inside pensions

Regulatory update

October 2019 to December 2019

Supporting you to improve governance and stay on top of the ever-changing technical issues in the pensions industry.

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New Issues – FCA publishes final rules to extend the remit of IGCs

The FCA published a policy statement on 17 December 2019 setting out final rules to extend the remit of Independent Governance Committees ("IGCs"), with new duties in two areas. This follows on from its consultation in April 2019.

IGCs currently provide independent oversight of the value for money of workplace personal pensions in accumulation, i.e. before pension savings are accessed. The new rules are intended to extend their remit with:

- a new duty for IGCs to consider and report on their firm's policies on ESG issues, member concerns, and stewardship for the products they oversee, and
- a new duty for IGCs to oversee the value for money of investment pathway solutions for pension drawdown.

The policy statement also includes related guidance for providers of pension products and providers of investment-based life insurance products.

The final rules and guidance come into force on 6 April 2020. The FCA also intends to publish the findings of its review of the effectiveness of IGCs in Q2 2020.

For more information:
https://www.fca.org.uk/publications/policy-statements/ps19-30-independent-governance-committees

The Civil Partnership (Opposite-sex Couples) Regulations 2019

The Civil Partnership (Opposite-sex Couples) Regulations 2019 were published on 11 November 2019. They came into force on 2 December 2019.

The Civil Partnership Act 2004 introduced civil partnerships for same-sex couples. These new regulations give effect to a Government commitment to extend civil partnerships to opposite-sex couples in England and Wales.

Trustees of occupational pension schemes should check whether any amendments are needed to their scheme rules, in particular to ensure death benefits may be distributed to opposite-sex civil partners.

For more information:
http://www.legislation.gov.uk/uksi/2019/1458/introduction/made

Pension Schemes Bill 2019-20

The long-awaited Pension Schemes Bill ("the Bill") has been published. As expected, several clauses and schedules are devoted to laying the groundwork for "collective money purchase benefits" and pensions dashboards. TPR's new powers, enabling it to be "clearer, quicker, and tougher", are also a significant feature.

The Bill will introduce:

- a framework for "collective money purchase schemes" (also known as collective DC, or "CDC")
- provisions to enable pensions dashboards;
- new criminal offences for failure to comply with a contribution notice, avoidance of an employer debt, and conduct risking accrued scheme benefits;
- a new power for TPR to impose a civil penalty of up to £1 million in respect of any of the above, and also where a person knowingly or recklessly provides it (or the trustees in certain circumstances) with false or misleading information;
- a new requirement for trustees of occupational DB schemes to determine (with the agreement of the employer) a strategy for ensuring that pensions and other benefits under the scheme can be provided over the long term (a "funding and investment strategy"); and
- restrictions on the right to a statutory transfer, unless prescribed conditions are met.

For more information:
https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8693

FCA sets out latest expectations for firms on Brexit

The FCA and regulated firms have been taking steps to prepare in the event the UK leaves the EU on 31 October 2019 without a deal (although this has now been extended to 31 January 2020). On 11 October 2019, the FCA issued an update on steps certain firms need to take.

The FCA is aware that leaving the EU during the working week could pose operational challenges for firms. During this time, firms should take reasonable steps to be prepared to comply with post-exit MiFID transaction reporting and EMIR trade reporting requirements. The FCA will take a proportionate and pragmatic approach to supervising reporting around exit day.

Alongside this, if the UK leaves the EU without a deal, passporting will end. Any EEA passporting firm wishing to continue operating in the UK will need to notify the FCA by 30 October that they wish to enter the Temporary Permissions Regime. Fund managers have until 16 October 2019 to inform the FCA if they want to make changes to their existing notification.

After exit, firms which notified the FCA of their intention to use the Temporary Permissions Regime will be contacted and provided with a "landing slot" for submitting their application for full UK authorisation. Upon authorisation, the FCA will generally expect firms to have a physical presence in the UK to help ensure effective supervision. The FCA will be consulting on its approach and expectations shortly.

For more information:
https://www.fca.org.uk/news/press-releases/fca-sets-out-latest-expectations-firms-brexit

TPR announces “crackdown” on poor record-keeping by schemes

On 2 October 2019, TPR issued a press release to announce that “trustees of hundreds of pension schemes are to be ordered to urgently review the data they hold as part of a crackdown on poor record-keeping”.

TPR is asking the trustee boards of 400 schemes to conduct a data review within six months. These schemes are believed to have failed to review their data in the last three years.

The trustees will be required to report to TPR what proportion of their members they hold accurate common and scheme-specific data for (see TPR’s Record-keeping guidance). Those that fail to do so may face action, including improvement notices relating to their inadequate internal controls. Failure to comply with the notice carries a fine of up to £5,000 for an individual or up to £50,000 in any other case.

A total of 1,200 schemes are also being contacted to remind them to carry out data reviews of both common and scheme-specific data every year. Trustees and scheme managers are responsible for ensuring these reviews are completed.

The move comes as TPR tightens its regulatory grip to drive up standards of governance and administration with the aim of delivering better outcomes for pension savers. In addition to record-keeping, communications will be sent to more than 1,000 schemes this year on issues such as dividend payments to shareholders and the length of recovery plans.

For more information (press release):
https://www.thepensionsregulator.gov.uk/en/media-hub/press-releases/crackdown-begins-on-poor-record-keeping-by-schemes

For more information (record-keeping guidance):
https://www.thepensionsregulator.gov.uk/en/trustees/managing-db-benefits/governance-and-administration/record-keeping

New Issues – ICAEW update on Fifth Money Laundering Directive

The ICAEW has published an update received from HMRC on the implementation of the Fifth Money Laundering Directive (“MLD5”) and in relation to the Trust Registration Service (“TRS”). Certain trusts need to register with the TRS but there is currently an exemption to this requirement which covers most pension schemes. MLD5 expands the scope of the TRS.

The update states that the Government will publish a response to the April 2019 HMT consultation on the transposition of MLD5 “in early 2020”. This follows the publication of the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 in December 2019, which implement MLD5 amendments in the UK.

In addition, the HMRC update quoted by the ICAEW references further consultation, noting that “the HMT consultation confirmed that HMRC would run a more detailed technical consultation on the details of implementation. Further details on this technical consultation and how you can contribute will be shared in early 2020. As part of this technical consultation, draft legislation for the trust registration elements of MLD5 will be shared. This will be transposed into domestic law during 2020.

The HMRC update also states that “sufficient notice” of any requirement to provide information on the TRS will be given to those impacted by the changes “in order to ensure business readiness”.

For more information:
https://ion.icaew.com/taxfaculty/b/weblog/posts/trust-registration-service-and-the-5th-eu-money-laundering-directive-update

New Issues – The Queen's Speech

The Queen's Speech, marking the formal opening of Parliament and setting out the Government's agenda for the coming session, was delivered on 19 December 2019.

Detail included in the background briefing notes makes specific reference to a Pension Schemes Bill, the previous version of which fell on the dissolution of Parliament before the general election. The DWP's press office has released a video featuring Guy Opperman which suggests that the Bill has been "refined" (without explaining exactly how), and that it will be taken forward "very early in the new year".

For more information:
https://www.gov.uk/government/speeches/queens-speech-2019

New Issues – PPF consultation on insolvency risk scoring

On 19 December 2019, the PPF launched an online consultation on the changes proposed to its insolvency risk methodology from 2021/22. This marked the start of the PPF's new partnership with Dun & Bradstreet (D&B) and the introduction of a range of new services.

The consultation document notes that it forms the first part of wider consultation on the levy methodology that will conclude with the setting of rules for the 2021/22 levy in December 2020. It also states that subsequent consultations will cover other aspects of the assessment of insolvency risk, such as whether the current grouping of scheme employers into ten bands, and the associated levy rates, remain fit for purpose.

The consultation is open until 5.00pm on 11 February 2020.

For more information:
https://ppf.co.uk/levy-payers/help-shape-our-rules

FCA announces future work on climate change and green finance

On 16 October 2019, the FCA published a feedback statement setting out its proposals to improve climate change disclosures by firms and information to consumers on green financial products and services.

Key actions the FCA intends to take include:

- consulting on new rules to improve climate-related disclosures by certain firms and clarifying existing obligations;
- finalising rule changes requiring IGCs to oversee and report on firms' ESG and stewardship policies, as well as separate rule changes to facilitate investment in patient capital opportunities;
- publishing a feedback statement in response to a joint discussion paper with the FRC on stewardship, setting out actions to address the most significant barriers to effective stewardship;
- clarifying its expectations around consumers' access to green financial products and services, and taking appropriate action to prevent consumers being misled.

The FCA will also continue to contribute to several collaborative initiatives, including the Government led cross-regulator taskforce on disclosures, as well as the Climate Financial Risk Forum which it established alongside the PRA earlier this year.

For more information:
https://www.fca.org.uk/publications/feedback-statements/fs19-6-climate-change-and-green-finance

FRC publishes "Revised and strengthened" UK Stewardship Code

On 24 October 2019, the FRC published the UK Stewardship Code 2020 ("the Code"). Described by the FRC as a "substantial and ambitious revision to the 2012 edition", the new Code will take effect on 1 January 2020.

The Code focuses on protecting the interests of UK savers and pensioners by ensuring that their money is managed responsibly, with a new emphasis on creating long-term value and on considering beneficiary and client needs. Key changes include the following:

- an extended focus that includes asset owners (such as pension funds and insurance companies) and service providers, as well as asset managers. This is intended to help align the approach of the whole investment community in the interest of end investors and beneficiaries;
- a requirement to report annually on stewardship activity and its outcomes.

- Signatories to the Code will be:
- expected to take ESG factors, including climate change, into account and to ensure their investment decisions are aligned with the needs of their clients;
- expected to explain how they have exercised stewardship across asset classes beyond listed equity, such as fixed income, private equity and infrastructure, and in investments outside the UK;
- required to explain their organisation's purpose, investment beliefs, strategy and culture, and how these enable them to practice stewardship. They are also expected to show how they are demonstrating this commitment through appropriate governance, resourcing and staff incentives.

Organisations wanting to become signatories will be required to produce an annual stewardship report explaining how they have applied the Code in the previous 12 months. The FRC will evaluate reports against its assessment framework, and those that meet the reporting expectations will be listed as signatories to the Code. To be included in the first list of signatories, organisations must submit a final report to the FRC by 31 March 2021.

Adherence to the Code is encouraged by TPR in its guidance for DB and DC trustees.

For more information:
https://www.frc.org.uk/getattachment/5aae591d-d9d3-4cf4-814a-d14e156a1d87/Stewardship-Code_Final2.pdf

Legislative reforms on sustainable finance adopted by Council of the EU

The Council of the EU has announced that it has adopted regulations aimed at "making finance greener and bringing it more in line with the objectives of the Paris agreement on climate change".

The first regulations introduce disclosure obligations on how financial companies integrate environmental, social and governance factors in their investment decisions.

The second regulations create new types of benchmarks aimed at giving greater information on an investment portfolio's carbon footprint: the EU climate transition benchmarks, which aim to lower the carbon footprint of a standard investment portfolio, and the EU Paris-aligned benchmarks, which have the more ambitious goal of selecting only components that contribute to attaining the 2°C reduction set out in the Paris climate agreement.

The texts were signed in the week of 25 November 2019 and will be published in the Official Journal of the European Union.

For more information:
https://www.consilium.europa.eu/en/press/press-releases/2019/11/08/capital-markets-union-council-adopts-legislative-reforms/#

PLSA launches Retirement Living Standards

On 17 October 2019, the PLSA launched its “Retirement Living Standards”.

Pitched at three levels (minimum, moderate and comfortable) the standards “have been designed to fill the gaps in current approaches” and to act as “a practical and meaningful starting point on a saver’s engagement journey”.

Like the 5-a-day healthy eating initiative, the PLSA’s ambition is for the Retirement Living Standards to become a widely adopted industry standard. For example, the PLSA envisages schemes using them in general member information, in annual benefit statements, or “to develop personalised targets for their members’ pension planning”. The PLSA wants to see schemes representing 90% of active savers adopt the standards by 2025.

As well as helping savers understand what their retirement will look like, the PLSA believes the standards will help the pensions industry by:

- providing “a set of robust standards, based on independent research with the UK public, for use across scheme communications and tools”;
- equipping “schemes to further encourage savers to engage with their pension”;
- giving “savers concrete information about costs in retirement to give them more confidence in planning to achieve their aspirations”.

The PLSA will seek to ensure the pensions sector and the Government adopt the Retirement Living Standards “to help many more people plan effectively for retirement”. It is also working with MAPS to include Retirement Living Standards in their tools, such as the pension calculator.

For more information:
https://www.plsa.co.uk/Press-Centre/Press-Releases/Article/PLSA-launches-Retirement-Living-Standards

New Issues – EIOPA publications

On 17 December 2019, EIOPA published the results of its 2019 Institutions for Occupational Retirement Provisions (IORPs) Stress Test. For the first time, this exercise covered the analysis of ESG factors for IORPs. The report notes “the absence of the UK sector from the exercise”.

On 18 December 2019, EIOPA published its December 2019 Financial Stability Report of the (re)insurance and occupational pensions sectors in the EEA. As well as noting the challenges posed by a “prolonged low yield” and “persistently low interest” environment, the report notes the risks posed to pension schemes by cyber and climate change related issues.

On the same date, its Consumer Trends Report 2019 for the EEA looked at the ongoing shift from DB towards DC schemes, and the changes and innovations taking place to address the issue.

For more information (stress test):
https://eiopa.europa.eu/Publications/EIOPA_2019%20IORP%20Stress%20Test%20Report.pdf

For more information (stability report):
https://eiopa.europa.eu/Pages/News/EIOPA-Financial-Stability-Report-December-2019.aspx

For more information (consumer trends):
https://eiopa.europa.eu/Pages/News/EIOPA-identifies-areas-where-risks-for-consumers-remain-high-notably-with-unit-linked-credit-life-credit-protection.aspx

New Issues – TPR issues leverage and liquidity research

TPR published new research on leverage and liquidity of DB pension schemes on 17 December 2019, which "was undertaken to help TPR and the Bank of England to assess the potential for systemic risks to arise due to the use of leverage in DB pension schemes".

TPR states in its press release that its "initial analysis of the data shows that encouragingly many schemes are well-diversified and are actively monitoring the risks in their portfolios that may arise in relation to leverage and liquidity. However, the research also shows that some schemes are pursuing more risky investment strategies that seek extra returns, which could be damaging in the event of adverse economic shocks". Fred Berry, TPR's Head of Investment Consultancy, states that TPR will now "analyse the survey responses in more detail and consider how [it] can use the findings to help trustees to improve their risk management practices further".

For more information:
https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/db-pension-scheme-leverage-and-liquidity-survey.ashx?la=en&hash=1DDBD287D5C70959DE58F3F36FA632095A21D0B7

New Issues – PPF publishes GMP equalisation Information note

On 16 December 2019, the PPF published an Information note "to assist schemes preparing to submit s179 valuations and certify Deficit-Reduction Contributions (DRCs)". The note contains questions and answers relating to GMP equalisation.

For more information:
https://www.ppf.co.uk/sites/default/files/file-2019-12/gmp_equalisation_information_note_b.pdf

The Finance Act 2004 (Specified Pension Schemes) Order 2019

UK tax relief is available on investment income and growth of pension schemes that are registered in the UK. Schemes do not need to be resident in the UK to become UK registered pension schemes.

In a recent First-tier Tribunal decision, the judge held that, as per his interpretation of the FA04, pension schemes established under an enactment of a country or territory other than the UK are not eligible to apply to be registered pension schemes. The court held that this inability to register and receive tax relief on UK investment income was contrary to EU law. As a result, the scheme was allowed to claim tax relief on its UK investments.

It has, however, always been the Government's intention to allow foreign equivalents of UK pension schemes to apply to become registered pension schemes so they can obtain UK pensions tax relief and be subject to the same conditions as their UK-based counterparts. The Finance Act 2004 (Specified Pension Schemes) Order 2019, which comes into force on 21 November 2019, aims to ensure the policy intention is met and remove any doubt from this interpretation.

For more information:
http://www.legislation.gov.uk/uksi/2019/1425/introduction/made

Code on Incentive Exercises finds a new home

The body that drafted and maintained the Code of Good Practice on Incentive Exercises has announced that it will "stand aside" from the Code and no longer update it. The Code is now set out on TPR's website and the announcement states that it should be used "as an example to trustees and practitioners of what good looks like in the area of incentive exercises…in future, practitioners and trustees should read and follow the guidance set out by the regulator, which includes reference to the Code of Good Practice on Incentive Exercises".

For more information:
http://incentiveexercises.org.uk/home
https://www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/incentive-exercises

TPR guidance on complying with investment governance duties

TPR has produced guidance aimed at helping trustees to meet their duties when they are working with providers of investment consultancy and fiduciary management services. This is in line with the new duties for trustees and managers of occupational pension schemes introduced by the CMA, which took effect from 10 December 2019.

The guidance is separated into four topics:

- "Choose an investment governance model" – aims to support trustees in understanding their investment governance capability, setting investment beliefs and objectives, and highlights other key matters to consider when deciding on an investment governance model;
- "Tender for fiduciary management services" – intended to provide trustees with practical information and key matters to consider when putting together a competitive tender exercise to appoint a fiduciary manager;
- "Tender for investment consultancy services" – sets out suggested key considerations and principles when running a tendering process for investment consultancy;
- "Set objectives for your investment consultant" – suggests matters to consider when setting objectives and monitoring performance, and includes case studies to illustrate how this might be applied by DB and DC schemes.

These guides were the subject of consultation earlier in the year, and the response to the consultation has been published along with the four guides.

For more information:
https://www.thepensionsregulator.gov.uk/en/document-library/consultations/draft-guidance-consultation-in-response-to-cma-recommendation

PPI report: Approaching the endgame: the future of DB pension schemes in the UK

On 29 October 2019, the PPI published a report on the future of DB pension schemes in the UK. With the majority of private sector DB pension schemes mature and cash flow negative, the report considers how they will continue to meet their obligations to members without endangering the core business of the employer sponsor.

For more information:
https://www.pensionspolicyinstitute.org.uk/research/research-reports/2019/2019-10-29-approaching-the-endgame-the-future-of-defined-benefit-pension-schemes-in-the-uk/

The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019

EMIR regulates over-the-counter (“OTC”) derivatives, central counterparties (“CCPs”) and trade repositories (“TRs”). Regulation (EU) No. 2019/834 (“REFIT”), which came into force on 17 June 2019, introduced targeted amendments to ensure EMIR requirements are applied more proportionately to non-financial counterparties, small financial counterparties and pension funds.

Before its amendment by REFIT, EMIR provided an exemption from the clearing obligation for EEA pension funds. This exemption was necessary as there is currently no appropriate technical solution for pension funds to clear all transactions covered by the clearing obligation through CCPs (and in particular to comply with the requirements for posting collateral) without imposing disproportionate costs on funds and, consequently, on pension fund members.

Although the exemption in EMIR expired on 16 August 2018, ESMA had issued a statement that the clearing obligation should not be enforced until the changes in REFIT came into force. REFIT then retroactively extended the exemption for EEA pension scheme arrangements to 18 June 2021 (with an option for the Commission to further extend the exemption twice by one-year increments).

The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 are intended to ensure that EMIR and related legislation will continue to operate effectively at the point at which the UK leaves the EU. The regulations maintain the pension fund exemption, for both UK and EEA funds, after the UK’s exit from the EU, and set it to expire on 18 June 2023. The regulations also empower HMT to further extend the exemption by up to two years at a time if no appropriate technical solution for pension fund clearing has been found.

For more information:
http://www.legislation.gov.uk/uksi/2019/1416/contents/made

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