Baker McKenzie.

November 2019

UK PENSIONS UPDATE

Developments this month may not have been quite as frenetic as in recent months but, nevertheless, we do have a few items of interest to report. Of note, the Government has confirmed that the General Levy is increasing following changes to some pension bodies. There are also some other developments which will require trustees' attention - from checking whether updates are required to scheme governing documentation to take into account changes to civil partnership legislation, to potentially revisiting processes around DB to DC transfers.

In This Issue

Time for a compliance healthcheck?

We have produced a new guide which sets out many of the significant current and future developments going on in the pensions industry, together with action points for both employers and trustees to ensure compliance readiness for the year ahead. If you have any questions, please get in touch with your usual Baker McKenzie contact.

Pension Schemes Bill on hold - for now

We reported on the Pension Schemes Bill in our last Update. The second reading of the Pension Schemes Bill, which was scheduled for 30 October, did not go ahead and, following the dissolution of

Parliament on November 6 in preparation for the General Election, cannot make any further progress unless it is re-introduced to Parliament in a future parliamentary session. There have been suggestions that this could happen, with Guy Opperman, the Pensions Minister, quoted in the media as saying: "*whichever government is in power after December 12 in my view can and will bring forward this bill*".

Regulations introduced to permit civil partnerships for opposite-sex couples

The Civil Partnership (Opposite-sex Couples) Regulations 2019 come into force on 2 December 2019 and will allow opposite-sex couples to enter into civil partnerships in England and Wales. Opposite-sex civil partners must be provided with survivor benefits identical to those enjoyed by same-sex civil partners.

In response to the changes, trustees should check whether their pension scheme's rules need to be amended to take account of the possibility of opposite-sex couples entering civil partnerships, particularly in the context of survivor benefits. In addition, trustees should liaise with their administrators to ensure that member communications and administrative practices are updated to reflect the extension of the civil partnership regime. Both employers and trustees may also wish to liaise with their actuarial advisers to understand whether scheme actuarial assumptions may alter in the future as a result of these changes.

PASA publishes Master Trust Transition Guidance

Baker McKenzie was involved in reviewing this guidance, which was issued last week. The guidance covers the practical issues that arise on the transition of members between defined contribution (DC) master trusts and from a DC scheme to a DC master trust. ***From a legal perspective, it highlights the importance of complying with trust law duties and employee consultation requirements, as well as considering scheme amendments and transfer documentation.*** Planning and communications are also considered.The guidance can be viewed here.

DB to DC Transfers: updated Regulator guidance recommends trustees undertake additional checks in order to satisfy the independent advice requirements

The Pensions Regulator has updated its guidance on DB to DC transfers and conversions. The changes in the updated guidance will be relevant to trustees who are processing DB to DC transfers worth over £30,000.

Trustees who are transferring DB benefits to a DC arrangement are subject to two main legal requirements. Firstly, they must check that the member has received appropriate independent advice. Once they have this confirmation, they must then check that the company or business providing the advice has permission to carry on the regulated activity by checking the FCA register. The changes to the guidance are relevant to the second of these requirements.

On 9 December, the FCA is replacing its "Approved Persons Regime" with its "Senior Managers and Certification Regime". As a result of this change, the FCA register will no longer contain details of all individual advisers who are FCA-approved (although it will continue to list details of some senior manager and selected other roles). The register will, however, continue to list firms who are authorised. The Regulator's updated guidance recommends that trustees continue to check that the adviser firm is listed on the FCA register. ***In addition, in order to check whether a particular adviser has the necessary FCA approval, the Regulator is recommending that trustees either contact the firm for whom the adviser works and ask them to confirm that the individual adviser works for that firm or check an appropriate third party directory.*** The FCA has said that it is developing such a Directory although it is not due to be published until next near.

"The recommendation to check the individual adviser seems to go beyond the requirements of the legislation, but reflects the regulatory direction of travel and may potentially influence the Pensions Ombudsman. It would be prudent for trustees to follow the recommendation and to ensure that their administrators are aware of this."

Caspar McConville
Senior Associate

New Government consultation on simplifying member benefit statements

The Department for Work and Pensions has launched a consultation in relation to the simplification of annual benefit statements. In the consultation, the DWP is seeking views on how the use of simpler and more consistent annual pension benefit statements, to be achieved through greater standardisation of structure, design and content, could help improve engagement with pensions. In addition, views are sought on proposed amendments to the disclosure regime so that relevant schemes would be required to include information in statements on member charges and transaction costs. The consultation closes on 20 December.

Government consults on increases to the General Levy

The Department for Work and Pensions (DWP) has published a review of the General Levy, concluding that increases will be required in order to meet the growing costs of the Pensions Regulator (TPR), the Pensions Ombudsman (TPO) and the Money Advice and Pension Service (MaPS).

The General Levy, which is separate from the PPF Levy and which is payable by occupational (both DB and DC) and personal pension schemes, recovers the funding provided by the DWP in respect of core activities of the aforementioned pensions bodies. It is calculated according to the number of scheme members, with different levy per member rates applying, depending on the size of the scheme - varying from £2.88 per member for the smallest schemes (2 to 11 members) to £0.65 per member for the very largest schemes (500,000 plus). The DWP has estimated that, if levy rates were to remain unchanged, there would be a funding deficit of around £540 million at the end of 2029 to 2030 for these organisations. The increasing deficit is being driven by continuing change and growth in the three pension bodies, including TPR's developing "*quicker, clearer, tougher"* approach.

As part of the review, the DWP is consulting on a number of options for how to implement the increases, ranging from a "holding" increase of 10% on 2019/2020 rates on 1 April 2020, with further increases from April 2021 informed by a wider review of the levy, to a phased increase over 3 years commencing 1 April 2020. The latter option would involve an increase in the levy of 45%, 125% and 245% of the 2019 to 2020 rates in each of the 3 years commencing 1 April 2020.

Trustees and sponsoring employers of both DB and DC schemes should be aware of the forthcoming increases. Importantly, the timing of the increases will depend on which option the DWP implements. Comments in the consultation suggest that the Government's preferred approach is the "holding" increase mentioned above, which would result in relatively modest increases, at least in 2020. Some of the other options would, however, see the General Levy increase significantly - up to 245% on 2019/2020 rates in some cases - within the next 3 years.

Revaluation Order published

The Occupational Pensions (Revaluation) Order 2019 has been published and will come into force on 1 January 2020. Revaluation increases of 1.7% are applicable to the period from 1 January 2019 to 31 December 2019.

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