

ACTION

1. Pensions liberation fraud

Pensions liberation involves the transfer of a member's pension savings to an arrangement that will allow access to the funds before age 55. Members are often given incorrect or incomplete information about the consequences, which can include high transfer fees, unauthorised payments (thus incurring a tax liability) and lack of security. Trustees should follow the guidance issued by the Pensions Regulator and seek legal advice on their duties where pensions liberation is suspected on any transfer.

ACTION

4. New governance expectations

The Pensions Regulator has issued for consultation a Code of Practice and Guidance on the governance and administration of occupational trust based DC pension plans. The material builds on existing Codes and Guidance and places some new expectations upon trustees. All pension plans with a DC element are affected by the draft regulatory material, including the DC elements of hybrid plans and AVC arrangements. Action will need to be taken - even where pension plans have high governance standards.

2. State pension reform accelerated

The Government plans to introduce the single-tier state pension from April 2016, a year earlier than originally proposed. Contracting out will be abolished and private sector employers will have the power to modify DB pension benefits for future service to offset their higher NI costs. We await the response to consultation on whether modifications will be possible where members have a 'protected person' status stemming from former membership of some rail, coal and electricity pension plans.

5. The VAT debate

In the Wheels case, the Court of Justice of the EU ruled that DB pension plans are not 'special investment funds' for VAT purposes, and therefore investment managers cannot VAT exempt their fees. Another European case will consider the DC position - so trustees of hybrid pension plans may wish to consider amending claims brought under Wheels. A further case will judge whether sponsoring companies can treat pension plan VAT costs as part of the employer's own VAT costs.

3. Pensions Regulator's new objective

The Chancellor announced in the Budget that the Pensions Regulator will be given a statutory objective to "support scheme funding arrangements that are compatible with sustainable growth for the sponsoring employer and fully consistent with the 2004 funding legislation". The new legislation is expected in Spring 2013 and will be reviewed after 6 months. Squire Sanders welcomes the greater certainty that this should bring to funding discussions for DB pension plans.

6. Disclosure of information

Amendments to disclosure of information regulations are expected to come into force in October 2013. The DWP is consulting on proposals to simplify DB benefit statements and also the basic information that must be provided to new/prospective members. For DC plans, changes in assumptions used in Statutory Money Purchase Illustrations are proposed and there will be new disclosure requirements where 'lifestyling' investment options are in place. Trustees should note the proposed changes.

7. Public sector pensions: LGPS

Revised benefit regulations for the new pension plan are out for consultation until early May (the stated deadline for making these regulations is "Spring"). Separate regulations to deal with governance changes have not been published yet. Contractors and other bodies who employ former public sector workers are awaiting further developments on changes to "Fair Deal". The Government Actuary's Department has now stopped accepting applications for new LGPS passports, pending finalisation of the new benefit regulations.

8. Data reviews

In the first of a series of reviews, the Pensions Regulator is approaching 250 pension plans to assess how trustees have addressed the record-keeping guidance and whether targets for 'common data' have been met. The record-keeping guidance will be updated this year to reflect the main findings of the review. The Regulator will increase its focus on 'conditional data' in 2013. In the meantime, if your pension plan is selected for review, this does not mean that the Regulator expects to find data problems.

9. Automatic enrolment thresholds

The auto-enrolment thresholds for the tax year 2013/2014 are: £9,440 for the auto-enrolment earnings trigger; and £5,668 and £41,450 respectively for the lower and upper limits of the qualifying earnings band. The Chancellor's Budget announcement that the PAYE threshold is set to rise to £10,000 for tax year 2014/2015 means that an increasing number of lower earners are likely to fall outside automatic enrolment, if the earnings trigger continues to align with the PAYE threshold.

10. TUPE consultation

The DWP is consulting on amendments to the TUPE legislation. The draft regulations aim to ensure that TUPE requirements are more closely aligned with DC auto-enrolment contribution obligations (which could otherwise lead to situations where transferring employees are entitled to receive more generous pension contributions than before the transfer). The amendments also seek to clarify the level of pension contributions that must be 'matched' by an employer who chooses to satisfy the TUPE requirements in this way.

Further information

For further information about any of our Hot Topics please contact any of the partners listed or your usual contact in the Squire Sanders Pensions team.

Catherine McKenna

Partner, Leeds

T +44 113 284 7045

E catherine.mckenna@squiresanders.com

Wendy Hunter

Partner, London

T +44 20 7655 1119

E wendy.hunter@squiresanders.com

Anthea Whitton

Partner, Leeds

T +44 113 284 7364

E anthea.whitton@squiresanders.com

Charmian Johnson

Partner, Manchester

T +44 161 830 5047

E charmian.johnson@squiresanders.com

Ian Forrest

Partner, Birmingham

T +44 121 222 3418

E ian.forrest@squiresanders.com

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

© Squire Sanders.

All Rights Reserved 2013