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Nudge-nudge, know what I mean?

Trustees and managers of occupational pension schemes must in some cases give their members (and members' survivors) a '*stronger nudge to pensions guidance*', if they enquire about accessing money purchase benefits on or after 1 June 2022. This will necessitate changes to administration processes and record keeping.

I'm afraid I don't quite follow you

From July to September 2021, the Department for Work and Pensions (DWP) held a consultation exercise on draft Amendment Regulations designed to result in scheme members and surviving beneficiaries receiving a stronger 'nudge' toward the Pension Wise guidance service (now a function of the Money and Pensions Service) when considering their money purchase benefit options.¹

The DWP has now announced the outcome of that consultation exercise², and laid the (somewhat-revised) Amendment Regulations³ before Parliament. They make changes to the disclosure legislation, and come into force on 1 June 2022.

A nod's as good as a wink to a blind bat

The 'stronger nudge' requirements will generally apply when a '*relevant beneficiary*', who could be either a scheme member or a person entitled to benefits on the death of a member, makes an application, or communication related to an application, to transfer or start receiving '*flexible*' (for example money purchase or cash balance) benefits from the scheme. The requirements will not, however, apply to transfer applications or communications if—

- the member is under age 50;
- receiving flexible benefits is not a purpose behind the application;
- the person was referred to the guidance service by the trustees of another scheme, and either received that guidance or opted out (the DWP explains in its post-consultation report that this is to cater for the possibility that some receiving

¹ *Stronger Nudge to Pensions Guidance* (July 2021) <www.gov.uk/government/consultations/stronger-nudge-to-pensions-guidance/stronger-nudge-to-pensions-guidance>. For a summary of the original proposals, please see *Current Issues* August 2021 <www.hymans.co.uk/media/uploads/Current_Issues_-_August_2021.pdf>.

² *Government Response: Stronger Nudge to Pensions Guidance* (January 2022) <www.gov.uk/government/consultations/stronger-nudge-to-pensions-guidance/outcome/government-response-stronger-nudge-to-pensions-guidance>.

³ *The Occupational and Personal Pension Schemes (Disclosure of Information) (Requirements to Refer Members to Guidance etc.) (Amendment) Regulations 2022* (SI 2022 No. 30).



scheme trustees might wish to extend the ‘nudge’ to enquiries about *inward* transfers, even though they are not obliged to do so); or

- the transfer is to a scheme in which the member will have to be told about the availability of the guidance under Financial Conduct Authority (FCA) rules.

If the trustees (or managers, for example in the case of a public service pension scheme) receive such an application on or after 1 June 2022, they will need to offer to book a Pension Wise guidance appointment on the beneficiary’s behalf. If the offer is accepted, they must take reasonable steps to make the booking. When the offer is not accepted, or the trustees are unable to arrange a suitable appointment, they must explain how the beneficiary can do so. They must also explain that the transfer or benefit crystallization cannot proceed until the beneficiary either confirms receipt of guidance or gives an opt-out notification. These steps must be repeated in subsequent interactions about the same application, until the beneficiary either confirms that guidance was received or opts out.

Opt-out notifications in connection with benefit-commencement applications must be given in a separate communication, although this stipulation could be satisfied by (for example) a phone call or email. A separate notice is unnecessary if the beneficiary confirms (even just verbally) that Pension Wise guidance, or regulated financial advice about the application, has been obtained during the preceding twelve months; that he or she qualifies for a serious ill-health lump sum (note that the person need not be applying for a SIHLS); or that the application is solely to transfer flexible benefits accrued under the scheme.

Look... are you insinuating something?

Trustees will need to maintain records of their ‘stronger nudge’ interactions. Specifically, they must keep a note of a relevant beneficiary’s receipt of Pension Wise guidance or opt-out notification, and any confirmation of circumstances that meant that opting out did not need to be accomplished via a separate communication.

‘That’s good, that’s good!’ (and with that, we shall desist from nerdishly quoting Monty Python’s ‘Nudge Nudge’ sketch). We are very much in favour of telling members about any high-quality guidance that is available to assist them in making their benefit choices. However...

Trustees will need to ensure that their administrators have adapted their processes and communications in time for 1 June 2022 (this may involve making and testing changes to online member portals). They will also need to be prepared to collect and retain sufficient information for the new record-keeping obligations. Note that the ‘flexible benefits’ caught by these rules include money purchase additional voluntary contributions within defined benefit schemes.

Even though there are no time limits specific to the ‘stronger nudge’ obligations, and the legislation puts applications on hold pending confirmation of guidance-taking or an opt-out, administrators may need to pull off some deft juggling to accomplish all of the tasks expected of them without drawing out retirement and transfer processes unreasonably. A morsel of judgement must also be reserved until we see how easy it is in practice to arrange Pension Wise appointments, systematically, on others’ behalf.

Another issue raised in response to the consultation is the interaction of the ‘nudge’ with the new statutory conditions for transfers that came into force in November 2021. They too, in some circumstances, push members toward MaPS guidance—albeit in that case there is no opting out. The DWP appeared to brush aside the challenges of explaining two separate guidance types: one voluntary, the other mandatory; one bookable by trustees, the other by the member; one requiring nothing more than verbal confirmation, the other a unique proof-of-receipt. We fear that such Byzantine details—one might add the need to advise members that they must hang up and call back to opt out—risk bringing the pensions system into disrepute.

‘Say no more.’

Dashboards regulations

The Department for Work and Pensions (DWP) has begun a consultation exercise on draft legislation on pensions dashboards.⁴ The Regulations, if passed, would set out the obligations of occupational pension scheme trustees and dashboard providers. They contain details of the DWP's proposals for a staged introduction of the obligation to connect with, and provide information to, the dashboards system, beginning in the summer of 2023 with the largest schemes (those with at least 20,000 active and deferred members). To assist those who will respond to the consultation, the Pensions Dashboards Programme has published guidance about various standards that it will produce, and with which compliance will be mandatory.⁵

The 28 pages of draft legislation and 137-page consultation document will leave no-one in any doubt about the complexity of this important undertaking. Look out for our [Sixty Second Summary of the proposals](#).

Flat-fee charge-cap restriction

Regulations have been laid before Parliament that prohibit the application of a flat-fee charge to a member's rights in defined contribution (DC) default arrangements if it would reduce their value below £100.⁶ They will also require that trustees take action to restore the value of a member's rights if more than one flat fee is imposed during a single charges year. The changes come into force on 6 April 2022.

In June 2020, the Department for Work and Pensions (DWP) issued a call for evidence on proposed changes to the default-fund charge cap in auto-enrolment pension schemes. The ideas put forward included lowering the level of the cap and restricting the application of flat fees to small, deferred pension pots that are subject to combination charging structures. The latter because of concern that members' investments are being eroded to nothing. The DWP's response to the consultation exercise, published in January 2021, confirmed that it would not change the level of the cap, but would introduce legislation to prevent the application of flat fees to small member pots.

The new Regulations amend the *Occupational Pension Schemes (Charges and Governance) Regulations 2015* so that from a scheme's first charging year ending after 6 April 2022:

- a flat-fee charge may not be imposed on a member's pension pot if the value of the member's rights within a single default arrangement is £100 or less;
- if the value of the member's rights is more than £100, a flat-fee charge may be imposed to the extent that it does not reduce the value of the member's rights to less than £100; and
- where more than one flat-fee charge is imposed on a member's rights under a single default arrangement during the same charges year, the value of the member's rights under the default arrangement must be restored to what it would have been had only one flat-fee charge been imposed.

The DWP has also updated its charge-cap guidance to reflect the amendments.

⁴ <www.gov.uk/government/consultations/pensions-dashboards-consultation-on-the-draft-pensions-dashboards-regulations-2022>.

⁵ <www.pensionsdashboardsprogramme.org.uk/2022/01/31/dwp-consultation-regulations-pensions-dashboards-pdp-standards>.

⁶ The *Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2022* (SI 2022 No. 10).

CDC Code of Practice published for consultation

The Pensions Regulator has published a consultation-draft Code of Practice on ‘*authorisation and supervision of collective defined contribution schemes*’.⁷

Background

The legislation allowing for the establishment of collective defined contribution (CDC) schemes—the legally approved phrase is ‘collective money purchase’ (CMP)—is contained in the *Pension Schemes Act 2021*. Whilst it has not yet been brought fully into force, draft *Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022* have been laid before Parliament, and are set to commence on 1 August 2022.⁸

Collective DC schemes are seen as a way of providing members with better outcomes than are available from traditional money purchase schemes. They do so by pooling risks during the pre- and post-retirement stages. As with an ordinary money purchase scheme, the employer has certainty over its contributions, so CDC provision is less risky for sponsors than are defined benefit (DB) schemes. The CDC scheme aims to provide its members with a certain level of pension, but they have no legal entitlement to particular rates or amounts of benefits. Instead of making the sponsor liable for the balance of the cost of financing DB, members’ pensions are subject to periodic actuarial adjustment to maintain a balance with the available assets.

Authorization & supervision

The draft Code contains guidance on how to apply for authorisation of a CDC scheme, and the criteria that the Regulator will use when considering those applications. The authorisation criteria relate to:

- fitness and propriety;
- systems and processes;
- member communications;
- continuity strategy;
- financial sustainability; and
- sound scheme design.

The Code also sets out details of the ongoing supervision regime for authorized schemes, and the actions trustees need to take if a ‘*triggering event*’ occurs. Triggering events include things like loss of authorization and sponsor insolvency. On the occurrence of a triggering event, the CDC scheme trustees must follow pursue one of the available ‘*continuity options*’, which vary depending on the nature of the event but generally involve discharging the scheme’s liabilities and winding it up, resolving the issue in question, or closing the scheme to new contributions or members (or both). The Regulator intends to revisit the Code later in the year to expand on its expectations for the continuity options, and will be publishing regulatory guidance.

The deadline for consultation response is 22 March 2022.

The first CDC scheme to apply for authorization is very likely to be for Royal Mail employees. The draft Code makes it clear that the standards of governance expected and the level of supervisory scrutiny to which schemes will be subjected are likely to be exacting.

⁷ <www.thepensionsregulator.gov.uk/en/document-library/consultations/collective-defined-contribution-code-consultation>.

⁸ See ‘*CMP draft legislation consultation response*’, in Current Issues January 2022, <www.hymans.co.uk/insights/research-and-publications/publication/current-issues-january-2022/>.

HMRC newsletters: January 2022

*Pension Schemes Newsletter 136*⁹ from Her Majesty's Revenue and Customs (HMRC) contains information about:

- relief at source (including extensions to some temporary changes to processes); normal minimum pension age (NMPA);
- maintaining QROPS status;
- pensions flexibility statistics;
- the Managing Pension Schemes service; and
- scheme pays reporting.

The NMPA section sets out HMRC's policies in connection with the scheduled increase to age 57 in 2028. It confirms, for example, that entitlement to a protected pensions age will be conditional on the existence of an '*unqualified right*' to access benefits before age 57, and that no such right will exist if the member needs anyone's consent, or if the rules do not specify an age (simply permitting retirement at the youngest age allowed by the tax legislation will not be sufficient). HMRC states that work on transitional arrangements (for example, concerning people without a protected pension age who reach age 55, but not age 57, before 6 April 2028) has begun.

The Newsletter also contains what appears to be a veiled warning about a professed Qualifying Recognised Overseas Pension Scheme (QROPS) that is rumoured to have established a defined benefit section with the intention of attracting transfers from UK DB schemes; and a note about the (*McCloud*-judgment inspired) extension of the 'scheme pays' facility to cases where there are retrospective amendments to a person's annual allowance pension input amount.

⁹ <www.gov.uk/government/publications/pension-schemes-newsletter-136-january-2022/pension-schemes-newsletter-136-january-2022>.

And Finally...

AFs favourite recent example of judicial drollery comes in the First-tier Tribunal case of *Pelaw MOT Ltd v The Pensions Regulator*.¹⁰ The ruling concerns a fine imposed upon an employer, by the Pensions Regulator, for a non-compliant auto-enrolment declaration of compliance (look, we don't write the laws, OK?). The employer had the considerable chutzpah to protest a £400 fixed penalty that it received for submitting its declaration almost two-and-a-half months late, despite four pieces of correspondence urging it—in increasingly serious tones—to do so, and two deadline extensions.

The case report was rather dry fare, if we're honest, and we're not sure it provided any general lessons, unless it's that those who stick their heads out of the trenches shouldn't be surprised if they're shot at. In hindsight, perhaps it was simply the paucity of other one-liners that made AF enjoy the judge's wry observation that '*... the fact that the penalty may be burdensome is inherent in the fact that it is a "penalty".'*

Zing...

¹⁰ [2022] 1 WLUK 91.