Authority has also been working on equivalent requirements for contact based pension plans, due to apply from April 2015.

4. Freedom and Choice

April 2015 is nearly upon us! Trustees of pension plans containing any element of DC (including AVC arrangements) should be assessing, in conjunction with employers and administrators, what flexibilities (if any) will be offered to members. Trustees should be in a position to communicate their decisions – to enable members to make choices about accessing their DC pension benefits and to benefit from the new guidance guarantee service (now known as 'Pension Wise'). Pension plans not offering flexibilities may see an increase in transfer requests.

Trustees who have decided not to introduce any flexibilities should still be in a position to communicate this to members.

5. New regulatory material

The Pensions Regulator has issued the first of its **package of communications** to help trustees to prepare for the "significant changes in the pensions landscape" coming into effect from April 2015. An 'essential guide' will help trustees through the myriad of information on DC governance and charge capping. Draft guidance for trustees on member transfers from DB pension plans was issued for consultation on 12 February. The Regulator has also promised that guidance will follow on DC flexibilities (including how trustees should direct members to the Pension Wise service), and there is more to come on the subject of pension scams.

Time to consider the need for further trustee training?

Other Key Developments

6. PPF – Risk Reduction

The Pension Protection Fund has confirmed changes to the recognition of risk reduction measures for the 2015/16 levy. Of particular note: Asset Backed Contributions with any underlying asset type can be recognised; employers can apply to have specific types of mortgages, or immaterial mortgages, excluded from the risk calculation; there is an amended certification for Type A contingent assets requiring trustees to certify a fixed sum; and surety bonds can be recognised as a Type C (ii) contingent asset. Trustees and employers should seek advice and take action well in advance of the 31 March 2015 deadline.

For more information see our *PPF communication*

7. Pensions Scams

The Pensions Ombudsman has published three determinations addressing complaints from members whose pension plans refused to transfer benefits to another arrangement due to suspicions that they were requested for pensions liberation purposes. In all three cases the Ombudsman concluded that the individuals did not have a statutory right to the transfer requested. However, he expects pension plan trustees and providers to carry out detailed investigations to establish whether a member has a right to transfer his benefits. If it transpires that such a right exists then the transfer should not be refused.

An industry group Code of Good Practice on dealing with pension scams is expected to be issued soon.

8. Commutation

Trustees and employers who write to pensioners and dependants to flag an option to commute trivial pensions/small pensions pots should note that such exercises may fall within the scope of the Code of Good Practice on Incentive Exercises which advocates specific processes regarding, for example, timescales, member communications and guidance. The Code will not generally apply to options offered as "business as usual" activity. Legal advice should be sought to check Code compliance and trustees should ensure that pension plan rules have been updated, if necessary, to increase commutation levels to the maximum allowed by legislation.

Seek legal advice if commuting trivial pensions

9. Refunds and Automatic Transfers

The Government has confirmed that, from October 2015, it will no longer be possible to pay a refund of member contributions from an occupational DC pension plan where a member has more than 30 days' "qualifying service". Trustees will need to review their pension plan rules, administration processes and member communications. In addition, the new pot-follows-member transfer regime is scheduled to be introduced from October 2016. The DWP has issued a policy paper, stating that the transfer system will be introduced in two phases. The first phase will involve the 20 or so largest administrators and will require members to agree to a transfer taking place.

The automatic transfer process will not really be "automatic" at the outset.

10. Abolition of Contracting-Out

Prior to the abolition of contracting-out on the reference scheme test basis HMRC is seeking to encourage greater uptake of its Scheme Reconciliation Service which allows reconciliation of a pension plan's GMP records with HMRC's records. Trustees/Administrators have until April 2016 to register. According to HMRC, this service is already highlighting a significant number of discrepancies. Separately, the DWP has announced that regulations governing the exercise of an employer's statutory right to amend pension plan rules to offset increased national insurance costs will be in force before the next General Election.

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 Patton Boggs pensions team.

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