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October 2021

The Pensions Brief

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Issues affecting all schemes

CMA compliance statements – deadline approaching

Trustees have until 7 January 2022 to send a compliance statement to the Competition and Markets Authority (CMA) confirming that they have complied with the CMA's requirement to set objectives for their investment consultants and its requirements for the carrying out of tender exercises for fiduciary managers.

Even where trustees do not use a fiduciary manager, their compliance statement must cover their compliance with the requirements in relation to fiduciary managers. In this instance, trustees are compliant because they do not use a fiduciary manager.

Action

Trustees should ensure that they submit their compliance statements by 7 January 2022, using the template form of wording set out in the CMA's order (see the definition of "Compliance Statement" in Part 2).

Fraud compensation levy – levy ceiling

The government is consulting on an increase to the fraud compensation levy ceiling for the 2022/23 levy year onwards. The change is being proposed in light of an expected increased number of claims on the Fraud Compensation Fund (FCF) following a recent court decision that pension liberation schemes that satisfy specified criteria are eligible to claim on the FCF.

The levy ceiling is currently £0.75 per member for eligible schemes and £0.30 per member for master trusts. The government is proposing to increase the ceiling to £1.80 and £0.65 respectively. The consultation closes on 10 December.

Action

Trustees should keep the progress of the consultation under review.

Climate change – Paris Agreement alignment

The government is consulting on requiring schemes that are subject to the climate change-related governance and reporting requirements to calculate and disclose a portfolio alignment metric setting out the extent to which their investments are aligned with the Paris Agreement goal of limiting the increase in the global average temperature to 1.5°C above pre-industrial levels.

The climate change governance and reporting requirements apply to schemes with £5 billion+ of assets from 1 October 2021 and to schemes with £1 billion+ of assets from 1 October 2022.

The government is also consulting on:

- Draft changes to the statutory guidance on the climate change-related governance and reporting requirements.
- Draft non-statutory guidance explaining best practice in relation to those sections of the statement of investment principles which set out the trustees' ESG and stewardship policies.
- Draft statutory guidance explaining the government's expectations in relation to the implementation statement.

The consultation closes on 6 January 2022 and the proposed new requirements will come into force for scheme years starting on or after 1 October 2022.

Action

Trustees should keep the progress of the consultation under review.

Sustainability – proposed new disclosure requirements

The government has published its roadmap for Phase 1 of its strategy to "green" the financial system and align it with the UK's net-zero commitment. Under Phase 1, new economy-wide "Sustainability Disclosure Requirements" (SDR) will require trustees of certain pension schemes to disclose their sustainability-related risks, opportunities and impacts. A consultation on the SDR for pension schemes is expected in 2022, with the requirements likely to be introduced for schemes with assets of £5 billion over the next 2-3 years and subsequently for schemes with assets of £1 billion+

Action

Trustees should keep the progress of the expected consultation under review.

Autumn Budget 2021

The Autumn Budget 2021 contained the following key pensions-related announcements:

- The government will consult before the end of the year on further changes to the DC default fund charge cap. The consultation will specifically consider amendments to the scope of the cap to better accommodate well-designed performance fees to ensure members can benefit from higher return investments, while unlocking institutional investment to support some of the UK's most innovative businesses.
- In 2025/26 the government will introduce a system to make top-up payments in respect of contributions made in 2024-25 onwards by low-earning individuals using a net pay arrangement. These top-ups are intended to ensure that individuals making contributions via a net pay arrangement are not worse off than those contributing via relief at source.
- Confirmation that the earnings element of the state pension triple lock will be suspended for 2022/23 – state pensions for 2022/23 will therefore be increased by the higher of CPI and 2.5%.

Action

No action required.

Pensions Ombudsman – guidance

The Pensions Ombudsman has published guidance outlining its views on best practice for communicating with scheme members.

The Ombudsman has also published a "How to avoid the Ombudsman" page on its website which has useful information on avoiding member complaints including top tips, guidance, links to case studies, key determinations and FAQs.

Action

No action required, but trustees and employers may find the guidance and webpage helpful when considering their approach to member communications and complaints.

Covid-19 – temporary administration process changes

HMRC has announced that some of the temporary changes to pension administration processes as a result of the Covid-19 pandemic will be extended until 31 March 2022.

Action

No action required, but administrators may wish to take advantage of the extension.

Issues affecting DB schemes

Scheme return – asset class information

The Pensions Regulator and the Pension Protection Fund (PPF) have responded to their consultation on proposed changes to the asset class information to be provided by DB schemes in the annual scheme return. The response confirms that the Regulator and the PPF will adopt a tiered approach, whereby the asset information required will depend on scheme size as follows:

- Schemes with PPF liabilities of less than £30 million (Tier 1) will see only minor changes, including introduction of a diversified growth fund category.
- Schemes with PPF liabilities of £30 million – £1.5 billion (Tier 2) will be asked to provide more granular information.
- Schemes with PPF liabilities of £1.5 billion or more (Tier 3) will be asked to provide the same information as Tier 2 schemes plus additional information on portfolio sensitivity and risk-factor stresses.

The consultation proposed that the Tier 1/Tier 2 threshold would be £20 million, but it has been increased following the consultation to £30 million. However, this threshold will be kept under review with a view to reducing it in future. Schemes will be able to voluntarily provide more information if they wish. The new requirements will be introduced in the 2023 scheme return.

Action

Although the new requirements will not be introduced until the 2023 scheme return, trustees should ensure that they put arrangements in place for the correct level of information to be provided to them to enable them to complete the 2023 return.

Contribution notices – code of practice

The Pensions Regulator has responded to its consultation on a revised version of its code of practice on contribution notices which it has updated to cover the two new grounds for issuing a contribution notice – the employer insolvency and employer resources tests. The finalised updated code has been laid before Parliament for approval and will come into force once it receives approval. The code includes:

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

The Regulator has also published the finalised version of updated guidance accompanying the code. This guidance sets out illustrative examples of where the circumstances in the code might and might not apply.

Action

No action required, but employers may find the code of practice and guidance helpful when considering whether proposed corporate activity could give the Regulator grounds to issue a contribution notice.

Issues affecting DC schemes

Annual benefit statements – simplification

Regulations will come into force on 1 October 2022 requiring the annual benefit statement provided by "qualifying schemes" to members in the accumulation (but not the decumulation) phase to be no longer than a double-sided A4 sheet. A "qualifying scheme" is any scheme being used for automatic enrolment that only provides DC benefits (a hybrid scheme will not therefore be a qualifying scheme, even if the DC section is being used for automatic enrolment).

The government has also published the finalised version of statutory guidance on the new format requirements (which includes an illustrative template) and a response to its consultation on the draft regulations and guidance.

The new requirements were originally intended to come into force on 6 April 2022. However, following the consultation, the government has decided to bring them into force on 1 October 2022.

Action

Trustees of automatic enrolment schemes that only provide DC benefits should start putting plans in place to ensure that annual benefit statements issued after 1 October 2022 meet the new requirements.

Gated funds – Pensions Regulator guidance

The Pensions Regulator has updated its DC investment governance guidance to add a new section to the default funds appendix on how schemes manage the temporary gating of funds, including whether temporarily redirecting contributions to a different fund will create a default fund and how trustees should deal with transfer requests where all or part of the member's funds are gated.

Action

No action required, but trustees and administrators may find the guidance helpful when considering how to deal with gated funds.

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.

- **Annual Pensions Conference 2021**
  17 November 2021 – The Pensions Regulator's consolidated code of practice: top ten tips
  24 November 2021 – Pensions dashboards: worth the wait?
  1 December 2021 – The Pensions Regulator's enhanced powers and new notifiable events: are you transaction-ready?
  8 December 2021 – Cybersecurity issues for pension schemes
- **Trustee Building Blocks Classes**
  8 December 2021 – DC governance

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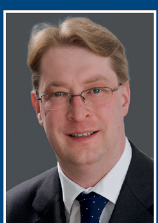
For more information about the Pensions Group, please contact:



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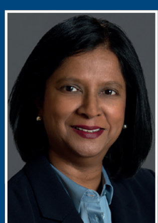

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Dates to note over the next 12 months

7 January 2022

Deadline for submission of annual compliance statements to the CMA

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
- Temporary extension of certain HMRC pension administration processes expected to end

6 April 2022

- 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

1 October 2022

- New annual benefit statement requirements for DC-only automatic enrolment schemes come into force
- New climate change governance and reporting requirements expected to come into force for schemes with £1 billion+ of assets
- New Paris Agreement alignment reporting requirements expected to come into force for certain schemes`

Key:

Important dates to note

For information