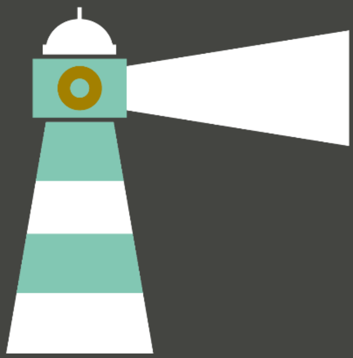
BRIEFING

TRAVERS SMITH

What's Happening in Pensions



Issue 91 – September 2021

In this issue:

Pension Schemes Act 2021: Key provisions of the Pension Schemes Act 2021 are being brought into force on 1 October 2021. These include the new contribution notice grounds, the new criminal offences and civil penalty provisions, and enhanced Pensions Regulator investigation and fining powers. A consultation is underway on changes to the notifiable events regime.

GMP equalisation - transfers: The industry working group on GMP equalisation, chaired by PASA, has published supplemental guidance on transfer payments. Two other guidance notes are due later this month.

TPR single code of practice: The Pensions Regulator has published a short interim response to its consultation on a new single code of practice, to which it received a massive response.

PPF compensation - *Hughes* case: The PPF has said that there will be no appeal by the representative beneficiaries in the Hughes case, concerning PPF compensation calculation and the unlawfulness of the compensation cap. Since the Secretary of State is also not appealing the Court of Appeal's decision, that decision will stand.

State pension 'triple lock': The Government will introduce a Bill to remove the legal requirement to increase state pensions in line with average earnings for 2022-23. Instead, increases will be applied under the higher of the other two elements of the 'triple lock' – CPI price inflation and 2.5%.

Health and Social Care Levy: The Government's plans for a Health and Social Care Levy include a 1.25 percentage point increase to dividend tax rates, from April 2022. Pension schemes were not mentioned but it appears that they will not be affected.

Pensions dashboards – data matching: PASA is to lead the development of industry conventions for matching pensions dashboard users to their pensions. It will do this alongside the PLSA and the ABI.

You may also be interested in the latest edition of Pensions Radar, our quarterly listing of expected future changes in the UK law affecting work-based pension schemes.

Pension Schemes Act 2021

Commencements

Key provisions of the Pension Schemes Act 2021 are, as expected, being brought into force on 1 October 2021. These include the new contribution notice grounds, the new criminal offences and civil penalty provisions, and enhanced Pensions Regulator investigation and fining powers.

Please see our updated briefing note for more detail of these measures. (NB You may need to refresh the page if it shows a version earlier than September 2021.)

Saving provisions in the commencement regulations prevent the contribution notice and other measures from having effect in relation to acts and omissions that, broadly, took place or began before 1 October 2021. There had been concerns that the contribution notice six year 'look-back period' might cause there to be a retrospective effect but steps have been taken to prevent this.

A particular point to note is that from 1 October 2021 the potential maximum fine for breach of the existing 'notifiable event' requirements will increase to £1 million (i.e. the significantly increased fine applies to both the existing notifiable events regime and to the additional notifiable events which will be brought into force at a later date in relation relating to certain other kinds of corporate activity).

Notifiable events consultation

A Government consultation has just been launched on those changes to the notifiable events regime. These are designed to give the Pensions Regulator earlier notice of proposed transactions that could affect the security of members' benefits. They will also require, at a later stage, an accompanying statement (formerly referred to as a "declaration of intent") to be given to the Regulator and scheme trustees, including information about the effects of certain categories of proposed transaction and what will be done to mitigate any adverse effects.

The consultation closes on 27 October 2021 and it appears that the changes are intended to take effect from 6 April 2022. We will report in detail in the next issue.

GMP equalisation - transfers

The industry working group on GMP equalisation, chaired by PASA, has published supplemental guidance on transfer payments.

The guidance is intended to assist schemes and advisers in finding a pragmatic approach to equalising historical transfers. It therefore focuses on practical considerations for transferring and receiving schemes. It is not a long document. Some of the more difficult questions are outlined, where the document cites the need for specific advice.

For transferring schemes, it looks at:

- Identifying the population in scope
- Reviewing data and filling in gaps
- Calculating top-up payments
- Addressing tracing and verification (perhaps including mortality screening)
- Communication and engagement
- Discharging top-up payments and settlement offers (the latter not considered in any detail)

For receiving schemes, it looks at:

- Uncertainties around the extent of the obligation to equalise transferred-in benefits established by the *Coloroll* judgment
- What the *Lloyds Banking Group* case said
- Individual transfers to DB schemes, including equalising the benefit granted on receipt and accepting top-up payments
- Individual transfers to DC schemes
- Bulk transfers

Further guidance from the group, on communications and on anti-franking, is expected during its 'GMP Equalisation week', which begins on 27 September 2021.

TPR single code of practice

The Pensions Regulator has published a short interim response to its consultation on a new single code of practice.

It notes that more than 10,000 individual comments were made, from 103 respondents.

As previously indicated, the Regulator will not be proceeding with its proposed expectation that no more than 20% of a scheme's assets will be in unregulated investments in the way that it was drafted. *"However, we will explore options for achieving our original policy objective whilst allowing schemes with liquidity risk management plans and prudent investment strategies to maintain exposures to unregulated assets."*

On the new content regarding own risk assessments (ORA), in relation to which consultation responses raised timing concerns, the Regulator says:

> *"Most respondents appear to have correctly understood the purpose of the ORA as a review of a scheme's existing risk controls. Few, if any, respondents objected to the principle of this new process. However, some did raise concerns about the amount of work it would entail, the timeframe, what the finished product would look like and the burden it would place on smaller schemes.*
>
> *Following feedback, we remain of the view that trustees should prepare their first ORA in a timely fashion, i.e. taking the legislative timescales as a maximum but preparing the document in a shorter timescale as a matter of best practice. We will also consider how often governing bodies should review the ORA.*
>
> *We continue to work through the responses in this area to identify other possible changes or guidance requirements, particularly for smaller schemes."*

On timing for the code to come into force, it says: *"We do not currently have a firm final publication date for the new code. However, we do not expect to lay the new code in Parliament before spring 2022. It is, therefore, unlikely to become effective before summer 2022."*.

PPF compensation - *Hughes* case

The PPF has said that there will be no appeal by the representative beneficiaries in the *Hughes* case. Since the Secretary of State is also not appealing the Court of Appeal's 19 July 2021 decision on the calculation of PPF compensation and the unlawfulness of the compensation cap, that decision will stand. See WHiP Issue 90 for details.

The PPF adds: *"But until we've planned our implementation of the judgment, we'll continue to pay members their current level of benefits."*.

State pension 'triple lock'

The Government is introducing a Bill to remove the legal requirement to increase state pensions in line with average earnings for 2022-23. Instead, increases will be applied under the higher of the other two elements of the 'triple lock' – CPI price inflation and 2.5%.

Under the triple lock, state pensions are increased annually by the highest of the percentage increase in average earnings, the CPI price inflation increase percentage and 2.5%. Statute requires increases to be at least in line with national average earnings increases. The triple lock has been applied on a discretionary basis in recent years.

Distortions in earnings over the measurement period, resulting to a large extent from the Coronavirus Job Retention Scheme (furlough), were expected to have otherwise required state pensions to be increased by more than 8%. The relevant inflation figures for the April 2022 increase will be announced later this month.

Health and Social Care Levy

The Government has announced plans for a Health and Social Care Levy. As well as National Insurance Contribution increases, this will include a 1.25 percentage point increase to dividend tax rates, from April 2022.

Though the Government's paper says that dividends paid to ISAs (which are not taxable) will not be subject to the levy, it is silent on the matter of dividends received directly or indirectly by pension schemes. It appears, however, that they will not be affected.

Pensions dashboards – data matching

PASA is to lead the development of industry conventions for matching pensions dashboard users to their pensions. It will do this alongside the PLSA and the ABI. It says:

> *"We will build on existing data matching approaches, align thinking with the small pots co-ordination group, and ensure industry-wide adoptability.*
>
> *We are also already engaging with the regulators (The Pensions Regulator and the Financial Conduct Authority) to help ensure the DMC thinking aligns with their emerging regimes for dashboards regulation.*
>
> *The data matching conventions must also work in practice, so we're liaising closely with 11 leading providers of pensions administration software. They can then implement the different industry matching conventions, for their different trustee and other clients to choose from to be used on their schemes.*
>
> *It's important to state, though, that the standard DMCs won't solve the matching challenge on their own. As well as adopting an appropriate DMC, trustees will need to work with their suppliers to implement (or build on existing) technology/data cleansing solutions which, in combination, will help to improve matches."*

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