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COVID-19 – Regulator updates guidance

The Pensions Regulator has announced updates to five of its guidance notes issued in response to the COVID-19 crisis.

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Whilst it's the restoration of the reporting requirements which have made the headlines in the pensions press, trustees of defined benefit schemes need to be aware of the major changes made to previous guidance on funding and investment.

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Background

Since the advent of the COVID-19 pandemic the Regulator has issued a suite of guidance aimed at assisting both trustees and employers in navigating this crisis. On 16 June the Regulator published updates to five of these guidance notes.

Defined benefit (DB) scheme funding and investment

In what the Regulator describes as a "major rewrite" to previous guidance originally issued on 27 March, it has updated its guidance on its view of the impact of COVID-19, explaining how it will continue to adapt its regulatory approach and provide trustee guidance dealing with difficult decisions due to the pandemic.

As before, the Regulator notes that the guidance does not cover everything and does not supersede trustees' fiduciary duties, their obligations under the scheme rules, or the legislation.

Suspending or reducing contributions

When the UK initially went into lockdown over COVID-19 some employers sought to suspend or reduce deficit repair contributions (DRCs) or future service payments to their pension schemes. Whilst at the time trustees were often responding at short notice to requests to reduce contributions on limited information, the Regulator expects that for many trustee boards there should now be greater understanding of their sponsor's financial position, including short-term affordability.

Three months on, whilst DRC suspensions or reductions to future service payments may continue to remain appropriate, trustees are expected to have an improved visibility of their sponsoring employer's financial situation. Accordingly, trustees should not unquestioningly extend their original suspension arrangements on a three-month rolling basis based on limited information. Instead, due diligence should be undertaken on the employer's financial position and its reasonableness assessed, before agreeing a new suspension or reduction.

Employer covenant

The Regulator makes a clear distinction between short-term liquidity/affordability issues and a medium to long-term deterioration in the sponsor's employer covenant.

Where there is clear evidence that the covenant has materially worsened and is not expected to recover in a reasonably short timeframe, trustees should consider whether it would be in the best interests of members to update the scheme's funding arrangements (e.g. by calling a new actuarial valuation and/or revising the recovery plan) to more accurately reflect the covenant position.

If a suspension or reduction in contributions is necessary trustees should seek protections and other mitigations (e.g. all dividends and other forms of covenant leakage should stop until the outstanding contributions are paid). Where possible the Regulator expects repayment within the current recovery plan timeframe.

In the small number of cases where short-term visibility of employer covenant is extremely limited, trustees may agree to a temporary suspension of contributions, provided they can demonstrate how this would not breach their fiduciary duties. (This is unlikely to be possible without appropriate written advice.)

Finalising ongoing valuations

There is a recognition that trustees may need more time to complete ongoing valuations. Whilst trustees are not necessarily expected to revisit assumptions, they may be advised that it is in the best interest of their members to do so. The Regulator would prefer the best outcome is reached for the scheme, rather than trustees simply looking to meet their deadline.

Where trustees don't allow for relevant experience since the effective date of the valuation in their recovery plan, they are expected to consider whether the post-valuation experience is relevant when agreeing the recovery plan, as the employer's affordability may now be constrained.

Investment strategy

Any trustees who have not reviewed their investment strategy in the light of COVID-19 should do so.

DB scheme funding for employers

The [guidance](#) for employers originally issued on 27 March has been updated to ensure it is consistent with the revised guidance for trustees. In particular, sponsors should provide trustees with the information they need and keep them informed of discussions with banks and other lenders.

The Regulator will be reasonable about requests for reductions/suspensions of contributions or additional debt being secured over employer assets etc. provided these requests can be justified and the scheme is treated fairly. Employers are reminded of the need to keep the appropriate paper trail regarding the treatment of their schemes as this may help in any future engagement with the Regulator.

Reporting to the Regulator

The Regulator's guidance on reporting duties and enforcement activity issued on 9 April has been updated. From 1 July 2020, all reporting requirements will resume as normal, including for:

- Suspended DRCs - trustees will need to submit a revised recovery plan or a report of missed contributions.
- Late valuations and recovery plan not agreed.
- Delays in cash equivalent transfer quotations and payments.
- Failing to prepare audited accounts.

Exception for defined contribution (DC) arrangements

There is one exception to the return to business as usual on reporting: providers will continue to have 150 days to report late payment of contributions, where normally the Regulator has to be informed within 90 days. The Regulator will review this easement again at the end of September.

Chair's statements

Where the Regulator receives any chair's statements, they will currently be returned unread, and not reviewed until after 30 September. The Regulator does not have a discretion about imposing a fine for a defective chair's statement or a failure to sign it off in time. It will, however, take a pragmatic view on the late preparation of audited accounts (in which a relevant chair's statement must be included).

Investment governance

The Regulator will not be taking any regulatory action if a review of a statement of investment principles (or statement in relation to any default arrangement) is not delayed beyond 30 September 2020.

Scheme administration

Guidance to trustees issued on 2 April has had some minor amendments. The Regulator recognises the pressure that COVID-19 has put on administrators and asks trustees to work with them at this time, for example, limiting non-critical demands and queries. Emphasis should be put on servicing vulnerable members.

Automatic enrolment and DC pension contributions

The Regulator has updated its guidance for employers on DC pension contributions to automatic enrolment schemes first published on 6 May.

The Regulator highlights that an employer's automatic enrolment duties continue to apply as normal, irrespective of whether employees are still working or are being furloughed as part of the Coronavirus Job Retention Scheme. This update recognises that employees who have been furloughed may work part-time for their employer, and from August 2020, employers will be unable to claim for a grant up to the statutory minimum automatic enrolment employer contribution.

There is also a reminder that employers, who are approaching the date of their triannual re-enrolment duties, can choose a later date of up to three months after the third anniversary to assess employees' eligibility to be enrolled.

Comment

The Regulator has tried to be as pragmatic as possible as the COVID-19 crisis has unfolded. Whilst we should expect further changes to guidance as the situation further unfolds, the Regulator, in rewriting the trustee guidance on DB scheme funding and investment, has indicated that this is expected to not substantially change going forward.

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