

The Pensions Brief

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Issues affecting DC schemes

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Issues affecting all schemes

Pension Schemes Bill

This Bill was laid before Parliament on 15 October 2019. It provided for:

- Collective DC schemes.
- New Pensions Regulator powers and sanctions, including introduction of various new criminal offences and a power to issue a civil penalty of up to £1 million in certain circumstances.
- Changes to the Regulator's existing powers to issue contribution notices.
- Changes to the notifiable events regime.
- Pensions dashboards.
- Changes to the DB funding regime including introduction of a requirement for trustees to determine a long-term funding and investment strategy.
- Changes to the statutory transfer regime whereby exercise of a statutory transfer right would be subject to restrictions to be set out in regulations.

Accompanying explanatory notes were also published. The Bill did not complete its passage through Parliament before Parliament was dissolved ahead of the December 2019 general election. It is likely that the Bill will be re-laid at some point, but exactly when and in what form is unknown.

Action

Trustees and employers should monitor developments in this area.

General pensions levy – rates increase

The government is consulting on proposed options to raise the rates of the general pensions levy from April 2020. The general levy is different from the Pension Protection Fund levy which only applies to DB schemes. The general levy applies to all schemes and funds the core activities of the Pensions Regulator, the activities of the Pensions Ombudsman, and some of the activities of the Money and Pensions Service. The four options under consultation are:

- A holding increase of 10% of 2019/20 rates in April 2020, with further increases from April 2021 being informed by a wider review of the levy.
- A phased increase of 45% to 245% of 2019/20 rates over the three years from April 2020.
- A phased increase of 25% to 185% of 2019/20 rates over approximately 10 years from April 2020.
- A phased increase of 0% to 205% of 2019/20 rates over approximately 10 years from April 2021.

The consultation closes on 29 November 2019.

Action

Trustees should keep the progress of the consultation under review.



Transfers-out – pension scams

The Pensions Ombudsman has upheld a complaint against a scheme administrator regarding a transfer to an alleged pension scam vehicle. The Ombudsman considered that the administrator had failed to:

- Consider correctly whether or not the member had a statutory transfer right.
- Engage directly with the member regarding the concerns it should have had with her transfer request, had the administrator properly assessed it.

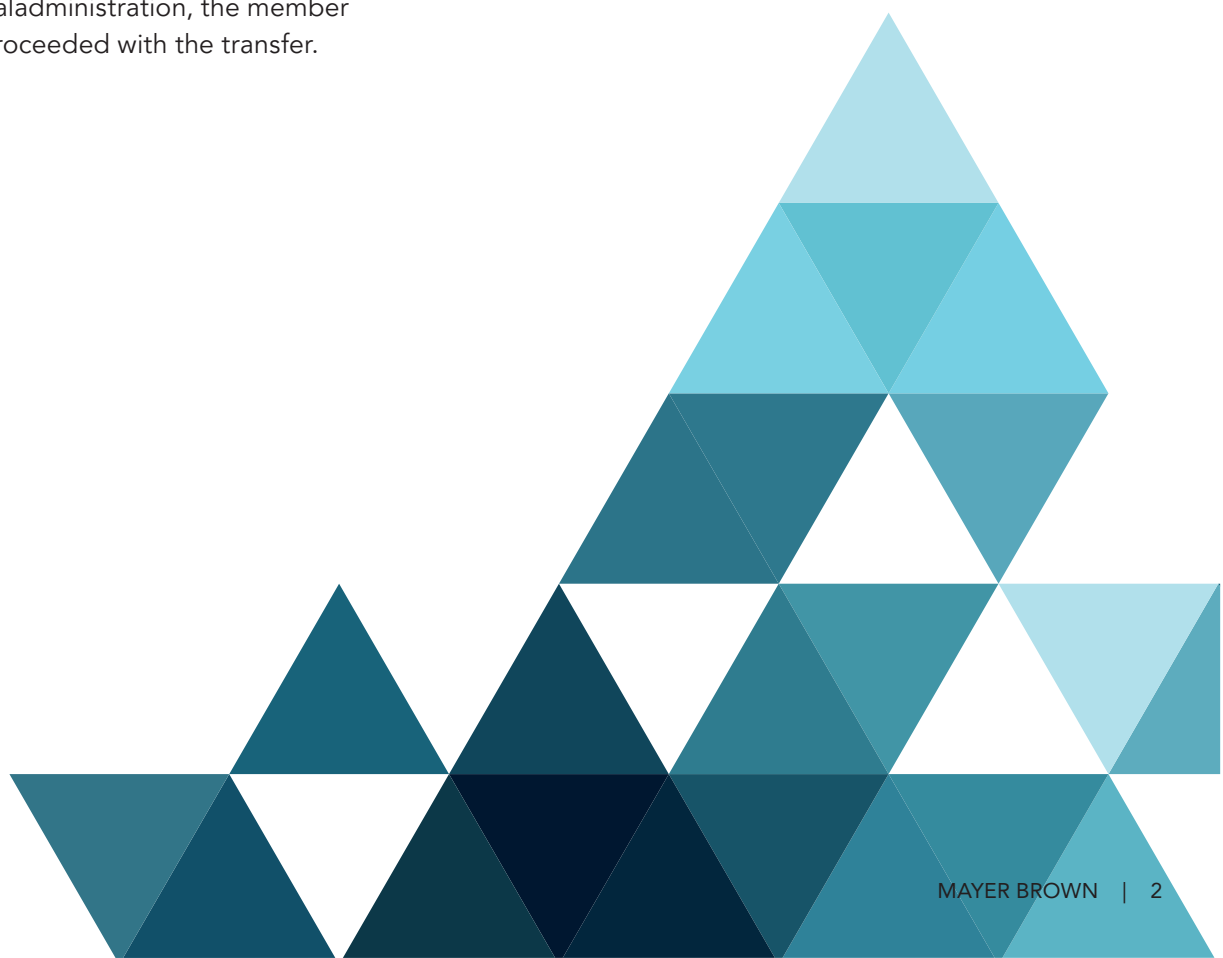
The member had been provided with the Pensions Regulator’s Scorpion leaflet and had signed a discharge form acknowledging that she had read the leaflet and discharging the scheme and the administrator from any future liability in connection with the transfer. However, the Ombudsman was satisfied that, but for the administrator’s maladministration, the member would not have proceeded with the transfer.

The Ombudsman directed the administrator to reinstate the member’s benefits in the scheme, or to provide equivalent benefits. To avoid “double-counting”, the administrator would be entitled to recover from the member any amount of her transferred benefits that the trustees of the receiving scheme were able to recover in future.

Mrs H (PO-21489)

Action

As well as providing members requesting a transfer with appropriate information on the risks of pension scams and pensions liberation, trustees should assess whether the member has a statutory transfer right, investigate the proposed receiving scheme, and make the member aware of any concerns that they have regarding the proposed transfer.



Issues affecting DB schemes

GMP equalisation – tax issues

HMRC has announced that it hopes to publish guidance in December 2019 on the tax issues associated with GMP equalisation. This guidance will cover issues relating to the lifetime allowance, lifetime allowance protections, and the annual allowance. The guidance will only apply to situations where schemes are using one of Methods A – C to equalise i.e. it will not cover GMP conversion. HMRC is continuing to work on GMP conversion and on other issues such as payment of lump sums. HMRC also notes that it may not be able to resolve all of the tax issues arising in connection with GMP equalisation via guidance and may need to consider some individuals on a case by case basis depending on their particular circumstances.

Action

Trustees and employers of schemes holding GMPs should keep the progress of the HMRC guidance under review as consideration of the tax issues associated with GMP equalisation will be an important part of the GMP equalisation planning process.

DB funding – consultation timing

The Pensions Regulator has announced that it will publish two consultations on the new DB funding framework and revised DB funding code of practice in the new year, subject to the progress of Brexit and other parliamentary business. The first consultation will focus on the principles of the new framework, while the second will focus on the detail. It is not clear how announcement of the December 2019 general election will impact this timetable.

The new framework will offer schemes two ways of complying with the funding regime:

- A “fast track” option under which schemes will be expected to achieve low dependency on the sponsoring employer by the time the scheme reaches maturity. Schemes taking this option

will receive a lower level of regulatory scrutiny, but will have less flexibility as they will have to comply with prescribed Regulator expectations.

- A “bespoke” option which will give schemes greater flexibility in their funding decisions. However, schemes taking this option will be subject to greater regulatory scrutiny and will be expected to justify their decisions to the Regulator.

Action

Trustees and employers of DB schemes should keep the progress of the two consultations under review.

Multi-employer schemes and employer departures – guidance

The Pensions Regulator has updated its guidance on multi-employer schemes and employer departures to cover deferred employer debt arrangements.

Action

Trustees and employers of multi-employer DB schemes may find the updated guidance helpful when considering an employer departure.

Equalisation – retrospective levelling-down of benefits

The Court of Justice of the EU has held that that, in the absence of an objective justification, EU law precludes a scheme from adopting an equalisation measure which retrospectively “levels down” benefits by increasing the normal retirement age for women to the same age as men even where that measure is permissible under national law and under the scheme’s trust deed.

Action

No action required.

Issues affecting DC schemes

Annual benefit statements – improvements

The government is consulting on how to deliver better annual benefit statements. The consultation seeks views on:

- The principle of short, simple statements and how adoption can be delivered through voluntary or mandatory approaches.
- The presentation of information on costs and charges.
- Ownership of the guidance on the assumptions used in statements.

The consultation closes on 20 December 2019.

Action

Trustees of schemes providing DC benefits (including additional voluntary contributions) should keep the progress of the consultation under review.

Mayer Brown news

Upcoming events

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- **Trustee Foundation Course**
 - 10 December 2019
 - 25 February 2020
 - 12 May 2020
 - 15 September 2020
 - 8 December 2020
- **Trustee Building Blocks Classes**
 - 12 November 2019 – DB funding and investment
 - 16 June 2020 – Trustee discretions and decision-making
 - 17 November 2020 – DB funding and investment

Employer Perspectives – news and views on employment and pensions issues

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Mayer Brown media comment

- [Andrew Block](#) and [Beth Brown](#) co-authored an article for PLC Magazine on the Court of Justice of the EU's decision in *Safeway v Newton*.

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Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

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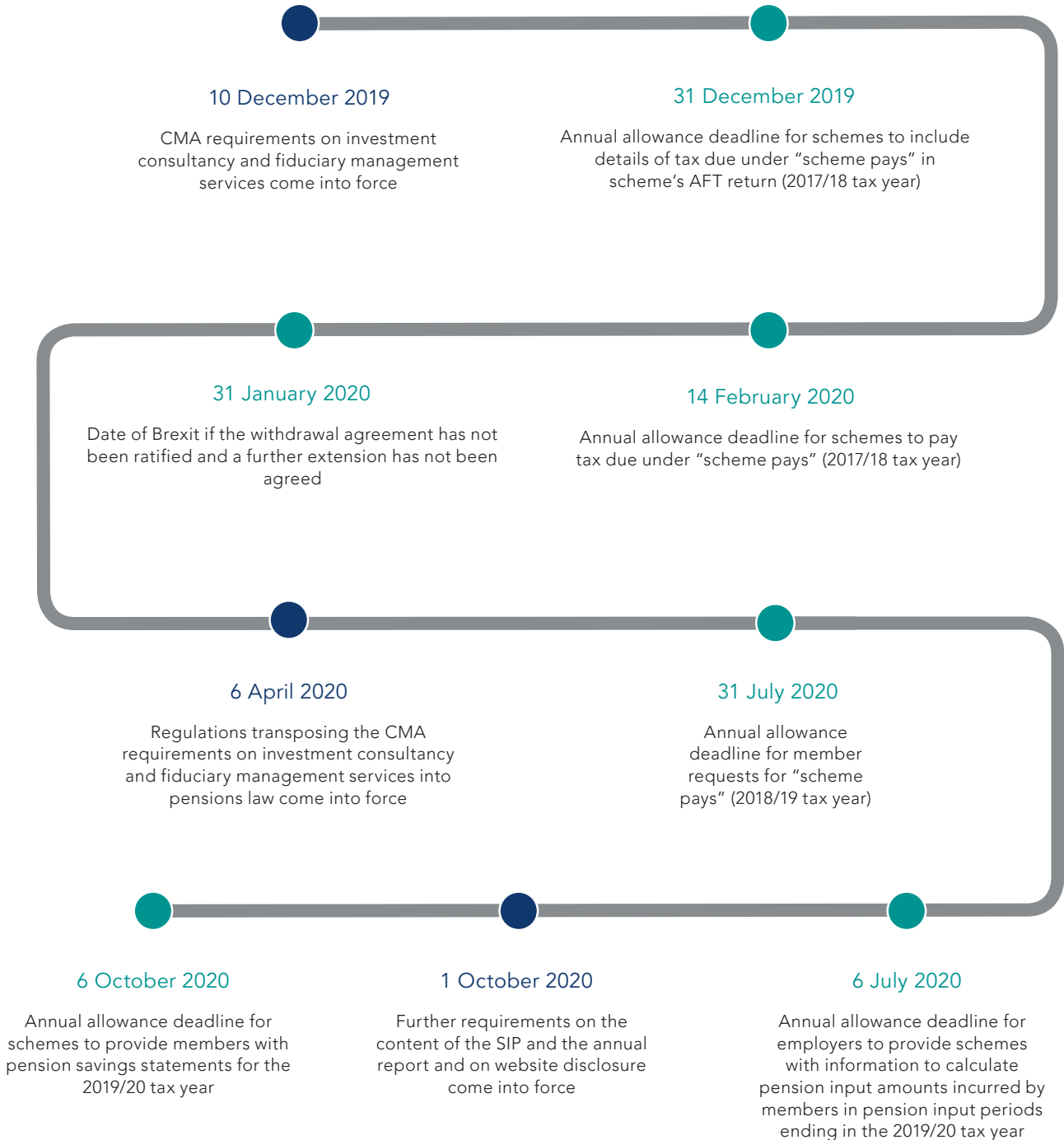
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Dates to note over the next 12 months



Key:

- Important dates to note
- For information

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