ALLEN & OVERY

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Pensions: what's new this week

Welcome to your weekly update from the Allen & Overy Pensions team, bringing you up to speed on all the latest legal and regulatory developments in the world of occupational pensions.

Auto-enrolment: admin following 6 April increases | Government confirms support for dashboards | Are allowances pensionable pay? *Booth* | Latest HMRC newsletter | EIOPA stress test | FSCS compensation

Auto-enrolment: admin following 6 April increases

Trustees and employers may wish to check that all consequential matters have been dealt with following the increase in minimum auto-enrolment contributions from 6 April 2019:

- The schedule of payments may need to be updated to accurately record the rate of contributions payable to the scheme by or on behalf of members; employers should also confirm that the correct contributions are being deducted under payroll processes (also bearing in mind the changes to qualifying earnings thresholds, where relevant).
- Employers must have reasonable grounds, when certifying that their DC scheme meets the quality tests, to be of the opinion that the quality tests will be met throughout the period of the certificate. Employers should review the validity of their certificate in relation to the increases in minimum contributions. Some employers may need to alter the expiry date of their current certificate so that it expires on the day after the increase, and recertify on the basis of the higher contribution rates.

More information is available in guidance from the Pensions Regulator.

Government confirms support for dashboards

The government has confirmed its plans to facilitate pensions dashboards, following a recent consultation (WNTW, 10 December 2018). The Single Financial Guidance Body (now the Money and Pensions Service) will lead the delivery of the initial phase, as well as developing its own, non-commercial dashboard. In order to operate, dashboards need to connect to supporting digital architecture, the build and delivery of which will be overseen by the industry delivery group. Initially, only the non-commercial dashboard and dashboards by FCA-regulated organisations will be permitted to connect, although access may be broadened in future.

The government has asked schemes to prepare in order to be ready to provide data within a three-to-four year timeframe – it intends to legislate to require schemes to provide data to members via a dashboard (the case for any exemptions remains under consideration). The obligation will be imposed using a staged timeline, with large DC schemes among the first to be required to participate. However, the government anticipates that some large DC schemes, including master trusts, will be ready to supply data on a voluntary basis in 2019/2020 – the industry delivery group will decide whether this is permitted. The government's view is that initially only basic information should be made available on dashboards, with more complex information being added later.

The government has also confirmed that the rollout will include a single 'pension finder service', and that it is working to include state pension data on dashboards. The costs of establishing the digital architecture, governance framework and the non-commercial dashboard will be funded by existing levies and government funding, but some costs will fall on schemes.

Are allowances pensionable pay? *Booth*

The High Court has recently considered whether various allowances paid to firefighters form part of their pensionable pay: *Booth v Mid and West Wales Fire Rescue Authority*. The case was an appeal against a determination by the Pensions Ombudsman (TPO) about whether certain allowances paid to firefighters were pensionable under the rules of three different schemes. The definitions were not identical; key issues for the judge were whether the allowances were paid in relation to the performance of the member's role, and whether allowances were permanent or temporary.

Justice Fancourt concluded that allowances paid to three members were pensionable (although for one member this was only from a particular date), but an allowance paid to the fourth member was not pensionable. When considering whether an allowance was permanent or temporary in relation to the rules of two schemes, he concluded that permanent did not mean pay or emoluments that must continue to the end of the member's employment. Rather, permanent meant pay other than allowances or emoluments that were temporary 'in the sense of being occasional, one-off, irregular or for a limited period of time only.' 'Permanent' and 'temporary' were construed in the context of employment as a firefighter generally lasting for the whole or the majority of a member's working life; the way in which the role is performed can change over time.

The judge also commented on TPO's procedures, and the provision of information to parties. In this case, the respondent was unaware until TPO's draft determination was released that certain additional communications had been sent to TPO by a complainant, and had not been provided with copies of the correspondence. The respondent then made a number of further submissions after the draft determination, that were taken into account in the final determination.

While acknowledging that in some cases it may be inappropriate for confidential or sensitive material to be shared (this being a decision for TPO), Justice Fancourt commented that TPO should have a general practice of sharing with the parties, before a draft decision is issued, the documents and communications received. TPO's website currently states:

> 'During an investigation we will share all the information we receive with all parties and give them an opportunity to comment. We will not withhold information from other people involved in the case or communicate on a 'strictly confidential' or 'without prejudice' basis.'

Latest HMRC newsletter

A new working group has been formed to consider the tax issues arising in relation to GMP equalisation, according to HMRC's latest Pension schemes newsletter (issue 108). No indication has been given of when guidance or further updates may be expected. The newsletter also includes an update for master trusts, guidance on using the Managing Pension Schemes and Pension Schemes Online services and detailed information about reporting obligations for schemes operating relief at source. HMRC has also updated its annual allowance calculator to include the 2019-2020 tax year.

EIOPA stress test

The European Insurance and Occupational Pensions Authority (EIOPA) has launched its third biennial stress-testing exercise. The exercise is designed to assess the resilience of DB, DC and hybrid schemes to an adverse market scenario, to analyse how impacts are transferred to the economy, and to assess schemes' exposure to environmental, social and governance (ESG) risks.

The exercise includes all EEA member states with occupational pension scheme sectors exceeding EUR500 million in assets. The UK is currently a participating state; the Pensions Regulator will identify and contact schemes to participate in the exercise (schemes are to submit data by 19 June 2019). The results are expected to be published by the end of 2019.

QROPS: new HMRC regulations

Two new sets of regulations coming into force on 25 April 2019 make changes in relation to the overseas transfer charge. This charge is payable in relation to certain QROPS transfers, and in some circumstances may become repayable at a later date.

The first set of regulations specifies requirements for claims for repayment (including the information to be provided), the procedure for processing claims, and the person to whom the repayment must be made. It also includes provision for appeals.

The second set of regulations makes changes in the following four areas: the information a member needs to provide to a QROPS scheme manager where there is a request for an onward transfer; the information to be provided on making a claim for repayment; accounting for the overseas transfer charge; and assessments of unpaid charges.

FSCS compensation

Certain maximum compensation limits under the Financial Services Compensation Scheme (FSCS) have been increased. In particular, the limit for investment claims and claims about advice on pensions transfers has been increased to GBP85,000 from GBP50,000.

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