Briefing note – new easements from The Pensions Regulator

The Pensions Regulator (TPR) has issued new guidance to assist both employers and pension managers when complying with their auto-enrolment duties. The guidance also covers reporting and complying with general pension regulations.

Auto-enrolment rules

In general, the auto-enrolment duties apply unchanged. However, there is an easement to the member consultation rules when making a reduction to the pension contribution structure. Although conditions will apply.

The guidance in full can be accessed here:

https://www.thepensionsregulator.gov.uk/en/covid-19-coronavirus-what-you-need-to-consider/automatic-enrolment-and-pension-contributions-covid-19-guidance-for-employers

The key points are summarised below:

TPR confirms that there is no general easement of auto-enrolment duties and so employers should continue to comply with the law.

For employers reaching re-enrolment dates, there is a tool to help employers identify whether they need to re-enrol and complete their declaration of compliance – this can be accessed here: https://www.thepensionsregulator.gov.uk/en/employers/re-enrolment

TPR confirms that contributions still need to be paid and provides a reminder that members should not be induced to reduce their contributions.

There is a reminder about the furlough arrangements so that via the government's Coronavirus Job Retention Scheme (CJRS) the statutory minimum employer contribution can be recovered.

For those employers unable to make their contributions they are advised to approach their provider to understand the flexibilities in the payment dates and also to explore other areas of assistance from government.

TPR has tried to summarise some common questions regarding pensions and the CJRS:

- Payroll and pension contribution – for most employers they note that payroll and pension contributions will carry on as normal. It is slightly more complicated for schemes that have certified on a different basis as they will need to calculate the 3% of qualifying earnings to reclaim this from the government.
- If a claim is being made from the CJRS but more is being paid to staff – the pension contributions should continue as before.

Reduction to contributions

If the employer is looking to reduce the contributions to the statutory minimum, TPR list the areas where this could be a complex action involving a review of government documentation, contracts and the requirement to consult with members for 60 days. There is however an easement on the consultation requirements if the following conditions apply:

- You have furloughed staff for whom you are making a claim under the Coronavirus Job Retention Scheme.
- You are proposing to reduce the employer contribution to your DC scheme in respect of furloughed staff only. For staff who have not been furloughed the existing pension contribution rate will continue to apply.
- The reduced contribution rate for furloughed staff will only apply during the furlough period, after which time it will revert to the current rate.
- You have written to your affected staff and their representatives to describe the intended change and the effects on the scheme and on your furloughed staff.

This easement is in place until 30 June 2020.

Broadstone view

This is welcome guidance with a clarification of the position, where we've had to work on assumptions to how they will act. The easement to allow a short-term reduction in contributions for furloughed staff are welcomed as the 60-day consultation requirement could have proved too long and also resulted in poor behaviours from employers. A clear criteria and process allows employers to clearly understand if they're allowed to amend their contributions and the simple communication with members that is required.

General regulatory easements

TPR is taking a more flexible approach to lots of the statutory and regulatory duties imposed on pension schemes. These easements will remain in place until 30 June 2020. Trustees and Pensions Managers should consider these easements when prioritising actions with schemes over this time.

The Pensions Ombudsman will also take into account TPR's guidance when considering complaints concerning this period.

The guidance can be accessed here: https://www.thepensionsregulator.gov.uk/en/covid-19-coronavirus-what-you-need-to-consider/covid-19-an-update-on-reporting-duties-and-enforcement-activity

Schemes in "relationship-managed" supervision

These schemes who have a closer liaison with TPR should already be seeing a change in regulatory focus to immediate risks.

The Pension Regulator's general approach

Reporting - If the breach will be rectified within a short timeframe (not more than three months) and it does not have a negative impact on savers, there is no need to report. It is important to keep a record of any decisions made and actions taken.

Enforcement - In making decisions about whether to take regulatory action in respect of breaches of administrative and compliance requirements, TPR will do so on a case-by-case basis and adopt a flexible approach – i.e. granting longer periods to comply and taking COVID-19 into account.

More detailed comments

TPR has made some further comments on some specific areas and noting whether it will, or will not, apply their general approach.

Annual Benefit Statements – TPR will apply its principles to the provision of statements, provided there is no detriment to savers.

Chair Statements – the law does tie TPR's hands here, the law is the law when it comes to compliance. However, The Pensions Regulator will not review statements and also will not issue fines before 30 June 2020.

Charge controls – there are limits on the charges members should pay. Any increases, even if temporary due to COVID-19 this should be reported, unless it is not material. Any regulatory action will be pragmatic and Trustees should be taking action to get the charges below the charge cap.

DB Transfer Values – TPR has already issued guidance here. They remind Trustees to be aware of scams, the right basis and the impact on administration functions.

Employer Related Investments (ERI) - not more than 5% of the current market value of scheme assets may at any time be invested in ERI. In addition, some ERI is absolutely prohibited. These restrictions and their reporting are not eased by TPR.

Investment governance – issues concerning compliance with updates or reviews of the scheme's Statement of Investment Principles or statement in relation to a default arrangement will be eased until 30 June 2020.

Late accounts – late provision of accounts is unlikely to cause member detriment and so won't be reportable. Master Trusts are also supposed to issue accounts to TPR and the filing of these can be delayed until 30 June 2020.

Late payment of contributions - late payment of employer contributions should only be reported where the breach is likely to be of material significance. There is also an extension to the normal period beyond which all late payments are material from 90 to 150 days. TPR says they will be proportionate but DC scheme contributions should be invested promptly.

Employers are also reminded of the importance of paying across contributions deducted from employees'/members' pay.

Master Trusts – given the size and scope of many Master Trusts the reporting of triggering events remain broadly unchanged.

Notifiable events – the range of events that are reportable in under-funded pension schemes, as they are TPR's warning system for problems with an employer or scheme remain unchanged.

Recovery plan not agreed – TPR has already given guidance to extend deadlines for the completion of valuations. If issues continue then communication with TPR should be made to help resolve them.

Broadstone view

Trustees and Pensions Managers should make note of these easements. However, where possible we should all aim toward business as usual to ensure members do not lose out. We are working hard to ensure that all the statutory obligations a scheme has to meet are met and members are given the information they need to make decisions for their retirement.

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