Pensions Investment Practice:

Investor Agenda

SUMMER | **2026**



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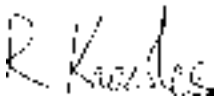
Welcome to our Summer 2026 edition of Investor Agenda

Not surprisingly, we focus in this edition on the long-awaited Pension Schemes Act 2026; and in particular the primary investment-related part of it – the contentious "mandation" provisions – although we will also have a long wait before we can expect to see implementing regulations under these provisions, as these cannot be made until 2028.

We also include an article on terms to consider in contracts for "fiduciary management" – sometimes known by other names such as delegated consulting, implemented consulting or outsourced CIO. Fiduciary management has been another long haul with AUM below only c.£100bn before 2010 and reports suggesting c.£250bn now, perhaps driven in part by the increasing complexity and governance burden of investment decision-making for trustees.

As always please do get in touch with me or your usual Linklaters contacts if you have any comments or topics you would like us to cover. Meanwhile, best wishes for an enjoyable (and typically long-awaited) summer.



Rosalind Knowles

Partner



Pension Schemes Act 2026: the implications of the new asset allocation mandation power

The Pension Schemes Act 2026 includes the highly contentious asset allocation mandation power, although this was subject to substantial amendments during the final stages of the Bill's passage through Parliament. Described as "mandation-lite", the Government has the power to introduce regulations requiring master trusts and GPPs to invest in line with the Mansion House Accord (i.e. 10% of default funds invested in private markets, with 5% allocated to UK businesses), although the power cannot be exercised before 1 January 2028 and is subject to a range of safeguards.

We consider below the key features of the legislation, as well as the implications for trustees.

What is the asset allocation power?

The Act introduces a new asset allocation requirement as one of the quality requirements that apply under the auto-enrolment regime for authorised DC master trusts and group personal pension schemes (GPPs). This means that, if and when the provisions are brought into force, master trusts and GPPs must be approved by the Pensions Regulator as meeting the asset allocation requirement in order for the scheme to be used for auto-enrolment purposes.

The Regulator will only be able to approve a master trust or GPP if the Regulator determines that at least the "prescribed percentage" of the scheme assets held in main default funds are "qualifying assets".

Regulations will set out what counts as a qualifying asset, but it will be limited to direct or indirect holdings in any of the following asset classes:

- private equity;
- venture capital;
- private credit;
- interests in land;
- infrastructure; and
- unlisted equity securities not falling within any of the categories above.

The description of qualifying assets may also relate to whether an asset is located in the UK or elsewhere, or the presence or absence of other factors linking an asset to economic activity in the UK.

The prescribed percentage will be set out in regulations, but cannot require more than 10% to be qualifying assets or more than 5% to be of a UK-specific description.

What safeguards are included in the legislation?

Following pressure from the House of Lords, the Act was amended during its passage through Parliament to include a range of safeguards around the exercise of the mandation power. These fall broadly under three headings:

1. When the power may be exercised

The Act provides that the power to make regulations under the asset allocation mandation power can only be exercised once and this cannot be before 1 January 2028 or after 31 December 2032.

In addition, all of the provisions relating to asset allocation will be repealed automatically on 31 December 2035. This means that, even if the power is exercised, the requirements will fall away entirely at the end of 2035.

2. Requirements before the power can be exercised

Before making the regulations, the Secretary of State must prepare and publish a report setting out:

- a joint assessment by the Financial Conduct Authority and the Pensions Regulator of the extent to which there is evidence of competitive conditions restricting master trusts and GPPs from investing in qualifying assets (and the Secretary of State must have regard to this assessment before making the regulations);
- the Secretary of State's assessment of the extent to which master trusts and GPPs have made progress towards achieving the aims of the Mansion House Accord;
- the Secretary of State's assessment of any barriers to master trusts or GPPs investing in qualifying assets, including in particular where such assets are located in the UK;
- the steps taken to address any such barriers;
- how the financial interests of members are or would be affected by the proposed regulations; and
- what effects the proposed measures could be expected to have on economic growth in the UK.

The Secretary of State will also be required to publish a report on the effects of the regulations within 5 years of the regulations coming into force. This must consider:

- whether and how the financial interests of members have been affected by the regulations; and
- the effects (if any) on economic growth in the UK.

3. Exemption from the requirements

The regulations must include a process under which master trusts and GPPs can apply for an exemption from the asset allocation requirement. This will require the master trust or GPP to confirm that meeting the asset allocation requirement is likely not to be in members' best interests; and set out the basis on which that conclusion has been reached.

The Regulator must then grant the exemption, subject to being satisfied that it was reasonable for the master trust or GPP to have reached the conclusion that meeting the asset allocation requirement is likely not to be in members' best interests. It will be possible to appeal this decision to the Upper Tribunal.

What are the implications for trustees?

The Government has said that it does not currently intend to use the asset allocation power in the Act and, as explained above, it cannot do so before 2028 at the earliest. If and when the Government does decide to exercise the power, it will only apply to the main default funds of master trusts and GPPs, and schemes will be able to apply for an exemption from the requirements where they are not likely to be in members' best interests.

Nonetheless, the inclusion of these provisions in the Act is significant and it seems reasonable to expect that the power will be exercised in due course if the aims of the Mansion House Accord are not met voluntarily over the next few years.

Potentially affected schemes should therefore monitor developments in this area closely.



Claire Collier



Lewis Thornton



Fiduciary management agreements: key terms to watch out for

Fiduciary management is the delegation by trustees of some of their investment powers and decisions. It may include (but is not limited to) responsibility for asset allocation and fund/manager selection. Use of fiduciary management has grown in popularity in recent years, particularly for smaller defined benefit (DB) schemes which do not necessarily have the bandwidth to manage the complexities and time commitment needed for investment management. However, it can be attractive for DB schemes of any size depending on trustees' willingness to control the various aspects of the investment process.

When entering into a fiduciary management arrangement, trustees will need to sign an investment management agreement (IMA) with their chosen manager. Unlike a standard IMA, a fiduciary management IMA should take account of the particular relationship between a trustee and the fiduciary manager and the services to be provided. This article looks at some of the key terms and issues which we typically see addressed in such IMAs.

Terms and issues to consider when entering into fiduciary IMAs

Key term or issue	Preferred position for trustees
Standard of care for the manager	We would look for managers to perform the investment services in line with a duty of care tailored to the scheme, i.e. with the due care and skill expected of a leading investment manager providing equivalent services to a pension scheme of a similar size.
Key manager personnel	The IMA should include details of the manager's key people who will manage the trustees' fiduciary mandate. Such a provision will usually give assurances that the key people will devote sufficient time to managing the scheme's investments and will not be removed or assigned to a different role without giving the trustees reasonable prior notice. Sometimes it is possible to negotiate "lock in" periods where the manager commits not to remove or replace the key personnel for a period.
Delegation powers	The IMA will usually allow the manager to delegate its functions, including its core functions of investment and portfolio management, to its affiliates. This is reasonable provided that where it does so, the manager will remain liable for its actions.

Key term or issue	Preferred position for trustees
	Managers will also want to be able to use third-party service providers to perform some of the services and may not accept liability for their actions. This is reasonable provided the manager acts in accordance with the agreed standard of care in the selection, appointment, use and ongoing monitoring of service providers.
Investments into the manager's own funds	A typical feature of fiduciary IMAs is the ability for the manager to invest scheme assets into their own in-house funds. This has obvious commercial benefits for the manager and can create positive investment outcomes for trustees; but care is needed on how this is structured. We would recommend IMAs contain some protective provisions for trustees covering, for example: > how the manager will manage conflicts of interest; > an ability for the trustees to veto these investment decisions; and > an option for the trustees to request and review all relevant documentation relating to the fund before the investment is made.
"Guardrails" for when the manager enters into underlying documents on the trustees' behalf	Linked to the issue in the row immediately above, it is fairly common in fiduciary mandates where the manager has authority to enter into underlying agreements on the trustees' behalf to agree "guardrails" in order to give trustees protection on the key terms within those documents if, as is often the case, they will not be reviewing and negotiating them directly. If the manager is unable to obtain the relevant terms in the underlying documents, this would need to be notified to the trustees and the trustees' consent would then be required to proceed. The most frequent we see discussed are: > Representations and warranties: we often see a specific restriction which limits the representations and warranties that can be provided in an underlying document to those which are given in the IMA. > Liability: including restrictions on the scope and extent of the trustees' liability in the underlying documents is also common. This can be both in terms of a monetary limit on the trustees' liability and in terms of the scope of liability. > Termination: we see terms relating to termination notice period requirements included in sub-IMAs (if used) to align with the termination notice period in the IMA.

Key term or issue	Preferred position for trustees
	> Market practice: we have seen an obligation on managers to ensure that the terms of documents entered into are generally consistent with market practice for similar documents. However, this can be difficult to enforce in reality, and some managers may resist this on the basis that it is a vague requirement to meet.
Trustee liability	The IMA is likely to require the trustees to indemnify the manager for any losses in connection with providing the services under the IMA and as a result of a breach of any trustee warranty. This is not unreasonable. It is important, however, that the trustees' liability under the indemnity is capped. This is a matter for commercial discussion with the manager, but an acceptable outcome would, for example, be a cap equal to the lower of: > the highest value of the total portfolio managed by the manager over an agreed period before any claim; and > the value of scheme's assets on the date of the claim.
Manager liability	We typically see managers having no cap on their liability in fiduciary IMAs other than for certain bespoke services. We think it is reasonable for managers to be liable for, and to indemnify the trustees against, any losses incurred by the trustees under the IMA that arise because of the manager's (or its delegate's) breach of the IMA, negligence, wilful default or fraud. Sometimes managers insist that trustees should use reasonable endeavours to mitigate any losses incurred, which can generally be accepted.
Investment advice under Section 36 of the Pensions Act 1995	Section 36 says that trustees are required to obtain and consider formal investment advice before investing in any manner (referred to as "proper advice" in the legislation). This advice is typically provided by an FCA authorised person. Trustees should check their fiduciary manager can provide this advice. We'd typically want to see such advice provided in the following (non-exhaustive) circumstances: > on the investment guidelines within the IMA before the manager starts to manage the scheme's assets;

Key term or issue	Preferred position for trustees
	> prior to any subsequent amendment to the investment guidelines taking effect; > where trustees have an option to veto an investment or are asked to consent to a manager selection decision in respect of one of the manager's own products (because this would be an investment decision); > where requested by trustees on any change to the scheme's statement of investment principles; and > where trustees request the manager provide updated advice from time to time on the fiduciary mandate.
Data protection	While we would not expect any member data to be provided to a fiduciary manager, it is usual to include some baseline data protection provisions in these kinds of agreements around the use of any data and security measures to be put in place. The IMA should contain cyber-security provisions. Given the nature of the services under the agreement, there is additional cyber risk for a mandate of this nature.
Termination	Trustees should be able to terminate a fiduciary IMA without cause on giving no more than 3 months' notice. The manager should not be able to terminate without cause on giving less than 6 months' notice. This gives the trustees sufficient time to plan for an orderly transition of assets to another manager(s). We would expect to see provisions which require the manager, on termination, to provide support to the transition to a replacement manager and continue to provide services for an agreed period after termination to support the transition.
Investment guidelines and fees	Detailed information about how the scheme's assets can be invested and any restrictions, as well as the manager's fees, will usually be set out in appendices to the IMA. Whilst these are a matter for commercial negotiation with the manager, we would expect trustees' investment consultants and legal advisers to review these appendices to ensure the terms are reasonable.



Gareth Craft

Contacts



Rosalind Knowles
Partner
Tel: +44 20 7456 3710
rosalind.knowles@linklaters.com



Philip Goss
Partner
Tel: +44 20 7456 5604
philip.goss@linklaters.com



Sarah Parkin
Partner
Tel: +44 20 7456 3548
sarah.parkin@linklaters.com



Claire Collier
Counsel
Tel: +44 20 7456 3716
claire.collier@linklaters.com



Gareth Craft
Managing Associate
Tel: +44 20 7456 4265
gareth.craft@linklaters.com



Oliver Hill
Managing Associate
Tel: +44 20 7456 4133
oliver.hill@linklaters.com



Will Rose
Managing Associate
Tel: +44 20 7456 5969
will.rose@linklaters.com

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