

THE PENSIONS BRIEF

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Issues affecting all schemes

IORP II Directive – implementation

Two sets of regulations will come into force on 13 January 2019 that implement the requirements of the EU IORP II Directive into UK law.

One set of regulations replaces the requirement for schemes to operate internal controls with a requirement for schemes to operate “an effective system of governance including internal controls” that is proportionate to the size, nature and scale of the scheme’s activities. Authorised master trusts will be exempt from the requirement. The regulations also set out a list of matters to be included in a code of practice that the Pensions Regulator must produce in relation to the effective governance system duty. Based on this list, it appears that schemes will need to produce written policies on various matters including key scheme functions, outsourcing of activities, and remuneration.

The other set of regulations makes changes relating to cross-border schemes and cross-border transfers.

Action

The requirement to establish an effective system of governance will come into force on 13 January 2019. However, the detail of what is required in this respect will be set out in a Regulator code of practice and this is unlikely to be finalised until the second half of 2019. Trustees should consider whether their current internal controls and governance framework is operating effectively, and should monitor progress on the Regulator code of practice. Once this is finalised, they should review their governance arrangements in light of it.

Brexit – impact on pensions legislation

Regulations have been laid before Parliament for approval which make changes to the legislation governing pension schemes to reflect Brexit. The main changes made are to:

- adjust references to the UK as an EU/EEA state where a distinction is being drawn between EU/EEA states and other overseas countries;
- amend the Investment Regulations 2005 so that the assets of a trust-based scheme must consist predominantly of investments admitted to trading on UK regulated markets; and
- repeal the cross-border pension regime.

The regulations will come into force on the date of Brexit.

Action

Once the regulations have been approved by Parliament, trustees should ask their investment consultant whether changes to the Scheme’s investment portfolio will be required as a result of the amendment to the Investment Regulations 2005.

Budget 2018 – pensions aspects

The main pensions-related announcements in the 2018 Budget were that:

- the lifetime allowance will increase to £1.055 million for the 2019/2020 tax year;
- the government will consult in 2019 on the function of the pensions charge cap to ensure that it does not unduly restrict the use of performance fees within default funds, while maintaining member protections; and
- the government will consult later this year on the detailed design for pensions dashboards.

Action

No action required.



Unmarried cohabiting partners – survivor’s pensions

The High Court has held that the fact that the Local Government Pension Scheme (LGPS) does not provide a survivor’s pension to an unmarried cohabiting partner of a member who left active membership before April 2008, but does provide a survivor’s pension to spouses of such members, is not discrimination on the grounds of age or marital status contrary to the European Convention on Human Rights (ECHR).

R (on the application of Harvey) v Haringey London Borough Council and another [2018] EWHC 2871 (Admin)

In addition, the Pensions Ombudsman has decided that, where a scheme’s rules provided for a higher survivor’s pension to be payable to a spouse/civil partner and a lower survivor’s pension to be payable to a nominated partner, the Supreme Court decision in *Brewster v NILGOSC* did not mean that a nominated partner was entitled to receive the higher survivor’s pension. (In the *Brewster* case, the Court held that a requirement in the LGPS for an unmarried cohabiting partner to have been nominated in order to receive a survivor’s pension was discrimination on the grounds of marital status and was therefore incompatible with the ECHR.)

PO-19086

(Note – claims of discrimination contrary to the ECHR can only be brought against public authorities.)

Action

No action required.

Issues affecting DB schemes

GMP equalisation – Court decision

The High Court has [held](#) that schemes are required to equalise benefits for the effect of guaranteed minimum pensions (GMPs). The Court also considered a number of possible equalisation methods. It held that the employer could require the trustees to adopt the lowest cost method.

In addition, the Court held that trustees are obliged not only to correct future benefit payments, but also past underpayments. Arrears of payments should be paid with interest at 1% over base rate. The Court considered whether any limitation period would apply to past underpayments and concluded that:

- there is no statutory limitation period; but
- where the scheme rules contain a provision under which unclaimed pension instalments are forfeited after six years, that provision may be enforceable.

For more information, please see our [legal update](#).

Action

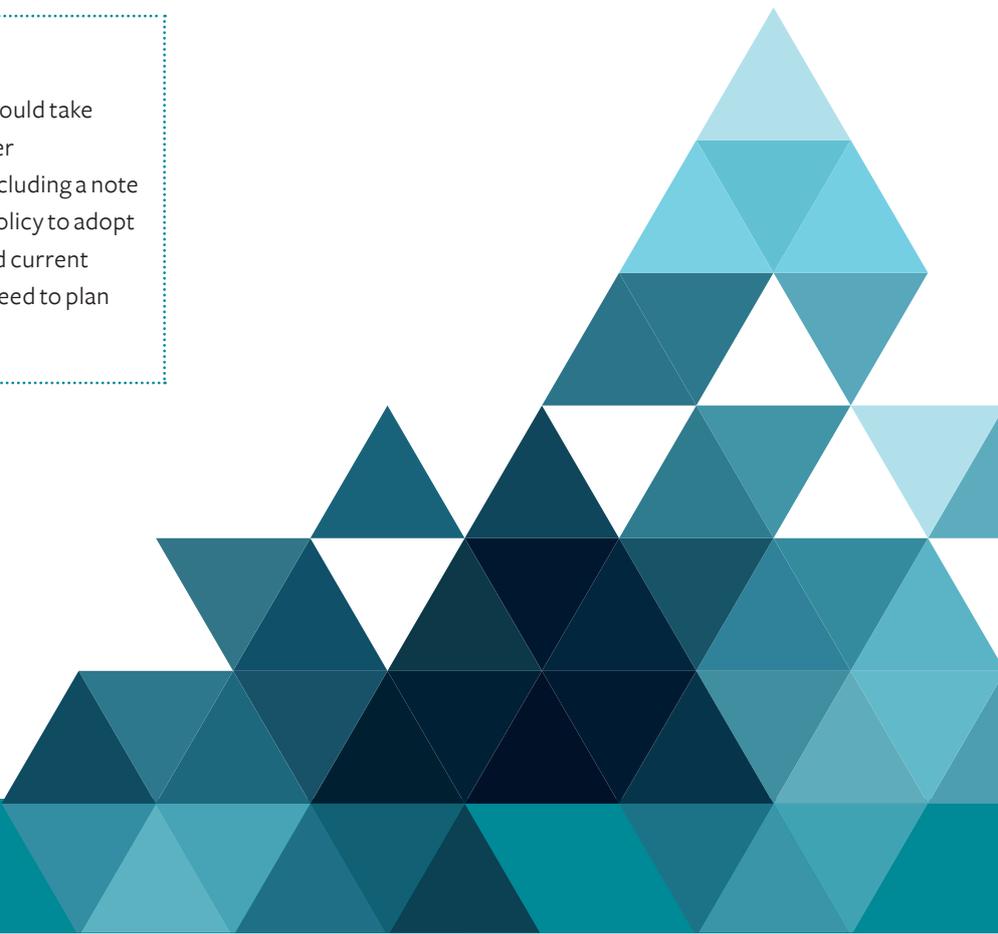
There are a number of actions that trustees should take immediately, such as sending a general member communication about the Court's decision, including a note in retirement quotations, and deciding what policy to adopt in relation to transfers-out, commutations and current valuations. Trustees and employers will then need to plan and implement a GMP equalisation process.

DB investment – guidance

The Pensions Regulator has updated its [guidance](#) on DB investment to include new sections on social impact investment and patient capital.

Action

No action required, but trustees of DB schemes may find the updated guidance helpful.



Issues affecting DC schemes

Master trust authorisation and supervision – further materials

The Pensions Regulator has published its [enforcement and supervision policy](#) for master trusts. It has also added new materials to its collection of [forms and guidance](#) for schemes to use when applying for master trust authorisation. The Regulator’s [code of practice](#) on the authorisation and supervision of master trusts came into effect on 18 October 2018.

Action

Trustees of schemes which fall within the definition of a “master trust scheme” should ensure that they submit their authorisation application by 31 March 2019.

Annual benefit statements – simplification

The government has launched a simpler, two page [annual DC benefit statement](#) and accompanying [technical guide](#). The simpler statement was developed in response to the government’s 2017 automatic enrolment review which found that only 14% of savers read their annual benefit statement.

Action

No action required, but trustees of DC schemes may find the simpler statement helpful when considering the design of their scheme’s annual benefit statement.

Pensions Regulator DC code of practice – guidance

The Pensions Regulator has updated its guidance for DC schemes on

- [investment governance](#) – to add new sections on social impact investment and patient capital; and
- [communicating and reporting](#) – to refer to the simpler annual benefit statement launched recently (see below).

The guidance accompanies the relevant sections of the DC code of practice.

Action

No action required, but trustees of DC schemes may find the updated guidance helpful.



Mayer Brown events and publications

Upcoming events

If you are interested in attending any of our events, please contact Katherine Carter (kcarter@mayerbrown.com) or your usual Mayer Brown contact. All events take place at our offices at 201 Bishopsgate, London EC2M 3AF.

Trustee Foundation Course

11 December 2018

Our Foundation Course aims to take trustees through the pensions landscape and the key legal principles relating to DB funding and investment matters, as well as some of the specific issues relating to DC schemes, in a practical and interactive way.

Trustee Building Blocks Classes

13 November 2018 – internal controls and risk management

FULLY BOOKED

Our Building Blocks Classes look in more detail at some of the key areas of pension scheme management. They are designed to be taken by trustees who have already taken our Foundation Course.

The View from Mayer Brown: UK Pensions Law Podcasts

Every month [Richard Goldstein](#), a partner in our Pensions Group, places a spotlight on key developments that could affect your scheme in a podcast. Just 10-15 minutes long and available on iTunes, the podcasts provide a quick and easy way to stay on top of current issues in pensions law.

Listen to or subscribe to The View from Mayer Brown UK Pensions Law Podcasts via iTunes here:



Please note – subscribing above will only work on a device with iTunes installed. Alternatively, if you don't have iTunes, you can access the podcasts via our [website](#).

Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

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Dates to note over the next 12 months



Key:

- Important dates to note
- For information

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