SLAUGHTER AND MAY

Pensions Bulletin

28 February 2019 / Issue 02

Legal and regulatory developments in pensions

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For more information, or if you have a query in relation to any of the above items, please contact the person with whom you normally deal at Slaughter and May or Bridget Murphy

New law

I. New Pensions Regulator powers and new penalties - Government response

1. The Government has issued its response to the June 2018 consultation paper on enhancing the Pensions Regulator's powers and on new civil and criminal penalties.

2. The response does not indicate when the changes will be introduced, although Guy Opperman MP had suggested previously that changes to primary legislation would be effected through the 2019 Pensions Bill.

3. To read about the proposals being taken forward, please see our briefing note.

II. DC schemes consultation on illiquid assets, the charge cap, and DC consolidation

1. The Government wants trustees of large DC schemes to consider illiquid investments when drawing up their Statement of Investment Principles ('**SIP**').

2. A consultation focuses on the following in relation to occupational DC schemes:

   2.1 encouraging greater investment in illiquid assets,

   2.2 changes to non-statutory guidance on the scope of the charge cap, and

   2.3 DC consolidation.

3. The consultation closes on 1st April, 2019.

A. Illiquid investments: SIP and Implementation Statement

1. The Government wants trustees of in-scope DC schemes to include in their SIP a statement about the extent to which they have considered illiquid investments.

2. In-scope schemes include those with non-AVC money purchase benefits, and which have:

   2.1 asset values of "perhaps £250m or £1bn", or

   2.2 scheme membership of "perhaps 5,000 or 20,000 or more members".

   Comment: The Government hopes that this will prompt trustees to consider investment innovation opportunities. Ultimately, however, trustees will continue to make their own investment decisions. This involves them acting in a way that reflects their duty of care to act as an ordinary prudent man of business would in managing similar affairs of his own.

3. In-scope schemes would also be required to report annually, via their Implementation Statement, on how they have followed their policy on illiquid assets. The Implementation Statement would have to set out the default fund's approximate percentage holdings in illiquid assets.

   Comment: The introduction of Implementation Statements is already scheduled[1] to take place on 1st October, 2020. The Implementation Statement is a statement in the annual report setting out how trustees implemented the policies set out in the SIP. Trustees will also be required to publish their

[1] under the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (SI 2013/2734)

Implementation Statement on a public website.

B. *Charge cap*

1. The Government wants to make it easier for trustees paying performance related fees (typically charged for certain types of illiquid investments) to check whether the default fund auto-enrolment 0.75% charge cap has been breached. An additional method for carrying out that check is therefore being proposed.

2. The consultation also “introduces and consults on” changes to non-statutory guidance on the scope of the charge cap, along with an updated, non-exhaustive, list of charges and costs.

   Comment: Trustees will need to familiarise themselves with the updated guidance. The changes focus on: investment trusts, costs incurred in underlying firms and physical assets, private equity costs, and other costs such as research costs and fund entry and exit costs.

C. *DC consolidation nudge*

1. The Government wants to nudge smaller DC schemes towards consolidation, so that members can access the economies of scale and better governance associated with larger DC schemes.

2. The consultation proposes extending the ‘value for members’ assessment, which forms part of the trustee Chair’s Statement. The additional assessment would need to consider whether it might be in members’ interests to be transferred into another scheme, such as an authorised master trust. A requirement to publish such an assessment may also be introduced.

3. The new requirement:

   3.1 would be applied to schemes with less/fewer than “£10m in assets or 1,000 members”;

   3.2 would need to be reviewed at least every 3 years, and after any significant change in the size or demographic profile of relevant members; and

   3.3 might be applied in more nuanced situations, such as closed schemes below a certain size with a certain proportion of members below age 50.

A Consultation on the Consideration of Illiquid Assets and the Development of Scale in Occupational Defined Contribution schemes - February 2019

III. PPF levy ceiling and compensation cap

1. DB scheme trustees engaged in exercises which are based around PPF compensation levels, such as scheme buy-outs or wind-ups, should note that the compensation cap will be £40,020.34 from 1st April, 2019.[2]

2. The 90% cap on PPF compensation for individuals who have not reached normal pension age (and who are not in receipt of a survivor’s pension or a pension on grounds of ill health) means that the maximum compensation that will be available to them will be £36,018.31.

2 The Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling and Compensation Cap) Order 2019 (SI 2019/159)

Points in practice

IV. CMA publishes draft Order on investment consultancy market remedies

1. Trustees will face new duties regarding their relationship with their investment consultants and fiduciary managers under remedies outlined in the CMA's final report into the investment consultancy market.

2. The remedies include mandatory tendering requirements for trustees delegating more than 20% of their scheme assets to a fiduciary manager, and a requirement for trustees to set objectives for their investment consultant. To read about the remedies outlined in the final report, please see Pensions Bulletin 19/01.

3. The CMA has now issued its notice of intention to make an Order intended to implement the remedies and has published the draft Order, which is open for consultation until 13th March, 2019.

V. TPR's measuring data guide

1. The practice of maintaining well-kept pension scheme data is of particular importance with the advent of dashboards (to read about the dashboards consultation, please see Pensions Bulletin 18/17). Trustees should familiarise themselves with the Regulator's latest Quick Guide, on measuring data.

2. The Guide, to be read alongside the 2016 Quick Guide to Record-keeping, outlines:

   2.1 the data trustees need to measure,

   2.2 how to measure it, and

   2.3 how to calculate 'common', and 'key scheme-specific', data scores.;

   Comment (1): 'Common' data is basic data used to identify members (eg, NI number). 'Scheme-specific' data is described as 'conditional' data in the Regulator's record-keeping guide (eg, employment records, GMP entitlement, or HMRC protections).

   Comment (2): The expectation that schemes should focus on 'key' scheme-specific/conditional data is new. The Regulator suggests that schemes work with their administrator to identify what is 'key'.

3. The Regulator expects trustees to review their data at least annually, with an additional review on the occurrence of significant events, such as winding-up, or changing administrator.

4. Trustees should also be confident that their administrator has put sufficient processes and controls in place to ensure the quality of new and historical data. The Guide sets out data quality checks that trustees should make.

5. The Guide also sets out how to calculate a scheme's "data score" i.e. the percentage of members for which the trustees have fully present and accurate common or conditional data.

VI. TPR's statement on Brexit

1. Brexit is not expected to have a significant effect on UK pensions law or trustees' ability to continue to administer their schemes. It may, however, impact on the employer covenant and trustees should already be alert to this.

2. Largely reiterating its previous Brexit statements[3], the Pensions Regulator has issued a short statement, aimed primarily at DB trustees, reminding them of the Brexit-related steps it expects them to initiate, namely:

   2.1 trustees should review any actions or contingency plans in the context of a "no deal" Brexit. The

[3] 2016 statement on market volatility following the EU referendum and 2018 Annual Funding Statement.

Regulator's 2019 Annual Funding Statement (due to be published in early March 2019) is to provide an update on the Regulator's expectations concerning DB schemes managing risk;

2.2 trustees should familiarise themselves with DWP guidance on paying benefits to EU citizens in the UK and to UK nationals in the EU, and are expected to speak to their administrator and communicate with members as necessary;

2.3 the Pensions Regulator says that it is working closely with the Government, EU Institutions, and pension authorities of other member states, to address the position of cross-border schemes and their members.

Watch List

The Watch List is a summary of some potentially important issues for pension schemes which we have identified and where time is running out (or has recently run out), with links to more detailed information. New or changed items are in **bold**.

No.	Topic	Deadline	Further information/action
1.	Put in place register of persons with significant control ("PSC") for trustee company where trustee is a corporate	6th April, 2016 and ongoing requirement	Pensions Bulletin 16/03
2.	Ban on member-borne commissions in DC schemes used for auto-enrolment	5th July, 2016 at the latest and ongoing requirement	Trustees must notify "service providers" if the scheme is being used as a "qualifying scheme" for auto-enrolment purposes and some or all of the benefits are money purchase. Pensions Bulletin 16/04.
3.	Money purchase annual allowance, which applies to individuals who have flexibly accessed their money purchase pot on or after 6th April, 2015, has dropped from £10,000 to £4,000 under Finance (No.2) Act 2017	Retroactive effect from 6th April, 2017	Member communications should include a warning note about this, highlighting the retroactive effect.
4.	GMP equalisation		
4.1	Part 8 action brought by female staff, trustee and Lloyds Trade Union	15th May, 2017	We will continue to monitor developments in this litigation, which has implications for all schemes with GMPs accrued in the period 17th May, 1990 to 5th April, 1997.
		Judgment published	26th October, 2018 Pensions Bulletin 18/15
		Clarificatory judgment published	Pensions Bulletin 18/17
4.2	Government response **to** consultation on GMP equalisation published	13th March, 2017	Pensions Bulletin 17/7
5.	HMRC's existing practice on VAT and pension schemes to continue indefinitely		Employers should consider taking steps to preserve, or even enhance, their pensions-related VAT cover. Pensions Bulletin 17/18
6.	DC bulk transfers without member consent: introduction of easements	6th April, 2018	Pensions Bulletin 17/18 Pensions Bulletin 18/05 Pensions Bulletin 18/08
7.	Bulk transfers of contracted-out rights without consent: introduction of easements	6th April, 2018	Pensions Bulletin 18/01 Pensions Bulletin 18/05
8.	Deferred debt arrangements became available	6th April, 2018	Pensions Bulletin 18/05
9.	Disclosure of costs, charges and investments - new requirements	Mostly in force 6th April, 2018	Pensions Bulletin 18/05
	Chair's statement and website must publish costs and charges information	Within 7 months of scheme year end falling on or after 6th April, 2018	

No.	Topic	Deadline	Further information/action
10.	Auto-enrolment total minimum DC contributions increase to 5% (of which minimum employer contribution of 2%)	6th April, 2018 to 5th April, 2019	
11.	Data protection: New Regulation: EU General Data Protection Regulation in force	25th May, 2018	Pensions Bulletin 16/05 Employment Bulletin 16/15 As data controllers, trustees need to ensure that compliance with the EU General Data Protection Regulation is achieved. A compliance checklist for trustees is available to clients from their usual Slaughter and May contact.
12.	Existing EMIR exemption extension for pension scheme arrangements ends	16th August, 2018	Pensions Bulletin 17/01 Pensions Bulletin 18/12
	EU Parliament confirms further extension of pensions exemption, with further extensions possible	12th June, 2018	Pensions Bulletin 18/10
13.	CJEU decides PPF compensation must equal at least 50% of each recipient's benefit *(Hampshire - Case C-17/17)*	6th September, 2018	Pensions Bulletin 18/13
14.	Master trusts new authorisation and supervision regime introduced	1st October, 2018	Pensions Bulletin 18/12 Pensions Bulletin 18/13 (note: SI later re-issued as SI 2018/1030)
15.	IORP II transposition deadline	12th January, 2019	Pensions Bulletin 16/11
16.	Brexit	By 29th March, 2019, unless extended	UK leaves EU from effective date of withdrawal agreement or, failing that, 2 years after giving Article 50 notice unless: (a) European Council and UK unanimously decide to extend period, or (b) UK withdraws its Article 50 notice before 29th March, 2019.
17.	Auto-enrolment total minimum DC contributions will increase to 8% (of which minimum employer contribution of 3%)	6th April, 2019 onwards	
18.	Trustees must ensure Statement of Investment Principles meets new requirements on ESG and stewardship	Most requirements to be met by 1st October, 2019	Pensions Bulletin 18/13
19.	Pensions Regulator consultation on draft DB Funding Code of Practice expected	Autumn 2019	

If you would like to find out more about our Pensions and Employment Group or require advice on a pensions, employment or employee benefits matters, please contact Jonathan Fenn or your usual Slaughter and May adviser.