TRUSTEE KNOWLEDGE UPDATE

Legal Update – February - April 2022

LEGISLATION

GMP fixed rate revaluation

(21 February 2022)

These regulations confirm that the rate of fixed rate revaluation for GMPs will be 3.25% per annum with effect from 6 April 2022 (down from 3.5%). Other regulations confirm the rates for the revaluation of earnings factors for GMPs from 6 April 2022 (the rate for tax year 2021-22 is 4.5%) and for GMPs in payment to increase by 3% from 6 April 2022.

Finance Act 2022 - NMPA

(24 February 2022)

The Act increases normal minimum pension age (NMPA) from 55 to 57 on 6 April 2028 (other than for members of uniformed public service schemes). It includes provisions giving a lower protected pension age (PPA) in certain circumstances (where the protection provisions in relation to previous increases in NMPA do not already apply).

The new provisions will enable a member to have a PPA from 6 April 2028 where either the "entitlement condition" or "block transfer condition" are met. Where a condition is met then the member will have a PPA of the higher of 55 and the age from which the member had an actual or prospective right to any benefit immediately before 4 November 2021.

The "entitlement condition" will be met if:

- immediately before 4 November 2021 the member had an actual or prospective right under the scheme to any benefit from an age of less than 57,
- the rules of the scheme on 11 February 2021 included provision conferring such a right on some or all of the members, and
- the member either had such a right under the scheme on 11 February 2021 or would have had such a right had the member been a member of the scheme on 11 February 2021.

Broadly the "block transfer condition" is met if the member is a member of the transferee pension scheme as a result of:

- a block transfer on or after 4 November 2021 from a pension scheme (the "original pension scheme") where the entitlement condition is met,
- a block transfer from the original pension scheme on or before 3 November 2021 where immediately before the transfer the member had an actual or prospective right under the original pension scheme to any benefit from an age of less than 57 and the rules of the original pension scheme met the other requirements of the entitlement condition, or
- a subsequent block transfer.

A "block transfer" is a transfer, in a single transaction, of all of the sums and assets held under a pension scheme which relate to the member and at least one other member of the scheme.

The Act also protects a PPA between age 55 and 57 where the member makes a recognised transfer to another scheme. The PPA will only be in relation to the transferred sums or assets (or benefits derived from them).

Comment:

The increase in NMPA was first announced in 2014 and so comes as no surprise. The new PPA provisions are complex, particularly in relation to transfers, and trustees and scheme administrators will need to keep detailed records to ensure member expectations are met. Member communications will need to be updated to reflect the change.

Collective Defined Contribution Schemes Regulations

(10 March 2022)

These regulations come into force on 1 August 2022. They include details of the application process, the criteria for authorisation, valuation and benefit adjustments, ongoing supervision and disclosure and publication requirements for CDC schemes.

Regulations have also been made making changes to existing pensions legislation to ensure that CDC schemes operate as intended and the interests of members are protected.

Comment

While the regulations are aimed at schemes with single or connected employers, the Government notes a wider interest in CDC and has confirmed that it aims to consult later this year on a package of prospective design principles and approaches to accommodate new types of CDC schemes.

Pension Schemes (Conversion of Guaranteed Minimum Pensions) Act 2022

(28 April 2022)

This Act (which has received Royal Assent and is awaiting official publication) makes amendments to the GMP conversion provisions of the Pension Schemes Act 1993 (including removing the requirement to notify HMRC) and introduces regulation-making powers in relation to the conditions for converted benefits and the identity of any “relevant person” required to consent to conversion. The amendments are intended to allow the statutory GMP conversion mechanism to operate more effectively.

CONSULTATIONS AND DRAFT LEGISLATION

Facilitating investment in illiquid assets

(30 March 2022)

This document includes the Government’s response to consultation on charge cap reform, a policy consultation on “disclose and explain” proposals for illiquid investments, a consultation on draft regulations on Employer Related Investments (ERI) in authorised master trusts and the Government’s response to a call for evidence on consolidation in the DC pensions market.

Charge cap reform

The Government has noted the mixed response to its proposal to exempt “well-designed” performance fees from the charge cap. It now intends to engage further with stakeholders, and to explore how some of the concerns might be addressed in the design of the policy and intends to consult on principle-based draft guidance alongside any consultation on draft regulations.

Illiquid investments – disclose and explain

The Government is consulting on proposals to amend the Statement of Investment Principles provisions to require DC schemes to disclose and explain their policies on illiquid investment for their default arrangements. It also proposes to introduce regulations that require DC schemes with over £100 million in total assets to publicly disclose and explain their default asset class allocation in their Chair’s Statement. The consultation closes on **11 May 2022**.

ERI in authorised master trusts

The Government is consulting on draft regulations which will apply to authorised master trusts with 500 or more active employers. The definition of ERI will be amended for these schemes so that restrictions on ERI will only apply in relation to investment in the scheme funder, the scheme strategist, or a person who is connected with or an associate of the scheme funder or the scheme strategist. The consultation closes on **11 May 2022**.

DC consolidation

The Government confirms that it will not be introducing any new regulatory requirements with the sole purpose of consolidating the DC market in 2022. However, it will work closely with TPR to monitor the impact of the value for members' assessment.

HMRC

GMP equalisation newsletter

(6 April 2022)

HMRC has published new guidance on GMP equalisation and conversion.

On equalisation in relation to past transfers, HMRC confirms that:

- A top-up transfer payment can usually be paid within the existing tax regime. The top-up can be made to the original receiving scheme or a different scheme.
- Where a lump sum top-up payment is made direct to the member it could be authorised as a relevant accretion, small lump sum or winding-up lump sum subject to the relevant conditions being met.
- Transfers made before 6 April 2006 are not "recognised transfers" and so cannot give rise to a relevant accretion.
- Where the top-up payment is made direct to the member (or member's estate) tax is due on 75% of the lump sum. Where the lump sum is paid to another individual following the member's death the lump sum will be wholly taxable.
- Paying a top-up transfer in respect of a member could result in a loss of fixed or enhanced protection if the additional transfer is not a "permitted transfer". That is likely to be the case if the receiving scheme is not a money purchase arrangement and so care is needed before making such a top-up transfer.

On conversion, the guidance says:

- For deferred members there are likely to be impacts on the treatment of their annual allowance in the tax year of conversion, as well as in all subsequent tax years. HMRC will undertake further work in this area.
- Also for deferred members, the effects of GMP conversion may cause the loss of Lifetime Allowance (LTA) protection. Schemes wishing to use the conversion method should consider the tax implications that may arise for these members.
- For pensioners:
  - conversion of a pensioner's benefit would not constitute benefit accrual for annual allowance purposes nor trigger the loss of fixed protection, if all benefits in the arrangement have been crystallised;
  - conversion of a pensioner's benefit could (if it involves an immediate jump in pension rate) result in an extra benefit crystallisation event for LTA purposes.
- Members who became deferred before 6 April 2006 should still remain outside annual allowance provisions provided the new benefit has the same actuarial value following conversion.

Comment:

The equalisation guidance focusses on past transfers-out and is generally helpful and broadly aligns with the approach we have been advising. The section on conversion is less developed and many points are still under consideration. HMRC is continuing to work through the issues with the Industry Working Group and will provide further updates in future pension schemes newsletters.

Managing Pension Schemes Newsletter

(11 April 2022)

This newsletter includes information and detailed guidance for pension scheme administrators on migrating pension schemes registered on the pension schemes online service to the managing pension schemes service.

THE PENSIONS REGULATOR

A step-by-step example of following the climate change guidance

(23 February 2022)

TPR has produced an illustrative example of the types of steps that trustees and their advisers could consider taking as they work through the requirements of the climate change regulations. The process starts with the trustees and their advisers developing a series of training workshops to enable them to understand the scale of the work involved and what additional training is needed.

Guidance on the Stronger Nudge

(3 March 2022)

TPR has updated its guidance on DC communicating and reporting to include a section on directing members to Pension Wise guidance. This guidance is intended to assist trustees in complying with the requirements of the amendments to the Disclosure Regulations which come into effect on 1 June 2022. The guidance broadly tracks the requirements of the regulations, suggesting practical ways in which trustees might comply and commenting that "*trustees may wish to consider encouraging members to take some time to fully consider their decision before confirming that they wish to opt out*".

Conflict in Ukraine

(4 March 2022, updated 22 March)

TPR has issued a statement on its expectations for schemes in light of the conflict. Trustees must be vigilant, but TPR warns against "hasty, uninformed decisions". Given the fall in value of Russian assets, and the need to monitor and comply with sanctions and governance requirements, TPR suggests that trustees may decide that divestment is in line with fiduciary duties. However, there are likely to be practical challenges to disposing of those assets in the short term. **Guidance from the Financial Conduct Authority** on ensuring the requirements on entities that are subject to sanctions should be considered.

In addition to investment, the statement flags the need to consider:

- the impact on employer covenant;
- any short-term liquidity needs;
- whether scheme cyber safety procedures remain adequate;
- the potential for heightened risk of financial crime, including scams; and
- whether to communicate with members (e.g. to urge them not to rush any decisions themselves).

Annual Funding Statement 2022

(27 April 2022)

TPR's Annual Funding Statement emphasises the importance of robust risk management across all areas of a scheme's assets, liabilities and covenant and says that trustees should consider their long-term funding target (LTFT) and their journey towards it. Trustees must remain alert to their scheme's funding position and covenant changing very quickly, especially in the current environment of *"high inflation, high energy prices, higher interest rates and slower* *economic growth*". The statement also includes specific advice for schemes currently undertaking a valuation.

MISCELLANEOUS

FRC [Consultation on proposed changes to AS TM1](#)

(14 February 2022)

The Financial Reporting Council is consulting on proposed changes to Actuarial Standards Technical Memorandum 1 to reflect the proposed requirements for pensions dashboards to display Estimated Retirement Income illustrations (ERIs). The proposed changes to AS TM1 include standardising the accumulation rate assumptions and the form of annuitisation at retirement for SMPIs and ERIs to ensure consistency between providers. The consultation closes on **6 May 2022**.

PLSA [Additional clarity on HMRC's GMP equalisation guidance on tax treatment](#)

(20 April 2022)

HMRC has provided an update (through its GMP equalisation Industry Working Group) on the tax treatment of the interest element of GMP equalisation arrears and transfer top-ups. Following "*inconsistency in practice*", HMRC has authorised the PLSA to confirm the position in advance of HMRC clarifying the issue in a future newsletter.

In HMRC's view, for pensions tax purposes the interest payment should be treated as interest made in respect of a late payment of pension instalments; it is likely to be "*yearly interest*" for tax purposes; and an obligation to withhold income tax is unlikely to arise under tax legislation (unless the payee usually lives abroad).

Comment:

The effect of this useful HMRC update is that in most instances, schemes should not deduct tax at source on the interest payment: and members should be told they are responsible for accounting to HMRC for any tax due.

Dates for diaries: Trustee training remains one of the most important ways of ensuring that trustees have the knowledge and understanding required to perform their duties. CMS runs regular trustee training days. If you would like to be updated of upcoming dates or have any other enquiries about this course, please contact Megan Thorogood (megan.thorogood@cms-cmno.com).