EVERSHEDS SUTHERLAND

Conquering the detail

UK Pensions Agenda

November 2021

1.

Transfers – In an attempt to address pension scams, **new legislation** will require trustees to do additional due diligence when members request a statutory transfer from 30 November 2021. They will need to ensure that either the transfer is to a safe type of scheme (including authorised master trusts and public sector schemes) or consider whether there are any amber or red flags suggesting a scam scheme. Red flags mean that the transfer cannot be made. Amber flags (including no employment link with a receiving occupational pension scheme) will require the member to seek advice. The Pensions Regulator has **issued guidance** on the new requirements.

Action – Review existing transfer due diligence processes and identify what changes might be needed. Also review member communications and consider what they will need to be told about the new requirements. For more details on what the regulations will require, see our **speedbrief**.

2.

Stewardship reporting – The Government is seeking views on **draft guidance** which will set out its expectations in relation to the content of implementation statements, particularly around disclosing voting and stewardship activities. Trustees will be expected to make fairly detailed disclosures in these areas and to explain why their policies are in the best interests of their membership.

Action – Consider if extra information might need to be included in implementation statements. For more information, see our **speedbrief**.

3.

Climate change – The Government is **proposing to amend legislation** to require trustees of schemes subject to climate change reporting requirements to calculate and disclose an additional metric from 1 October 2022 describing the extent to which their investments are aligned with limiting the increase in the global average temperature to 1.5 degrees Celsius above pre-industrial levels. Schemes should also be aware that in June the **Taskforce for Nature Related Financial disclosures** was launched with the aim of doing the same for nature and bio-diversity that the TCFD does for climate change.

Action – Where trustees are in-scope for the climate change reporting requirements, consider how to address the new metric. Talk to investment managers about how this obligation can be complied with.

4.

Notifiable events – Following a number of high profile corporate failures, the Pension Schemes Act 2021 included provisions seeking to provide the Regulator and trustees with early warning of transactions that might affect DB schemes. The Act provides that where there is a DB scheme, employers and those connected or associated with them will need to notify the Regulator of certain employer related events. **Draft regulations** have been issued setting out when notification will be required – this is proposed to be at a very early stage of various corporate transactions.

Action – Ensure sponsors and trustees are aware of what is proposed and what is notifiable under the new draft regime. More detail about what will need to be notified is set out in our **speedbrief**. It is anticipated that the new requirements will come into force on 6 April 2022.

5.

CMA Order compliance statements – In 2019, the **CMA issued an Order** on competitive tendering for fiduciary managers and setting objectives for investment consultants and the Pensions Regulator has **issued guidance** on these requirements. The Order was due to be replaced with DWP regulations in April 2020 but these have been delayed. The CMA Order must therefore still be complied with, which means that trustees will need to send a second **compliance statement** plus an accompanying certificate to the CMA confirming compliance by 7 January 2022.

Action – Ensure that the compliance statement and certificate are sent to the CMA by the deadline and that they follow the requirements set out in the Order.

6.

New Pensions Regulator powers – The Regulator has issued its finalised **criminal offences policy** which provides guidance on its approach to the investigation and prosecution of two new criminal offences, "avoidance of an employer debt" and "conduct risking accrued scheme benefits". In addition, it is **consulting** on additional new policies which amongst other things set out when and how it will exercise its new information gathering powers and impose the £1million fines permitted by the Pension Schemes Act 2021.

Action – Ensure sponsors and trustees are aware of the new offences and when the Regulator is likely to become involved. More details are set out in our **speedbrief** and the provisions in the Pension Schemes Act are summarised in our **guide to the Act**.

7.

Fraud compensation fund – The FCF provides compensation where scheme assets are reduced as a result of an offence involving dishonesty and the employer is insolvent. As a result of a court case, some liberation schemes will be eligible for FCF compensation, hugely increasing its liabilities. The Government is lending the FCF money in the short term to cover these liabilities but to meet them in the longer term it is **proposed** that the maximum levy that can be raised from occupational pension schemes to fund the FCF will rise from 75p per member to £1.80 and for master trusts from 30p to 65p.

Action – Consider the impact that this levy increase is likely to have. Watch out for the actual amount of the levy that is imposed and ensure funds are available to pay it.

8.

PPF levy – The PPF has issued its **draft levy determination** for 2022/23. There are no significant changes proposed to the calculation. The **pandemic easements** introduced last year for small schemes and capping the risk-based levy will continue. Small changes to the way schemes are mapped to levy bands are proposed along with an amalgamation of the provisions for consolidators and schemes without substantial sponsors. The PPF anticipates a reduction in the levy it collects of £105 million and that around 82% of schemes will see a reduction in the risk-based levy.

Action – Consider the impact that the proposed changes in the levy are likely to have. As the levy will reduce for most schemes, existing funding arrangements are likely to be adequate for those schemes to meet it.

9.

Value for members and net investment reporting – **Regulations** will require trustees of DC schemes with assets of less than £100 million, that are at least 3 years old, to include a new value for members assessment in the chair's statement for the scheme year ending after 31 December 2021. They will need to consider if costs, charges and net investment returns provide value when compared with 3 larger schemes and have discussed the option of a transfer with one. In addition, trustees of all schemes that have to prepare a chair's statement **will need to** report their net investment returns in their chair's statement for the first scheme year ending after 1 October 2021. More detail is set out in **statutory guidance**.

Action – Consider what needs to be done to comply with the new requirements and what additional data will be needed and ensure that deadlines can be met. More details are set out in our **DC Practical Notes**.

10.

Minimum pension age – **Draft legislation** has been issued which will increase the minimum age at which most members can take pension benefits from age 55 to age 57 in April 2028. The legislation includes provisions which will allow members who had a right to retire at age 55 before 4 November 2021 to retain that right in certain circumstances. The right will also be protected on block and individual transfers, but in the case of an individual transfer, new rights accrued in the receiving scheme will not benefit from the lower pension age.

Action – Consider whether any members will have a protected pension age and, if so, what information needs to be provided on transfers. Also consider the position of any members transferring in and whether the transfer payment will need to be ring-fenced.

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