MAYER | BROWN

March 2023

The Pensions Brief

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▲ Follow development and keep under review

Dates to note over the next 12 months

6 April 2023

- Exemption of performance fees from the DC default fund charge cap and new DC performance fee-related disclosure requirements come into force
- Removal of lifetime allowance charge comes into effect
- Annual allowance increases to £60,000
- Minimum level of tapered annual allowance increases to £10,000
- Adjusted income thresholder for tapered annual allowance increases to £260,000
- Money purchase annual allowance increases to £10,000

28 April 2023

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

30 June 2023

PPF levy deadline for submission of full block transfer certificates

1 October 2023

- New DC default arrangement illiquid investment disclosure requirements come into force
- New DC default arrangement asset allocation disclosure requirements come into force
- New DB statutory funding regime expected to come into force

31 January 2024

Deadline for schemes to send annual event report to HMRC (2022/32 tax year)

6 April 2024

Abolition of lifetime allowance expected to come into effect

Key:

Important dates to note

For information

Issues affecting all schemes

Spring Budget 2023 – significant pensions tax changes

The Spring Budget included the following pensions-related announcements:

- The lifetime allowance (LTA) will be abolished from 6 April 2024. In the meantime, the LTA charge will be removed from 6 April 2023.
- The annual allowance (AA) will be increased from £40,000 to £60,000 from 6 April 2023.
- The minimum level of the tapered AA will be increased from £4,000 to £10,000 from 6 April 2023. The adjusted income threshold for the tapered AA will also be increased from £240,000 to £260,000 from 6 April 2023.
- The money purchase AA (MPAA) will be increased from £4,000 to £10,000 from 6 April 2023.

For more information, please see our legal update.

A Finance Bill making the above changes (other than the abolition of the LTA) has been laid before Parliament. The explanatory notes to the Bill confirm that a future finance bill will fully remove the concept of the LTA.

HMRC has published guidance on the LTA changes. Among other things, this confirms that if a member holds valid enhanced or fixed protection which was applied for before 15 March 2023, from 6 April 2023 they will be able to accrue further benefits and transfer their benefits without losing that protection.

Action

Trustees and administrators should update their administration processes and member communications to reflect the various changes. They should also consider whether to issue a member communication on the changes.

Employers should update employee communications which refer to the LTA, AA, tapered AA or MPAA. Employers should also consider whether they wish to make changes to any arrangements that they have put in place for employees who have ceased or limited benefit accrual to avoid breaching the AA, tapered AA, MPAA or LTA or to avoid losing a form of LTA protection.

Lastly, trustees and employers should consider whether they wish to make any changes to their scheme rules in light of the changes.

Pensions dashboards – updated guidance

The Pensions Regulator has updated its guidance for schemes on pensions dashboards. The Regulator has made significant changes to reflect the Pensions Dashboards Regulations 2022 and the finalised Money and Pensions Service standards. The updated guidance also reflects the delay to the dashboards staging timetable announced last month.

In addition, the Pensions Administration Standards Association (PASA) has published:

- An addendum to its guidance on data matching conventions. The addendum covers matching without a National Insurance number and 'Possible Match' responses to find requests.
- Guidance on how schemes should respond to member questions about dashboards prior to dashboards becoming accessible by the public. The guidance includes suggested responses to typical questions that members may ask.

Action

Trustees and administrators should review the Regulator guidance and factor it into their dashboards planning. They may also find the PASA guidance helpful.

Equality, diversity and inclusion – Pensions Regulator guidance

The Pensions Regulator has published guidance for trustees and employers on equality, diversity and inclusion (EDI). The guidance explains what EDI is, why it is important for pension schemes to improve EDI in their trustee boards and how trustees and employers can do so. The guidance for trustees provides practical ways and examples to help trustee boards and those with the power to appoint trustees to improve EDI. The guidance for employers provides practical steps to help employers improve EDI on the trustee board through recruitment and by ensuring their staff have sufficient time to carry out their role on the trustee board. The Regulator has also published an EDI overview, as well as a template trustee recruitment leaflet and a template advertisement for trustee candidates. For more information, please see our legal update.

Action

Trustees and employers should review the guidance and consider what steps they should take to improve EDI in the trustee board.

Climate change reporting – Pensions Regulator review

The Pensions Regulator has published a review of a selection of scheme climate change reports. While the review noted several areas of good practice, it also identified some common issues including:

- A lack of sufficient background information on the scheme meaning disclosures were difficult to interpret.
- Failure to provide disclosures of strategy, scenario analysis and metrics activities at the level described in the statutory guidance on reporting.
- Accessibility issues, including long or complicated web addresses and use of PDFs not compatible with those using reader accessibility requirements.
- Omission of disclosures required by the statutory guidance.

The Regulator expects to see an improvement for the next round of reporting. Where a scheme fails to meet the required standards, the Regulator will consider whether enforcement action is necessary.

Action

Trustees of schemes that are subject to the climate change reporting requirements should review the Regulator's comments and factor them into the preparation of their next climate change report.

Data protection – updated Bill

The Data Protection and Digital Information (No. 2) Bill has been laid before Parliament. It is a revised version of the Data Protection and Digital Information Bill which has now been withdrawn following consultation with businesses and other data privacy stakeholders. The new Bill makes a range of changes that may be relevant to trustees, including the following:

- A record of processing activities will only be required if the data controller carries out high risk processing. It is not currently clear whether the data processing carried out by pension schemes will be considered high risk processing. However, under the Bill, the record must be 'appropriate' to the nature, scope and purpose of the processing, the resources of the data controller and the risks involved. This may result in a lower burden to trustees than the current requirements if trustees are still required to maintain a record.
- The requirement for data controllers to appoint a data protection officer will be replaced with a requirement for public bodies and data controllers carrying out high risk processing to designate a 'senior responsible individual' to be responsible for data protection risks within the organisation. In practice, the responsibility of a senior responsible individual and data protection officer are similar, however a senior responsible individual is expected to be a member of 'senior management' and can delegate their tasks to others.
- In addition to adequacy regulations in relation to international data transfers, new 'data bridges' will allow easier transfers to countries whose data protection standards are not 'materially lower' than those of the UK. This would potentially cover countries such as the USA, Australia and Singapore. This may be relevant to arrangements that trustees have with third parties, in particular the use of cloud services.

For more information, please see our legal update.

Action

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

Transfers – industry code

The Pension Scams Industry Group (PSIG) has published an interim updated version of the Practitioner Guide element of its Code of Good Practice, detailing the key due diligence steps that pension practitioners should undertake when assessing a transfer. The PSIG has also published an accompanying summary of the updated Guide.

The other four elements of the Code (Framework Document, Resources Pack, Technical Guide and Summary of Changes) have not been updated. The PSIG intends to update these, including producing a final version of the Practitioner Guide, after the outcome of the government's review of the statutory transfer rules that were introduced in November 2021 so that it can take account of any changes made to the rules following that review.

Action

No action required, but trustees and administrators may find the updated Practitioner Guide helpful when considering their transfer processes and/or specific transfer-related queries.

Issues affecting DB schemes

Liability-driven investment – Bank of England recommendation

The Bank of England's Financial Policy Committee (FPC) has recommended that the Pensions Regulator should specify a minimum level of resilience for leveraged liability-driven investment (LDI) funds and LDI mandates in which pension schemes may invest. The FPC has suggested that an appropriate minimum would be resilience to a gilt yield increase of 250 basis points, in addition to the resilience required to manage other risks and day-to-day movements in yields.

Action

Trustees with investments in leveraged LDI funds and/or LDI mandates should monitor any action taken by the Regulator in response to the FPC's recommendation.

Derivatives – clearing exemption

The government has announced that it will extend the exemption for pension schemes from the statutory clearing obligation by two years. The exemption will now expire on 18 June 2025. The government will conduct a review of the exemption ahead of its new expiry date, allowing time for consideration and implementation of a longer-term approach.

Action

No action required.

Sponsoring employer difficulties – Pensions Regulator engagement

The Pensions Regulator has published a blog post on the importance of trustees engaging with the Regulator if their scheme's sponsoring employer is in difficulty. The post also sets out the following key factors that trustees should consider when their sponsor is challenged:

- The importance of having a comprehensive financial information-sharing package which is assessed regularly by appropriately qualified independent covenant advisers.
- The need to involve the Regulator at an early stage when it becomes clear that trading for a sponsoring employer is challenged, when the viability of a company is uncertain, or if there are issues or defaults with other key financial creditors.
- The importance of ensuring that trustees have the right skills to deal with a distressed situation and have access to expert advisers.

Action

No action required, but trustees should bear the Regulator's expectations in mind if their sponsoring employer is facing difficulties.

Issues affecting DC schemes

Value for members – regulatory initiative

The Pensions Regulator has launched a regulatory initiative to check that trustees of DC schemes with assets of less than £100 million are complying with the new value for members (VFM) assessment requirements that came into force in October 2021. The initiative follows a Regulator survey of DC schemes last year that found only 17% of schemes required to complete the new VFM assessment had done so, and that 64% were unaware of the requirement. The Regulator will contact selected schemes about their VFM assessment, including those that have indicated they have failed the assessment. The initiative will then check that trustees have plans in place to improve their assessments.

The Regulator has also published a blog post on its recent joint consultation with the government and the Financial Conduct Authority on a new VFM framework. The post emphasises the importance of DC schemes providing VFM and explains the reasoning behind the consultation.

Action

No action required, but trustees of DC schemes that are subject to the new VFM assessment requirements should ensure that they are complying with them.

Mayer Brown news

Upcoming events

For more information or to book a place, please contact Katherine Carter.

- **Trustee Foundation Course**

  7 June 2023
  6 September 2023
  6 December 2023

- **Trustee Building Blocks Classes**

  17 May 2023 – DC governance
  8 November 2023 – Pensions dashboards

- **Quarterly webinars**

  28 June 2023 – topic TBC
  27 September 2023 – topic TBC
  13 December 2023 – topic TBC

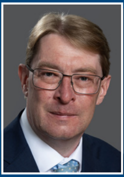
Mayer Brown legal updates

- Spring Budget 2023 – important changes to pensions taxation
- Equality, diversity and inclusion – Pensions Regulator guidance

Our legal updates from the last three months are available here.

Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

For more information about the Pensions Group, please contact:



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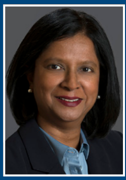

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