STEPHENSON HARWOOD
pensions law group

Snapshot

September 2021

Overview

- A number of changes are coming from 1 October 2021: are you ready?
- New criminal offences and civil enforcement powers of the Pensions Regulator (the **Regulator**) come into force from 1 October 2021.
- Certain schemes will need to comply with governance and disclosure obligations in line with the recommendations of the Task Force on Climate-related Financial Disclosures.
- Defined benefit schemes will need to publish an implementation statement on their website by 30 September 2021.

- The notifiable events regime is being expanded
- Draft regulations have been published expanding the notifiable events regime by extending the events that need to be notified to the Regulator, the time period over which notification is required and the amount of information to be communicated to the Regulator.

- Upcoming changes for defined contribution schemes – value for members and investment return disclosures
- New regulations will come into force on 1 October 2021 which will require a value for members assessment to be undertaken in the report on the **first scheme year that ends after 31 December 2021.**
  - Trustees of relevant schemes will also need to state in their annual chair's statement the investment returns net of costs and charges for default arrangements and self-selected funds.

A number of changes are coming from 1 October 2021: are you ready?

A number of new obligations are coming into force with effect from 1 October 2021. Those who are affected should ensure they are prepared for these.

Topic	Details	Which schemes are affected
New criminal offences and civil enforcement powers of the Regulator	The Regulator has been granted extended powers under the Pension Schemes Act 2021 and most of these come into force on 1 October 2021. These include the creation of new offences in respect of defined benefit schemes for: - The avoidance of an employer debt - Conduct risking accrued scheme benefits - Failure to comply with a contribution notice	Defined benefit pension schemes

	There is some concern in the industry that the new extended powers will see sponsors of defined benefit schemes become nervous of distributing large dividends or providing generous executive remuneration in case it is viewed as "value leakage".	
Compliance with TCFD obligations	Affected schemes will have to comply with governance and disclosure obligations in line with the 11 recommendations of the Task Force on Climate-related Financial Disclosures.	- Occupational pension schemes with net assets exceeding £5 billion - Authorised master trusts - Authorised collective money purchase schemes This list will be extended from 1 October 2022
Implementation statement must be published on website by 30 September 2021	An implementation statement setting out: (i) how trustees have followed and acted upon the stewardship policy in their Statement of Investment Principles; and (ii) their voting behaviors will need to be published.	Defined benefit pension schemes

Extension of the notifiable events regime

The notifiable events regime requires certain defined benefit sponsor or scheme related events to be notified to the Regulator. It essentially works as an early warning system allowing the Regulator to monitor and react to any events that could threaten the funding position of the scheme.

As part of the recent drive to increase the powers of the Regulator, draft regulations extending the notifiable events regime have been published for consultation. These draft regulations (The Pensions Regulator (Notifiable Events) (Amendment) Regulations 2021) amend the notifiable events regime by extending the events that need to be notified, the time period over which notification is required and the amount of information to be communicated to the Regulator.

Changes to the notifiable events

The draft regulations:

- remove the need for an employer to notify the Regulator if it receives advice that it is wrongfully trading;
- introduce two new notifiable events:
    - a decision in principle by an employer to sell a material proportion of its business or assets. A material proportion of the business or assets is defined as one that

accounts for more than 25% of the employer's annual revenue or gross value of its assets (as appropriate) either on its own or taken together with any other sales decided upon within the previous 12 months; and

- a decision in principle by an employer to grant or extend certain security over its assets which will rank above the pension scheme on an insolvency.

Changes to the timing of notification

The new notifiable events also bring forward the time from when certain notification obligations apply. The new events (and the existing corporate sale event as amended by the draft regulations) are triggered once a "decision in principle" is reached. This is defined as the stage before any negotiations have even been entered into and provides the Regulator with an earlier warning compared to current notifiable events.

Changes to the information to be notified

The draft Regulations also provide for notices and accompanying statements to be provided in respect of the two new notifiable events listed above, as well as in respect of the current notifiable event where a parent company decides to relinquish control of the sponsor of a defined benefit pension scheme. This requires a statement to be given regarding:

- the event and, where relevant, the main terms proposed;
- the adverse effects on the pension scheme;
- the adverse effects of the event on the employer's ability to meet its legal obligations to support the scheme;
- steps taken to mitigate the adverse effects; and
- any communication with the trustees of the eligible scheme about the event.

The consultation closes on 27 October 2021 after which time we can expect to see the Regulations finalised. This area is something that sponsors of defined benefit pension schemes should keep in mind as they will need to be aware of this new extended regime before undertaking any corporate transactions.

Upcoming changes for defined contribution schemes – value for members and investment return disclosures

The DWP has published responses to two consultations that were carried out regarding the improved outcomes for members of defined contribution pension schemes.

The Government has confirmed that it will move forward with new regulations (the Occupational Pension Schemes (Administration, Investment, Charges and Governance) (Amendment) Regulations 2021) that will come into force on 1 October 2021. These regulations will, amongst other things:

- seek to encourage the consolidation of smaller defined contribution schemes. This will be done by requiring trustees or managers of schemes with assets of less than £100 million and that have been operating for at least three years to undertake an annual "value for members" assessment. This will require the scheme to be compared against at least three large schemes with regards to certain quality and costs criteria. This assessment will need to be reported on in the annual report and in the annual return. If the scheme is found not to offer good value for members, the trustees must state what steps they are going to take as a result. The first value for members assessment will need to be undertaken in the report on the **first scheme year that ends after 31 December 2021.**

- Trustees of relevant schemes (broadly money purchase schemes) will need to state in their annual chair's statement the investment returns net of costs and charges for default arrangements and self-selected funds.

Statutory guidance on these requirements will also come into effect on 1 October 2021.

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