SQUIRE PATTON BOGGS

Hot Topics in Pensions

Winter 2022-2023

UK

In the cold winter months, our readers may find themselves seeking solace in comfort food. A sweet treat and a warm drink might be the perfect way to refuel before catching up on the latest pensions news. In our Winter Hot Topics in Pensions, we suggest food and drink combinations for a mid-morning or mid-afternoon sugar boost, as we guide you through some key pensions developments. What do you think of our choices? Have we picked your favourite?

Adding Spice to Pensions Law

Non-pensions-specific legislation is adding seasonal spice to pensions law – a mince pie with mulled wine may help you to digest this. The Retained EU Law (Revocation and Reform) Bill will result in most EU law, which was retained after the Brexit transition period, ceasing to have effect in the UK from 31 December 2023, unless it is specifically preserved in regulations. The Economic Crime and Corporate Transparency Bill will require directors of corporate trustees to verify their identities with Companies House. In addition, the Data Protection and Digital Information Bill is poised to make sweeping changes to the UK's data protection framework.

The Autumn Statement – Strong Coffee Required

The impact of the chancellor's autumn statement could not be sugar coated, as the hole in the economy needed to be addressed. Among his announcements, the chancellor confirmed that the state pension triple lock will be retained, meaning that state pensions will increase by 10.1% in April 2023. The chancellor also announced that the second state pension age review would be published in early 2023 – this will include whether to bring in earlier a state pension age of 68. The government also published its outcome of consultation on its review of Solvency II. If you need a pick-me-up, a doughnut and a strong cup of coffee may be in order.

Business Plans in Bite-sized Chunks

Business planning is a delicate operation. When finessing your plans for the next calendar year or scheme year, consider whether the trustees' budget allows for training on new and developing areas. Could improvements be made to governance and decision-making – for example, were the scheme's investment governance arrangements robust enough to withstand the pressures placed on the market following the September mini-budget? Do de-risking plans and options need to be revisited? Is adequate time and resource allocated for implementing the single code of practice? Perhaps a plate of petit fours and a glass of sparkling Champagne would inspire your thoughts?

Transfers – A Sticky Situation

Regulations restricting the processing of statutory transfers are causing practical problems. A statement from The Pensions Regulator (TPR) and the Department for Work and Pensions (DWP) responded to concerns about "red flags" where receiving schemes offer small-scale incentives (leading to the transfer being blocked), or "amber flags" where receiving schemes include overseas investments (requiring the member to obtain MoneyHelper guidance). Unfortunately, their suggestion that trustees fall back on non-statutory transfer powers in scheme rules does not provide a complete solution for schemes (including the Local Government Pension Scheme, where that is not an option). We hope for a speedy resolution. This requires maximum sustenance, so we are dishing out gooey chocolate brownies and hot chocolate. Too much chocolate? Surely not!

Dashboards Regulations – With Jam and Cream

Following consultation, the government will give at least six months' notice of the Dashboards Available Point – the point at which pensions dashboards go live to the public. The more pressing deadlines for pension schemes are the earlier "staging deadlines" by which they must connect their schemes to dashboards, in accordance with The Pensions Dashboards Regulations 2022. Trustees need to plan ahead to ensure that they will be ready on time, and refer to the recently published standards, which describe the requirements in more detail. Do administration contracts need updating to include the new requirements? A lot to discuss over afternoon tea? We suggest a cup of Earl Grey and a scone with jam and cream (or is it cream and jam?).

TPR's New Policies – Far From Light and Fluffy

TPR has published two documents, made to go together like Madeira cake and Madeira wine. The finalised scheme management enforcement policy is extensive. Topics include TPR's approach to using its enforcement powers and the matters it will consider when more than one power is available to it. While the policy sweetens its impact by including examples and case studies, most powers are discretionary and TPR emphasises that the way in which it exercises them will depend on the facts of each case. TPR's complementary prosecution policy has been updated to reflect Pension Schemes Act 2021 changes.

The Charge Cap – A Short But Chequered History

Numerous changes have been proposed to the defined contribution regulatory charge cap since it came into force in 2015. The DWP has consulted on draft legislation and statutory guidance to allow trustees to exclude well-designed performance-based fees from the charge cap from 6 April 2023. Starting from 1 October 2023, the draft legislation requires trustees to disclose and explain their policies on illiquid assets investments in the statement of investment principles and to disclose the asset class allocation of their default fund(s) in the chair's statement. The Battenberg cake has a much longer history, allegedly dating back to 1884, but possibly with fewer changes to its ingredients than the charge cap – try this with a frothy coffee.

Smoothing Over Money Purchase Illustrations

The Financial Reporting Council has published an updated version of actuarial standard AS TM1. The standard specifies the methods and assumptions to be used for statutory money purchase illustrations from 1 October 2023. It also specifies that annuities will be displayed on a flat-rate, single-life basis and without a separate pension commutation lump sum value. The main reason for these changes is to provide consistency, so that the value information displayed on pensions dashboards is consistent with illustrations issued by pension schemes. We hope for a silky-smooth transition – so we will pair this topic with melt-in-the-mouth cheesecake and Irish cream liqueur.

Our Well-baked New Year Wishes

Here are the top three issues on our wish list for the DWP and TPR in 2023: (1) bring forward the review of statutory transfer legislation – it is not working as intended, resulting in delays and confusion; (2) explain the delay in amending the notifiable events regime – the consultation closed in October 2021 and we are still not clear on the DWP's intentions; and (3) press ahead with TPR's single code of practice so that trustees can finalise their governance arrangements. Pensions Minister Laura Trott faces a number of challenges. Former Minister Sir Steve Webb used to mull over pensions issues with a Bakewell tart and a cup of English breakfast tea (which sounds good to us).

Looking Forward – But Back in Time for Tea

In the coming months, we are looking out for: (1) TPR's second consultation on the defined benefit funding code of practice; (2) the DWP's proposals for extending collective money purchase legislation to allow for the emergence of multi-employer schemes and new models; (3) more from TPR and the industry working group on their diversity, equality and inclusion initiatives; and (4) TPR's updated covenant guidance, which will cover climate-related risks and opportunities. We finish with a touch of nostalgia. What are your earliest memories of baking? Perhaps you specialised in gingerbread men, jam tarts or cornflake buns? Your childhood favourite may go down well with a nice cold glass of milk.

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