



Punter Southall

pensionsbulletin

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Back to work for the Pensions Minister

After the excitement of the party conference season, politicians are now getting back to their parliamentary business. Sittings in the House of Commons resumed on 10 October, and the next stages of the Pensions Bill are scheduled for 18 October, with further amendments already being laid.

In his speech at the Liberal Democrat Conference, Steve Webb, the Minister for Pensions, listed four items in his in-tray: charges on defined contribution (DC) pensions, small pension pots, good value when purchasing pensions and enhanced transfer value exercises.

Small pension pots

The issue of small pension pots has been under consideration since the changes to pensions taxation were made at A-Day (6 April 2006). Small pots can be expensive to administer and can be swallowed up by charges; it can be difficult or even impossible for individuals to purchase a pension with them.

The rules on trivial commutation were extended to allow individuals to draw small pots of up to 1% of the lifetime allowance across all schemes as cash. This could still leave individuals with small pots that they could not convert into cash because they had larger pensions elsewhere taking them over the 1% limit, so, in 2009, changes were made to the tax rules to allow individuals in occupational pension schemes to draw small pots of up to £2,000 in cash irrespective of other pensions they might have. However, this did nothing to help those with small pension pots in personal pension schemes. HM Revenue and Customs (HMRC) has thus far been reluctant to extend the trivial commutation rules to personal pension schemes because of the risks of abuse, but is now expected to come out with further proposals on the issue.





Speed read

- **Proposals on small pension pots expected later this year**

- **Options could include extending the rules on trivial commutation to personal pension schemes**

- **Short service refunds from occupational DC schemes likely to be removed**

- **TPR expected to publish proposals on enabling good member outcomes in DC schemes in the autumn**

- **The ABI has published a compulsory code of practice for insurers on providing retirement information to members**

- **Pensions Minister critical of enhanced transfer value exercises**

- **Commons Report and Third Reading stages of Pensions Bill expected on 18 October**

- **Transitional measures announced for women most affected by acceleration of increase in SPA**

- **Possibility of amendment to restate the DWP's view of 'money purchase' following the Bridge case**

With the coming of employer duties from October 2012 onwards, there is an increasing likelihood of individuals building up small pension pots. Changes are also likely to the current rules on short service refunds – at present, occupational DC schemes are able to refund member contributions where a member leaves a scheme within three months of joining rather than giving them benefits in the scheme. Steve Webb has warned employers that they should not rely on being able to do this in future and indicated that this regulatory arbitrage between occupational DC and personal pension schemes may well be removed (although the refund option is likely to remain for DB schemes). If the short service refund option were to go, then this would also tend to increase the number of small pension pots.

In the Minister's conference speech, he said that he wants to help people put their small pension pots together to produce 'big fat pots'. Options on the table could include extending the trivial commutation rules to personal pension schemes, allowing couples to amalgamate their small pension pots or allowing employers to transfer all small pension pots to a single provider without the member's consent. Formal proposals are expected later this year.

Better value from DC pensions

Another two issues on the Minister's agenda relate to enabling members to get better value from their DC pension pots. The Department for Work and Pensions (DWP) and the Pensions Regulator (TPR) are increasingly looking to improve the quality of DC pension schemes as part of the new employer duties regime, given that it is likely that most new pension scheme members will be enrolled into DC schemes.

The first of the issues raised by Steve Webb is that of minimising charges on DC pensions. Over the summer, TPR published an initial response to the reaction to its discussion paper on 'Enabling good member outcomes in work-based pension provision', which also highlighted the importance of transparent disclosure of scheme charges. TPR is expected to publish a full response, including proposed next steps, in the autumn.

The Minister also stressed the importance of members being made aware that they could well get a better pension by shopping around (i.e. taking an open market option). He indicated that he would be working with the Treasury and insurance industry to see whether the current state of affairs could be improved. At present, around a third of people do not shop around at all and over half still buy their pension from their provider. The Association of British Insurers (ABI) has announced that it will introduce a compulsory code of practice for insurers, under which insurers will be banned from including an annuity application form in their information packs in order to encourage people to shop around.

Encouraging shopping around and keeping control of charges will certainly help to improve DC pensions; however, after the level of contributions going into the fund, the key factor that determines members' pensions at retirement is the investment return. Given recent losses in the equity markets and current low interest rates, many DC pension holders are finding their latest benefit statements make rather grim reading.

Enhanced transfer values

The fourth, and most controversial, item in Steve Webb's in-tray is that of enhanced transfer values. This is an issue on which both the Minister and the previous Chair of the Pensions Regulator, David Norgrove, have expressed strong views, with Steve Webb describing an arrangement under which individuals receive an incentive if they accept a transfer as a 'bung'. He also went on to say, however, that 'firms have every right to talk to their workers and ex-workers about getting their pension rights in a different way', but stressed the importance of members being able to take 'well-informed decisions'.

Some have pointed out that it seems a little surprising that the Minister should be happy with a state of affairs in which any member of a DB pension scheme has a right to take a transfer value calculated on best estimate terms, but expresses concern when members are offered an enhancement to that transfer value either as a top-up to the pension pot or as a cash incentive. Whilst it does appear that there have been a few examples of bad practice, the Pensions Regulator's guidance on the topic provides a clear set of principles for employers to follow if they wish to make such an offer to their pension scheme members. It therefore does not seem clear exactly what action the Minister is now proposing to take.

Pensions Bill

One of the other items on Steve Webb's immediate 'To do' list must be to see the Pensions Bill through Parliament. Given that it had its First Reading on 13 January and its Report and Third Reading stages are not scheduled until 18 October 2011, this has been one of the longest Pensions Bills in its gestation (although the Pensions Act 2008, at 357 days, is still likely to beat it).

The main sticking point is the proposed acceleration of the increase in the state pension age (SPA) to 66 in 2020 and, in particular, the treatment of a particular group of women who would have seen their SPA rise by up to two years. In his speech, the Minister spoke about the need to 'ease the transition' for women in this position and on 13 October, the Government announced that it would extend the date at which the SPA reaches 66 from April 2020 to October 2020. This means that no-one will see a rise in their SPA of greater than 18 months.

Iain Duncan Smith, the Secretary of State for Work and Pensions, has also been quoted as indicating that the increase in SPA to 67 will be brought forward, possibly from 2036 to 2026. It does not, however, seem likely that this would be included in the current Pensions Bill.

One final amendment that could be slipped into the Pensions Bill at the Report Stage is a change to the definition of 'money purchase' in the light of the Supreme Court's judgment in the Bridge case that schemes with a guaranteed investment return or guaranteed annuity rate are money purchase. This was contrary to the DWP's view that schemes in which it is theoretically possible for there to be a deficit must be 'defined benefit' and so they could decide to use the Bill to reinstate their own interpretation of what 'money purchase' means. It seems questionable, however, whether such a controversial amendment would be introduced at such a late stage in the parliamentary process.



Behind the scenes

Andy is a very experienced member of Punter Southall's technical team, who has worked in the pensions industry for over 25 years. He represents Punter Southall on the Legislation Committee of the Society of Pensions Consultants.

Andy specialises in solving complex technical problems at member and scheme level, and liaises regularly with the various regulatory bodies to obtain solutions to often conflicting requirements. Having previously drafted scheme rules, he now works closely with clients and law firms engaged in rules revision and consolidation.

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"The good thing about having seen the pensions landscape evolve over the years is that so much is still relevant today and embodied in rules. Knowledge of historic legislation right up to the latest developments enables me to give comprehensive and detailed advice on particular questions and unusual situations which occur."

Andy Wells



Other recent developments

European Commission Call for Advice

The European Insurance and Occupational Pensions Authority (EIOPA) is preparing to respond to a Call for Advice from the European Commission on a review of the IORP (Institutions for Occupational Retirement Provision) Directive. So far, it has published a draft of its advice to the Commission on issues relating to the scope of the directive, the definition of cross-border activity, outsourcing and scheme governance. A further consultation on its draft advice is expected on 25 October, covering more controversial issues such as the funding of defined benefit pension schemes, which could have very significant consequences for UK pension schemes, if implemented as the Commission currently proposes.

A European Pensions White Paper is also expected before the end of the year. This is expected to cover wider issues, in particular those relating to disclosure, portability, DC pensions and the overall adequacy of retirement provision across the EU.

FATCA

FATCA is the unlovely acronym for the Foreign Account Tax Compliance Act, a US law that could potentially impact on UK occupational pension schemes from January 2013. Under it, it appears that trustees would have to investigate whether any beneficiaries are US citizens; otherwise they would face a 30% US withholding tax on any payments by a US entity to the scheme. We understand that the NAPF is lobbying for occupational pension funds to be exempt from the Act.

More clarity on pensions tax changes

The Finance Act 2011 received Royal Assent on 19 July 2011, and was followed soon afterwards by the publication of a number of sets of regulations implementing some of the details of the new regime as well as the publication of the form for applying for fixed protection.

On 21 September, HMRC published an update to its Registered Pension Schemes Manual (RPSM) to incorporate the changes to the annual and lifetime allowances. There are over 700 new or amended pages. However, a number of practical questions still remain, especially about the scheme pays regime, where the scheme is paying the tax on the member's behalf.

A further update to the RPSM is expected later in the year.

Window on the world: news from our international team

Debate continues regarding the proposals agreed earlier in the year between the Dutch unions, employers and ministers regarding proposed reforms of the state and occupational pension system in the Netherlands. These reforms potentially represent a radical overhaul of one of the largest funded DB regimes in the world.

The factors creating problems for the Dutch pension scheme system are similar to those in the UK, namely, low interest rates, increasing life expectancies and the impact on asset values of the financial and economic crises.

The agreed proposals included increases to the state pension age and a move towards greater risk-sharing between employers and employees. Contributions to occupational pension schemes would be split between employees (one third) and employers (two-thirds) and contribution levels for employers would be capped at their current levels with risks relating to longevity and investment being passed to the employees.

Of the 19 FNV unions, two of the largest have currently voted against the agreed proposals. It is likely that further discussions and negotiations will take place. If and when agreement is reached with union members, draft legislation must be prepared and put before parliament.

Consultation on further auto-enrolment regulations

The DWP are currently consulting on further amendments to the automatic enrolment regulations. In particular, these draft regulations will implement the alternative routes under which employers will be able to certify that their DC scheme satisfies the quality requirements (where their pensionable salary definition is based on basic rather than gross pay). The consultation also includes a guidance document for employers opting to certify their scheme in this way.

Statement on identifying a scheme's statutory employer

TPR has issued a statement for trustees emphasising the importance of ensuring that they are aware of which employers have a statutory obligation to the scheme. This information will need to be included in the next scheme return. TPR has also issued a brief training module which is available on their website.



Publications round-up

If you have missed any of our publications over the last quarter, they can be found on our website:

www.puntersouthall.com

Briefing notes:

Abolition of DC contracting out

An overview of the abolition of DC contracting out for pension schemes from 6 April 2012, including the implications for existing protected rights funds.

The rising risk of being contracted out for DB schemes

A briefing note looking at the implications for employers of the reduction in the level of the National Insurance rebates available in respect of contracted-out DB schemes.

Supreme Court rules on Bridge case: what exactly are money purchase benefits?

A summary of the recent judgment in the Supreme Court which determined that schemes with a guaranteed investment return or annuity rate are money purchase.

New IAS19

An overview of the various changes to IAS19, in particular the additional disclosure requirements, which could prove onerous to many companies.

The importance of good administration

A review of a number of recent statements from the Pensions Regulator, focusing on the importance of good record-keeping and the respective roles of trustees, auditors and administrators.

Removal of age 75 rule for retirement benefits

An analysis of the implications of the removal of the requirement to take pensions and lump sum benefits by age 75, and of the new rules for capped and flexible drawdown.

News alert:

2012/13 Pension Protection Fund levy consultation

A review of the PPF's consultation on the levy for 2012/13, including a total levy estimate of £550 million.

Identifying your scheme's statutory employer

An alert on the Pensions Regulator's recent statement for trustees on the importance of identifying a scheme's statutory employer(s) in order to ensure that the scheme would qualify for the protection of the PPF in the event of employer insolvency.

High earners and contributors survival guide and survey:

8: The reduction in the lifetime allowance from 6 April 2012

An overview of the planned reduction in the lifetime allowance from £1.8 to £1.5 million, the implications for existing forms of protection and the introduction of the new fixed protection.

High earners and contributors survey: where are we now?

A survey of trustees, employers and pensions managers of the action that they are proposing to take as a result of the annual and lifetime allowance changes.

PSTS Bulletin:

The Great Lakes great escape?

An analysis of how the Pensions Regulator successfully used the threat of its powers to enforce a funding settlement in the case of the Great Lakes UK Limited Pension Plan.

Where can I get further information?

To discuss any of the issues covered in this edition, please get in touch with Jane Beverley on 020 7839 8600 or by email to jane.beverley@puntersouthall.com. Alternatively, please speak to your usual Punter Southall contact.

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Dates for your diary

Key dates (October – December 2011):

- 1 October** End of transitional window for phasing out default retirement age
- 1 October** Technical Actuarial Standard on Transformations in force
- 11 October** DWP consultation on automatic enrolment regulations and guidance on certifying DC schemes closed
- 18 October** Parliamentary consideration of Pensions Bill 2010/11 resumes
- 25 October** EIOPA expected to produce draft response to the European Commission on issues including the funding of DB pension schemes
- Autumn** DWP paper on short service refunds expected
- Autumn** HM Treasury consultation on trivial commutation rules for small pension pots expected
- Autumn** The Pensions Regulator consultation on strategy for regulating scheme funding expected
- Autumn** The Pensions Regulator response on next steps for enabling good outcomes in DC schemes
- 2 November** PPF levy consultation on 2012/13 levy determination closes
- 6 November** DWP consultation on regulations increasing rate of GMP revaluation and allowing trustees to remove references to protected rights in their rules closes
- Late autumn** European White Paper on Pensions expected

- December** Employer debt regulations on flexible apportionment arrangements expected
- 16 December** EIOPA expected to respond formally to European Commission's Call for Advice on the IORP directive
- By end of year** Consultation on regulations and guidance on GMP equalisation expected

Events:

Auto-Enrolment – Making it Happen

- 8 November – London
- 9 November – Birmingham • Aberdeen • Cardiff
- 10 November – Edinburgh • Bristol
- 11 November – Newcastle

Public Sector Pensions & the future for outsourcing contractors

- 23 November – London
- 29 November – Edinburgh
- 1 December – Birmingham

Employer Masterclass

- 19 January – London
- 24 January – Birmingham

Trustee training:

A full range of courses available throughout the year for trustees, ranging from courses for newly appointed trustees to courses for experienced chairmen of trustees.

Event booking

Book your complimentary place on our website:
www.puntersouthall.com/events

Alternatively, get in touch with Sarah Tolson for more information on 020 7839 8600 or email her at events@puntersouthall.com

Find out more at www.puntersouthall.com

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