XPS Pensions

Briefing

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Ten key dates for 2019

In brief

- **2018 was marked by a number of important pensions consultations, but the focus is expected to shift to new pensions legislation in 2019, as the parliamentary timetable allows scope for non-Brexit-related legislation**
- **A Pensions Bill is expected in May or June to include legislation implementing DB superfunds, collective DC schemes, pensions dashboards and enhanced powers for TPR, especially during corporate transactions**
- **We are also expecting a consultation from TPR on an updated code of practice on DB funding**
- **Key cases on the horizon include a judgment from the ECJ in the Safeway case on whether equalisation changes can be made retrospectively, whilst 2019 will also see the continuing unfolding of the implications of the Lloyds and Hampshire cases (on GMP equalisation and PPF compensation respectively)**

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Whilst Brexit discussions have continued to occupy most of the available government and parliamentary time, 2018 did see a number of important pensions consultations following on from the publication of the White Paper earlier in the year, as well as the most significant pensions judgment for some years in the form of the Lloyds ruling on GMP equalisation.

2019 looks set to be a year in which we see a renewed focus on pensions regulation, in particular through a new Pensions Bill, which is expected to cover defined benefit (DB) consolidation, collective defined contribution (DC) schemes, new powers for the Pensions Regulator (TPR) and pensions dashboards. We should also see a consultation from TPR on its revised code of practice on DB funding. In this briefing note, we look at some of the key milestones we expect to see in the year ahead.

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1 9 January: Pensions cold-calling ban finally in force

Somewhat belatedly, the Government has finally legislated to prevent the making of unsolicited direct marketing calls to individuals in relation to pension schemes, except in limited circumstances. It remains to be seen how successful this measure will be in deterring pension scammers and in particular how well members will understand that any cold call they receive is not just possibly unwelcome but also illegal. We are also still awaiting legislation to limit the statutory right to a transfer to cases where the receiving scheme is an authorised personal pension or master trust, or an occupational pension scheme to which the member has a genuine and demonstrable employment link.

2 13 January: IORP II Directive in force

It now seems hard to believe that the IORP (Institutions for Occupational Retirement Provision) II Directive once appeared to pose a great threat to UK pension schemes. The proposals for pension schemes to be funded on an insurance-style basis were dropped long ago and the UK has now made clear that it will be taking a 'light-touch' approach to implementing the remaining much less onerous requirements. We expect a code of practice from TPR in 2019 to implement the governance requirements in the Directive, but it is likely that the disclosure requirements (such as annual benefit statements) will be addressed through existing developments, such as the pensions dashboards, rather than by legislation.

3 1 February: Consultation closes on superfunds

The Department for Work and Pensions (DWP) launched a consultation in December 2018 on superfunds, i.e. DB schemes set up to consolidate DB pensions whilst breaking the link with the ceding employer. The proposals involve both tight 'gateway' conditions to restrict the circumstances in which schemes can be transferred to a superfund and a financial adequacy framework that requires superfunds to demonstrate at least a 99% probability of paying or securing members' benefits in full. We expect to see legislation to set out the authorisation regime for superfunds in the forthcoming Pensions Bill 2019, but we will also need to see how the nascent consolidator market responds to the proposed regulatory regime.

4 29 March: The UK withdraws from the EU

No list of dates for 2019 can be complete without 29 March, the exit day specified in the European Union (Withdrawal) Act 2018 on which the UK will leave the European Union (EU) (at precisely 11pm). However, at the time of writing, it is unclear exactly what form of Brexit we will have and whether we will have a transitional period and, if so, whether it will end on 31 December 2020 as currently proposed. It is hard therefore to make any firm predictions about the impact on pension schemes, although we do not expect any immediate changes to pensions legislation on withdrawal. The impact on employer covenant and investment volatility is likely to be more significant.

5 31 March: Master trust application deadline

All existing master trusts must apply for authorisation by 31 March or exit the market. TPR will make a decision on an application within six months of receiving it, meaning that the authorisation process for existing schemes will have finished by the end of September 2019.

6 31 March: Scheme return and PPF deadline

31 March is the deadline for submitting the annual scheme return on Exchange in order for it to be taken into account in the 2019/20 levy calculation by the Pension Protection Fund (PPF). This is also the deadline for re-executing existing contingent assets with a fixed cap on new standard forms, although the deadline is extended to the following Monday (1 April) for the delivery to the PPF of hard copy documents supporting online certifications of contingent assets.

7 31 March: GMP reconciliation deadline for HMRC

The final date to submit clerical queries to HM Revenue and Customs (HMRC) about the data they held on contracted-out benefits and Guaranteed Minimum Pensions (GMPs) was 31 December 2018 (for schemes utilising the Scheme Reconciliation Service (SRS) this was 31 October 2018). HMRC have indicated that they will respond to all outstanding queries by 31 March 2019 when a final membership scan will be provided.

The Pensions Administration Standards Association (PASA) has produced guidance on how to deal with 'stalemate cases' where it is not possible to reconcile the scheme's data with HMRC's. A large number of queries was submitted prior to the deadlines and so, once replies are received, it will still take several months for administrators to analyse, reconcile and, working in conjunction with trustees, decide upon actions for remaining queries. Once reconciliation is complete, the focus will shift to rectifying benefits, alongside allowing for uplifts arising from GMP equalisation.

8 6 April: Auto-enrolment rates increase again

Last April saw the minimum contribution rates under the auto-enrolment legislation increase from 2% of qualifying earnings (of which at least 1% is from the employer) to 5% (at least 2% from the employer). Despite concerns that this could lead to an increase in opt-outs, the latest evidence from the DWP suggests that the opt-out rates in the period immediately after the increase remained consistent with levels before April 2018. The hope is that we will also see no change in opt-out rates when the minimum increases again in April 2019 to 8% (at least 3% from the employer).

9 25 May: First anniversary of GDPR

For many schemes, implementing the General Data Protection Regulation (GDPR) was one of the major tasks of the first half of 2018. However, at the time, the Information Commissioner was keen to stress that '25 May is not the end. It is the beginning.' The first anniversary of the introduction of the GDPR may well provide an ideal opportunity for trustees to review their implementation of GDPR, especially where they had specified 25 May 2019 as the date for an annual review of their data protection policies or risk registers.

10 1 October: New SIP requirements in force

By 1 October, trustees of all schemes that are required to produce a Statement of Investment Principles (SIP) must prepare or update it to set out their policies in relation to financially material considerations, including environmental, social and governance (ESG) factors and the stewardship of investments. The SIP must also include the trustees' policy on the extent (if at all) to which non-financial matters are taken into account in investment policies.

For further information

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