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 2021

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

Legislative and regulatory developments

The following are expected developments with known or expected dates:	**KEY DATE**
General levy The Government has confirmed proposals to increase rates and change the structure of the general levy on pension schemes, with the aim of significantly increasing the amount it collects. For 2022/23 and 2023/24, there will be higher increases, especially for DB schemes, based on membership numbers. See WHiP Issue 88.	From April 2021
Fraud compensation levy The maximum Fraud Compensation Fund levy will be raised for 2021/22: this is 75p per occupational pension scheme member (30p per master trust member). The 2020/21 levy was 25p per member. See WHiP Issue 88.	From April 2021
Post-Brexit arrangements for financial services The EU and UK are expected to publish a memorandum of understanding on a framework for future regulatory cooperation on the cross-border provision of financial services. Trustees should continue to monitor the impact of Brexit on their investment arrangements and counterparties.	Spring 2021
Single Pensions Regulator code of practice The Pensions Regulator is consulting on a consolidation and update of 10 of its current codes of practice, with more to follow. The new draft single code also includes 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 Issue 88.	Consultation closes 26 May 2021

Fiduciary management and investment consultancy

9 June 2021 for some schemes; later for others

Schemes that have been using fiduciary management services for some time may face a 9 June 2021 deadline for putting those services out to tender or retender. Other schemes already using such services are subject to later deadlines. See our alert "Fiduciary management: June 2021 tender deadline for some schemes".

7 January 2022

The Government proposes to introduce regulations to reinforce an order of the Competition and Markets Authority (CMA) but these have been delayed. In the meantime, the CMA order still applies. It requires the setting of strategic objectives for investment consultants and imposes rules on trustees who engage (or are looking to engage) providers of fiduciary management services, as well as on the providers themselves. Trustees have to confirm compliance to the CMA annually, by 7 January, until regulations replace this obligation with a requirement to report to the Pensions Regulator. See our reminder alert regarding January 2021 confirmations and 2019 briefing note Investment consultancy and fiduciary management: a dose of CMA medicine.

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

June 2021 or June 2022, and June 2023

Until now, certain EU (including UK) pension schemes have benefited from a temporary exemption from the clearing obligation under EMIR. The exemption applies to certain OTC derivatives transactions used to reduce investment risks and liabilities. In the EU, this exemption is due to expire in June 2021, although the EU Commission has proposed that this be extended until June 2022. Post-Brexit, UK pension schemes no longer benefit from the exemption under EMIR. In the UK, however, the Treasury has extended the exemption for certain pension schemes until at least June 2023 and included both UK and EEA pension schemes within its scope.

What this means is that transactions entered into by UK or EEA pension schemes, which benefit from the UK exemption, with UK banks will not need to be cleared (while the exemption remains in place) but transactions (that are within the clearing requirements of EMIR) entered into by UK pension schemes with EEA banks will need to be cleared.

Post-Brexit "data bridge"

30 June 2021

Temporary arrangements apply to the transfer of personal data from the EU to the UK from 1 January until the end of June 2021. (Data transfers from the UK to the EU are unaffected by the end of the Brexit transition period.) It is hoped that during this period the European Commission will declare the UK data protection regulatory framework adequate, allowing transfers to continue without the need for additional action by transferring parties. See WHiP Issue 86.

COVID-19 scheme administration easements

30 June 2021

Certain HMRC COVID-19 easements are set to expire, including as regards accounting for tax return submissions and payments; reporting transfers to QROPSs; pension scheme returns for 2019 and 2020; benefit crystallisation event 1 and other valuations; and relief at source claims. See HMRC Pension schemes newsletter 128.

Investment disclosure – ESG, climate change and stewardship

1 October 2021 and beyond

Trustees have new obligations that started from October 2019 concerning the content of statements of investment principles (SIPs) and the disclosure of information about investment matters, including as to environmental, social and governance (ESG) factors, climate change and stewardship.

Scheme annual reports and websites have to include implementation statements (typically from October 2020 for DC and hybrid schemes and October 2021 for DB schemes but this can be affected by transitional regulations and the timing of scheme accounts). Benefit statements will have to tell members where they can find this information. See WHiP Issues 73 and 76.

From October 2021, trustees of occupational pension schemes with £5 billion+ in assets (excluding buy-in policies), authorised master trusts and collective money purchase schemes will be required by regulations under the Pension Schemes Bill (see below) to comply with enhanced climate governance requirements, with first public disclosures to be made within seven months of the end of the scheme year in which the governance requirements start to apply. These will be based on Taskforce on Climate-related Financial Disclosures (TCFD) recommendations. Schemes with assets of £1 billion or more will become subject to the same requirements from October 2022. Smaller schemes might be affected from 2024. A Government consultation on draft regulations and statutory guidance was issued alongside final Pensions Climate Risk Industry Group non-statutory guidance. The outcome is awaited. See our briefing note "Pension Schemes Act 2021: what happens next?" and WHiP Issues 84 and 87.

DC scheme governance

October 2021

Various changes are to be made to DC scheme governance legislation and guidance to help improve member outcomes. These include measures to facilitate illiquid investment, put pressure on small schemes to consolidate, and require additional content in chair's governance statements regarding investment returns and charges. See WHiP Issues 84 and 88.

Pension Schemes Act 2021 measures

Autumn 2021

The following aspects of the Pension Schemes Act 2021 are expected to be brought into force this autumn, probably 1 October 2021 (see our briefing note "Pension Schemes Act 2021: what happens next?" and WHiP Issue 88 for more detail):

- **Contribution notices:** There will be two new grounds (subject to certain defences) for the Regulator to issue a contribution notice. These are in circumstances where (a) if a section 75 debt had fallen due immediately after an act or failure to act, the act or failure to act would have materially reduced the amount of the debt likely to be recovered by the scheme and/or (b) where an act or failure to act reduced the employer's resources by an amount that is material, relative to the estimated section 75 debt. There has been a consultation on draft regulations relating to limb (a) above and also information gathering powers and penalties: the final regulations are awaited.
- **New offences and civil penalties:** There will be two new criminal offences, subject to certain defences: avoidance of an employer debt and conduct risking accrued scheme benefits. The Pensions Regulator has consulted on a draft prosecution policy and the final version is awaited. Similar civil penalty measures will also apply.
- **Restriction of statutory transfer right:** With a view to combating pension transfer scams, the Government will be able to prescribe that the statutory transfer right is subject to certain conditions – for example, relating to the member's employment or place of residence and/or the member having received information or guidance, and to the provision of evidence about those matters. A consultation on draft regulations is expected in summer 2021.

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

31 December 2021

The FCA continues to encourage all market participants to transition away from the use of LIBOR, which will no longer be supported from 31 December 2021 (for most currencies and durations). Some pension schemes 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 for every asset class but many market participants have now adhered to the ISDA 2020 IBOR Fallbacks Protocol, which can be used to amend ISDA, GMRA and GMSLA documentation (among others). Schemes should discuss the suitability of doing so with their counterparties and legal and investment advisors.

Alternative options, such as bespoke bilateral amendments to documentation, may be more suitable for some schemes (particularly in relation to complex arrangements such as longevity hedging arrangements).

DB scheme funding and investment

Late 2022 or early 2023

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". Valuations will have to be submitted to the Pensions Regulator as soon as reasonably practicable. Details will be in regulations, on which a public consultation is awaited.

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 towards the end of 2021, with the code expected to be in force in late 2022 or early 2023.

See our briefing note "Pension Schemes Act 2021: what happens next?".

Pensions dashboards

In advance of 2023

The current, delayed timetable for pensions dashboards anticipates a public launch in 2023. Schemes will be required to provide data in advance of this. Consultation on proposed regulations is expected later this year, with regulations to be laid in 2022. See WHiP Issue 86 and our briefing note "Pension Schemes Act 2021: what happens next?".

Automatic enrolment reviews

2023

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

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.

Lifetime allowance freezing ends

6 April 2026

The lifetime allowance may increase, after a period of freezing at £1,073,100. See WHiP Issue 88.

Normal minimum pension age to be raised to 57

6 April 2028

The Government intends to legislate to raise the normal minimum pension age for registered pension schemes from 55 to 57, with some protections proposed. See WHiP Issue 87.

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. See WHiP Issues 78, 81 and 86. A judicial review challenge is expected.

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 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 has proposed 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.

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

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, most recently, about the obligations on trustees as regards past transfers-out.

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 HMRC group has considered tax issues and published newsletters in February 2020 and July 2020.

An industry group is considering issues for trustees and administrators and has issued guidance notes on methodology, when to rectify, data, communications and tax issues. A sub-group is considering GMP conversion and will issue a case studies document. Further guidance is expected on anti-franking (in the form of examples), implementation communications and historic transfers.

See our briefing notes GMP equalisation: court ruling and GMP equalisation – where are we now?.

Pension Schemes Act 2021

As well as matters noted above, the Pension Schemes Act 2021 also covers the following matters. (See our briefing note "Pension Schemes Act 2021: what happens next?" for more detail.)

- **Notifiable events:** There will be new events that must be notified to the Regulator. The detail will be in regulations, a consultation on which is expected later this year, but the Government previously indicated that these will be the "sale of a material proportion of the business or assets of a scheme employer which has funding responsibility for at least 20% of the scheme's liabilities" and "granting of security on a debt to give it priority over debt to the scheme".
- **Collective money purchase benefits:** There are provisions to enable the provision of collective defined contribution pensions as "money purchase benefits". Collective money purchase schemes target defined benefits but do not guarantee them and the pensions are paid from the scheme rather than externally. Initially, the only permitted model will be the one agreed by Royal Mail with the Communication Workers Union. A consultation on draft regulations is expected in early summer. The current Finance Bill contains facilitating amendments to the

Finance Act 2004 (see WHiP Issue 88).

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. In the meantime, Pensions Regulator guidance applies. The Government has also indicated that it is considering issues around taxation. See WHiP Issue 74, 82, 85 and 88.

Small DC pots

The Small Pots Working Group has 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. A new group has been formed to take these forward.

DC charges cap

The Government will prohibit the use of flat fee charges for DC pension pots with a value of less than £100. See WHiP Issue 86.

DC benefit statements

The Government will be mandating the use of simple annual benefit statements for DC automatic enrolment schemes. See WHiP Issue 85.

DC member guidance

The Government has announced that it will be bringing into force legislation requiring the Secretary of State to make regulations obliging trustees to refer DC beneficiaries to pensions guidance and ensure that they have received it or opted out of receiving it. This will apply when an individual applies to transfer out or to start receiving benefits. See the WHiP Issue 85.

DC chair's statements

The Government will be 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.

Annual allowance – 'scheme pays'

The "scheme pays" legislation, whereby members can ask their scheme to pay an annual allowance charge and reduce their benefits, will be amended so that it can be used in respect of charges for earlier tax years. This is to be done in connection with the remedies being granted to public sector scheme members following the *McCloud* age discrimination case. See WHiP Issue 88.

Tax relief consultation

The Government has sought submissions as to ways to address the tax relief disadvantages for low earners in schemes (generally occupational pension schemes) where the "net pay" tax relief system is operated. Its response is awaited. See WHiP Issue 83.

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