BRIEFING

TRAVERS SMITH

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 2022

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	
From 1 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 1 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.	1 October 2021, 1 October 2022 and beyond
The Government has proposed 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 WHiP Issue 92.	From 1 October 2022
There are further proposals, under the Government's Greening Finance roadmap, 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 WHiP Issue 92 and our Financial Services & Markets department's briefing note UK Sustainable Investing: follow the green brick road.	From 2023/24 (?)

DC scheme governance

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

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 by allowing performance-based charges to be spread over up to five years for the purposes of assessment of default fund fees against the charges cap;
- 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, 90 and 93.

TCFD and sustainability disclosures by FCA-regulated entities and others

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

The FCA is requiring climate change disclosures by asset managers, life insurers and personal pension providers. Rules 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. There are also separate requirements applicable to listed companies. See WHiP Issue 93.

Dates to be confirmed

Sustainability disclosure requirements will apply to FCA-regulated entities and certain companies, with the purpose of informing investors and consumers. See WHiP Issue 93 and our Financial Services & Markets department's briefing note UK Sustainable Investing: follow the green brick road.

General levy

April 2022 and April 2023

The Government has 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 higher increases, especially for DB schemes, based on membership numbers. See WHiP Issue 88.

DC "stronger nudge" to Pension Wise guidance

1 June 2022

Trustees have new obligations in respect of individuals who are looking to draw flexible benefits (broadly DC rights) 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. See WHiP Issue 93.

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 outcome is awaited.

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, EU and UK 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. In the EU, this exemption is due to expire in June 2022, however it is likely to be extended until June 2023, after which it is expected that schemes that currently benefit from this exemption will be required to clear their OTC derivatives if they fall within the criteria for mandatory clearing. UK schemes that enter into in-scope derivatives transaction with EU counterparties should note that they already no longer benefit from this exemption under EMIR as it only applies to EU schemes. In the UK, the exemption under UK EMIR will apply until at least June 2023 and, in contrast to EMIR, applies to both UK and EU schemes. What this means is that where a UK or EU scheme enters into an in-scope derivatives transaction with a UK counterparty the transaction will not need to be cleared, but where a UK scheme enters into an in-scope derivatives transaction with an EU counterparty the transaction will need to be cleared.

Collective DC benefits

1 August 2022

There are provisions in the Pension Schemes Act 2021 and now regulations 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. See WHiP Issues 93 and 94.

A Pensions Regulator consultation on a draft code of practice concerning the authorisation and supervision regime for these schemes closed on 22 March 2022 (see WHiP Issue 93).

A consultation is expected later this year on proposals to accommodate new types of collective money purchase schemes: for example, master trusts for unconnected employers.

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 schemes and asset managers, will be required under EMIR and UK EMIR to exchange initial margin on most of their uncleared OTC derivatives transactions from 1 September 2022. Schemes will be caught if they have a portfolio of uncleared OTC derivatives with an aggregate notional amount in excess of €8 billion, based on the average month-end amount for March, April and May. To determine this, schemes should collect data from all investment managers that enter into derivatives transactions where the scheme is the principal counterparty (but can exclude derivatives entered into by pooled funds, where the scheme is an investor in the fund).

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 Issues 89 and 92 for details.

Expanded notifiable events regime

October 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.

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.

London Inter-Bank Offered Rate (LIBOR) now discontinued but "synthetic" LIBOR published until end of 2022

31 December 2022 (?)

The final LIBOR rates for most currencies and durations were published on 31 December 2021. In most cases, schemes will already have agreed to transition their LIBOR transactions (such as interest-rate derivatives) to a replacement rate, such as compounded SONIA (the sterling overnight index average). However, where no replacement rate has been agreed, a statutory rate known as "synthetic LIBOR" is being published and will take effect (certain exclusions apply). Synthetic LIBOR will exist until at least the end of 2022, giving schemes additional time to negotiate contractual replacements if they have not done so already. The FCA has indicated, however, that it intends to consult during 2022 on retiring synthetic LIBOR and we continue to recommend that schemes take a proactive approach and transition their LIBOR exposures as soon as possible.

Fiduciary management and investment consultancy

To be confirmed

Some time ago, the Government proposed 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.

7 January 2023

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 2022 confirmations and our 2019 briefing note Investment consultancy and fiduciary management: a dose of CMA medicine.

Scheme returns - asset information

March 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 WHiP Issue 92.

Pensions dashboards

Starting June 2023

The timetable for pensions dashboards anticipates that schemes will be required to provide data on a staged basis, with the public launch expected to be in 2024. The largest master trust schemes will start the staging process on 30 June 2023; the largest DC automatic enrolment schemes start on 31 July 2023; the largest DB schemes start on 30 November 2023 with the exception of public service schemes, which stage on 30 April 2024.

Decisions need to be taken well in advance of a scheme's staging date. See WHiP Issue 94.

DB scheme funding and investment

October 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 now expected in autumn 2022, with the code expected to be in force alongside the legislation in October 2023.

See 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.

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 92.

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

RPI reform

February 2030

The UK Statistics Authority is expected to align the Retail Prices Index with the Consumer Prices Index including owner-occupied housing costs (CPIH) when it is able to do so unilaterally, which is from February 2030. The Chancellor of the Exchequer declined to consent to earlier reform. See WHiP Issues 78, 81 and 86. A judicial review challenge is expected to be heard by the High Court in summer 2022.

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, subject to a review that is now underway. 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 about the obligations on trustees as regards past transfers-out. See our briefing notes GMP equalisation: court ruling and GMP equalisation – where are we now?.

The Government previously stated its intention to legislate to remove the need for a claimant to point to a comparator of the opposite sex in order to establish unlawful discrimination. Implementation was delayed, however, pending the *Lloyds* litigation and consideration of a combined value-equalisation and GMP-conversion process. There has been no news on progress in this area.

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

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

A private member's bill on GMP conversion, intended to make it easier to use that facility alongside equalisation, has completed its passage through Parliament with the Government's support and received Royal Assent. Much of the detail will need to be dealt with in regulations, for which no date has been given. See WHiP Issue 93 and the next issue.

DC illiquid investment

The Government is consulting on proposals to require DC schemes to "disclose and explain" in their statement of investment principles their policies on illiquid investment and for schemes with over £100 million in assets to disclose in the chair's statement their default asset allocation. There are also proposed relaxations of employer-related investment requirements for large master trusts. See the next issue of WHiP.

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

R FURTHER INFORMATION, PLEASE CONTACT

Daniel Gerring
Partner, Head of Pensions
daniel.gerring@traverssmith.com
+44 (0)20 7295 3341

Susie Daykin
Partner
susie.daykin@traverssmith.com
+44 (0)20 7295 3247

David James
Partner
david.james@traverssmith.com
+44 (0)20 7295 3087

Andy Lewis
Partner
andrew.lewis@traverssmith.com
+44 (0)20 7295 3444

Dan Naylor
Partner
dan.naylor@traverssmith.com
+44 (0)20 7295 3454

Nick White
Knowledge Counsel
nick.white@traverssmith.com
+44 (0)20 7295 3472

10 Snow Hill | London EC1A 2AL | T: +44 (0)20 7295 3000 | F: +44 (0)20 7295 3500 | www.traverssmith.com