ALLEN & OVERY

4 February 2019

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.

Reminder: auto-enrolment changes from 6 April | ICO: new blog on 'no deal' Brexit | Latest HMRC newsletter | FRC consults on FRS 102: multi-employer DB plans | TPR: latest DC trust report | Stewardship: FRC, FCA propose changes | PLSA 2019 voting guidelines, 2018 AGM Review

Reminder: auto-enrolment changes from 6 April

The second staged increase in the level of minimum contributions for DC schemes and personal pension schemes under the auto-enrolment framework applies from 6 April 2019. To remain a qualifying scheme for auto-enrolment purposes, arrangements must meet the new requirements. This is also relevant for defined benefit schemes that meet the quality test by reference to the minimum DC requirement.

Under the changes, for DC schemes and GPPs, employer contributions must be a minimum of 3% and jobholder and employer contributions must total a minimum of 8%, based on qualifying earnings (different rates apply for alternative earnings measures).

The planned increase in contributions has been known for some time, and employers and trustees of affected arrangements should already have a plan in place to ensure compliance with the new requirements from April. If you have not already addressed this, please contact your usual A&O adviser as soon as possible.

Formerly contracted-out DB schemes

In connection with the abolition of contracting-out, formerly contracted-out DB schemes were granted a transitional easement in relation to the quality requirements – where the conditions were met, these schemes were entitled to use a scheme-level cost of accruals test (for more information, see WNTW, 14 March 2016). The easement is available until 5 April 2019 (unless it ceased to apply at an earlier date following an actuarial report that there was a material difference in the cost of providing benefits accruing for different groups of relevant members).

Employers of schemes which currently benefit from the easement should already have sought advice on compliance with the quality requirements from April. If this is relevant to your scheme, please contact your usual A&O adviser as soon as possible.

ICO: new blog on 'no deal' Brexit

The Information Commissioner has published a new 'myth-busting' blog post on transfers of personal data to and from the EU in the event of a 'no deal' Brexit, with links to associated guidance. In particular, it notes that in the event of a 'no deal' Brexit, no 'adequacy agreement' will be in place to cover data transfers between the EU and the UK, so businesses will need to have contractual clauses in place to permit any such data transfers on an ongoing basis.

Latest HMRC newsletter

HMRC's latest Pension Schemes Newsletter confirms that it is considering pensions tax issues arising from the *Lloyds* GMP equalisation decision and will provide information and advice on this 'in the coming months'. To read more about the case, see our briefing Equalising pensions for GMPs? High Court says 'yes'.

The newsletter also contains a correction to previous guidance given to scheme administrators on reporting non-taxable death benefits, and information for schemes operating relief at source (including a draft version of the annual return of information declaration).

Master trusts are also reminded to apply for authorisation from TPR before the end of March 2019, and that a master trust that operates without authorisation may be de-registered by HMRC. However, a scheme would not automatically be de-registered – in reaching its decision, HMRC would consider the facts of each case, and the impacts of de-registration on the employers and members.

FRC consults on FRS 102: multi-employer DB plans

The Financial Reporting Council (FRC) is consulting on amendments to financial reporting standard FRS 102, in relation to accounting for defined benefit (DB) pension schemes.

Section 28 (Employee Benefits) provides that multi-employer DB plans are to be accounted for on a defined contribution (DC) basis, where there is insufficient information to account on the DB basis. Currently, it does not specify what an entity participating in a multi-employer DB plan needs to do to transition to DB accounting when sufficient information becomes available. The FRC is therefore proposing to specify the accounting treatment to be used for the transition – the proposed change in accounting would take place from the date on which sufficient information becomes available (unless this would require a restatement of information). The FRC has stated that the proposals would not affect the ongoing accounting for the DB plan, and would not require new information. However, it may result in the initial recognition of the net DB liability being brought forward.

The proposals are expected to be effective for accounting periods beginning on or after 1 January 2020, with early application permitted. The consultation closes on 31 March 2019.

TPR: latest DC trust report

The Pensions Regulator (TPR) has published its annual report on the DC landscape, based on scheme return information. A summary of the key findings (in graphs) is also available, as well as a TPR blog post on the findings.

According to the report, there continues to be a significant increase in the number of members contributing to DC schemes (and an increase in the value of assets), which reflects an increase in membership of the largest schemes (5000+ members), particularly master trusts. TPR has highlighted that 99% of members of DC schemes with 12 or more members use the default investment strategy. There has also been a significant increase in the value of transfers-in to DC schemes.

Stewardship: FRC, FCA propose changes

Changes are proposed to investment stewardship, according to new consultations by both the FRC and the Financial Conduct Authority (FCA). Stewardship is concerned with responsible and engaged investment to promote long-term, sustainable value, and includes activities such as monitoring assets and service providers, and engaging issuers and holding them to account. The new consultations are part of a package of measures, including changes to corporate governance and the government's recent changes to the obligations of trustees in relation to pension scheme investments, which come into force later this year (to read more, see WNTW of 17 September 2018).

Stewardship Code: the FRC is consulting on a new UK Stewardship Code containing higher expectations for stewardship and more rigorous reporting by signatories, which would be subject to increased oversight by the FRC. The Code is not mandatory, but a number of pension funds and trustees are signatories to the current Code. Key proposals include:

- A new, broader definition of stewardship meaning that the Code would include investment decision-making and investments other than listed equities.
- To sign up to the Code, signatories would be required to submit a Policy and Practice Statement to the FRC, which would need to be reviewed annually (and updated if applicable). They would also need to produce an annual, publicly available, report on activities taken to comply with the Code. To reduce duplication, the FRC envisages that signatories could signpost to reports produced to meet other obligations, provided that they also meet the requirements of the Code. The FRC would review the disclosures made.
- Asset owners (including pension scheme trustees) and asset managers would be obliged to ensure that (material) environmental, social and governance (ESG) issues are taken into account. For asset owners, this would be via investment and stewardship mandates.

The consultation closes on 29 March 2019.

FCA: The FCA has released a consultation paper on proposals to improve shareholder engagement (which relates to the implementation of the revised Shareholder Rights Directive), and a discussion paper on building a regulatory framework for effective stewardship (press release available here).

- *Consultation paper:* The consultation proposals relate to increasing transparency through shareholder engagement policies and investment strategies of asset managers and life insurers, and board approval for related party transactions by listed UK companies. The proposals may be of interest to pension scheme trustees as institutional investors. The consultation closes on 27 March 2019. Note that the FCA has stated that the consultation is based on the existing UK and EU regulatory framework, and if there is a 'no deal' Brexit it would expect to return with revised proposals.
- *Discussion paper:* the FCA is seeking input on how to encourage the institutional investment community to engage more actively in stewardship, as well as aiming to generate discussion on: what is effective stewardship; minimum expectations for financial services firms investing on behalf of clients and beneficiaries; higher standards to be pursued by the UK; and the public and private benefits of improved stewardship. Comments are due by 30 April 2019.

PLSA 2019 voting guidelines, 2018 AGM Review

The Pensions and Lifetime Savings Association has published its 2019 Corporate Governance Policy and Voting Guidelines, together with its 2018 AGM Review (which indicates an increase in shareholder dissent, including an increase in dissent on remuneration at FTSE 100 companies).

The guidelines set out voting best practice for pension schemes and/or their asset managers, and has been updated to reflect the new UK Corporate Governance Code and other developments.

Contact information

Helen Powell	0203 088 4827
PSL Counsel, London	Helen.Powell@allenovery.com
Ruth Emsden	0203 088 4507
PSL, London	Ruth.Emsden@allenovery.com