

18 February 2019

## Pensions: what's new this week

Welcome to your weekly update from the Allen & Overy Pensions team, bringing you up to speed on all the latest legal and regulatory developments in the world of occupational pensions.

Strengthening TPR powers | TPR commentary on valuation processes | CMA: new rules on investment services | Update: Brexit 'no deal' regulations | Latest HMRC newsletter | Finance Act 2019 receives Royal Assent

### Strengthening TPR powers

---

The government has set out its vision for new powers for the Pensions Regulator (TPR) in a long-awaited [consultation response](#). As well as changes affecting corporate transactions, the government is proposing to create two new criminal offences: wilful or reckless behaviour in relation to a pension scheme, and failure to comply with a contribution notice.

Key details remain to be clarified, and changes to primary and/or secondary legislation will be required. Our [briefing](#) on the response highlights the key proposals relevant to both trustees and sponsors.

### TPR commentary on valuation processes

---

TPR has released its latest quarterly compliance and enforcement [bulletin](#), which again highlights TPR intervention over DB scheme funding – the previous edition commented that 'getting tougher on the basics' had had a marked effect in reducing delays in the submission of recovery plans where the trustee and employer fail to agree (for more information, see [WNTW](#), 19 November 2018).

This quarter, TPR notes that its intervention has led to trustees negotiating robustly with employers, shorter recovery plans, and a better ratio of deficit repair contributions to dividends. It has also been encouraging trustees to 'front load' recovery plans (that is, to ensure that greater contributions are paid at the beginning of the plan). The bulletin notes that TPR is likely to have concerns where a recovery plan for strong employers extends beyond six years, and reiterates that it is prepared to intervene to encourage a better balance between the interests of schemes and shareholders. In particular, TPR says that it will take action where it sees substantial dividends with low scheme contributions and long recovery plans – the bulletin also includes a case study about this (for more information about a recent TPR intervention on this issue, see [WNTW](#), 10 December 2018). TPR is also communicating directly with some trustees ahead of valuations as part of its new supervisory approach (for more information, see [WNTW](#), 24 September 2018).

## CMA: new rules on investment services

---

Following its investigation into investment consultants and fiduciary management (see [WNTW](#), 17 December 2018), the Competition and Markets Authority (CMA) is now [consulting](#) on the terms of an order implementing its proposals. The order would impose obligations on trustees to tender for fiduciary management (FM) services and to set objectives for investment consultants.

The draft order includes the following restrictions for trustees of occupational pension schemes:

- Trustees may not enter into or continue an FM agreement without carrying out a competitive tender, where the agreement (or this agreement aggregated with other FM agreements) would cover 20% or more of scheme assets. Trustees would need to invite, and use their best endeavours to obtain bids from, three or more unrelated FM providers and evaluate the bids received. Trustees can decide whether an open or closed tender best suits their scheme.
- Where there are existing arrangements in excess of the 20% threshold, trustees may not continue to obtain FM services from the relevant provider after a specified period (broadly, five years; there is an initial two year grace period) unless there has been a competitive tender.
- Trustees may not enter into a contract with an investment consultancy (IC) provider for IC services (or continue to obtain these services) unless the trustees have set strategic objectives for the provider – this would not apply to contracts due to end within a six month period after the order is made. Strategic objectives will be closely linked to the scheme's investment objectives in most cases; they should include a clear definition of the expected outcome and the timescale for delivery; they will be reviewed at least every three years or after a significant change to the scheme's investment strategy; and trustees will ask providers to report periodically on their performance in meeting the objectives.

These obligations would not apply to the trustees or managers of certain schemes (such as public service pension schemes and certain master trusts). The order also includes fee disclosure and performance reporting requirements for providers; it would remain in force until the earlier of equivalent provisions being brought into force by TPR or the Financial Conduct Authority (FCA), or ten years from the date of the order. The consultation closes on 13 March 2019.

## Update: Brexit 'no deal' regulations

---

We reported last month that Parliament had approved the draft 'no deal' pensions regulations – the regulations have now been [made](#), which means that they will come into force on 'exit day' (29 March 2019), unless the government subsequently takes steps to prevent this. A separate set of [regulations](#) make changes in respect of Northern Ireland.

The regulations amend numerous items of pensions legislation in connection with the UK's exit from the EU and are intended to operate in the event that there is no withdrawal agreement. A key change is that the regulations for cross-border pension schemes will be revoked.

TPR has recently provided guidance for trustees in relation to Brexit (see [WNTW](#), 28 January 2019).

For news on other Brexit-related developments, visit [www.allenoverly.com/Brexit](http://www.allenoverly.com/Brexit).

# Latest HMRC newsletter

---

HMRC has published [issue 42](#) of its Countdown bulletin for administrators dealing with reconciliation processes after the end of DB contracting-out. The bulletin contains details about scheme financial reconciliation (largely in relation to Contribution Equivalent Premiums). Schemes in deficit must pay the full amount due by 21 May 2019; if the full amount is not paid, liability will be reinstated in the scheme for some, or all, members by 26 June 2019. However, HMRC will write off debts below GBP1,000 or debt raised before 18 March 2013. For schemes in surplus, the surplus will be retained in the National Insurance Fund if the surplus is GBP3 or under (unless the scheme tells HMRC it disagrees), or relates to a scheme that has not engaged with HMRC.

## Finance Act 2019 receives Royal Assent

---

The [Finance Act 2019](#) has received Royal Assent.

The Act makes changes to the income tax exemption in section 307 of the Income Tax (Earnings and Pensions) Act 2003 in relation to provision by an employer for retirement or death benefits – this includes excepted group life policies.

From 6 April 2019, the government has broadened the types of employer contributions or paid premiums which fall within the exemption, by broadening the definition of ‘retirement or death benefit’. Under the current definition, the beneficiary must be an employee or a member of the employee’s family or household. Under the changes, the beneficiary may be any individual or a charity. The government announced this measure in the Autumn Budget 2017, and the policy paper is available [here](#).

## Contact information

---

|                                     |   |
|-------------------------------------|---|
| Helen Powell<br>PSL Counsel, London | 0203 088 4827<br><a href="mailto:helen.powell@allenovery.com">helen.powell@allenovery.com</a> |
| Ruth Emsden<br>PSL, London          | 0203 088 4507<br><a href="mailto:ruth.emsden@allenovery.com">ruth.emsden@allenovery.com</a>   |

This ePublication is for general guidance only and does not constitute definitive advice.