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March 2020

The Pensions Brief

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Issues affecting all schemes

Coronavirus (COVID-19) – Government, Regulator And Industry Action

Pensions Regulator guidance

The Pensions Regulator (the Regulator) has issued a batch of COVID-19-related guidance:

- DB scheme funding and investment: COVID-19 guidance for trustees
- DB scheme funding: COVID-19 guidance for employers
- DC investment: COVID-19 guidance for trustees
- COVID-19: an update for trustees, employers and administrators
- Guidance for DB scheme trustees whose sponsoring employers are in corporate distress

In particular, the guidance suggests that:

- Where an employer asks to temporarily suspend deficit repair contributions, trustees should agree provided certain conditions are met, including that:
  - » the employer enters into a legally binding agreement not to pay any distributions or dividends;
  - » the employer does not pay any intra-group transfers unless the trustees understand the rationale and such transfers are covenant enhancing; and
  - » unless the trustees have full visibility of the employer covenant, the suspension is for no more than three months.
- DB schemes finalising their valuations now can delay submitting scheme documentation to the Regulator for up to three months without the Regulator taking action. Such schemes do not need to revisit their assumptions or take into account post-valuation experience in the light of the market disruption caused by COVID-19, but should ensure that contributions are affordable for employers in the current circumstances.
- In the event of administrator resourcing issues, pension payments and the processing of retirements and bereavements should take priority.
- Events which ordinarily need to be reported to the Regulator should continue to be reported as usual, but the Regulator will for the time being take a proportionate and risk-based approach towards enforcement.

We issued an alert which summarises the guidance in more detail.

Three-month transfer suspension window

In its COVID-19 guidance, the Regulator indicates that it will not take regulatory action in the three months starting on 27 March 2020 against trustees who suspend cash equivalent transfer value (CETV) activity. Trustees will still need to report breaches. After the three months, trustees may continue to suspend CETV activity if this is still in the best interest of their members, but should be clear on the reasons and should notify the Regulator.

One of the drivers for the Regulator's action is Action Fraud's report that there was a 400 per cent increase in scams in March, linked to COVID-19.

The Coronavirus Act 2020 – emergency volunteer leave

The Coronavirus Act 2020 received Royal Assent on 25 March 2020. It introduces time-limited emergency measures in a number of areas. The measures include a new right for workers to take emergency volunteer leave in blocks of two, three or four weeks.

Under Schedule 7 of the Act, workplace pension schemes are deemed to include an "emergency volunteering rule". The rule provides (broadly) that where a member takes time off to act as an emergency volunteer, their rights under the scheme are unaffected.

Pension Protection Fund (PPF) guidance

The PPF has set up a new webpage containing details of the measures it is putting in place to respond to the impact of COVID-19. These include provision for contingent asset documents to be submitted by email rather than in hard copy.

Other guidance

Other recent guidance on COVID-19-related issues includes:

- the Pensions and Lifetime Savings Association's "top tips" for DB and DC schemes;
- the Pensions Administration Standards Association (PASA) guidance for administrators; and
- our alert for trustees.

Action

Trustees should read the Regulator's guidance and consider what action, if any, they should take as regards covenant and funding; investment; governance (e.g. electronic decision-making); transfers; and member communications.

Climate change – Pension Schemes Bill amendment and consultation

An updated version of the Pension Schemes Bill was published on 4 March 2020. It includes the climate change amendments discussed in our last Pensions Brief.

On 12 March 2020 the Pensions Climate Risk Industry Group (a group established by the Regulator, the Department for Work and Pensions (DWP) and other Government departments) published a consultation on non-statutory guidance for trustees as regards assessing, managing and reporting climate-related risks.

Action

Trustees should monitor developments and consider whether they wish to respond to the consultation.

DWP cancels general levy increase

On 4 March 2020, the DWP published a response to its October 2019 consultation on proposed increases to the general levy on pension schemes. The DWP confirmed it would be increasing levy rates for most schemes by 10% with effect from 1 April 2020.

On 30 March 2020 the DWP cancelled this increase due to the COVID-19 crisis. The Government will review the structure of the levy and engage with industry later this year.

Action

For noting.

2020 Budget and Finance Bill 2019-21 – annual allowance taper and lifetime allowance

On 11 March 2020, the Chancellor of the Exchequer, Rishi Sunak, delivered the Government's 2020 Budget. The Budget, together with the Budget Report, announced that the following changes would be made with effect from 6 April 2020:

- The income thresholds for the tapered annual allowance would rise by £90,000, although the allowance would taper to a minimum of £4,000 rather than £10,000. Following the changes, the tapered annual allowance applies only to individuals with "threshold income" of over £200,000 and "adjusted income" of over £240,000.
- The lifetime allowance would be increased in line with CPI to £1,073,100.

The provisions implementing the change to the annual allowance taper are contained in the Finance Bill 2019-21 which was introduced to the House of Commons on 17 March 2020.

Action

For noting.

Issues affecting DB schemes

GMP equalisation – PASA publishes its latest guidance

On 17 March 2020, the GMP Equalisation Working Group of PASA published its latest guidance, "When to Rectify". The guidance sets out the Group's views as to the timing of GMP rectification and equalisation exercises. It suggests four steps which trustees should take now in order to make the right decision for their scheme:

- understand the data;
- understand the nature and the timing of the tasks required to rectify benefits and the potential approaches available;
- consider the impact on members in scope for GMP rectification of any delay whilst finalising the equalisation approach; and
- consider and document the scheme's position on other factors that will influence the decision on when to undertake GMP rectification for those potentially impacted by GMP equalisation.

Action

Trustees should take account of the guidance when planning any GMP equalisation exercise.

PPF levy – PPF confirms insolvency risk methodology for 2021/22

On 19 March 2020, the PPF published its "Insolvency scoring from 2021/22" policy statement, following consultation on changes to its insolvency scoring method.

In December 2019 the PPF formally introduced Dun & Bradstreet (D&B) as its new insolvency partner. The PPF has confirmed that insolvency risk scores calculated by D&B will 'go-live' from the end of April 2020 – for use in 2021/22 levy invoices. The basis for scoring will be substantially unchanged from that consulted on.

The statement also contains a note that, due to COVID-19, the PPF does not plan to publish its final rules for the 2021/22 levy year until December 2020. The PPF will monitor developments and consider whether any changes to the rules are necessary.

Action

Trustees should monitor developments.

Consultation on new DB funding code

On 3 March 2020, the Regulator published the first part of its consultation on a revised DB funding code of practice. The consultation considers:

- the Regulator's new proposed regulatory approach;
- the principles which the Regulator thinks should underpin the new framework; and
- how those principles could be applied in practice to provide clearer guidelines.

The consultation proposes a new twin-track regulatory system, comprising a fast-track approach and a bespoke approach.

For the purpose of the fast-track approach, the Regulator will set straightforward quantitative compliance guidelines. Valuations and recovery plans which follow the guidelines are likely to be deemed compliant with the statutory funding regime. Trustees and employers who take the fast-track approach can expect minimum regulatory involvement.

Under the bespoke approach, trustees and employers will have more flexibility to account for scheme- and employer-specific circumstance, but decisions will need to be fully articulated and evidenced. Trustees and employers who take the bespoke approach can expect greater scrutiny from the Regulator.

The consultation also sets out the Regulator's proposed key principles, including:

- Trustees and employers should understand scheme-specific funding and investment risks and evidence how these have been assessed and managed.
- Mature schemes should have a low level of employer dependency and invest in a way that makes them resilient to risk.
- Trustees should develop a journey plan to achieve their long-term objective. Technical provisions should have a clear link to the long-term objective.
- Technical provisions deficits should be recovered as soon as affordability allows, while minimising adverse impact on sustainable growth of the employer.

The consultation closes on 2 June 2020.

The second part of consultation, due to be published later this year, will focus on the draft code itself.

Action

Trustees should monitor developments and consider whether they wish to respond to the consultation.

Consultation on reform to the Retail Prices Index (RPI)

On 11 March 2020, the Government and the UK Statistics Authority (UKSA) launched a consultation on the UKSA's proposed change to the RPI methodology. The change would involve aligning RPI with CPIH as from a future date – 2030 was suggested.

The consultation covers, among other things, whether the change should be implemented before 2030, at some point in or after 2025.

The consultation will close on 22 April 2020, with the Government and UKSA responding to the consultation before the parliamentary summer recess.

Action

Trustees should consider whether they wish to respond to the consultation. Trustees should also consider whether to seek actuarial or investment advice on the implications of the proposed change.

Issues affecting DC schemes

Consultation on DC consolidation

The Pensions Minister, Guy Opperman, has announced that there will be a consultation on Regulations to encourage the consolidation of small DC schemes, to take place in the spring.

Action

For noting.

Mayer Brown news

Upcoming events

- **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

Due to the COVID-19 restrictions, our events will be hosted via telephone/video conference until further notice. We will provide further details nearer the time of each event.

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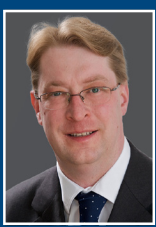
Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

For more information about the Pensions Group, please contact:



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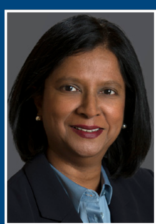

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Dates to note over the next 12 months

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

1 October 2020

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

31 July 2020

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

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