

ALLEN & OVERY

Joint DB and DC trustee agenda update: current legal issues

For January 2020 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.

Survivor benefits: action required? **UPDATED!**

The first [opposite-sex civil partnerships](#) in England and Wales are expected to be entered into shortly. Updates may be required to scheme rules/literature.

The government is expected to publish regulations providing for opposite-sex civil partnership and same-sex marriage in Northern Ireland. Legislation to permit opposite-sex civil partnerships in Scotland is still in progress.

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

Pension Schemes Bill **UPDATED!**

The [Pension Schemes Bill](#) introduced in the last Parliament included proposed changes to the Pensions Regulator's (TPR) powers and sanctions, new duties affecting trustees, and changes to statutory transfer rights. The government is expected to re-introduce the Bill in the new Parliament.

ACTION: Maintain a watching brief.

PPF levy determination 2020/21 **NEW!**

The Pension Protection Fund has [published](#) its final levy determination, and associated guidance, for 2020/21.

ACTION: Ensure your timetable for Q1 2020 enables you to meet the relevant deadlines.

Initial margin changes: are you in scope? **NEW!**

Initial margin requirements for certain derivatives contracts are changing. Trustees need to identify now whether their scheme will be affected, as considerable preparation may be required. Our [short guide](#) will help identify whether your scheme may be in scope and, if so, how to prepare.

ACTION: If your scheme is likely to be in scope, work with advisers to plan your approach.

Preparing for the Chair's statement **NEW!**

Many schemes providing DC benefits must prepare an annual Chair's Statement. We have recently updated [A quick guide to preparing for the Chair's Statement](#), which lists suggested actions for gathering the evidence needed for the statement. With TPR issuing numerous fines for non-compliance, trustees may also be interested in our companion guide, [Producing the Chair's Statement: what can go wrong](#).

ACTION: Review your preparatory processes and consider any improvements.

New Stewardship Code

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 [methodology](#). A further hearing in the Lloyds case (on transfers-out) is expected in April/May. The government has issued [guidance](#) on GMP conversion.

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 (as well as a further progress update).

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.

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

[New rules](#) require trustees to run competitive tenders for fiduciary management services and to set strategic objectives for investment consultancy providers. A similar (but not identical) regulatory regime is [expected](#) to come into force in April 2020. TPR has recently [published](#) its finalised guidance to support the new duties.

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

ACTION: Check that your scheme is compliant; maintain a watching brief on the new regime (expected April 2020).

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.

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.

Upcoming 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.

Updates to transfer checks

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 TPR record-keeping guidance

TPR has [updated](#) its record-keeping guidance, and has also [contacted](#) schemes about record-keeping standards, in line with its stated regulatory priorities.

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'.

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