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Inside Pensions – Regulatory Update

Prepared by Inside Pensions
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New Issues Equitable Life announcement

Equitable Life has announced that it has agreed to transfer the Society and all its policies to Reliance Life, an agreement which it believes will both secure, and enhance, the capital distribution currently given when with-profits policy benefits are taken (from the current 35% to a level expected to be between 60% and 70%). The announcement will be of interest to all pension schemes that hold Equitable Life policies.

With-profits policyholders will be asked to vote on the proposal before it can go ahead. An Independent Expert's report will be made available to policyholders beforehand.

The vote is not likely to take place before mid-2019, and the proposal will then be put before a High Court judge for approval. There is no action for policyholders to take now, with more information expected to be provided in October 2018. Equitable Life has provided a Q&A for members.

For more information (announcement):
http://www.equitable.co.uk/good-news-for-with-profits-policyholders/
For more information (Q&As):
http://www.equitable.co.uk/helpful-qas/

New data protection legislation in force

As widely publicised, the GDPR is now in force. Aimed at creating a regulatory regime fit for the digital age, the GDPR builds on existing data protection provisions, many of which will feel familiar. However, there are a number of important changes that trustees and employers need to be aware of.

Just in time for the GDPR's 25 May implementation date, the UK's latest Data Protection Act received Royal Assent on 23 May 2018. The Data Protection Act 2018 (Commencement No 1 and Transitional and Saving Provisions) Regulations 2018 brought the parts of the Data Protection Act 2018 most relevant to pension schemes and trustees (including the easements referred to below) into force on 25 May 2018.

The new Act both brings the GDPR's provisions directly into UK legislation (subject to certain amendments), and replicates and updates the Data Protection Act 1998 (which is generally repealed from 25 May 2018). Essentially, this means that the new Act and the GDPR need to be read side by side.

The Act brings with it some new easements that are designed to allow the processing of sensitive personal data in certain circumstances, including where the processing is "necessary for the purposes of performing or exercising obligations or rights" imposed by law "in connection with employment, social security or social protection". This should help employers comply with their employment law obligations. A further easement is stated to apply to the processing of sensitive personal data by occupational pension schemes. However, it is narrowly drafted and likely to be of use only in limited circumstances, such as where medical underwriting is being undertaken.

For more information:
http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted

Financial Guidance and Claims Act 2018 receives Royal Assent

The Financial Guidance and Claims Bill received Royal Assent on 10 May 2018, becoming the Financial Guidance and Claims Act 2018.

Amongst other things, the Act provides:

- for the establishment of the new Single Financial Guidance Body;
- for protection against “unsolicited direct marketing relating to pensions” (cold calling);
- that trustees and providers must ensure individuals accessing their pension funds are referred to, and asked whether they have received, appropriate guidance.

The final version of the Act contained amendments tabled following recommendations from the Work and Pensions Committee, including that regulations to make provision for the ban on cold calling should be put in place by June 2018, or the delay explained in a statement to Parliament.

The Work and Pensions Committee has welcomed the Act, but continued to raise questions about its reach.

For more information:
http://www.legislation.gov.uk/ukpga/2018/10/contents/enacted/data.htm

TPR publishes annual DB funding statement

TPR published its annual DB funding statement on 5 April 2018. The statement sets out what TPR expects from trustees and employers, according to the ability of the employer to support the scheme and the scheme’s funding strategy. It is particularly relevant to schemes calculating valuations with effective dates between 22 September 2017 and 21 September 2018 (Tranche 13).

The statement includes guidance on how trustees should approach a valuation and the current issues that may affect them, such as market conditions and the impact of Brexit. It stresses the importance of risk-management and contingency planning given the “continuing economic uncertainty”. It also highlights examples of “leakage” of value from the companies which support DB schemes, and suggests close monitoring of member transfer requests in light of the potential impact on the scheme’s funding and investment strategy, and to ensure the right quality of advice is available to members.

In a related press release, TPR warns trustees and sponsoring employers of DB schemes that they “must do more to protect member benefits”. It says that it “remains concerned about the growing disparity between dividends and deficit-reduction payments and expects fair treatment between shareholders and trustees”, and warns that it will act if a scheme is not treated fairly, by using existing powers, while working with government to implement new powers proposed in the recent DB White Paper.

Anthony Raymond, TPR’s Interim Executive Director of Regulatory Policy, said “recent corporate failures have shown the risks of long recovery plans while payments to shareholders are excessive, relative to deficit-repair contributions. Trustees should negotiate robustly with the sponsoring employer to secure a fair deal for the pension scheme, while employers should balance the interests of pension savers with returns to shareholders and investors. We are working more closely than ever with trustees to support them in this process. However, if trustees fail to act we can intervene to protect members by using the full range of powers available to us now.”

TPR also confirmed that it has stepped up its proactive DB funding case work by 90% to support trustees as they prepare valuations and recovery plans.

For more information (annual DB funding statement):
http://www.thepensionsregulator.gov.uk/docs/db-annual-funding-statement-2018.pdf
For more information (press release):
http://www.thepensionsregulator.gov.uk/press/trustees-must-treat-scheme-members-fairly-tpr-warns.aspx

Bulk transfers of DC pensions without member consent: guidance published

On 30 April 2018, the DWP published guidance on bulk transfers without consent of money purchase benefits without guarantees. The guidance supports changes made by the Occupational Pension Schemes (Preservation of Benefits and Charges and Governance) (Amendment) Regulations 2018 from 6 April 2018.

The DWP's consultation on the draft regulations (the response to which was published in February 2018) sought views on changes to simplify the bulk transfer provisions for DC pensions without member consent. The regulations now make it possible to make a bulk DC transfer without consent from an occupational DC scheme:

- to an authorised master trust (effective once the master trust regime begins on 1 October 2018); or
- to another occupational pension scheme, provided the transferring trustees have obtained and considered the written advice of an "appropriate adviser" who is "independent" of the receiving scheme.

These provisions replace the requirement to obtain an actuarial certificate and the "scheme relationship condition". The provisions are subject to a transitional period which is running until 30 September 2019, during which the original rules can still be used.

The guidance aims to helps trustees comply with the new regulations, and is intended to be used alongside TPR's DC Code and guidance for trustees on managing DC schemes.

For more information:
https://www.gov.uk/government/publications/occupational-pensions-bulk-transfers-without-consent-of-money-purchase-benefits-without-guarantees

New Issues Government strengthens its commitment on social impact investment

On 12 June 2018, the Government published its response to the November 2017 industry-led report on Growing a Culture of Social Impact Investment in the UK.

As part of the response, the Government has committed to work with the investment and savings industry to support the launch of further social impact investment funds. It has also outlined plans "to encourage more investments to flow into disadvantaged areas and to create investment opportunities that address social challenges, while also creating financial return."

The report notes that the Government is considering changes to regulation as well as identifying actions it can take "to help build capacity and increase transparency around social impact investment by pension schemes".

The Government states that it will continue to work alongside the financial services industry and regulators and will provide a progress update "in winter 2018".

For more information:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717511/Government_Response_to_Advisory_Group.pdf

New Issues DWP launches consultation on protecting DB pension schemes

On 26 June 2018, the DWP published the first of the consultations promised by this year's White Paper, "Protecting [DB] pension schemes – a stronger Pensions Regulator".

The consultation seeks views on proposals in three key areas:

- increasing TPR's and trustees' access to timely information to allow greater corporate oversight;
- extending the sanctions regime to deter wrongdoing and to punish it when necessary; and
- improving TPR's existing anti-avoidance powers.

The consultation closes on 21 August 2018.

For more information:
https://www.gov.uk/government/consultations/protecting-defined-benefit-pension-schemes-a-stronger-pensions-regulator

New Issues Consultation on new investment regulations

Under draft regulations, published for consultation on 18 June 2018, it is proposed that trustees will be required to produce a policy which includes an assessment of the sustainability of their investment decisions.

The DWP proposes that, by 1 October 2019, the draft Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations 2018 will require:

- trustees to update or prepare their Statement of Investment Principles (SIP) to set out how they take account of financially material considerations, including (but not limited to), those arising from ESG considerations, including climate change, and their policies in relation to the stewardship of the investments;
- trustees of "relevant schemes" (broadly, DC) to publish their SIP on a website, and use the annual benefit statement to tell members that the SIP is available. They will also need to prepare a separate statement setting out how they will take account of the views which, in their opinion, members hold in relation to matters covered in the SIP.

In addition, it is proposed that from 1 October 2020, relevant schemes will need to produce an implementation report, setting out how they acted on the statement on members' views and publish that report online (as for the SIP itself), again informing members of its availability through the annual benefit statement.

Changes are also proposed to guidance that was first published in February 2018, to state how trustees should meet the new requirements of the regulations.

The regulations were published alongside the Government's final response to the Law Commission's report on pension funds and social investment. This response notes the Government's plans to clarify the requirements for trustees of occupational pensions and IGCs of workplace personal pensions around:

- consideration of broader long-term financial risks
- pension schemes' ability to consider members' non-financial or ethical concerns
- the role of engagement alongside voting as an important aspect of stewardship of pension scheme assets.

The consultation closes on 16 July 2018.

For more information (consultation):
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716949/consultation-clarifying-and-strengthening-trustees-investment-duties.pdf
For more information (Government response):
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717375/pension-funds-and-social-investment-final-response-to-law-commission-report.pdf

New Issues EAC publishes final Green Finance findings

On 4 June 2018, The Environmental Audit Committee ("EAC") published the final findings of its inquiry into Green Finance.

"Greening Finance: embedding sustainability in financial decision making" references a "worrying disparity" between the guidance on environmental risks available to trust and contract-based schemes – a result of the different approaches to guidance taken so far by TPR and the FCA (the regulators for trust and contract-based schemes respectively). The report notes that while TPR updated its guidance (for both DB and DC schemes), in light of recommendations by the Law Commission, to clarify "that trustees are required to take into account factors that are financially material to investment performance, including environmental, social and governance factors", but that the FCA has not produced similar guidance.

It also notes that there remains some "confusion about the extent to which pension trustees have a duty to consider environmental risks", and asks the Government to work to provide clarity in the area.

For more information:
https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/1063/1063.pdf

New Issues EAC launches inquiry into use of retail prices index

The EAC has launched an inquiry into the use of RPI as a measure of inflation.

The inquiry is comprised of two evidence sessions, asking witnesses whether RPI should be dropped as a measure of inflation, what reasons there are for keeping it, and what impact changing RPI would have on the people and organisations who use it. The inquiry follows comments to the EAC by the Governor of the Bank of England in January 2018.

The inquiry is expected to conclude before Parliament's summer recess.

For more information:
https://www.parliament.uk/business/committees/committees-a-z/lords-select/economic-affairs-committee/news-parliament-2017/use-of-rpi/

ICO publishes final version of consent guidance

On 9 May 2018, the Information Commissioner's Office ("ICO") published the final version of its guidance relating to consent. The guidance sits alongside the ICO's Guide to the GDPR and provides "more detailed, practical guidance" on consent and when it can be relied on as a lawful basis for processing personal data.

The GDPR imposes stringent conditions for obtaining valid consent and, for this reason, the ICO suggests using consent as the grounds for processing personal data only where necessary.

For more information:
https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/consent/

TPR publishes guidance on cyber security principles for pension schemes

TPR has published new regulatory guidance for trustees on “Cyber security principles for pension schemes”.

The guidance notes that trustees and scheme managers need to take steps to protect members and assets against “cyber risk”. It defines “cyber risk” broadly, as “the risk of loss, disruption or damage to a scheme or its members as a result of the failure of its information technology systems and processes [… including] risks to information (data security) as well as assets, and both internal risks (e.g. from staff) and external risks (e.g. hacking).”

The guidance advises that schemes of all sizes should take steps to build cyber resilience – the ability to assess and minimise the risk of a cyber incident occurring, but also to recover when an incident takes place. It suggests schemes should work with all relevant parties (including in-house functions, third party service providers and employers) to define their approach to managing this risk.

The guide sets out good practice for all schemes, which may be adopted proportionately to the profile of a particular scheme.

For more information:
http://www.thepensionsregulator.gov.uk/guidance/cyber-security-principles-for-pension-schemes.aspx

HMRC issues update on new service to manage and register pension schemes

On 12 April 2018, HMRC published guidance on the “Manage and Register Pension Schemes service”. The newsletter updates stakeholders on the service which has been flagged in previous Pension Scheme Newsletters. The service will:

- provide a new digital platform for schemes to be managed and registered;
- provide a digital account for all pension schemes and reporting;
- issue all HMRC notifications regarding registration;
- hold details of existing pension schemes, pension scheme administrators and pension practitioners following migration from the existing Pension Schemes Online service.

The service is to be rolled out in two phases:

- the first features will be released from 8 May 2018 (“Phase One”), and new schemes will be able to be registered using the service from this date:
- “Phase Two” starts from April 2019, and will allow scheme reporting and new practitioner registration, alongside the full management and registration of schemes.

For more information:
https://www.gov.uk/government/publications/pension-schemes-manage-and-register-pension-schemes-service-newsletter-april-2018/pension-schemes-manage-and-register-pension-schemes-service-newsletter-april-2018

New Issues TPR updates chair’s statement guidance

On 27 June 2018, TPR released an updated version of “A quick guide to the chair’s statement”, and a new technical appendix, which form its guidance on the legal requirements in relation to such statements.

TPR’s aim is to provide additional clarity in terms of its expectations of chairs’ statements.

For more information (guide):
http://www.thepensionsregulator.gov.uk/docs/chair-statement-quick-guide.pdf
For more information (appendix):
http://thepensionsregulator.gov.uk/docs/chair-statement-quick-guide-appendix.pdf

New Issues Updated version of pension scams code published

On 22 June 2018, the Pension Scams Industry Group ("PSIG") published a second version of its Code of Practice on combating pension scams. The guidance, which does not have a statutory basis, aims to "share good practice and help reduce the risk of successful scams".

The original code was published in 2015, and has been updated "because of the changing nature of pension scams, the introduction of pension freedoms and the clarification in law of the statutory right to transfer". The updated Code applies to all transfer requests processed on or after 22 June, and "will be reviewed and updated on a regular basis to ensure it reflects current risks and good practice".

For more information:
https://www.plsa.co.uk/Portals/0/Documents/Policy-Documents/2018/180605Combating%20Pension%20Scams%20Code%20Version%202%20FINAL%20signed.pdf

New Issues PPI publishes report on the evolving retirement landscape

The PPI has published the first report in a two-part series on "The evolving retirement landscape". The report explores the ways in which the retirement landscape has changed since the freedoms were introduced and what this might mean for future retirees.

For more information:
http://www.pensionspolicyinstitute.org.uk/uploaded/documents/2018/PPI%20Evolving%20retirement%20landscape%20-%20final.pdf

New Issues Trustee suspended after police investigation launched into pension fraud

On 20 June 2018, TPR reported that it had suspended a pension scheme trustee after detectives launched a fraud investigation.

TPR's Determinations Panel decided that it was "overwhelmingly in the interests of scheme members and for the protection of scheme assets" for Gordon Craig to be suspended from acting as a trustee on any scheme while the police investigation continues. Alongside concerns over potential liberation activities, the panel also believed that the trustees had breached their duties "by keeping poor records and having limited knowledge of how the pension scheme should have operated".

An independent trustee was appointed to the Optimum Retirement Benefits Plan to act in place of Mr Craig and the other trustees to the scheme, a move which is intended to protect other pension holders by preventing them from transferring their funds into the scheme.

For more information:
http://www.thepensionsregulator.gov.uk/docs/DM6734446.pdf

TPR continues to roll out 21st Century Trusteeship campaign

TPR has released further guidance in its campaign to protect workplace pension savers by driving up the standards of governance across pension schemes.

The latest instalment looks at "Managing risk" within schemes.

TPR is not creating new or higher standards. Instead, the campaign, which is part of TPR's commitment to support schemes by being clearer and more directive, will outline how people involved in running schemes can take action to meet expected standards and what action TPR will take if they do not improve. Earlier releases looked generally at "good governance", "trustees' roles and responsibilities", "clear purpose and strategy", "trustee training and improving your knowledge", "skills and experience" (looking at the selection, review and evaluation of the trustee board), and advisers and service providers (considering their selection, appointment and review).

For more information:
http://www.thepensionsregulator.gov.uk/7-managing-risk.aspx

New information sharing agreement between TPO and TPR

TPO and TPR announced on 21 May 2018, that they have agreed to share information with a view to "mutually enhancing their knowledge and understanding of developing pension issues".

The parties' information sharing agreement came into effect in March 2018, and gives details of the principles the organisations will follow when sharing information about complaints and concerns. It acknowledges that both organisations have shared goals and an overlap in responsibilities. Information concerning pension complaints handled by TPO may now be shared with TPR, helping to inform its investigation processes. Similarly, following an investigation of a pension scheme, TPR may now advise TPO of any concerns it has regarding that scheme's failure to implement policy and procedural changes as recommended by TPR.

Through this agreement, TPO and TPR aim "to protect pension scheme members, endorse and support the achievement of higher standards across the industry and ensure a safe pensions saving environment".

For more information:
https://www.pensions-ombudsman.org.uk/wp-content/uploads/TPR-and-TPO-SharingAgreement-signed-copy-2018.pdf

TPR to seize assets of employers that refuse to pay fines

TPR has issued a press release stating that employers that refuse to pay workplace pension fines could have their assets seized to pay their debts.

TPR is appointing High Court Enforcement Officers ("HCEOs") to enforce court orders in England and Wales (and the equivalent in Scotland and Northern Ireland) on those employers that refuse or fail to comply with their automatic enrolment duties and subsequent fines. TPR has said that it will also consider whether it should prosecute employers that remain non-compliant with their automatic enrolment duties despite being given a court order demanding they pay the fines they have incurred.

HCEOs will also be used to collect payment for other fines or levies issued by TPR that trustees or trust managers fail to pay, such as for non-compliance with the requirements for DC chairs' statements and scheme return offences.

For more information:
http://www.thepensionsregulator.gov.uk/press/assets-to-be-seized-from-employers-that-snub-workplace-pension-fines.aspx

TPAS launches freephone helpline number

On 9 April 2018, TPAS announced that it has a new number (0800 011 3797) which will allow customers to access its service completely free of charge.

The previous local rate number will remain in use to ensure customers can still access the service if they are unaware of the new number.

For more information: https://www.pensionsadvisoryservice.org.uk/news/tpas/tpas-launches-freephone-helpline-number