

ALLEN & OVERY

Joint DB and DC trustee agenda update: current legal issues

For October 2017 meetings

Welcome to our monthly update on current legal issues for trustees of DB and hybrid pension schemes, designed to help you stay up to date with key developments between trustee meetings, and to support the legal update item on your next trustee agenda. We also have a separate DC-only briefing.

Prepare for GDPR compliance **UPDATED!**

New data protection rules will apply from 25 May 2018 under the General Data Protection Regulation. GDPR preparation will be a significant issue, requiring a wide-ranging review of data protection issues and practices. Standard processes, contracts with administrators and other data processors, and member communications will all need to be updated.

Our guide to GDPR compliance planning will help you to prioritise actions to achieve compliance in good time. [Read more](#)

ACTION: Ensure that you have a plan in place to achieve GDPR compliance, including updating administration agreements and other provider contracts, plus member communications.

TPR sets out governance expectations **NEW!**

The Pensions Regulator has published new guidance on the basics of scheme governance, as the first element in its 21st Century Trustee campaign to improve governance standards. The guidance includes links to other material, including a newly-published guide to data improvement plans. [Read more](#)

ACTION: Review the guidance and consider whether scheme practices should be updated. Consider whether your data improvement plan meets the Regulator's expectations.

GMP round-up

Our recent round-up of GMP-related issues provides an update on the latest developments, including reconciliation deadlines, potential pitfalls, and concerns about 'missing' GMP increases. [Read more](#)

ACTION: Ensure your GMP reconciliation process is on track to meet the deadlines; contact us for help with any GMP-related concerns.

TPR defines 'professional trustee'

The Pensions Regulator has announced that paid trustees won't normally be considered to be professional if they have a membership/employment link with the scheme or relevant corporate group, and they do not act or offer to act as a trustee in relation to any unrelated scheme. Higher standards are expected of professional trustees; status and remuneration are also relevant to enforcement and penalties. [Read more](#)

ACTION: All trustees should review the policy and confirm their status. This information must be given on the annual scheme return.

Same-sex spouse/civil partner death benefits

The Equality Act 2010 permits schemes to calculate a survivor's pension for a same-sex spouse/civil partner by reference to the member's service from 5 December 2005 only, rather than by reference to all service. The Supreme Court has now ruled that this restriction is unlawful; same-sex spouses and civil partners should be given the same pension rights as opposite-sex spouses. [Read more](#)

ACTION: If your scheme currently provides death benefits on the restricted basis, contact us for help with a rule change and member communications.

Reduction in MPAA **UPDATED!**

The Finance (No. 2) Bill 2017 includes provisions restricting the money purchase annual allowance (MPAA) to GBP4,000, and increasing the tax exemption for employer-arranged pensions advice to GBP500. The Bill provides for these provisions to take effect from 6 April 2017; we will report on any changes to the retrospective impact of the provisions as the Bill progresses through Parliament. [Read more](#)

ACTION: Consider whether further member communications are required.

Money laundering compliance duties

Trustees have additional compliance duties under new money laundering regulations which took effect on 26 June 2017. The most immediate duties relate to record-keeping and to provision of information when entering into a transaction/business relationship with parties (such as banks/some advisers) that are required to carry out money laundering checks. Additional HMRC reporting requirements could be more burdensome; further guidance is expected shortly. [Read more](#)

ACTION: Note the new duties and keep a watching brief on further developments.

Auto-enrolment: upcoming changes

Statutory minimum auto-enrolment contributions for DC schemes will increase on 6 April 2018 (and again a year later) – to find out more, see Part 1 of our [updated guide](#) to the auto-enrolment regime.

The Pensions Regulator has published additional guidance on a range of issues linked to the increase in statutory minimum contributions. [Read more](#)

ACTION: Liaise with employers about the impact of the forthcoming changes. Assess the need for rule amendments and consultation as appropriate.

PSC register requirements

Most UK companies (including corporate trustees) are required to maintain a register of persons with significant control over the company (known as a PSC register) and to file a copy at Companies House each year. Any PSC register changes must now be notified to Companies House within 14 days. Similar rules apply to Scottish limited partnerships (for example, within an asset-backed funding arrangement). [Read more](#)

ACTION: Corporate trustees should note the new requirement and notify Companies House of any updates to their PSC register since their last annual confirmation statement.

Early exit and commission-based charges

From 1 October 2017, early exit charges (imposed where members take, convert or transfer scheme benefits before normal pension age) will be subject to a 1% cap and other restrictions. The existing ban on charging members to recoup the cost of adviser commission payments in relation to auto-enrolment qualifying schemes will also be extended. Statutory guidance on calculating the cap has now been published. [Read more](#)

ACTION: Confirm whether your scheme applies charges of either type and liaise with providers and administrators to ensure future compliance.

Changes for ‘safeguarded-flexible’ benefits

New rules will apply from 6 April 2018 when members with ‘safeguarded-flexible benefits’ (such as benefits with a guaranteed annuity rate) seek to transfer, convert or access their benefits flexibly, and when those benefits are valued for the purposes of the independent advice requirement. Trustees will be required to provide a personalised risk warning highlighting the guarantee and its value. [Read more](#)

ACTION: If your scheme offers safeguarded-flexible benefits, liaise with administrators to ensure appropriate processes are in place for valuing benefits and providing risk warnings.

Watch this space

- The FCA is due to publish a draft financial guidance factsheet for trustees. [Read more](#). Our [quick guide](#) discusses the risks of breaching financial services regulatory rules.
- The government intends to set out its proposals for DB pensions reform in a White Paper later this year. [Read more](#)
- The government proposes changes to statutory transfer rights from late 2018, to help combat pension scams. [Read more](#)

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Need help managing DB pension risk? Visit www.allenoverly.com/pensionrisk

Looking for resources on a range of DC-related issues? Visit www.allenoverly.com/DCHQ

Contact us at pensions.team@allenoverly.com for more information or to be added to our mailing list.