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The Pensions Brief

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Issues affecting all schemes

Finance Act 2022

The Finance Act 2022 has received Royal Assent. Its pension-related provisions include:

- An increase in normal minimum pension age (NMPA) to 57 with effect from 6 April 2028. It also introduces an associated protected pension age regime under which members of registered pension schemes who meet certain criteria can retain a protected pension age of less than 57. For more information on the increase in NMPA, please see our legal update.
- 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 to use the "scheme pays" facility to pay any resulting annual allowance charge that is over £2,000. The extension came into force on 6 April 2022, but has retrospective effect to 6 April 2016.

Action

Trustees and administrators should consider how the increase to NMPA will affect their members and what member communications may be required. They should also ensure that their administration processes are updated to reflect the new reporting and payment deadlines for "scheme pays".

Annual allowance – provision of information

Regulations came into force on 6 April 2022 that impose new requirements on the provision of information in relation to the annual allowance. In particular:

- Employers will be required to update information provided in the previous six tax years to schemes for the purposes of calculating a member's pension input amount (PIA) where they subsequently discover that the information provided was insufficient to enable the scheme to correctly calculate the PIA.
- Where a member's PIA in any of the previous six tax years has changed as a result of either the provision of additional information by the employer or a change in the scheme rules, and the member has exceeded the annual allowance for that tax year (whether under the original or updated calculation of the PIA), schemes must send the member a new or updated (as applicable) pension savings statement.

Action

Employers, trustees and administrators should update their payroll and administration processes to reflect the new requirements.

Ukraine conflict – guidance

The Pension Regulator has published guidance for trustees on the conflict in Ukraine. The Regulator expects trustees to be vigilant and talk to their advisers about any action which they may need to take, depending on their scheme's investment, risk management or employer covenant exposures. Issues to consider include:

- Any impact on the employer and therefore on the employer covenant.
- The likely impact on the scheme's investments including short/medium-term risks – the guidance also sets out how trustees should approach the question of whether to disinvest from Russian assets.
- The possible increased risk of cyber attacks and pension scams and whether the scheme's related processes and procedures remain adequate or need to be reviewed.

Trustees should also consider whether to communicate with members to let them know what steps the trustees are taking to manage risks to the scheme.

In addition, the Regulator wants trustees to let it know about any significant issues or challenges that they or their scheme's sponsoring employer are facing as a result of the conflict.

For more information on the investment implications for trustees of the conflict in Ukraine, please see our legal update.

Action

Trustees should speak to their investment advisers and, if necessary their usual contact at Mayer Brown, about what changes may be required to their investment portfolio in light of the conflict in Ukraine.

Fraud compensation levy – levy ceiling

Regulations came into force on 1 April 2022 that increase the fraud compensation levy ceiling to:

- £0.65 per member for authorised master trusts (from £0.30 per member).
- £1.80 per member for all other occupational pension schemes (from £0.75 per member).

Action

No action required.

Automatic enrolment – proposed regime extension

The government has confirmed that there is not sufficient time remaining in the current parliamentary session for the private member's bill that would extend the automatic enrolment regime to complete the parliamentary process. The government also confirmed that it remains committed to the 2017 automatic enrolment review and will in time introduce or support legislation to take it forward.

Action

No action required.

Issues affecting DB schemes

Guaranteed minimum pensions – calculation

An order came into force on 6 April 2022 that sets the percentage by which earnings factors used in the calculation of guaranteed minimum pensions (GMPs) are to be increased in order to ensure that those factors maintain their value in line with the increase in average earnings.

Action

Trustees and administrators should ensure that the updated percentage increases are applied to the earning factors used from 6 April 2022 when calculating any GMPs.

Public service pensions – annual increases

An order will come into force on 11 April 2022 that specifies the increases to be applied to "official" (i.e. public service) pensions in payment.

Action

Trustees and administrators of schemes whose rules tie increases to pensions in payment to the increases applied to official pensions should ensure that the increases specified in the order are applied.

GMP equalisation – FAQs

The Pensions Administration Standards Association has published guidance on frequently asked questions (FAQs) during the guaranteed minimum pension (GMP) equalisation process. The FAQs include:

- PAYE tax considerations on the payment of arrears and interest.
- The practicalities of equalising death benefits.
- Checking whether underpaid members receiving arrears or increases exceed the lifetime allowance.
- The impact of GMP equalisation on commutation.

The FAQs will be updated and added to over time as the implementation of GMP equalisation progresses.

Action

No action required, but trustees and administrators of schemes with GMPs may find the FAQs helpful when planning the GMP equalisation process for their scheme.

Issues affecting DC schemes

Illiquid assets – facilitating investment

The government is consulting on proposals to require DC schemes to disclose and explain:

- Their policy on investment in illiquid assets in their statement of investment principles.
- Where the scheme has £100 million+ of assets, the allocation of assets in their default arrangement in their annual chair's governance statement.

The government is also proposing to amend the definition of "employer-related investments" so that, for authorised master trusts with 500+ active employers, the statutory restrictions on employer-related investments will only apply in relation to investment in the scheme funder, the scheme strategist, or persons who are connected/associated with them. This change would come into force on 1 October 2022.

The consultation closes on 11 May 2022.

In addition, the consultation includes the government's response to the following:

- Its consultation on the proposed exclusion of certain performance fees from the scope of the DC default fund charge cap – in light of the concerns expressed by respondents, the government will continue to consult and engage with stakeholders and any reforms will be carefully designed.
- Its call for evidence on greater consolidation in the DC pensions market – the government will not introduce in 2022 any new regulatory requirements on consolidation. Instead, the government will work closely with the Pensions Regulator to monitor the impact of the new value for members assessment requirements that were introduced last year for schemes with less than £100m in assets.

Action

Trustees and administrators of schemes providing DC benefits should keep the progress of the consultation under review.

Pensions guidance – "stronger nudge"

The Pensions Regulator has added a section to its "Communicating and reporting" guidance for DC schemes on the new requirements in relation to the "stronger nudge" to pensions guidance that will come into force on 1 June 2022.

Action

No action required, but trustees and administrators of schemes providing DC benefits (including additional voluntary contributions) may find the guidance helpful when preparing for compliance with the "stronger nudge" requirements.

Chair's governance statement – penalties

The First-tier Tribunal has dismissed a reference by a trustee company against a fixed penalty notice issued to it for failure to prepare a chair's governance statement. The sole director of the trustee company argued that the failure was unintentional and caused by a lack of knowledge on his part as to the requirement to prepare a statement. The Tribunal held that, in light of the statutory duty for trustee directors to have appropriate knowledge and understanding of the law relating to pensions, lack of knowledge was not a reasonable excuse for failure to prepare a chair's statement.

Action

No action required, but trustees of schemes providing DC benefits (other than additional voluntary contributions) should ensure that they comply with the requirement to prepare an annual chair's governance statement.

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**
  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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Dates to note over the next 12 months

6 April 2022

- Ban on flat fees being charged on DC default fund pots of £100 or less comes into force
- New reporting and payment deadlines for "scheme pays" and new annual allowance provision of information requirements come into force

29 April 2022

PPF levy deadline for submission of deficit reduction contribution certificates and exempt transfer applications

1 June 2022

Stronger trustee guidance obligations for schemes providing flexible benefits come into force

30 June 2022

PPF levy deadline for submission of full block transfer certificates

1 August 2022

Authorisation and supervision framework for collective money purchase schemes comes 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 come into force for schemes with £1 billion+ of assets
- New Paris Agreement alignment reporting requirements expected to come into force for certain schemes

7 January 2023

Deadline for submission of annual compliance statements to the CMA

31 January 2023

Deadline for schemes to send annual event report to HMRC (2021/22 tax year)

Key:

Important dates to note

For information

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