

Spring cleaning

UK Pensions Agenda

April 2017

Advisors: Eversheds Sutherland LLP

1 European General Data Protection Regulation will come into force in May 2018. Trustees and sponsors will have new obligations in relation to personal data they hold, members will need to be given additional information and there will need to be appropriate internal policies in place. Agreements with third parties who handle data will also need to be reviewed.

Action: Table data protection as an issue for discussion at upcoming meetings and begin to identify what data is held, new processes that need to be put in place and which third parties process member data. For more information see [here](#) and [here](#).

2 Investment guidance has been issued by the Pensions Regulator aimed at DB scheme trustees. It builds on the risk based approach set out in the DB Funding Code and sets out a number of things that the Regulator regards as best practice.

Action: Review the guidance and identify any areas you may need to work on to ensure the plan meets the standards expected by the Regulator.

3 GMPs and equalisation – GMPs are calculated by reference to and paid at different ages for male and female members and are potentially discriminatory. The Government started consultation on a proposed method of dealing with such inequalities last year and has now made it clear that it intends to proceed with its proposals and does not envisage that this will be affected by Brexit.

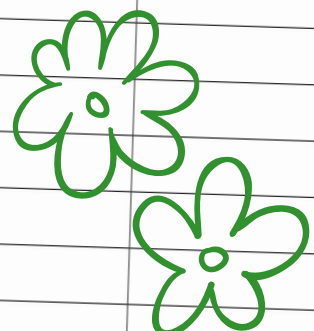
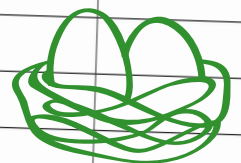
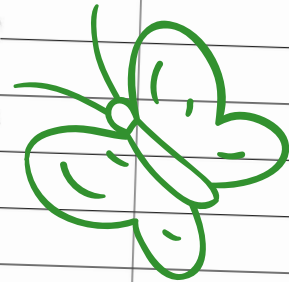
Action: No action can be taken until the Government have finalised their proposals, but consider tabling discussion of GMPs for a meeting in the first half of 2018. For more information see [here](#).

4 The DB Green Paper considers whether additional legislation is required in relation to investment and funding. It also discusses the possibility of allowing struggling plans to suspend or amend indexation and revaluation provisions, greater powers for the Pensions Regulator and the possibility of consolidating smaller plans.

Action: The Green Paper is wide ranging but is a long way from any concrete proposals. For the moment just keep a watching brief. There are more details [here](#).

5 Overseas transfers – where members request a transfer overseas on or after 9 March 2017, new requirements apply. Broadly speaking, the receiving plan and the member will need to be in the EEA or they will need to have a connection either because they are in the same country or because the member is employed by a participating employer. If these requirements are not satisfied, a 25% tax charge will arise.

Action: Ensure that processes for dealing with overseas transfers are updated to reflect the new requirements. For more information read [here](#).





6 The money purchase annual allowance - a last minute change to the Finance Act 2017 to get it through Parliament before it was dissolved meant that a proposed change to the money purchase annual allowance from £10,000 to £4,000 was dropped. However, the Government has indicated that if it is returned to power, it is likely to reintroduce this change as soon as possible.

Action: The change means that the money purchase annual allowance remains as £10,000. What is not clear is whether any later change will be retrospective and, if so, to what date. Any communications to members dealing with this issue should mention the possibility that the allowance may still be reduced to £4,000 and that this change might be backdated.

7 The Advice Allowance became available from 6 April 2017. Members can ask for £500 from a DC or hybrid pension pot (including DC AVCs) once a year and three times in their lifetime. It must be paid to an authorised financial adviser and be used to provide or implement retirement advice.

Action: If members ask for payment of the allowance, check if plan rules allow payment and consider amending rules if they do not.

8 The Pensions Directive contains new requirements which will change UK law, including the need for trustees to have regard to environmental, social and governance factors when investing plan assets, and to operate plans so as to avoid "intergenerational unfairness". The Directive should be transposed into UK law by 13 January 2019, and the Government may proceed with this despite the Brexit process.

Action: Take early action to review any new obligations under the Directive and plan ahead for implementation.

9 Death benefits have been considered twice by the Supreme Court this year. In *Brewster*, the Court held that, under the European Convention on Human Rights, a co-habiting partner should be paid a survivor's pension from the Local Government Pension Scheme without the need to be named on a nomination form. Judgment is still awaited in the second case, *Walker v Innospec*, which concerns whether schemes can lawfully apply a 5 December 2005 cut-off to the service used for calculating survivor benefits for civil partners and same sex spouses.

Action: If you have a plan with similar nomination requirements, you may wish to review whether they remain appropriate. If your plan has a 5 December cut-off for civil partners and same sex spouses, keep an eye out for the *Walker v Innospec* judgment as it may require a review of practice.

10 Age discrimination - there have been a number of age discrimination cases so far this year. The Court of Appeal has held that the compulsory retirement of police officers with maximum pension benefits to meet required budget cuts was objectively justifiable. In two other cases, employment tribunals came to opposite conclusions on whether a requirement for younger members to transfer to less generous pension arrangements whilst allowing older members not to for up to 10 years was objectively justifiable.

Action: If you are putting in place anything designed to be more favourable to older members, seek advice. Also consider whether any past activities where objective justification was used need to be reviewed.

For more details on these or any other issues, speak to your usual Eversheds Sutherland advisor or email

Francois Barker, Head of Pensions
francoisbarker@eversheds-sutherland.com