

The Pensions Brief

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Issues affecting all schemes

Pensions Regulator powers – enforcement approach

The Pensions Regulator (the Regulator) is consulting on its approach to the new powers introduced by the Pension Schemes Act 2021 and their interaction with its existing powers. (These new powers came into force on 1 October.) The consultation covers three draft policies which explain the Regulator’s approach to three areas as follows:

- Overlapping powers policy – where the Regulator has the option to pursue both criminal and/or regulatory powers in respect of the same set of circumstances.
- Monetary penalty powers policy – the Regulator’s new powers to impose high fines for information-gathering and avoidance-related scenarios.
- Information-gathering powers policy – the use of section 72 notices, interviews and inspections in the context of the Regulator’s enforcement cases, including its approach to the new fixed and escalating penalty powers for non-compliance.

The consultation closes on 22 December.

Action

Trustees and employers should keep the progress of the consultation under review. As the Regulator’s new powers are now in force, trustees and employers should also take advice on them if any corporate transaction or reorganisation which affects the employer covenant is planned.

Data protection – proposed regime reform

The government is consulting on proposed changes to the UK’s data protection regime. The changes would see the UK deviate from the requirements under the EU General Data Protection Regulation and would loosen restrictions on the use of data in the UK. Changes that would affect trustees of occupational pension schemes include removal of the requirements to:

- Designate a data protection officer.
- Conduct data protection impact assessments.
- Meet certain data mapping and record keeping obligations.
- Inform the Information Commissioner’s Office of personal data breaches where the risk to data subjects is “not material”.

The consultation closes on 19 November. For more information, please see our [legal update](#).

Action

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



Issues affecting DB schemes

Notifiable events – proposed changes

The government is consulting on regulations that:

- Make changes to the list of employer notifiable events.
- Prescribe the events affecting a DB scheme employer in respect of which a notice and accompanying statement (often referred to as a “declaration of intent”) must be given to the Pensions Regulator and the scheme trustees.

The consultation closes on 27 October, and the draft regulations are intended to come into force on 6 April 2022. For more information, please see our legal update.

Action

Employers and trustees of DB schemes should keep the progress of the consultation under review. Employers should be aware that the regulations as currently drafted would require them to report certain transactions and reorganisations to the Pensions Regulator from 6 April 2022.

Pension Protection Fund – 2022/23 levy

The Pension Protection Fund (PPF) is consulting on the draft rules for the 2022/23 levy. The PPF intends to set the 2022/23 levy estimate at £415 million, £105 million less than in 2021/22. This means that around 82% of schemes that pay the risk-based levy will see a reduction in their levy.

Very limited changes are proposed to the levy rules. The key changes include the following:

- The PPF valuation basis is being changed following introduction of updated guidance on the assumptions to be used in PPF valuations. This is expected to reduce the levy for 99% of schemes.
- The previously separate levy rules on commercial consolidators and schemes without a substantive sponsor are being combined into a single appendix, widening the definition so that all schemes without a conventional sponsorship structure can be treated consistently.

The consultation closes on 9 November.

Action

Employers and trustees of DB schemes should keep the progress of the consultation under review.



Guaranteed minimum pensions – revaluation

The government is consulting on changing the level of fixed rate revaluation for guaranteed minimum pensions from 3.5% to 3.35% pa for members leaving pensionable service after 5 April 2022. The consultation closes on 18 November.

Action

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

Guaranteed minimum pensions – equalisation

The cross-industry GMP Equalisation Working Group has published:

- Further guidance on member communications – this covers the implementation stage of guaranteed minimum pension (GMP) equalisation, while the previous guidance (published in August 2020) covered the early planning stage.
- Supplemental guidance on anti-franking – the group previously published guidance on equalisation methodologies in September 2019 that included a short section on anti-franking.

Action

No action required, but trustees and administrators may find the guidance helpful when considering member communications in relation to GMP equalisation and the interaction of GMP equalisation with the statutory anti-franking requirements.

Pension Schemes Act 2021 – new criminal offences

The Pensions Regulator (the Regulator) has published its finalised policy setting out its approach to the investigation and prosecution of the new criminal offences of avoidance of an employer debt and conduct risking accrued scheme benefits. These new offences came into force on 1 October.

The policy explains what the new offences are and who is in their scope, and sets out the approach that the Regulator will take when assessing whether a person has a reasonable excuse for conduct that would otherwise constitute an offence. The policy also compares the new offences with other related powers, and includes some examples of the types of behaviour that may fall within, and outside, the scope of the new offences.

Action

No action required, but trustees and employers of DB schemes may find the guidance helpful when considering corporate activity that may impact the scheme, whether directly or indirectly.

Issues affecting DC schemes

Value for members – new requirements

The Pensions Regulator has updated its value for members [guide](#) to reflect the additional value for members assessment and reporting requirements that came into force on 1 October for schemes with less than £100 million in assets that provide DC benefits other than additional voluntary contributions. The new requirements apply for scheme years ending after 31 December 2021.

Action

No action required, but trustees of schemes which are subject to the new requirements may find the guidance helpful when considering how to comply with the requirements.

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 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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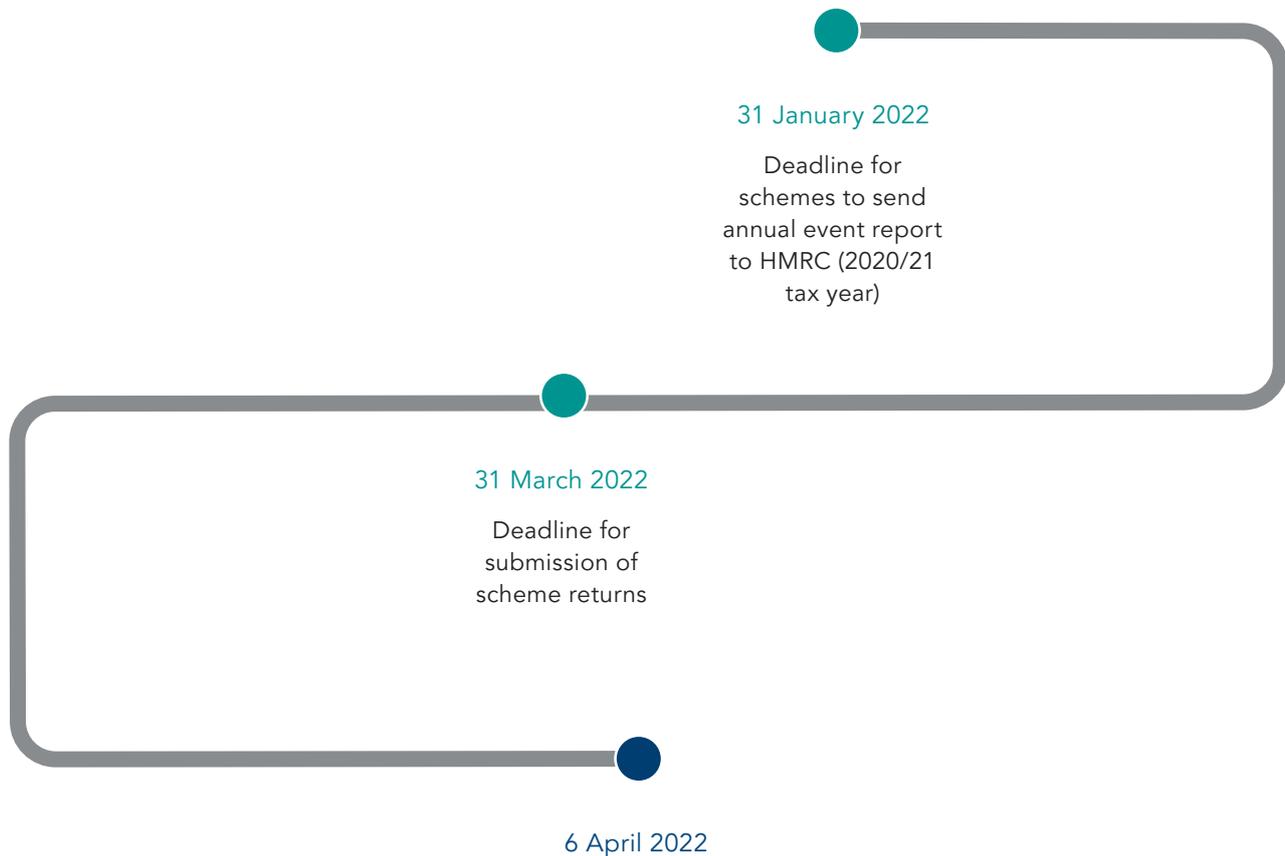
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Dates to note over the next 12 months



- 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
- Changes to the notifiable events regime and new “declaration of intent” requirements expected to come into force

Key:

- Important dates to note
- For information

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