

Getting ready for winter

UK Pensions Agenda – November 2017

1 Data Protection - the European General Data Protection Regulation comes into force on 25 May 2018 and contains new obligations for data controllers and those who process data on their behalf. In addition, a new Data Protection Bill has been issued and the Information Commissioner has published action plans and guidance setting out the things that data controllers should be doing to comply with the new legal requirements.

Action: both trustees and employers are likely to be data controllers for the purposes of these changes and need to have an action plan in place now to ensure compliance with all of the new requirements in time for May 2018. For more information, see [here](#).

2 Money laundering - new regulations will require pension trustees to keep records of who the beneficial owners of the pension trust are. They will also need to register on HMRC's new beneficial owners register if the plan pays certain kinds of tax. Registration may need to be by 31 January 2018 unless the plan needed to register for self-assessment for the first time by 5 October 2017, in which case HMRC will require the information by 5 December 2017. HMRC has issued guidance explaining what they think pension scheme trustees will need to do to comply with these requirements.

Action: make sure the information to be included in the necessary records has been identified and consider whether registration with HMRC will be required and by when. Professional trustees are subject to additional obligations. The guidance from HMRC can be found [here](#).

3 Tax changes - draft legislation has been issued which will implement the reduction in the money purchase annual allowance (from £10,000 to £4,000) announced earlier in the year. The change will be effective from 6 April 2017. Changes are also proposed which will give HMRC a discretion to deregister a plan where the sponsoring employer is dormant.

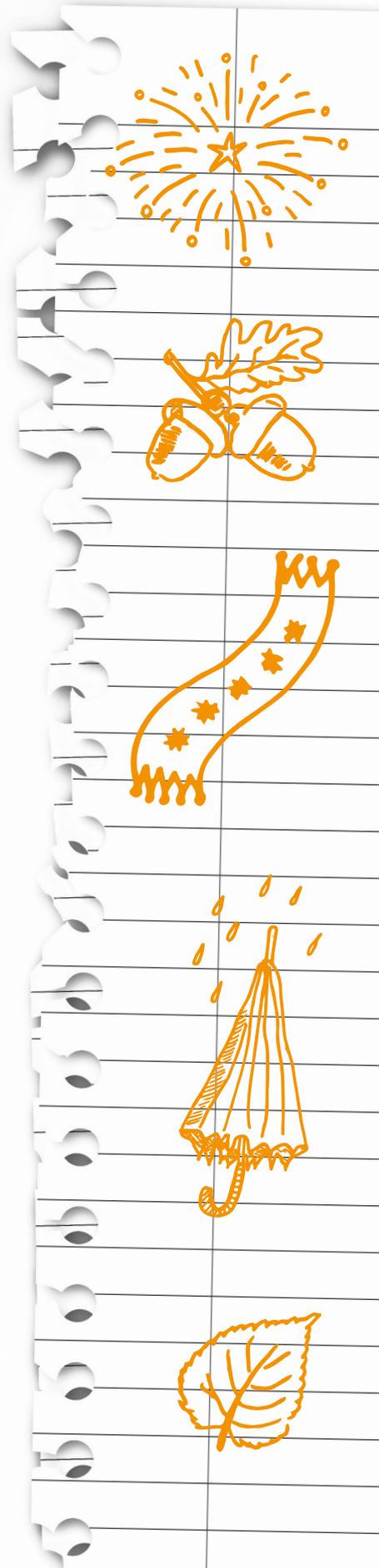
Action: consider what you need to tell members in relation to the change in the money purchase annual allowance. Where participating employers are dormant, consider if this change might affect the plan.

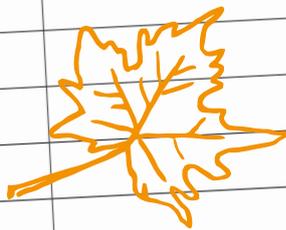
4 PPF draft levy determination - the PPF has confirmed that it intends to make changes to the existing score cards used to calculate the risk of employer insolvency. Where guarantees are in place, the PPF originally intended to require them to be re-documented by March 2018 but it has decided to leave this for a year. However, it is proceeding with proposals to require trustees to get "guarantor strength" reports where a guarantee is likely to result in a levy saving of £100,000 or more.

Action: the PPF anticipates that the changes will mean that many plans will see a difference in their levy, with 1 in 5 seeing a higher levy. Where contingent assets such as guarantees are in place, start the recertification process early enough to allow time to consider whether a guarantor strength report is needed. Further information is [here](#).

5 Protected rights - where a plan was contracted-out on a money purchase basis prior to 6 April 2012, rules will have contained provisions for protected rights (money purchase benefits provided in lieu of the state second pension). In some cases, rules may have been drafted in such a way that the abolition of protected rights did not automatically mean that the plan ceased to have to make any special provision in relation to them. To deal with this, trustees were given a power to modify rules by resolution to remove protected rights provisions. This power must be exercised before 6 April 2018.

Action: where a plan was historically contracted-out on a protected rights basis, check whether a resolution to remove protected rights provisions from the rules has already been passed. If not, consider whether one needs to be passed prior to 6 April 2018.





6 Equalisation - it had been understood that where a plan attempted to equalise by an announcement, subsequently confirmed by deed, the deed could not be backdated to the date of the announcement as this would amount to retrospective equalisation which was not permitted under European law. The Court of Appeal has now cast doubt on that view in *Safeway v Newton* and is going to refer the question of retrospective deeds of amendment where the rules specifically allowed the effective date of a deed to be the date of an earlier announcement to the European Court.

Action: it will take a number of years for this issue to be heard by the European Court. However, in the meantime, if a similar situation is identified it should no longer be assumed that equalisation could not be effective from the date of an announcement where later confirmed by a deed (in line with the rules). Plans in this position should take legal advice but wait for the decision of the European Court before taking any action on the basis of this judgment.

7 DC transaction costs - as part of the Chair's annual statement, trustees need to disclose the transaction costs that members' funds have been subject to or explain where they have not been able to obtain this information. With effect from 3 January 2018, the Financial Conduct Authority will require firms managing money on behalf of DC plans to disclose administration charges and transaction costs to trustees.

Action: this is something to be aware of when preparing the next annual Chair's Statement. You should be able to make full disclosures on transaction costs as firms will have no grounds to refuse to supply the information to you.

8 Investment consultants - the Financial Conduct Authority has referred the investment consultancy and fiduciary management market to the Competition and Markets Authority (CMA) for investigation. They are concerned that pension plan trustees rely heavily on investment consultants but have limited ability to assess the quality of their advice. The CMA is carrying out an investigation to see if there are any market features which prevent, restrict or distort competition and if so, what action is needed to resolve them.

Action: ensure that you understand the investment advice you are given and whether any fiduciary managers are meeting performance targets. The Pensions Regulator has issued **guidance** on the standards expected from trustees in relation to their dealings with investment providers.

9 VAT - HMRC has still not confirmed how plans should deal with VAT on investment costs. The current transitional period allowing continued use of the 70:30 rule (where bundled charges can be split by allocating 70% to investment and 30% to other charges) ends on 31 December 2017. However, in the absence of any new guidance, it seems likely that HMRC will either further extend the transitional period or allow the continued use of the 70:30 rule. In the meantime, HMRC has unexpectedly said that from 1 January 2018, insurers will no longer be able to treat supplies of pension fund management services to DB arrangements as VAT exempt.

Action: there is no current need to restructure arrangements for paying plan expenses to deal with the first issue and current arrangements should continue (at least for now). On the second issue, very few DB plans are managed by insurers. However if you have a wholly insured arrangement, consider the impact this will have. For more information see [here](#).

10 Employer duties - the Court of Appeal decided in *IBM v Dagleish* that when an employer carried out a benefit restructuring exercise, in order to determine whether it had exercised its duties properly it was necessary to consider if it had acted irrationally or perversely. One factor to take into account in considering this is the reasonable expectations of members but they should be given no more consideration than other factors.

Action: if you are currently involved in discussions to amend member benefits, careful consideration still needs to be given to what members may have been told in the past, but this needs to be considered alongside other relevant factors including the financial needs of the employer. More details of the judgment are [here](#).

For more details on these or any other issues, speak to your usual Eversheds Sutherland adviser or email **Francois Barker**, Head of Pensions francoisbarker@eversheds-sutherland.com

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