What's coming up in 2019?

As 2018 draws towards an end and thoughts are turning to the festive season, it is a good time to consider what the new year might hold for the world of pensions.

For this Aries Insight, then, we take a look forward and outline some of the changes and developments that we might expect to see in 2019.

Pension Benefit Statements

Under Articles 39 and 40 of the *EU Directive on the supervision of Institutions for Occupational Retirement Provision* (known as IORP II), occupational pension schemes will be required to provide all active and deferred members with an annual Pension Benefit Statement which must include such information as details of the individual's accrued entitlements or fund value and pension benefit projections.

Whilst money purchase schemes already provide annual statements for members, this will be a new requirement for defined benefit arrangements.

The *European Insurance and Occupational Pensions Authority* (EIOPA) has published a report on the implementation of IORP II in relation to Pension Benefit Statements, which provides guidance on the design and content of Pension Benefit Statements.

The deadline for transposing these requirements into UK law is 13 January 2019, so we can reasonably expect draft Regulations to appear shortly. We do not, however, know the effective date of any changes.

Cold calling ban

In October 2018, the Government published its response to the consultation on the cold-calling ban. The intention here is to ban cold-calling in connection with pension benefits; a major issue in the context of pension scams.

Draft Regulations have been laid to introduce the ban, although the exact effective date is not yet known.

There remains some doubt as to how effective any cold-calling ban will be, notwithstanding the maximum penalty of £500,000 for any contravention of the ban. We can, however, only hope that it will serve as a further deterrent to pension scam activity.

Welsh rate of Income Tax

From 6 April 2019, the Welsh Government will be able to set the Welsh rates of Income Tax for Welsh taxpayers. This will work by reducing the basic, higher and additional Income Tax rates applicable for English taxpayers by 10 pence and the Welsh Government will then decide the three Welsh rates of income tax, which will be added to the reduced English rates. The combination of reduced English rates plus the Welsh rates will determine the overall rate of income tax paid by Welsh taxpayers.

To facilitate the identification of Welsh taxpayers, from January 2019 HMRC will provide schemes operating on the Relief at Source basis a notification of residency status report that will identify both Scottish and Welsh taxpayers.

Fortunately, the Welsh Government has confirmed that, for 2019/ 2020 it intends to set the Welsh rates of income tax at 10p. This means the rates of income tax paid by Welsh taxpayers will continue to be the same as those paid by English and Northern Irish taxpayers.

2019/2020 Lifetime Allowance

As announced by the Chancellor in the 2018 Budget, the standard Lifetime Allowance for the 2019/2020 tax year is expected to be £1,055,000. Section 218 of the Finance Act 2004 requires that, before the start of the tax year, Regulations are made to officially confirm the new figure, however it would be rather surprising if there are any changes to the already announced figure.

Employer contributions into life assurance and QROPS

The Government has previously consulted on proposed changes to the tax treatment of employer contributions for life assurance and contributions paid into a QROPS.

Under the current legislation, such contributions are currently treated as a 'benefit in kind' for the individual (and thus taxable) unless the named beneficiary for any benefits available on the individual's death is the individual, a member of the individual's family or a member of their household.

Under the proposed changes, which are due to come into force from 6 April 2019, this restriction will be removed, so that the tax exemption will apply in all cases where the named beneficiary is any individual or a registered charity.

HMRC's Policy paper on this change is available here.

Collective Defined Contribution Schemes

The Government is currently consulting on the introduction of "collective defined contribution schemes".

Readers may remember that the Pension Schemes Act 2015 included legislation allowing for the introduction of "collective benefits" under the banner of a "defined ambition" pension framework, although these provisions have never been brought into force.

Under the current consultation, collective defined contribution schemes would be very different from the previously proposed collective benefit provisions. Key points arising under the current consultation are that:

- Collective defined contribution schemes would provide a "target" level of benefit for each member, with all the contributions being pooled and, on retirement, benefits being paid out from the scheme itself,

- Collective defined contribution benefits would represent a special category of money purchase benefits (so that the sponsoring employer would not be responsible for making up any shortfall that may arise),

- As the benefits would be money purchase, collective defined contribution schemes would not be eligible to enter the Pension Protection Fund if the employer becomes insolvent,

- Collective defined contribution schemes would be required to undertake annual actuarial valuations to determine whether any changes in the level of benefits in payment are required,

- Collective defined contribution schemes would have to be authorised by the Pensions Regulator before they will be able to accept any contributions. The authorisation process is expected to be similar to the current requirements for Master Trusts,
- Entirely new primary and secondary legislation will be required to support the introduction of collective defined contribution schemes.

The current consultation ends on 16 January 2019 and the Government aims to publish its response within 12 weeks from that date. It is possible that primary legislation might be included in a Pensions Bill during 2019.

It remains to be seen how broad the interest in establishing collective defined contribution schemes will be, however if they do become popular, this would represent a significant change from the current pensions landscape.

Defined Benefit Superfunds

Hot on the heels of the collective defined contribution schemes consultation, the Government launched a further consultation looking at defined benefit superfunds – schemes set up to allow the consolidation of existing (generally small and closed) defined benefit schemes into a single scheme. Defined benefit superfunds offer various advantages, including benefiting from economies of scale and the possible access to a wider mix of investment opportunities.

Equally, however, there are potential risks in that, following the bulk transfer of members into the superfund, the link with the original sponsoring employer is severed. In addition, superfunds are generally run with a view to generating a profit for the provider and / or the investors.

For these reasons, the Government is proposing a strict regulatory framework for superfunds, including that:

- Superfunds will have to be established as a corporate body, incorporated within the UK, who would be viewed as the statutory employer for the scheme,

- For superfunds to operate, they will have to be authorised by the Pensions Regulator,

- The authorisation requirements would be similar to those already existing for Master Trusts,

- The provider of the scheme will be required to provide a 'capital buffer' provided by investors and / or through fees paid by the ceding employers, as a substitute for the employer covenant,

- Superfunds will be required to provide annual valuations and quarterly updates on their funding position to the Regulator,

- Schemes that are sufficiently well-funded that they are able to buy out all the benefits (either 'now' or in the foreseeable future) would be excluded from transferring their members into a superfund, and any scheme wishing to transfer to a superfund would have to demonstrate that this enhances the likelihood of members receiving full benefits.

Defined benefit superfunds would be classed as a special category of defined benefit schemes, meaning that they would be eligible for entry into the Pension Protection Fund (PPF). To help protect the PPF and PPF levy payers, however, the consultation proposes that superfunds should be able to demonstrate a 99% probability of being able to pay out all benefits in full and suggests a strict hierarchy of 'triggering events' if the funding level drops below certain levels, ultimately including a requirement for the scheme to be automatically wound up.

The Government acknowledges that the introduction of a supervisory regime for superfunds will require new primary (and secondary) legislation. Again, then, it is possible that primary legislation might be included in a Pensions Bill during 2019.

Although, unlike the collective defined contribution scheme proposals, there are already schemes operating that could be viewed as vehicles for the consolidation of existing defined benefit schemes (such as defined benefit Master Trusts), the introduction of a new supervisory and regulatory regime for superfunds could increase employers' and trustees' interest in transferring to a superfund.

GMP Equalisation

Following the recent High Court ruling in the *Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank plc* case, schemes with any GMP element are currently considering exactly how they should adjust their benefits to address the inequalities arising as a result of the different treatment of GMPs for men and women.

Although the High Court case confirms the underlying principle that GMPs must be equalised, it still leaves many questions unanswered, such as the treatment of members who have transferred out or fully commuted their benefits. It is possible that further Court cases may be required to settle these outstanding issues.

It appears that the DWP will have to produce guidance on how schemes might go about equalising their benefits in respect of GMPs – something that they have historically been very reluctant to do. It is, of course, impossible to say when any such guidance might emerge, however schemes with any GMP element should look out for any further developments in this area.

The Pensions Dashboard

When the Pensions Dashboard was first proposed, it was intended that it would be up and running by April 2019. Despite various rumours to the contrary, the Government has confirmed that it remains committed to making the dashboard a reality (albeit, with the development being led by the pensions industry).

As time goes by, the April 2019 deadline looks less and less likely, particularly as the Government's feasibility study on the dashboard, which was originally expected to be published in March 2018, was finally published in December 2018 as part of a consultation that runs until 28 January 2019.

At this stage, a 2019 delivery date might still be achievable and we would certainly welcome the launch of the dashboard as soon as possible. We are not, however, holding our breath on this one, particularly as the consultation document refers to a time period of three to four years within which the majority of eligible schemes are expected to be supplying their data to the dashboard(s).

The Government does, however, intend to introduce legislation that will require pension schemes to provide data for the pensions dashboards, so we may see some developments in this area shortly.

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