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New Anti-Money Laundering Legislation: what it means for trustees

We reported in the [June 2017 Update](#) that new anti-money laundering legislation had come into force, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the Regulations).

This item provides further detail about what the new Regulations mean for trustees of occupational pension schemes and how we believe they are likely to be applied in practice.

The new Regulations largely replicate requirements which existed under the previous regime, such as the requirement to conduct customer due diligence, carry out risk assessments and have money laundering policies in place. Professional trustees, who were required to comply these requirements under the previous regime, should already be familiar with these and will need to continue to comply with them. There are, however, also some new requirements about keeping and providing information about beneficial ownership in relation to trusts, which they will need to comply with. Broadly, the key new requirements will involve the following:

- maintaining up to date and accurate written information about the scheme, including certain information about the scheme's participating employers and trustees (such as name, address of principal office, NI or taxpayer reference) and the types (categories) of beneficiaries entitled or potentially entitled to benefits under the scheme. For most schemes, it is likely that much of this information will be available fairly readily. Trustees will also need to provide this information to certain third parties on request and to tell relevant third parties that they are acting as a trustee; and

- in relation to "relevant taxable trusts", providing information to HMRC about the scheme. This will involve providing the information outlined above to HMRC, as well as some additional information, such as information about the assets of the scheme. The initial deadline for providing information to HMRC is 31 January 2018 and thereafter there is an ongoing requirement to keep the information updated. It is likely that most occupational pension schemes will fall within the definition of relevant taxable trusts, at least in some years. There is not currently any guidance from HMRC about how they view these requirements in the context of an occupational pension scheme.

There is currently some debate about whether the new information requirements outlined above will apply to non-professional trustees as well as professional trustees. **In our view, based on the Regulations as currently drafted, the new requirements will also apply to non-professional trustees.** It is possible that HMRC will issue further guidance on the scope of the requirements in due course or that the Regulations will be clarified by subsequent amendments. In the meantime, **given that the Regulations are already in force and the 31 January 2018 deadline in respect of the requirements to provide information to HMRC, all trustees of occupational pension schemes should put themselves in a position to be able to comply with the requirements.** As a next step, trustees, in conjunction with their administrators, may wish to check whether they have any gaps in the information which they or their administrators already hold against what is required under the Regulations. We are working to put together a checklist to assist with this.

There is also some uncertainty about how HMRC guidance on registration with HMRC for the purposes of anti-money laundering compliance applies in light of the new Regulations. Under the previous regime, HMRC guidance stated that professional trustees did not need to register with it for the purposes of it acting as the supervisory body for anti-money laundering. Although HMRC guidance was updated at the same time as the final Regulations came into effect, it is not yet clear how a continuing exemption from the requirement to register with HMRC fits with the new requirements.

We will keep you advised of any further developments.

FCA Asset Management Market Study: Final Report

The FCA's final report on its Asset Management Market Study was published on 28 June 2017. The report looks at various aspects of the asset management industry and considers the position of both institutional investors (for example, trustees of occupational pension schemes) and retail customers (e.g. private individuals).

The FCA's interim report was published last November and since then it has taken additional soundings in relation to its preliminary conclusions. From a trustee perspective, there are a number of potentially important findings:

- a finding of relatively weak price competition in a number of areas of the asset management industry;
- concerns about how asset managers communicate their objectives; and
- concerns about lack of competitiveness in the investment consulting market.

The proposed remedies include:

- supporting disclosure of a single all-in fee to investors;
- supporting consistent and standardised disclosure of costs and charges to institutional investors;
- establishing a working group to consider how to make a fund manager's objectives clearer and more useful to investors;
- a recommendation that the DWP continues to review and, where possible, remove barriers to pension scheme consolidation; and
- additional proposals to improve the effectiveness of intermediaries.

This last point is up for further investigation. There is still in place a consultation on making a market investigation reference to the Competition and Markets Authority regarding the FCA's concern about the extent of the market share taken by the three largest providers, the appearance of relatively low

switching levels and the potential for conflicts of interest, particularly with the fiduciary management products. There will be a final decision on whether to make a market investigation reference in September 2017.

Further information and the final report can be found [here](#).

Automatic enrolment: transitional period to end on 30 September 2017

When the automatic enrolment regime was first rolled out, employers who were using defined benefit schemes (including hybrid schemes) were given the option to delay automatic enrolment until 30 September 2017 in respect of eligible jobholders who met certain conditions. Broadly, employers could have chosen to make use of this easement if they employed eligible jobholders before their staging date who were entitled to join a pension scheme with defined benefits but who chose not to do so.

This easement will come to an end on 30 September 2017. Any employers who made use of the easement will need to make arrangements to ensure that they comply with their automatic enrolment duties from that date. The Pensions Regulator (the "Regulator") has published detailed [guidance](#) for such employers about what they will need to do at the end of the transitional period.

Many employers chose not to make use of this easement when their staging date first applied, and, where that is the case, no action is required.

Regulator steps up enforcement action with 173 fines

The Regulator has published two bulletins detailing how it has used its powers to tackle non-compliance with the legal requirements to complete scheme returns and prepare an annual chair's statement. These show that the Regulator issued fines to 173 non-compliant pension schemes in 2016. 88 of these fines were for failing to complete scheme returns and 85 were for not preparing a chair's statement, with the majority of fines being issued against schemes with fewer than 100 members.

The overriding message from the Regulator is that ignorance of the requirements is not a sufficient defence for failing to comply. Trustees have an obligation to maintain an up-to-date understanding of both their scheme and the law in order to properly perform their role and avoid any regulatory action.

Data from the Regulator shows its increased focus on compliance and enforcement appears to have paid off, with 97% of schemes now compliant with their basic legislative obligations.

For more information, the Regulator bulletins can be found here: [Scheme Returns](#) and [Chair's Statement](#).

Law Commission moves to clarify social investment rules

The Law Commission published its report on pension funds and social investment on 23 June 2017, following a call for evidence issued in November 2016.

The report concludes that barriers to social investment by pensions funds are, in most instances, structural or behavioural as opposed to legal or regulatory. Social investment in this context is defined as the inclusion of some non-financial element in decision making, alongside a desire for good risk-adjusted returns.

The report recommends several changes to the law and regulation for both trust and contract-based schemes. For trust based schemes, it is proposed that the following changes are made to the Occupational Pension Schemes (Investment) Regulations 2005 (SI 2005/3378):

- the phrase “social, environmental or ethical considerations” should be amended to accurately reflect and clarify the distinction between financial factors and non-financial factors; and
- there should be a requirement that the statement of investment principles produced by trustees should state the trustees’ policy (if any) on stewardship of the investments they hold.

Further information, including the full report, can be found [here](#).

Pensions Disputes News

Update to High Court rebrand

In the [June 2017 Update](#), we noted that a number of the specialist jurisdictions of the High Court will collectively become known as the Business and Property Courts of England and Wales from a ceremonial launch date of 4 July.

The Business and Property Courts will formally start to operate on 2 October 2017.

Supreme Court rules on pensions for civil partners and same-sex spouses

The Supreme Court has ruled that pensions for surviving civil partners and same-sex spouses should be calculated on the same basis as for surviving opposite-sex spouses, and should not be subject to any temporal restrictions.

For more information, see our [Special Update - July 2017](#).

Pensions Ombudsman Annual Report shows rise in caseload

In its 2016/17 Annual Report and Accounts, the Pensions Ombudsman (the "Ombudsman") highlights the continued rise in the number of complaints received. Over 6,000 enquiries were handled in the course of the year, with 70% resolved informally by adjudicators rather than a formal Ombudsman decision.

The report also highlights the success of new working practices: 70% of complaints were received through the on-line application system launched in April 2016 and, despite the increase in number of enquiries, 40% of investigations were completed within 6 months (compared to 25% in the previous year).

Further information can be found [here](#).

Contact us

If you wish to discuss any of these issues further, please contact your usual Baker McKenzie lawyer.

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