MAYER | BROWN

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The Pensions Brief

At a glance...

Issues affecting all schemes

TRANSFER RIGHTS

Consultation on changes to statutory transfer rights

PENSIONS DASHBOARDS

Call for input on the connection staging timetable

LIQUIDITY RISK

Pensions Regulator blog post on managing liquidity risk

Issues affecting DB schemes

DB FUNDING

2021 Pensions Regulator annual funding statement

CONTRIBUTION NOTICES

Consultation on revised Pensions Regulator code of practice

Issues affecting DC schemes

BENEFIT STATEMENTS

Consultation on simplification of annual benefit statements

DEFAULT FUND CHARGES

Consultation on changes to permitted charges in default funds

Action required

Follow development and keep under review

Issues affecting all schemes

Transfer rights – changes to combat pension scams

The government is consulting on draft regulations setting out new conditions that will need to be met in order for a member to have a statutory transfer right. The new conditions are designed to help prevent transfers to scam vehicles.

The draft regulations set out four conditions, **one** of which must be met in order for a statutory transfer to proceed:

1. The transfer is to one of certain prescribed types of scheme, including an authorised master trust.
2. The transfer is to a UK occupational pension scheme and the member can demonstrate an "employment link" with the receiving scheme.
3. The transfer is to a qualifying recognised overseas pension scheme and the member can demonstrate either an "employment link" (as under the second condition) or a "residency link".
4. For all other transfers, trustees will be required to determine if any prescribed "red" or "amber" flags are present. Where no flags are present, the transfer can proceed. Where one or more of the amber flags are present, the transfer can only proceed if the member has taken guidance on scams from the Money and Pensions Service. Where one or more of the red flags are present, the transfer cannot proceed.

The consultation closed on 9 June and the government intends to introduce the regulations this autumn. For more information, please see our legal update.

Action

Trustees and administrators should keep the progress of the consultation under review.

Pensions dashboards – staging timetable

The Pensions Dashboards Programme, the body responsible for developing the pensions dashboard ecosystem, has published a call for input on the staging timetable for connection to the dashboard ecosystem. The proposed timetable would see schemes connect in three "waves" based on scheme size as follows:

- Wave 1 – schemes with 1,000+ members
  - » Cohort 1 – authorised master trusts with 20,000+ members and Financial Conduct Authority-regulated personal pension schemes (spring 2023)
  - » Cohort 2 – other DC schemes being used for automatic enrolment (during 2023)
  - » Cohort 3 – all remaining schemes with 1,000+ members (2023 – 2024)
- Wave 2 – schemes with 100 – 999 members
- Wave 3 – schemes with 99 or fewer members

The call for input closes on 9 July.

In addition, the Pensions Regulator has published a podcast on pension dashboards which, among other things, discusses the steps that schemes should be taking to prepare for the introduction of dashboards.

Action

Trustees should keep the progress of the call for input under review.

Liquidity risk – Pensions Regulator views

The Pensions Regulator has published a blog post on managing liquidity risk. In the post, the Regulator calls on trustees to improve their understanding of the liquidity risks their schemes are exposed to and to actively monitor and mitigate those risks. The post also contains further detail on the Regulator's expectation (as set out in the draft consolidated code of practice that it recently published for consultation) that trustees should ensure that no more than 20% of scheme investments are held in assets not traded on regulated markets.

Action

No action required, but trustees may find the blog post helpful when considering the liquidity of scheme investments.

Issues affecting DB schemes

2021 Pensions Regulator annual funding statement

The Pensions Regulator has published its 2021 annual funding statement. The statement is targeted at schemes undergoing a valuation with an effective date between 22 September 2020 and 21 September 2021 and schemes undergoing significant changes that require a review of their funding and risk strategies. Its main themes are as follows:

- The importance of scenario planning/analysis when considering actuarial assumptions and scheme demographics, particularly in relation to any assumptions regarding the impact of Covid-19 on longevity, and when undertaking covenant assessment.
- The impact of Covid-19 and Brexit on mortality assumptions, employer covenant and affordability, and the need for mortality assumptions for be balanced, evidence-based and derived using a sound methodology.
- The need, when taking account of post-valuation experience, to consider both negative and positive events.
- The importance of using independent specialist advice where appropriate to support covenant and affordability assessments.
- The need for trustees to plan to recover deficits with a focus on employer affordability, while maintaining fair treatment and balancing the sustainable growth of the employer. Schemes should be treated equitably compared to other creditors, especially shareholders, where affordability is an issue.
- The ongoing importance of covenant monitoring, contingency planning and integrated risk management.
- The likelihood that there will be an increase in the level of corporate activity as the recovery from Covid-19 progresses and the need for trustees to be prepared and ready to act in the event of any corporate activity.
- The need for trustees and employers to set a long-term funding target that is consistent with how they expect to deliver the scheme's benefits.

The statement also sets out ten categories of scheme and outlines what the Regulator considers to be the specific key risks and expectations for each category. The statement includes a table to enable schemes to assess which category they fall into.

Lastly, the statement confirms that the Regulator expects to carry out its second consultation on the revised DB funding code of practice in late 2021 and that it does not expect the revised code to be in force before late 2022 at the earliest.

Action

Trustees and employers of schemes that are currently undergoing a valuation or are reviewing their funding strategy should review the statement and take it into account in their funding discussions. Trustees and employers of other schemes may also find the statement helpful.

Contribution notices – new tests

The Pensions Regulator is consulting on changes to its code of practice on the material detriment test to reflect the two new grounds for issuing a contribution notice that are being introduced by the Pension Schemes Act 2021. The changes that the Regulator is proposing to make include:

- An explanation of the employer insolvency and employer resources tests.
- An updated set of circumstances in which the Regulator would expect to issue a contribution notice as a result of one or more of the tests being met.

The Regulator is also consulting on changes to the guidance that accompanies the code which sets out illustrative examples of where the circumstances in the code might and might not apply. The Regulator has revised these examples to reflect the updated circumstances in the code and its experience of investigating and issuing contribution notices. The consultation closes on 7 July.

Action

Trustees and employers should keep the progress of the consultation under review.

Issues affecting DC schemes

Annual benefit statements – simplification

The government is consulting on new requirements for the length and format of the annual benefit statement that is sent to members of certain DC schemes. The government is also consulting on draft accompanying statutory guidance.

The draft regulations apply to any scheme being used for automatic enrolment that only provides DC benefits. The draft regulations require the annual benefit statement provided by such schemes to members in the accumulation (but not the decumulation) phase to be no longer than a double-sided A4 sheet. The draft statutory guidance sets out how information to be included in the statement can be structured and presented, and includes an illustrative template.

The consultation closes on 29 June. The draft regulations are intended to come into force on 6 April 2022.

Action

Trustees should keep the progress of the consultation under review.

Default funds – permitted charges

The government is consulting on replacing the current three permitted charging structures for default funds in DC schemes that are being used for automatic enrolment with a single, universal charging structure. The universal structure would be a single percentage charge on the value of the member's pot, and combination charging structures would be prohibited.

The consultation also confirms the government's intention to introduce a ban on flat fees being charged on pots of £100 or less in default arrangements in DC schemes that are being used for automatic enrolment. The consultation includes a draft statutory instrument introducing the ban. The government plans to introduce the ban from 6 April 2022, subject to other parliamentary priorities.

The consultation closes on 16 July.

Action

Trustees should keep the progress of the consultation under review.

Mayer Brown news

Upcoming events

All events will take place as online webinars. For more information or to book a place, please contact Katherine Carter.

- **Trustee Foundation Course**
  15 September 2021
- **Trustee Building Blocks Classes**
  16 June 2021 – Trustee discretions and decision-making
  8 December 2021 – DC governance

Employer Perspectives – news and views on employment and pensions issues

Visit the blog at employerperspectives.com and subscribe to blog updates via email.

Mayer Brown media comment

Duncan Watson and Liam Kellett co-authored an article for LexisNexis PSL on the government's proposals to incorporate performance fees into the DC default fund charge cap.

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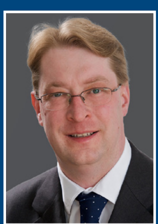
Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

For more information about the Pensions Group, please contact:



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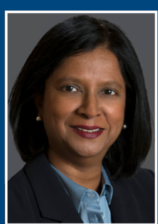

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Dates to note over the next 12 months

30 June 2021

PPF levy deadline for submission of full block transfer certificates

6 July 2021

Annual allowance deadline for employers to provide schemes with information to calculate pension input amounts incurred by members in pension input periods ending in 2020/2021 tax year

31 July 2021

Annual allowance deadline for member requests for "scheme pays" (2019/20 tax year)

30 September 2021

Final deadline for schemes to include implementation statement in scheme annual report and publish it on a publicly available website

1 October 2021

Climate risk governance and disclosure requirements expected to come into force for larger schemes

5 October 2021

DC default fund charge cap changes and additional DC governance and disclosure requirements expected to come into force

6 October 2021

Annual allowance deadline for schemes to provide members with pension saving statements (2020/21 tax year)

31 December 2021

Annual allowance deadline for schemes to include details of tax due under "scheme pays" in scheme's AFT return (2019/20 tax year)

31 January 2022

Deadline for schemes to send annual event report to HMRC (2020/21 tax year)

14 February 2022

Annual allowance deadline for schemes to pay tax due under "scheme pays" (2019/20 tax year)

31 March 2022

Deadline for submission of scheme returns

6 April 2022

- New annual benefit statement requirements for DC-only automatic enrolment schemes expected to come into force
- Ban on flat fees being charged on DC default fund pots of £100 or less expected to come into force

Key:

Important dates to note

For information