MAYER | BROWN

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The Pensions Brief

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Dates to note over the next 12 months

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

31 January 2024

Deadline for schemes to send annual event report to HMRC (2022/23 tax year)

31 March 2024

PPF levy deadline for submission of scheme returns, contingent asset and asset-backed contribution certificates and special category employer applications

2 April 2024

PPF levy deadline for submission of supporting contingent asset documents

6 April 2024

- Abolition of lifetime allowance expected to come into effect
- New DB statutory funding regime expected to come into force

30 April 2024

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

30 June 2024

PPF levy deadline for submission of full block transfer certificates

Key:

Important dates to note (red) | For information (blue)

Issues affecting all schemes

Automatic enrolment – extension of regime

The Pensions (Extension of Automatic Enrolment) Act 2023 has now received Royal Assent. It gives the government the power to make regulations:

- Reducing the age at which workers become eligible for automatic enrolment.
- Reducing or removing the lower qualifying earnings limit.

This regulation-making power will come into force on a day to be appointed by statutory instrument.

Action

Employers, trustees and administrators should monitor the government's exercise of this regulation-making power.

EU law rights – codification into UK law

Two sets of regulations have been laid before Parliament for approval which codify into UK law certain EU law rights decided in various court decisions. The first set of regulations:

- Remove the requirement for an actual opposite sex comparator to establish whether there is discrimination caused by the GMP legislation for post-May 1990 service (in relation to both benefits provided under an occupational pension scheme and Pension Protection Fund (PPF) compensation).
- Requiring schemes to pay equal survivors' benefits to spouses and civil partners regardless of whether they are opposite or same sex.

The second set of regulations:

- Require the PPF compensation payable to a person to be at least 50% of the value of the benefits that the person would have been entitled to under the rules of the original scheme. This applies for assessment dates on or after 1 January 2024.
- Remove the PPF compensation cap for assessment dates on or after 1 January 2024.

Once approved, the regulations will come into force immediately before the end of 2023. Currently the EU law rights decided in the various court decisions form part of "retained EU law" by virtue of the European Union (Withdrawal) Act 2018. However, under the Retained EU Law (Revocation and Reform) Act 2023, these retained EU law rights will cease to apply after 31 December 2023 unless codified into UK law.

Action

No action required.

Climate change – first fine for breach of reporting obligations

The Pensions Regulator (TPR) has announced that it has issued the first fine for failure to comply with the climate change reporting obligations. The trustee of a scheme which was subject to the requirements had produced its climate change report and the scheme administrator had sought to publish it online by the statutory deadline of 31 July 2022. However, the website URL was faulty and the report was not in fact accessible online. After TPR contacted the trustee, the report was correctly published on 10 August 2022.

TPR issued a fine of £5,000 which the trustee has paid. In line with its monetary penalties policy, TPR issued a fine above the statutory minimum (£2,500) because the trustee was a corporate body and to reflect the nature of the breach.

Action

No action required, but trustees who are subject to the climate change reporting obligations may wish to confirm that their climate change report has been published online and that the website URL is functional. This decision also indicates that TPR is likely to take a relatively stringent approach to enforcement of the reporting obligations generally and trustees may wish to bear this in mind when preparing their climate change reports.

Pensions dashboards – connection options

The Pensions Dashboard Programme has published FAQs on the different options for connection to the dashboards ecosystem. The FAQs cover:

- The different options for connection.
- How to decide the right approach.
- Who is responsible for ensuring the scheme connects on time.

Action

No action required, but trustees and administrators may find the guidance helpful in their dashboards preparation.

Pension sharing – updated guidance on charges

The Pensions and Lifetime Savings Association has updated its guidance on pension sharing on divorce. The guidance is designed to support private sector schemes when providing information for pension sharing orders. It includes a recommended range of charges as well as a flowchart outlining the circumstances in which charges can be made.

Action

No action required, but trustees and administrators may find the guidance helpful when levying charges in connection with pension sharing.

Administrators – Pensions Regulator involvement

The Pensions Regulator (TPR) has published a blog post on how it is changing its regulatory approach to work more closely with administrators. TPR believes that good quality data is the foundation of a well-run scheme and administrators are integral to ensuring this. In January 2022, TPR created an Administrator Relationships function, a team dedicated to engaging directly with third party administrators on a voluntary basis which is currently focusing on the following areas:

- Systems and processes.
- Data quality.
- Trustee focus on and understanding of the importance of administration.
- Member engagement and communication.
- Pensions dashboard readiness.

Action

No action required.

Issues affecting DB schemes

Pension Protection Fund – 2024/25 levy

The Pension Protection Fund (PPF) is consulting on the draft rules for the 2024/25 levy. The levy estimate is £100 million, half of the 2023/24 levy estimate, which the PPF expects to result in a levy reduction for 99% of schemes. The PPF believes that, given the statutory restrictions on the extent to which it can increase the levy from one year to the next, £100 million is the lowest levy that it can charge whilst maintaining the capability to revert to charging a material levy over a reasonable period should this prove necessary in future.

The PPF is proposing minimal changes to the levy rules for 2024/25, with changes focused solely on those needed to achieve the £100 million levy estimate. However, given recent improvements in scheme funding, additional methodology changes will be required in future as otherwise some schemes could see their levy increase significantly as the pool of risk-based levy payers reduces. The consultation therefore seeks views on the options to distribute a £100 million levy between schemes in future years. The consultation closes on 30 October 2023.

The key dates for the 2024/25 levy are:

- 31 March 2024 (midnight) – submission of scheme returns, contingent asset certificates, asset-backed contribution certificates and special category employer applications.
- 2 April 2024 (5pm) – submission of supporting contingent asset documents.
- 30 April 2024 (5pm) – submission of deficit reduction contribution certificates and exempt transfer applications.
- 30 June 2024 (5pm) – submission of full block transfer certificates.

Action

Trustees and employers should monitor the outcome of the consultation.

Regulated apportionment arrangements – guidance

The Pensions Regulator (TPR) has published guidance on regulated apportionment arrangements (RAAs) for employers and trustees who are considering whether to agree one. The guidance:

- Notes that TPR would only expect RAAs to be considered in circumstances where the employers are facing potential insolvency.
- Outlines what an RAA is and when it can be considered.
- Sets out the principles that TPR expects to be met in respect of any RAA application and describes the process for making an application.
- Confirms that TPR expects its RAA principles to be followed in respect of other agreements which produce a similar outcome to an RAA.

Action

No action required, but trustees and employers who are considering whether to agree an RAA, or an agreement which will produce a similar outcome, may find the guidance helpful.

Return of surplus – reasonableness of trustee decision

The Pensions Ombudsman has decided that, in making the decision to return surplus to the employer, a trustee had considered all relevant factors, acted within the scheme rules and made a reasonable decision.

The Ombudsman noted that they did not have jurisdiction to decide whether the trustee had complied with the statutory provisions governing the return of surplus to an employer on winding-up. However, the Pensions Regulator has apparently written to the member who complained to the Ombudsman to say that it is liaising with the trustee to confirm that those requirements have been complied with.

Action

No action required.

Mayer Brown news

Upcoming events

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

- **Trustee Building Blocks Classes**
  8 November 2023 – Pensions dashboards
- **Trustee Foundation Course**
  6 December 2023
- **Quarterly webinars**
  13 December 2023 – topic TBC

Recent Mayer Brown work

- Andrew Block and Esther White advised the trustee of the M&G Group Pension Scheme on a £311 million buy-in of deferred and pensioner liabilities with The Prudential Assurance Company Limited. For more information, please see our news article.

- Richard Evans and Henry Corrigan advised the trustee of the Ford Pension Scheme for Senior Staff on a £340 million buy-in with Scottish Widows.

Mayer Brown media comment

- Andrew Block, Devi Shah and Alexandra Wood wrote an article for The Drawdown on the additional complexities which a private equity firm will face when acquiring a distressed business with a DB pension scheme.

Mayer Brown legal updates

- Pension schemes and international data transfers – updates to contracts required

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.

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