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Essential pensions news

Updater

October 2018

Introduction

Essential Pensions News covers the latest pensions developments each month.

Budget Day confirmed as October 29, 2018

In a break from tradition, the Chancellor will give this year's Budget statement early and on a Monday, *October 29*.

Hopefully, given Theresa May's upbeat closing speech at the recent Conservative Party Conference, the Chancellor will resist considering pension savings as an easy target for raising further Government funds, and will find no reason to again cut pensions tax relief for members. Predictably though, rumours are starting to appear in the pensions and wider media and the Chancellor's description of pensions tax relief as "eye-wateringly expensive" has given rise to fears that further reductions may be planned, either by reducing the annual allowance or by introducing a flat rate for all savers, regardless of their marginal rate of income tax.

Constant tweaking of the tax system adds to pensions complexity and reduces confidence in retirement saving. Unsurprisingly, HMRC has reported a significant increase in tax receipts following the reductions in the annual allowance over recent years, with the number of members exceeding the allowance reaching 16,590 in 2016/17 and paying a total of £517 million in tax by way of the annual allowance charge. Much of this will be due to the operation of the tapering allowance for higher earners, and the fact that many relatively modestly paid DB scheme members may now find themselves caught.

In the same tax year, HMRC sources show that £102 million was paid in tax charges for those who exceeded the lifetime allowance, which was then £1 million.

PPF publishes draft 2019/20 levy determination

The Pension Protection Fund (PPF) has published for consultation its draft levy rules for 2019/20. The consultation period ends at 5pm on *October 25, 2018*.

Although the PPF describes the last 12 months as a "challenging environment", the PPF says its overall funding position remains strong and most schemes will notice little change in the 2019/20 levy year. Despite the highest level of claims in its history over the past year, the PPF has set its levy estimate for 2019/20 at £500 million, which is a 10 per cent reduction from the £550 million intended to be collected in 2018/19.

In terms of the detailed rules contained in its levy determination, the PPF has concluded that the changes made for 2018/19 (notably with the publication of revised standard forms for contingent asset certification in January 2018) are working well. It is therefore proposing only limited adjustments for 2019/20. It does not intend to adjust the levy scaling factor or scheme-based levy multiplier.

- *Re-execution requirements*. As regards contingent assets which include a fixed sum maximum amount (including those where the fixed sum element is within a "lower of" formula) (Fixed Caps), these will be recognised for levy purposes only where they are executed on the new standard forms. Where schemes with agreements on Fixed Caps on the old standard forms (i.e. pre-January 2018) do not re-execute the agreement and certify it as a new or recertified contingent asset, no levy credit will be given for the 2019/20 levy year.

  Schemes with guarantees that are limited only by relation to the funding position of the scheme – whether section 75 or section 179 funding – do not need to re-execute their agreement.

  The proposed deadlines for certification are *March 31, 2019*, for online actions and *5pm Friday March 29, 2019*, for hard copy documents.

- *DB consolidation vehicles*. A major new addition to the draft rules relates to the anticipated creation of commercial defined benefit (DB) consolidation vehicles in the coming years, the facilitation of which was proposed in the DWP's March 2018 White Paper.

  Meanwhile, the PPF is aware that some consolidators may emerge under the current regime. If they are established as occupational pension schemes (and would therefore be PPF-eligible) the PPF proposes a new levy rule based on existing methodology allowing for charging on consolidators in the 2019/20 year.

- *ECJ decision in Hampshire*. In relation to the recent ECJ Hampshire decision (see our September 2018 update), which held that members were entitled to an individual minimum guaranteed compensation level of 50 per cent of scheme benefits on employer insolvency, the PPF says it is considering the ruling carefully, but expects the number of members affected to be very small. Once the implementation approach is clear, it will consider whether any changes are needed to its section 179 valuation guidance and consult appropriately.

View the Levy Consultation Document (47 pages).

FCA publishes rules on improving quality of pension transfer advice

On *October 4, 2018*, the Financial Conduct Authority (FCA) published a policy statement (58 pages) on improving the quality of pension transfer advice.

In its statement, the FCA sets out feedback to its March 2018 consultation, confirming that most respondents largely agreed with the FCA's proposals. Key changes include raising the qualification levels for pension transfer specialists and imposing a requirement for a suitability report to be provided to the member, regardless of whether the advice is to transfer or not.

The guidance on two advisers working together and assessing attitude to transfer risk, and the requirement to prepare a suitability report in all circumstances came into force on *October 4, 2018*.

The perimeter guidance when providing triage services to prospective clients comes into force on *January 1, 2019*. The FCA had concerns that some firms were straying into the provision of personal recommendations, rather than offering generic, balanced information on the advantages and disadvantages of a pension transfer.

Changes to the pension increase assumptions come into force on *April 6, 2019*. The remaining changes will come into force on *October 1, 2020*.

The FCA will also carry out further work on the different charging structures used in pension transfer advice. If it concludes that changes are needed, it will consult further in the first half of 2019. In the meantime, the FCA encourages firms to check that they meet its current requirements on disclosing charges and managing conflicts of interest.

The final rules are set out in Appendix 1 to the policy statement.

Comment

Some respondents to the consultation had suggested that the requirement for a financial adviser to provide a suitability report (regardless of whether the advice was to transfer) would add significantly to the costs of providing advice, and that this would ultimately be passed onto consumers. There were also concerns voiced that it may deter people from seeking advice, and make it unaffordable for others.

From *October 1, 2018*, financial advisers have been required to show a member considering a DB transfer how the transfer value they are offered by the scheme compares with an estimate of the lump sum needed to buy an equivalent pension at retirement to the one being surrendered. It is likely that for savers ten years away from retirement, the transfer value will on average be around only 55 per cent of the "full value" of the DB pension being given up.

Where advisers are reliant on contingent charging (resulting from the successful recommendation of an alternative savings product) they may need to do more work in order to justify giving impartial advice, and this may increase the cost to the consumer. However, it could also result in a more balanced charging structure where the same fee is payable regardless of any product recommendation. This could avoid future complaints and the award of high compensatory sums, such as that of Mr C, reported in our cases section below.

Master trusts: further documents for authorisation process published by Pensions Regulator

We noted in our September 2018 update that TPR had published several template forms and guidance notes in advance of the new master trust authorisation regime coming into force on *October 1, 2018*.

TPR has published two further materials that master trusts will be required to use when applying for authorisation, which are as follows

- *Financial information checklist* – this is designed to highlight the key items of information applicants must provide in order to satisfy the statutory financial sustainability requirement. Applicants must cross-refer to the relevant page or paragraph numbers in their supporting documents (such as their business plan or costs, assets and liquidity plan) indicating the component requirements are met.

- *Application index* – this is intended to index all documents supporting an authorisation application. The completed application index must clearly signpost the mandatory information required under the legislation, as well as identifying particular documents or sections of documents containing additional information showing how a master trust scheme meets the statutory requirements.

TPR's master trust forms and guidance can be accessed here.

Master trusts:
TPR finalises master trust supervision and enforcement policy

TPR has published the final version of its Master trust authorisation: Supervision and enforcement policy, together with its response to the July 2018 consultation on the draft policy.

A number of changes have been made to the policy following the consultation, including

- *Supervisory intensity* – the draft policy had proposed that TPR would monitor compliance through a combination of "routine supervision" and "additional supervision" and these terms have now been removed. The policy now refers to a varying "intensity of supervision" in line with TPR's assessment of risk posed by individual master trusts. The intended level of supervisory intensity will be confirmed by TPR to each master trust separately.

- *Periodic scheme evaluations* – following a periodic scheme evaluation, TPR will write to the trustees communicating its view of the master trust, the key risks from a regulatory perspective and the proposed interactions with the master trust for the next regulatory period. Material changes to TPR's views will be communicated periodically.

- *Master trust assurance framework (MTAF)* – TPR notes that, in contrast to the MTAF, the authorisation and supervision regime is mandatory and broader in scope. Although compliance with the MTAF may go some way towards demonstrating that a scheme meets the authorisation criteria, it will not guarantee continued authorisation. TPR will no longer update the list of schemes that have met the MTAF standards.

Two additional pieces of guidance will be published shortly

- Guidance on the supervisory return.
- Guidance on notifying triggering and significant events, including the type and severity of events that should be notified.

Master trusts: HMRC updates its scheme administration guidance

HMRC has updated various guidance documents following the implementation of the new master trust regime on *October 1, 2018*.

The guidance now includes the new HMRC requirements when confirming information regarding master trusts. The key changes include

- *Manage a registered pension scheme*: this guidance covers how administrators should inform HMRC about scheme changes, and now includes a section dedicated to master trusts. It confirms that if an existing scheme's structure changes to become (or cease to be) a master trust then the administrator must tell HMRC within 30 days. If the scheme is becoming a master trust, the administrator must also apply for authorisation from TPR.

- *Updated notification form: form APSS578*, is to be used to report when a scheme becomes (or ceases to be) a master trust scheme, and has been updated with a new section "Becoming a master trust".

- *Apply to register a pension scheme*; this guidance explains how an administrator can apply to register a new pension scheme with HMRC. It has been updated to confirm that if HMRC are being informed about a new pension scheme that is to be registered as a master trust, the administrator must also apply to TPR for authorisation at the same time. HMRC will not register a master trust until it has been so authorised.

HMRC publishes issue no. 37 of its Countdown Bulletin

Of interest to schemes which were formerly contracted-out on a DB basis is the latest edition of HMRC's Countdown Bulletin.

The Bulletin contains administrative guidance on: financial reconciliation; data quality issues to be avoided in scheme returns; and the introduction of a trustee approval process where there is a contribution adjustment action as a result of scheme reconciliation.

View the Bulletin.

Master trusts: replacement DWP regulations issued

The Occupational Pension Schemes (Master Trusts) Regulations 2018 were formally made on *September 25, 2018*, and replace the previous regulations of the same name made on *September 5, 2018*, which have now been withdrawn.

There are few material differences between the two versions of the regulations and the explanatory memorandum states that, owing to an administrative error, the wrong version of the regulations was mistakenly placed before the minister to sign.

Material changes in the new regulations are

As before, the Regulations came into force on *October 1, 2018* with the exception of Regulations 23(2)(b)(i) and (ii) (relating to fraud compensation) which come into force on *April 1, 2019* (not April 6, 2019, as in the previous version).

Additional provisions are included in Regulation 13 (supervisory return: contents). These relate to details TPR may require in relation to accounting information from insurance companies with which the trustees or managers of the scheme hold policies of insurance or annuity contracts.

Pensions Ombudsman – Dr G (PO-18953): death benefits – guidance provided on giving reasons for exercise of discretion

The Pensions Ombudsman (TPO) has upheld a complaint against a scheme administrator who refused to award death benefits to the partner of a deceased scheme member.

After a previous TPO direction to reconsider the award of these death benefits, the administrator accepted that, although the complainant Dr G was potentially eligible for both a dependant's pension and lump sum death benefit under the scheme rules, discretion had been used to determine that she should not receive either form of death benefit.

TPO determined that, while the scheme administrator had taken into account all the relevant factors in making its decision, it had not given reasons for reaching its conclusion. TPO noted

"Documented reasons need not themselves be lengthy but should be sufficient to convey to the reader an understanding of the factors which have been given some weight. It may also be appropriate to record why some factors have been discounted. The reasons should be sufficient to enable an aggrieved party to know whether there are grounds to challenge the decision."

TPO then directed the scheme administrator to reconsider whether the complainant should be entitled to death benefits, to fully document its rationale for the decision, and to communicate that decision to the member within 21 days of it being made.

Comment

This is an important decision and should be noted by all trustees and administrators making decisions using their discretion in relation to the award of benefits under scheme rules.

It sheds further light on TPO's views regarding the giving of reasons by decision-makers when exercising discretionary powers in a pension scheme. The key points are contained in the passage quoted above from paragraph 22. Essentially, this suggests that, even where

trustees document in their minutes the appropriate relevant factors that have been taken into account in reaching a discretionary decision, they must ultimately specify which factors in particular led them to reach that decision. This will not always be straightforward, and some trustees may fear that going into greater detail in this fashion may open their decisions to legal challenge.

TPO took a similar stance in his determination in *Allen* (2002), where he commented that he could see no good reason why the trustees of the scheme could not disclose the trustee minutes to Mr Allen, subject to the need to preserve the privacy of individual members. He has also commented generally that, as a matter of good administrative practice, trustees should provide reasons for their decisions to those with a legitimate interest in the matter. He added that not knowing the basis on which an adverse decision is taken is itself an injustice.

However, in *Wilson v Law Debenture* (1994), Rattee J held that, in the absence of evidence of impropriety, the Court will not force pension scheme trustees to give reasons why they made a discretionary decision.

In *Smith* (2004), TPO confirmed that trustees' supply of reasons for their decisions covered both those on questions of fact and exercises of their discretion. Trustees should bear in mind the reality of TPO's likely view and remember that it is possible they might ultimately have to disclose the minutes of their meetings to members. It should be noted, though, that TPO cannot overturn a decision simply because he or she would not have reached the same conclusion. For TPO to interfere, the trustees' decision-making process must be flawed in some way.

Given that a member might be particularly interested in having disclosed the trustees' reasons for a decision at the centre of a dispute or complaint, scheme rules can be drafted to limit the extent to which trustees are obliged to give reasons for discretionary decisions. They do not, however, usually exclude completely the trustees' option to give reasons. Trustees may wish to check their scheme rules for wording providing that the trustee is not obliged to give reasons unless required to do so by a court, tribunal or ombudsman of competent jurisdiction, and seek advice about any potential changes.

We will be looking in more depth at recent Ombudsman determinations in our October briefing.

View the Determination.

Adviser ordered by Ombudsman to compensate complainant to extent necessary to put him in pre-transfer position – Ref: DRN9316495

Summary

The customer (Mr C) complained to the Financial Ombudsman Service(the Ombudsman) that the advice he had received from Portafina LLP (the Adviser) in relation to a potential transfer from his occupational defined benefits scheme to a self-invested personal pension (SIPP) was unsuitable.

Although the Adviser had recommended *against* the proposed transfer, the Ombudsman ruled that its advice had not set out Mr C's options fully and in an understandable manner. It was fair and reasonable in the circumstances for the Adviser to compensate Mr C to the extent necessary to put him in the position he would have been in had he not transferred,

and assuming that he had taken his pension at age 60. In addition, a £400 award was made for distress and inconvenience, and interest was ordered at 8 per cent for any compensation payment delayed beyond 90 days.

Facts of the case

In 2011, Mr C sought advice from the Adviser on a potential transfer from his DB occupational pension scheme (the Scheme), in order to *"make home improvements and create an emergency fund"*.

After obtaining information from the Scheme, the Adviser wrote to Mr C in November 2011, setting out the benefits that would be payable. As the critical yield required on the transfer value to match the Scheme was 10.1 per cent, it recommended that Mr C did not transfer. If Mr C still wanted to transfer, the Adviser could help but it would have to treat him as an insistent customer. In that case, Mr C would need to complete an insistent customer form which it included with the advice letter. It would then, it said, send him a copy of its detailed advice report.

Mr C signed a form saying he still wanted to transfer, and also the insistent customer form on November 17, 2011, which confirmed he understood he would be worse off in retirement if he proceeded with the transfer. Later the same month, a Pension Release Report was sent to Mr C which confirmed the transfer would be against advice and that he would therefore be treated as an insistent client.

The report then outlined the different options that were available in respect of income and tax-free cash, but did not recommend a scheme pension as Mr C had indicated he wished to have access to his tax free cash entitlement, with no income being withdrawn. It also recorded that Mr C had a moderately cautious attitude to risk but that he had told the Adviser that he was aware of the down falls in taking his benefits but due to his current circumstances still wished to do so.

The Adviser then recommended a transfer to a SIPP, invested in various funds. Mr C, through his representative, subsequently complained to the Adviser that the advice to transfer was unsuitable, but this complaint was not upheld and it was subsequently referred to the Ombudsman.

The adjudicator noted

- The regulator's Conduct of Business Rules said that firms should start on the assumption that advice to transfer will not be suitable.
- The advice was unsuitable given Mr C's particular circumstances.
- The Adviser had not complied with the regulator's Principles for Business in treating Mr C as an insistent customer and arranging the transfer.
- The Adviser should have refused to accept the SIPP business.

The Ombudsman's provisional determination

The Ombudsman held that

- If the Adviser had properly explained the risks, particularly in light of the use of the tax-free cash and that a new conservatory was not a necessity, it was unlikely Mr C would have insisted on transferring against advice.
- The SIPP funds selected presented a higher degree of risk than that Mr C had agreed to take.
- It appeared that Mr C's circumstances subsequently changed and he had a real need to take his pension around the time he reached aged 60 (that is, prior to the Scheme's normal retirement age of 65). Therefore the calculation of compensation should be based on an assumption that Mr C had taken his benefits on the date he reached his 60th birthday.
- The calculation should be made in line with guidance as updated by the Financial Conduct Authority in October 2017, as at the date of the Ombudsman's final determination.
- The Adviser could also contact the DWP to obtain Mr C's contribution to SERPS/S2P in order to include a "SERPS adjustment" in the calculation.
- Mr C should be paid £400 for distress and inconvenience.

In addition, the Ombudsman recognised that the SIPP investments were likely to be illiquid. If the Adviser was unable to buy the investments from the SIPP, it should pay Mr C an upfront lump sum equivalent to five years of SIPP fees, which was a reasonable period for the SIPP to be closed. Mr C should be asked to provide an undertaking to the Adviser to repay it any future SIPP returns.

Compensation must be paid to Mr C within 90 days of the date the Adviser's receipt of his acceptance of the ruling. Simple interest at a rate of 8 per cent p.a. must be added for any settlement time in excess of 90 days, except where delays in the SERPS adjustment calculation were attributable to the DWP.

The parties were then invited to provide any further evidence or arguments for the Ombudsman to consider before he made his final decision.

The Ombudsman's final determination

Neither party having provided any further evidence for the Ombudsman to consider, he decided it was fair and reasonable for the Adviser to calculate and pay compensation to Mr C as set out in the provisional decision.

Mr C was asked to accept or reject the decision by *September 1, 2018*.

View the determination.

Comment

This decision will set alarm bells ringing with advisers and it seems particularly harsh. It appears that individuals are becoming increasingly absolved from responsibility for decisions relating to their own finances. Are advisers now expected to delve into the relative merits of an individual's spending plans for funds they have been advised *not* to transfer? In terms of pensions flexibility and accessing DB benefits under the pensions freedoms regime, it seems likely that advisers will be more reluctant to provide the required advice to DB members before a transfer of "safeguarded benefits".

On the other hand, the Ombudsman's view was that the adviser here should have set out in very clear terms the relative advantages and disadvantages of the complainant's proposals to access his pension fund for the tax-free cash and reinvest in a SIPP. Advisers should take note. It is also probably unwise to advise against a transfer but then in the same communication to tout for the ongoing business if the member decides not to follow that advice.

As we note in our article above, the FCA has published rules on improving the quality of pension transfer advice and changes started to come into effect on *October 4, 2018*, with more to follow on *January 1, 2019*.

Pensions Ombudsman – Mrs S (PO-17636): death benefits – trustees failed to give proper consideration to continued interdependency between member and widow

The Deputy Pensions Ombudsman (DPO) has upheld a complaint where scheme trustees decided against paying a member's widow death benefits as they failed to find any interdependency between her and the member.

The member and his widow had been separated but were jointly responsible for a mortgage and had shared care of their two children. Following a series of discussions, and after obtaining legal advice, the trustees decided to pay a death-in-service lump sum and dependent's pension to the member's children. They did so after finding that there was no interdependency between the member and his widow.

The DPO agreed that the trustees had taken the relevant scheme rules into account and had made attempts to consider all the relevant information. In trying to reach a "proper decision" they had correctly noted the widow as a potential beneficiary. They had similarly acted correctly in assessing whether the member's circumstances had changed since he signed a nomination form naming his wife as sole beneficiary in 2004.

However, the DPO held that the trustees had erred in finding that there was no interdependency between the member and his widow. This was a finding that no reasonable trustee could make in light of all the evidence, especially the undissolved marriage, joint mortgage liability and shared responsibility for the care of two children.

The DPO directed the trustees to reconsider their death benefits decision, but taking into account the continued interdependency between the member and his widow. However, the DPO stated she did not intend to bind the trustees' future decision, but they should provide the widow with supporting evidence of how it was reached. Further, they should pay the widow £500 for the distress and inconvenience caused.

View the Determination.

Comment

Most trustees will be aware of the Court of Appeal's decision in the 1999 case of *Edge v Pensions Ombudsman* which held that there is a duty for trustees to act impartially, in a manner which they consider to be fair and equitable, having regard to the different classes of beneficiary, and also between individuals within those classes.

This determination of the DPO highlights the risks for trustees when faced with competing claims for the payment of death benefits. However, the *Edge* judgment does make it clear that trustees are entitled to prefer the interests of one beneficiary over another when exercising a discretionary power. What was also highlighted in the *Edge* decision is the duty to exercise the power for its intended purpose, giving proper consideration to relevant matters and excluding from consideration those which are irrelevant. The preference for one potential beneficiary over another is merely the result of the proper exercise of the discretionary power.

If trustees do not take into account all relevant matters – as the DPO found in this case – their decision may be challenged. However, the DPO did emphasis that she did not intend to bind the trustees' reconsideration, and it may well be the case that, on looking at the case again, their previous decision stands.

Pensions Ombudsman – Mr R (PO-19086): death benefits – refusal to award full widower's pension to unmarried partner did not amount to unlawful discrimination following Brewster

TPO has rejected a complaint by a deceased member's surviving partner that a pension scheme's decision to award him a nominated partner's pension, rather than a full widower's pension, amounted to discrimination following the Supreme Court decision in *Brewster*, on which we reported in our update for February 2017.

In *Brewster*, the Supreme Court decided unanimously that a cohabiting surviving partner was eligible for a survivor's pension. The Court held that as there was no requirement for married members or those in civil partnerships to nominate their spouse/civil partner as beneficiary, it was difficult to justify a need for cohabitees to do so (the cohabitees having satisfied the other requirements in terms of financial dependence and the relationship's stability).

Mr R had cohabited with the late member for many years, but they had not married. When the scheme introduced survivors' pensions for nominated partners on January 1, 2007, the member had nominated Mr R for a partner's pension in the event of her death.

After the member died, the scheme awarded Mr R a partner's pension, which provided significantly lower benefits than a widower's pension as it was calculated by reference only to the member's pensionable service post-dating January 1, 2007. Mr R claimed that the decision in *Brewster* meant that pension schemes were prohibited from discriminating between married and unmarried couples.

TPO disagreed. He held that the *Brewster* decision had established that a requirement for a cohabiting, unmarried member to complete a nomination form in order to have an eligible survivor's pension in place amounted to unlawful discrimination, as there was no similar requirement for a married member. This did not apply in Mr R's case, as the member had nominated him for a partner's pension, which he was receiving.

In effect, Mr R was in the favourable position that Ms Brewster had sought to be in when pursuing her case. *Brewster* did not suggest that qualification criteria in pension schemes were discriminatory where they properly distinguished between different categories of beneficiary.

TPO found that neither the Human Rights Act 1998 nor Brewster supported Mr R's claim that non-married couples were entitled to receive the same pension benefits as married couples. Mr R had been awarded the survivor's pension benefits to which he was entitled under the scheme's governing rules.

Comment

It seems the complainant here confused the issues of meeting the qualifying criteria for a survivor's benefit with the question of how that benefit should be calculated. The Supreme Court decision in *Brewster* confirms that the imposition of a nomination requirement on an unmarried member that does not apply to a married member is unlawful discrimination. It does not, however, indicate levels of benefits that may apply to different categories of members.

Nevertheless, it may be only a matter of time before a similar case reaches the courts, based on alternative arguments. Trustees of schemes where surviving partners' benefits that are less generous than those awarded to widows or widowers (or surviving civil partners) should keep an eye on developments in this area.

Pension developments in the pipeline

Below is a summary of pension changes expected in the near future in addition to those outlined above. Changes since the last update are in red

Steria (Pension Plan) Trustees Ltd v Sopra Steria Ltd and others: High Court claim seeking declaration regarding the requirement to obtain a section 37 certificate. The case was heard on May 22, 2017. The claim has been stayed until June 18, 2018, with both parties having been ordered to update the court before April 5, 2018.

Hearings in the High Court in relation to *GMP inequality* issues in relation to Lloyds Banking Group schemes began in July 2018. The judgment is *expected very soon*.

Clarification of trustees' fiduciary duties in relation to longer term investment risks – the DWP has published its full response to the 2017 Law Commission report, *Pension funds and social investment*. The FCA intends to consult in the first quarter of 2019 on a single package of rule changes relating to the Government's suggested changes.

EMIR – new requirements to the exchange variation margin relating to derivatives applied from March 1, 2017. If an investment manager uses over the counter derivatives, schemes should check that arrangements are in place for trustees to comply with the new regime. A further EMIR temporary exemption extension for pension scheme arrangements applied to August 16, 2018, and has now expired. With two extensions already granted, there is no possibility of further extending the temporary exemption. In the absence of a further temporary exemption, ESMA expects national competence authorities not to prioritise their supervisory actions towards entities that are expected to be exempted again relatively shortly.

The DC scheme Chair's annual governance statement must be completed within 7 months of the end of the scheme year. For example, schemes with a March 31 year end must submit the statement by October 31, 2018. TPR issued trustee guidance on the statement in November 2017 and the guidance was updated in June 2018 and further in September 2018.

IORP II – the expected transposition date is January 12, 2019. The DWP is shortly expected to provide more detail on how it intends to implement the Directive. Brexit should be achieved by March 29, 2019. The UK will then leave the EU from the effective date of withdrawal agreement or, failing that, 2 years after giving Article 50 notice unless European Council and UK unanimously decide to extend period.

New regulations – the Occupational Pension Schemes (Administration and Disclosure) (Amendment) Regulations 2018, came into force April 6, 2018, setting out new requirements to improve *transparency on DC benefit costs and charges to members*.
They do not apply to DB schemes providing only DC AVCs. Members must be provided with access to information via a website with 7 months of the scheme's year-end date – meaning the earliest date is November 6, 2018, for schemes with year-end April 6, 2018.

VAT – HMRC's existing practice on VAT and pension schemes is to continue indefinitely. Employers should consider taking steps to preserve (or enhance) their pensions-related VAT cover.

Auto-enrolment – cyclical re-enrolment now applies within a 6-month window related to the employer's staging date. e.g. employers with a July 1, 2015, staging date must complete the cyclical re-enrolment process between April 1, 2018, and September 30, 2018. Total minimum contributions were increased to 5 per cent (of which minimum employer contribution of 2 per cent) from April 6, 2018. Total minimum contributions will increase to 8 per cent (of which minimum employer contribution of 3 per cent) from April 6, 2019.

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