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The Pensions Brief

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Issues affecting all schemes

Pensions Bill continues its passage through parliament

The Pensions Bill has moved to the Committee stage. The Bill is substantially the same as when it was first introduced in 2019 (before being put on hold for the election) but a reminder of the key provisions is below. (Note that not all provisions apply to both defined benefit schemes and defined contribution schemes – some apply to just one type of scheme).

New Pensions Regulator powers:

The new legislation will strengthen the Regulator's powers, for example, by:

- introducing new criminal offences for (a) failing to pay a contribution notice without reasonable excuse, (b) avoidance of a s75 debt, and (c) wilfully or recklessly putting pension savings at risks (the last two carrying a potential prison sentence of up to seven years and/or an unlimited fine)
- giving the Pensions Regulator power to issue civil penalties of up to £1m for certain breaches, including for failure to comply with the notifiable events reporting requirements (which will themselves be strengthened and extended)
- introducing new grounds for the Regulator to be able to issue a contribution notice
- providing the Regulator with new information-gathering powers including the power to summon a person for interview or conduct "dawn raids" on businesses (failure to attend an interview or refusing to answer questions will be a criminal offence)

Long term DB funding strategy:

The legislation will require trustees to put in place a "funding and investment strategy" designed to ensure that benefits under the scheme can be provided over the long term. The chair of trustees will need to sign and submit this document to the Regulator with an accompanying statement.

Collective defined contribution schemes:

The Bill introduces the necessary framework for collective defined contribution (CDC) schemes to be established. CDC schemes are new to the UK; they invest members' and employers' contributions collectively (rather than in individual member accounts), contributions are fixed and, although members have a target pension, benefits may be adjusted depending on investment returns.

Pensions dashboards:

The Bill establishes a framework for pensions dashboards to be established, including provisions to require pension schemes to provide information. Most of the detail will be set out in regulations.

Members' transfer rights:

In the light of concerns about transfers to scam arrangements, the Bill includes powers to make regulations allowing trustees to require further information from a member before the member can take a transfer, including information about their employment and place of residence.

Action

Trustees and employers should monitor developments in this area.

Pensions Bill: climate change-related amendments

The Government has tabled amendments to the Pensions Bill during its passage through the Lords that will give the Department for Work and Pensions (DWP) power to make regulations imposing requirements on trustees "with a view to securing that there is effective governance of the scheme with respect to the effects of climate change". The amendments are widely drafted so as to allow regulations imposing obligations on various matters including:

- reviewing the scheme's exposure to prescribed climate risks and determining a strategy for managing that exposure
- determining targets relating to the scheme's exposure to such risks
- measuring performance against those targets, and
- preparing documents and publishing prescribed information relating to the effects of climate change on the scheme.

Regulations made under the amended legislation could also include provisions for the Pensions Regulator to have power to issue compliance notices and penalties for non-compliance. The amendments also provide for the DWP to be able to issue guidance which trustees would have to have regard to when complying with the requirements.

Action

Trustees should monitor developments in this area.

Consultation on the future of trusteeship and governance: Pensions Regulator's response

The Pensions Regulator has responded to the consultation issued in July 2019, which invited industry views on three areas: trustee knowledge and understanding (TKU), skills and ongoing learning; scheme governance structures for effective decision-making and driving DC consolidation.

The TKU Code of Practice will be reviewed with a view to simplifying how the Regulator's expectations of trustees are presented and differentiating those expectations by trustee role-type: lay trustees, chairs and professional trustees. The Regulator says it will not seek to change legislation or introduce a requirement for qualifications or continuing professional development. Instead, it will articulate a range of acceptable methods for demonstrating TKU. In particular, the new industry accreditation framework for professional trustees being launched by the Association of Professional Trustees (APPT) is likely to be a route for professional trustees to demonstrate TKU.

The Regulator will also explore whether to set an indicative number of hours and types of activities that count towards learning. Based on responses to the consultation, the Regulator is thinking of setting 15 hours per year as an indicative baseline for ongoing learning for lay trustees, while professional trustees would be expected to follow the industry-based standards on ongoing learning, currently set at 25 hours per year.

The response repeats the Regulator's view that there is clear evidence that diverse groups make better decisions than non-diverse groups and proposes setting up an industry working group, chaired by the Regulator in the first instance to help schemes improve the diversity of trustee boards.

The Regulator does not propose to press for a requirement to appoint a professional trustee to every trustee board, recognising that it would not currently be feasible given existing capacity and the views expressed in the consultation responses highlighting the additional cost and burden on schemes, the potential to reduce trustee diversity and the fact that the APPT standards have not had a chance to bed in. The Regulator may revisit the idea in future.

The section of the consultation response on driving DC scheme consolidation responds to the questions in the consultation about schemes that are unable to meet the Regulator's expectations. The Regulator is looking for ways to encourage such schemes to improve or wind up and transfer to better-run schemes. A particular barrier to consolidation identified by the Regulator is the existence of guarantees. Options discussed include assignment to the individual members, compensation for giving up a guarantee and changing legislation to allow Nest to accept assignment of such schemes. No firm proposals are being made at this stage but the Regulator will continue to work with both industry and the DWP to find solutions that can overcome barriers to consolidation.

Action

The planned new TKU Code of Practice is likely to require more detailed record-keeping to support the trustees in demonstrating how they are meeting the TKU requirements in terms of types of activity, scope and number of hours spent. Professional trustees should familiarise themselves with the new professional trustee standards and consider seeking accreditation. Trustees and employers should monitor developments arising from the response.

Issues affecting DB schemes

HMRC GMP equalisation newsletter

HMRC has published guidance on some of the tax issues arising from the adjustments schemes may make to equalise benefits for the effects of GMP. HMRC makes it clear that the guidance relates to benefit adjustments which are solely to address GMP equalisation, not other benefit adjustments. Also, it relates only to equalisation methods that involve dual record-keeping – it does not apply where a scheme is using GMP conversion.

The guidance confirms that, as a general rule, an increase in the pension due to GMP equalisation is not a new entitlement as it results from membership during the period 17 May 1990 to 5 April 1997. Also, members who are within the "deferred member carve-out" will still be within that carve-out if the only adjustment made to their benefits is attributable solely to GMP equalisation.

This means that adjustments to equalise for GMPs will not constitute new benefit accrual for annual allowance purposes. HMRC considers that there is no need to revisit pension input amount calculations done in the past but the revised pension amount will need to be used in the opening and closing benefit calculations for annual allowance purposes in current and future years.

Lifetime allowance protections should be preserved as GMP equalisation benefit adjustments will not result in any benefit accrual after 5 April 2006. Those with primary or individual protection will need to notify HMRC of the corrected figure for the value of rights protected "without undue delay". Also, if the GMP equalisation benefit adjustment results in an increase in the value of a member's benefit such that they would qualify for protection from the lifetime allowance charge, they can approach HMRC with evidence to support late notification.

The lifetime allowance calculation for benefit crystallisation events will need to use the revised pension amount. If a member is already in receipt of their pension, then the original benefit crystallisation event (BCE2) which occurred when the pension came into payment will need to be corrected.

If a member's overall pension benefits are above the lifetime allowance as a result of a recalculated benefit crystallisation event, then a lifetime allowance charge will be due.

Action

This guidance should be taken into account by trustees when implementing adjustments for GMP equalisation.

Pensions Regulator comments on DB consolidation

The latest blog by the Regulator's David Fairs comments on the maturing landscape for DB schemes and the need to consider the next phase of pension provision. In particular, the Regulator wants to encourage those in the industry that are looking to provide new or innovative solutions in the DB area to get in touch with the Regulator.

The blog notes that, increasingly the market is looking at other types of vehicles to move into, for example DB superfunds. The Regulator can see that there could be benefits to a transfer to a DB superfund for some schemes but protecting savers is at the Regulator's core, and it expects trustees to think very carefully about whether this is in their members' best interests.

The blog refers to the Regulator's expectations of DB superfunds where they intend to operate before any authorisation regime is put in place and notes that the Regulator will be assessing whether such schemes are appropriately protecting savers transferring into them.

Action

For noting.

Issues affecting DC schemes

ABI report assessing five years of pension freedoms

The Association of British Insurers (ABI) has issued a report, "Five years on: Future-proofing the freedoms". The report assesses the impact of the introduction of more flexible ways of drawing benefits from DC pension arrangements, how well the risks associated with them have been mitigated and proposes some reforms to address the problems that remain.

The report points out that there is more information and guidance to support members' decision-making than five years ago but take up remains low and people are taking decisions without adequate support. Withdrawal rates are a particular concern: many members are withdrawing money from their pension pots at rates that are likely to mean they run out of money in retirement if they do not have other sources of income. In 2018/19, according to the FCA, 40% of withdrawals were at an annual rate of 8% and over, whereas the rate calculated to ensure a 95% chance of not exhausting savings in retirement would be 3.5% on average. This is likely to become a much larger issue in future when a greater proportion of people will be relying on DC accounts to provide their pensions.

The ABI's view is that helping people to decide how much to withdraw is one of the key outstanding issues to address and they say they will explore the ways in which such help could be delivered. They also recommend a change to legislation and regulation to enable pension providers to give more help to customers without crossing the boundary to regulated advice.

Further recommendations are that the Money and Pensions Service introduce a later life review to help people plan during their retirement and that DB schemes should be required to give risk warnings to any member considering a transfer to a DC arrangement.

The report points out that most people do not recognise the difference between trust-based and contract-based pension schemes. It recommends that FCA-type requirements should apply to occupational schemes as well as contract-based schemes, for example wake-up packs, cost transparency, investment pathways and vulnerable customers.

The report also proposes that the government establishes a Retirement Commission to advise on the policy changes needed for good consumer outcomes in later life and encourages the government to legislate for the proposed increase of the Normal Minimum Pension Age to 57.

Action

Trustees should note this report but the changes to the current legal and regulatory framework proposed by the report are at this stage only recommendations and would require action by the government, regulators and industry bodies.

Pensions Regulator DC trust: scheme return data

The Regulator has issued its annual statistics publication, Defined Contribution (DC) trust, which gives a snapshot of occupational DC trust-based pension schemes in the UK.

The report shows that, over 2019, the number of DC schemes with 12 or more members has fallen by 12%, indicating continued concentration in the DC market, partly due to master trust authorisation. Since the beginning of 2010, the total number of schemes with 12 or more DC members (including hybrids) has declined by 62% from 4,560 to 1,740.

There are currently 38 authorised master trusts which together account for 16.6 million DC memberships and £38.5 billion assets.

Action

For noting.

Mayer Brown news

Upcoming events

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

- Trustee Foundation Course

  12 May 2020
  15 September 2020
  8 December 2020

- Trustee Building Blocks Classes

  16 June 2020 – Trustee discretions and decision-making
  17 November 2020 – DB funding and investment

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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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Dates to note over the next 12 months

31 March 2020

Submit scheme returns
Certify contingent assets and asset-backed contribution arrangements on Exchange by midnight in order for PPF to take them into account for 2020/21 levy year

1 April 2020

Submit hard copy documents (including guarantor strength reports) relating to contingent assets to PPF by 5pm

6 April 2020

Regulations transposing the CMA requirements on investment consultancy and fiduciary management services into pensions law come into force

30 April 2020

Certify deficit reduction contributions on Exchange by 5pm

6 July 2020

Annual allowance deadline for employers to provide schemes with information to calculate pension input amounts incurred by members in pension input periods ending in the 2019/20 tax year

31 July 2020

Annual allowance deadline for member requests for "scheme pays" (2018/19 tax year)

1 October 2020

Further requirements on the content of the SIP and the annual report and on website disclosure come into force

6 October 2020

Annual allowance deadline for schemes to provide members with pension savings statements for the 2019/20 tax year

31 December 2020

Annual allowance deadline for schemes to include details of tax due under "scheme pays" in scheme's AFT return (2018/19 tax year)

31 January 2021

Send annual event report to HMRC

Key:

- Important dates to note
- For information