EVERSHEDS SUTHERLAND

Things to think about in Autumn evenings

Pensions Agenda

September 2022

1. Scheme funding

Draft regulations have been issued which set out more details on how the new DB funding regime will work. Under the new regime, schemes must aim to be fully funded on a low-risk basis (with low-risk investments and low dependency on the sponsoring employer) by the time they are *"significantly mature"*. Significant maturity will be defined in the **new DB funding code** and is to be measured by the duration of liabilities. The draft regulations also define what *"employer covenant"* means for funding purposes and will require a deficit to *"be recovered as soon as the employer can reasonably afford"*.

Action – Consider whether to respond to the **consultation** which closes on 17 October 2022 and how the new funding approach could affect schemes. More details of the proposals are set out in our **speedbrief.**

2. Pensions dashboards

The Government has **responded to its consultation** on the **draft dashboard regulations** and confirmed that it intends to proceed largely as originally intended, with only minor changes. A **second consultation** looked at how the industry will be notified about when the dashboards will go live to members. There has also been a **consultation** from the Pensions Dashboard Programme on the dashboard standards which provide the rules and controls that facilitate connection to the dashboard ecosystem, and the Pensions Regulator has issued **guidance** on how schemes should comply with their dashboard obligations.

Action – Identify what dashboard staging dates are likely to be, what information will be needed to match members with benefits and how to provide required benefit information. For more detail on the changes to the initial proposals see our **speedbrief**.

3. Transfers and scams

DWP and the Regulator have issued a **joint statement** acknowledging concerns about the new **transfer conditions**, particularly where receiving schemes hold overseas investments. The statement says that where trustees believe that one of the conditions cannot be satisfied and *"there is no statutory right to transfer but they have concluded following due diligence that the transfer is at low risk of a scam, [they] can grant a 'discretionary transfer' where scheme rules allow."* The Regulator has also announced a **new strategic plan** for combatting scams, which includes establishing an expectation that schemes include a scam warning in annual benefit statements.

Action – Ensure transfer due diligence has been updated to deal with the new transfer conditions, and consider what the scheme specific/discretionary approach should be where the statutory conditions are not met because the receiving arrangement holds overseas investments.

4. Investment consultants and fiduciary managers

The **CMA Order** on the competitive tendering of fiduciary management mandates and setting objectives for investment consultants has been replaced with **regulations** which come into force on 1 October 2022. The Regulator has also updated its **guidance for trustees**. Trustees need to set objectives for investment consultants and review performance against them every 12 months and, if appropriate, revise the objectives at least every three years.

Action – Identify where objectives are required and ensure appropriate objectives are set and reviewed at required intervals. Be aware of requirements in relation to fiduciary management mandates.

5. Benefit corrections

HMRC has **issued a newsletter** confirming that that when making interest payments for past underpayments, including for GMP equalisation, the payment will be an authorised payment if the interest is provided on an arm's length commercial basis. The newsletter also deals with the taxation of interest. In addition, a **recent court case** confirmed that trustees can use forfeiture provisions in relation to past benefit underpayments where a member has failed to claim such payments, and considered what was required for a claim in these circumstances.

Action – Where there have been past underpayments, consider the terms of any forfeiture provisions and whether they should be applied. Also be aware of the guidance on the payment of interest, when it will be an authorised payment and how it should be taxed.

6. Climate Change

The second wave of schemes (with assets of over £1 billion) will come into scope of the climate change reporting requirements on 1 October 2022. The Regulator **has said** that it will take a collaborative approach to reporting and does not anticipate it will be necessary to issue any penalty notices to trustees that have already published their reports, other than where there was no genuine effort to comply with the requirements or publish a report at all. In addition, schemes with assets in excess of £1 billion and authorised DC master trusts **will need to** report on an additional *"portfolio alignment"* metric from 1 October 2022, measuring the extent to which investments are aligned with the Paris Agreement goal of limiting the global average temperature increase to 1.5°C above pre-industrial levels.

Action – If in-scope of the climate change requirements, consider what additional disclosures will be required in the next TCFD report and discuss with asset managers what data will be required.

7. Statements of investment principles

Guidance issued by DWP helpfully confirms that the intended audience of the statement of investment principles (SIP) is the Pensions Regulator. It also considers what information should be included in the SIP around stewardship and engagement, and how trustees should formulate a policy on these issues. Trustees are encouraged to consider key elements of the **Stewardship Code**, and to summarise the stewardship priorities which will inform their engagement activities and explain why they have selected these priorities in the SIP. The guidance applies from 17 June 2022.

Action – Consider the guidance and the extent to which existing stewardship activities comply with it. Where more information is needed, engage with asset managers and determine how to update the SIP. For more information, see our **speedbrief**.

8. Implementation statements

Statutory guidance applies to implementation statements for scheme years ending on or after 1 October 2022 and says the intended audience for these is also the Pension Regulator. It sets out how trustees should determine *"significant votes"* for the purposes of disclosure in statements, and the information that is required in relation to them (including company name, size of holding, summary of resolution, explanation for vote, voting outcome and next steps). It also sets out what information trustees need to provide on compliance with the policies in their SIP over the year.

Action – Plan ahead to ensure the information required for future implementation statements is available in time. Remember that implementation statements are backwards looking, so the task of putting governance in place and assembling the detailed information for next year's statement should start now. For more information, see our **speedbrief**.

9. Tax relief

Most occupational pension schemes access tax relief by deducting contributions from gross pay. However, there is an alternative where contributions are deducted from net pay and the scheme claims a tax credit from HMRC, even if the member is a non-taxpayer, which means that this form of tax relief is better for non-taxpayers. **Draft legislation** will require HMRC to provide that, so far as reasonable, where contributions are deducted from gross pay, non-taxpayers are paid an amount equal to the tax credit under the alternative system. It is estimated that 1.2 million people will be eligible for this payment and the average beneficiary will receive an extra £53 a year.

Action – This does not require action by trustees or administrators but is worth being aware of, as there have been calls for schemes to change the way they operate tax relief in recent years to ensure that non-taxpayers are not disadvantaged.

10. Single code of practice

Last year, the Pensions Regulator **consulted on its new single code of practice**, which will set out the internal controls and governance processes that the Regulator considers schemes should have in place and how they should be monitored and reviewed. The Regulator **originally said** that it expected the final version of the code should be ready in the summer, but it is now expected to be published this autumn. In the meantime, to help schemes prepare for the new requirements, the PLSA has published a **guide to carrying out own risk assessments**.

Action – Watch out for the new code and identify any deadlines for new policies. Consider carrying out a gap analysis to identify any additional governance processes that the new code might require. For more detail on the single code, see our **speedbrief**.

Key dates for pension diaries

21 September 2022	New contracts dealing with transfers of personal data outside of the EEA should include new safeguards.	Update contractual terms and be aware of which contracts might be affected.
1 October 2022	New simpler annual statement requirements come into force for DC only schemes used for auto-enrolment.	In-scope schemes will need to ensure that statements issued after this date fit on two sides of A4.
1 October 2022	The climate change reporting requirements will extend to schemes with £1bn or more of assets. In addition, in-scope schemes will need to report against an additional metric.	If you are in scope of the climate change requirements, compliance work should already be underway.
1 October 2022	New regulations come into force in relation to setting objectives for investment consultants and competitive tendering of fiduciary management mandates replace CMA Order.	Consider where these requirements apply and ensure appropriate objectives are set.
17 October 2022	Consultation closes on draft funding regulations which provide more detail on the requirements for trustees to have a long term funding and investment strategy and a statement setting out the strategy.	Consider whether to respond. For more detail, see our **Guide to the Pension Schemes Act 2021.**
October 2022	The Pensions Regulator has indicated that it intends to lay the new single code of practice before Parliament later this year – no date has been specified.	Consider carrying out gap analysis to identify what new governance processes might be required.
October 2022	The Pensions Regulator has said that it intends to consult on the new funding code of practice after the draft funding regulations were issued – no date has been specified.	Watch out for the consultation and consider whether to respond.
October 2022	Possible further consultation on dashboard regulations following "indicative" draft regulations earlier in the year.	Watch out for developments and identify scheme staging date.
Autumn 2022	Still awaiting new notifiable events provisions (which will require notification of certain corporate transactions) to come into force.	For more detail about the new requirements, see our **Guide to the Pension Schemes Act 2021.**
27 December 2022	Existing contracts providing for overseas data transfers need to be updated to include new safeguards where data includes EU data.	Identify which contracts might be affected and which provisions will need to be updated.
May 2023	DWP committed to a review of the new transfer conditions within 18 months of them going live.	Watch out for any proposed changes.
June 2023	From June 2023 onwards it is proposed that schemes will need to connect to the dashboard ecosystem – the exact date will depend on size and type.	Identify dashboard connection date and consider what needs to be done to get ready.
1 October 2023	New version of AS TM1 which sets out the assumptions for money purchase illustrations should come into force.	Watch out for final version.
21 March 2024	Existing contracts providing for overseas data transfers need to be updated to include new safeguards.	Identify affected contracts and required amendments.
6 April 2028	Normal minimum pension age will rise from age 55 to 57 but some members may retain a right to retire at 55.	Consider when to tell members and what protections are available.

For more information on how we can help you please contact:

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