SQUIRE PATTON BOGGS

Hot Topics in Pensions
Spring 2018

Say “I do” to our Spring Hot Topics. Love is in the air as we prepare for the wedding celebrations of HRH Prince Henry of Wales and Rachel Meghan Markle. We invite you to be guests of honour at our royal wedding pensions party and we hereby pledge to faithfully honour our commitment to share with you the top 10 hot topics of the day. Cheers!

1. General Data Protection Regulation – A Long Engagement

There will inevitably be a rush for trustees to meet the General Data Protection Regulation compliance deadline of 25 May 2018, but it is important that this is not viewed as a “one-off” exercise. The protection of individuals’ personal data will need to become business as usual, with regular checks carried out to ensure that standards are maintained and vows are not broken. Many of our clients are now addressing ongoing compliance by adopting data privacy and data breach policies and building data protection reviews into future business plans.

2. Tax – Sealed With a Loving Kiss

New income tax rates and bands will apply for Scottish residents from 6 April 2018. HMRC has confirmed that pension plans operating “relief at source” can still reclaim tax at 20%; any additional amounts can be reclaimed by the individual. Separately, in terms of VAT recovery, HMRC confirmed that the loved and cherished practice allowing employers to recover 30% of VAT incurred on combined investment and administration services can continue indefinitely. Some employers may wish to explore other arrangements for a higher level of VAT recovery – our blog contains more detail.

3. Member Communications – For Better, For Worse

From 6 April 2018, trustees of pension plans who are required to produce a chair’s statement in respect of their defined contribution benefits must communicate additional information about transaction costs and administration charges. This includes expanding the content of the chair’s statement and posting information on the internet. Trustees should ensure that the chair’s statement covers all requirements set out in legislation. Signalling an end to its honeymoon period, The Pensions Regulator has recently named six pension plans whose trustees have been fined for producing non-compliant chair’s statements.

4. Plan De-registrations – Something Old, Something New

Scheme Administrators should log on to HMRC’s old pension schemes online service to update their details if they want to have and to hold on to their Scheme Administrator status. Those who have not accessed the service in over a year may not be migrated to the new system in April, risking potential de-registration by April 2019 of the pension plans for which they are responsible. In other news, from April 2018 HMRC will have the power to de-register a plan where the sponsoring employer has been dormant for one month or more during the preceding year.

5. Transfers – Something Borrowed, Something Blue

New regulations effective from 6 April 2018 address bulk transfers without consent (1) from one defined contribution arrangement to another and (2) from defined benefit (DB) plans with contracted-out benefits to plans that have never been contracted-out. Meanwhile, the House of Commons and the House of Lords are undertaking some blue-sky thinking on the Financial Guidance and Claims Bill, regarding the extent to which financial guidance should be a default option on transfers of flexible benefits. See our blog for more on transfer developments.

6. Safeguarded-flexible Benefits – Ringing in Changes

Two changes to legislation affecting pension plans with "safeguarded-flexible benefits" are being ushered-in from 6 April 2018. (1) Trustees should issue risk warnings to members before carrying out transactions such as a transfer or conversion of benefits, or the payment of an uncrystallised funds pension lump sum. (2) The valuation method is changing for the purposes of assessing whether members' pension values exceed £30,000 and whether they must, therefore, take appropriate independent advice. There is a new disclosure of information requirement for members whose transfer values have fallen below £30,000 under the new valuation method.

7. Anti-money Laundering – Driving a Horse and Carriage Through the Established Position

Trustees are reminded that they should be identifying and recording certain data for all "beneficial owners" of their pension plans to comply with anti-money laundering legislation. Whilst this should be a piece of (wedding) cake, the definition of "beneficial owner" is wide. Trustees should also be alert to whether any of the relevant taxes arise in respect of their pension plan, which could trigger a requirement to register with HMRC. Reviewing ongoing compliance with these obligations should be added to the trustees' business plan and/or risk register.

8. Automatic Enrolment – The Government Plights Its Troth

From 6 April 2018, Automatic Enrolment (AE) contributions will increase to 5% (with a minimum employer contribution of 2%). Whilst employers who closely follow the statutory formula are likely to be exempt from the employee consultation requirements, best practice would be to remind affected employees of the impact this will have on their pay packet. AE has proved to be no candle in the wind. December 2017 heralded the publication of the government's review, noting the success of AE but containing proposals for improvement, including removing the lower earnings limit for qualifying earnings and reducing the age trigger to 18.

9. Employer Debt Changes – Arriving Late to the Party

The Occupational Pension Schemes (Employer Debt) Regulations 2005 are amended with effect from 6 April 2018. Employers of multi-employer schemes who cease to employ any active members may enter into a deferred debt arrangement with pension plan trustees. This will avoid the triggering of a statutory debt against the employer. The easement could be a champagne moment for employers of non-associated multi-employer schemes, for whom easements such as flexible apportionment arrangements are not viable. Conditions apply and trustees will be able to unilaterally end the arrangement in specified circumstances.

10. White Paper – The Last Dance

The promised White Paper on security and sustainability of DB pensions is expected to focus heavily on options for consolidation, which the Department for Work and Pensions (DWP) has described as "amazingly complex". Could the recent pooling of Local Government Pension Scheme funds be seen as a blueprint for the private sector? It is anticipated that the White Paper will also focus on the powers of The Pensions Regulator, which have come under recent scrutiny. This may be the last real opportunity for the DWP to influence the future of DB pension provision – it has flirted with this issue for some time.

Contacts

Kirsty Bartlett
Partner, London
T +44 20 7655 0298
E kirsty.bartlett@squirepb.com

Judith Donnelly
Partner, London
T +44 20 7655 1115
E judith.donnelly@squirepb.com

Matthew Giles
Partner, Birmingham
T +44 121 222 3296
E matthew.giles@squirepb.com

Elizabeth Graham
Partner, Leeds
T +44 113 284 7494
E elizabeth.graham@squirepb.com

David Griffiths
Partner, Manchester
T +44 161 830 5359
E david.griffiths@squirepb.com

Wendy Hunter
Partner, London
T +44 20 7655 1119
E wendy.hunter@squirepb.com

Catherine McKenna
Partner, Leeds
T +44 113 284 7045
E catherine.mckenna@squirepb.com

Helen Miles
Partner, Birmingham
T +44 121 222 3138
E helen.miles@squirepb.com

Clifford Sims
Partner, London
T +44 20 7655 1193
E clifford.sims@squirepb.com

Philip Sutton
Partner, Birmingham
T +44 121 222 3541
E philip.sutton@squirepb.com

Follow us on Twitter: @SPB_Global