NORTON ROSE FULBRIGHT

Stop Press

COVID-19 guidance updates from the UK Pensions Regulator

June 2020

The Pensions Regulator has been busy updating its COVID-19 guidance and on June 16, 2020 announced a number of changes. This Stop Press shows where some of the guidance highlighted in our April briefing has been updated. The landing page for all the Regulator's guidance is here.

Although the Regulator will expect trustees, wherever possible, to comply with their reporting requirements from July 1, 2020, it states that it will continue to regulate pragmatically and sympathetically.

Several detailed guides have been produced and some have been updated since their original publication.

Title of update (with link)	Date first published	Date revised	Substance of update
DB funding and investment: COVID-19 guidance for trustees	March 27, 2020	June 16, 2020	This guidance has undergone a significant re-write to consolidate previously published guidance. It provides an update of the Regulator's view of the impact of COVID-19, and explains how the Regulator will continue to adapt its approach in providing guidance for trustees dealing with difficult decisions. The Regulator has taken on board feedback from employers, trustees and advisers, and has provided additional guidance on some of the practical challenges that trustees and employers face. It states that, although it continues to monitor the situation, it does not anticipate further updates to the guidance unless circumstances change significantly. The Regulator recognises the challenging position many trustees have found themselves in and that they have had to make some difficult decisions. It states that if hindsight proves that trustees made the 'wrong' call, they will be able to defend their decision if they have obtained as much relevant information as they reasonably could and have taken professional advice where appropriate. They should also act in accordance with the provisions of the trust deed and make fully recorded decisions in good faith.

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			Key points in the updated guidance are outlined below. **Suspending or reducing contributions** – the Regulator's evidence suggests that around 10 per cent of schemes have agreed a temporary suspension or reduction of deficit repair contributions (DRCs) so far. With some schemes in the process of discussing possible extensions to suspension or reduction arrangements, the Regulator acknowledges that trustees will be approaching these requests from a position of greater understanding of the employer financial position including short-term affordability. Discussions with lenders and other creditors are likely to have progressed and employers are now more likely to have financial projections as part of an updated business plan which reflects their view of the likely impacts of COVID-19. As such, many trustees should be able to review in more detail the business case for a new or continuing suspension or reduction of contributions to ensure it is appropriate and the scheme is being treated equitably. The Regulator does not expect trustees to unquestioningly extend their original suspension arrangements on a three-month rolling basis. Most trustees will be able to undertake due diligence on the employer's financial position before agreeing a new suspension or reduction. **Valuations due to be finalised** – although valuation assumptions may have been set under very different conditions, the Regulator does not necessarily expect trustees to revisit them. The Regulator maintains its position on not requiring trustees to allow for relevant experience since the effective date of the valuation in their recovery plan. However, it does expect trustees to consider whether the post-valuation experience is relevant when agreeing the recovery plan in the context that the employer's affordability may now be constrained. **Transfer values** – June 30, 2020 marks the end of the period during which the Regulator said it would take no action regarding breach of the statutory requirements if trustees decide to suspend CETVs. Breaches should be reported from July 1, 2020 but the Regulator will continue to take a pragmatic approach to those caused by COVID-19 issues. If COVID-19 presents issues for trustees, the Regulator suggests they should take legal advice and consider taking advantage of the existing flexibility in the legislation which provides for additional time (up to three months) to issue CETV quotations for reasons outside their control. Covenant monitoring and contingency planning – the Regulator has published a list of questions which it hopes will help trustees understand risks to the scheme's sponsoring employers and assist in covenant monitoring. Trustees should consider the likely significance of the impact on the scheme in line with the Regulator's guidance on integrated risk management. They should also consider whether contingent assets may be available to support the scheme, particularly if the employer is seeking concessions from the scheme.

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DB scheme funding – COVID-19 guidance for employers	March 27, 2020	June 16, 2020	This guidance has been updated Involving scheme trustees to ensure it is consistent with the trustee-related guidance (see above) The Regulator highlights that it is important that employers provide trustees with the information they need, in a timely manner. Trustees should also be informed of any discussions with other stakeholders, such as banks and other lenders, which may impact on the position of the scheme.
Scheme administration: COVID-19 guidance for trustees and public service	April 2, 2020	June 16, 2020	There have been minor changes to this guidance. Paragraphs have been added on maintaining services for potentially vulnerable members and on reducing the burden on administrators. The Regulator stresses that for trustees running a public service scheme, it is important to work with the administrators and focus on critical processes, as well as being flexible and pragmatic. Trustees should assess whether the business continuity plan is still adequate and contact their administrator or service provider to find out what contingency is in place to mitigate the impact of increases in work volumes or unavailable staff.
COVID-19: an update on reporting duties and enforcement activity	April 9, 2020	June 16, 2020	Reporting requirements for those running a pension scheme that were paused in response to COVID-19 will resume from July 1. The Regulator highlights its more flexible approach to what reporting is expected and when enforcement action would be appropriate. Breaches of administrative and compliance requirements will be assessed on a case-by-case basis. The Pensions Ombudsman has confirmed it will take into account the Regulator's latest guidance on COVID-19 issues if it receives complaints about delays caused by COVID-19 circumstances. Reporting requirements will resume for: • suspended deficit repair contributions – trustees will need to submit a revised recovery plan or report of missed contributions • late valuations and recovery plans not agreed • delays in cash equivalent transfer quotations and payments • failure to prepare audited accounts • master trusts, where formal reporting is expected to resume. **Late payment of contributions** – providers will continue to have 150 days to report late payments of contributions (other than deficit repair contributions), where normally information on late payments is required within 90 days. This easement will be reviewed at the end of September. **Chair's statements and failure to prepare audited accounts** – the Regulator will continue not reviewing any chair's statements it receives until after September 30, 2020. Any chair's statements sent to the Regulator will be returned unread, and should not be taken as any indication that the statement in question complies with the requirements. A pragmatic approach will be taken to late preparation of audited accounts delays will be accepted to September 30. **Investment governance** – the Regulator does not expect to take regulatory action if a review of a statement of investment principles (or statement in relation to any default arrangement) is not delayed beyond September 30, 2020.

Title of update (with link)	Date first published	Date revised	Substance of update
Automatic enrolment and pension contributions: COVID-19 guidance for employers	April 2020	June 15, 2020	This guidance provides several detailed worked examples of contributions to salary sacrifice arrangements and also addresses issues relating to DC scheme certification for auto-enrolment purposes. It has been updated to note that: • from July 1, 2020, staff on furlough under the Coronavirus Job Retention Scheme may work part of the time for their employer • for claims starting on or after August 1, 2020, employers will no longer be able to claim a grant for up to the statutory minimum automatic enrolment (AE) employer contribution.
DC scheme management and investment: COVID-19 guidance for trustees	April 17, 2020	May 21, 2020	This guidance notes that trustees face difficult decisions across a range of investment-related areas, and should undertake reviews of several matters, including: • the degree of their scheme's exposure to certain counterparties and the diversification and extent of any concentrations of risk, whether in specific investments or sectors • any previously agreed investment and risk management decisions due to be implemented in the future. On May 21, 2020 a section was added on when the temporary closure of investment funds create a default arrangement. The Regulator has confirmed it will take a "pragmatic approach" where trustees create a default arrangement by redirecting member contributions from a self-selected fund that is "gated" due to the COVID-19 crisis to an alternative fund, chosen by the trustees. This comes as a result of trading in some property funds due to an inability to accurately value the property portfolio owned by the fund in the current social distancing circumstances.

Comment

Most of the Regulator's guidance was produced in late March or early April and was originally proposed to have effect until June 30, 2020. These updates are timely, now that there has been a chance to assess how the COVID-19 pandemic is likely to affect employers and their schemes. Although the Regulator has recognised that many DB scheme sponsors are likely to ask for the reduction or suspension of DRCs to continue, it has provided some useful pointers for trustees approached with such requests by employers. Its assurance that it will continue to be "flexible and pragmatic" where the legislation affords it some discretion is welcome.

Contacts

Lesley Browning
Partner
Tel +44 20 7444 2448
lesley.browning@nortonrosefulbright.com

Peter Ford
Partner
Tel +44 20 7444 2711
peter.ford@nortonrosefulbright.com

Shane O'Reilly
Partner
Tel +44 20 7444 3895
shane.o'reilly@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

Law around the world

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