BRIEFING

TRAVERS SMITH

What's Happening in Pensions

Issue 101 – March 2023

Budget 2023: This year's Spring Budget included significant pensions content, most notably the abolition of the lifetime allowance (but with transitional complications) and the raising of the annual allowance.

Pensions dashboards programme paused: The Pensions Minister has announced a delay and reset of the pensions dashboards programme. New scheme connection deadlines will be announced in due course but schemes are urged to continue their preparations.

Pension scams - industry group interim guide: The Pension Scams Industry Group has published an Interim Practitioner Guide, setting out the key due diligence steps that a practitioner should undertake when assessing a transfer request in light of the 2021 transfer conditions regulations.

Transfer scams – reporting to the FCA: The FCA has added a new page to its website on reporting transfer requests that give schemes cause for concern.

Automatic enrolment extension bill: A new private members bill has Government support and will allow the Secretary of State to reduce the automatic enrolment age from 22 to 18 and abolish the qualifying earnings lower threshold. No date to do this has been announced.

ESG and climate change reporting: The Pensions Regulator has announced a campaign to ensure that trustees are meeting their ESG and climate change reporting duties.

Social factors taskforce: The DWP has reportedly launched its social factors taskforce.

Protected pension age – High Court decision: The High Court has ruled that an individual did not satisfy the condition for a protected pension age under the Finance Act 2004 that "on 5th April 2006 the member had an actual or prospective right under the pension scheme to any benefit from an age of less than 55". This was because the right in question was subject to employer consent.

Employer-related investment: The Pensions Regulator has published new guidance reminding trustees and employers of the restrictions on using pension scheme funds for employer related investments and the risk of criminal prosecution.

Work and Pensions Committee DB inquiry: Parliament's Work and Pensions Committee has launched an inquiry that will review DB pension schemes and the challenges and opportunities they pose to members, trustees, employers and the Pensions Regulator.

PENSIONS RADAR: You may also be interested in the latest edition of Pensions Radar, our quarterly listing of expected future changes in the UK law affecting work-based pension schemes.

SUSTAINABILITY MATERIALS: Our Sustainable Business Hub includes a section on ESG and sustainable finance issues for pension schemes and their sponsors. See also our latest ESG Newsletter.

Budget 2023

This year's Spring Budget included significant pensions content, most notably as regards the lifetime allowance, annual allowance and other pensions tax allowances. Draft legislation was published later in the Finance Bill. The following are the pensions highlights.

Tax allowances

The Chancellor announced major changes to pensions allowances with the stated aim of encouraging the over 50s to remain in, or return to, work. This is particularly pertinent to high earning senior clinicians in the NHS: in recent years, many high-earning NHS medics have retired early or reduced their hours in order (at least in part) to avoid incurring pensions tax charges in respect of their DB pension accrual. The changes are all, however, applicable generally and will mean lower taxation of benefits above the lifetime allowance.

The changes are as follows:

- The **lifetime allowance** (currently £1,073,100) and lifetime allowance charge will be abolished.
- The **55% tax charges on various lump sum benefits in excess of the lifetime allowance** will be amended so that taxation of that element is at the individual's income tax marginal rate. This includes:
  - the lifetime allowance excess lump sum;
  - the serious ill-health lump sum;
  - the defined benefits lump sum death benefit; and
  - the uncrystallised funds lump sum death benefit.
- The tax-free **pension commencement lump sum** limit (for those without protections for higher amounts), which is currently set at 25% of the lifetime allowance, will be retained and frozen at that level, which is £268,275.
- The **annual allowance** will be raised from £40,000 to £60,000.
- The **tapered annual allowance** will be raised from £4,000 to £10,000, with the 'adjusted income' threshold increased from £240,000 to £260,000.
- The **money purchase annual allowance** will be raised from £4,000 back to its original level of £10,000.

These changes take effect for the 2023/24 tax year and thereafter. It should be noted, however, that it is only the lifetime allowance tax charge that will be abolished from April 2023, with the full lifetime allowance and protection legislation intended to be repealed from the 2024/25 tax year (though we can foresee difficulties with that). This means that no one will have to pay a lifetime allowance charge from 2023/24 onwards. Schemes and individuals will, however, still need to keep records of protections and used lifetime allowance; lifetime allowance checks will still need to be performed; and benefit crystallisation event (BCE) statements will still need to be issued. This is because:

- For some lifetime allowance protections, the protected level of maximum pension commencement lump sum is based on the individual's protected lifetime allowance.
- Benefits crystallised above the individual's lifetime allowance will be subject to income tax at the individual's marginal rate. For lump sum death benefits, this will be different from the tax treatment of the amount within the lifetime allowance.
- One of the automatic enrolment exemptions is where the employer has grounds to believe that the worker has a relevant lifetime allowance protection.

Complicating matters further, Labour has pledged to reinstate the lifetime allowance (whilst making special arrangements for affected NHS staff) but has said nothing about existing or new protections.

Individuals with a lifetime allowance protection who have opted out of a pension scheme in order to avoid losing it may now be able to join the scheme and many will wish to do so.

In some cases, employment terms or pension scheme rules restrict contributions to the level of the annual allowance, tapered annual allowance or money purchase annual allowance, or even the lifetime allowance. Any such restrictions should now be reviewed.

There is additional explanation and commentary on our Budget website. The fullest HMRC summary of these changes can be found here, with a Pension Schemes Newsletter later adding important detail.

Investment

DC pension schemes are mentioned in relation to an initial package of measures designed to support growth in "sectors of the future":

- *"Increasing support for the UK's most innovative companies by extending the British Patient Capital programme for a further 10 years until 2033-34 and increasing its focus on R&D intensive industries, providing at least £3 billion in investment.*
- *Spurring the creation of new vehicles for investment into science and tech companies, tailored to the needs of UK DC pension schemes, through a new Long-term Investment for Technology and Science (LIFTS) initiative.*
- *Leading by example by pursuing accelerated transfer of the £364 billion Local Government Pension Scheme assets into pools to support increased investment in innovative companies and other productive assets. The government will shortly come forward with a consultation."*

Net pay tax relief changes

The Government confirmed that, as previously announced (see WHiP Issue 97), the 2023 Finance Bill will include provision for the making of top-up payments to individuals with a total income below the income tax personal allowance who are saving into a pension scheme using a 'net pay' arrangement (generally occupational pension schemes, including some master trusts). This is designed to alleviate a disadvantage that such members suffer in comparison with individuals who are in a 'relief at source' scheme (generally personal pensions and some master trusts) (see WHiP Issue 83 for an explanation).

This will apply for the 2024/25 tax year but payments will not be made before April 2025. Draft legislation has been published.

Pensions dashboards programme paused

The Pensions Minister has made a written statement to Parliament to announce a delay and reset of the pensions dashboards programme. This is needed because "additional time is required to deliver the complex technical solution to enable the connection of pension providers and schemes".

There will be a new chair of the programme board appointed. A new staging timetable for schemes to connect will be announced in due course, to be followed by amending regulations. In the meantime, schemes are urged to continue their preparations. The Pensions Regulator has updated its initial guidance.

The length of the pause has not been indicated but the statement says that the Minister will update Parliament before the summer recess (i.e. by 20 July 2023).

The Pensions Dashboards Programme has published FAQs about connection deadlines and the revised timeline, in light of the Government announcement.

We have updated our website article "10 actions for getting to grips with pensions dashboards" to reflect the latest developments.

Pension scams - industry group interim guide

The Pension Scams Industry Group has published an Interim Practitioner Guide, setting out the key due diligence steps that a practitioner should undertake as good practice when assessing a transfer request in light of the 2021 transfer conditions regulations designed to help schemes to combat pension transfer scams (see our briefing 'Pension scams: new statutory transfer right restrictions').

Some issues with the regulations have caused difficulties for the industry, including the 'amber flag' where there are any overseas investments in the receiving scheme and the 'red flag' where there is any incentive to transfer offered. The

Group therefore decided to await resolution of the issues before updating its Code of Good Practice. The Interim Guide is intended as a standalone piece of guidance to help practitioners in the meantime.

The Guide addresses, among other things, the use of 'clean lists' / 'green lists' and using discretionary transfer powers in clear low risk cases where there could be obstacles to using the statutory transfer procedure.

A short summary document explains the key points.

Travers Smith partner David James is a member of the Group and contributed to the Interim Guide.

Transfer scams – reporting to the FCA

The FCA has added a new page to its website on reporting transfer requests that give schemes cause for concern. It says:

> *"Concerns could be because you have a number of red or amber flags or have decided to refuse a transfer. See The Pensions Regulator's guidance on the specific checks when dealing with pension transfer requests.*
>
> *We would like you to report to us about:*
>
> - *individuals who provide unauthorised advice on pension transfers* [or investments]
> - *increases in the volume of transfers advised by the same adviser to the FCA*
> - *if a member requested a transfer following a cold call or unsolicited contact*
> - *if the member has been offered an incentive to make a transfer*
> - *if the scheme has high risk or unregulated investments*
> - *if the scheme charges are unclear or high*
> - *if the scheme's investment structure is unclear, complex or unorthodox*
> - *potential scam activity"*

The FCA expands on the web page on particular areas of risk regarding the first two of these. It gives email addresses for making reports in respect of DB to DB transfers and DC to DC transfers (oddly, there is none specified for DB to DC transfers).

Automatic enrolment extension bill

The Pensions (Extension of Automatic Enrolment) (No. 2) Bill replaces a similar earlier bill that has been withdrawn. It proposes to allow reduction of the automatic enrolment age from 22 to a lower age (likely to be 18) and abolition of the qualifying earnings lower threshold (with phasing out possible). This is a private members bill but the Pensions Minister has announced that it has Government backing.

The bill would give the Secretary of State power to make the changes, with a statutory requirement for prior consultation on the implementation approach and timing, and a report to Parliament on the outcome.

No timescale has been announced but a consultation is expected in the autumn. The Government has previously said that implementing this policy, which derives from a 2017 review, is subject to ways of making it affordable for employers (see WHiP Issue 68).

ESG and climate change reporting

The Pensions Regulator has announced a campaign to ensure that trustees are meeting their ESG and climate change reporting duties.

It says:

"As part of the campaign, TPR will launch a regulatory initiative in the spring to check whether trustees are publishing important data on ESG. Emails are being sent to DB, DC and hybrid schemes making clear that TPR is analysing scheme return data to monitor compliance.

TPR is checking whether trustees of schemes with more than 100 members (unless exempt) have published a statement of investment principles (SIP) which details the policies controlling how a scheme invests, including consideration of financially material ESG and climate factors.

They must also publish an implementation statement (IS) – which shows how the principles in the SIP have been implemented.

A review of a cross-section of SIP and IS statements will follow in the summer. The outcome of this review will be shared with industry to highlight good practice.

TPR is warning trustees of schemes in scope that enforcement action may be taken against them if they fail to publish their SIP and/or implementation statement. TPR has the power to impose a fine up to £50,000 (where the trustee is a corporate body).

Since 2019, TPR has requested information through scheme returns in relation to SIPs and ISs. TPR is currently reviewing the SIP and IS data provided through the 2022 DC scheme return. Initial analysis has highlighted a number of schemes did not provide valid website addresses of the SIP and IS statements, and TPR will be communicating with these schemes next month.

Authorised schemes and those with relevant assets of £1 billion or more must also publish an annual climate change (or TCFD) report. Trustees of these schemes should provide the URL to the report in their scheme return. TPR will be issuing a statement on TCFD reports in the spring."

Social factors taskforce

The DWP has reportedly launched the social factors taskforce announced by Guy Opperman when he was pensions minister (see WHiP Issue 97). This is aimed at helping trustees to manage and measure financially material social considerations relating to scheme investments.

There has been no official public announcement but reports say that the group will, among other things, seek to identify reliable data sources and other resources. It will operate for one year and deliver guidance and recommendations to the industry.

Protected pension age – High Court decision

In *Devon and Somerset Fire and Rescue Authority v Howell and HMRC*, the High Court ruled that an individual did not satisfy the condition for a protected pension age under the Finance Act 2004 that "on 5th April 2006 the member had an actual or prospective right under the pension scheme to any benefit from an age of less than 55". This was because the right in question was subject to employer consent.

The employer was willing to consent to the early retirement pension but only if paying it would not amount to an unauthorised payment under the Act (i.e. because it would be paid earlier than the individual's normal minimum pension age, which would be 55 if no protected pension age applied).

The judge found that although the legislation was ambiguous, the explanatory notes to the Act were clear on the point. This decision is also consistent with HMRC guidance, which states that in order to have an actual or prospective right to draw benefits, the member must have had an "unqualified right" (a term not used in the legislation) to take benefits.

Employer-related investment

The Pensions Regulator has published new guidance reminding trustees and employers of the restrictions on using pension scheme funds for employer related investments and the risk of criminal prosecution.

The Regulator's longer statement on this subject from November 2010 remains on its website and so still seems to be applicable.

Work and Pensions Committee DB inquiry

The Work and Pensions Committee has launched an inquiry that will review DB pension schemes and the challenges and opportunities they pose to members, trustees, employers and the Pensions Regulator.

A call for evidence is open until 26 April 2023. It asks for input on the following questions:

- *"Is the right regulatory framework in place to enable open DB schemes to thrive?*
- *Is there sufficient capacity in the buy-out market to meet demand from DB schemes? If not, what are the alternatives?*
- *What should the Pensions Regulator (TPR) do to improve the quality of trustee boards?*
- *What, if any, further steps should be taken to encourage DB scheme consolidation?*
- *Are there any circumstances in which consolidation should be mandatory?*
- *Do the recent improvements in funding levels change the future role of DB schemes in UK pension provision?*
- *How should scheme surpluses be treated? For example, should they remain in the scheme or be shared between employers and scheme members? Are the issues different for open and closed schemes?*
- *What are the implications of improved funding levels for the Pension Protection Fund?*
- *Should changes be made to the Pension Protection Fund (PPF), Financial Assistance Scheme (FAS) or Fraud Compensation Fund (FCF) to improve outcomes for members?"*

FOR FURTHER INFORMATION, PLEASE CONTACT

Daniel Gerring
Partner, Head of Pensions
daniel.gerring@traverssmith.com
+44 (0)20 7295 3341

Susie Daykin
Partner, Acting Head of Pensions
susie.daykin@traverssmith.com
+44 (0)20 7295 3247

Niamh Hamlyn
Partner
niamh.hamlyn@traverssmith.com
+44 (0)20 7295 3287

David James
Partner
david.james@traverssmith.com
+44 (0)20 7295 3087

Andy Lewis
Partner
andrew.lewis@traverssmith.com
+44 (0)20 7295 3444

Dan Naylor
Partner
dan.naylor@traverssmith.com
+44 (0)20 7295 3454

Nick White
Knowledge Counsel
nick.white@traverssmith.com
+44 (0)20 7295 3472

10 Snow Hill | London EC1A 2AL | T: +44 (0)20 7295 3000 | F: +44 (0)20 7295 3500 | www.traverssmith.com