DLA PIPER

PENSIONS NEWS

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IN THIS ISSUE

INTRODUCTION

Welcome to DLA Piper's Pensions News publication in which we report on recent developments in pensions legislation, guidance and case law, as well as keeping you up to speed on what to look out for in the coming months.

This edition brings you the developments from September 2013 including the following:

- **Automatic enrolment:** the coming into force of regulations banning consultancy charges in automatic enrolment schemes; updates to the statutory guidance on certification; and the Regulator's latest survey about awareness of intermediaries (including trustees) of the reforms.
- **The Pensions Regulator:** the coming into force of the new Codes of Practice on late payment of contributions to DC schemes; and a report on governance of public service pension schemes.
- **PPF:** the consultation on the levy for 2014/15.
- **Legislation:** regulations to strengthen the requirements on QROPS from 14 October 2013 and new regulations for the LGPS for England and Wales which will come into force on 1 April 2014.
- **Other news:** the outcome of the Office of Fair Trading's market study of DC schemes including recommendations made and agreements for action with the Association of British Insurers and the Regulator; and an update on the statistical status of RPIJ.

If you would like to know more about any of the items featured in this edition of Pensions News or how they might affect you, please get in touch with your usual DLA Piper pensions contact or contact Cathryn Everest. Contact details can be found on page 23.

AUTOMATIC ENROLMENT

CONSULTANCY CHARGES

In the July edition of Pensions News we reported on draft regulations banning member-borne consultancy charges from automatic enrolment schemes.

On 14 September the regulations giving effect to that ban came into effect.

The prohibition

The final form of the regulations is the same as the draft version. This means that, subject to one exception, in order to qualify as an automatic enrolment scheme any part of an occupational or personal pension scheme that provides money purchase benefits must not contain a provision that:

- allows a deduction from contributions or from any income or capital gain arising from their investment or allows a reduction in the value of the jobholder's rights;
- if the amount deducted is to be paid to a third party under an agreement that party has with the employer.

A third party for these purposes does not include the trustees of an occupational pension scheme or the provider of a personal pension scheme.

The exception to the prohibition is any deductions made under a legally enforceable agreement that the employer entered into with a third party before 10 May 2013, which is the date on which the Government announced its intention to ban these types of charges.

Looking ahead

The effects of the change are to be monitored both through DWP and TPR surveys in order to understand any changes in behaviour over the coming months.

The DWP press release announcing that the regulations had come into effect states that the Government intends to consult in the autumn on whether to extend the ban to those schemes in respect of which agreements were in place before 10 May 2013.

As we reported in the July edition of Pensions News, the Government has previously stated that it also intends to consult on extending the prohibition to qualifying schemes that are not automatic enrolment schemes.

Employers should check that any scheme they are already using to fulfil their automatic enrolment duties does not breach the terms of this prohibition. For employers who have not yet reached their staging date, when selecting a scheme to use to fulfil their duties, this criterion should be included in the assessment of whether a scheme is an appropriate vehicle.

CERTIFYING MONEY PURCHASE SCHEMES – UPDATED GUIDANCE

Background

From 1 October 2018 the standard quality requirement that DC schemes must meet in order to be a qualifying scheme will be that the total contributions are at least equal to 8% of "qualifying earnings", with at least 3% payable by the employer, with lower levels applying until then.

For these purposes the contributions need only be paid on a range of qualifying earnings (currently from £5,668 to £41,450 but subject to annual review) but qualifying earnings is broadly defined to include commission, bonuses, overtime and specified statutory payments.

If a scheme's rules do not explicitly meet this requirement, an employer may still meet the quality requirement if it can certify the scheme either:

- meets one of three alternative sets of contribution requirements which do not use the definition of qualifying earnings, require contributions to be payable from the first pound of earnings and which in some cases apply different percentage rates; or
- meets the standard requirements in practice, for example, because even though bonuses are not pensionable, a higher contribution rate means the total contributions exceed the total required under the standard quality requirement.

The legislation requires employers using certification to have regard to guidance issued by the Secretary of State when putting the certificate in place. The DWP first issued such guidance in February 2012 which was updated in July 2012.

The updated guidance

In September, a further updated version of that guidance was issued by the DWP and a summary of some of the key changes is set out below.

- The section that sets out examples of who can sign the certificate has been updated to include the head of payroll, the head of HR, the accountant, the scheme administrator, an actuary or another professional adviser.
- The guidance expressly states that the date on which earnings data is checked for the purposes of giving the certificate should not be too far in advance of the effective date of the certificate.
- Certificates can cover periods of up to 18 months which means that the qualifying earnings bands (which will be relevant if the employer is certifying that the standard requirements are met in practice) may change during the certification period. The guidance states that the bands used for the purposes of the employer's calculations should be those that are known at the time the certificate is signed but that, if there is a significant change to the bands during the certification period, employers may need to consider whether their opinion has changed.
- The guidance also confirms that if an employer is confident that from the staging date the scheme will meet the relevant requirement, there is nothing to prevent it from preparing a certificate in advance of the staging date, although the effective date will remain the staging date.
- The question and answer section of the guidance has a new entry which clarifies that when using one of the three sets of alternative requirements, this requirement should be met on the basis of what is contained within the scheme rules.
- The following points are made in connection with the requirement that, where the certificate covers only some jobholders who are active members, it must set out the names and roles of those it does cover and certain jobholders that it does not cover.
  - The certificate does not need to be revised to include the names and roles of those newly hired after the effective date as they will be covered by the certificate until it needs to be renewed.
  - It is acknowledged that the certificate only provides a snapshot at any one point in time and therefore the guidance recommends that employers keep a regularly refreshed list of which workers are covered by the certificate.
  - Whilst the employer has a statutory obligation to provide a copy of the certificate on request by a relevant jobholder or recognised trade union, the employer should consider removing any personal information that would identify any jobholders other than the person making the request or where it is not necessary for the purpose for which the certificate has been requested. It is also noted that employers should ensure they comply with the requirements of the Data Protection Act 1998 when providing certificates.
- Where more than one employer participates in a scheme and one or more are using certification, each employer must hold a certificate. The updated guidance states that it would be sufficient to produce one certificate that lists all the relevant employers and provide a copy to each employer.
- The guidance previously stated that if a scheme used different sets of the three alternative requirements for different jobholders, a separate certificate would be needed for each set. However, the latest version states that a single certificate can be used unless it proves

difficult in practice. It goes on to state that if a single certificate is used, it must be clear on the certificate who is covered by which set of requirements.

- In terms of terminology, whilst the three categories of requirements were previously referred to as different "tiers", the DWP now refers to them as "sets". The reason for this is said to be that "tiers" incorrectly implied a hierarchy.

Pending changes to the legislation

The updated version of the guidance also refers to some pending changes to the automatic enrolment legislation.

- A change so that hybrid schemes certifying their money purchase benefits on one of the three alternative requirements can phase in contributions – the DWP proposes to amend the legislation to reflect this point before the end of 2013.
- The proposal (reported in the March edition of Pensions News) to change the pay reference period for the purposes of assessing the quality requirement – whilst the response has not yet been published to the consultation containing that proposal, the updated guidance confirms that the intention is to make the amendment with effect from November 2013.

It is useful to have the updated version of the guidance which clarifies some practical points. It is important that employers putting in place a certificate for their scheme use this updated version of the guidance, including the sample certificate. If you are certifying your scheme and would like any advice to ensure the certificate is valid, please get in touch with your usual DLA Piper pensions contact.

CERTIFYING DEFINED BENEFIT SCHEMES – UPDATED GUIDANCE

The DWP has also published updated versions of the two sets of guidance – one of which is for employers, the other for actuaries – in relation to certifying that DB and hybrid schemes meet the quality requirement.

The general position in relation to DB schemes is that if a jobholder is in contracted-out employment, the quality requirement is met but if a jobholder is not in contracted-out employment, a test scheme standard set out in legislation has to be met with either the employer or the actuary (depending on the circumstances) certifying this is the case, having regard to the guidance.

Some key points to note in relation to the updates to the guidance are set out below.

Contracted-out schemes with some members not in contracted-out employment

It has not previously been clear what the position is where a scheme is contracted-out but there are some active members who are not in contracted-out employment, for example, because they are over state pension age. The question is whether the quality requirement would still be met for those members by virtue of the scheme having a contracting-out certificate or whether the test scheme standard would have to be assessed for these specific members.

The updated versions of the guidance set out the DWP's view that, in respect of such members, a simplified approach can be used. Under this simplified approach, when assessing if the quality requirement is met for a jobholder in a contracted-out scheme who is not in contracted-out employment, the employer will need to establish that the benefits to be provided for that jobholder and the other members who are *not* in contracted-out employment are calculated in the same way as those for the members of the scheme who *are* in contracted-out employment. If this is the case, the test scheme standard is satisfied.

The guidance emphasises that for the test to be met, there must not be any differences between the two sets of benefits. For example, there must be no differences in normal retirement age, accrual rate, definition of pensionable pay, maximum service periods or methods of revaluation or indexation.

If there are any differences, then the same assessment of the test scheme standard will have to be completed for these members as would apply for schemes which are not contracted-out at all.

Career average schemes – revaluation

Where a scheme provides for average salary benefits, in order to be a qualifying scheme, there are additional requirements to be met in relation to revaluation while members are in service.

The updated guidance makes the following points about this requirement and also clarifies that, as it is not part of the test scheme standard, these sections do not form part of statutory guidance but simply suggest best practice for employers.

- There is flexibility for schemes to take a reasonable and practical approach on the reference year for the purposes of comparing the scheme's revaluation rate with the minimum requirement.
- A time lag before benefits accrued in each year are revalued (which is noted to be common operational practice in such schemes) fits with the Government's policy intention provided it is reasonable.

Jobholders to include in the test

The updated guidance confirms that it is jobholders who are active members at the date of determination and in respect of whom the test scheme standard will apply who should be included in the assessment.

Who should give the certificate?

The legislation and guidance addresses the circumstances in which an employer can self-certify and when an actuary should complete the test. The updated guidance for employers also makes it clear that, even where the employer could self-certify, they can still delegate the certification to the actuary. The template certificate now provides for the actuary to note where they are providing the certificate on this basis.

Schemes with different benefit scales

The guidance for employers has been updated to clarify that in schemes with different benefit scales, the test scheme standard must be satisfied at the level of the scheme as a whole rather than at the level of each benefit scale.

Template certificate

Some amendments have been made to the template certificate in both sets of guidance including the deletion of the section on the revaluation rates for career average schemes because that requirement is not part of the test scheme standard.

Forthcoming amendments to the legislation

Like the updated guidance on certifying DC schemes, these updated versions refer to proposals that featured in the DWP's March consultation. In this case, proposals for amendments (i) to take future increases in state pension age into account in the age at which a test scheme must provide entitlement to benefits and (ii) to the tests for lump sum schemes are mentioned and it is again reported that the intention is for these changes to come into effect in November 2013.

The confirmation about the treatment of members of contracted-out schemes who are not in contracted-out employment is one that we would expect employers to particularly welcome as it removes the concern that the full test scheme standard assessment might have to be completed for only a small number of members.

Employers should ensure that they are certifying on the basis of this updated guidance including its step by step checklists and template certificate rather than those in the previous version of the guidance.

SURVEY – AWARENESS, UNDERSTANDING AND ACTIVITY

On 10 September, the Pensions Regulator published "*Intermediaries' awareness, understanding and activity in relation to workplace pension reforms Spring 2013*" reporting on the latest wave of its research to identify and track awareness, understanding, knowledge, attitudes and intended actions in relation to the reforms.

Background

The research was based on 580 telephone interviews conducted between May and July 2013.

The intermediaries covered by the research included pension specialists (pension administrators and trustees), pension consultants/employee benefit consultants, Independent Financial Advisers, payroll administrators, HR professionals, accountants and bookkeepers.

As with previous waves of the survey, trustees were included in the pension specialists category of intermediary. This is because, whilst they do not advise employers, they will typically have a high level of awareness and understanding of technical pension issues and be in a position to share information with their scheme employers about the reforms, such as whether the scheme meets the criteria to be used for automatic enrolment.

64 of the survey respondents were trustees and the findings in relation to them included the following:

- Levels of awareness and understanding remained largely unchanged since the last survey in autumn 2012. Awareness was at 94% compared to 97% in autumn 2012 and whilst levels of understanding were 67% which was a fall from 81%, this was stated not to be statistically significant.
- Of a list of key elements of the reforms, the element least well known among trustees was the need for employers to register automatic enrolment details, although this had a figure of 73%.
- In terms of detailed understanding, trustees were:
  - most likely to be aware that: eligible workers will need to be identified (89%); communications need to be sent out on an ongoing basis (88%); and employers need to identify those jobholders who have a right to opt in and receive an employer contribution (80%);
  - less likely to know: that those eligible include certain contractors as well as employees (39%); the factors to assess for eligibility (56%); the type of earnings to be assessed (34%); the need to identify entitled workers (36%); and that the employer has to enrol workers who choose to opt in during a postponement period (39%); and
  - less likely to understand pay reference periods (45%).
- 42% were already helping their sponsoring employers in relation to automatic enrolment (compared to 43% in autumn 2012) and 23% planned or expected to do so (compared to 28%), although 34% expected to have no involvement or did not know if they would (compared to 29%).
- 24% of trustees anticipated acting on behalf of their scheme employers and 30% anticipated providing technical advice.
- The activities that most trustees reported having undertaken included finding out staging dates and determining whether the existing scheme could be used for automatic enrolment.

The results are largely unchanged since autumn 2012 in terms of the levels of awareness and involvement with the reforms as well as the key tasks being undertaken by trustees. In terms of the understanding of more detailed aspects of the reforms, the results are said to show that a significant proportion of trustees lack a detailed knowledge of the reforms.

It is important for employers to note that whilst the survey results show trustees and other intermediaries expecting to act on behalf of the employer in relation to certain aspects of the reforms, even if this is the case, the employer will still be ultimately responsible for compliance and therefore should ensure that they understand the steps that are being taken.

If you are an employer or trustee and would like any training to assist with your levels of awareness and understanding of the reforms, please get in touch with your usual DLA Piper pensions contact.

THE PENSIONS REGULATOR

MAINTAINING CONTRIBUTIONS

The June edition of Pensions News included a report covering the Regulator's response to its September 2012 consultation about updates to its Codes of Practice on reporting the late payment of contributions to occupational and personal defined contribution schemes together with new accompanying guidance.

At that stage, the updated versions of the Codes and guidance were still in draft form and subject to Parliamentary approval. In September, legislation was made officially bringing the updated versions of the Codes into effect on 20 September 2013.

The final form of the Codes and guidance are the same as those that were published in June and therefore the commentary contained in the June edition of Pensions News still applies.

A key point in relation to the updated versions of the Codes is that they now cover not only the reporting of late payments but also the monitoring of contributions that are paid to schemes. The Codes state that trustees (or managers in the case of personal pensions) should have a process in place (ideally documented in writing) for monitoring contributions and that process should be proportionate and risk-based. It would therefore be useful for trustees to include this issue in their work plans for the coming months so that they can ensure that they have a process in place or, if a process is already in place, that this is reviewed to ensure it remains appropriate.

KODAK RESTRUCTURING

On 4 September, the Regulator issued a press release responding to the announcement that the Kodak Pension Plan has completed the acquisition from Eastman Kodak Company of the Personalised Imaging and Document Imaging businesses.

The Regulator's comments on the Kodak case

The Regulator's response states that:

- it provided clearance in April for the acquisition of the two companies and establishment of a new pension plan;
- the solution avoids the group's insolvency and pension scheme members will benefit from the cash flows and growth potential of the two businesses; and
- the Regulator regards this as an important step towards reaching an outcome that best balances the needs of members, the PPF, the company and the employees.

Looking ahead, the Regulator states that there are still some matters to be resolved with the pension trustees and the PPF and, once the remaining milestones are complete, the Regulator plans to publish a report outlining how it approached this case.

General comments on restructurings

More generally the press release quotes the Regulator's interim chief executive as commenting that where businesses are in a distressed state, the Regulator is prepared to be creative and work collaboratively with pension trustees and employers to explore options to find viable outcomes. The press release also notes the importance of approaching the Regulator at an early stage if there are financial difficulties that threaten ongoing support to the scheme.

Reports from the Regulator such as those it published in relation to the Uniq case (see the May edition of Pensions News) and UK Coal (see the January edition of Pensions News and the July edition in relation to subsequent developments) provide a useful insight into the Regulator's approach to restructuring scenarios. It is therefore interesting to see that the Regulator plans to issue a more detailed report on this case and we will provide a further update when it does so.

GUIDE FOR NEW TRUSTEES

In September the Regulator published "*A guide for new trustees*", a short introductory guide designed to give new trustees an idea of the duties that their new role entails.

The guide provides a brief overview of the following areas as well as links to further information from the Regulator in relation to each: trustee knowledge and understanding; the trustee role and responsibilities; and governance and scheme administration.

The guide also provides information about the Trustee Toolkit and contact details for other organisations such as the Pensions Advisory Service, the Pensions Management Institute and the National Association of Pension Funds.

If you have any new trustees appointed to your board and would like more detailed training on their role to ensure the required standards of trustee knowledge and understanding are met, please get in touch with your usual DLA Piper pensions contact.

GOVERNANCE OF PUBLIC SERVICE PENSIONS

Background

In the April edition of Pensions News, we reported on the Public Service Pensions Act 2013 which provides the framework for regulations to be made establishing new public service schemes to give effect to reforms proposed following the review by the Independent Public Service Pensions Commission.

The changes cover schemes for civil servants, the judiciary, local government workers, teachers, health service workers, fire and rescue workers, members of police forces and the armed forces. The existing schemes will be closed to future accrual on 31 March 2015 (or 31 March 2014 in the case of the Local Government Pension Scheme for England and Wales) and there is power in the Act to create new schemes.

The Act makes provision for benefit changes by providing that final salary schemes are not permitted and therefore enabling the creation of career average schemes to replace the existing final salary schemes. In addition, the Act:

- states that the regulations for the new schemes will have to make certain provisions in relation to governance, such as providing for a scheme manager and a pensions board; and

- makes provision in relation to regulation by introducing requirements for knowledge and understanding and internal controls and giving the Pensions Regulator power to issue Codes of Practice about public service schemes.

The Regulator's survey

In recognition of its upcoming role from April 2015 in setting standards of governance and administration in these public service schemes, the Pensions Regulator commissioned an independent survey in order to gain a more detailed understanding of the current governance and administration standards. (However, the research did not cover the Judicial Pension Scheme because the research was already underway when it was added to the Regulator's role.)

In September, the Regulator published a report on the findings of that research. The research took the form of an online self-completion questionnaire. 115 schemes completed the survey giving an overall response rate of 53%. When looking at the national schemes alone, the response rate was 100%. The results of the survey are segmented into three groups:

- unfunded locally-administered schemes (that is, those for police and fire fighters);
- funded locally-administered schemes (that is, the Local Government Pension Scheme); and
- unfunded nationally-administered schemes (that is, those for civil servants, teachers, the NHS and the armed forces).

The survey drew in part on questions that would usually be covered in the Regulator's surveys about governance and record-keeping in private sector schemes.

The results cover issues such as: frequency of formal meetings; board member training; policies on knowledge and understanding; frequency of formal administration reports; monitoring the cost of scheme administration; standards of administration; measurement of common data; measurement of conditional data; use of external service providers; processes for risk management including conflicts of interest; documenting internal controls; and views on overall governance activities.

In the summary of findings, it is reported that:

- the survey confirmed the Regulator's expectation that the LGPS and the national schemes currently have the better-developed governance arrangements of the public service schemes;
- the LGPS schemes overall are the most likely to track and disclose service standards and to measure the state of records;
- the schemes with the most employers are most likely to have been alerted to data quality problems; and
- although there is room to improve, the survey finds examples of good practices.

Looking ahead

The Regulator states that it:

- is currently working on a regulatory strategy and codes of practice for these schemes and the findings of the survey will inform the development of the regulatory approach;
- will consult on the strategy and codes later in 2013;
- will take a similar approach to public service schemes as to private sector schemes by prioritising education and enablement but taking enforcement action if necessary; and
- plans to monitor and report on the progress of public service schemes each year.

The scheme manager will be the person responsible for managing and administering the scheme, for example, this may be the relevant Secretary of State and for the LGPS will be the local administering authority in respect of each fund. The role of the pensions board is to assist the scheme manager in securing compliance with the scheme regulations and other legislation relating to governance and administration and with requirements imposed by the Pensions Regulator. A knowledge and understanding requirement will also be imposed on the members of the pension boards.

It will be for the scheme regulations and scheme manager to determine precisely how the pension board carries out its role. The standards of governance and administration that are expected will be a question for the Regulator's upcoming codes of practice and regulatory guidance. It will be important for the members of the new pension boards to have any training needed to meet the levels of knowledge and understanding and to ensure that they have processes in place to meet the relevant standards of governance and administration.

PENSION PROTECTION FUND

CONSULTATION ON 2014/15 LEVY

On 5 September, the PPF published its consultation on the levy for 2014/15. The consultation is open until 5pm on 24 October 2013.

Background

From 2012, the PPF changed the design of the levy with the aim of, so far as possible, maintaining stability and predictability in the way the levy is calculated over a three year period. The first such triennium covers the 2012/13, 2013/14 and 2014/15 levy years.

In order to achieve this stability, the formula (or parameters) for calculating the levy are fixed for the triennium aside from in specified circumstances which are where doing so would result in: the levy ceiling being exceeded; the scheme-based levy estimate exceeding 20% of the total levy; or a variation of more than 25% from the previous year's levy estimate.

The levy estimate for 2014/15

Applying the same levy parameters to 2014/15 does not result in any of the specified circumstances arising. The PPF has concluded that the parameters remain appropriate and that no changes need to be made to them for 2014/15. This has the result that the levy estimate has increased by around 10% from the £630 million estimate for 2013/14 to £695 million for 2014/15.

The final amount invoiced could differ from this estimate because much of the data used to calculate levy bills is not yet available which means that the estimate is based on a set of assumptions (for example that all contingent assets certified for 2013/14 will be recertified).

The PPF emphasises that the increase in the estimate is not a reaction to individual events, such as large single claims being made on the PPF. In addition, because the parameters for the levy triennium were confirmed in late 2011, they do not take account of: the change proposed to the PPF compensation cap (see the June edition of Pensions News) or the potential impact of the proposed new objective for the Pensions Regulator to minimise any adverse impact on the sustainable growth of an employer (see the May edition of Pensions News).

The PPF notes that it has not currently included a rule about the proposed change in 2014 to the statutory definition of money purchase benefits. However, depending on how this issue progresses, the PPF states that it may need to provide in the final Determination for an ability to review 2014/15 levy calculations to take into account the impact of this change.

In terms of the impact on individual bills, the PPF makes it clear that the increase in the estimate of 10% does not mean that all bills will increase by 10%. Rather, depending on their circumstances, some schemes will see a fall in the levy and others will see an increase larger than 10%. The PPF estimates that comparing projected levy payments for 2013/14 and 2014/15:

- around 50% of schemes will see a levy increase of 15% or less;
- around 20% of schemes will see increases of over 25% (although it is noted that those with large percentage increases are generally still paying comparatively low levies); and
- around 4% of schemes will see a levy reduction.

Contingent assets

Whilst there are no major changes proposed to the levy rules for 2014/15, the PPF proposes some changes in relation to contingent assets.

- **Recertifying**

  In the past, recertifying a contingent asset has only been possible if it was certified in the immediately preceding levy year. The PPF states that this has led to a practice of recertifying even where the contingent asset makes no difference to a scheme's levy, simply in order to avoid having to undertake the requirements of certification and submission as a new contingent asset in a later year.

The PPF proposes to allow schemes to recertify (without having to submit the papers required for a new certification) where they have certified in any previous levy year provided: (i) the last certification/recertification was not more than five levy years previously; (ii) the underlying guarantee has been in place throughout the intervening period; and (iii) the PPF receives confirmation that either the trustees do not believe the legal position has changed since the levy year in which it was last certified or, if they have reason to believe it may have changed, a revised legal opinion is submitted.

- **Certification in relation to the resources of the guarantor**

The current certification wording that trustees have to give states that they have "*no reason to believe*" the guarantor could not meet its full commitment under the contingent asset.

In recognition of stakeholder concern that this could act as a block to certification where there is one isolated negative factor but this is outweighed by a number of positive factors, changes are proposed to the wording so that it is drafted positively rather than negatively. The PPF believes this remains consistent with its 2013/14 guidance and does not expect it to affect the way in which trustees consider the value of the guaranteed amount or the assessment of the guarantor.

The reference to belief has also been changed to refer to trustees being "*reasonably satisfied*" that the guarantor is able to meet its full certified commitment. Express reference has also been added to the following two points that the PPF first made in the 2013/14 guidance: (i) the need for trustees to investigate the guarantor's financial position before certifying; and (ii) the need for trustees making "*reasonable enquiry*" to consider the impact of the employer's insolvency on the ability of the guarantor to meet its certified commitment.

The PPF does not think that this changes its existing approach in relation to what trustees should do before providing the certification. The PPF states that what constitutes "*reasonable enquiry*" to be "*reasonably satisfied*" will be specific to the scheme's circumstances and therefore it will not publish prescriptive requirements that trustees should follow, although it notes that trustees should refer to the guidance which already provides examples of the investigations trustees should consider.

The proposed new certification wording is therefore as follows:

"*The trustees, having made reasonable enquiry into the financial position of each certified guarantor, are reasonably satisfied that each certified guarantor, as at the date of the certificate, could meet its full commitment under the contingent asset as certified, having taken account of the likely impact of the immediate insolvency of all of the relevant employers*".

The PPF acknowledges that some stakeholders may prefer to retain the existing wording but it comments that introducing guarantor certification has had a substantial effect in removing dubious guarantees from the system. The PPF states that it welcomes feedback on this.

Draft guidance

In recognition of the fact that the late publication of some guidance on contingent assets caused difficulties for some schemes for the 2013/14 levy year, the PPF has published the draft guidance, including that on contingent assets, alongside the consultation.

The PPF states that this is not part of the formal consultation but early publication will give an opportunity to comment on anything which is unclear. The PPF also notes that it does not necessarily intend to repeat this approach in the future.

Key dates

The consultation also sets out the proposed key dates that will impact on PPF levies for 2014/15. The proposed deadline for submission of information to be taken into account in the levy calculation is 5pm on Monday 31 March 2014 aside from a few exceptions (for example, certification of deficit reduction contributions).

Looking ahead to 2015/16

All of the levy parameters will be reviewed for the start of the new triennium in 2015/16 although the PPF states that it will only make changes to the parameters or the rules where there is clear evidence to support that course of action.

The first stage of consultation for the new triennium is expected to be launched in early 2014, with a consultation on the final levy rules for 2015/16 following in autumn 2014.

The PPF had previously stated that an increase to the levy could be expected for 2014/15 and therefore the estimate is in line with this. In terms of contingent assets, we would expect trustees and employers to welcome the proposed additional flexibility on when recertification can take place rather than a new certification being required. For trustees who are planning to submit contingent assets, it will be important to ensure the certification is given in the correct form and also that the deadlines for submission are adhered to. We will report again when the response to the consultation and final determination are issued.

LEGISLATION

QUALIFYING RECOGNISED OVERSEAS PENSION SCHEMES (QROPS)

In September, the Registered Pension Schemes and Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2013 were made; coming into force on 14 October, the purpose of which are to further strengthen the QROPS regime.

The changes made by the regulations include the following.

- An increase to the information that QROPS must provide to HMRC when they notify HMRC of their status and of the making of a payment in respect of a relevant member. HMRC states that in practice QROPS already provide most of the additional information and therefore this does not represent an increase in administrative burden for the schemes.
- The introduction of a new requirement to re-notify HMRC every five years that the scheme meets the requirements to be a QROPS.
- The extension of the requirements to provide information to schemes that cease to be QROPS on or after 14 October 2013 which will mean all transfers of UK pension savings to QROPS will be subject to the same reporting requirements regardless of whether the scheme subsequently remains a QROPS. A penalty regime is also introduced that will apply to former QROPS if they fail to meet the information requirements.
- Amendments to ensure that scheme managers may report information on QROPS and former QROPS electronically.

As a result of the changes to the legislation, some forms used by QROPS to provide information to HMRC will need to be updated. Also in September, HMRC reported that these changes had been made and the new forms will be available from 14 October when the regulations come into force.

LOCAL GOVERNMENT PENSION SCHEME

As mentioned in the Pensions Regulator section of this newsletter, under the Public Service Pensions Act 2013 (**"Act"**), existing public service schemes will close to future accrual on 31 March 2015, with the exception of the Local Government Pension Scheme for England and Wales which will close to future accrual on 31 March 2014.

On 12 September the Local Government Pension Scheme Regulations 2013 were therefore made which will come into force on 1 April 2014 and will introduce the new benefit regime, features of which include:

- benefits accruing on a career average revalued earnings basis (CARE) rather than a final salary basis;
- an accrual rate of 1/49th of pensionable pay each year; and
- a normal retirement age equal to state pension age (or, if higher, age 65) with pension drawn before this date subject to actuarial reduction.

As the Act is not yet completely in force, these regulations are made under existing legislation but in anticipation of that legislation being superseded by the Act.

The Explanatory Memorandum to the regulations emphasises that they contain a complete scheme in that they are not dependent on any other regulations being made to function effectively. However, the Memorandum also lists the further legislation which is still to come in relation to the new LGPS including the following.

- Transitional regulations which the Department for Communities and Local Government (DCLG) anticipates being able to make within the next month.
- The Act requires the DCLG to come forward with regulations to establish a national scheme advisory board and local pension boards for each of the individual local government pension scheme fund authorities in England and Wales. A discussion paper on governance arrangements has already been published and responses to this will be taken into account in formulating draft regulations which will be published for consultation later in 2013.

- The Act requires the new scheme to set an employer cost cap for the purpose of measuring changes in the cost of the scheme. The Treasury will issue a direction addressing how the cap will be set and, following this, draft amending regulations will be published for consultation in relation to this point for the LGPS.
- Amending regulations will be issued about how the Public Sector Club (concerning transfers of accrued rights) will operate in the CARE environment once agreement has been reached on this.

OTHER NEWS

THE OFT'S REPORT ON DC SCHEMES

Background

In the January edition of Pensions News we reported on the launch of a market study by the Office of Fair Trading (OFT) looking at whether the DC workplace pension market is working well and whether, in light of auto-enrolment, competition is capable of driving value for money and good outcomes for members.

The OFT's report on this market study was published on 19 September, concluding that, due to weaknesses on the buyer side of the market (which the OFT states is one of the weakest it has analysed in recent years) and the complexity of the product, competition alone cannot be relied on to drive value for money for all those saving in workplace DC schemes.

Recommendations and agreements

The report sets out a number of recommendations by the OFT to address the concerns it has about the DC market as well as details of agreements that the OFT has reached with other organisations for actions to be taken, including the following.

- Improving governance
  - It is recommended that the Government introduce minimum governance standards for all pension schemes to ensure consistent ongoing assessment of value for money.
  - In light of particular concerns about governance for contract based schemes, the Association of British Insurers (ABI) and its members have agreed the introduction of Independent Governance Committees embedded within the providers of contract based and bundled trust based schemes. These committees will consider the key elements of value for money and, if a problem is identified, report a proposed action to the board of the provider.
- Recommendations on improving quality of information to make decision-making on value for money easier
  - All costs and charges (save for investment management transaction costs) should be disclosed in a framework that will enable employers to compare a commonly defined single charge.
  - Investment management transaction costs should be transparently reported and made available to the Independent Governance Committees and regulators should agree a consistent methodology for reporting comparable information.
  - The DWP should consider whether to mandate that information about key elements of scheme quality be provided to employers in a comparable format by all providers of automatic enrolment schemes where no intermediary is involved.
- Ending the risks of consumer detriment
  - The ABI and its members that provide contract based DC schemes have agreed to carry out an audit of 'at risk' schemes. That is, those sold pre 2001 which may therefore have higher charges and all post 2001 products with charges exceeding the equivalent of a 1% Annual Management Charge. An Independent Project Board will determine, with the new Independent Governance Committees, what action needs to be taken in response to the audit findings.
  - The OFT expresses concern that there are around 2,900 small and medium size trust based schemes (those with between 12 and 999 members), many of which appear to be at risk of delivering poor value for money. The Pensions Regulator has committed to set out how trustees can assess value for money of small trust based schemes. The trustees of those schemes will report the results of their assessment to the Regulator who will then use that information to assess which schemes are at greatest risk and target further regulatory activity accordingly.
    The OFT also recommends similar actions in relation to medium sized schemes.

- It is recommended that, in light of the Regulator's findings, the Government considers matters such as whether greater onus should be placed on trustees to prove compliance with value for money standards and whether the Regulator's enforcement powers are sufficient.

- Preventing risks of future consumer detriment
  - The OFT recommends that active member discounts be banned and schemes containing adviser commissions should not be used for those who are automatically enrolled.

The OFT also expresses the view that it would be helpful for future policy and regulatory initiatives to be informed by the longer term principles of: scale; alignment of incentives; robust independent governance; flexibility; and simplicity and switching.

Competition issues

The OFT has provisionally concluded that, even though it has identified some concerns with competition, it would not be appropriate to make a Market Investigation Reference to the Competition Commission at this stage because there are steps in place to address the concerns.

The report includes full reasoning for this provisional conclusion and that conclusion is now the subject of a consultation which closes at 5pm on 31 October 2013.

At this stage there has been no official response from the Pensions Regulator to state when it will commence the work it has agreed to undertake in relation to small trust based schemes. Nevertheless, trustees of such schemes should be aware that they may be asked to complete a value for money assessment and report on that to Regulator. It will also be interesting to see how the DWP responds to the OFT's recommendations about issues that it should consider for legislation.

RPIJ

In the March edition of Pensions News, we reported on:

- the cancellation of RPI's designation as a National Statistic; and
- the publication by the Office for National Statistics (ONS) of the first statistics for RPIJ which was designated as an experimental statistic but was being assessed by the UK Statistics Authority for National Statistic status.

The outcome of that assessment of RPIJ was published over the summer and concluded that, subject to the ONS implementing specified enhancements and reporting them to the UK Statistics Authority, RPIJ can be designated as a new National Statistic. The deadlines for the ONS to make the reports are October 2013 in respect of some enhancements and December 2013 in respect of others.

The enhancements to be made include that the ONS should:

- update the information published about the users and uses of the consumer price inflation statistics and user experience of them to include information about RPIJ;
- confirm that it will seek to achieve continuous improvement in statistical processes related to RPIJ;
- publish a revisions policy for consumer price inflation statistics, including RPIJ; and
- improve the commentary about RPIJ in the monthly Consumer Price Inflation Statistical Bulletin to aid user interpretation of the statistics.

The ONS has stated that it will remove the experimental statistics classification from RPIJ once the enhancements have been made.

Trustees should consider whether the drafting of their scheme rules could mean that the previous cancellation of RPI as a National Statistic and the anticipated designation of RPIJ as a National Statistic could affect the measure of inflation used for the scheme. If you would like advice about the operation of your scheme rules on this point please get in touch with your usual DLA Piper pensions contact.

AMENDMENTS TO IAS19

In the March edition of Pensions News, we reported on the publication by the International Accounting Standards Board (IASB) of an Exposure Draft of proposed amendments to "*IAS 19 Employee Benefits*" which is the document that sets out the accounting requirements for employee benefits.

The updates were proposed in response to concerns raised about complexities in accounting for contributions from employees and third parties to defined benefit schemes.

Minutes of a public meeting of the IASB in September have been published which state that it decided that:

- it should proceed with the proposed amendments subject to some changes to the proposed wording;
- re-exposure is not necessary; and
- the effective date for the changes should be 1 July 2014 although earlier application should be permitted.

In terms of next steps, final amendments will now be prepared which the IASB expects to issue in November 2013.

ON THE HORIZON

- **DC quality standards.** The DWP's Call for Evidence closed on 9 September 2013.
- **New statutory objective for the Pensions Regulator.** TPR's consultation on amendments to its Code of Practice on 'Funding defined benefits' and its regulatory approach to defined benefit schemes is expected to be published in the autumn.
- **Charges.** A consultation on amendments including the introduction of a cap and extending the ban on member borne consultancy charges is expected in the autumn.
- **Exceptions to automatic enrolment duties.** A consultation is due to be published in the autumn.
- **IORP Review.** Proposals to amend the IORP Directive in relation to governance and transparency are expected to be published in the autumn.
- **Personalised lifetime allowance.** A summary of responses to the consultation and updated draft legislation are expected to be published in the autumn.
- **Disclosure regulations.** The new regulations will be laid before Parliament after the summer recess and come into force on 6 April 2014.
- **Pension protection following TUPE transfer.** The consultation on amendments to this legislation closed on 5 April 2013. The changes were originally proposed to come into force on 1 October 2013 but the final form regulations and response to consultation are awaited.
- **Employer debt.** The consultation on amendments to the "restructuring provisions" closed on 7 June 2013. The changes were originally proposed to come into force on 1 October 2013 but the final form regulations and response to consultation are awaited.
- **Fiduciary duty.** The Law Commission's consultation on fiduciary duties in relation to investments is expected to be published in October 2013 with the report (containing recommendations) to follow in June 2014.
- **DC regulation.** An updated version of the Regulator's regulatory approach will be published in the autumn with the compliance and enforcement policy to be published later in the year.
- **PPF levy.** The consultation on the levy for 2014/15 closes on 24 October 2013 at 5pm.
- **DC Code.** The DC Code of Practice and accompanying guidance are expected to become effective in November 2013.
- **Simplification of automatic enrolment.** The DWP's consultation closed on 7 May 2013. It was originally proposed that the majority of amendments will come into force in April 2014 although it would be considered if they could come into force sooner. The updated versions of the DWP's statutory guidance on certification make reference to some of the proposed amendments and state that it is intended that they will come into effect in November 2013.
- **Record-keeping.** An updated version of the Regulator's guidance is expected to be published in 2013 which will include a focus on "conditional data".
- **Public service schemes.** Later in the year, the Regulator will consult on a regulatory strategy and codes of practice for the public service schemes which fall within its remit under the Public Service Pensions Act 2013.
- **IORP solvency.** Further details of EIOPA's work programme on IORP solvency will be published later in 2013.
- **RPIJ.** The Office for National Statistics must report to the UK Statistics Authority by the end of 2013 on the implementation of specified enhancements to RPIJ so that it can be designated as a National Statistic.

- **PPF's insolvency risk provider.** New insolvency risk scores will be available in early 2014 and will be used for the 2015/16 levy year.
- **Pensions Bill.** The Bill is expected to receive Royal Assent by the end of the parliamentary session in spring 2014.
- **Equalisation for GMPs.** During the Parliamentary debate on the Pensions Bill, it was reported that guidance on GMP conversion (which will provide guidance on an alternative method by which schemes can equalise benefits including GMPs prior to conversion) is expected to be provided by spring 2014.
- **Short service refunds.** It is intended that short service refunds will be withdrawn from money purchase schemes in 2014.
- **Changes to the annual allowance and the lifetime allowance.** The lifetime allowance will be reduced to £1.25 million and the annual allowance to £40,000 for tax years 2014/15 onwards.
- **State Pension.** The reform of state pension which would result in the end of contracting-out is proposed to take effect in April 2016.

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