

The Pensions Brief

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Issues affecting all schemes

Investment consultancy and fiduciary management – new trustee duties

The government is consulting on draft regulations which:

- Integrate into pensions law the remedies imposed by the Competition and Markets Authority (CMA) on trustees following its investigation into the investment consultancy and fiduciary management markets.
- Enable the Pensions Regulator to monitor and enforce compliance with the remedies.

The regulations replicate the CMA's remedies order subject to some minor differences. In particular, rather than submitting annual compliance reports to the CMA, trustees will be required to include details of their compliance with the regulations in their scheme return. The consultation closes on 2 September 2019, and the regulations are expected to come into force on 6 April 2020.

The Regulator is also consulting on guidance to support trustees in complying with the new duties. The guidance covers tendering for fiduciary management and investment consultancy services, setting objectives for investment consultants, and choosing an investment governance model. The consultation closes on 11 September 2019.

The CMA remedies order comes into force on 10 December 2019 and trustees will need to comply with its requirements until the regulations come into force. For more information on the CMA remedies order, please see our legal update.

Action

Trustees should keep the progress of the consultation under review.

Trusteeship and governance – consultation

The Pensions Regulator is consulting on the future of trusteeship and governance. The consultation makes a number of proposals including:

- Imposing a statutory requirement for trustees to demonstrate a minimum level of trustee knowledge and understanding e.g. through training or qualification.
- Requiring trustee boards to include an accredited professional trustee.
- Imposing a statutory requirement for trustee boards to report on the steps they are taking to ensure that the board has the necessary diversity of skills and reflects the scheme membership.
- Encouraging DC schemes which cannot demonstrate an improvement in their governance standards to consolidate in order to close the "quality gap".

The consultation closes on 24 September 2019.

Action

Trustees should keep the progress of the consultation under review.



Pensions Regulator codes of practice – review

The Pensions Regulator has published a [statement](#) announcing that it will be reviewing its codes of practice over the next year to reflect the requirement that came into force in January 2019 for schemes to have an effective system of governance. The Regulator expects that this review will involve combining the content of the 15 current codes of practice to form a single, shorter code. There will be a formal consultation later this year, and the Regulator will expect trustees to be able to demonstrate that they have an effective system of governance within 12 months of publication of the finalised updated code.

Action

Trustees should monitor the progress of the Regulator's review of its codes of practice.

Insolvency priority order – HMRC position

The government has published [draft legislation](#) which will move HMRC up the creditor hierarchy in insolvency proceedings from 6 April 2020 by giving it secondary preferential status in respect of certain taxes paid by employees and customers, including VAT, PAYE and employee National Insurance contributions (NICs). HMRC will remain an unsecured creditor for other taxes, such as corporation tax and employer NICs, and in respect of any penalties or interest due. There is no limit on the amount or age of the debts due to HMRC which will have secondary preferential status.

Action

Trustees should be aware of the impact of this change on their creditor status in the event of any insolvency proceedings affecting their scheme employer(s).

Automatic re-enrolment – online tool

The Pensions Regulator has launched an [online tool](#) to help employers to re-enrol their staff more simply.

Action

Employers may find the tool useful when re-enrolling staff.

Tax treatment of benefits – negligent misstatement

The High Court has [decided](#) that a police authority, as an administrator of the Police Pension Scheme, was liable for negligent misstatement where it had sent letters to various retiring police officers which informed the officers that they would receive a tax-free lump sum on their retirement before age 55, but did not state that a penalty tax charge would be payable if the officers re-commenced employment within one month of their retirement date. The officers were all re-employed within one month of their retirement and therefore suffered the penalty tax charge.

Action

Scheme administrators should give consideration to what additional information (if any) should be included in communications about benefits and their tax treatment, and should take advice where necessary.

Issues affecting DB schemes

Survivors' benefits – equalisation

The government has announced that, aside from those changes brought about by the Supreme Court decision in *Walker v Innospec*, it will not make any further retrospective changes regarding equalisation of survivors' benefits under occupational pension schemes. The Supreme Court decision in *Walker v Innospec* requires schemes to provide the same survivors' benefits to same sex spouses and civil partners as would be provided to opposite sex spouses (save in relation to GMPs).

Action

Trustees that have not yet taken action to reflect the changes required by the *Walker v Innospec* decision should go ahead and implement any necessary changes.

Issues affecting DC schemes

Master trusts – systems and processes

The Pensions Regulator has published additional guidance for master trusts on systems and processes.

Action

Trustees of master trusts may find the additional guidance useful.

Mayer Brown news

Upcoming events

All events take place at our offices at 201 Bishopsgate, London EC2M 3AF.

- **Trustee Foundation Course**
17 September 2019
10 December 2019
- **Trustee Building Blocks Classes**
12 November 2019 – DB funding and investment
- **Annual Pensions Conference**
2 October 2019 – The benefit of foresight: what can trustees do to protect their members?

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