The Early Bird Catches The Worm

Article By
Claire Dimmock
Chris Harper
Squire Patton Boggs (US) LLP
Compensation and Benefits: Global Insights

Friday, March 6, 2020

In October 2019 pension trustees’ investment duties were expanded. Further changes will take place from 1 October 2020, which will affect defined benefit (DB), defined contribution (DC) and hybrid pension schemes. In order to be in a position to comply with those duties, trustees will need to take action now. Trustees not only need to revise their statement of investment principles (SIP) (again) and publish it but also need to report on how they have implemented their policies. The implementation report may need to include a description of trustees’ activities before 1 October 2020.

SIP – Revisions

1. Policy in Relation to Arrangements with Asset Managers

From 1 October 2020, trustees must include in their SIP their policy in relation to any “arrangements” with asset managers. The policy will need to set out on a “comply or explain” basis various matters including, for example, how the arrangement incentivises the asset manager to align its investment strategy and decisions with the trustees’ policies in the SIP and how the trustees monitor portfolio turnover costs. More detail can be found in Part 1 of our client communication on trustees’ investment duties.

Many trustees will not currently include such matters their SIP, so a realistic
amount of time will need to be set aside to consider and formulate a policy on these issues, which is then implemented.

2. Stewardship

Since 1 October 2019, trustees have been obliged to state in their SIP their policies in relation to:

- The exercise of rights (including voting rights)
- Undertaking engagement activities in respect of the scheme’s investments (including monitoring and engaging with relevant persons about relevant matters).

From 1 October 2020, the definition of relevant persons will include (in addition to an issuer of debt or equity and investment managers) another stakeholder or holder of debt or equity. Also, from 1 October 2020, relevant matters will include the capital structure of investments and management of actual or potential conflicts of interest.

3. Process

There is a process that trustees must follow when revising their SIP, which should also be factored into the timescales. Trustees must:

- Obtain and consider the written advice of a suitably qualified person, and
- Consult the employer.

Trustees should allow plenty of time to deal with the new obligations.

**SIP - Publication**

Trustees of schemes providing DC benefits (other than benefits arising purely from additional voluntary contributions) are already required to publish their SIP online in a publicly available format. Where trustees have enlisted the help of a third party, such as scheme administrator or sponsoring employer, they should test that they can find their scheme’s SIP by using a google search. Not all SIPS that have been published to date are easy to locate – and they should be!

From 1 October 2020, trustees of DB schemes will also have to publish their SIP online in a freely available format. Trustees should start planning now how they will achieve this if their scheme does not have its own website. Could they publish the SIP on the website of their scheme administrators/consultants/sponsoring employer/any professional trustee appointed to the scheme?

**Implementation Report - Preparation**

From 1 October 2020, trustees of both DC and DB schemes will be required to produce an implementation report as part of their annual report. For trustees of schemes providing DC benefits, this means setting out how they have implemented
the policies in their SIP. The report must also describe voting behaviours and use of proxies during the year. Trustees of DB schemes will need to produce a shortened version of the implementation report that trustees of schemes providing DC benefits are required to produce. More information can be found in Part 1 of our communication on trustees’ investment duties.

Trustees need to make sure that they are already implementing the policies in their SIP. If trustees are not implementing certain of their policies then they should consider the reasons for this – does the SIP need to be revised?

**Implementation Report – Publication**

From 1 October 2020, an implementation report relating to the SIP for a scheme providing DC benefits must be published online and in a freely available format. Note, however, that:

- the section on voting behaviours, and
- the expanded definitions of relevant persons and relevant matters

do not need to be factored into the implementation report that is published online until 1 October 2021.

In contrast, while trustees of pure DB schemes must produce their first implementation report by 1 October 2020, they have a year’s grace before publication is required.

**Requirements at a glance!**

Trustees should be taking the following actions:

- Prepare a policy in relation to arrangements with asset managers
- Revise their stewardship policy to take account of the expanded definitions of relevant persons and relevant matters
- Consider whether there are any policies in the SIP that are not being implemented – do they need to be amended?
- Take advice from a suitably qualified person
- Consult with the employer on changes to the SIP
- Finalise the revised SIP
- Implement the policies in the SIP
- Trustees of schemes providing DB benefits only should decide how they will ensure that their SIP is published in a publicly available format online
- Trustees of all schemes should publish their SIP by 1 October 2020
• Prepare an implementation report

• Trustees of schemes providing DC benefits (except where the only DC benefits derive from additional voluntary contributions) should arrange publication of their implementation report by 1 October 2020

• Trustees of schemes providing only DB benefits should arrange publication of their implementation report by 1 October 2021.

More information on these reporting and publishing requirements, along with a timeline, can be found in Part 1 and Part 2 of our communication on trustees’ investment duties.

© Copyright 2020 Squire Patton Boggs (US) LLP

Source URL: https://www.natlawreview.com/article/early-bird-catches-worm