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Issues affecting all schemes

REMINDER – deadline for CMA compliance statements approaching

A reminder that 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. For more information, please see the [October 2021 issue](#) of the Pensions Brief.

Statutory transfers – new conditions

[Regulations](#) came into force on 30 November which introduce new conditions in order for a member to have a statutory transfer right. One of the following conditions must be met:

- The transfer is to one of certain schemes deemed to present a low risk of being a scam vehicle.
- For all other transfers, no prescribed red or amber flags are present. If a red flag is present, the transfer cannot proceed. If an amber flag is present, the member must take pension scams guidance from the Money and Pensions Service before the transfer can proceed. For transfers to occupational pension schemes and qualifying recognised overseas pension schemes, trustees will also be required to establish whether the member has an employment or residency link with the receiving scheme – if no such link can be established, this will be an amber flag.

The Pensions Regulator has published [guidance](#) for schemes on the new conditions, and the government has [responded](#) to its consultation on the draft version of the regulations.

For more information, please see our [legal update](#).

Action

Schemes should take immediate action to update their transfer processes and communications to reflect the new conditions.

Finance Bill

The [Finance \(No. 2\) Bill](#) has been laid before Parliament. Its pensions-related provisions include:

- An extension in certain circumstances to the reporting and payment deadlines for member requests to use the scheme pays mechanism. The changes are designed to enable members whose pension input amount for a previous tax year is retrospectively amended for certain reasons (which will be set out in regulations) to use the scheme pays facility to pay any resulting annual allowance charge that is over £2,000. The extension will come into force on 6 April 2022, but will have retrospective effect to 6 April 2016.
- An increase in normal minimum pension age (NMPA) to 57 with effect from 6 April 2028. The Bill also creates an associated protection regime under which members of registered pension schemes who had an unqualified right as at 11 February 2021 to take benefits at an age below 57 will retain that right once NMPA increases to 57.

Action

Trustees and administrators should keep the Bill's progress through Parliament under review.

Data management and controls – industry guidance

The Pensions Administration Standards Association (PASA) has published [guidance](#) on data management and controls. This builds on the data management plans guidance released by PASA in March 2021 and considers the ongoing data management and controls of pension scheme records.

Action

No action required, but trustees and administrators may find the guidance helpful when considering the management of scheme data.

Pensions Ombudsman – factsheets

The Pensions Ombudsman has published a [factsheet](#) on Ombudsman determinations. This covers publication of determinations, complying with the directions in a determination, what parties can do if the Ombudsman has not decided in their favour and appealing a determination.

Action

No action required, but trustees and employers may find the factsheet helpful.



Issues affecting DB schemes

Deferred pensions – revaluation

The order specifying the percentages to be used when revaluing deferred pensions using the final salary method has been made and will come into force on 1 January 2022.

Action

Trustees and administrators of schemes that use the final salary revaluation method should ensure that the percentages specified in the order are applied.

Guaranteed minimum pensions – conversion

The government has recently confirmed its backing for the private member's bill on guaranteed minimum pension (GMP) conversion that is currently going through Parliament. The bill aims to clarify and streamline the GMP conversion process.

Action

Trustees and employers of schemes that hold GMPs should keep the bill's progress through Parliament under review.

Contribution notices – revised code of practice

The Pensions Regulator's revised code of practice on contribution notices came into effect on 25 November. Revised accompanying guidance also came into effect.

Action

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

GMP reconciliation – change of administrator

The Pensions Administration Standards Association has published a briefing note on how to treat GMP reconciliation data during a transition to a new administrator.

Action

No action required, but trustees of schemes that hold GMPs and that are planning a change of administrator may find the briefing note helpful.



DB superfunds – Pensions Regulator approval

The Pensions Regulator has announced that the first DB superfund has completed the Regulator’s formal assessment process. Further superfunds will be added to the list of assessed superfunds as and when they complete the assessment process.

The government has announced plans to introduce a statutory authorisation and supervision regime for DB superfunds, but has not confirmed when this will happen. The Regulator’s assessment process is intended to operate as an interim regime in the meantime.

Action

No action required.

Pension increase rule - rectification

The High Court has rectified a scheme’s trust deed and rules to correct an error in the pension increase rule. Under the scheme’s original 1988 trust deed and rules, the trustee had the power to select the scheme’s indexation measure. However, under subsequent versions of the trust deed and rules (dated 1996, 2002 and 2006), the principal employer had the power to set the annual rate of increase to pensions in payment and the trustee’s power to select the indexation measure was omitted. The court held that when entering into the 1996 trust deed and rules, the principal employer and the trustee had not intended to change the pension increase rule.

Action

No action required.



Issues affecting DC schemes

Default funds – permitted charges

The government has responded to its consultation on permitted charges in DC schemes. The response confirms that the government will proceed with its proposal to introduce a ban on flat fees being charged in default arrangements in DC schemes being used for automatic enrolment (qualifying schemes) where the fee would reduce the value of a member's pot to less than £100. The ban will come into force on 6 April 2022. The government will update its non-statutory guidance on the DC default fund charge cap to cover the ban.

The government's consultation also proposed replacing the current three permitted charging structures for default funds in DC qualifying schemes with a single, universal charging structure. The government will publish a response to this part of the consultation, and its proposed next steps, in a separate response shortly.

Action

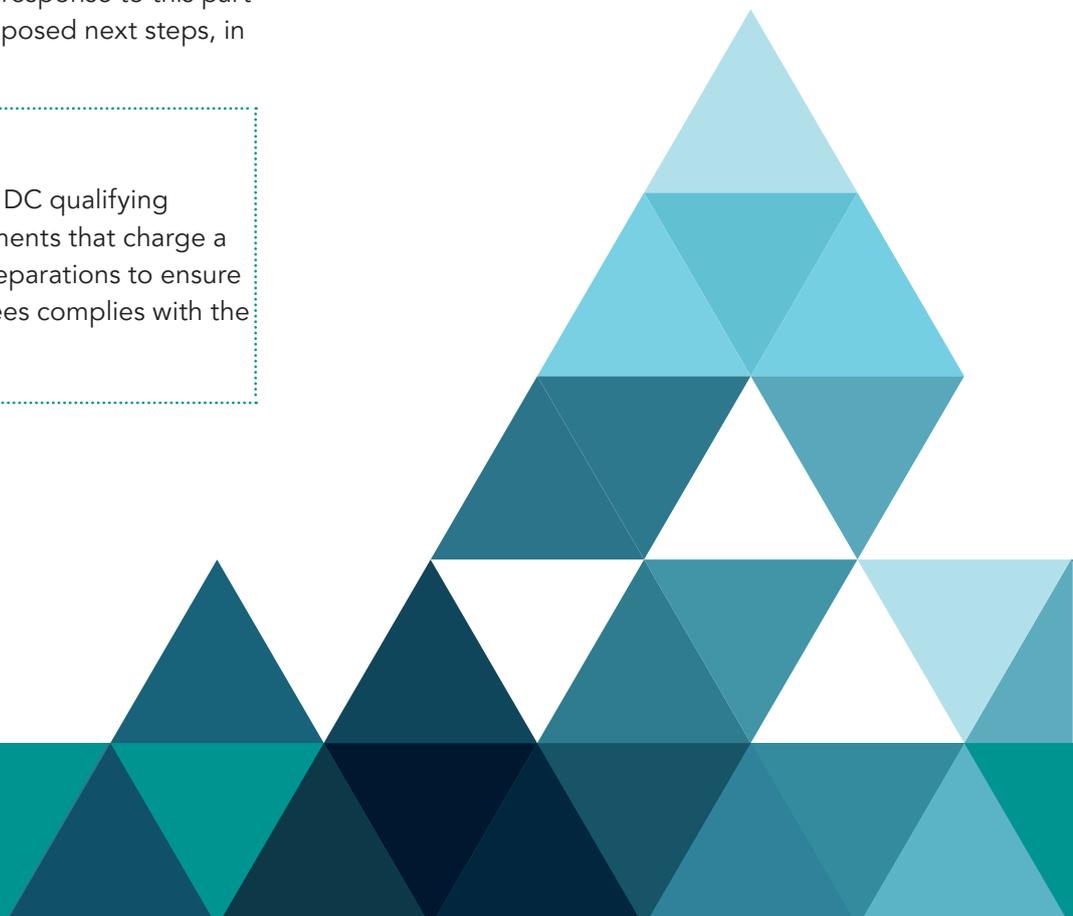
Trustees and administrators of DC qualifying schemes with default arrangements that charge a flat fee should start making preparations to ensure that the application of those fees complies with the ban from 6 April 2022.

Default fund charge cap – performance fees

The government is consulting on proposals to remove performance fees from the scope of the DC default fund charge cap. The proposals are designed to help ensure that DC schemes are able to access a broader range of illiquid asset classes that have the potential to result in positive outcomes for members. The consultation closes on 18 January 2022.

Action

Trustees of DC schemes that are subject to the default fund charge cap 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**
 - 9 March 2022
 - 8 June 2022
 - 7 September 2022
 - 7 December 2022
- **Trustee Building Blocks Classes**
 - 11 May 2022 – member communications
 - 9 November 2022 – trustee discretions and decision-making

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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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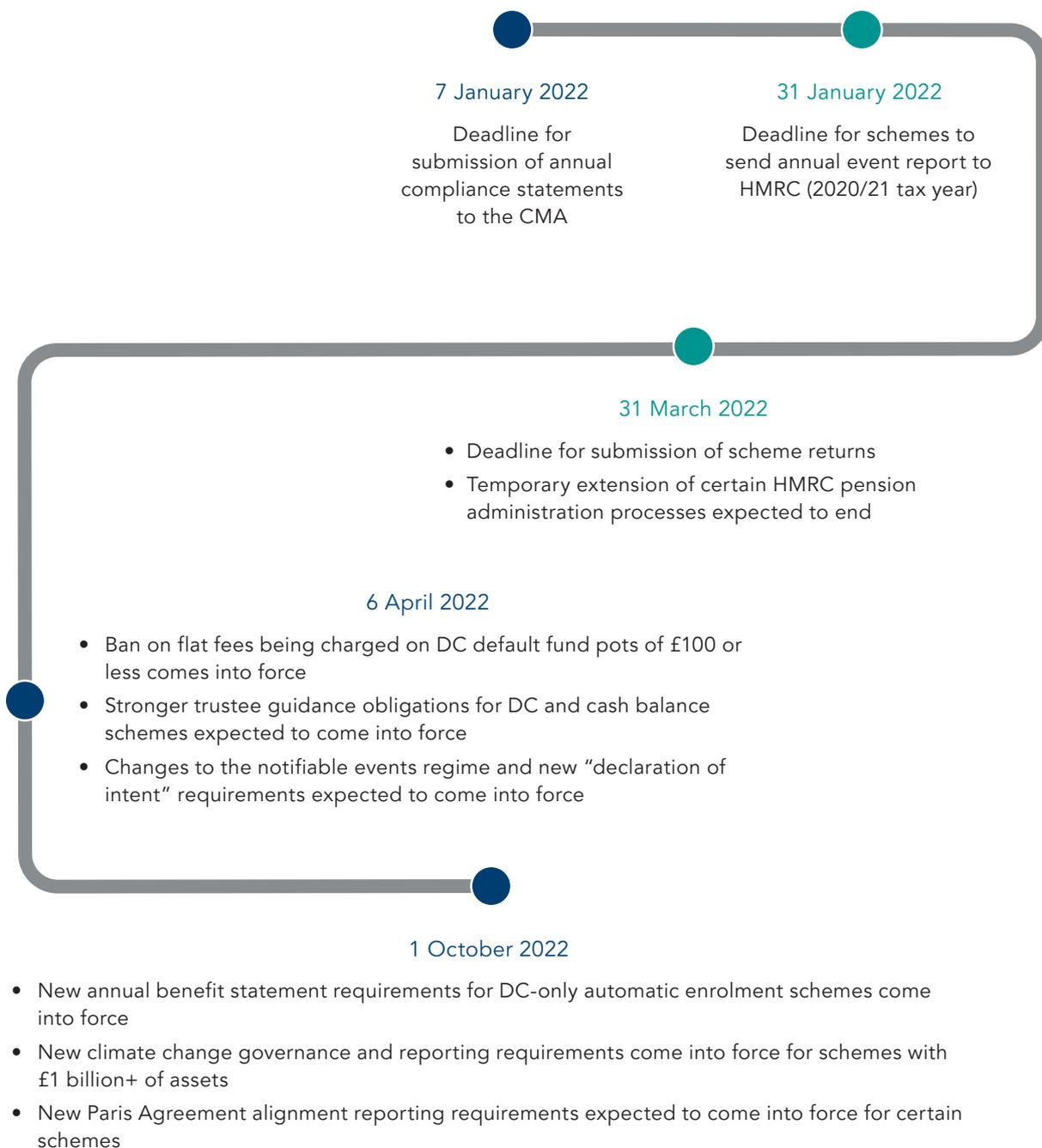
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Dates to note over the next 12 months



Key:



Important dates to note



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