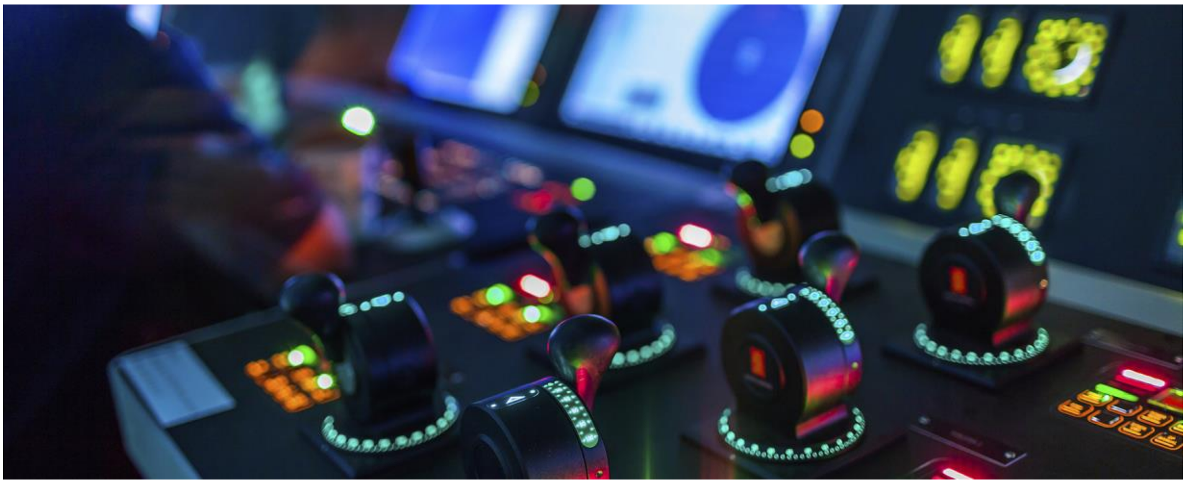

July 2019

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 charges and costs 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 (but not of any collective investment scheme in which those collective investment schemes themselves invest). Annual benefit statements must say how a member can request the statement.	From 6 April 2019
See **WHiP Issue 70**.	
Investment disclosure	1 October 2019, 1 October 2020 and 1 October 2021
Trustees have new obligations concerning the content of statements of investment principles and the disclosure of information about investment matters, including as to environmental, social and governance (ESG) factors, climate change and stewardship. DC and hybrid schemes have to publish their statement of investment principles on a publicly accessible website from 1 October 2019. DB schemes will have to publish their statement of investment principles on a publicly accessible website from 1 October 2020. Benefit statements will have to alert members. See **WHiP Issues 73** and **76**.	
Stewardship Code	October 2019
The FRC has consulted on a new Stewardship Code for institutional investors (including pension schemes) in relation to UK listed companies. The final version	

is awaited. See **WHiP Issue 75**.

Brexit

11pm on 31 October 2019; 1st of month following earlier withdrawal agreement; or date of any further extension

The UK's notice under Article 50 of the Treaty on European Union started a two year period, which has been extended twice, for the UK and EU to try to agree exit terms 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, including pensions. See also **WHiP Issues 74** and **75**.

Professional trustee accreditation

Late 2019

The Professional Trustee Standards Working Group has published new standards for professional trustees of occupational pension schemes. Details of the accreditation framework are awaited. See **WHiP Issue 75**.

Civil partnerships

By 31 December 2019

Legislation is expected to allow opposite sex couples to enter into civil partnerships. See **WHiP Issue 76**.

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 76**. (*See also note 2 on page 5: Effect of Brexit*.)

Fiduciary management and investment consultancy

From 10 December 2019 (CMA order) / 6 April 2020 (proposed legislation)

The government proposes to introduce regulations to reinforce a Competition and Markets Authority (CMA) order regarding a new regime for fiduciary management. This affects pension scheme trustees who engage providers of these services as well as the providers themselves. There will also be a requirement for trustees to set strategic objectives for their investment consultants. Trustees will have to confirm compliance annually. See **WHiP Issues 74**, **75**, **76** and the next issue.

Securities Financing Transactions (SFT) Regulation

11 April 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 will come into force on 11 April 2020. See **WHiP Issue 57**. (*See also note 1 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**.

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**.

European Markets Infrastructure Regulation (EMIR): mandatory clearing of over the counter (OTC) derivatives transactions

17 June 2021

The temporary clearing exemption for pension schemes has been extended as part of the "REFIT" of EMIR. The exemption applies to certain OTC derivatives transactions used to reduce investment risks and liabilities. Notwithstanding this, the FCA continues to encourage all market participants, including pension schemes, to prepare for mandatory central clearing as early as practicable. See **WHiP Issue 76**. (*See also see note 1 on page 5: Effect of Brexit.)*

London Inter-Bank Offered Rate (LIBOR) to be discontinued

During 2021

The FCA is encouraging all market participants to transition away from the use of LIBOR, which will no longer be supported by it from the end of 2021. Pension schemes may use LIBOR as a benchmark against which the investment performance of their managers is judged as well as having positions in interest-rate derivatives referable to LIBOR. There is not yet a settled, market-wide view of what will replace LIBOR but industry groups are active in seeking suitable alternatives.

Automatic enrolment changes

Mid-2020s

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**.

Normal minimum pension age to be raised to 57

From 2026 to 2028

The government intends to raise the normal minimum pension age for registered pension schemes from 55 to 57 and thereafter to maintain a ten year gap with state pension age.

Automatic re-enrolment

Every three years

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**.

State pension ages rising

Until 2046 or perhaps 2039 (with implications already for schemes with bridging pensions or state pension offsets)

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.

PENDING CASES

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

Retrospective equalisation of pension ages

In *Safeway v Newton*, the European Court is considering 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 considering issues for trustees and administrators (following publication of a 'call to action' in July 2019, initial guidance expected September 2019). An HMRC group is considering tax issues (initial guidance expected perhaps in autumn 2019).

See our briefing notes **Equalisation of benefits that include GMPs** and **GMP equalisation: court ruling**, and **WHiP Issues 74** and **76**.

Pensions Regulator powers

The government is pressing ahead with most of its proposals to strengthen the Pensions Regulator's powers and to introduce new notification requirements for pension scheme trustees, sponsoring employers and related parties. There will be significant changes in relation to scheme governance and funding, and new measures in relation to corporate activity and other events that might detrimentally affect pension schemes. Changes include new criminal offences and significant financial penalties. However, no timescale has been given and much of the important detail is yet to be settled.

See our briefing note **Confirmed government plans for the protection of DB pensions**.

DB scheme funding

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 2020, following a consultation this year on a new scheme funding framework. 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 notes **Protection of DB pension schemes: government plans** and **Confirmed government plans for the protection of DB pensions**.

DB 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. Its response is awaited. See **WHiP Issue 74**.

Collective DC

The government will be bringing forward legislation to enable the provision of collective defined contribution pensions as "money purchase benefits". Collective DC schemes target defined benefits but do not promise them and the scheme pays pensions. Initially, the only permitted model will be the one agreed by Royal Mail with the Communication Workers Union. See **WHiP Issue 75**.

Pensions dashboard

Schemes will be required to make data available for pensions dashboards. Details are awaited but the obligation will be staged, with the largest DC schemes affected first. See **WHiP Issue 76**.

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, where the compensation was less than 50% of the accrued scheme benefit entitlement. See **WHiP Issue 72**. The government is considering how to implement the judgment. In the meantime, the PPF is increasing compensation for those affected. A new European Court case, *Bauer*, concerning a German pension arrangement could result in PPF compensation being required to protect benefits in full on the insolvency of an employer (see **WHiP Issue 76**). *(See also note 2 below*: *Effect of Brexit.)*

Combatting pension scams: restriction of statutory transfer right

The government has proposed 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 have been 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.*)

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 after Brexit.*

Effect of Brexit Note 2: *When/if the UK leaves the EU, and subject to any agreed exit terms, it will not be obliged to implement EU directives. Some Brexit models would, however, require the UK to continue to implement many directive requirements. 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.*

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, Andy Lewis, Dan Naylor and Paul Stannard.

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

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