Linklaters

Pensions in five: **pension developments this month**

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Pension Schemes Bill

The Pension Schemes Bill is continuing its passage through Parliament . In advance of committee stage, a running list of amendments was published. The most notable of these is a new clause proposed by the DWP in relation to climate change risk. This provides that regulations may impose requirements on trustees “with a view to securing that there is effective governance of the scheme with respect to the effects of climate change”.

The requirements which may be imposed by regulations include:

> reviewing the exposure of the scheme to risks of a prescribed description;

> assessing the assets of the scheme in a prescribed manner;

> determining, reviewing and (if necessary) revising a strategy for managing the scheme’s exposure to risks of a prescribed description;

> determining, reviewing and (if necessary) revising targets relating to the scheme’s exposure to risks of a prescribed description;

> measuring performance against such targets; and

> preparing documents containing information of a prescribed description.

Regulations may also require trustees to publish information of a prescribed description relating to the effects of climate change on the scheme. There is also provision for a compliance regime to be introduced by regulations, with penalties for non-compliance of up to £5,000 for an individual or £50,000 in any other case. The government has confirmed that these powers “are not intended to direct pension schemes as to how they should invest”.

GMP equalisation

HMRC has published guidance on GMP equalisation. This covers pensions tax issues relating to the annual allowance (including the deferred member carve-out) and the lifetime allowance (including fixed, primary, individual and enhanced protection). Helpfully, the guidance starts from the premise that any increase in the amount of pension due at retirement is not a new entitlement. As a result, GMP equalisation benefit adjustments should not constitute new accrual of benefit that needs to be tested for annual allowance purposes or which would prejudice applicable lifetime allowance protections. However, such adjustments might have an impact on the amount of any previous and future benefit crystallisation events. Also, if the reason for the increase is a mixture of GMP equalisation and other adjustments (e.g. in the case of GMP conversion), there may be consequences for some members.

HMRC says it is continuing to explore the pensions tax issues not covered in the guidance, including the treatment of lump sum and death benefit payments, and it is aiming to give more guidance on these “as soon as possible”. HMRC is also continuing to explore the tax implications for schemes choosing GMP conversion.

Auto-enrolment thresholds review

The government has published a written statement following its review of the auto-enrolment thresholds for 2020/21. The government has concluded that:

> the earnings trigger will remain at £10,000 for 2020/21;

> the lower limit of the qualifying earnings band will be £6,240 for 2020/21 (currently £6,136) – this maintains the link with the NICs lower earnings limit; and

> the lower limit of the qualifying earnings band will remain at £50,000 for 2020/21 – this maintains the link with the NICs upper earnings limit.

The earnings trigger is one of the criteria which determines who is eligible to be auto-enrolled, while the qualifying earnings band is the band of earnings in respect of which contributions are made.

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Future of trusteeship and governance

The Pensions Regulator has published its response to last year’s consultation on the future of trusteeship and governance. The consultation included proposals in relation to trustee knowledge and understanding (TKU), scheme governance structures and defined contribution (DC) consolidation. For the time being at least, many of the more controversial proposals, such as requiring a professional trustee to sit on every pension scheme board, have been shelved. But trustees can expect some changes, particularly in relation to TKU, with much of the detail to follow in a consultation expected in early 2021.

Trustee knowledge and understanding

The response confirms that the Regulator will review and update its TKU Code of Practice and related guidance, to ensure that its expectations for the content and level of TKU that trustees need to attain remains appropriate. Once the revised TKU guidance is in place, the Regulator plans to run a regulatory initiative on TKU to check compliance.

The Regulator has dropped plans to require qualifications or CPD to demonstrate how TKU is acquired and maintained. Instead, it plans to articulate a range of acceptable methods for demonstrating TKU. This may include setting an indicative number of hours for ongoing learning – suggested as 15 hours per year for lay trustees and 25 hours per year for professional trustees.

The Regulator also intends to review its trustee toolkit over the course of 2020/21.

Scheme governance structures

Although not ruled out altogether, the Regulator has for the time being dropped its proposal to introduce a requirement for schemes to report on the steps they are taking to increase diversity on their boards. Instead, it proposes setting up an industry working group to deliver:

> A clear definition of what is meant by diversity and inclusion.

> Good and best practice guidance on board composition and how boards can make the most of the pool of potential trustees they have available to them.

> Practical tools and case studies to promote the recruitment of diverse trustees.

> Inclusive material that can help to promote the benefits of becoming a trustee.

> Engagement with employers to recognise the benefits of the trustee role in personal development of employees.

The Regulator has also dropped its proposal to require a professional trustee to sit on every pension scheme board, although it says it may revisit this idea in the future.

Proposals to change the way schemes with sole trustees are regulated have also been shelved for the time being, but schemes that use a sole trustee will continue to be scrutinised.

DC consolidation

The Regulator says it will continue to monitor DC consolidation activity, and will work with both industry and the DWP to find solutions to overcome barriers to consolidation.

Professional trustee accreditation

The Pensions Management Institute (PMI) has announced the launch of an accreditation programme for professional trustees, known as APTitude. The APTitude programme was developed following the publication of standards for professional trustees in 2019. It is open to all professional trustees who meet the Regulator’s description of a professional trustee. To hold the accreditation, professional trustees will have to pass an initial application, which will require them to:

> have successfully completed the Regulator’s Trustee Toolkit;

> have passed the PMI’s Level 3 Certificate in Pension Trusteeship Unit 1;

> have passed the PMI’s Level 3 Certificate in Pension Trusteeship Unit 2 (this is a new examination designed to assess a candidate’s soft skills);

> comply with “fit and proper” requirements based on the master trust requirements;

> basic DBS check;

> proof of credible and relevant employment history within the industry for the past five years; and

> references from two reputable figures within the industry, such as an existing accredited professional trustee, a pensions lawyer or a scheme actuary.

Applications opened from 24 February 2020.

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