

# ALLEN & OVERY

## Joint DB and DC trustee agenda update: current legal issues

### For December 2019 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.

#### Opposite-sex civil partnerships: action required? **NEW!**

The government has introduced [opposite-sex civil partnerships](#), and the first of these are expected to be entered into shortly. Updates may be required to scheme rules/literature.

**ACTION:** Check whether any changes are required. Review coverage of buy-in policies.

#### Reminder: investment objectives, fiduciary management **UPDATED!**

[New rules](#) requiring trustees to run competitive tenders for fiduciary management services and to set strategic objectives for investment consultancy (IC) providers are effective from 10 December 2019. A similar (but not identical) replacement regime is [expected](#) to come into force in April 2020. The Pensions Regulator (TPR) is expected to publish its final guidance shortly.

Schemes with in-house providers may be covered by a carve-out for the December deadline but are likely to be required to set objectives under the 2020 regulations.

**ACTION:** Check that your scheme is compliant by the December deadline (if applicable); maintain a watching brief on the new regime (expected April 2020, subject to political developments).

#### New Stewardship Code **NEW!**

The 2020 [UK Stewardship Code](#) sets out a new definition of stewardship and increased expectations of trustees as asset owners. Trustees should seek advice on the implications for the scheme, and consider carefully whether to sign up.

The Financial Conduct Authority is also continuing its work on stewardship issues.

**ACTION:** Review the new Code and consider whether to become a signatory.

#### GMP equalisation **UPDATED!**

An industry working group has published [initial guidance](#) on GMP equalisation and [guidance on methodology](#). A further hearing in the Lloyds case (on transfers-out) is expected in April/May next year.

The government has issued [guidance](#) on GMP conversion, which leaves some questions unanswered. HMRC has [confirmed](#) that schemes do not need to notify it about conversion, and that [high-level guidance](#) on the annual/lifetime allowances and tax protections will be published shortly. It will also give an update on further guidance in progress, e.g. on trivial commutation.

Trustees should consider their approach to payment of arrears and seek advice on their scheme's forfeiture rule.

**ACTION:** Consider appropriate equalisation methods, work with administrators to prepare data. Seek legal advice as appropriate.

#### 2020 changes to investment duties

New [requirements](#) will apply to statements of investment principles (SIPs) in 2020, when trustees must report on implementation and update the SIP with further content. Trustees should ensure that upcoming requirements are included in the scheme's business plan.

**ACTION:** Review information required; prepare for compliance.

#### GMP reconciliation

HMRC has provided an [update](#) on its services following the end of the Scheme Reconciliation Service (SRS). Schemes that engaged in SRS will receive a final data cut, which may include additional member liabilities, but will not be able to query the information with HMRC.

**ACTION:** Confirm administrators will review HMRC's data cut. Seek advice if a significant financial liability is disputed.

## Chair's statement: what can go wrong

Many schemes providing DC benefits must prepare an annual Chair's statement on governance issues. TPR has imposed numerous fines for non-compliant statements. Our [publication](#) looks at some common problems, as well as factors to consider if a penalty notice is received.

**ACTION:** Ensure that the draft statement receives a legal review before it is finalised.

## Pension Schemes Bill **UPDATED!**

This [Bill](#) included proposed changes to TPR's powers and sanctions, new duties affecting trustees, and changes to statutory transfer rights. The Bill has failed due to the general election, but similar proposals are expected to be introduced in the new Parliament.

**ACTION:** Maintain a watching brief.

## New TPR record-keeping guidance

TPR has [updated](#) its record-keeping guidance, and has also [contacted](#) schemes about record-keeping standards. These actions reflect previous announcements by TPR that record-keeping would be a regulatory priority.

**ACTION:** Review the updated guidance, check compliance. Discuss with advisers as appropriate.

## Watch this space

- TPR plans to consult on [DB funding](#), its [regulatory strategy](#) and changes to [Codes of Practice](#), and to publish [new materials](#) for trustees in relation to restructurings. We are awaiting its response to the [consultation](#) on trusteeship and DC consolidation.
- Further details about the [accreditation framework](#) for professional trustees are expected.
- Changes to [guidance](#) requirements are expected.
- The government has [consulted](#) on DB 'superfunds'.

## Updates to transfer processes **NEW!**

From December 2019, many individuals will no longer appear on the [Financial Services Register](#). TPR has updated its [DB-DC transfers guidance](#) to reflect this, and to set out its expectations of checks by trustees.

**ACTION:** Review the updated guidance; ensure administrators update transfer processes.

## New DB investment guidance

TPR has published [updated DB investment guidance](#).

**ACTION:** Review and discuss with advisers.

## Equalisation review required?

Retirement ages can only be retrospectively 'levelled down' if this is objectively justified, according to a [new court decision](#). Trustees of schemes that initially equalised informally, e.g. using an 'amendment by announcement' power, may wish to take advice unless equalisation actions have already been reviewed.

**ACTION:** Check whether legal advice is required.

## Date for your diary

Our next Pensions Academy will be held on the morning of 25 February 2020. Invitations will be sent in due course, but please save the date.

## Have your say

A [consultation](#) on changes to annual benefit statements closes on 20 December 2019. It covers statement design, costs and charges information, and changes to guidance for Statutory Money Purchase Illustrations.

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