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BRIEFING

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 2024

Travers Smith Pensions Sector Group

SUSTAINABILITY MATERIALS: Our Sustainable finance and Investment 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**
DC illiquid investment Regulations require DC scheme trustees to disclose and explain: • in their default arrangement statement of investment principles their policies on illiquid investment; and • in the chair's statement their default asset allocation. See WHiP Issue 102 for more detail.	1 October 2023 to 1 October 2024
Pensions Regulator general code of practice and own risk assessments The Pensions Regulator has consolidated and updated ten of its codes of practice in the new 'General code of practice'. The General Code also includes new content on scheme governance: this relates to the broadening of 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 also need to undertake an "own risk assessment" of their system of governance at least every three years. See our briefing notes on the various aspects of the Code.	In force from 28 March 2024 but with a grace period of at least two years for producing the scheme's first own risk assessment
Deadline for deferring pensions dashboards connection Schemes have until 8 August 2024 to apply if they need to defer the 31 October 2026 pensions dashboards statutory connection deadline (see below). They need to satisfy strict criteria involving a change of administrator or a contractual retendering requirement in order to be able to do this.	8 August 2024
DB scheme funding and investment DB schemes will be required to have a "funding and investment strategy" for ensuring that benefits can be provided over the long term. After determining or revising such a	Valuations with effective dates on and after 22 September 2024

strategy, trustees will have to prepare a "statement of strategy", to be agreed with the sponsoring employer. All valuations will have to be submitted to the Pensions Regulator, whether or not the scheme is in deficit. See WHiP Issues 97 and 108.

To complement these changes, the Pensions Regulator has consulted on a new Code of Practice, a statement of strategy template and a 'fast-track' mechanism for schemes able to meet certain criteria based on tolerated levels of risk. The final Code and other Pensions Regulator materials should follow this summer. Guidance from the Regulator is also expected on covenant considerations. See WHiP Issue 99.

London Inter-Bank Offered Rate (LIBOR) and synthetic LIBOR settings

The final LIBOR rates for most currencies and durations were published on 31 December 2021. A statutory rate known as "synthetic" LIBOR continued to be temporarily published for certain LIBOR settings, giving schemes additional time to transition their LIBOR transactions (such as interest-rate derivatives) to a replacement rate, such as compounded SONIA (the sterling overnight index average). The publication of the 1 and 6-month synthetic sterling LIBOR settings ceased as of 31 March 2023. The 3-month synthetic sterling LIBOR setting ceased on 28 March 2024.

The overnight and 12-month US dollar LIBOR settings ceased permanently after publication on 30 June 2023, and ICE Benchmark Administration Limited is required to continue publication of the 1, 3 and 6-month US dollar LIBOR settings on a synthetic basis from 1 July to 30 September 2024, but this rate may only be used for legacy transactions

30 September 2024

Pensions dashboards

Starting from 30 April 2025 (based on scheme type and number of non-pensioner members), with an ultimate statutory deadline of 31 October 2026

The Government has published guidance including a staged timetable for pension schemes and providers to connect to the pensions dashboards ecosystem and be in a position to process 'find' and 'view' requests. The guidance retains the original plan for staged connection dates, ahead of the legal deadline of 31 October 2026. Schemes are required to "have regard to" the guidance. Dates are determined based on scheme type and number of non-pensioner members. See the WHiP Issues 105 and 108.

Schemes have been urged to prepare for connection in good time. See our article 10 actions for getting to grips with pensions dashboards.

EMIR/UK EMIR: mandatory clearing exemption for pension schemes

18 June 2025

Under UK EMIR certain pension schemes have benefited from an exemption from the obligation to clear certain classes of OTC derivatives contracts while the FCA has considered the accessibility of clearing for pension schemes. The exemption under UK EMIR currently applies until 18 June 2025. The FCA is considering whether the exemption should apply beyond that date.

Schemes should generally ensure that they are familiar with the clearing requirements and that they are operationally ready to begin clearing derivatives transactions should they exceed the various volume thresholds if the exemption ceases to apply.

In the EU, the exemption from clearing for EEA pension schemes expired on 18 June 2023. The EU has now finalised its reform package known as "EMIR 3.0". The package introduces an exemption from clearing for certain transactions with pension schemes in third countries (such as the UK) where the scheme is authorised, supervised and recognised under national law and benefits from a clearing exemption in the scheme's home jurisdiction. This means that if the Government extends the exemption under UK EMIR beyond 2025, UK authorised schemes may become exempt from clearing OTC derivatives transactions with EEA counterparties once EMIR 3.0 comes into force.

In the meantime, schemes who may be considering entering OTC derivatives transactions with EEA counterparties should seek up-to-date advice on the likely availability and timing of the clearing exemption.

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.

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. A new statute introduces powers to make the changes but there is no new indication as to the timing of implementation. See WHiP Issue 105.

DC asset allocation disclosure

2027 (1 December 2024 for LGPS funds)

Under a Government proposal, DC schemes would need to disclose publicly certain information about their asset allocations, including the extent to which assets are invested in UK equities. This would take effect from 2027 but Local Government Pension Scheme funds are expected to use 'best endeavours' to do this for their 2023/24 annual reports. See WHiP Issue 108.

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 who have not already done so 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.

Lifetime allowance statutory override ends

5 April 2029

A statutory override has the effect that scheme rule references to the lifetime allowance continue to have effect following and notwithstanding its abolition on 5 April 2024. This ceases to apply on 5 April 2029, so scheme rules may need to be amended before then, where possible. See WHiP Issue 108.

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 (with implications already for schemes with bridging pensions or state pension offsets)

State pension age for both men and women is rising to age 68 by 2046 but this is due to be reviewed after the next general election. See WHiP Issue 102.

The increase from 66 to 67 has been brought forward by eight years, to take place between 2026 and 2028.

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:

Options for DB schemes and proposed public sector consolidator

The Government wants more productive investment from DB schemes, including to assist with economic growth and infrastructure projects. It is expected to relax rules on accessing surplus (having already reduced the tax charge) and facilitate more scheme consolidation. This would involve a public sector consolidator, to be established by 2026 and run by the Pension Protection Fund. See WHiP Issue 107.

Other DB consolidator schemes

The Government has consulted on proposals for legislation on the authorisation and supervision of DB consolidator schemes, or "superfunds", which are intended to operate in some circumstances as an alternative to buy-out. Legislation will be put forward "when Parliamentary time allows", including 'gateway' criteria for schemes to be able to access a consolidator scheme. In the meantime, Pensions Regulator guidance applies and guidance on alternative models is expected soon. See WHiP Issues 74, 82, 85, 88 and 104.

Collective DC expansion

The Government intends to broaden collective money purchase pension provision beyond single or connected employer schemes. There should be a consultation very soon on allowing multi-employer "whole-life" schemes (i.e. schemes providing accrual and paying benefits). Decumulation-only arrangements may be permitted in the future. See WHiP Issues 100, 104 and 106.

DC value for money

The Government, Pensions Regulator and FCA have confirmed a new framework on metrics, standards and disclosures for value for money assessments in DC occupational pension schemes and personal pensions. DC scheme trustees and independent governance committees of workplace personal pension schemes will be required to assess in detail, compare and disclose the value for money that their scheme provides. This will involve much more than consideration of just costs and charges. The Government and regulators aim to help trustees to make more informed investment and governance decisions and employers to compare options for pension provision, whilst also driving competition. This is expected to take effect in the "mid-2020s". An FCA consultation is expected very soon. See WHiP Issues 100, 104 and 106.

DC decumulation help

The Government intends to impose a duty on DC schemes to offer decumulation products or services meeting the needs of a generality of their members, to include a collective DC option (see above). Master trusts may be subject to this requirement first. The regulations which cover Nest need to be amended to allow it to offer a range of decumulation options. Pensions Regulator interim guidance is expected in 2024. See WHiP Issues 104 and 106.

Small DC pots

The Government has settled on the 'multiple default consolidator' model for dealing with deferred DC pots of less than £1,000. A small number of authorised schemes, including master trusts, will act as consolidators. The Government is consulting on aspects of how this will operate. Later, a 'lifetime provider' model may be introduced. See WHiP Issues 101, 104 and 106.

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. The value for money framework proposals (see above) are, however, expected to result in the chair's statement requirements being phased out. The Government is also considering giving the Regulator discretion over fines for non-compliance, which are currently mandatory. See WHiP Issue 88.

Trustee register

There will be a register of trustees, to help the Pensions Regulator to communicate and collect information. See WHiP Issue 106.

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 on this.

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 has been considering issues for trustees and administrators and has issued guidance notes on various aspects.

A statute on GMP conversion, intended to make it easier to use that facility alongside equalisation, was passed in 2022. The substantive legislative changes are left to regulations, for which no date has been indicated. See WHiP Issues 93 and 95.

Notifiable events

There is expected to be a new, more extensive regime for certain notifiable events (i.e. events that have to be notified to the Pensions Regulator) that occur in relation to scheme employers. The key detail will be in regulations, which are long delayed, but new notifiable events may include the sale of a material proportion of the business or assets of a scheme employer which has funding responsibility for at least 20% of the scheme's liabilities and the granting of security on a debt with priority over debt to the scheme. Notifications under the new regime will also have to be given to the scheme trustees and may need to be given earlier than at present.

Regulations can impose the new duties on not just the scheme employer but also a person connected or associated with it, or any other specified person. Notifications will have to be accompanied by a statement. It is expected that this will need to set out the implications for the scheme of the proposed transaction (or other corporate activity) and how any risks will be mitigated.

See our briefing note 'Pension Schemes Act 2021: what happens next?' and WHiP Issue 91.

Amendment power case

The BBC is appealing the High Court's ruling 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. See WHiP Issue 104.

Case on section 37 / regulation 42 certificates

In a case involving a Virgin Media group pension scheme, the High Court ruled on the consequences of a deed amending a contracted-out pension scheme not being accompanied by the actuary's confirmation required under section 37 of the Pension Schemes Act 1993. The decision is being appealed to the Court of Appeal. See WHiP Issue 103.

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