is

TRUSTEE KNOWLEDGE UPDATE

Legal Update – November 2022 – January 2023

LEGISLATION

Pensions Dashboards Regulations

(21 November 2022)

These regulations set out the requirements for qualifying pensions dashboards services, as well as the connection and data requirements for pension schemes and compliance and enforcement provisions. They come into force on 12 December 2022.

The regulations include staging deadlines based on scheme size and benefit type. The first staging date is 31 August 2023 for large DC master trusts, with all schemes with at least 1,000 relevant members staging by 30 September 2024 at the latest. It has been confirmed that the Secretary of State will give at least 6 months' notice of the Dashboards Available Point (DAP) when the public will have access to the system.

Comment

The Government is forging ahead with pensions dashboards. It is essential that trustees check their likely staging date and engage with their administrators in order to prepare. The criteria for deferring connection are very narrow and most schemes will be required to connect on the staging date set out in the regulations. Whilst most schemes will rely on their administrator to put in place a dashboard connection, the trustees are responsible for compliance and so need to make sure the arrangements set up by their administrator are appropriate.

Revaluation and indexation rates

(25 November 2022)

This Order sets out the statutory minimum revaluation rates for deferred pensions and minimum annual increase rates for DB pensions in payment. For revaluation, the Higher Revaluation Percentage for the period 1 January to 31 December 2022 is 5% and the Lower Revaluation Percentage for that period is 2.5%. Statutory minimum indexation rates are 5% for pensions accrued between 6 April 1997 and 5 April 2005 and 2.5% for rights accrued on or after 6 April 2005.

GOVERNMENT AND PARLIAMENT

Pensions Dashboards: guidance on deferred connection

(12 December 2022)

The DWP has published guidance for trustees considering applying for the deferral of their staging deadline for connection to the pensions dashboards infrastructure. Connection can only be deferred where trustees can show that, before 12 December 2022, they had embarked on a programme to transfer to a new administrator and/or entered into a contract containing an obligation to retender the administration of the scheme. The trustee must also show that complying with the staging deadline would be disproportionately burdensome or would put the personal data of members at risk.

Value for Money: A framework on metrics, standards, and disclosures

(30 January 2023)

This DWP policy consultation has been developed in partnership with TPR and the FCA. It aims to set out how schemes will have to provide better value and service quality: with metrics for disclosure of investment performance, costs and charges, and quality of service. The idea is to move the dial from a focus purely on cost to a holistic assessment of VFM.

Responses are sought by **27 March 2023**.

Broadening the investment opportunities of defined contribution pension schemes

(30 January 2023)

The government has published its response to consultation on facilitating investment in illiquid assets and on an exemption from the DC charge cap for performance-based fees, along with regulations and statutory guidance.

Disclose and explain policies on illiquid investments

Trustees of 'relevant schemes' (i.e. most schemes with DC benefits, other than where they relate only to AVCs) will be required to include information on their illiquid asset policy in the default fund Statement of Investment Principles (SIP). Illiquid assets are defined as '*assets of a type which cannot easily or quickly be sold or exchanged for cash and where assets are invested in a collective investment scheme, includes any such assets held by the collective investment scheme*'.

The illiquid asset policy must include a statement as to whether or not investments include illiquid assets. Where investments do include illiquid assets, the policy must include details of the types of assets and how they are held. Where no illiquid assets are held the policy must include an explanation of why the trustees have chosen not to invest in them. The new requirements will apply on the first occasion that the default SIP is updated after 1 October 2023, with a requirement that the policy must be included from 1 October 2024 at the latest.

Reporting on asset allocation

The regulations also provide for annual asset allocation disclosures for the default funds of 'relevant schemes'. Trustees will have to calculate the percentage of assets in the default fund allocated to each of the asset classes:

a) cash;

b) corporate or Government bonds;

c) shares listed on a recognised stock exchange;

d) shares which are not listed on a recognised stock exchange;

e) infrastructure;

f) property which does not fall within (e);

g) instruments creating or acknowledging indebtedness which do not fall within (b); and

h) any other assets which do not fall within (a) to (g).

Trustees must have regard to the statutory guidance when making the asset allocation calculation.

This information must be included in the Chair's statement in relation to the first scheme year which ends after **1 October 2023** and published on a publicly available website.

Performance-based fees and charge cap

The regulations include amendments to the Charges and Governance Regulations from 6 April 2023, excluding '*specified performance-based fees*' from charges subject to the cap. Trustees must take into account the statutory guidance when deciding whether a fee falls within the prescribed definition.

The trustees must include information on the amount of any performance-based fees in the Chair's statement. This information must also be published on a publicly available website. This applies to the first scheme year ending after **6 April 2023**.

Where trustees have already adopted performance fee smoothing for the purposes of the charge cap the new provisions do not apply until the first charges year which ends after the earlier of the date which is 5 years after the end of the first charges year in which the trustees first chose to apply performance-fee smoothing and 5 April 2028.

Addressing the challenge of deferred small pots

(30 January 2023)

DWP has published a new call for evidence seeking feedback on workable solutions to the problem of proliferating deferred small DC pots.

The Government wants to deepen the evidence base around the scale of growth in the number of small pots. The focus is on two large-scale automated consolidation solutions: a default consolidator model, and 'pot follows member'.

Responses are sought by **27 March 2023**.

Extending Opportunities for Collective Defined Contribution Pension Schemes

(30 January 2023)

DWP is consulting on proposals to extend Collective Defined Contribution (CDC) schemes to include multi-employer models. It asks what new types of multi-employer CDC should look like, and how they could be used to maximise the benefit for savers.

Responses are sought by **27 March 2023**.

THE PENSIONS REGULATOR

Dashboards compliance and enforcement policy consultation

(24 November 2022)

TPR is consulting on its dashboards compliance and enforcement policy. The policy will sit alongside other relevant TPR policies and procedures including enforcement procedures, monetary penalties policy, enforcement policy and prosecution policy.

According to the draft policy, TPR expects trustees to have read, considered and implemented TPR guidance, as well as standards and guidance issued by MaPS. TPR expects schemes to operate adequate internal controls including but not limited to:

- reviewing and assessing the quality of their data from multiple dimensions, and putting adequate controls around them for continuous improvement;
- having appropriate controls when selecting, appointing and managing service providers;
- having risk management processes in place, including processes for monitoring the resolution of issues between the scheme and any relevant third parties; and
- having processes in place to identify breaches of the law and, if necessary, report them.

TPR also expects schemes to keep clear audit trails of how they took steps to prepare to comply with the dashboards duties, to keep a record of compliance as set out in MaPS' reporting standards and keep a record of steps taken to resolve any issues that arise. The draft policy includes case studies of how TPR might use its powers in practice.

The consultation closes on **24 February 2023** and TPR aims to publish the final policy in spring 2023.

Maintaining liability-driven investment resilience

(30 November 2022)

TPR has issued guidance for trustees on maintaining liability-driven investment resilience. Rather than set a specific level of liquidity buffer which should be maintained, TPR says that schemes should follow the expectations set out by the relevant National Competent Authority (NCA) which regulates the particular fund (this one from Ireland for example).

TPR guidance says that if trustees depart from the liquidity buffer set out by the relevant NCA they should:

- work with their advisers to demonstrate the buffer the scheme has in place;
- complete a risk assessment of how the scheme will respond to stressed market events;
- detail a step-by-step plan for bringing the scheme to higher levels of resilience in the event of volatility returning to the market; and
- document these arrangements and review regularly.

The guidance also recommends that trustees review their governance processes and consider what practical steps they can implement as a result of lessons learned.

TPR suggests that schemes could, as an alternative, establish a line of credit with their sponsoring employer to ensure liquidity. Any facilities must only be utilised on a short-term basis and for liquidity purposes.

Consultation on DB Funding Code

(16 December 2022)

TPR has published its draft funding code of practice for DB pension schemes ('draft Code') and a consultation document, as well as a response to its 2020 funding code consultation.

Under provisions to be introduced under the Pension Schemes Act 2021, trustees must specify the funding level and investments they intend to have at the date the scheme reaches significant maturity; and calculate liabilities for the scheme's funding and investment strategy on the principle that by no later than that date, the scheme is fully funded on a low dependency funding basis and invested in a low dependency investment allocation. The draft Code is designed to support schemes in setting the journey plan towards their long-term objective, reducing reliance on their sponsoring employer as the scheme reaches maturity. The technical provisions set at each triennial scheme valuation effectively become steps along that journey.

As expected, the draft Code refers to a scheme achieving significant maturity by no later than the end of the scheme year in which it reaches a duration of liabilities of 12 years. TPR estimates that 11% of DB schemes currently have a duration of less than 12 years and so will already have arrived at that benchmark.

The draft Code contains a lot of detail on employer covenant monitoring. TPR expects that, when considering employer covenant, trustees should examine the covenant visibility, reliability and longevity as distinct elements, monitored over different time periods. TPR will also update its covenant guidance to supplement the principles set out in the draft Code.

In addition, TPR is consulting on a proposed twin track regulatory approach under which it can filter out schemes that require minimal engagement, via a 'fast track' procedure. Trustees following Fast Track will have to demonstrate how their scheme meets specified criteria on technical provisions, investment stress and length of recovery plan (which should be no longer than six years - or three years where the scheme has already attained significant maturity).

Where a valuation submitted to TPR meets the Fast Track parameters, TPR is unlikely to scrutinise it further. However, TPR is at pains to say that it is equally valid for schemes to adopt a Bespoke approach instead, allowing trustees flexibility to select their own scheme-specific funding solutions.

The consultation closes on 24 March 2023 and the final regulations and code are currently planned to be laid in mid-June, coming into force in October 2023.

Comment

The Code will play a major part in determining how DB schemes set their long term goals and manage their investment and funding as they journey to those goals. Trustees and employers should analyse the detail and consider whether to respond.

Supporting defined contribution savers in the current economic climate

(12 January 2023)

TPR has issued new guidance for trustees of DC schemes setting out how schemes should communicate and support savers and how trustees can strengthen their governance and ensure their investment strategies support stronger saver outcomes. There is a 20 point checklist for trustees at the end of the guidance.

The guidance says that trustees should, in accordance with the DC code, review their governance structures, in particular looking at how investment risks are assessed and investment decisions made. Trustees may also wish to ask their investment adviser to carry out a strategy review considering the current market conditions to ensure the investment arrangements and the outcome they are targeting remain suitable.

TPR says that trustees should ensure savers have enough information to make informed decisions about their savings, beyond what is required by law. Trustees should:

- help savers understand what a fall in their DC pension means for them given their personal circumstances – this will depend on where they are in their pensions journey and their investment strategy;
- encourage savers to communicate with them, including when and how they wish to take their benefits;
- encourage savers to seek guidance or take advice and not make hasty decisions; and
- communicate with savers before and after, as well as through their annual benefit statements.

Comment

Trustees of schemes with DC benefits should review the statement and make sure they comply with TPR's expectations.

THE PENSION PROTECTION FUND

PPF Levy Policy Statement and Rules 2023/24

(13 December 2022)

The PPF has issued its 2023/24 Levy Policy Statement, Determination and associated documents.

The key headlines are that:

- the expected total levy for 2023/24 is £200m, down from £390m for 2022/23. 98% of schemes are expected to see a fall in their levy;
- the sensitivity of the levy to changes in insolvency risk is being reduced by halving the incremental increase between levy bands. This will reduce the volatility of bills and is a first step to enabling a simpler approach to insolvency risk in the levy;
- the Levy Scaling Factor is reduced by 23% and Scheme-based Levy Multiplier by 10%; and
- asset and liability stress factors will be updated in line with TPR's updated assets categorisation in the scheme return.

Comment:

The Policy Statement largely reflects the PPF's thinking in its September consultation and is generally good news for levy payers. Trustees and employers should now have the information they need to make final decisions on any further steps to reduce the levy (for example, by putting in place or re-certifying contingent assets).

MISCELLANEOUS

ICO

International data transfer guidance – update

(17 November 2022)

The ICO has updated its international transfer guidance, including adding a new section on Transfer Risk Assessments (TRAs). The new guidance applies where a restricted transfer of personal data is being made to a receiver located outside the UK.

There are three circumstances in which a restricted transfer can be made:

1. It is covered by adequacy regulations. These currently cover transfers to EU and EFTA states, Gibraltar, Andorra, Argentina, Guernsey, Isle of Man, Israel, Jersey, New Zealand, Switzerland and Uruguay, and certain transfers to Japan and Canada.
2. It is covered by appropriate safeguards.
3. It is covered by an exception.

The guidance provides that before making a transfer using one of the appropriate safeguards (including binding corporate rules and standard data protection clauses), the sender must be satisfied that the relevant protections in the UK GDPR are not undermined for people whose data is transferred and that this should be done by undertaking a TRA. The ICO has provided a TRA tool template document with questions and guidance, that sets out one way to carry out a TRA (it is not a requirement to use the tool). The questions covered include:

- What are the specific circumstances of the restricted transfer?
- What is the level of risk to people in the personal information you are transferring?
- What is a reasonable and proportionate level of investigation, given the overall risk level in the personal information?
- If enforcement action outside the UK may be needed, are you satisfied that you and the data subjects will be able to enforce the transfer mechanism in the destination country?

If, having undertaken a TRA, the sender decides that the transfer mechanism will not provide appropriate safeguards, then the transfer must not be made unless one of the limited exceptions applies.