Essential pensions news

Introduction

*Essential Pensions News* is our monthly update, covering the latest developments in the pensions world, and providing relevant information in a new ‘at a glance’ format.

TPR publishes consultation on ‘Regulating defined benefit pension schemes’

The Pensions Regulator (TPR) has published for consultation its revised code on defined benefit (DB) regulatory strategy and funding policy. The consultation paper sets out how TPR intends to approach its new statutory objective ‘to minimise any adverse impact on the sustainable growth of an employer’.

The code focuses on the issue of ensuring a balance between the needs of schemes and those of employers in the light of the new objective. TPR acknowledges that sustainable growth will have different meanings for employers depending on their circumstances. Trustees should consider the new objective from the standpoint of their particular employer.

The consultation ends on *February 7, 2014* and will be of interest to all employers providing DB benefits. The final version of the code is expected to be in force by *July 2014*.

The draft revised code sets out a number of key funding principles which are applicable to all DB schemes:

- Balance between the scheme and employer – TPR considers that a strong, ongoing employer together with an appropriate funding plan is the best support for a well-governed scheme. It states that ‘Trustees will need to assess and have a good understanding of the employer’s position and plans...
(including how any plans for sustainable growth will enhance the employer covenant)’ and should ‘be prepared to use the flexibilities within the system to reflect the employer’s circumstances without compromising what they believe to be an appropriate outcome given the needs of the scheme’.

• Integrated approach to risk management – trustees should take an integrated approach to risk management, focusing on the three areas of employer covenant, investment and funding, with the employer covenant being the ‘cornerstone’ of the trustees’ approach.

• Trustees should understand how these risks interact and where ‘significant intentional changes’ are made or occur to any one of these elements, TPR expects the elements to be adjusted to ensure that members are not disadvantaged.

• Reaching funding targets – trustees should aim for any funding shortfall to be eliminated as quickly as the employer can reasonably afford, but in doing so they should seek balance ensuring that their decisions do not:
  – unreasonably impact on the employer’s growth and investment plans and its long term ability to support the scheme
  – compromise the needs of the scheme or
  – involve taking excessive or unnecessary risks.

• Working collaboratively – trustees and employers should work collaboratively in an open and transparent manner to reach funding solutions that achieve a balance between the needs of all parties.

• Proportionality – trustees should act proportionately, taking into account issues such as scheme size, employer size and strength of the employer covenant, in carrying out their functions.

• Taking risks – not all risks need to be eliminated but trustees taking funding or investment risks should be confident that the employer is able to mitigate likely adverse outcomes over an appropriate period with appropriate contingency plans.

Other key funding principles include taking a long term view, effective scheme governance and ensuring that the scheme is treated fairly amongst competing demands on the employer in a manner consistent with its equivalent creditor status.

View the consultation document.

TPR updates its detailed auto-enrolment guidance

Of interest to all employers is the updated version of TPR’s detailed auto-enrolment guidance notes published on November 28, 2013. Included is a significant amount of new material reflecting specific points raised with TPR by employers and their advisers during the first year of the regime.

The guidance now also reflects the technical changes to the auto-enrolment legislation that came into force on November 1, 2013. Two new guidance notes 10 and 11 provide expanded coverage of the statutory requirements about providing information to workers and automatic re-enrolment respectively.
TPR publishes guidance on asset-backed contribution arrangements

TPR has published guidance on asset-backed contribution arrangements (ABCs). An ABC may help employers meet their scheme funding obligations, and thus could be of interest to employers and trustees of defined benefit or hybrid schemes.

An ABC is a contractual arrangement between trustees and one or more entities within the sponsoring employer’s group. ABCs involve regular payments to the scheme for the duration of the arrangement, with the payment stream deriving from an underlying asset.

TPR recognises that such innovative funding mechanisms may help employers meet their scheme funding obligations and can, in certain circumstances, improve a scheme’s security by providing access to assets not previously accessible.

The guidance confirms the steps TPR considers trustees should take before entering into a new funding arrangement. It also sets out what TPR considers to be the key risks of which trustees should be aware when undertaking such a structure, including:

- awareness of the risk to the scheme on an employer’s insolvency
- the impact on the scheme’s risk profile
- the potential illegality of such arrangements.

The guidance confirms that, where appropriate, TPR will challenge trustees’ decisions to enter into ABCs, operating a risk-based and proportionate approach on a case-by-case basis.

PPF publishes its 2014/15 Levy Determination and key dates for contingent asset certification

The Pensions Protection Fund (PPF) has published its Levy Determination and contingent asset certification deadlines. This will be of interest to all employers providing defined benefits.

On December 10, 2013, following its September 2013 consultation, the PPF published its 2014/15 Levy Determination and confirmed that the 2014/15 pension protection levy estimate will be £695 million, as originally proposed.

The 2014/15 levy is the last to be set under the first three year period of the new levy framework implemented in 2012/13.

The Determination, which sets out the Levy Rules, confirmed that the levy scaling factor and the scheme based levy multiplier will remain unchanged from the previous year at 0.73 and 0.000056 respectively.

The PPF has also confirmed the outcomes for the issues it consulted on and set out the key dates and deadlines for 2014/15 levy year.
In July 2013, the PPF announced that it will be appointing Experian as its new insolvency risk provider from 2015/16, the start of the next three year period for the levy, replacing current provider, Dun & Bradstreet.

The PPF is now working with Experian to develop a new scoring methodology with the intention of improving transparency for levy payers. In addition, the PPF is working with an industry steering group to evaluate the new scoring methodology as part of a broader review of the levy. Development work continues and the PPF intends to consult in Spring 2014.

The PPF recognises that schemes will need time to understand the new model and there will be a familiarisation period during which schemes and employers can challenge the data held by Experian before it is used in the levy.

**Dun & Bradstreet methodology change**

After the levy consultation was published, the PPF became aware that Dun & Bradstreet, as the current insolvency risk provider for the PPF, will be introducing a new scoring methodology for the UK from the beginning of 2014 and would not be able to supply UK scores on the existing basis. However, the PPF has decided that it will not make changes to the Levy Rules because of this issue, which means the new scores will be included in the 12 month average calculations in the same way as the previous failure scores.

**Key dates and deadlines**

The Determination sets out the deadlines that schemes must meet for levy-reducing measures to be taken into account by the PPF in the 2014/15 levy year:

<table>
<thead>
<tr>
<th>Action</th>
<th>Deadline</th>
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<tr>
<td>Submission, via TPR's online Exchange system, of scheme return information used to calculate levy</td>
<td>5pm, March 31, 2014</td>
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<tr>
<td>Deadline for contingent asset certification and re-certification</td>
<td>5pm, March 31, 2014</td>
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<tr>
<td>Deadline for certification of deficit reduction contributions</td>
<td>5pm, April 30, 2014</td>
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<tr>
<td>Deadline for certification of full block transfers</td>
<td>5pm, June 30, 2014</td>
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Employers and trustees should bear in mind that putting in place contingent assets can be a lengthy process and this should be started as soon as possible in the New Year.

View the Determination.
Implications for pensions of the Chancellor’s Autumn Statement

On December 5, 2013, the Chancellor delivered his Autumn Statement. There was nothing unexpected from the pensions point of view, with confirmations being given that individual protection 2014, drawdown pensions and increases to State pension age will proceed as previously announced.

As expected, the Autumn Statement confirmed the following:

• Individual protection 2014 (IP2014) will be introduced under the Finance Bill 2014, providing transitional protection for those adversely affected by the drop in the lifetime allowance from £1.5 million to £1.25 million from 2014/15.

• Individuals with IP 2014 will have a personalised lifetime allowance equal to the value of their pension savings on April 5, 2014, subject to an overall maximum lifetime allowance of £1.5 million. This personalised allowance will remain at the same level unless the standard allowance rises above it, in which case the personalised allowance would revert to the standard lifetime allowance. If the value of benefits crystallised exceeds the individual’s personalised allowance, the excess will be subject to the lifetime allowance charge. A claim for IP 2014 must be made by 5 April 2017, and an individual who has claimed IP 2014 will not be subject to restrictions on further contributions or accruals. IP 2014 can be claimed in addition to either fixed protection or fixed protection 2014.

• Drawdown pensions – there will be no change in rates. Following a review of the capped drawdown tables and the underlying assumptions, the Government Actuary’s Department has confirmed that current rates are a reasonable match to market annuity rates, and so the Government has decided not to make any changes to the drawdown tables.

• Increases to state pension age (SPA) – SPA will increase further to reflect rising life expectancy. Currently, SPA is due to rise to age 66 for both sexes between March 2019 and September 2020 under changes made by the Pensions Act 2011. Provisions in the Pensions Bill 2013 will see further increases, with SPA due to rise to age 67 between April 2026 and April 2028.

The Pensions Bill 2013 will also require the Government to carry out periodic reviews of SPA to take into account changes in life expectancy and such other factors as the Secretary of State considers relevant. The first review is due by May 2017. The Government has now decided that the core principle underpinning the reviews will be that people should expect to spend up to a third of their adult life in receipt of the state pension.

• Additional state pension: NICs top-up – in advance of the introduction of a single-tier state pension in April 2016, the Government announced it will create a new category of voluntary National Insurance contributions (NICs) (to be known as class 3A) which will be available for certain pensioners who want to top up their NIC record and secure higher additional state pension before its abolition. In order to be eligible to pay class 3A NICs, an individual must reach SPA before April 6, 2016. The new system will be introduced in October 2015 and further details will be announced in due course.

• Basic state pension – under the ‘triple lock’ formula, the basic state pension will rise by 2.7 per cent from April 2014, matching the increase in the Consumer Prices Index for the year to September 30, 2012. This will mean a weekly increase of £2.95 for an individual entitled to receive a full basic state pension.
PPF publishes Issue no. 4 of Technical News

The November newsletter from the PPF includes the following updates:

- GMP equalisation update – all schemes transferring to the PPF since June 1, 2013 have been required to perform equalisation calculations on all guaranteed minimum pensions (GMPs) during the scheme’s assessment period. Further guidance is provided here.

- Pension sharing on divorce – dealing with Pension Sharing Orders (PSOs) and taking account of these in compensation calculations is a recurring issue for the PPF. It is particularly important that a pension debit member’s debit is revalued at the assessment date, and full details are provided to the PPF on how any pension credits are awarded under the scheme rules. Online guidance is currently being updated and should be available in the New Year.

- Money purchase benefits – the PPF confirms that it will continue to treat money purchase benefits under its established procedures until such time as any legislation is implemented relating to the new definition of money purchase benefits.

View the newsletter.

TPR updates its statement ‘Identifying your statutory employer’ following Olympic Airlines case

In a previous update, we reported that the High Court had held that it had jurisdiction to wind up the principal employer, Olympic Airlines, of the Olympic Airlines SA Pension & Life Assurance Scheme (the Scheme), in England under European insolvency legislation, notwithstanding that the company was already in liquidation in Greece.

The High Court held that Olympic Airlines had an establishment in England on the date of the winding-up petition, as the company remained in possession of its London office and had retained the services of two employees on an ad hoc basis. Further, there was no reason why the Court should not exercise its discretion to make the order since, in the circumstances, only a winding-up order would suffice.

However, a decision handed down on June 6, 2013, in Trustees of the Olympic Airlines SA Pension & Life Assurance Scheme v Olympic Airlines SA [2013], the Court of Appeal (CA) overturned the High Court decision, disagreeing with the first instance ruling that the High Court had jurisdiction in the UK to wind up Olympic Airlines.

The significance for the scheme is that the Greek liquidation did not trigger a PPF assessment period, since foreign liquidation proceedings do not count as ‘qualifying insolvency events’ under section 127 of the Pensions Act 2004. Without a qualifying insolvency event, the Scheme is barred from entering the PPF. In recently revised guidance, TPR has urged the trustees of DB pension schemes with an overseas employer to monitor the extent of that employer’s economic activity in the UK, particularly if there is a risk of insolvency.

TPR has now updated its online statement, ‘Identifying your statutory employer’, in the light of the CA decision. We understand that the Olympic case is subject to an application for permission to appeal to the Supreme Court. In the meantime, TPR’s guidance encourages trustees to consider:
• the impact of having an overseas employer, including as to the scheme’s ongoing funding position

• the enforcement of debts in the employer’s jurisdiction

• the risk of assets moving out of the UK

• the scheme’s ability to enter the PPF.

View the updated statement.

The draft Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2014

The DWP has published the above draft Regulations, proposing changes in relation to auditor independence for very large schemes, trustees’ liability following annuity purchase and a correction to the employer debt regulations. The consultation period runs until January 10, 2014.

The proposed amendments are:

• a relaxation of the scheme auditor independence requirements under the Occupational Pension Schemes (Scheme Administration) Regulations 1996. Some very large multi-employer schemes are unable to comply with the auditor independence requirements because of their size and the limited number of audit firms able to audit such large schemes. The proposed amendment is to exempt trust-based, multi-employer schemes where at least two thirds of the employers are not associated or connected and there are at least 500 participating employers in the scheme

• a clarification of the circumstances in which trustees may obtain a discharge after securing benefits under an insurance or annuity contract under the Occupational Pension Schemes (Discharge of Liability) Regulations 1997. The proposed amendment puts beyond doubt the options available in securing short service benefits, including a tax-free commencement lump sum

• a cross-referencing error is corrected in regulation 10 of the Occupational Pension Schemes (Employer Debt) Regulations 2005.

View the consultation paper and draft Regulations.
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