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July 2022

The Pensions Brief

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Issues affecting all schemes

Pensions dashboards – detailed requirements

The government has responded to its consultation on draft regulations setting out the detailed requirements for pension dashboards. The response notes that a number of changes will be made to the regulations in light of the consultation, including the following:

- The staging deadlines for the first two cohorts (master trusts with 20,000+ active and deferred members and DC schemes being used for automatic enrolment with 20,000+ active and deferred members) will be deferred by two months.
- The provisions around how the staging deadline for a hybrid scheme is determined will be changed so that the scheme would total the active and deferred members across both the DC and DB sections and treat the entire membership as a DB scheme to determine the staging deadline.

The Pensions Dashboard Programme (PDP) is also consulting on the standards that schemes will need to comply with in relation to pension dashboards. The consultation closes on 30 August 2022.

For more information on both the government consultation response and the PDP consultation, please see our legal update.

In addition, the Pensions Administration Standards Association (PASA) has published guidance in relation to pension dashboards on:

- Data accuracy – this provides a list of the various data sources available to accurately confirm if a member is alive or deceased, and their name, date of birth, address and NI number.
- Pension values – this includes a checklist and guidance on understanding value data requirements and scheme readiness to meet those requirements and creating an action plan.

Action

Trustees should determine when their staging deadline will be. Once the final regulations are published, trustees and administrators should review them and update their dashboards preparation as necessary. They may find the PASA guidance helpful in this respect. They should also keep the progress of the PDP consultation under review.

Transfers – incentives and overseas transfers

The government and the Pensions Regulator have published a statement on the operation of the statutory transfer conditions that were introduced last year. The statement has been published in light of industry concerns around the incentives red flag and the overseas investments amber flag.

The statement notes that:

- The conditions are not intended to impose additional burdens on schemes or administrators, or to impact on standard business practices.
- Most transfers are legitimate and can proceed with minimum intervention.
- The conditions should have no impact on the process for transfers that, prior to the introduction of the regulations, would have caused no concern.

The statement states that schemes should take a "risk-based" approach to assessing transfers and notes that trustees may decide that even though a red or amber flag is present, the transfer still presents a low scam risk. In such circumstances, if trustees consider the regulations prevent a statutory transfer being made, the statement suggests that they could consider granting a discretionary transfer if their scheme rules permit this.

The Regulator has updated its guidance on transfers to reflect the statement.

Action

No action required, but trustees and administrators should bear in mind that while the statement clarifies the policy intention behind the transfer conditions, it does not change the meaning of the conditions. The regulations identify any form of incentive (other than those made by the trustees or the employer of the transferring scheme) as a red flag and any form of overseas investment as an amber flag. Schemes cannot make a statutory transfer where a red flag is identified or where an amber flag is identified and the member has not taken scams guidance from Money Helper. Should trustees wish to make a transfer where a statutory transfer is not permitted, they can make a non-statutory transfer, as the statement suggests. However, the scheme rules would need to permit this and the trustees would need to be satisfied that it was in the member's interests to do so.

ESG – consideration of social factors

The government has responded to its call for evidence on the consideration of social factors by trustees. The response notes that most schemes do not have a standalone policy on social factors and consider them as part of an integrated approach to ESG. The government believes that an integrated approach and a standalone approach are both acceptable. However, where trustees take an integrated approach, they should still actively consider which social factors might be financially material to the scheme's performance. As well as encouraging schemes to join the Occupational Pensions Stewardship Council, the government will establish a taskforce to identify reliable data and metrics and ensure that focus on social factors continues to grow throughout the investment chain.

Action

No action required, but trustees should ensure that they include social factors in their consideration of ESG factors affecting the scheme's financial performance.

Data protection – reform

The Data Protection and Digital Information Bill has been laid before Parliament. It reforms the data protection regime in the UK, including:

- Replacing the requirement for data controllers and processors to appoint a data protection officer with a requirement to designate a "senior responsible individual" to be responsible for data protection risks within the organisation or delegate that task to suitably skilled individuals.
- Replacing the requirement for data controllers and processors to keep records of processing activities with new record-keeping requirements. Data controllers and processors that employ fewer than 250 employees will be exempt from the duty to keep records, unless they are carrying out high risk processing activities.
- Replacing the requirement to conduct a data protection impact assessment in relation to high risk processing with a requirement to conduct an assessment of high risk processing. The Bill also makes optional the current requirement for data controllers to consult the Information Commissioner prior to processing where an assessment indicates that the processing would result in a high risk in the absence of measures being taken to mitigate the risk.

Action

Trustees, employers and administrations should keep the Bill's progress through Parliament under review.

Automatic enrolment – extension of regime

The private member's bill extending the automatic enrolment regime has been re-laid before Parliament. The bill was originally laid in the previous parliamentary session, but was not able to complete the parliamentary process before the session ended. The bill:

- Extends the automatic enrolment regime to all jobholders aged 18 and over.
- Removes the lower automatic enrolment qualifying earnings threshold.

Action

Employers and trustees of schemes that are being used for automatic enrolment should keep the bill's progress through Parliament under review.

Net pay arrangements – tax relief

The government has published draft legislation which would ensure that individuals who earn below the personal allowance and contribute to a pension scheme via a net pay arrangement receive the same level of tax relief on their contributions as individuals who contribute via relief at source. Under the draft legislation, HMRC would be required to make top-up payments directly to eligible individuals.

Action

No action required.

Issues affecting DB schemes

Funding and investment strategy – detailed requirements

The Pension Schemes Act 2021 introduces an obligation for trustees of DB schemes to set a strategy for ensuring that benefits under the scheme can be provided over the long term (a funding and investment strategy). Trustees must also prepare a written statement of the strategy. The government is consulting on draft regulations that:

- Set out the detailed requirements that trustees must comply with when determining and reviewing their funding and investment strategy.
- Set out the detailed requirements that trustees must comply with when preparing their written statement of strategy.
- Make consequential amendments to the scheme funding legislation.

The draft regulations indicate that they will come into force at some point in 2023. Schemes will be required to prepare their first funding and investment strategy within 15 months of the effective date of the scheme's first valuation after the regulations come into force.

The consultation closes on 17 October 2022. For more information, please see our legal update.

Action

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

Issues affecting DC schemes

Authorised master trusts – employer-related investments

Regulations will come into force on 1 October 2022 that 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 investments in the scheme funder, the scheme strategist, or persons who are connected/associated with them.

The government has also responded to its consultation on the proposed changes.

Action

Trustees of authorised master trusts with 500+ active employers should consider whether they wish to make any changes to their investment policy in light of the regulations.

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**
  7 September 2022
  7 December 2022
- **Trustee Building Blocks Classes**
  9 November 2022 – trustee discretions and decision-making
- **Quarterly webinars**
  27 September 2022 – To go or not to go: dealing with pension transfers
  13 December 2022 – TBC

Pro bono and CSR

- Charlotte Tarr, a trainee solicitor in our Pensions Group, has advised a pro bono client on their appeal against the government's decision to refuse their application for the Personal Independence Payment (PIP) benefit. Following our advice, the client is now receiving the PIP benefit.
- Mayer Brown has launched Enable, a network that focuses on raising awareness, providing support and education, and maximising opportunities in an inclusive environment for staff both directly and indirectly affected by disabilities. Charlotte Tarr is one of the co-founders of the network.

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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Dates to note over the next 12 months

1 August 2022

Authorisation and supervision framework for collective money purchase schemes comes into force

1 October 2022

- New climate change governance and reporting requirements come into force for schemes with £1 billion+ of assets
- New Paris Agreement portfolio alignment metric requirements come into force for certain schemes
- Integration of CMA remedies on investment consultancy and fiduciary management into pensions law expected to come into force
- New annual benefit statement requirements for DC-only automatic enrolment schemes come into force
- Changes to the employer-related investment regime for authorised master trusts with 500+ active employers come into force

31 January 2023

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

Key:

Important dates to note

For information