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The Pensions Brief

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Issues affecting all schemes

Pension Schemes Act 2021 – implementation

Legislation has been laid before Parliament that will bring the majority of the Pensions Regulator's new powers and sanctions under the Pension Schemes Act 2021 into force from 1 October, including:

- The new criminal offences of avoidance of an employer debt, conduct risking accrued scheme benefits, and failure to comply with a contribution notice.
- The new employer resources and employer insolvency tests for issuing a contribution notice.
- The new civil penalty of up to £1 million for:
  - Avoidance of an employer debt.
  - Conduct risking accrued scheme benefits.
  - Failure to comply with a contribution notice.
  - Failure to comply with the notifiable events regime.
  - Knowingly or recklessly providing the Regulator (or, in certain situations, trustees) with false or misleading information.
- The Regulator's new information-gathering powers and the new fixed and escalating penalties for failure to comply with its information-gathering powers.

The main change to the Regulator's powers that is not being brought into force yet is the requirement for employers with a DB scheme that are undertaking certain corporate transactions to provide a "declaration of intent" about the transaction to the Regulator and the trustees.

The legislation also ensures that the Regulator's new powers do not have retrospective effect.

Action

No action required, but employers should bear the new powers and sanctions in mind when making decisions affecting a DB pension scheme. Employers and trustees should also be aware of the new sanctions for failure to comply with statutory duties such as the notifiable events regime and the Regulator's information-gathering powers.

Pensions Regulator codes of practice – consolidation

The Pensions Regulator has published an interim response to its consultation on its draft consolidated code of practice. The response's key points are as follows:

- The Regulator will not proceed with the expectation for schemes to limit their investment in unregulated assets to 20% in the way it was drafted in the draft code. However, the Regulator still wants to achieve its original policy objective of protecting members of poorly run, and typically small, schemes from investment in poor quality and/or inappropriate assets. The Regulator will therefore explore options for doing so whilst allowing schemes with liquidity risk management plans and prudent investment strategies to maintain exposure to unregulated assets.
- The Regulator still believes that trustees should prepare their first own risk assessment (ORA) in a timely fashion, i.e. taking the three year legislative timescale as a maximum but preparing the ORA in a shorter timescale as a matter of best practice. The Regulator will consider how often governing bodies should review the ORA and will continue to consider other possible changes or guidance requirements, particularly for smaller schemes.

The Regulator does not currently have a firm publication date for the finalised code, but does not expect to lay it in Parliament before spring 2022. The code is therefore unlikely to become effective before summer 2022.

Action

Trustees should continue to keep the progress of the consultation under review. Although the finalised code is unlikely to come into force until next summer, trustees should start considering now what changes they may need to make to their scheme governance processes to meet the requirements of the consolidated code. To help trustees, Mayer Brown has prepared a Trustee Consolidated Code Compliance Package which provides a clear process for trustees to get compliant in a timely, efficient and cost-effective manner. For more information, please speak to your usual Mayer Brown contact.

Changes to pension rights – taxation of compensation

The First-Tier Tribunal has decided that while compensation for loss of pension rights is not a payment from employment (and is not therefore taxable as employment income), the payment must be made in exchange for the surrender of a vested pension right. Where compensation is paid in exchange for employees agreeing to change their future terms and conditions of employment (including terms as to accrual of pension rights), but there is no change to those employees' vested pension rights, the compensation will be a payment from employment and will therefore be taxable.

Action

No action required, but employers wishing to pay employees compensation in return for changes to their pension rights should bear the decision in mind when considering the tax treatment of that compensation.

Issues affecting DB schemes

GMP equalisation – past transfers

The Pensions Administration Standards Association (PASA) has published supplemental guidance on equalising past transfer payments for the effect of guaranteed minimum pensions (GMPs). The guidance reflects the November 2020 *Lloyds* decision on equalisation of past transfers, and updates the GMP equalisation methodology guidance published by PASA in September 2019.

Action

No action required, but trustees and employers may find the guidance helpful when deciding what approach to adopt towards equalisation of past transfer payments.

PPF levy – payment period

The Pension Protection Fund (PPF) has announced that it will offer levy payers impacted by Covid-19 up to 90 days interest free to pay their 2021/22 levy bill. Ordinarily, levy payers have 28 days to pay their levy bill before interest becomes payable. However, levy payers will be able to apply for a 90 day extension to this period by completing an online form on the PPF's website explaining how they continue to be affected by the pandemic.

Action

No action required, but any levy payers wishing to apply for an extension should do so as soon as possible after receiving their levy bill, and before expiry of the 28 day period.

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.

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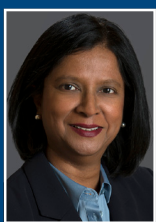

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Dates to note over the next 12 months

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

- New Regulator powers and sanctions under the Pension Schemes Act 2021 come into force
- 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

31 December 2021

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

31 January 2022

Deadline for schemes to send annual event report to HMRC (2020/21 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
- Stronger trustee guidance obligations for DC and cash balance schemes expected to come into force

Key:

Important dates to note

For information