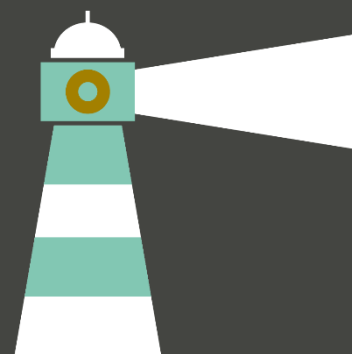


# What's Happening in Pensions



Issue 93 – January 2022

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**DB funding – Pensions Regulator update:** A new Pensions Regulator blog post by David Fairs has announced further delays to the Pension Schemes Act 2021 revised DB funding regime.

**Pensions Regulator on covenant:** The Regulator has published a blog post by Nicola Parish, "*Uncertainty remains, but trustees hold key to protecting savers*", urging trustees to be vigilant and prepare for emerging covenant risk.

**Contribution notices – Pensions Regulator code of practice:** A Government Order has brought into effect the Pensions Regulator's updated Code of Practice 12. This updates the circumstances in which the Pensions Regulator would expect to issue a contribution notice following the recent changes.

**Pension protection levy rules:** The PPF has published its 2022/2023 pension protection levy rules, including the rules for recognition of contingent assets such as guarantees.

**Pensions Regulator TCFD guidance:** The Pensions Regulator has published its guidance on the new TCFD governance and reporting obligations, currently applicable to the largest schemes and authorised master trusts.

**TCFD regime for asset managers, listed companies and others:** The FCA has published two policy statements, with final rules and guidance on TCFD disclosures for (1) asset managers, life insurers and FCA-regulated pension providers and (2) standard listed companies.

**Sustainability – FCA disclosure regime:** The FCA has issued a discussion paper seeking views on proposed new sustainability disclosure requirements and a sustainability labelling system. These would apply to asset managers and certain FCA-regulated asset owners. Regulations adding to the company strategic report requirements have also been made.

**Finance Bill - normal minimum pension age:** The Government has confirmed that normal minimum pension age under the Finance Act 2004 will be increased from 55 to 57 from 6 April 2028. The protections will, however, be different from those previously proposed.

**GMP Conversion Bill:** The Pension Schemes (Conversion of Guaranteed Minimum Pensions) Bill has had its second reading in the House of Commons. The Bill aims to improve the GMP conversion legislation in the Pension Schemes Act 1993, to make it easier for schemes to use that facility as part of their GMP equalisation exercise.

**DC charges cap – performance-based fees:** The Government is consulting on proposals to remove "well designed" performance-based fees for certain categories of investment, such as venture capital and other forms of private equity, from the DC automatic enrolment scheme default fund charge cap.

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**DC charges – flat fees:** The Government is proceeding to prohibit the charging of flat fees as part of a combination charge structure on DC pots of £100 or less in schemes used for automatic enrolment, from 6 April 2022.

**Scheme returns:** The Pensions Regulator has published details of changes to the information that will be requested in this year's DB and hybrid scheme return form.

**PPF compensation:** The PPF has issued press releases outlining its approach to the disapplication of the PPF compensation cap following the Court of Appeal's decision in the *Hughes* case.

**PPF valuation guidance:** The PPF has published new versions of five notes relating to the valuation of PPF protected liabilities. It has also published a new information note 'Information for valuing benefits in respect of the *Hampshire*, *Hughes* and *Bauer* judgments in a section 143 valuation'.

**Pensions dashboards – data matching:** The Pensions Administration Standards Association has published initial guidance for schemes on the choice of data matching convention that they must make ahead of their compliance with the forthcoming pensions dashboards legislation.

**Rectification and validity of a pension increase rule:** The High Court has granted rectification of the pension increase provisions in successive versions of a scheme's trust deed and rules, returning the rule to a form that was less favourable to the employer. It also ruled on questions of valid amendment.

**COVID-19 – HMRC easements:** HMRC has announced that certain temporary easements introduced as a result of the pandemic are extended again.

**Collective money purchase schemes:** The Government has published its response to the consultation on collective money purchase scheme regulations and two sets of final draft regulations. The Pensions Regulator is drafting on a draft code of practice on the authorisation and supervision of such schemes.

**State pension 'triple lock':** Legislation disapplies the earnings element of the "triple lock" for the basic and new state pensions for 2022/23.

**State pension age review:** The Government has launched the next review of the state pension age. The review will consider the latest life expectancy data and other evidence.

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. A new issue is due to be published later this month.

## Transfer scam protection regulations

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The Government has laid [regulations](#) to restrict individuals' statutory transfer rights in specified circumstances, with the aim of helping trustees to stop scam transfers. The Pensions Regulator has issued [guidance](#) on the new regulations.

The legislation has effect in relation to applications for DB transfer value statements of entitlement or DC transfer requests made on or after 30 November 2021. Trustees who make statutory transfers need to ensure that their transfer processes and communications are aligned with the legislation. The drafting of the regulations raises some difficult issues for trustees to navigate. Schemes that have a discretionary transfer power may have more flexibility but many of the new measures will in any event be considered good practice.

See our briefing "[Pension scams: new statutory transfer right restrictions](#)" for details.

## DC "stronger nudge" to guidance

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The Government has made [regulations](#) requiring trustees to give a "stronger nudge" to Pension Wise guidance to, broadly, individuals who are looking to draw DC benefits or, if aged 50 or over, to transfer them for that purpose. It has also published a [consultation response](#) (see [WHiP Issue 90](#) for details of the consultation proposals). There are material changes from the consultation draft. The regulations take effect from 1 June 2022.

Since 6 April 2015, under the amended 2013 disclosure regulations, trustees are required to signpost certain older individuals with "flexible benefits" (broadly meaning DC benefits) to Pension Wise guidance when giving them information about their benefit or transfer options. They must also nudge them towards Pension Wise guidance where there is a communication from either party about the individual's options for their flexible benefits. These obligations are disapplied when the new stronger nudge requirement applies.

From 1 June, trustees will have new obligations in respect of individuals who are looking to draw flexible benefits or, if aged 50 or over, to transfer them for that purpose. They will have to offer to book a guidance appointment with Pension Wise and ensure, before paying benefits or making the transfer, that the guidance has been taken or the individual has opted out. This new legislation is intended to present "taking Pension Wise guidance as a normal part of the process".

The statute (new section 113B Pension Schemes Act 1993) and final regulations amending the disclosure regulations together provide as follows:

- The new requirements apply when trustees receive an application or a communication made in relation to an application (e.g. an earlier enquiry) from a beneficiary (i.e. a member or survivor) who has rights to flexible benefits, either to transfer any of those rights or to start receiving any of them. There is no exception for small pots.
- Where it is a transfer application, the requirements do not apply if the beneficiary is under the age of 50 or if receiving flexible benefits is not the purpose or one of the purposes of the application (for example it is for the purposes of consolidation). (It seems that trustees may now have to ask the reason for a transfer application because otherwise how will they know the purpose(s) of the application?).
- The requirements also do not apply in respect of a transfer application if the trustees are told that the beneficiary has been nudged by a different occupational pension scheme in accordance with the requirements of the regulation (although there is no requirement for a receiving occupational pension scheme to do this). Nor do they apply where trustees are told that the receiving scheme is required to comply with the corresponding FCA stronger nudge rules, which apply to receiving schemes as well as transferring schemes: this will be the case if the receiving scheme is a personal pension. Note, however, that at the time the transferring occupational pension scheme becomes subject to the nudge requirements, the personal pension may not yet be required to take any action, because the FCA rules are different.
- Where the requirements apply:
  - Trustees must refer the beneficiary to Pension Wise guidance, accessible during an appointment which includes the facility for real-time human interaction (which can be face to face, by telephone or via another electronic medium). They must also provide an explanation of the nature and purpose of such guidance.
  - Before proceeding with the application, trustees must ensure that the beneficiary has either received the guidance or has opted out of receiving it.
  - Trustees must offer to book a guidance appointment on the beneficiary's behalf "on a date, at a time and of a kind suitable for the beneficiary". (Practically, it seems that trustees will need to make enquiries of the beneficiary in order to establish their availability and needs.) At the same time, they may tell the individual how to make a booking directly if they wish. Where the individual accepts the trustees' offer to book, the trustees must take reasonable steps (which is not defined in the regulations) to book that appointment. Where they do not accept the offer, or where the booking has not been possible, trustees must give the individual details of how to make a booking themselves.
  - Trustees must explain to the beneficiary that they cannot proceed with the application unless the beneficiary has received guidance and notified the trustees that they have done so, or opts out of receiving guidance. Notifications and opt-outs can be written, online or verbal. Trustees do not need to verify that guidance has been obtained where the individual says that they have done this.
  - An opt-out notification must be free-standing (e.g. not in the application form) except:
    - for transfer applications (so the option can be included in scheme transfer documentation);
    - where the trustees are told that the beneficiary has received the guidance or regulated financial advice in relation to the application in the previous 12 months; or

- where the beneficiary qualifies for a serious ill-health lump sum (even if the application is not for that benefit).
- Subsequent interactions must repeat the above requirements unless the beneficiary has confirmed that they have taken the guidance or has opted out in a free-standing.
- Trustees must keep records of notifications of guidance or advice being taken and of opt-out notifications.

The transfer scam protection transfer conditions (see above) apply separately, meaning that more than one guidance appointment may be required, covering different risks.

Some notable changes from the consultation draft are as follows:

- The stronger nudge requirements can apply at an earlier stage. Under the consultation draft, they applied when the application was made. Now, the nudge can be given in response to a pre-application communication and need not be given again when the application is made.
- Only rights to flexible benefits are now caught. Under the consultation draft, a member with both DB and DC benefits seeking to transfer only the DB rights would have been in scope.
- Trustees do not need to deliver the stronger nudge if they are told that the receiving scheme has already done so (which is voluntary).
- Some opt-out communications, including those in respect of a transfer, can now be in the transfer documentation, rather than having to be free-standing.
- All survivors of a member who is aged 50 or over were previously included; now the survivor has to be aged 50 or over.

The regulations were previously due to take effect from 6 April 2022 but will now come into force on 1 June 2022. This is the same date that corresponding, but unfortunately different, FCA rules for personal pension providers commence.

In a [blog post](#), David Fairs of the Pensions Regulator mentioned that it intends to produce guidance ahead of the new duties coming into force.

## DB funding – Pensions Regulator update

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A new Pensions Regulator [blog post](#) by David Fairs has announced further delays to the Pension Schemes Act 2021 revised DB funding regime.

Mr Fairs says that the Government is expected to publish its consultation on draft regulations regarding funding and investment in spring 2022. The Regulator would then consult on the draft funding code of practice in the late summer of 2022.

A date for the legislation and code coming into force is not given but it now seems that this is very unlikely to be before 2023. Mr Fairs does, however, confirm that "When introduced, the changes will be forward-looking, meaning that schemes with valuation effective dates on or after the code's commencement date will be affected".

He goes on to discuss the proposed 'Fast Track' and 'Bespoke' approaches to confirming compliance. The Regulator is looking into how it can allow a more scheme-specific approach under the 'Bespoke' route. It is also considering "how best to incorporate covenant into both Fast Track and Bespoke to ensure it can be used in the most flexible way to justify risk-taking".

For background, see our [client briefing note](#) on the Act.

## Pensions Regulator on covenant

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The Pensions Regulator has published a [blog post](#) by Nicola Parish, "*Uncertainty remains, but trustees hold key to protecting savers*", urging trustees as the "first line of defence" to be vigilant and prepare for emerging covenant risk.

The post says that the Regulator has contacted more than 400 schemes, selected due to the perceived likelihood of covenant issues arising in the ongoing pandemic and economic uncertainty, to check that they have considered the Regulator's sponsoring employer distress guidance (see [WHiP Issue 85](#)). The Regulator has carried out more in-depth engagement with an additional 30 schemes considered most at risk from a weakening covenant. Nine cases have been opened.

## Contribution notices – Pensions Regulator code of practice

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A Government [Order](#) has brought into effect the Pensions Regulator's updated [Code of Practice 12](#). This updates the circumstances in which the Pensions Regulator would expect to issue a contribution notice following the changes, including the two new grounds, that took effect from 1 October 2021 pursuant to legislative amendments made by the Pension Schemes Act 2021.

For background, see our [briefing note](#) on the Act.

## Pension protection levy rules

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The PPF [has published](#) its 2022/2023 [pension protection levy rules](#), including the rules for recognition of contingent assets such as guarantees, and its [policy statement](#), discussing the small number of changes made this year. There is also a [press release](#).

The final rules are materially the same as the consultation version (see [WHiP Issue 92](#)) but with an additional measure, for 2022/23 only, to protect the small number of schemes whose levy bills would have risen significantly compared with 2021/22 due to businesses having been forced to close temporarily by the pandemic: individual scheme levy rises will be restricted to 25%. This is in addition to continuation of support measures introduced for 2021/22: a lower risk-based levy cap, payment deadline extensions and the 'small scheme adjustment'.

The PPF estimates that more than 80% of schemes that pay a risk-based levy will see their levy fall. It now expects to collect £390 million (revised down from £415 million at the time of the consultation and £130 million less than for 2021/22).

Rules for a new category of "Alternative Covenant Schemes" (ACS) will apply to schemes without a substantial sponsor and commercial consolidators, replacing the separate rules that applied last year. ACS, as defined, could include standard merged occupational pension schemes with ongoing employer support but the PPF is seeking to address concerns about that via guidance rather than by changing the definition. It does, however, give some comfort in the rules by prescribing that there must be an active PPF Board decision to classify any scheme as an ACS.

The deadline for certifying or recertifying a contingent asset for the 2022/23 levy year is 31 March 2022. Please speak to your usual Travers Smith contact as early as possible for any assistance needed.

## Pensions Regulator TCFD guidance

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The Pensions Regulator has published its [guidance](#) on the new TCFD (Task force on Climate-related Financial Disclosures) governance and reporting obligations, currently applicable to the largest schemes and authorised master trusts (see the box below), together with a [consultation response](#).

Reminder: These new climate-related governance and reporting requirements first apply to the largest schemes with assets in excess of £5 billion (and authorised master trusts and collective money purchase schemes) from 1 October 2021, 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. Schemes with assets of £1 billion or more would become subject to the requirements a year later, with scope to consider an extension to smaller schemes from 2024. See our [briefing note](#) on the Pension Schemes Act 2021 and [WHiP Issues 87](#) and [89](#) for details of the requirements.

There are currently proposals (see [WHiP Issue 92](#)) to require trustees subject to those regulations to calculate and disclose an additional portfolio alignment metric, setting out the extent to which their investments are aligned with the Paris Agreement goal of limiting the global average temperature increase to 1.5 degrees Celsius above pre-industrial levels. That would apply from 1 October 2022.

The Regulator's [press release](#) focuses on telling trustees that, as this area develops, they must ensure they get the advice they need from appropriately skilled and competent advisers and that the advice they get from external experts is relevant and helpful, and represents value for money. Noting that this is a developing area, the Regulator says that its approach "will aim to recognise where schemes have made a genuine effort to collect as much of the necessary information and data as they can and have recorded the steps they have taken to do so. As with all our regulatory activity, we will aim to take a reasonable and proportionate approach to enforcement."

Key improvements to the consultation draft guidance following feedback include the following:

- There are now links to relevant sections of the Government's statutory guidance.
- It includes clearer and additional examples, with a step-by-step one to follow shortly covering the whole process from the beginning to publishing the report. The Regulator will not produce an example report but intends in the future to signpost examples of best practice.
- There is increased emphasis on funding and covenant, including the need for climate-related risks to be integrated with the scheme's wider approach to risk management. The Regulator is also reviewing its existing covenant guidance, with a consultation to be held in 2022. This will incorporate more detail on what schemes should do to reflect climate-related risks and opportunities when assessing the strength of sponsor covenant.
- The Trustee Toolkit is being updated to reflect the new requirements. The Regulator will consider calls for a standalone climate change module.

There is also a new Appendix 3 to the Regulator's [monetary penalties policy](#) covering the requirements in this area.

See [WHiP Issue 90](#) for the consultation. The Government's statutory guidance can be found [here](#) and the PCRI non-statutory guidance [here](#).

## TCFD regime for asset managers, listed companies and others

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The FCA has published two policy statements, with final rules and guidance on TCFD disclosures for (1) asset managers, life insurers and FCA-regulated pension providers and (2) standard listed companies. This follows a consultation over the summer (see [WHiP Issue 90](#)). These disclosures will help pension scheme trustees better to fulfil their own TCFD obligations (see above).

The [rules](#) for **asset managers, life insurers and FCA-regulated pension providers** will require them to make mandatory disclosures, consistent with the TCFD's recommendations, on an annual basis at:

- Entity level – an entity-level TCFD report setting out how they take climate-related risks and opportunities into account in managing or administering investments on behalf of clients and consumers
- Product or portfolio level – a baseline set of consistent, comparable disclosures in respect of their products and portfolios, including a core set of metrics

These rules apply from 1 January 2022 for the largest in-scope firms and one year later for smaller firms above a £5 billion exemption threshold. The first public disclosures must be made by 30 June 2023.

The [rules](#) for **issuers of standard listed shares or equity shares represented by certificates** (global depositary receipts) say that such entities must now include a statement in their annual financial reports explaining whether their disclosures meet the TCFD recommendations. If not, they will need to explain why not and say what steps they are taking in order to comply and over what timescale. (Standard listed investment entities and shell companies, however, are excluded from this requirement). This new Listing Rule and associated guidance is intended to reflect the existing obligation under the Listing Rules (LR 9.8.6 R (8)) for premium listed companies in relation to climate-related disclosures, so that standard listed issuers will now be subject to the same obligations in this regard.

The new Listing Rule is accompanied by further [guidance](#) to help companies determine whether their disclosures are compliant with the TCFD recommendations and related disclosures. This guidance incorporates references to the TCFD's [updated guidance](#) on metrics, targets and transition plans and updated implementation guidance published in October 2021.

These rules apply in respect of accounting periods beginning on or after 1 January 2022.

[Regulations](#) also add to the requirements for affected companies' strategic reports. They come into force on 6 April 2022 and apply in respect of financial years commencing on or after that date.

## Sustainability – FCA disclosure regime

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The FCA has issued a [discussion paper](#) seeking views on proposed new sustainability disclosure requirements and a sustainability labelling system. These would apply to asset managers and certain FCA-regulated asset owners.

Further to the Government's Roadmap to Sustainable Finance (see our Financial Services & Markets department's [briefing](#)), the FCA's discussion paper DP21/4 on Sustainability Disclosure Requirements (SDR) and investment product labels envisages a three-tiered system with different levels of disclosures targeted at different types of investors. The discussion paper also includes the FCA's proposals for the classification of products according to their sustainability activities and objectives.

The FCA proposes that asset managers and certain FCA-regulated asset owners should be in scope of the new disclosure rules. It tentatively suggests coverage similar to that proposed for its new TCFD reporting regime but is open to alternative suggestions. The FCA says that it is also considering whether to introduce specific sustainability-related requirements for financial advisers and how (if at all) the regime should apply to funds that are being marketed into the UK.

A consultation is expected in Q2 2022.

For more detail, see our Financial Services & Markets department's [briefing](#).

As previously reported (see [WHiP Issue 92](#)), it is proposed that the TCFD climate-related requirements for pension schemes (see above) will in future be widened to cover sustainability-related risks and opportunities, after the FCA regime is in place. There will first be a consultation.

## Finance Bill - normal minimum pension age

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The Government [has confirmed](#) that normal minimum pension age under the Finance Act 2004 will be increased from 55 to 57 from 6 April 2028. The protections will, however, be different from those previously proposed (see [WHiP Issue 90](#)).

Normal minimum pension age (NMPA) is the lowest age at which benefits can generally be taken without incurring an unauthorised payments tax charge.

Individuals will be protected against the NMPA increase if, immediately before 4 November 2021 (the date the outcome was announced), they had an existing unqualified right (i.e. not subject to consent) to take benefits from earlier than age 57 pursuant to scheme rules that were in place on 11 February 2021 (the date of the original consultation about the increase), even if the individual was not a member at that time. Such persons will have a protected pension age of 55 or 56 (as the case may be).

The increase will not apply to members of uniformed services pension schemes, including the police, fire service and armed forces pension schemes.

There will also be protections for members who transfer, as part of a group or individually:

- **Block transfers:** There will be protections in respect of future block transfers. The protection will cover all benefits under the receiving scheme, including existing benefits under it and benefits accrued in the future. This applies to block transfers made on or after 4 November 2021 but is extended by a separate provision so as also to cover block transfers which have taken place since 11 February 2021. Unlike earlier protections, there is no need for the transfer to be made within 12 months of the individual joining the receiving scheme.



- **Individual transfers:** Protected members will retain their protection following a future individual transfer but on a ring-fenced basis. The protection does not apply to any other benefits or future accrual under the receiving scheme. This applies to individual transfers made on or after 4 November 2021. This would seem to present administration issues for schemes that accept transfers, even those that do not allow retirement before age 57 (i.e. because there could be a further onward transfer to another scheme and that scheme would need to be informed).

There will not (as previously proposed) be a window of opportunity for individuals to transfer from a scheme with no unqualified right to take benefits from before age 57 into a scheme that confers such a right, and thereby benefit from that right. The exception to this is for transfers made on or after 4 November 2021 in execution of a request made before that date. (NB it seems that there would be no protection if the transfer was completed before that date.)

The Government has again acknowledged that there is an issue regarding members reaching age 55 but not 57 before 6 April 2028. It is still considering how to address this. The issue is as follows:

- An unprotected member who reaches age 55 in the two years before 6 April 2028, and is therefore not yet age 57 on that date, could start to receive a pension from age 55 (or 56) but then the NMPA increase on 6 April 2028 would mean that instalments of pension are now unauthorised payments i.e. because the member is then below NMPA when they were not previously.
- Also, a member who reaches age 55 before 6 April 2028 can access their benefits at age 55 but if they defer accessing their benefits until after 5 April 2028 and have not yet reached age 57 at that point, accessing their benefits would result in unauthorised payments.

Clause 10 of the [Finance Bill](#) published on 4 November 2021 contains the relevant provisions. It is possible that changes will be made before the Bill becomes law.

HMRC [Pension schemes newsletter 136](#) includes provisional guidance on the draft legislation.

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## GMP Conversion Bill

The [Pension Schemes \(Conversion of Guaranteed Minimum Pensions\) Bill](#) has had its [second reading](#) in the House of Commons. The Bill aims to improve the GMP conversion legislation in the Pension Schemes Act 1993, to make it easier for schemes to use that facility as part of their GMP equalisation exercise.

This is a private member's bill but the Pensions Minister has confirmed that it has the Government's support. If passed, it will amend the legislation to provide more flexibility in relation to (a) who has to consent to a conversion exercise and (b) the amount of the survivor pension that has to be provided post-conversion, allowing these matters to be prescribed by regulations.

The Bill will next be considered by a public bill committee, from a date yet to be announced.

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## DC charges cap – performance-based fees

The Government [is consulting](#) on proposals to remove "well designed" performance-based fees for certain categories of investment, such as venture capital and other forms of private equity, from the DC automatic enrolment scheme default fund charge cap.

The consultation paper says that the most common structure is the combination of a fixed annual management fee, paid regardless of return, and a performance-based element which is payable upon returns exceeding a certain 'hurdle rate'. This is often referred to as 'carried interest' and appears mainly in closed-ended fund structures with fees charged to the investor, i.e. crystallised, at the end of the life of a fund but accrued at intervals across the investment period. A common formula is "2 and 20", with a 2% fixed fee and a 20% performance-related fee.

The recently introduced smoothing mechanism for performance fees (see [WHiP Issue 92](#)) is broadly considered to be of limited benefit. The Government is therefore now looking into whether performance fees for certain kinds of investment can be excluded altogether, whilst ensuring that other investment product fee structures cannot be amended to fall within the exclusion. In doing so, it also wants to encourage market participants to reform existing performance fee structures, taking into account the needs of DC schemes. The kinds of investment in scope are venture



capital, private equity, infrastructure and private credit. The fixed fee element of such investments would not be excluded.

If it proceeds with this, the Government is minded to require disclosure of performance-based fees in the chair's statement and to remove the smoothing mechanism, unless transitional measures are needed.

The consultation closes on 18 January 2022. Any resulting regulations are expected to be subject to consultation early in 2022 and to come into force in October 2022.

## DC charges – flat fees

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A Government [consultation response](#) confirmed that it will proceed to prohibit the charging of flat fees as part of a combination charge structure on DC pots of £100 or less in schemes used for automatic enrolment. This will apply to active and deferred members. The announcement was followed by [amending regulations](#) and [updated non-statutory guidance](#).

More particularly:

- A flat fee can only be imposed where the value of the member's rights under the default arrangement is more than £100.
- The flat fee may only be imposed to the extent that it does not reduce the value of the member's rights under the default arrangement to less than £100 (so a partial flat fee can be imposed).
- Where more than one flat fee charge is imposed under a single default arrangement in respect of a charges year, the value of the member's rights must be restored to the level it would have been had only one such charge been applied.

The change takes effect from 6 April 2022.

The Government will respond separately on its suggestion of mandating a single universal charging structure. For now, it has noted that a "broad majority" of respondents opposed the idea.

See [WHiP Issue 89](#) for details of the consultation.

## Scheme returns

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The Pensions Regulator [has published](#) details of changes to the information that will be requested in this year's DB and hybrid scheme return form.

The new information to be requested for **DB and hybrid schemes** is:

- the website addresses where the scheme's statement of investment principles (SIP) and implementation statement have been published (if applicable - this only applies to trustees of schemes with more than 100 members).
- the website address where the scheme's climate change report has been published (if applicable – this only currently applies to trustees of schemes with 'relevant assets' of £5 billion or more at the end of their first scheme year ending on or after 1 March 2020)
- the trustee assessment of the employer covenant grading (if available)

For **hybrid schemes**, the following additional information will be requested (where applicable):

- information about the more detailed 'value for members' assessment
- the website address where extracts from the chair's statement have been published

There are no changes to the [DC scheme return](#) questions.

Scheme returns must be submitted by 31 March 2022. Schemes will receive notices to complete them from the end of January.

## PPF compensation

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The PPF has issued a [press release](#) outlining its approach to the disapplication of the PPF compensation cap following the Court of Appeal's decision in the *Hughes* case (see [WHiP Issue 90](#)). This was shortly followed by a second [press release](#) on time limits.

The first said:

*"In September this year, we issued an [update](#) on our work to implement the Court of Appeal's ruling that the compensation cap was unlawful, and to pay arrears to pensioners due increases as a result of the Hampshire ruling.*

*Since then, we've continued to make progress:*

- *we've now paid arrears due to those FAS pensioners who'd already received a Hampshire increase, ahead of our target of the end of 2021*
- *we no longer apply the cap to new PPF retirees*
- *we've started the process to remove the PPF compensation cap and expect to scale up payments in the New Year*

### **Anticipated timescale**

*Sue Rivas, our Director of Scheme Services, explains that the process of removing the compensation cap will take some time to complete:*

*"I'm really pleased that we're now processing members and have started to remove the PPF cap. But it's going to be a long and complicated piece of work to complete. Uncapping is a complex process, particularly for those members who've already received a Hampshire increase, and we expect that it'll take until the end of 2022 before we're able to disapply it for the majority of currently-capped PPF pensioners.*

*"I understand that it's a frustrating time for those affected PPF capped pensioners, especially if you haven't heard from us yet. I assure you that we're working through our processes as quickly as possible, so you don't need to contact us. We'll be in touch with you as soon we can."*

### **Six-year time limit**

*We still need to finalise whether we'll put a six-year time limit on arrears payments. We're continuing discussions with DWP on this point, and hope to have more information soon. We'll make an announcement on this as soon as possible."*

The second said:

### **"PPF pensioners**

*The Board has confirmed that we won't put a time limit on payments of Hampshire or uncapping arrears. We'll pay arrears from the time that affected members started to receive compensation.*

### **FAS pensioners**

*Although the FAS cap wasn't affected by the Court of Appeal's ruling, some members are entitled to Hampshire arrears to make sure that they receive 50 per cent of the value of their accrued old age benefits.*

*We're the scheme manager for FAS on behalf of DWP. DWP has now confirmed that it will not put a time limit on the payment of Hampshire arrears for members. They also confirmed that interest won't be paid on the arrears, because there's no legal basis to do so.*

### **Next steps**

*We're working hard to complete the payments due as a result of the court rulings. It's a long and complicated piece of work, and we expect it'll take until the end of 2022 for us to complete the majority of the payments."*

## PPF valuation guidance

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The PPF [has published](#) new versions of five notes relating to the valuation of PPF protected liabilities. It has also published a new information note '[Information for valuing benefits in respect of the Hampshire, Hughes and Bauer judgments in a section 143 valuation](#)'. These reflect the judgments in those cases.

PPF entry valuations are affected by those judgments because the law as now understood may make a difference to whether or not a scheme enters the PPF.

The updated section 179 pension protection levy valuation guidance, however, confirms the PPF's previous interim position that no allowance needs to be made for the impacts of the judgments. This is because section 179 valuations are used primarily to distribute levies among affected schemes, which already involves some approximations. The PPF has therefore taken a proportionate approach and considers that the additional burden on the industry to calculate the impact of these judgments would not be justified by the relatively modest redistribution of levy likely to result.

## Pensions dashboards – data matching

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The Pensions Administration Standards Association (PASA) [has published](#) initial [guidance](#) for schemes on the choice of data matching convention that they must make ahead of their compliance with the forthcoming pensions dashboards legislation.

The guidance explains how schemes must choose how they wish to compare "find requests" from dashboard users against the member records they hold. Trustees' choice of matching will depend on the accuracy of the personal data they hold on their scheme, across all of their deferred and active member records.

Draft regulations setting out what schemes will need to do are expected to be consulted upon in "early 2022". Staged "onboarding" of schemes is due to begin in 2023.

## Rectification and validity of a pension increase rule

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In [Re Mitchells & Butlers Pension Plan](#), the High Court granted rectification of the pension increase provisions in successive versions of a scheme's trust deed and rules, returning the rule to a form that was less favourable to the employer. It also ruled on questions of valid amendment concerning the role of the actuary.

The scheme's original 1988 rules allowed the trustee to choose a different index for determining annual pension increases. Three later versions of the rules, in 1996, 2002 and 2006, left out that trustee power and included a power for the employer to alter the increase rate. The employer sought to exercise that power to provide a different increase by adopting CPI instead of RPI to calculate future increases.

The judge heard evidence from numerous witnesses, most of whom were cross-examined, and concluded that there had been no intention on the part of either the trustee or the principal employer to make those changes.

The current principal employer (since 2003) did not contest that aspect of the case but argued that it would be prejudiced by rectification of the amended documentation and that the claim should therefore fail. This was on the ground that it was a *bona fide* purchaser for value without notice of mistakes made in earlier versions of the rules. On the facts of the case, the judge found that it was not such a purchaser. Assuming the rights and powers of principal employer under a deed of substitution did not, the judge said, amount to a purchase of an interest in property, which is required for the purposes of a *bona fide* purchaser defence. There was also a "considerable overlap of directors" between the old and new principal employer companies.

The judge therefore granted rectification of the 1996 deed and accepted that the later iterations of the deed could also be rectified, which is not the case as a matter of course.

A separate argument raised on behalf of members was that the scheme rules' amendment power required consultation with the scheme actuary in order for an amendment to be valid and there had been no valid consultation because this aspect was not drawn to the actuary's attention. The judge accepted this, holding that the 1996 deed that originally purported to make the changes to the pension increase rule was not effective in doing so, because a key condition precedent had not been satisfied.

Although section 67 of the Pensions Act 1995 (regarding the amendment of accrued/subsisting rights or entitlements) was not in force at the time of the 1996 deed, it was in time for the 2002 deed. The judge held that the requirements of that section were not satisfied, again because of a failure to alert the actuary to the change. This meant that the 2002 deed amendments were not valid or effective. By the time of the 2006 deed, section 67 had been amended and failure to comply now only makes an amendment voidable at the instance of the Pensions Regulator, rather than automatically void. Given the Regulator's role, the judge declined to rule on the validity of the 2006 deed.

Going forward, actuaries who have a role in making the amendment may expect to be told about all the changes being made by a replacement trust deed and rules – as is usually the case anyway - and may seek to limit their confirmations to particular amendments to which they have been alerted.

## COVID-19 – HMRC easements

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HMRC's [Pension schemes newsletter 134](#) announced that certain temporary easements introduced as a result of the pandemic are extended again.

The relaxations in relation to the following notification requirements now apply until 31 March 2022:

- APSS105 relief at source repayment claims
- APSS106 relief at source repayment claims
- APSS590 relief at source declaration
- submitting the APSS107 registered pension schemes annual statistical return without a signature

Most of HMRC's easements ended on 30 June 2021.

## Collective money purchase schemes

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The Government [has published](#) its response to the consultation on collective money purchase scheme regulations and two sets of final draft regulations. The Pensions Regulator [is consulting](#) on a draft code of practice on the authorisation and supervision of such schemes.

Subject to Parliamentary approval, the legislation will come into force on 1 August 2022. The Pensions Regulator expects to consult on its code of practice in January 2022. The Pensions Minister says that work has already begun to understand interested parties' proposals for multi-employer collective money purchase schemes.

Under a collective money purchase scheme, target defined benefits are communicated but not promised. Investments are pooled (not selected by members) and pensions are paid from the scheme rather than by annuity purchase. Adjustments are made to pensions in payment and to benefit targets, based on the funding position from time to time.

The permitted model is an occupational pension scheme for single or associated employers, which for the time being rules out commercial operators. The legislation is being introduced to allow Royal Mail to set up such an arrangement for its staff, by agreement with the Communication Workers Union. Other employers may use the same framework but will not have design flexibility.

Arrangements will need to be authorised, for a substantial fee, by the Pensions Regulator under requirements not yet published but expected to be similar to those that apply under the master trusts authorisation regime.

The final regulations set out an authorisation and supervision regime and were developed in close consultation with the Pensions Regulator. They also include provisions on valuations and benefit adjustments, and on triggering events and continuity. Employers wishing to have a scheme with different rates of accrual or contributions or normal pension ages for different groups will have to operate segregated sections. Disclosure regulations amendments focus on ensuring that members understand that benefits are targeted, not guaranteed.

See [WHiP Issue 90](#) for details of the original consultation.

The Pensions Regulator's draft new code of practice is designed to reflect the regulations. It addresses the authorisation criteria and the Regulator's proposed approach to supervision. The Regulator will accept applications for authorisation from August 2022, when the regulations are in force. The [consultation](#) closes on 22 March 2022.

## State pension 'triple lock'

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The [Social Security \(Up-rating of Benefits\) Act 2021](#) disapplies the earnings element of the "triple lock" for the basic and new state pensions for 2022/23.

Legislation requires the Secretary of State to review the levels of the basic and new state pension every year and increase them at least by reference to earnings inflation. The other elements of the triple lock (2.5% and CPI prices inflation) are Government policy rather than law.

Earnings inflation for the relevant period was more than 8% but the figure is distorted by factors related to the pandemic, including the furlough scheme. Disapplying the earnings element means that state pensions will be increased by the higher of 2.5% and the annual increase in prices under the Consumer Prices Index (CPI). The CPI increase for the relevant period was 3.1% so that is the increase that will be applied in 2023.

## State pension age review

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The Government [has launched](#) the next review of the state pension age. The review will consider the latest life expectancy data and other evidence. A report must be published by 7 May 2023.

It says:

*"State Pension age is currently 66 and two further increases are currently set out in legislation: a gradual rise to 67 for those born on or after April 1960; and a gradual rise to 68 between 2044 and 2046 for those born on or after April 1977. The first Review of State Pension age was undertaken in 2017 and concluded that the next Review should consider whether the increase to age 68 should be brought forward to 2037-39 before tabling any changes to legislation.*

*As the number of people over State Pension age increases, due to a growing population and people on average living longer, the government needs to make sure that decisions on how to manage its costs are, robust, fair and transparent for taxpayers now and in the future. It must also ensure that as the population becomes older, the State Pension continues to provide the foundation for retirement planning and financial security.*

*Therefore, this review will consider a wide range of evidence, for example, it will:*

- examine the implications of the latest life expectancy data*
- provide a balanced assessment of the costs of an ageing population and future State Pension expenditure*
- consider labour market changes and people's ability and opportunities to work over State Pension age*
- and develop options for setting the legislative timetable for State Pension age that are transparent and fair*

### **Further information**

*As set out in the 2014 Act, the Secretary of State is commissioning two independent reports to contribute to the evidence considered during this review: a report from the Government Actuary and a report on other factors.*

- The Government Actuary will provide a report which must assess the age of entitlement in legislation by analysing the latest life expectancy projections;*
- The report on other relevant factors will consider recent trends in life expectancy and the range of metrics we could use when setting State Pension age. This is to ensure the way we set State Pension age is robust, transparent and provides fairness to both taxpayers and pensioners. This report will be led by Baroness Neville-Rolfe DBE., CMG.*

*The UK Government agreed during the passage of the Pensions Act 2014 that the State Pension age Review would consider evidence from across the UK. The review will therefore consider differences across countries and regions, including Northern Ireland; it will also consider the effects for individuals with different characteristics and opportunities, including those at risk of disadvantage."*

## FOR FURTHER INFORMATION, PLEASE CONTACT



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