

Pensions: what's new this week

Welcome to your weekly update from the Allen & Overy Pensions team, bringing you up to speed on all the latest legal and regulatory developments in the world of occupational pensions.

Covid-19 update | Parental bereavement leave | Morrisons not vicariously liable for data leak | Auto-enrolment: qualifying earnings | Clearing for pension schemes: consultation | Latest HMRC newsletters | PPF updates compensation cap factors

Covid-19 update

The Pensions Regulator (TPR) has announced further flexibility for schemes and sponsors, including an effective easement for schemes that decide to suspend transfer processes during the current crisis, and the ability for sponsors to agree with trustees to reduce or suspend deficit reduction contributions, in both cases for a three-month period. For more information about the guidance issued on 27 March, please see our briefing '[TPR provides easements on transfers and DRCs, plus further guidance](#)'.

On 3 April, TPR also published further [guidance](#) for trustees on working with administrators to deliver critical processes and core functions, and reminding trustees about the risk of member scams. TPR says that trustees should work flexibly with their administrators, which may include agreeing changes in operating procedures. It considers that new or updated processes should be in line with new [guidance](#) by PASA for administrators and any changes or activities put on hold should be documented. TPR expects trustees and administrators to contact it where they believe they will be unable to pay members' benefits on time; TPR plans to issue further advice on this shortly.

Other recent developments include:

- The government has [announced](#) that it intends to make changes to insolvency law, including suspending wrongful trading provisions. You can read more about this in our [briefing](#).
- The government has [revoked](#) regulations that would have increased the industry levy payable by schemes, in light of the pandemic – the government has [said](#) that it will now focus on reviewing the levy structure and engaging with industry.
- The Information Commissioner's Office has launched a [data protection and coronavirus information hub](#).
- [TPR](#) and the [Financial Conduct Authority](#) have issued press releases urging members to remain calm and not rush decisions in response to Covid-19, and to be aware of scam risk. TPR has published a [blog post](#) on this as well. The Pensions Advisory Service's coronavirus information page for members can be found [here](#).
- The closing date for TPR's DB funding [consultation](#) has been extended from 2 June to 2 September 2020, and the closing date for the [consultation](#) on non-statutory guidance on assessing, managing and reporting climate-related risks has been extended from 5 June to 2 July 2020.

Parental bereavement leave

A new category of statutory leave entitlement for employees ([parental bereavement leave](#)) will be available where a child dies on or after 6 April 2020. Employees will also be entitled to statutory parental bereavement pay if they meet additional eligibility criteria (such as length of service). Although the leave is known as parental bereavement leave, it is available to a broader category of persons, including individuals who have been responsible for a child who had been living in their home for at least a month.

Employers may already have updated policies and procedures in light of the new entitlements. In the pensions context, they will also need to ensure that the correct approach is adopted for the deduction of pension contributions and, when time permits, trustees should take advice on whether scheme rules need to be amended – if required, this can be included as part of the next set of planned scheme amendments.

Morrison's not vicariously liable for data leak

The Supreme Court has ruled, in a class action over a data breach, that Morrison's is not vicariously liable for a former employee leaking personal information about over 100,000 members of staff: [Morrison's v various claimants](#). This overturned previous decisions by the High Court and Court of Appeal.

The Supreme Court held that vicarious liability was not established as the former employee (a senior auditor) had not been acting in the course of his employment – he had not been engaged in furthering his employer's business when he committed the wrongdoing, but was pursuing a 'personal vendetta' related to earlier disciplinary proceedings. You can read more about the decision in this [blog post](#) by our data protection specialists.

Many data breaches are internal, and the current situation where many individuals are working from home in unusual circumstances could present increased risks of data breach. Trustees and sponsors must be alert to the risk of insider breach, whether deliberate or inadvertent, and ensure that this risk is being managed appropriately. [Guidance](#) published by the National Cyber Security Centre on homeworking may be a useful resource.

Auto-enrolment: qualifying earnings

The [order](#) amending the qualifying earnings band for auto-enrolment will come into force on 6 April 2020. The earnings trigger remains at £10,000 for 2020/21, the lower limit of the qualifying earnings band is increased to £6,240 (from £6,136) and the upper limit remains at £50,000. The order also sets out rounded figures for pay reference periods of less than a year.

Clearing for pension schemes: consultation

The European Securities and Markets Authority is [consulting](#) on issues relating to potential central clearing solutions for pension scheme arrangements under the European Market Infrastructure Regulation, once the current exemption from clearing comes to an end.

The consultation paper seeks views and data on potential central clearing solutions, and in particular on issues around discharging variation margin requirements (for example, the potential reduction of investment returns due to increased cash holdings). The consultation runs until 15 June 2020.

Latest HMRC newsletters

HMRC's latest [Countdown Bulletin](#) announces a delay in issuing final data cuts for GMP reconciliation due to a reallocation of resources in response to Covid-19. HMRC is now aiming to publish its final timeline for issuing data cuts by the end of April 2020.

HMRC's latest [Managing Pension Schemes service newsletter](#) provides information on using the platform for accounting for tax returns from 1 April 2020, as well as an update on future additions to the platform.

PPF updates compensation cap factors

The PPF has [published](#) updated compensation cap factors used to determine the level of compensation payable by the PPF to eligible individuals from 1 April 2020. For 2020/21, the cap at age 65 has been set at £41,461, an increase of 3.6% from the 2019/20 cap of £40,020.

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