

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.

January 2023



SUSTAINABILITY MATERIALS: Our [Sustainable Business Hub](#) includes a section on [ESG and sustainable finance issues for pension schemes and their sponsors](#). See also our latest [ESG Newsletter](#).

Legislative and regulatory developments

The following are forthcoming developments with known or expected dates:

KEY DATE

ESG, climate change 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 are subject to the same requirements since 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 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

(Relevant assets are measured for these purposes as at the scheme year end date falling on or after the 1 March of the previous calendar year)

From 1 October 2022, those TCFD requirements are expanded to require schemes to calculate four, rather than three, climate-related metrics on their investments. This makes 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 are also corresponding reporting requirements. See [WHiP Issues 92 and 96](#).

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

Various changes have been made to DC scheme governance legislation and guidance with the aim of helping to improve member outcomes. These include measures:

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

- to facilitate investment in certain illiquid assets by allowing certain 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 schemes with less than £100 million in assets that have been operating for less than three years to consolidate, by requiring them to undertake annually and report on, a detailed 'value for members' assessment of costs and charges; and
- to require additional content in the chair's governance statement on investment returns net of costs and charges, for self-selected funds as well as for default arrangements.

See [WHiP Issues 84, 88, 90 and 93](#).

TCFD and sustainability disclosures by FCA-regulated entities and others

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](#).

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 [WHiP Issue 93](#) and our Financial Services & Markets department's briefing note [UK Sustainable Investing: follow the green brick road](#).

30 June 2024 at the earliest

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

1 September 2022

Some buy-side market participants, including some schemes and asset managers, are now required under EMIR and UK EMIR to exchange initial margin on most of their uncleared OTC derivatives transactions. These requirements have applied since 1 September 2022, but schemes that are out of scope currently may still fall within scope in the future if they enter into derivatives contracts in excess of certain volume thresholds. 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 of each year. Schemes that find themselves to be above the €8 billion threshold should ensure their documentation enables them to exchange initial margin with their counterparties where necessary.

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

Legislation now mandates the use of simpler, two-page annual benefit statements to meet disclosure legislation requirements for DC automatic enrolment schemes. See [WHiP Issues 89 and 92](#) for details.

Single Pensions Regulator code of practice and own-risk assessments

Early 2023

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](#).

Scheme returns - new information requirements

31 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 99](#).

All schemes now have to report on compliance with the requirements regarding investment consultants' objectives and tendering for fiduciary management to the Pensions Regulator, rather than to the CMA. There is some uncertainty about how this is to be done but it may be addressed by updated scheme return content. See [WHiP Issue 99](#).

Pension protection levy – contingent assets

31 March, 3 April, 28 April and 30 June 2023

Contingent asset (e.g. guarantee) certificates and ABC (asset-backed contribution) certificates in respect of the 2023/24 levy year must be submitted to the Pension Protection Fund by midnight on 31 March 2023, with contingent asset documents to be submitted by 5pm on 3 April 2023.

The deadline for deficit reduction contribution certificates and exempt transfer applications is 5pm on 28 April 2023. Full block transfer certification is required by 5pm on 30 June 2023. Invoicing begins in autumn 2023.

See [WHiP Issue 99](#).

London Inter-Bank Offered Rate (LIBOR) discontinued but "synthetic" LIBOR published temporarily

31 March 2023

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" has continued to be published and has taken effect to amend contracts which did not include fallback rates. This gave schemes additional time to negotiate contractual replacements if they have not done so already. The FCA has now announced that it will cease requiring publication of the 1 and 6-month synthetic LIBOR settings at the end of March 2023, after which the only remaining synthetic LIBOR setting will be 3 month LIBOR, which the FCA aims to discontinue in due course. Schemes should no longer be relying on any synthetic LIBOR settings and should transition any remaining LIBOR exposures as soon as possible.

DB consolidator schemes

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](#).

General levy

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 illiquid investment

6 April 2023

The Government has consulted on draft regulations to exclude certain "well-designed" performance fees from the charges cap. This would replace the current spreading option

(but with transitional measures). The final regulations are awaited.

They would also require DC schemes to “disclose and explain” in their default fund statement of investment principles their policies on illiquid investment and in the chair's statement their default asset allocation.

1 October 2023 to 1 October 2024

See [WHiP Issue 98](#).

EMIR/UK EMIR: mandatory clearing exemption for pension schemes

18 June 2023

Until now, certain pension schemes have benefited from an exemption from the obligation to clear certain classes of OTC derivatives contracts under EMIR/UK EMIR. This exemption has been time-limited and has been extended annually by the European Commission while clearing solutions for pension schemes have been considered. The Commission has now extended the exemption for a further year until 18 June 2023 – for what is expected to be the final time. Schemes should ensure they are familiar with the clearing requirements and are operationally ready to begin clearing derivatives transactions should they exceed the various volume thresholds for clearing.

Pensions dashboards

Starting August 2023

The timetable for pensions dashboards requires schemes to connect and provide data on a staged basis, with the public launch expected to be in late 2024. The largest master trust schemes must connect by 31 August 2023; the largest DC automatic enrolment schemes by 30 September 2023; and the largest DB schemes by 30 November 2023 with the exception of public service schemes, which are required to connect by 30 September 2024. There are limited easements for schemes in the process of changing administration or in winding-up.

Decisions need to be taken well in advance of a scheme's staging date. See our updated article [10 actions for getting to grips with pensions dashboards](#).

DB scheme funding and investment

1 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 has been held (see [WHiP Issue 97](#)).

To complement these changes to the statutory scheme funding regime the Pensions Regulator has consulted on a new Code of Practice and a 'fast-track' mechanism for schemes able to meet certain criteria based on tolerated levels of risk. See [WHiP Issue 99](#).

The code is expected to be in force alongside the legislation, both taking effect in respect of valuations with effective dates from 1 October 2023.

Automatic enrolment review

2023

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

Retained EU law (Revocation and Reform) Bill

31 December 2023

This Government bill has the potential to result in the repeal of swathes of EU-derived legislation by virtue of a 'sunset clause' which provides for certain retained EU law to fall away automatically on 31 December 2023 unless it is specifically saved. See [WHiP Issues 98](#) and [99](#).

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 97](#).

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 and a judicial review challenge failed. See [WHiP Issues 78, 81, 86](#) and [98](#).

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 due to report by May 2023. 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](#), [April 2022](#) and [June 2022](#) on tax issues relating to GMP equalisation adjustments (respectively on: dual records adjustments to pension benefits; adjustments to lump sum payments; transfer corrections and GMP conversion; and tax on pension arrears and interest).

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 indicated. See [WHiP Issues 93](#) and [95](#).

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. For the latest, see [WHiP Issue 96](#).

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](#).

Amendment power case

The BBC is asking the High Court to rule on the interpretation of its DB scheme amendment power, regarding the ability to change member contributions and future service benefits, including the power to end accruals (though specific proposals have not yet been announced). The amendment power requires, among other options, that the scheme actuary certifies that the amendment does not substantially prejudice the interests of active members.

FOR FURTHER INFORMATION, PLEASE CONTACT



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



Susie Daykin
Partner, Acting Head of Pensions
susie.daykin@traverssmith.com
+44 (0)20 7295 3247



Niamh Hamlyn
Partner
niamh.hamlyn@traverssmith.com
+44 (0)20 7295 3287



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
