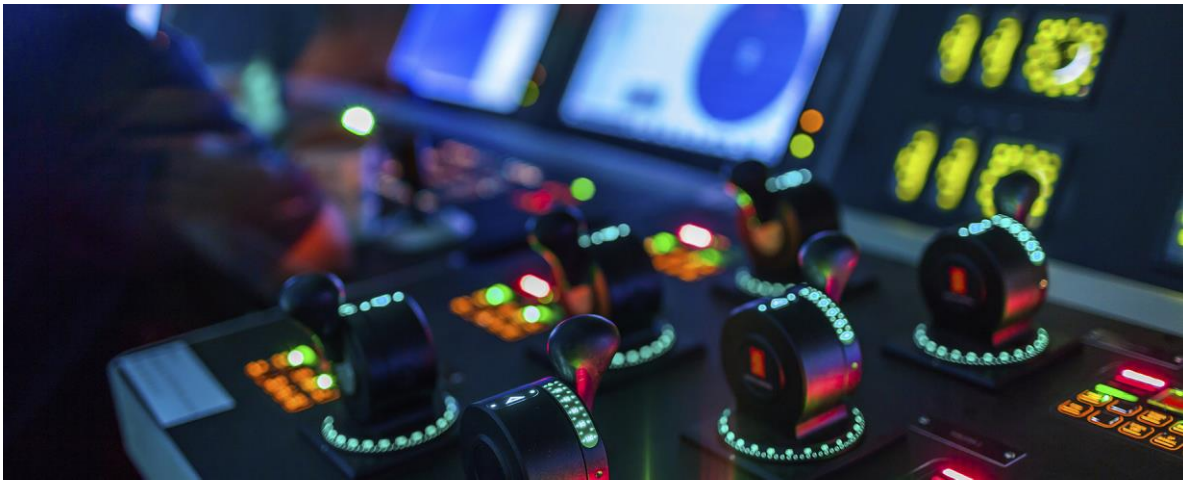

January 2019

Pensions Radar

Pensions Radar is a quarterly listing of expected future changes in UK law affecting work-based pension schemes. Please speak to your usual Travers Smith contact if you would like to know more about any topics.

LEGISLATIVE AND REGULATORY DEVELOPMENTS

The following are expected developments with known dates:	KEY DATE
DC investment disclosure	
Information on DC investment charges and transaction costs must be disclosed by trustees in the annual chair's governance statement and on a public website, to which benefit statements must refer. Trustees must comply within seven months after the first scheme year end date falling on or after 6 April 2018.	From 6 November 2018 or later
Trustees must also provide to DC members on request a statement containing, in relation to any pooled fund (ie, collective investment scheme or unit-linked contract), the name and international securities identification number (ISIN) of each underlying collective investment scheme (at the top level only). Annual benefit statements must say how a member can request the statement.	From 6 April 2019
See **WHiP Issue 70**.	
Brexit The UK's notice under Article 50 of the Treaty on European Union started a two year period for the UK and EU to agree exit terms and their post-Brexit relationship, before the UK leaves the EU. See our briefing note **Leaving the EU: the legal implications** for an outline of the potential impact in various areas. See also **WHiP Issue 74**.	29 March 2019 (unless notice withdrawn or all EU member states agree an extension)
European Markets Infrastructure Regulation (EMIR): mandatory clearing of over the counter (OTC) derivatives transactions An exemption for pension schemes from the mandatory central clearing requirements of EMIR expired on 16 August 2018. The exemption applied to certain OTC derivatives transactions used to reduce investment risks and liabilities. Whether pension schemes will be able to avail themselves of an expected new exemption (until at least 2021) depends on the EU ratifying an amendment to EMIR before Brexit. The FCA continues to encourage preparation	29 March 2019 (or later Brexit)

for mandatory central clearing as early as practicable. See our briefing note **EMIR reporting: are you ready?** and **WHiP Issues 62** and **71**. (*See also see note 1 on page 5: Effect of Brexit.)*

Pension protection levy: contingent assets — 31 March 2019

Contingent assets, including guarantees, need to be certified to the PPF by 31 March 2019 if they are to be recognised for a 2019/20 levy reduction. This year, all guarantees that include a fixed sum (ie, £x) liability cap must be in the PPF's new standard form to be accepted by the PPF. Existing guarantees may need to be amended or replaced, which will require negotiations between trustees and guarantors. See our briefing note **Does your PPF guarantee include a fixed sum liability cap? If so, the clock is ticking**.

Master trust authorisation regime — 31 March 2019

The Pension Schemes Act 2017 includes provisions for the authorisation and regulation of master trusts. Trustees of existing master trusts have six months from 1 October 2018 to apply for authorisation or to decide to wind up the scheme. See **WHiP Issues 64**, **68**, **70**, **71** and **72**.

Discontinuation of legal opinions covering the 1995 GMRA — From April 2019

The International Capital Markets Association will no longer publish legal opinions that cover the 1995 version of the Global Master Repurchase Agreement (GMRA). The GMRA is the market-standard trading documentation for use in sale and repurchase (repo) transactions. Valid legal opinions are required by counterparties as a condition for entering into a repo. Schemes with 1995 GMRAs in place should update their documentation to the newer 2000 or 2011 versions.

Fiduciary management — By 11 June 2019

The Competition and Markets Authority will implement a new regime for fiduciary management, affecting pension scheme trustees engaging providers of these services as well as the providers themselves. See **WHiP Issue 74**.

Investment disclosure — 1 October 2019 and 1 October 2020

Trustees will have new obligations concerning the disclosure of information about investment matters, including as to environmental, social and governance (ESG) factors and stewardship. See **WHiP Issue 73**.

EU Fifth Money Laundering Directive — 10 January 2020

The EU's Fifth Money Laundering Directive will impose more onerous obligations on trustees than the current directive, regarding disclosure of beneficiary details and registration. See **WHiP Issue 71**. (*See also note 2 on page 5: Effect of Brexit.*)

DC scheme charges — 2020

The government will again review the DC charges cap. For more details, see our briefing note **DC charges and governance** and **WHiP Issue 68**.

Securities Financing Transactions (SFT) Regulation — 2020

This EU Regulation relates to SFTs such as repo/reverse repo and securities lending transactions. Record-keeping obligations are already in force and trustees are required to issue prescribed risk warnings to their counterparties. The requirement to report SFTs to a trade repository is expected to come into force in 2020. See **WHiP Issue 57**. (*See also note 1 on page 5: Effect of Brexit.*)

Expiry of statutory power to amend contracted-out DB scheme rules — 5 April 2021

The unilateral employer power to amend formerly contracted-out scheme rules to

reduce future benefit accrual and/or increase member contributions will expire. See our briefing note **State pension reform and the end of contracting-out**.	
Automatic enrolment changes The government has proposed significant changes to the scope of the automatic enrolment duties, including extending automatic enrolment to 18 to 21 year olds and removal of the lower pensionable pay threshold, subject to finding ways to make these changes affordable. See **WHiP Issue 68**.	Mid-2020s
Normal minimum pension age to be raised to 57 The government intends to raise normal minimum pension age from 55 to 57 and thereafter to maintain a ten year gap with state pension age.	From 2026 to 2028
Automatic re-enrolment Every three years, an employer must carry out an exercise to re-enrol, into an automatic enrolment scheme, eligible jobholders who opted out after they were automatically enrolled. This duty first arises three years from the employer's staging date, when automatic enrolment was first required, and there is a six month window around that anniversary during which the exercise must be carried out. It must then be repeated every three years. See our briefing note **Automatic re-enrolment**.	Every three years
State pension ages rising State pension age for both men and women is now rising above age 65, currently to age 68 by 2046. The increase from 66 to 67 has been brought forward by eight years, to take place between 2026 and 2028. The government proposes that the increase from 67 to 68 now be made between 2037 and 2039. See our briefing note **Bridging pensions – state pension age issues**, on the issues that rising state pension ages can cause for schemes that attempt to integrate with the state pension.	Until 2046 or perhaps 2039 (with implications already for schemes with bridging pensions or state pension offsets)

PENDING CASES

The following pending case may result in a judgment that affects schemes other than just those involved:

Retrospective equalisation of pension ages

In *Safeway v Newton*, the European Court will consider whether European law prevented a scheme's retrospective amendment power from being used to 'level down' benefits accrued in a *Barber* window period. See **WHiP Issue 67**.

EXPECTED DEVELOPMENTS WITH NO CONFIRMED DATE

The following are expected legislative and regulatory developments for which there is no confirmed date:

GMPs and sex discrimination

The *Lloyds Banking Group case* has provided some clarity about the need to equalise benefits to remove the discriminatory effects of GMPs but a further hearing, to consider undecided issues, may take place. The government previously stated its intention to legislate to remove the need for a claimant to point to a comparator of the opposite sex in order to establish unlawful discrimination. Implementation was delayed, however, pending the *Lloyds* litigation and consideration of a combined value-equalisation and GMP-conversion process. An industry group is also now considering issues for trustees and administrators. See our briefing notes **Equalisation of benefits that include GMPs** and **GMP equalisation: court ruling**, and **WHiP Issue 74**.

Pensions Regulator powers

In its March 2018 white paper, the government proposed to extend the Pensions Regulator's powers to allow it to penalise those who deliberately put a pension scheme at risk. The government also proposes a criminal offence and civil penalties for directors or connected persons found to have committed wilful or grossly reckless behaviour in relation to a pension scheme. The "notifiable events" framework will be improved and the Regulator's information gathering powers will be extended.

There will be a requirement that employers or parent companies produce a "declaration of intent" in advance of the riskiest transactions (including sales and takeovers of employers), having consulted trustees on the assessment of detriment and mitigation.

See our briefing note **Protection of DB pension schemes: government plans** and **WHiP Issue 71**.

DB scheme funding

As noted in the March 2018 white paper, the Pensions Regulator is developing a new Code of Practice on Funding Defined Benefits (with new accompanying guidance), to define "prudent" (in relation to technical provisions) and "appropriate" (in relation to recovery plans) and to ensure that long-term objectives for the scheme are considered when setting funding objectives. A consultation is expected in spring 2019. The government intends to make compliance with at least part of the new Code a statutory requirement.

DB schemes will be required to have chairs, who must produce statements on key funding decisions (as well as consideration of key risks, value for money and long-term plans for the scheme). These are to be submitted to the Regulator with triennial valuations, with power for the Regulator to request an out-of-cycle statement.

See our briefing note **Protection of DB pension schemes: government plans**.

PPF compensation levels

In *Hampshire v Board of the Pension Protection Fund*, the European Court ruled that the PPF does not provide adequate protection in cases such as Mr Hampshire's. See **WHiP Issue 72**. The government is considering how to implement the judgment. In the meantime, the PPF is increasing compensation for those affected. *(See also note 2 on page 5: Effect of Brexit.)*

Survivors' pensions for same sex spouses, civil partners and widowers

The Supreme Court's decision in *Walker v Innospec Limited* (see **WHiP Issue 65**) requires pensions for surviving same sex spouses and civil partners to be provided on the same basis as for opposite sex spouses. It also raises difficult questions, not considered by the Supreme Court, about survivors' GMPs and benefits for widowers in respect of pre-April 1988 service. The government is reviewing the position.

Collective DC schemes

The government has consulted on legislation to facilitate the operation of "collective defined contribution" schemes, under which defined benefits are targeted but not promised and the scheme pays pensions. Its response is awaited. See **WHiP Issue 73**.

DB scheme consolidation

The government has consulted on legislation governing DB consolidator schemes which are intended to operate in some circumstances as an alternative to buy-out. See **WHiP Issue 74**.

Combatting pension scams: restriction of statutory transfer right

The government proposes to limit the schemes to which a statutory cash equivalent transfer value can be taken. There will only be a statutory right to transfer to: a personal pension operated by an FCA authorised firm; an occupational pension scheme where there is evidence of genuine earnings from an employment to which the scheme relates; or an authorised master trust. See **WHiP Issue 66**.

IORP II directive

Existing internal controls requirements will be broadened to require occupational pension schemes to "establish and operate an effective system of governance including internal controls", which must be "proportionate to the size, nature, scale and complexity of the activities of the occupational pension scheme".

The Pensions Regulator's code of practice on internal controls is required to be updated. Schemes with 100 or more members will need to check existing policies or introduce new policies in relation to various matters. Trustees of such schemes will also be required to carry out and document an "own-risk assessment" of their system of governance. See **WHiP Issue 62** and **73**. (*See also note 2 below: Effect of Brexit.*)

Civil partnerships

The government has announced that it intends to allow opposite sex couples to enter into civil partnerships. See **WHiP Issue 73**.

Shared parental leave for grandparents

The government might extend rights to shared parental leave and pay to working grandparents.

Effect of Brexit Note 1: *EU regulations (as distinct from directives) apply in member states without the need for domestic implementing legislation. Under the European Union (Withdrawal) Act 2018, they will continue to apply in the UK until domestic law changes to give effect to Brexit.*

Effect of Brexit Note 2: *Strictly speaking, obligations on the UK to implement EU directives by applicable deadlines that pre-date the UK leaving the EU should be complied with. It remains to be seen whether this will occur in practice. Some Brexit models would require the UK to continue to implement many directive requirements.*

Pensions Radar is not a substitute for proper legal advice. If you wish to discuss any topics, please speak to your usual contact in the Travers Smith Pensions team or to one of the Pensions partners: Susie Daykin, Daniel Gerring, David James, Dan Naylor and Paul Stannard.

Please see **our website** for briefing notes and issues of our regular newsletter, "What's Happening in Pensions".

If you do not already subscribe to our Pensions mailings and would like to do so, please email **pensions@traverssmith.com**.

Travers Smith LLP
10 Snow Hill
London EC1A 2AL
T: +44 (0)20 7297 3000
F: +44 (0)20 7295 3500

www.traverssmith.com