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June 2021

The Pensions Brief

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Issues affecting all schemes

Climate change – governance and reporting

Regulations have been laid before Parliament for approval that introduce new climate change-related governance and reporting requirements for schemes with £1 billion+ of assets and authorised master trusts. The timetable for introduction of the requirements is as follows:

- 1 October 2021 – occupational pension schemes with relevant assets of £5 billion+ and authorised master trusts (regardless of their asset level).
- 1 October 2022 – occupational pension schemes with relevant assets of £1 billion – £5 billion.

The government has also published statutory guidance accompanying the regulations. Trustees are required to have regard to the guidance in complying with the new requirements. It provides an overview of the requirements and offers guidance on what trustees should do in order to comply with them. The guidance take effect on 1 October.

For more information, please see our legal update.

Action

Trustees of schemes that will be subject to the requirements this year should continue to work towards establishing arrangements to ensure compliance, while trustees of schemes that will be subject to the requirements next year should start making preparations now.

Action

Trustees of other schemes may wish to consider the extent to which they should voluntarily comply with some or all of the requirements as a matter of good scheme governance.

Pensions Regulator powers – information-gathering

The Pension Schemes Act 2021 gives the Pensions Regulator new powers to interview relevant individuals and to issue fixed and escalating penalties for failure to comply with its information-gathering powers. Regulations will come into force on 1 October that set out:

- The information to be included in an interview notice issued by the Regulator.
- The levels of the fixed and escalating penalties that the Regulator can issue.

Action

No action required.

Finance Act 2021

The Finance Act 2021 has received Royal Assent. Its pensions-related provisions include:

- A freeze on the lifetime allowance at its current level of £1,073,100 until the 2026/27 tax year.
- A framework for the taxation of collective money purchase benefits.

Action

No action required.

Data protection – transfers from the EEA

The European Commission (EC) has formally adopted an adequacy decision in relation to transfers of personal data from the EEA to the UK under the EU General Data Protection Regulation. The decision has immediate effect. The adoption of the decision means that schemes and employers can continue to freely transfer personal data from the EEA to the UK without having to implement any additional safeguards. Transfers of personal data from the UK to the EEA are already permitted under UK adequacy regulations. For more information, please see our legal update.

Action

No action required.

Pensions fraud – guidance

The Pensions Administration Standards Authority has published guidance for schemes on the types of fraud affecting the pensions sector and the range of tactics that need to be deployed to counter pensions fraud.

Action

No action required, but trustees and administrators may find the guidance useful when considering how best to combat pensions fraud.

Disguised remuneration – unfunded pension arrangements

HMRC has published information on disguised remuneration arrangements that use unfunded pension arrangements in an attempt to avoid corporation tax, income tax and National Insurance contributions.

Action

No action required, but employers who are considering setting up an unfunded pension arrangement may find the information helpful in understanding the tax treatment that will be applied to that arrangement.

Pension increases – interpretation of scheme rules

The Court of Appeal has overturned the High Court's decision that a reference in a scheme's pension increase rule to "any other rate decided by the Principal Employer" should be construed as meaning "any higher rate". The Court held that the words "any other rate" were clear and unambiguous and could refer to a higher or a lower rate. The provision should therefore be construed as giving the Principal Employer power to apply a higher or lower increase rate. While there was a mismatch between this construction and what members had been told at the time that the scheme demerged from its predecessor scheme, this did not mean that the mistake had been made in the drafting of the scheme rules – the mistake could just as easily have been in the drafting of the member communication at the time of the demerger.

Action

No action required.

Pension arrears – limitation periods and forfeiture

In a case involving underpaid pension increases, the High Court has provided further guidance on the extent to which forfeiture and limitation provisions apply to claims for pension arrears. The judge confirmed that a member claim for pension increase arrears against the scheme's current trustee would not be subject to a statutory six year limitation period. However, a claim against a former trustee would be subject to the statutory limitation period. The scheme's forfeiture rule would apply both where a member had failed to claim the entirety of the benefit due to them and where they had failed to claim part of the benefit. It did not matter whether the failure to claim involved any fault on the part of the member or not.

The scheme's forfeiture rule gave the trustee power to decide to pay the forfeited benefits to the member(s) notwithstanding the forfeiture. The judge considered the factors that the scheme's trustee should take into account when deciding whether to exercise this power. How the situation had arisen, including the absence of fault on the part of the members and/or the presence of fault on the part of the trustee, and the consequences of the discretion being exercised or not were relevant factors. The fact that in this case the underpaid pension increases were not the members' fault and that the trustee was open to some degree of criticism meant that the first reaction of the trustee should be to make good the pension arrears without further delay. However, the scheme's forfeiture rule did not impose an obligation on the trustee to do so, and the trustee could choose not to do so if the other uses of the money permitted by the rule were considered to be more compelling or there were administrative difficulties that justified not making good the arrears. The fact that the scheme was in a Pension Protection Fund assessment period, whether members could reasonably have been expected to make claims for the underpaid pension increases sooner, and the fact that the trustee received advice on pension increases in 2000 were also relevant factors. The trustee could also choose to exercise its discretion in favour of some members and not others.

The judge also held that, while there was a powerful reason for the trustee to exercise its discretion in favour of the members, the need for the trustee to consider any administrative difficulties in exercising its discretion meant that the judge could not rule as a matter of law that it would be perverse for the trustee not to exercise its discretion in favour of every member for every year during which there were pension increase arrears.

In addition, the judge held that if interest was awarded on the pension increase arrears, the appropriate rate would be 1% above base rate.

Action

No action required.

Issues affecting DB schemes

Contribution notices – new employer resources test

The Pension Schemes Act 2021 creates two new grounds for issuing a contribution notice – the "employer insolvency test" and the "employer resources test". Regulations have been laid before Parliament for approval that set out what constitutes an employer's resources, and how they are to be valued, for the purposes of the employer resources test. Once approved, the regulations will come into force on 1 October.

Action

No action required.

Guaranteed minimum pensions – conversion

A private member's bill has been laid before Parliament that aims to clarify and streamline the GMP conversion process. Private member's bills are rarely enacted.

Action

Trustees and employers should keep the bill's progress under review.

Issues affecting DC schemes

Value for money – new requirements

Regulations have been laid before Parliament for approval that:

- Introduce more detailed value for members assessment and reporting requirements for DC schemes with less than £100 million in assets for scheme years ending after 31 December 2021.
- Introduce a requirement for all DC schemes to report the net investment returns for their default and self-selected funds in the chair's governance statement for scheme years ending after 1 October 2021.
- Amend the DC default fund charge cap to allow schemes to smooth performance fees over a five-year period for charges years ending after 1 October 2021.
- Require DC schemes to produce a statement of investment principles (SIP) for default funds with a "promise" for scheme years ending after 1 October 2021.
- Require the chair's governance statement for scheme years ending after 1 October 2021 to state the level of costs and charges for historically selected funds that are no longer available for selection.

The government has also published statutory guidance on the new value for members assessment and net returns reporting requirements and has updated its statutory guidance on the reporting of costs and charges and related information to reflect the regulations. The new guidance and the updated guidance will come into force on 1 October.

Action

Trustees of schemes with less than £100 million in assets should start considering how they will comply with the new value for members assessment and reporting requirements.

Action

Trustees of all schemes should obtain the necessary information to report on net investment returns and costs and charges for historically selected funds.

Action

Trustees of schemes with default funds with a "promise" should put plans in place to produce a SIP for that fund.

Scheme consolidation – barriers

The government has published a call for evidence on the barriers to further consolidation of the occupational trust-based DC pension scheme market in the UK. The call for evidence closes on 29 July.

Action

No action required.

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**
  8 December 2021 – DC governance

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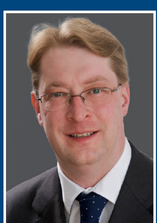
Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

For more information about the Pensions Group, please contact:



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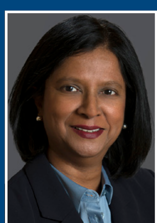

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Dates to note over the next 12 months

6 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 change governance and reporting requirements come into force for larger schemes
- New net return reporting requirements come into force for DC schemes
- Changes to the DC default fund charge cap to allow smoothing of performance fees come into force
- Requirement for DC schemes to produce a SIP for default funds with a "promise" comes into force
- Requirement for the chair's DC governance statement to state the level of costs and charges for historically selected funds that are no longer available for selection comes into force

6 October 2021

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

31 December 2021

- New value for members assessment and reporting requirements for DC schemes with less than £100m in assets come into force
- 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