

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.

October 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 forthcoming developments with known or expected dates:

KEY DATE

ESG, climate change, stewardship and sustainability

October 2021 and beyond

From October 2021, trustees of occupational pension schemes with £5 billion+ in relevant assets (broadly, excluding buy-in policies), authorised master trusts and (when permitted) collective money purchase schemes are required 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 are based on Taskforce on Climate-related Financial Disclosures (TCFD) recommendations. Schemes with relevant assets of £1 billion or more will become subject to the same requirements from October 2022. Smaller schemes might be affected from 2024. See our briefing note [Pension Schemes Act 2021: what happens next?](#) and [WHiP Issues 84, 87 and 89](#). These requirements are supplementary to existing regulations requiring ESG-related content in statements of investment principles (SIPs) and 'implementation statements' in scheme annual reports, as well as public website disclosures.

A new Government consultation proposes that, from 1 October 2022, those TCFD requirements will be expanded to require schemes to calculate four, rather than three, climate-related metrics on their investments. This would make a portfolio alignment metric, on the extent to which scheme investments are aligned with the Paris Agreement goal of limiting the increase in the global average temperature to 1.5 degrees Celsius above pre-industrial levels, mandatory alongside absolute emissions and emissions intensity metrics. There will also be corresponding reporting requirements. See the next issue of WHiP.

From 1 October 2022

There are further proposals, under the Government's [Greening Finance roadmap](#) published on 18 October 2021, for the TCFD regime for pension schemes to be broadened to cover other sustainability-related risks and opportunities beyond climate change, with staging based on schemes' relevant asset sizes in the same way as for the TCFD requirements. A consultation is awaited. See the next issue of WHiP and our Financial Services & Markets department's briefing note [UK Sustainable Investing: follow the green brick road](#).

From 2023/24 (?)

DC scheme governance

Various changes are being made to DC scheme governance legislation and guidance to help improve member outcomes. These include measures:

- to facilitate investment in certain illiquid assets (with a further consultation to follow later in 2021);
- to put pressure on small schemes to consolidate by requiring them to assess value for members; and
- to require additional content in chair's governance statements regarding investment returns net of charges.

See [WHiP Issues 84, 88 and 90](#).

1 October 2021 and (for value assessments) the first scheme year after 31 December 2021

Restriction of statutory transfer right

With a view to combating pension transfer scams, regulations will introduce additional conditions that must be met before members can exercise their statutory transfer right to most schemes. In some circumstances, members will be required to take guidance and provide evidence that they have done so. For transfers to a private sector occupational pension scheme, other than an authorised master trust, they may be required to demonstrate that they are in a relevant employment or (for a QROPS) have relevant overseas residency. The Government has consulted on draft regulations and the outcome is awaited. See our briefing note [Pension Schemes Act 2021: what happens next?](#).

30 November 2021 (?)

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

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. For many transactions, the alternative rate being used to replace LIBOR is based on compounded SONIA (the sterling overnight index average), but other rates may be more suitable depending on the circumstances.

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).

31 December 2021

TCFD and sustainability disclosures by FCA-regulated entities and others

The FCA proposes enhanced climate change disclosure requirements for asset managers, life insurers and personal pension providers. Rules will apply from a date based on the size of the firm's assets, with disclosure requirements applying 18 months later. Information from asset managers is needed by occupational pension scheme trustees in relation to their own disclosure requirements. See [WHiP Issue 90](#).

1 January 2022/30 June 2023 and 1 January 2023/30 June 2024

Sustainability disclosure requirements will apply to FCA-regulated entities and certain companies, with the purpose of informing investors and consumers. See our Financial Services & Markets department's briefing note [UK Sustainable Investing: follow the green brick road](#).

Dates to be confirmed

Fiduciary management and investment consultancy

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

To be confirmed

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](#).

7 January 2022

General levy

April 2022 and April 2023

The Government has this year implemented 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 further, higher increases, especially for DB schemes, based on membership numbers. See [WHiP Issue 88](#).

DC charges cap

April 2022 ("subject to other parliamentary priorities")

The Government intends to prohibit the use of flat fee charges for DC pension pots with a value of less than £100. See [WHiP Issue 89](#).

DC member guidance

6 April 2022

The Government intends to make regulations which would oblige trustees to refer DC beneficiaries aged 50 and over to Pension Wise guidance and ensure that they have received it or opted out of receiving it. This "stronger nudge" will broadly apply when an individual applies to transfer out (except in order to consolidate) or to start receiving benefits. See [WHiP Issue 85](#) and [90](#).

Expanded notifiable events regime

6 April 2022 (?)

There will be new kinds of corporate activity that must be notified to the Pensions Regulator, and to scheme trustees, and expanded requirements to make notifications at early and later pre-completion stages of a transaction. In some cases, there will also need to be an accompanying statement (formerly referred to as a "declaration of intent") including information about the effects of the proposed transaction and what will be done to mitigate any adverse effects.

The detail will be in regulations, on which there has been a consultation. See our briefing note [Pension Schemes Act 2021: what happens next?](#) and WHiP Issue [91](#).

Single Pensions Regulator code of practice and own-risk assessments

Summer 2022 (at the earliest)

The Pensions Regulator has consulted on a consolidation and update of ten 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 Issues 88](#) and [91](#).

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

June 2022 and June 2023

Until now, certain EU and UK pension schemes have benefited from a temporary exemption from the clearing obligation under EMIR and UK 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 2022 (having been extended from June 2021 and with the regulation envisaging a possible further one-year extension). 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 under UK EMIR until at least June 2023 and included both UK and EEA pension schemes within its scope.

What this means is that where exempt UK or EEA pension schemes enter derivatives transactions with UK banks the transaction will not need to be cleared while the exemption remains in place, but where UK pension schemes enter in-scope derivatives transactions with EEA banks these transactions will need to be cleared.

European Markets Infrastructure Regulation (EMIR/UK EMIR): mandatory initial margin transfer for OTC derivatives transactions

1 September 2022

Certain buy side market participants, including some pension schemes and asset managers, will be required under EMIR/UK EMIR to exchange initial margin on most of their uncleared OTC derivatives transactions from 1 September 2022. Schemes will be caught if they use uncleared OTC derivatives with an aggregate notional amount above EUR8bn, based on the average month-end amount for March, April and May each year calculated at group level. To determine this, data will need to be collected from all investment managers who manage derivatives transactions in respect of which the scheme is a principal counterparty. Where the scheme's OTC derivatives usage is below EUR8bn, it will not be affected, but the investment manager may require confirmation of the level of the scheme's overall OTC derivatives use.

For more detail, see our briefing note [EMIR/UK EMIR Initial Margin Requirement – is your scheme ready for Phase 6?](#).

DC benefit statements

1 October 2022

The Government is mandating the use of simpler, two-page annual benefit statements to meet disclosure legislation requirements for DC automatic enrolment schemes. In the future, statements may need to be issued during an annual "statement season". See [WHiP Issue 89](#) and the next issue for details.

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" 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 is awaited.

To complement these changes to the statutory scheme funding regime 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?](#).

DB consolidator schemes

2022 or 2023

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 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](#).

Pensions dashboards From April 2023

The current timetable for pensions dashboards anticipates that schemes will be required to provide data on a staged basis, starting in April 2023, in advance of the full public launch. 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?](#).

Scheme returns - asset information 2023

Defined benefit schemes will be required to supply greater asset class information to the Pensions Regulator and PPF in their annual scheme returns. See the next issue of WHiP.

Automatic enrolment reviews 2023

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

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 Issue 83](#) and the next issue.

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](#).

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](#).

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 normal minimum pension age for registered pension schemes is expected to be raised from 55 to 57, with some protections on which confirmation is awaited. See [WHiP Issues 87](#) and [90](#).

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

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.

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

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

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 various aspects. Further guidance is expected on historic transfers and administration Q&As.

A private member's bill on GMP conversion, intended to make it easier to use that facility alongside equalisation, is currently due to receive its second reading in November 2021.

See our briefing notes [GMP equalisation: court ruling](#) and [GMP equalisation – where are we now?](#).

Collective DC benefits

There are provisions in the Pension Schemes Act 2021 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 closed on 31 August 2021. See our briefing note [Pension Schemes Act 2021: what happens next?](#) and the next issue of WHiP.

The next Finance Bill will contain facilitating amendments to the Finance Act 2004 (see [WHiP Issue 88](#)).

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](#). A new industry group is taking the matter forward.

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](#).

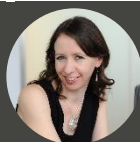
Annual allowance – 'scheme pays'

The "scheme pays" legislation, whereby members can ask their scheme to pay an annual allowance charge and reduce their benefits, will be amended with retrospective effect 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](#).

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