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Current issues

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Articles this month:

Consultation-outcome Blitzkrieg

The Department for Work and Pensions (DWP) announced the outcome of *four* pensions consultation exercises on 26 February 2018.[1] They herald important, and mostly welcome changes to the rules on—

- 'section 75' debts in multi-employer schemes;
- DC-to-DC transfers without consent;
- disclosure of DC costs, charges and investments by occupational schemes; and
- transfers of contracted-out rights without consent.

The amendments are, largely, effective from 6 April 2018.

Section 75 employer debts

There will be a new option for dealing with the 'section 75' debts that arise in multi-employer schemes when a participating employer ceases to employ active members.[2] This is known as an 'employment-cessation event' (ECE). If the necessary conditions are satisfied, the employer will, subject to the agreement of the scheme's trustees, be able to enter into a 'deferred debt arrangement' (DDA). It will then be as though no ECE had occurred, so that there will be nothing to trigger an employer-debt calculation at that time.

The conditions for a DDA are essentially that the scheme is not in the process of being assessed for entry into the Pension Protection Fund (PPF); and that the trustees believe it unlikely that such an assessment (triggered by employer insolvency) will commence, or that the employer covenant will weaken materially, in the year after the DDA is put in place. In a change to the original consultation proposals, there will be no requirement for a 'funding test'.

The DDA will come to an end if—

- the deferred employer and trustees agree to end it;
- the deferred employer becomes (or is treated as having become) insolvent;
- all of the other participating employers become insolvent (or deferred employers);
- the deferred employer undergoes a form of restructuring other than those described in the Employer Debt Regulations (in which another participant takes on all of the employer's assets and liabilities);

[1] Feel free to mutter something metaphorical about the idiosyncratic frequencies of bus arrivals.
[2] <www.gov.uk/government/consultations/the-draft-occupational-pension-schemes-employer-debt-amendment-regulations-2017>.

- the trustees bring it to an end because of the employer's failure to comply with its funding obligations or duty to disclose information, or a material weakening in its covenant is imminently likely to occur (in the following year).
- the deferred employer employs an active member;
- the scheme begins to wind up; or
- the scheme as a whole ceases to have active members (i.e. there's a 'freezing event').

The first five occurrences in the list above will be ECEs, so that an employer debt calculation will be required. The last three will not trigger a debt calculation (in a wind up the trustees can choose when to assess the debt).

DC-to-DC transfers without consent

It will be possible to transfer money purchase rights, without member consent, from one occupational pension scheme to another, if—

- the receiving scheme is an authorized master trust;
- both schemes are sponsored by companies in the same corporate group, and the transferred members are (or were) employed by a group company; or
- the transferring trustees (or employer, if it has sole power to effect the transfer) have taken advice about the transfer from a person with appropriate pension scheme management expertise, who is independent of the receiving scheme (with a particular focus on whether the adviser has within the preceding year been paid by the receiving scheme for advisory, administration or investment services, by a provider of such services to the receiving scheme, or by the receiving scheme's sponsor (or another company in its group).[3]

Restrictions on member-borne charges will continue to apply when members' rights are transferred without their consent from one default arrangement under an occupational pension scheme to another, or between default arrangements within the same scheme. However, the revised amendments clarify that the charging restrictions do not apply when a member who was not invested in a default arrangement, as a result of having expressed an investment choice within the preceding five-year period, is transferred without his or her consent to another non-default arrangement.

Disclosure of DC costs, charges and investments by occupational schemes

Trustees of occupational pension schemes providing defined contribution (DC) benefits will have to expand their annual governance ('chairs'') statements to include information about the charges and transaction costs for each fund choice, and provide an illustration of the compounded effects of the charges and costs over time.[4] The information will have to be made freely and publicly available online. Members will also be entitled to request additional details of their investments in pooled funds; the information given will have to cover the member's current investment choices and be not more than six months old. The availability of these newly required pieces of information will have to be brought to members' attention in annual benefit statements. The DWP has published guidance that trustees will have to take into account when producing the required 'cumulative effects' illustration, and when publishing charges-and-costs information online.

The changes will not affect governance statements for scheme years ending before 6 April 2018. The ability to request pooled fund information will come into force on 6 April 2019. The exemptions in the current legislation continue to apply, so that the changes will not affect, for example, arrangements for executives, public sector schemes, and those for which the only money purchase benefits are derived from additional voluntary contributions (AVCs).

[3] <www.gov.uk/government/consultations/bulk-transfers-of-defined-contribution-pensions-without-member-consent-draft-regulations>.
[4] <www.gov.uk/government/consultations/occupational-pensions-improving-disclosure-of-costs-charges-and-investments>.

Transfers of contracted-out rights without consent

It will be possible to transfer active, deferred and pensioner members' contracted-out rights, without their consent, to a salary-related pension scheme that has never itself been contracted out, provided the transferring and receiving schemes relate to the same employer, or to two employers within the same corporate group; or when the transfer is the result of a financial transaction between unrelated employers.[5] The receiving scheme will have to mirror the transferred GMPs, both in amounts and terms of payment. For a transfer of section 9(2B) rights, the transferring scheme actuary will have to certify that the rights acquired by the members in the receiving scheme are '*broadly, no less favourable*' than those transferred; and those acquired benefits must themselves be ones that would have been capable of satisfying the '*statutory standard*' for *post*-5 April 1997 contracting out (the 'reference scheme test').

Needless to say, there is more to the changes being introduced under each heading than we could provide in the time and space available. Look out for more details in due course.

Royal Mail agrees CDC plan, legislation permitting

Royal Mail Group has agreed, in principle, to introduce a collective defined contribution (CDC) scheme, subject to the necessary legislative changes.[6] The Royal Mail Pension Plan (RMPP), the Group's existing defined benefit (DB) scheme, will close to future pension accrual on 31 March 2018.[7] Transitional arrangements will cover the period between the closure of the DB pension arrangement and the establishment of the CDC scheme. In the meantime, Royal Mail and the Communication Workers Union will lobby the Government to pass the legislation necessary for their plans to come to fruition, offering to act as a pilot project for the introduction of CDC schemes, if necessary.

The benefits targeted by the proposed CDC scheme would include pensions of one-eightieth of pensionable pay for each year of service, with pre-retirement revaluation and increases in payment linked to the Retail Prices Index. A linked cash-balance arrangement will provide a lump sum equal to three-eightieths of pensionable pay for each year of service: members will have the option of contributing an additional 1 per cent of pensionable pay, matched by Royal Mail, in order to increase this lump sum. The basic member contribution rate will be 6 per cent of pensionable pay; Royal Mail will contribute 13.6 per cent.

Until the installation of the CDC scheme, a new cash-balance section of the RMPP will (from 1 April 2018) provide its members with a lump sum equal to 19.6 per cent of their pensionable pay for each year of service. This will allow members to minimize the need to commute existing DB pension rights in order to obtain pension commencement lump sums.[8] The lump sum rights will be subject to discretionary revaluation, pre-retirement, investment performance permitting (the aim will be to provide increases of two percentage points above the CPI). Members will contribute 6 per cent of pensionable pay, and Royal Mail 15.6 per cent (13.6 per cent to provide the lump sum, and an additional 2 per cent for death and ill-health benefits).

Royal Mail will also, from 1 April 2018, increase its contributions to the Royal Mail Defined Contribution Plan (RMDCP), into which new joiners since 31 March 2008 have been enrolled. The default contribution structure will

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[5] <www.gov.uk/government/consultations/bulk-transfer-of-contracted-out-pension-rights-without-member-consent-draft-regulations>.

[6] *Agreement reached between Royal Mail and the CWU and trading update*, London Stock Exchange, 1 February 2018 <www.londonstockexchange.com/exchange/news/market-news/market-news-detail/RMG/13518283.html>; *Negotiators' Settlement: Agreement between Royal Mail Group and the Communication Workers Union Regarding Guiding Principles of Employment Security and a Mutual Interest Approach to Future Challenges and Opportunities* <www.cwu.org/wp-content/uploads/2018/02/LTB-59.18-Attachment-2017-18-Agreement-pre-ballot.pdf>.

[7] There have been no new DB members since 31 March 2008, which is also when the benefit structure switched from one based on final salary to one based on career average revalued earnings. Benefits up to 31 March 2012 are provided from the Royal Mail Statutory Pension Scheme, the unfunded scheme set up by the Government upon the privatization of the Royal Mail. The RMPP provides benefits accrued since 1 April 2012.

[8] Royal Mail is in discussion with the Cabinet Office in the hope that it will make consequential changes to the Royal Mail Statutory Pension Scheme to allow this to work as desired.

be 6 per cent from members, with 10 per cent from the employer (lower tiers are optional). Members of the RMDCP with at least five years' service will be given the option of joining the cash balance arrangement.

PPF bridging pension regulations finalized

The Government has finalized regulations that amend how the Pension Protection Fund (PPF) deals with bridging pensions.[9] The compensation rules will now reflect the benefits payable under the the individual schemes admitted to the PPF. The changes took effect on 24 February 2018.

A bridging pension is a temporary pension paid by some occupational pension schemes to bridge the gap between retirement and commencement of the State pension, so that the pensioner's total (i.e. occupational plus State) pension income remains roughly level throughout retirement.

Previously, compensation payments were based on a member's pension entitlement at the date that a pension scheme entered a PPF assessment period. This meant that members who were entitled to a bridging pension at the scheme assessment date had their PPF compensation fixed at that higher rate for life. In contrast, if the scheme had not entered a PPF assessment period, the member's pension would have decreased when the bridging pension ceased to apply under the scheme rules (usually when the member reached State pensionable age).

In November 2017, the Government consulted for the second time on how the PPF should deal with bridging pensions.[10] The finalized Regulations, in force from 24 February 2018, amended the PPF compensation rules to take forward the Government's (revised) proposal that the PPF should mirror individual scheme rules.

In light of feedback received on the draft provisions during the consultation, the Government has amended the regulations so that:

- the terminology used to describe the overall pension being delivered is now a 'step-down pension' rather than a 'bridging pension', with the temporary additional element being referred to as the 'bridging element';
- they no longer provide for late retirement increases in respect of the bridging element (as there was concern that doing so could give rise to an unauthorized payment if the payment was subsequently reduced); and
- the bridging element does not continue after the member's death.

[9] *The Pension Protection Fund (Compensation) (Amendment) Regulations 2018*, SI 2018 No. 95.
[10] See Current Issues December 2017, <www.hymans.co.uk/news-and-insights/research-and-publications/publication/current-issues-december-2017/>.

Government to explore case for extending civil partnerships

There has been some comment in the press about a new Bill that 'could add several billion pounds to the liabilities of company pension schemes'.[11] This is a reference to the Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill 2017-19, which is a Private Members' Bill, but has the support of the Government.[12]

The relevant clause would oblige the Government to review civil-partnerships law to see what changes could be made to bring about equality between same-sex and other couples, to conduct a public consultation exercise, and to report back to Parliament with proposals. The Home Office Minister taking the lead on the Bill said that the Government is 'committed to resolving this issue.'[13]

Two somewhat-related Bills have been introduced by members of the House of Lords.[14]

It is not clear what 'resolution' of the issue would mean. In the course of describing the research that the Government intends to carry out, between now and September 2019, the Minister said that it is still considering 'whether phasing out civil partnerships for same-sex couples is the best way forward.'

2018/19 Lifetime allowance confirmed

Regulations have been made that will increase the standard lifetime allowance from £1 million to £1,030,000 for the 2018/19 tax year.[15]

A provision was inserted into the *Finance Act 2004* in 2016 requiring the annual indexation of the standard lifetime allowance. It has effect for the 2018/19 tax year onward, so that the allowance for the tax beginning on 6 April 2018 is to be increased in line with the rise in the Consumer Prices Index (CPI) for the 12 months to the end of September 2017. The CPI 12-month rate for September 2017 was 3 per cent.

Dispute resolution: TPAS functions to transfer to Pensions Ombudsman

The dispute resolution functions of the Pensions Advisory Service (TPAS), as well as its dispute resolution team and volunteer network, are to be transferred to the Pensions Ombudsman with effect from 1 April 2018.[16]

Currently, customers can seek help from both the Pensions Ombudsman and TPAS when dealing with a pension complaint. TPAS tends to focus on complaints before the scheme's internal dispute resolution procedure (IDRP) has been completed, and the Ombudsman on complaints that have been through the IDRP.

The transition is being made to streamline and simplify the process, so that both pre- and post-IDRP complaints being dealt with in the same place. TPAS and the Ombudsman are planning to update the information provided to the public and the pensions industry about the services they provide. Pension schemes and providers are to be given information to help them make the changes necessary to their communications to members.

This looks like a rebadging of the current service ahead of the planned merger of TPAS with the Money Advice Service and Pension Wise. The Government will have to make changes to legislation, which obliges trustees to point members toward TPAS for help resolving disputes. Trustees will need to review their documentation and member communications to ensure that members are being referred to the correct body.

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[11] '*New law could add billions to pension scheme liabilities*', *FT Adviser*, 15 February 2018 <www.ftadviser.com/pensions/2018/02/15/new-law-could-add-billions-to-pension-scheme-liabilities/>.

[12] <https://services.parliament.uk/bills/2017-19/civilpartnershipsmarriagesanddeathsregistrationetc.html>.

[13] *Hansard*, House of Commons Debates, 2 February 2018, Column 1121, <https://goo.gl/L6hKtz>.

[14] The *Civil Partnership Act 2004 (Amendment) (Mixed Sex Couples) Bill 2017-19* <https://services.parliament.uk/bills/2017-19/civilpartnershipact2004amendmentmixedsexcouples.html>, and the *Civil Partnership Act 2004 (Amendment) (Sibling Couples) Bill 2017-19* <https://services.parliament.uk/bills/2017-19/civilpartnershipact2004amendmentsiblingcouples.html>.

[15] *The Finance Act 2004 (Standard Lifetime Allowance) Regulations 2018* (SI 2018 No.206).

[16] <www.pensions-ombudsman.org.uk/2018/02/the-pensions-advisory-service-dispute-function-moves-to-the-pensions-ombudsman/>.

HMRC newsletters

Scottish Income Tax Newsletter

Her Majesty's Revenue and Customs (HMRC) has published a newsletter for pension scheme administrators ahead of the introduction of the changes to the bands and rates of income tax for Scottish taxpayers.[17]

In December 2017, the Scottish Government announced that it planned to change the bands and rates of income tax for Scottish taxpayers. The bands and rates, in force from 6 April 2018 are:

Band	Taxable income range (£)	Tax rate (per cent)
Starter	Over 11,850 - 13,850	19
Basic	Over 13,850 - 24,000	20
Intermediate	Over 24,000 - 44,273	21
Higher	Over 44,273 - 150,000	41
Top	Over 150,000 -	46

The newsletter confirms that members of pension schemes that use the 'net pay arrangements' (typically used by occupational pension schemes) will continue to receive full tax relief on their contributions. (The same will be true for those who participate in salary sacrifice arrangements under which their employers contribute on their behalf, regardless of scheme type.)

For schemes using 'relief at source arrangements' (generally personal pension schemes) with members resident in Scotland who will pay the new Scottish starter rate of 19 per cent, tax relief will continue to be given at the existing 20 per cent rate (via their scheme administrator). They will not be required to pay back the extra. Scheme members who pay the new intermediate rate of 21 per cent will have to claim the one-per-cent relief that they will miss out on (it will be paid to the member, not into their pensions pots). Higher-and additional-rate payers already need to claim the missing relief, so there will be no change for them process-wise.

Most people paying tax at 21 per cent will not routinely complete tax returns; employers and providers may wish to draw their attention to the need to claim extra relief.

Countdown Bulletin

A new edition of HMRC's Countdown Bulletin has also been published.[18] Among other things, it sets out a new process for obtaining refunds of contributions equivalent premiums and limited revaluation premiums when benefits are transferred to another pension scheme after 6 April 2016.[19]

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[17] <www.gov.uk/government/publications/pension-schemes-relief-at-source-for-scottish-income-tax-newsletter-february-2018/pension-schemes-relief-at-source-for-scottish-income-tax-newsletter-february-2018>.

[18] <www.gov.uk/government/publications/countdown-bulletin-32-february-2018/countdown-bulletin-32-february-2018>.

[19] Contributions equivalent premiums (CEPs) are, in broad terms, used to restore the State scheme rights of those whose pensionable service ends before they become entitled to preserved benefits. Limited revaluation premiums (LRPs) are payments made to reflect the difference between limited-rate and full-rate revaluation (limited rate revaluation of guaranteed minimum pensions is no longer an option for schemes, but legacy cases exist where contracted-out employment ended before 6 April 1997).

And Finally…

Amid the chaos brought about by the #beastfromtheeast, *AF* was mildly amused by a photograph doing the rounds on Twitter.[20] Captioned '*Meanwhile, in Finland*', it depicts an elderly man—almost certainly a pensioner, giving us a flimsy excuse for mentioning it—up to his knees in water, gamely using an axe to enlarge an ice-hole in a lake. Oh, and he appears to be naked. We say '*appears to be*' only because he could conceivably be wearing socks and/or shoes. He's probably not.

It appeared in *AF*'s Twitter timeline because it was 'liked' by a pensions consultant. Make up your own punchline about pensions consultants…

[20] Warning: whilst it's pretty inoffensive, you may decide that it's NSFW (not suitable for work)—and quite possibly NRFF (Not Really From Finland) <https://t.co/ovL928K5Dx>.