

PENSIONS

LEGAL

As you were

The information that trustees must give scheme members will remain largely unchanged if the government's latest proposals become law in October. A plan for a radical simplification has been dropped.

There will be little change in the detailed requirements about the information members must receive, and the current timescales for providing it will continue to apply. But if they wish to, DC schemes will be able to simplify their benefit illustrations. And, from 2012, new members will have to receive "basic information" about their scheme within one month of joining rather than two. This reflects the timetable for auto-enrolment in NEST.

E-communication will be allowed subject to safeguards, including a right for members to opt out. Schemes will be able to set e-communication as the default method for providing information. There will be rules about websites.

The government has stepped back from the wide-ranging

simplification it proposed last year. With limited exceptions, the current detailed requirements would have been replaced with an overarching principle that members should be told enough to understand their benefits and take informed decisions. Specific time limits would have been replaced with a general requirement to communicate within a reasonable time. Public consultation raised concerns about uncertainty for trustees and the cost of designing bespoke disclosure regimes.

The result is a revised proposal to maintain the current rules with largely permissive changes that schemes are free to take up or ignore. Apart from the change over basic information, schemes that are compliant today will not need to alter what they are doing in order to remain compliant.

The consultation period on the new proposal has closed. The planned effective date for the revised regulations is 1 October 2010.

Conundrum continues

The government has said it is planning legislation to require schemes to equalise GMPs. This follows its proposal that schemes entering the Financial Assistance Scheme should equalise. But it is unclear what the announcement means. Whether we hear any more of it may depend on the election.

The government says UK law requires equalisation where there is a comparator i.e. a person of the opposite sex in a comparable job. The change is said to be that equalisation will also be required where there is no comparator. But

many lawyers contest that current law requires equalisation. This is broadly on the argument that GMPs are effectively state benefits.

Unless the proposed legislation makes clear that GMP equality is required (rather than just dealing with the comparator point), the announcement amounts to little: the disagreement whether or not GMP equalisation is required will continue. Until the government makes clear what it means, the position appears to be "as you were".

Changes on 6 April

These changes in the law come into effect on 6 April:

- in a DB scheme, changing the definition or make-up of pensionable pay for future accrual will need 60 days consultation with employees, including where the change will be to terms and conditions and will not require a rule alteration,
- the Information Commissioner can fine data controllers (like trustees) more – up to £500,000 – for serious breaches of data protection law,
- if levies are paid late, the PPF will be able to charge interest (from 1 April), and

- refunds of contributions will be taxed at 20% up to £20,000 (currently £10,800) and any excess at 50% (up from 40%).

As we go to press the DWP has published changes to the s.75 employer debt regulations (effective 6 April) following the consultation last year. The main alteration abolishes the debt on certain group restructurings. We will publish a briefing on the changes.

Welcome

Welcome to the first edition of **Pensions**, our bimonthly update keeping you informed of developments in pensions law.

To find out more about how we can help you with your occupational pension scheme, please email tim.illston@burges-salmon.com or call him on 0117 939 2284.

Green issue

In future we intend to distribute our publications by email to reduce our environmental impact. This also has the advantage of eliminating the delay in printing and posting.

For some of you this will be the first time that you have received one of our publications by email. If it is, we hope you agree with our policy.

If you have received this newsletter by post, please let us have an email address for future mailings.

To contact us with your email address, please email marketing@burges-salmon.com or write to Jayne Taylor at our Bristol address over the page.



Visit our website at www.burges-salmon.com

REGULATORY

TPR presses for FSD

The Pensions Regulator (TPR) is pursuing a financial support direction against North American companies in the Nortel group that are under insolvency procedures. A Canadian court has declined to give effect to the FSD but TPR is

challenging this decision. The only other FSD TPR has pursued (Sea Containers) also involved it in insolvency procedures overseas. Clearly, TPR is willing to take on difficult, high profile cases.

Securities lending

Schemes that lend out their securities must make sure they know what they and their investment managers are doing, says TPR. Trustees need to ensure the risks are properly

mitigated and that they receive a full share of the rewards. See www.thepensionsregulator.gov.uk/pdf/stock-lending-statement-Jan2010.pdf

Post valuation rises in asset values

Exceptional market conditions at the end of March 2009 mean that a scheme with a valuation date around that time can take account of the subsequent improvement in asset values, says TPR. But technical provisions must remain prudent and the recovery plan must be as short as is reasonably affordable. Whether or not a recovery plan is

affordable is independent of post valuation events: favourable events should influence its length, not the level of payments.

See:

www.thepensionsregulator.gov.uk/guidance/schemeFunding/technical/5360.aspx

Internal controls

If you are on our e-mailing list, you will have had our note on TPR's radically revised draft guidance on internal controls. This was its first move in a new campaign to improve governance and administration. The paper accepts that TPR has so far been unable to persuade many smaller schemes to adopt the processes that deliver good risk management. The new guidance is particularly addressed

to these schemes – and sets them a demanding target.

See "Pensions Regulator and Governance: Right skills and right processes" on the publications page of our website:

www.burges-salmon.com/Practices/pensions_and_incentives/Publications/default.aspx.

Record attempt

TPR is ready to take legal steps to enforce record keeping obligations. This is the first time it has escalated its regulatory effort in this way. TPR has been disappointed by the limited response from schemes and some professional

administrators to its 2009 guidance on record keeping. In a consultation paper (*Record keeping: measuring membership data*) issued in February it sets out how it proposes to increase the pressure. It warns that it could name and shame.

TAX

High earners

If the restriction on pensions tax relief for high earners from April 2011 affects you or your scheme, you should take advice. HMRC is still working out the detail of the anti-forestalling measures that apply in the run up. The definition of earnings is wide, so people with employment income significantly below the floor of £130,000 annual pre-tax "relevant income" can be subject to the restriction. Watch out too for changes in a pattern of saving: this can bring someone within the restrictions when they would otherwise

have escaped. Some corporate activity can impose a change in patterns of contribution.

For a briefing that looks at the issues in a DB scheme from the point of view of an individual high earner, see

www.burges-salmon.com/Practices/pensions_and_incentives/Publications/Attack_on_defined_benefit_schemes.pdf

News in brief

We circulated these briefings to our e-mailing list:

- PPF levy 2010/11 and 2011/12: approaching deadlines. This is about the deadlines for certifying contingent assets and for filing information (about solvency) with D&B.
- PPF levy 2011/12: insolvency risk. This explains how the PPF will change the way it assesses the

employer's solvency for levy year 2011/12. The deadline for filing the information that will be the basis of the assessment is 30 March this year.

Go to:

www.burges-salmon.com/Practices/pensions_and_incentives/Publications/default.aspx

In the office



We welcome **Hannah Davis** to the pensions team. She has joined us from a City firm.

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