BRIEFING

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.

April 2023

SUSTAINABILITY MATERIALS: Our Sustainable Business Hub includes a section on ESG and sustainable finance issues for pension schemes and their sponsors. See also our latest ESG Newsletter.

Legislative and regulatory developments

The following are forthcoming developments with known or expected dates:

KEY DATE

EMIR/UK EMIR: mandatory clearing exemption for pension schemes

18 June 2023 – EEA

18 June 2025 – UK

Until now, certain pension schemes have benefited from an exemption from the obligation to clear certain classes of OTC derivatives contracts under each of EMIR and UK EMIR while clearing solutions for pension schemes have been considered.

The European Commission's EMIR exemption for EEA schemes expires on 18 June 2023. The exemption under UK EMIR has been extended to 18 June 2025.

Schemes should ensure they are familiar with the clearing requirements and are operationally ready to begin clearing derivatives transactions should they exceed the various volume thresholds for clearing. In advance of the 18 June 2023 EMIR exemption expiry, schemes facing EEA bank counterparties should ensure they are in a position to either close-out their in-scope derivatives (or novate such derivatives to UK bank counterparties) or exclusively face UK bank counterparties for in-scope derivatives.

Pensions Regulator general code of practice and own-risk assessments

June 2023 (but with a time period to be confirmed for schemes to comply with the new scheme governance content)

The Pensions Regulator has consulted on a consolidation and update of ten of its current codes of practice, with more to follow. The outcome is awaited.

The new 'general code' will also include new content on scheme governance: this relates to the broadening of existing internal controls requirements 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". Schemes with 100 or more members will need to check existing policies or introduce new policies in relation to various governance matters. Trustees of these schemes will also be required to carry out and document an "own-risk assessment" of their system of governance. See WHiP Issues 88 and 91.

London Inter-Bank Offered Rate (LIBOR) discontinued but "synthetic" LIBOR published temporarily

30 June 2023

28 March 2024

30 September 2024

The final LIBOR rates for most currencies and durations were published on 31 December 2021. A statutory rate known as "synthetic" LIBOR continued to be temporarily published, giving schemes additional time to transition their LIBOR transactions (such as interest-rate derivatives) to a replacement rate, such as compounded SONIA (the sterling overnight index average).

The publication of the 1 and 6-month synthetic sterling LIBOR settings ceased as of 31 March 2023. The 3-month synthetic sterling LIBOR setting is expected to cease on 28 March 2024. The overnight and 12-month US dollar LIBOR settings will cease permanently after publication on 30 June 2023, and ICE Benchmark Administration Limited will continue publication of the 1, 3 and 6-month synthetic US dollar LIBOR settings from 1 July to 30 September 2024.

DC illiquid investment

1 October 2023 to 1 October 2024

Regulations require DC scheme trustees to disclose and explain:

- in their default arrangement statement of investment principles their policies on illiquid investment; and
- in the chair's statement their default asset allocation.

See WHiP Issue 100.

Automatic enrolment review

2023

The Government is required to review the automatic enrolment DC and DB scheme alternative quality requirements every three years.

Retained EU law (Revocation and Reform) Bill

31 December 2023

This Government bill has the potential to result in the repeal of swathes of EU-derived legislation by virtue of a 'sunset clause' which provides for most retained EU law to fall away automatically on 31 December 2023 unless it is specifically saved. See WHiP Issues 98 and 99.

DB scheme funding and investment

April 2024

DB schemes will have to have a "funding and investment strategy", for ensuring that benefits can be provided over the long term. After determining or revising such a strategy, trustees will have to prepare a "statement of strategy" which will normally have to be agreed with the sponsoring employer. All valuations will have to be submitted to the Pensions Regulator as soon as reasonably practicable, whether or not the scheme is in deficit. Details will be in regulations, on which a public consultation has been held (see WHiP Issue 97).

To complement these changes to the statutory scheme funding regime the Pensions Regulator has consulted on a new Code of Practice and a 'fast-track' mechanism for schemes able to meet certain criteria based on tolerated levels of risk. See WHiP Issue 99.

Lifetime allowance to be abolished

6 April 2024

The lifetime allowance charge was abolished from 6 April 2023. The Government intends to repeal the remainder of the lifetime allowance legislation with effect from 6 April 2024. We do not yet know how protections will then be treated. In the meantime, the lifetime allowance and protections remain in place for limited purposes. See WHiP Issue 101.

Tax relief – 'net pay' schemes

From April 2024

The Government will take steps to address the tax relief disadvantages for low earners in schemes (generally occupational pension schemes, including some master trusts) where the "net pay" tax relief system is operated. See WHiP Issues 97 and 101.

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. A private member's bill supported by the Government seeks to introduce powers to make the changes but there is no new indication as to timing. See WHiP Issues 68 and 101.

Data transfers to the EU

June 2025

The European Commission's June 2021 adequacy statement regarding protections for personal data transferred from the EU to the UK expires after four years but can be renewed. See WHiP Issues 86 and 90.

Normal minimum pension age to be raised to 57

6 April 2028

The normal minimum pension age for registered pension schemes will be 57 (rather than 55) with effect on and from 6 April 2028, with some protections for members with existing rights to draw benefits earlier. Trustees should inform members at the next opportunity of any change to the age from which they are able to access benefits under the scheme rules. See WHiP Issue 94.

RPI reform

February 2030

The UK Statistics Authority is expected to align the Retail Prices Index with the Consumer Prices Index including owner-occupied housing costs (CPIH) when it is able to do so unilaterally, which is from February 2030. The Chancellor of the Exchequer declined to consent to earlier reform and a judicial review challenge failed. See WHiP Issues 78, 81, 86 and 98.

Ongoing and recurring events

The following are events that are ongoing or recurring:

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 (with implications already for schemes with bridging pensions or state pension offsets)

State pension age for both men and women is rising 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. 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.

Expected developments with no confirmed date

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

Pensions dashboards

The timetable for pensions dashboards had been set, requiring schemes to connect and provide data on a staged basis. The public launch had been expected to be in late 2024. The programme is currently, however, on hold and new dates are awaited. See WHiP Issue 101.

Schemes have been urged to continue to prepare for connection. See our updated article 10 actions for getting to grips with pensions dashboards.

DB consolidator schemes

The Government has consulted on legislation governing DB consolidator schemes, or "superfunds", which are intended to operate in some circumstances as an alternative to buy-out. Its response is long awaited. In the meantime, Pensions Regulator guidance applies and guidance on alternative models is expected in 2023. The Government has also indicated that it is considering issues around taxation. See WHiP Issue 74, 82, 85 and 88.

GMPs and sex discrimination

Judgments in the *Lloyds Banking Group* case have provided some clarity about the need to equalise benefits to remove the discriminatory effects of GMPs and about the obligations on trustees as regards past transfers-out. See our briefing notes GMP equalisation: court ruling and GMP equalisation – where are we now?.

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. There has been no news on progress in this area.

HMRC published newsletters in February 2020, July 2020, April 2022 and June 2022 on tax issues relating to GMP equalisation adjustments (respectively on: dual records adjustments to pension benefits; adjustments to lump sum payments; transfer corrections and GMP conversion; and tax on pension arrears and interest).

An industry group is considering issues for trustees and administrators and has issued guidance notes on various aspects.

A private member's bill on GMP conversion, intended to make it easier to use that facility alongside equalisation, has been passed. The substantive legislative changes are left to regulations, for which no date has been indicated. See WHiP Issues 93 and 95.

DC value for money

The Government, Pensions Regulator and FCA have consulted on a new framework on metrics, standards and disclosures for value for money assessments in DC occupational pension schemes and personal pensions. They propose to require DC scheme trustees and independent governance committees of workplace personal pension schemes to assess in detail, compare and disclose the value for money that their scheme provides. They aim to help trustees to make more informed investment and governance decisions and employers to compare options for pension provision, whilst also driving competition. The consultation outcome is expected in Summer 2023 but with no new law for a few years yet. See WHiP Issue 100.

Small DC pots

The Small Pots Working Group published its recommendations to the Government and pensions industry on potential ways of addressing the proliferation of small DC pension pots: see WHiP Issue 86. An industry working group has been taking the matter forward and a Government call for evidence on proposed options was issued in January 2023: see WHiP Issue 101.

DC chair's statements

The Government is discussing potential improvements to the DC chair's governance statement requirements with the Pensions Regulator and industry representatives. It will also consider giving the Regulator discretion over fines for non-compliance, which are currently mandatory. See WHiP Issue 88.

Amendment power case

The BBC is asking the High Court to rule on the interpretation of its DB scheme amendment power, regarding the ability to change member contributions and future service benefits, including the power to end accruals (though specific proposals have not yet been announced). The amendment power requires, among other options, that the scheme actuary certifies that the amendment does not substantially prejudice the interests of active members.

Case on section 37/regulation 42 certificates

In a case involving a Virgin Media group pension scheme, the High Court is expected to be asked to rule on the consequences of a deed amending a contracted-out pension scheme not being accompanied by the actuary's confirmation required under section 37 of the Pension Schemes Act 1993.

Collective DC expansion

The Government is consulting on a policy framework for broadening collective money purchase pension provision beyond single or connected employer schemes. The consultation also asks for views on questions around both "whole-life" schemes (i.e. schemes providing accrual and paying benefits) and decumulation-only arrangements. See WHiP Issue 100.

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