HYMANS ROBERTSON

Current issues

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Articles this month:

Protecting DB pensions schemes: White Paper
New option for dealing with multi-employer scheme debt
Authorization & supervision of master-trust schemes
New DC disclosure obligations: costs, charges & investments
Transfers without consent: DC-to-DC & contracted-out rights
Age discrimination in retirement policies
Finance Act 2018
Government considers extending dormant assets scheme
HMRC newsletters
Change of address for DWP letter forwarding service

Protecting DB pensions schemes: White Paper

The Government published a highly anticipated White Paper, '*Protecting Defined Benefit Pension Schemes*', on 19 March 2018.[1] Its proposals include an overhaul of the DB funding Code of Practice, the introduction of triennial 'chair's statements', new powers for the Pensions Regulator, and clearing the path for existing and new consolidation opportunities. Steps toward implementation have begun, but will not reach fruition until the 2020s.

Scheme funding

The Regulator will clarify its expectations in a revised *Code of Practice No. 3: Funding Defined Benefits*. The Government proposes that it will require trustees to lay out their funding plans in the context of a declared, long-term objective. The updated Code will also offer more guidance on what it means for technical provisions (funding needs) to be determined '*prudently*' and for recovery plans to be '*appropriate*'. The importance of risk-management and having a long-term view will also be considered.

The Government intends to make some aspects of the new Code *mandatory*; currently, despite its evidential value and authority, non-observance of the Code does not render a person liable to legal proceedings. The Regulator's powers to fine and direct funding activity will be enhanced accordingly.

Trustees will be required to appoint a chairperson and produce a DB 'chair's statement' somewhat akin to those currently required in respect of money purchase benefits. It will cover matters such as the trustees' assessment of their main funding risks and how they are managing them, how they set their long-term funding objective, and their reflections on past decisions. They may also have to show how they will meet governance standards and achieve value for money. Rather than being an annual obligation, as it is for DC benefits, the DB chair's statement will be integrated into the triennial valuation process. Although intended primarily as an internal, scheme-governance tool, it will also be provided to the Regulator to assist it in the performance of its functions; it will have the power to demand out-of-cycle statements in cases of most concern.

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/691286/protecting-defined-benefit-pension-schemes.pdf.

The Government plans to work with the Regulator and others to improve cost transparency and members' comprehension of summary funding statements. The Regulator will publish a factsheet intended to promote better understanding of DB funding methods.

Regulator's powers

The Government intends to back up the Regulator's contribution-notice powers with an ability to impose punitive fines. The range of targets will extend to individual directors and acts and omissions occurring after 19 March 2018 may be covered.

The Regulator will be given the power to compel those who are reluctant, or confidentiality-bound, to attend interviews and answer its questions. Its existing information-gathering capabilities will be bolstered by new fining powers, whereas currently its only option in cases of non-compliance is to pursue resource-intensive criminal prosecutions. The Regulator's powers to enter premises and inspect documents and electronic devices will also be extended. Advance notice of inspection is likely, unless it would prejudice the success of the investigation. The Government has, for the moment, decided not to specifically oblige cooperation with an investigation, reasoning that the new sanctions will be sufficient incentive.

The notifiable-events framework will be reviewed and may be extended to other transactions. The timing of notifications will be clarified to ensure that the Regulator is informed *before* events take place. The effectiveness of the clearance system for business activities will also be scrutinized. Companies, in consultation with trustees, will have to state how they intend to mitigate the adverse effects to schemes of potentially risky transactions such as sales or takeovers.

As a 'back-stop' to the Regulator's power to fine, in the worst cases there will be a new criminal offence for those who engage in wilful or grossly reckless behaviour in connection with their DB scheme. The Government also wants to strengthen the links between the Regulator and the Insolvency Service, to ensure that action leading to disqualification of directors is considered in appropriate cases of serious wrongdoing.

Consolidation

The Government will develop a framework for the authorization, supervision and governance of new commercial consolidation vehicles that may emerge and into which sponsoring employers may transfer their liabilities (and off-load their risks). Its current thinking is that the funding requirements would be somewhat higher than for schemes with a sponsoring employer, but not so onerous as those for insurance companies offering buy-out products. It is expected that an additional capital buffer would be required to off-set the loss of the employer covenant. Sponsors and trustees would be expected, separately, to obtain expert, independent advice before transferring to a commercial consolidator. The terms upon which such consolidation vehicles could enter into the Pension Protection Fund (PPF) in the event of insolvency—if indeed that will be allowed—will be an important consideration.

The Government plans to work with the Regulator to raise awareness of current consolidation options, such as DB master trusts. It is considering how a new accreditation regime might help existing vehicles to advertise their high standards.

As a means to reduce complexity and smooth the path to consolidation, the Government is also considering making minor changes to the facility that allows conversion of guaranteed minimum pensions (GMPs) into 'ordinary' scheme benefits. Her Majesty's Revenue and Customs (HMRC) will consider the potentially negative lifetime and annual allowance consequences. The Government will consider its position on the need to equalize for GMP difference in light of an upcoming legal judgment on the matter.

Timing

Steps that do not require legislation can be taken more or less immediately, or have already begun. These include the Regulator raising its game in the ways that it oversees, intervenes in, and communicates its expectations to

schemes; and the aforementioned work promoting awareness of existing consolidation possibilities, and greater understanding of scheme funding methodology.

Changes that require legislation—the bulk of the proposals—will take much longer. Most of them entail an Act of Parliament. The White Paper cautions that time for that is unlikely to be found '*before the 2019 – 20 parliamentary session at the earliest.*' In the meantime, during the remainder of 2018 and in 2019, there will be several consultation exercises.

As seemed inevitable in light of recent developments, there will be a tightening of the funding regime. The emphasis on clarity of objectives and integrated risk-management is pleasing, and to some extent the new chair's statement is where trustees should 'show their working'. If the Regulator's approach to the DC chair's statement is anything to go by, it will be rigorously scrutinized. It is also unsurprising that the Regulator is being 'tooled up' to cope with the more-interventionist approach expected of it.

We have been saying for a while now that no change is needed to reap some of the potential rewards of consolidation, so it is good that it has been recognized. It will be interesting to see how the commercial-consolidator concept develops.

Finally, there are some notable omissions from the policy paper. There is no statutory override allowing RPI-to-CPI switches, no change to the employer debt calculation, and no reduction to valuation production deadlines.

New option for dealing with multi-employer scheme debt

Legislation from the Department for Work and Pensions (DWP) has introduced a new '*deferred debt arrangement*' (DDA) option for managing employer debts in multi-employer defined benefit pension schemes.[2] It is effective from 6 April 2018.

Employer debts: a quick recap

An '*employment-cessation event*' (ECE) occurs whenever an employer participating in a multi-employer DB scheme ceases to employ any active members, if benefits continue to accrue under at least one other sponsor. In a scheme that is closed to new entrants, that state of affairs can arise simply as a result of people retiring or changing jobs. Unless preventive action is taken, the ECE triggers calculation of the employer's share of the scheme deficit, calculated on the 'buy out' basis (that is to say, on the assumption that benefit liabilities will be discharged by the purchase of annuities). That share of the deficit becomes a debt imposed upon the employer that experienced the ECE.

The employer debt legislation contains a multitude of potential options for coping with ECEs.[3] Depending on the circumstances and the option that is pursued, the cessation of active membership might not be classed as an ECE (so that no employer debt arises), or the amount payable by the employer may be less than it would be otherwise. There are strict conditions that must be satisfied if one of the options for managing ECEs is to be used: many employers, especially those participating in non-associated multi-employer schemes, are unable to make use of them.

New option: deferred debt arrangements

The Government has responded by introducing a new mechanism, the deferred debt arrangement. Under a DDA, cessation of active membership will not be treated as an ECE, thereby postponing the employer debt for so long as the DDA remains in place. The company will continue to be a statutory '*employer*' for funding and other purposes.

[2] The *Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018* (SI 2018 No. 237).

[3] The Pensions Regulator's guidance on *Multi-employer Schemes and Employer Departures* <www.thepensionsregulator.gov.uk/guidance/multi-employer-schemes-and-employer-departures.aspx> is a comprehensible, single-document summary of the characteristics and implications of the available mechanisms, although it has not yet been updated to cover deferred debt arrangements.

It is possible to make a DDA after the occurrence of an ECE, or whilst the employer is within a '*period of grace*'.[4] In broad terms, the conditions for a DDA are that:

- the trustees consent in writing;
- the scheme is not under assessment for entry into the Pension Protection Fund (PPF), or being wound up; and
- the trustees are satisfied that:
  - employer insolvency (triggering PPF assessment) is unlikely; and
  - the employer's covenant is not likely to weaken materially,

  in the twelve months after the DDA is put in place.

In a change to the DWP's original proposal, the conditions do not include satisfaction of the '*funding test*' that has often been a stumbling block for other employer debt alternatives.

The legislation specifies the events that will bring the DDA to an end, and the consequences of each:

Event	Debt calculation triggered?
Deferred employer employs active member	No
Employer and trustees agree to terminate	Yes
Employer suffers insolvency event	Yes
All employers either insolvent or deferred employers	Yes
Scheme starts to wind up	Not immediately (in a wind up, the trustees choose when the debt calculation takes place)
Employer restructures (Does not apply, in broad terms, if another scheme participant takes on all of 'old' employer's assets, employees and pension liabilities. When 'new' employer also covered by a DDA, must be no likelihood of its covenant weakening materially, or of PPF assessment, within 12 months.)	Yes
Scheme closes to accrual	No
Trustees notify employer that DDA has ended because of (i) non-compliance with funding obligations, (ii) likely weakening of covenant within 12 months, or (iii) failure to disclose important information.	Yes

[4] The period of grace rules allow an employer to cease, temporarily, to have any active members, on the understanding that it intends to employ at least one active member before the end of the period. The default period of grace is twelve months, but it can be extended to up to thirty-six months if the trustees agree.

Other changes

The Government has made a number of other, incidental changes to the employer debt legislation. Most notably, employers will have up to three months after the occurrence of an ECE in which to serve the trustees with a '*period of grace*' notice; prior to the amendments, they had just two months in which to do so.

The DWP has decided against making amendments to cater for debts triggered by multiple ECEs for the same employer. It seems to have concluded that providing a solution for the few that have the issue as a result of past participation would be more complicated than first thought, and that the options now available in the employer debt legislation will minimize its impact in the future.

Deferred debt arrangements have the potential to provide much-needed relief for some employers who have found themselves trapped in multi-employer DB schemes, continuing to endure risk, and accumulating additional liabilities, because the alternative was a ruinous exit debt. They may also be of interest to sponsors that have added defined contribution sections to their schemes so that they could end DB accrual without ECEs triggering debts: a DDA may give them more freedom to explore alternative DC providers.

The new option needs the agreement of the scheme's trustees, who will naturally need to be convinced that a DDA is in their members' interests. Their consent will also be needed if the employer subsequently wishes to exit the arrangement and trigger a debt calculation voluntarily (cf. the position of former employers in frozen schemes). Some sponsors are bound to be twitchy about the trustees' ability to tear up the DDA if they perceive that the strength of the covenant is wavering; it may be better than the alternative.

Authorization & supervision of master-trust schemes

The DWP has announced the outcome of its consultation on the details of the new supervisory regime for master-trust schemes.[5] Regulations will come into force on 1 October 2018. The Pension Regulator has published a draft Code of Practice, for consultation purposes.[6] Responses should be submitted by 8 May 2018.

Legislation

The foundations of the master-trusts authorization and supervision regime were laid by the *Pension Schemes Act 2017*, but many of its provisions have yet to be brought into force. Any scheme that meets the statutory definition of a 'master trust scheme' will have to obtain the Pensions Regulator's authorization in order to operate; otherwise, it will be forced to wind up. A master-trust scheme is any multi-employer, occupational pension scheme that provides money purchase benefits, if participation is not restricted to connected employers (for example, the members of a particular corporate group). The definition is wide enough to embrace industry-wide and other non-associated multi-employer (NAME) schemes. Existing schemes will have a six-month transitional period—expected to begin on 1 October 2018—within which to apply for authorization.

Public service pension schemes are exempted from the requirements. The new regulations will exclude schemes for which the only money purchase benefits are attributable to additional voluntary contributions (AVCs) or cash equivalents transferred in from other schemes. Exception will also be made for some schemes with memberships restricted to people who were employed in State-run industries before they were privatized. Other exemptions cover for example single-member schemes and '*relevant small schemes*' (small self-administered schemes).

Before authorizing a master-trust scheme, the Regulator will have to be satisfied that:

- those persons involved in establishing and running the scheme are fit and proper persons;
- it is financially sustainable;

[5] <www.gov.uk/government/consultations/draft-occupational-pension-schemes-master-trusts-regulations-2018>.
[6] *Code of Practice No. 15: Authorization and Supervision of Master Trusts* <www.thepensionsregulator.gov.uk/doc-library/master-trust-code-consultation-2018.aspx>.

- each '*scheme funder*' (in broad terms, any organization that is entitled to profit if charges exceed costs, or obliged to provide extra funding if they are not) meets requirements as to its constitution and the activities that it undertakes;
- sufficiently effective operational systems and processes are in place; and
- it has an adequate continuity strategy.

In a change to the consultation proposals the application fee for new master-trust schemes will be £23,000, not £24,000; existing schemes will pay £41,000 rather than £67,000.

Guidance

The draft Code of Practice provides a summary of the law, and explains the process of applying for authorization, the considerations that will be taken into account, and what sorts of evidence should be provided to satisfy the statutory criteria. Compliance with the Regulator's Codes is not mandatory, although they must be taken into account, where relevant, in legal proceedings. Nevertheless, the Regulator notes that this Code will be singular because it has not previously been responsible for authorizing the operation of pension schemes.

New DC disclosure obligations: costs, charges & investments

Legislation coming into force on 6 April 2018 will expand the information that must be included in chairs' statements about charges and transaction costs, and oblige trustees to post it online.[7] Members' annual benefit statements will have to point them toward the charges-and-costs information, and also (from 6 April 2019) to the availability of additional, up-to-date details of the funds in which they are invested. A considerable amount of extra work will have to be done to satisfy these new obligations.

Chairs' statements

The requirement to produce an annual governance statement for DC benefits, known as the 'chair's statement', was introduced in April 2015. In it, trustees have (in broad terms) had to set out charges and transaction costs for their *default* investment fund, and the *range* of charges and costs for the other available funds in which members are invested.

Charges and costs

For scheme years ending on or after 6 April 2018, trustees will have to expand their chair's statement 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. As is the case currently, the chair's statement will have to be produced within seven months of the scheme's year-end so that it can be included in the trustees' annual report, which has the same deadline. The charges-and-costs information will have to be made freely available online, and its availability will have to be brought to members' attention in annual benefit statements. It will only have to be provided in hard-copy form if it would be unreasonable for the person requesting it to obtain it from the relevant Web site.

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.[8]

Fund information

From 6 April 2019, 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

[7] The *Occupational Pension Schemes (Administration and Disclosure) (Amendment) Regulations 2018* (SI 2018 No. 233).

[8] *Cost and charge reporting: guidance for trustees and managers of occupational schemes* <www.gov.uk/government/uploads/system/uploads/attachment_data/file/684124/cost-and-charge-reporting-guidance-for-trustees-and-managers-of-occupational-schemes.pdf>.

old. The availability of this information will also have to be brought to members' attention in annual benefit statements.

Exemptions

These changes will not affect all schemes that provide DC benefits. Those exempted include arrangements for executives, public sector schemes, and schemes under which the only money purchase benefits are derived from additional voluntary contributions (AVCs).

Transfers without consent: DC-to-DC & contracted-out rights

Following a brace of consultation exercises, Amendment Regulations have made transfers without consent considerably less daunting, both when made between occupational defined contribution (DC) arrangements[9], and when contracted-out rights in defined benefit (DB) schemes are involved[10]. The amendments are almost entirely effective from 6 April 2018.

DC-to-DC transfers

Legal changes will make it easier, from 6 April 2018, to transfer money purchase rights from one occupational pension scheme to another, without obtaining member consent. The requirements will depend on the nature of the receiving scheme and the connection between the schemes' sponsors. The option to continue to use the current actuarial-certification process when transferring money purchase rights will remain open until 1 October 2019.

Prior to 6 April 2018, transfers between occupational pension schemes could take place without member consent only if (amongst other things):

- the transferring and receiving schemes related to employment with
- the same employer;
- different employers within a corporate group; or
- unrelated employers involved in a financial transaction, such as a merger or acquisition; *and*
- an actuary certified that, in his or her opinion, the members would acquire rights under the receiving scheme that were '*broadly, no less favourable*' than the rights transferred.

When those rules were conceived, pension schemes were predominantly defined benefit (DB) in nature, and the requirements made sense in that context. They are less appropriate to transfers between the DC schemes that have since become the most popular choice for occupational pensions provision in the private sector. The trustees of a DC scheme are not required to appoint an actuary for any other purpose; and although there was some debate about precisely which factors were relevant for the '*broadly, no less favourable*' test in a DC context, and how it ought to be performed, most people agreed that the skills required were not uniquely actuarial.

Responding to concern that the requirements were overly burdensome for DC-to-DC transfers, the Department for Work and Pensions (DWP) issued a call for evidence on the subject in December 2016, and published draft proposals in October 2017. It has now finalized the amending legislation.

It will, from 6 April 2018, be possible to transfer money purchase rights without obtaining member consent, from one occupational pension scheme to another, if—

- the receiving scheme is an authorized master trust; or

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[9] The *Occupational Pension Schemes (Preservation of Benefit and Charges and Governance) (Amendment) Regulations 2018* (SI 2018 No. 240). The consultation outcome report is available at <www.gov.uk/government/consultations/bulk-transfers-of-defined-contribution-pensions-without-member-consent-draft-regulations>.

[10] The *Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations 2018* (SI 2018 No. 234). The consultation outcome report is available at <www.gov.uk/government/consultations/bulk-transfer-of-contracted-out-pension-rights-without-member-consent-draft-regulations>.

- 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 have taken advice about the transfer from a person with appropriate pension-scheme-management expertise, who is independent of the receiving scheme.

When determining whether an expert adviser is independent, the trustees are required to consider 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).

This is a change in policy: the consultation proposals would have required the trustees to look back *five* years, and to have considered a broader range of past services. If the employer, rather than the trustees, has sole power to effect the transfer, the advice obligations fall upon it instead, and it must confirm its compliance to the trustees.

Charges

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:

- was not invested in a default arrangement because he or she expressed an investment choice within the preceding five-year period; and
- is transferred without his or her consent to another non-default arrangement.

Guidance

The DWP is to collaborate with the Pensions Regulator to produce guidance for trustees. It is likely to cover the choice of an expert adviser, and the characteristics of receiving schemes that are relevant when deciding whether a transfer is in their members' interests. The DWP's report on the outcomes of the consultation exercise indicates that the guidance will be available by the end of April 2018.

Contracted-out rights

Another set of Amendment Regulations will, from 6 April 2018, make it possible to transfer members' contracted-out rights, without their consent, to a salary-related pension scheme that has never been contracted out.

Prior to 6 April 2016, when a new single-tier State pension was introduced, members of salary-related schemes could be '*contracted out*' of the State additional pension arrangements (that is, SERPS and S2P). In return, those schemes had to provide their members with '*guaranteed minimum pensions*' (GMPs), in respect of service between 6 April 1978 and 5 April 1997, and '*section 9(2B) rights*' for accrual thereafter.

Before 6 April 2018, a transfer of GMP or '*section 9(2B) rights*' could only be made, without the member's written consent, in a '*connected employer transfer*' between former contracted-out salary-related schemes.[11] As it has not been possible to set up a new contracted-out scheme since 5 April 2016, employers' options were severely constrained if they wished to re-organize their pension arrangements. The DWP began a consultation exercise,

[11] It is a '*connected employer transfer*' if the transferring and receiving schemes relate to the same employer, or to two employers in the same corporate group; or if the transfer is a result of a financial transaction between unrelated employers.

about proposals to alleviate the restrictions, in December 2017. Amendment Regulations have now been laid before Parliament.

It will, from 6 April 2018, 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*, subject to the following conditions. The transferring and receiving schemes must either relate to the same employer, or to two employers within the same corporate group; alternatively, the transfer must be the result of a financial transaction (for example, the sale of a business) between unrelated employers. 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—as discussed in the preceding part of this article—have to certify that the rights acquired by the members in the receiving scheme are '*broadly, no less favourable*' than those transferred; in addition, 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').

These are welcome—some might say, long-overdue—developments.

Age discrimination in retirement policies

The Court of Appeal has accepted an employer's justifications for fixing 55 as the age at which awards under its long-term incentive plan vested.[12]

The employer operated a long-term incentive plan (LTIP) as a way to attract and retain employees who contributed to the success of the company. In broad terms, if employment terminated early, the awards were forfeited. There was, however, an exception for employees who left on or after the '*customary retirement age*' for their location. In the UK, that was taken to mean 55, which has been the '*normal minimum retirement age*' under the pensions tax legislation since 6 April 2010. The aggrieved employee, having resigned at the age of 50 and facing the prospect of losing his LTIP awards, challenged that interpretation. He, like other members of the employer's defined benefit (DB) pension scheme, had a '*protected pension age*' of 50, because of a transitional provision in the legislation (in a context of allegations of ageism, we hesitate to describe it as a 'grandfather clause'). He argued that he should be allowed to keep his LTIP awards at that age, and that the employer's policy of not allowing him to do so amounted to unlawful age-based discrimination.

No-one disputed that it was an example of direct discrimination based on age. Amongst the characteristics that are protected by anti-discrimination law, however, age is unusual in allowing for the possibility of objectively justifying direct discrimination. To do so, the employer must show that the treatment in question is a proportionate means of achieving a legitimate aim. Case law has established that the aim must be a social policy objective.

The employer argued that its LTIP policy incentivized employees to remain with the company, whilst ensuring that there was no disincentive to retiring at the customary age, thereby ensuring that there were advancement opportunities for more junior colleagues. It thought that allowing the retirement exception to apply at age 50 for everyone would not achieve the employee-retention goal that lay behind the policy. It preferred to apply the same age condition across the board, in the interests of parity between the employees who were members of its DB scheme, which had closed to new members in 2005, and those who were in the defined contribution (DC) scheme that replaced it. There was also an issue of '*intergenerational fairness*': the DB members with the protected pension ages were, generally, older than their colleagues in the DC scheme.

On the question of the legitimacy of the employer's aims, the Court agreed that it was possible for its actions to advance a legitimate social policy even though they were taken in its own best interests. The DB scheme members already had the benefit of more-generous pension terms, and limiting the extent of the advantages that they

[12] *Air Products PLC v Cockram* [2018] EWCA Civ 346.

enjoyed over their less-privileged, younger colleagues '*was … a legitimate social policy aspect of intergenerational fairness.*'

As to whether the employer's decision to set the retirement exception at age 55 was a proportionate means of achieving its aims, the Court was unconvinced by an argument based on the disparity in treatment of an employee who retired at age 54 and one who left aged 55. The judge commented that '*Bright lines are a common feature of benefits payable on retirement.*'

The Court, accordingly, allowed the employer's appeal, upholding the initial decision by the employment tribunal, which had dismissed the age-discrimination complaint.

It is not uncommon for a business to have a group of (generally) older employees in its closed DB scheme, with more recently employed (and therefore often younger) staff members in a less costly DC substitute. It seems that, in those circumstances at least, a retirement-age condition in a loyalty-incentive scheme can be justified if it is in pursuit of properly considered aims.

Pension schemes themselves are subject to a long list of age-equality exceptions; as the judge said, 'Bright lines [A.K.A. 'cliff edges'] are a common feature …'

Finance Act 2018

The Finance Bill 2018 received Royal Assent on 15 March 2018, becoming the *Finance Act 2018*.

The Act contains new powers for Her Majesty's Revenue and Customs (HMRC) to extend the circumstances in which it can refuse to register, or can de-register a pension scheme to include:

- a master trust that is not authorized by the Pensions Regulator; and
- other occupational pension schemes where the sponsoring employer has been dormant for a continuous period of one month.

HMRC's new powers come into force on 6 April 2018.

The unqualified nature of the 'dormant employer' power prompted concerns that genuine pension schemes could be deregistered. The official response has been to reassure the industry that, in practice, the intention is to use the new power only when other evidence suggests that a scheme is 'iffy' (we are paraphrasing).

Government considers extending dormant assets scheme

Her Majesty's Treasury and the Department for Digital, Culture, Media and Sport are exploring the prospects for expanding the scope of a 'dormant assets scheme', currently confined to bank and building society accounts, into other areas, including pensions.[13]

Under the *Dormant Bank and Building Society Accounts Act 2008*, approximately £1bn has been transferred into the scheme from dormant accounts. A proportion of the money (around half) has been passed to the Big Lottery Fund to support good causes.

The Government established an independent Commission on Dormant Assets in 2016, and tasked it with considering whether a wider range of dormant assets could be covered. It reported in 2017. The Government's response has been developed with help from representatives of the financial services industry.

Like the Commission, the Government sees some potential for extending the scheme's reach. Any such expansion would, however, be subject to the safeguards that are currently in place: participation will be voluntary, the first

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13 <www.gov.uk/government/uploads/system/uploads/attachment_data/file/681983/Government_Response_to_Commission_on_Dormant_Assets_16_February_2018.pdf>.

priority will be to reunite people with their assets, and asset owners will (if and when they resurface) be entitled to reclaim their assets.

More specifically, the Government '*believes that there is substantial potential for dormant insurance and pension products to be included in the scheme*', whilst recognizing the difficulty of capturing assets held in trust and collective structures. It will appoint a '*senior industry champion*' from the sector, who will advise it on the potential for expanding the scheme into this area, the appropriate definition of 'dormancy', and other technical and practical considerations.

As hinted in the response document, the dormant-assets concept is not a natural fit for the trust-based structures found in occupational pension schemes: individual members seldom have a claim to specifically allocated assets, and the schemes may have their own rules about what happens to unclaimed benefits. It is particularly ill-suited to defined benefits schemes, which are typically funded by the employer on a balance-of-cost basis.

HMRC newsletters

Her Majesty's Revenue and Customs (HMRC) has published Pension Schemes Newsletter 96[14] and 97[15]. Newsletter 96 includes information on:

- the pension tax implications of the new Scottish income tax rates and bands that will apply from 6 April 2018[16];
- relief at source – how to complete the annual return of individual information, check residency status and reporting and paying back excess relief claimed to HMRC;
- the new pensions online service; and
- reporting non-taxable death benefits.

Newsletter 97 includes information on:

- relief at source, including in relation to Scottish income tax;
- the Finance Act 2018; and
- outstanding account for tax (AFT) charges.

Change of address for DWP letter forwarding service

The postal address for the tracing and letter-forwarding service offered by the Department for Work and Pensions is now

Department for Work and Pensions
Bulk Letter Forwarding Service
Mail Handling Site A
Wolverhampton
WV98 2DU

More information about the service is available online.[17]

[14] <www.gov.uk/government/publications/pension-schemes-newsletter-96-february-2018/pension-schemes-newsletter-96-february-2018>.
[15] <www.gov.uk/government/publications/pension-schemes-newsletter-97-march-2018/pension-schemes-newsletter-97-march-2018>.
[16] See our summary of the *Current Issues* March 2018 for a summary of the Scottish Income Tax Newsletter, <www.hymans.co.uk/news-and-insights/research-and-publications/publication/current-issues-march-2018/>.
[17] <www.gov.uk/government/publications/pensions-and-insurance-tracing-and-letter-forwarding-service>.

And Finally…

AF is away this month. Normal servive will resume shortly.

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