DC workplace pensions – new legal requirements

Several significant changes to the legal and regulatory requirements for DC workplace pension plans came into force on 6 April 2015. Trustees, providers, independent governance committees and employers need to keep pace with these changes relating to:

- the new flexibilities for DC pension savers and related safeguards
- new restrictions on member-borne costs and charges
- new requirements to ensure DC workplace pension plans deliver value for money,
- new requirements to ensure that default investment strategies are designed in members' interests, and
- more stringent governance requirements for DC workplace pension plans.

We summarise below the recent changes affecting different DC workplace pension plans:

(i) All DC workplace pension plans

- Individuals with DC pension savings now have much greater flexibility over how they access their savings from age 55. Trustees and providers that have not already done so need to:
  1. decide which of the new benefit options they will provide to members under their plan and update their plan rules to reflect this ☐
  2. review the suitability of their plan's default fund and other investment options and update them as necessary ☐
  3. update member communications, and ☐
  4. be prepared to issue the relevant regulatory risk warnings to individuals before they access their benefits. ☐
- Trustees and providers should monitor their members' behaviour to check that any assumptions made about how members will access their benefits are borne out in practice. ☐

(ii) DC occupational pension plans (including master trusts)

Trustees of DC occupational pension plans are now required to:

- Update member communications to comply with the new disclosure requirements which include providing information to members about the new benefit options and the availability of guidance from Pension Wise. ☐
- Assess annually and report on the extent to which member-borne charges and transaction costs which relate to money purchase benefits under their plan represent "*good value*" for members. ☐
- Prepare a statement of investment principles for their plan's default fund setting out the trustees' policies, aims and objectives for the fund and explaining how these are intended to ensure the assets are invested in "*the best interests*" of members and beneficiaries. ☐
- Review the default strategy and performance of the default fund at least once every three years and without delay after any significant change in investment policy or the demographic profile of the relevant members. ☐
- Ensure that core financial transactions are processed promptly and accurately (this includes, but is not limited to, the investment of contributions, transfers into and out of the plan , transfers between different investments within the plan and payments to, or in respect of, members). ☐

- Publish an annual governance statement signed by the Chair, which must:
  - describe any review of the default fund undertaken during the scheme year and any changes made as a result or, where no review has been undertaken, state the date of the last review
  - describe how the new requirement to process core financial transactions promptly and accurately has been met
  - state the level of charges and transaction costs applicable to the default fund during the relevant scheme year
  - state the range of levels of charges and transaction costs in non-default funds during the relevant scheme year
  - indicate any information about transaction costs that the trustees have been unable to obtain and what is being done to obtain this in future
  - explain the trustees' assessment of the extent to which member-borne charges and transaction costs represent "*good value*" for members, and
  - describe how the trustee knowledge and understanding requirements have been met during the scheme year and how the combined knowledge and understanding of the trustees, together with their advisers, enables them to properly exercise their functions.

- Inform the Pensions Regulator of who the Chair of trustees is via Exchange (where a Chair has never formally been appointed, trustees must appoint one and notify the Regulator by 6 July 2015).

- Ensure their plan rules contain no restrictions on the person who can provide administrative, fund management, advisory or other services to their plan.

(iii) All DC automatic enrolment qualifying schemes

- Member-borne costs and charges (excluding transaction costs) under default funds of qualifying schemes must now not be more than the new charge cap, which for a single charge structure is 0.75% annually of the value of the members' rights.

(iv) Master trusts (and other multi-employer DC occupational pension plans for unconnected employers)

- By 6 July 2015, these plans are required to have a minimum of three trustees with a majority (including the Chair) being "*non-affiliated*".

- New requirements apply to the appointment process for trustees of these plans, including the need for "*non-affiliated*" trustees to be appointed via an "*open and transparent*" recruitment process and the need for the Chair to be involved in the appointment of all other trustees.

- The trustees must make arrangements to encourage members of the plan to make their views known to the trustees.

- In addition to the points identified under (ii) above, the annual governance statement for a multi-employer plan must also include details of:
  - how the requirement to have a majority of "*non-affiliated*" trustees has been met
  - how the requirement to have an "*open and transparent*" recruitment process has been met for any "*non-affiliated*" trustees appointed in the past year, and
  - details of the arrangements put in place during the year to encourage members to make their views known.

(v) Workplace personal pension plans

- Providers should now have in place an independent governance committee (IGC) or governance advisory arrangement (GAA) to assess the ongoing "*value for money*" of its workplace personal pension plans particularly, though not exclusively, through assessing:
  - whether default investment strategies within those plans are designed in members' interests and have clear statements of aims and objectives
  - whether the investment strategies are regularly reviewed and necessary action taken to ensure the alignment with members' interests
  - whether core financial transactions are processed promptly and accurately
  - the levels of charges borne by members, and
  - the direct and indirect costs incurred by managing and investing members' pension savings, including transaction costs.
- IGCs and GAAs are required to raise any concerns they have in relation to value for money with the provider and have the power to escalate matters to the Financial Conduct Authority, members, employers or to go public if those concerns are not addressed satisfactorily.
- IGCs and GAAs are required to publish an annual report setting out:
  - the IGC/GAA's opinion on the value for money delivered by the relevant plans
  - how it has considered members' interests
  - any concerns raised with the provider and the response received
  - how the IGC/GAA has sufficient expertise, experience and independence to act in members' interests
  - (for IGCs) confirmation that the IGC has sufficient independent members, and
  - the arrangements put in place to ensure members' views are directly represented to the IGC/GAA.
- IGCs must consist of at least five members with the majority, including the Chair being independent of the provider. Independent members must be appointed through an "*open and transparent*" recruitment process.

Links to relevant regulatory material

- Essential guide to communicating with members about pension flexibilities – The Pensions Regulator
- The essential guide to governance standards and charge controls - The Pensions Regulator
- Code of Practice 13: Governance and administration of DC occupational defined contribution trust-based pension schemes – The Pensions Regulator
- The charge cap: guidance for trustees and managers of occupational pension schemes - The Department for Work and Pensions
- Policy Statement: PS14/17 Retirement Reforms and the Guidance Guarantee - The Financial Conduct Authority
- Policy Statement: PS15/4 Retirement reforms and the guidance guarantee: retirement risk warnings – The Financial Conduct Authority

- Final rules for independent governance committees – The Financial Conduct Authority
- Final rules for charges in workplace personal pension schemes – The Financial Conduct Authority

Comment

The world of DC workplace pension plans is changing radically. Gone are the days when DC was regarded in some quarters (wrongly) as short for "don't care". Workplace DC pension plans now entail considerable oversight and governance – and consequently carry considerable legal, reputational and financial risks for employers, trustees and providers.

It is essential that trustees, providers and IGCs keep pace with the changes and ensure that their plans are compliant. Employers that operate a DC plan ought to know how their plan's trustees/provider are responding to these changes and what this means for their staff and their HR function. For example, the new freedom for people to access some or all of their DC savings as cash from age 55 may have significant implications for peoples' ability to afford to retire.

Further changes affecting DC plans are likely to be introduced in the next Parliament, whatever flavour of Government we have, so trustees, providers, IGCs and employers will need to remain on their toes.

Contact

If you have any queries about what these changes mean for your plan(s) please speak to your usual Eversheds' adviser or contact:

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