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Current issues

February 2019

Articles this month:

Trustees urged to verify whether schemes are master trusts

The Pensions Regulator has warned that some schemes may, unbeknown to their trustees, fit the statutory definition of a master trust.[1] Failure to recognize this could result in a scheme being wound up involuntarily.

Under the *Pension Schemes Act 2017*, a '*master trust scheme*' is a private-sector, occupational pension scheme that is designed to accommodate multiple, unconnected employers.[2] Exceptions are made in some cases, such as industry-wide schemes that are closed to new members by 31 March 2019, or where the only money purchase benefits are those attributable to additional voluntary contributions (AVCs).[3] It is even possible for a group of schemes that do not individually match the definition to be treated, collectively, as a single master trust scheme if they are under common control.

The legislation is such that new master trusts cannot commence operations, on or after 1 October 2018, without first obtaining authorization from the Regulator. Master trusts that were already operational on that date have until 31 March 2019 to apply for authorization to continue. Those that do not obtain authorization must wind up. Trustees of master trusts that continue to operate without authorization may be fined.

The Regulator has produced a step-by-step guide to help trustees make an initial assessment of whether their schemes are master trusts.[4] Legal advice is recommended.

Any private sector scheme that provides money purchase benefits other than AVCs and can or does cater for unconnected employers should have its status checked, if it has not been already, as a matter of urgency.

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[1] <www.thepensionsregulator.gov.uk/en/media-hub/press-releases/schemes-warned-to-check-they-are-master-trusts-or-risk-breaking-the-law>.
[2] See section 1 of the 2017 Act and regulation 3 of the *Occupational Pension Schemes (Master Trusts) Regulations 2018* (SI 2018 No. 1030). Connected employers include those that are (or were) members of the same corporate group; or that have separate legal identities but operate as a single business; or that jointly employ scheme members; or following a transfer of active members from one employer to the other (although the connection is deemed to last only six months if the transfer is not covered by the TUPE legislation); or where one employer controls (or has within the previous six months controlled) 33 per cent or more of the voting power of the other; or that are involved in a joint venture (and for six months after the end of a joint venture).
[3] Regulations 26 & 27 of the *Occupational Pension Schemes (Master Trusts) Regulations 2018* (SI 2018 No. 1030).
[4] <www.tpr.gov.uk/-/media/thepensionsregulator/files/import/pdf/is-your-scheme-a-master-trust.ashx>.

Regulator and DWP guidance in preparation for UK exit

The Pensions Regulator and the Department for Work and Pensions (DWP) recently published guidance in preparation for the UK's exit from the European Union (EU).

Regulator's statement on the UK's exit from the EU

The Pensions Regulator's statement is aimed primarily at the trustees of defined benefit pension schemes.[5] The Regulator does not expect the UK's exit to have any significant, immediate effects on underlying pension legislation or the current administration of pension schemes, regardless of whether UK departs with a negotiated settlement or on a 'no deal' basis.

Trustees and scheme sponsors are reminded of what is expected of them as set out in the guidance[6] published by the Regulator following the referendum result and in its 2018 Annual Funding Statement[7]. Trustees are asked to review (if necessary) any actions or contingency plans in the context of 'no deal'. The Regulator says its 2019 Annual Funding Statement will provide an update on its expectations around managing risks relevant to the UK's exit.

The Regulator recommends that schemes operating cross-border consider the implications of Brexit, and whether contingency plans are required in the event of a 'no deal' scenario. It also recommends that trustees who may be considering applying for authorisation to begin cross-border activities should, if possible, wait until there is more clarity.

Lastly, trustees are directed to the DWP's guidance (see below) regarding the payment of benefits to EU citizens in the UK and UK nationals in the EU in the event of a 'no deal' exit.

DWP guidance to UK nationals and EU citizens

The DWP has issued guidance explaining the pension rights of UK nationals living in the EU in a 'no deal' scenario.[8] In summary:

- pensions paid by UK private occupational pension schemes will be unaffected;
- UK-based providers of annuities or personal pensions should have made the necessary changes to ensure payments are unaffected; and
- entitlement to the UK State Pension will continue for UK nationals living in the EU and the Government says it is committed to uprate it across the EU in 2019-2020; ongoing uprating will depend on whether reciprocal arrangements with the EU are agreed.

The DWP has also issued guidance explaining the pension rights of EU citizens in the UK if it leaves the EU without an agreement.[9] It reassures them that UK private occupational pension schemes can make pension payments to EU citizens living abroad.

The glaring gap in the guidance for a UK national is whether or not there will be continued eligibility for benefits (e.g. healthcare) paid for by the EU country that they currently live in if there is 'no deal'. This topic is not even addressed in the guidance for EU citizens. The already-vexed issue of the UK's refusal to up-rate State pensions paid to ex-pats will become more controversial if we cannot agree reciprocal arrangements with the post-Brexit EU.

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[5] <www.thepensionsregulator.gov.uk/en/document-library/statements/exit-from-the-eu-statement>.
[6] <www.thepensionsregulator.gov.uk/en/document-library/statements/market-volatility-following-the-eu-referendum,-c-,-guidance-statement-from-tpr->.
[7] <www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/db-annual-funding-statement-2018.ashx?la=en&hash=7661E9166A493D6F341C0DCB4D4A741ECC3076D0>.
[8] <www.gov.uk/guidance/uk-nationals-in-the-eu-benefits-and-pensions-in-a-no-deal-scenario>.
[9] <www.gov.uk/guidance/eu-citizens-in-the-uk-benefits-and-pensions-in-a-no-deal-scenario#will-eu-citizens-wanting-to-move-to-the-uk-after-29-march-2019-be-able-to-claim-benefits>.

Age discrimination exception to be updated for SPA rises

The Department for Work and Pensions (DWP) proposes to amend legislation to allow bridging pensions to cease at State pensionable ages (SPAs) above 65 without contravening age-equality rules.[10] The changes may not come through in time to cater for the first tranches of pensioners who will reach SPA at ages higher than 65.

Occupational pension schemes are statutorily deemed to include a rule preventing discrimination based on certain '*protected characteristics*', one of which is age.[11] Numerous exceptions have been made for age-based rules, practices, actions and decisions that are not considered to breach the non-discrimination rule.

Many occupational pension schemes pay temporary 'bridging' pensions, during the period between their members' normal retirement ages and the date when they become entitled to State pensions, with the aim of providing them with more stable overall pension incomes through their retirements. This practice is currently covered by one of the age-discrimination exceptions, but only when the bridging element of the pension stops '*at any time between 60 and 65*'.[12] The DWP proposes to replace '*65*' with '*that member's state pension age*'.

The change has some urgency because of the state of progress of the phased increases that are currently being made to SPA, under the *Pensions Act 1995* (as amended). The first batch of pensioners to reach their SPA at ages over 65 are those with dates of birth falling within the period from 6 December 1953 to 5 January 1954, who will attain pensionable age on 6 March 2019 (so that SPA for someone born on 6 December 1953 will be reached at 65 years and 3 months). Accordingly, the consultation period about the proposals ends on 30 January 2019, and the DWP intends to make the necessary changes '*as soon as possible.*' However, it is possible that the amendments will not be made in time, so the Government has asked respondents to supply details of the numbers of members who may be affected during the next six months, and also the next twelve months; and if there are '*any ways in which schemes may be able to minimize these impacts*'.

We would not be surprised if some conclude that this is a problem that is entirely of the Government's making. They may also take the view that there is little chance that members will complain about bridging pensions that are more up-to-date with the realities of State pensionable ages than the DWP's legislation. That may influence how they rank this issue amongst the others that they expect to contend with over the coming months. Trustees should, of course, seek legal advice on such matters.

If your scheme provides bridging pensions, it may be worth checking whether the current eligibility criteria cater for increases to SPA. You may also wish to estimate the additional cost of extending bridging pensions to higher SPAs; if so, please contact your usual Hymans Robertson consultant to discuss the matter.

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[10] *Consultation: Draft Equality Act (Age Exception for Pension Schemes) (Amendment) Order 2019* <www.gov.uk/government/consultations/the-draft-equality-act-age-exception-for-pension-schemes-amendment-order-2019>.

[11] Section 61 of the *Equality Act 2010*.

[12] Paragraph 14 of Schedule 1 to the *Equality Act (Age Exceptions for Pension Schemes) Order 2010* (SI 2010 No. 2133).

House of Lords Committee pushes RPI fix

The House of Lords Economic Affairs Committee has published a report on *Measuring Inflation*, in which it concludes that the UK Statistical Authority (UKSA)'s failure to tackle a problem with the Retail Prices Index (RPI) is '*untenable*', and may be a derogation of duty.[13] It has called for a correction that would be expected to significantly lower the annual rate of RPI inflation.

Background

In 2010, a routine change to the collection of clothing prices inadvertently increased the extent of the 'formula effect': the part of the gap between RPI and CPI (Consumer Prices Index) inflation that is explained by differences in the way in which they calculate price averages. Before the 2010 change, the formula effect had averaged 0.5 percentage points; since 2011 it has averaged 0.9 percentage points. Clothing accounted for almost all of the increase and causes over half of the current formula effect.

In 2012, the Office for National Statistics sought views on possible amendments to the RPI to tackle the 'formula effect'. The response was overwhelmingly that there should be no change, due to concerns about the effects on index-linked gilts and pensions.

The RPI lost its designation as a 'National Statistic', with effect from 2013, owing to its perceived shortcomings.[14] Although it continues to be published (under a statutory obligation), the Office for National Statistics has, generally speaking, ceased making methodological improvements to it. The ONS's stated position is that the RPI is '*a very poor measure of general inflation*', and that its use should be discouraged.

An independent review came to the conclusion, in 2015, that the RPI should be considered a '*flawed*', '*legacy measure*' of inflation, which should not be used unless there are contractual commitments at stake.[15]

(For the sake of balance we should note that, as the Committee acknowledges, the RPI also has its defenders.)

Conclusions and recommendations

The Committee says that

- it is surprising that the RPI is considered a 'legacy measure', given the extent to which it is still used, and recommends that methodological improvements recommence;
- the UKSA is required to attempt to fix the clothing-prices problem, and raises the possibility that, by refusing to do so, it could be in breach of its statutory obligation to '*promote and safeguard … the quality of official statistics*', including '*their impartiality, accuracy and relevance*';
- it is unconvinced that '*the interests of those who may be affected negatively by any change*', primarily index-linked gilt holders, should be allowed to block such a correction;
- if the UKSA proposes the change, the Chancellor of the Exchequer should consent, as it '*is untenable for an official statistic, that is used widely, to continue to be published with flaws that are admitted openly*';
- the UKSA should, once a method of capturing owner-occupier housing costs has been agreed, and after consulting its stakeholder and technical panels, recommend a single general measure of inflation (which, says the Committee, could be the RPI, repaired and improved), and that the Government should adopt the preferred candidate for all purposes within five years;
- in the meantime, the Government should generally switch to the CPI for uprating purposes, unless contractually bound to use the RPI (it also says that the Government '*should address the imbalance in its*

[13] *Measuring Inflation* (HL Paper 246) <www.parliament.uk/business/committees/committees-a-z/lords-select/economic-affairs-committee/news-parliament-2017/measuring-inflation-report-publication..

[14] *Shortcomings of the Retail Prices Index as a measure of inflation* (March 2018) <www.ons.gov.uk/economy/inflationandpriceindices/articles/shortcomingsoftheretailpricesindexasameasureofinflation/2018-03-08>.

[15] *UK Consumer Price Statistics: A Review* (Paul Johnson, January 2015) <www.statisticsauthority.gov.uk/archive/reports---correspondence/current-reviews/uk-consumer-price-statistics---a-review.pdf>.

use of consumer price indices', by which it means that it should stop using the generally higher RPI increases in cases where it is the pay*ee*, and the CPI where it is the pay*er*);

- the Government should now stop issuing RPI-linked gilts and begin issuing CPI-linked gilts that would be designed to switch over to the new single general measure of inflation in due course; and
- the UKSA and the Government should ultimately decide whether the RPI should continue to be published for the purposes of existing RPI-linked contracts, or whether a programme of adjustments, phased in over a sufficiently long period, should bring it into line with the chosen single general measure of inflation.

When one takes into account the polite language in which UK Parliamentary publications are typically written, the Committee's criticism of the performance of the statistical authorities probably falls somewhere between 'robust' and 'excoriating'.

The Committee's argument seems to be that even if the 'fix' (whatever it is) would be a fundamental change, and detrimental to the interests of index-linked gilt owners, that should not stop it going ahead. Absent some form of compensation, we can imagine that there might be one or two bond-holders—and their lawyers—who would strenuously disagree.

The Government is under no obligation to accept the Committee's recommendations, but it is expected to respond. If the UKSA proposes a fix for the clothing prices issue, and it is accepted, it could materially reduce the gap between the RPI- and CPI-based rates of inflation.

FCA reveals plans to improve DC retirement outcomes

The Financial Conduct Authority (FCA) has made changes to its rules and guidance, and is seeking views on other measures, designed to address concerns arising from its recent review of the retirement income market: the Retirement Outcomes Review.[16]

The Review began in 2016, and a final report was published in June 2018. It assessed the development of the retirement income market since the 'Freedom and Choice' reforms liberalized access to pension savings. It was particularly concerned with the growing number of scheme members who enter drawdown arrangements without obtaining financial advice, and may end up investing their pension funds in cash even though they do not mean to make imminent withdrawals.

In a policy statement, the FCA announced new rules and guidance covering pre-retirement 'wake-up packs' and risk warnings, and the information provided about annuities, effective from 1 November 2019. Changes designed to make the costs of drawdown products clearer, and more amenable to comparison, will take effect on 6 April 2020.[17]

At the same time, the FCA put forward a second batch of proposed changes arising from the Review's findings.[18] Drawdown providers will be required to provide a selection of '*investment pathways*' to non-advised customers. The intention is that they will be offered investment solutions that are broadly appropriate to how they intend to use their funds. Customers will also have to make an active decision to invest in cash (or to continue to do so), having been provided with suitable risk warnings. Drawdown providers will have to give customers annual information about the costs and charges that they have paid in the course of drawdown, or once they have taken an '*uncrystallized funds pension lump sum*' (UFPLS).

Responses to the second set of proposals should be submitted by 5 April 2019.

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[16] *FCA proposes rules on investment pathways and other measures to improve retirement outcomes for consumers* <www.fca.org.uk/news/press-releases/fca-proposes-rules-investment-pathways-and-other-measures-improve-retirement-outcomes-consumers>.

[17] *PS19/1: Retirement Outcomes Review: feedback on CP18/17 and our final rules and guidance* <www.fca.org.uk/publication/policy/ps19-01.pdf>.

[18] *CP19/5: Retirement Outcomes Review: Investment pathways and other proposed changes to our rules and guidance* <www.fca.org.uk/publication/consultation/cp19-05.pdf>.

People are currently making life-changing retirement decisions without access to affordable advice, or guidance. The FCA's 'investment pathways' would be a step in the right direction, as long as costs are kept low, and are clearly communicated. Greater transparency on charges will allow consumers to compare providers' offerings and shop around; we think that the FCA should go further, and force providers to share details of the best quote on the market, as it currently does for annuities.

Widening the PO's jurisdiction and dispute resolution remit

The Department for Work and Pensions (DWP) proposes to make some changes to the Pensions Ombudsman's remit and jurisdiction.[19] They would allow earlier involvement in disputes, and enable employers to complain about personal pension providers. Some changes to member communications would be required.

Early resolution of disputes

The Ombudsman is, generally speaking, barred from investigating complaints about occupational pension schemes until they have been through the scheme's internal dispute resolution procedure. However, in March 2018, the Ombudsman took on the dispute resolution function of the Pensions Advisory Service (TPAS), as well as the employees and volunteer advisers who helped scheme members to solve any disagreements with their schemes. The DWP's concern is to create the necessary legal environment in which the transferred function, which the Ombudsman has dubbed the 'Early Resolution Service' (ERS), can continue to operate. This raises questions about the legal status of any agreement that is reached between parties using the ERS, and whether the Ombudsman should be able to make binding directions at the conclusion of the process.

There are places in the pensions legislation where members must still (technically) be referred to TPAS for help with disputes. Those provisions therefore need to be updated. The Pensions Regulator has pragmatically reassured trustees and others that they will not be penalized for updating their member communications in advance of legislative amendments (although it is hard to see how any other decision would have been acceptable).[20]

Employer complaints

At present, the only circumstances in which an employer can complain to the Ombudsman about the actions of a personal pension provider are when it does so on behalf of a scheme beneficiary. Now that employers are subject to automatic-enrolment duties, there may be cases in which they wish to refer a dispute to the Ombudsman in their own right.

The short consultation period for the proposals ran from 19 December 2018 to 18 January 2019.

For the most part, these proposals seem like a natural progression. The Ombudsman has been working for some time on ways to resolve complaints at an early stage, where possible: for example, an adjudicator will now offer an opinion on most cases that are investigated, and only when that opinion is not accepted by one or other of the parties will it reach an Ombudsman's desk. According to his latest annual report, around seventy per cent of investigations conclude without his or his Deputy's intervention.[21]

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[19] *The Pensions Ombudsman: dispute resolution provisions and widening of jurisdiction* (December 2018) <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765953/pensions-ombudsman-dispute-resolution-provisions-and-widening-of-jurisdiction.pdf>.

[20] <https://www.pensions-ombudsman.org.uk/wp-content/uploads/Final-Signed-Letter-on-the-move-of-Dispute-Resolution-from-TPAS-to-TPO.pdf>.

[21] <www.pensions-ombudsman.org.uk/wp-content/uploads/TPO-AR-2018-FINAL-ONLINE.pdf>.

Public-sector pension reform transitional provisions ruled discriminatory

The Court of Appeal has adjudged the transitional arrangements made in the course of reforming the Judicial and Firefighters' pension schemes, earlier in this decade, to be discriminatory.[22] Other public service pension schemes, with similar transitional provisions, may be affected by the decision.

Public sector pension reform: recap

In March 2011, the Independent Public Services Pension Commission, under Lord Hutton, published recommendations for reform of the various pension schemes in the public sector. The changes subsequently made varied from scheme to scheme, but common threads included a switch from final salary to career average benefits, and tying normal retirement dates to State pensionable age.

Notably, in the context of this judgment, the Hutton Review advised against providing transitional protection for members over a certain age, saying that it was unnecessary (as those closest to retirement were already the ones least affected by the reforms) and probably contrary to age discrimination legislation. The Government rejected that advice, and made provisions ensuring that active members who were within ten years of normal pension age (NPA) on 1 April 2012 were fully protected from the changes, effectively remaining entitled to accrue benefits on their existing terms until retirement. Those who were at that time between ten and fifteen years away from their NPAs were given a less-complete, tapered form of protection, under which they enjoyed limited periods of continued accrual under their existing schemes before being moved into the reformed schemes. The youngest members were given no protection other than retention of their accrued rights.

The claims

Groups of judges and firefighters who found themselves in the tapered- and no-protection categories brought claims against the Government, saying that the transitional provisions amounted to direct age-related discrimination, indirect race-based discrimination, and a breach of equal pay legislation.

The judges were (in broad summary) successful in their initial Employment Tribunal claims and in the Government's subsequent appeal to the Employment Appeals Tribunal (EAT). The firefighters' claims were dismissed, at the first instance, but they appealed successfully to the EAT.

The Government then took the cases to the Court of Appeal.

Court of Appeal judgment

The Court upheld the EAT's rulings that the transitional arrangements for judges and firefighters are discriminatory on grounds of age. It rejected the Government's attempts to justify the age-based discrimination as a proportionate means of achieving a legitimate aim. Whilst it has a margin of discretion over the aims that it pursues and the ways in which it chooses to achieve them, the Government had failed to substantiate its reasons for the discriminatory treatment. Its justification, which amounted to a belief that it '*was a moral decision*' that '*it felt right*' to protect older members, was '*not good enough*', in the Court's view.

The claimants were also largely successful in their arguments about other forms of discrimination.

We understand that the Court of Appeal turned down the Government's request for permission to appeal to the Supreme Court. It might apply directly and, given the sums of money that must be at stake, and the difficulty in re-visiting years-old transitional protections to remove any discriminatory effects, it would be unsurprising to us if it did. The sorts of transitional provisions deprecated in this judgment are shared by many other public sector schemes. It is unclear at the moment whether the Government would be expected to remove or revise them.

[22] *Lord Chancellor v McCloud* [2018] EWCA Civ 2844.

New 'Fair Deal' proposals for the LGPS

The Ministry of Housing, Communities and Local Government (MHCLG) seeks views on revised '*Fair Deal*' proposals for England and Wales.[23] Service providers that take on local government employees in outsourcing exercises will have to offer them membership of the Local Government Pension Scheme (LGPS), and will no longer have the option of providing a 'broadly comparable' scheme instead.

Fair Deal: a potted history

The original '*Fair Deal*' policy was introduced, in 1999[24], to establish rules about the pension rights of ex-public sector employees who were transferred to new employers when public services were outsourced to private-sector contractors or other organizations. The transferred staff members had to be provided with pension schemes that were '*broadly comparable*' to their public sector schemes.

The policy applied primarily to central government departments, and had to be adapted for local government. Under the resulting '*Best Value*' policy, service providers were given the option of providing broadly comparable schemes or participating directly in the LGPS. Such participants became known as '*admission bodies*'.

Revised central government guidance, known as the 'new Fair Deal', was published in October 2013.[25] Under it, transferred employees are to be given continued access to their public sector schemes, rather than broadly comparable arrangements. It has taken effect for central government schemes such as the Civil Service Pension Scheme. The Department for Communities and Local Government (as it was then known) published its first set of proposals for tailoring the new Fair Deal to the needs of local government in May 2016. In answer to concerns expressed by respondents, the re-named MHCLG said it would come up with fresh proposals.

The new 'new Fair Deal' for LGPS members

As with the new Fair Deal policy for central government, local government service providers will no longer have the option of providing transferred staff with a broadly comparable scheme. Compulsorily transferred staff members will be entitled to continued membership of the LGPS; however, there will be a choice of means of achieving that end.

The revised proposals would apply to '*Fair Deal employers*': essentially, all current LGPS employers other than higher and further education institutions and admission bodies. Any employees of such an employer who are eligible for LGPS membership and are compulsorily transferred in an outsourcing exercise after the effective date of the changes will become '*protected transferees*', entitled to continued access to the LGPS. They will continue to be protected transferees for as long as they are employed (wholly or mainly) in the provision of the outsourced service, and throughout subsequent transfers and sub-contracting exercises. Other employees of a service provider who work (wholly or mainly) on the outsourced service may be treated as protected transferees if the Fair Deal employer and service provider agree.

Employees of *current* admission bodies who are transferred to a sub-contractor during the period of an *existing* outsourcing contract will not become protected transferees automatically, but the admission body will have the option of requiring the sub-contractor to offer continued access to the LGPS. When a Best Value contract is renewed or re-tendered, however, any ex-local government employees who are still working on the outsourced function will become protected transferees.

Once a person becomes a protected transferee under the auspices of a particular LGPS administering authority, he or she will be entitled to transfer any rights accrued in the past in a broadly comparable scheme into the fund

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[23] *Local Government Pension Scheme: Fair Deal—Strengthening Pension Protection* <www.gov.uk/government/consultations/local-government-pension-scheme-fair-deal-strengthening-pension-protection>.

[24] *Staff Transfers from Central Government: A Fair Deal for Staff Pensions* <webarchive.nationalarchives.gov.uk/20140320191258/http://resources.civilservice.gov.uk/wp-content/uploads/2011/09/stafftransfers2_tcm6-2428.pdf>.

[25] *Fair Deal for Staff Pensions: Staff Transfer from Central Government* <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/262490/PU1571_Fair_Deal_for_staf_pensions.pdf>.

managed by that administering authority. This will be treated as an individual transfer request, and the MHCLG proposes that the LGPS benefits awarded in return for the member's cash equivalent transfer value will be determined on an actuarially neutral basis in accordance with MHCLG guidance. This could result in service credits that are less than year-for-year.

New 'deemed employer' option

The MHCLG proposes to create a new route by which protected transferees can be provided with access to the LGPS. As an alternative to the service provider becoming an admission body it will be possible for the outsourcing Fair Deal employer to continue to act as the transferees' '*deemed employer*', for pension purposes. This is intended to facilitate risk sharing between the contracting parties (with the hope of reducing the risk premiums that service providers build into their bids), make the transition smoother for members, and slow the growth in the number of LGPS employers (which is causing administrative problems). The MHCLG says that it may also allow service providers to account for their pensions obligations differently. The LGPS's Scheme Advisory Board (SAB) will issue guidance on risk-sharing arrangements between Fair Deal employers and service providers: Fair Deal employers will need to take the SAB's guidance into account when setting the contract terms for both deemed employer and admission agreement cases. The Department for Education will issue mandatory guidance on the provisions that must be included in the service contracts between academies and service providers if the deemed employer route is to be used.

The choice between the admission body and deemed employer approaches will have to be stated in the service contract.

Automatic transfers in mergers and takeovers

Other proposed amendments to the LGPS Regulations in England and Wales will provide that, when an LGPS employer is merged into or taken over by another organization, the successor body becomes the Scheme employer and (in the absence of explicit legal provision to the contrary) is responsible for the exiting employer's Scheme assets and liabilities. If the successor body is already a LGPS employer with active members in its own right (whether in the same LGPS fund or another), the exiting employer's assets and liabilities will be automatically transferred to the successor's administering authority and combined with the successor's own assets and liabilities. The MHCLG will issue mandatory guidance on the details of these automatic transfers.

Next steps

The closing date for responses to the consultation exercise is 4 April 2019.

The Government's proposed reform package is a step forward from the 2016 consultation exercise. There are still practical details to be clarified, if not by the finalized Regulations, then in the promised guidance from the MHCLG, DfE and SAB. Still, it is good to see that the MHCLG is committed to resolving the long-standing issue of 'new Fair Deal' for LGPS employers.

HMRC newsletters

Her Majesty's Revenue and Customs (HMRC) has published three updates since the last edition of *Current Issues*.

Relief at source pension schemes newsletter

The newsletter includes the arrangements for claiming tax relief on behalf of Scottish taxpayers who are members of pension schemes using the relief at source mechanism (mostly personal pensions).[26] These arrangements are based on the Scottish Income Tax rates for the 2019-2020 tax year from the Scottish Government's Draft Budget published in December 2018. The rates are the same as those for the 2018-2019 tax year.

The current tax relief rules will continue to apply. Providers will claim tax relief at the 20% basic rate for members who are Scottish taxpayers, including those liable to income tax at no more than the Scottish 'starter rate' of 19%, or who pay no tax. HMRC will not recover the one per cent difference between the Scottish starter and Scottish basic rate. Pension scheme members who are Scottish taxpayers liable to income tax at the Scottish 'intermediate rate' of 21% will be entitled to claim the additional 1% relief through their Self-Assessment returns, or by contacting HMRC if they do not already complete a return.

The Welsh Government has confirmed that for the 2019-2020 tax year, the income tax rates for Welsh taxpayers will continue to be the same as those for English and Northern Irish taxpayers.

Countdown Bulletin 41

This is the latest Bulletin in a series designed to deal with the aftermath of the abolition of contracting out.[27] An update is provided on scheme financial reconciliation cut-off dates. Schemes have until close of business on 28 February 2019 to request their financial position. The cut-off date for scheme financial reconciliation is 11 January 2019. A scheme in surplus will not receive a refund when HMRC runs its final refund and billing exercises in April 2019 unless it has requested its financial position.

Pension schemes newsletter 106

In this newsletter, HMRC acknowledges the increased interest in the equalization of GMP benefits following the *Lloyds Banking Group* ruling.[28] HMRC says it is considering the pension tax implications of this ruling and will provide further information and advice in future newsletters. There is also a reminder that trustees of an existing master trust have until 31 March 2019 to apply to the Pensions Regulator for authorization to continue as a master trust. Failure to obtain authorization is grounds for loss of registered pension scheme status.

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[26] <www.gov.uk/government/publications/relief-at-source-pension-schemes-newsletter-january-2019/relief-at-source-pension-schemes-newsletter-january-2019>.
[27] <www.gov.uk/government/publications/countdown-bulletin-41-january-2019/countdown-bulletin-41-january-2019>.
[28] <www.gov.uk/government/publications/pension-schemes-newsletter-106-january-2019/pension-schemes-newsletter-106-january-2019>.

And Finally…

Vindication at last! And from no less authoritative a source than the Queen's Own Nerdy Data Accumulators (AKA the Office for National Statistics). In *Shrinkflation: How many of our products are getting smaller?*, the ONS answers its own question (possibly because everyone else ignored them when they spoke) by reporting that, between September 2015 and June 2017, there were 206 products--mostly food and drink--that experienced '*shrinkflation*': that is to say, diminished in size whilst their prices remained constant.[29] (In the interests of balance--albeit it's the sort of 'balance' that results in fractured scaphoid bones--we ought to mention the 79 products that ballooned over the same period.)

[*Desultory attempt to link this guff to pensions: So, you may be wondering, what effect does this have on inflationary increases? We think that the ONS is saying that it (rather sensibly) takes shrinkflation into account by measuring price-per-unit: so inflation will rise even though we're just getting less bang for our buck--whether or not pyrotechnics are one of the things that have suffered from shrinkflatification (or should that be shrinkflatulence?).*]

So, despite *AF*'s mum's solemn assurances, it's *not* just that our hands have gotten bigger. We always suspected that she was a shill for 'Big Chocolate', and now we have the proof[30]…

[29] >www.ons.gov.uk/economy/inflationandpriceindices/articles/theimpactofshrinkflationoncpihuk/howmanyofourproductsaregettingsmaller>.
[30] See also *Shrinkflation and the changing cost of chocolate* <www.ons.gov.uk/economy/inflationandpriceindices/articles/shrinkflationandthechangingcostofchocolate/2017-07-24>.