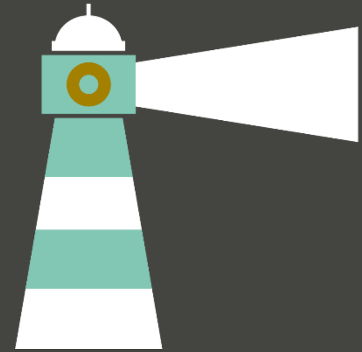
BRIEFING



What's Happening in Pensions

Issue 78 - November 2019

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RPI and CPI: The Chancellor of the Exchequer has responded to the UK Statistics Authority's request to his predecessor that he agree to proposals for reform of RPI, aligning it with CPIH. There will be a consultation in January 2020 on whether to make the change before 2030, but not before 2025.

Pension protection levy: The PPF has consulted on its proposed 2020/21 pension protection levy determination and accompanying appendices and guidance. There are few changes but lower funding levels and higher insolvency risks mean that many schemes' levies will rise.

General levy: The government is consulting on options for increasing the general levy on pension schemes. This could lead to significant increases.

DC annual benefit statements: The government is consulting on an approach to achieving simple annual DC benefit statements for workplace pensions, including whether adoption of a new template should be mandatory.

Multi-employer schemes and employer departures: The Pensions Regulator has updated its guidance on managing employer debts when an employer leaves a multi-employer scheme.

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Investment stewardship and disclosure: The government has published a Shareholders' Rights Directive II Fact Sheet. This purports to summarise what trustees need to do to comply with the investment governance and disclosure requirements that derive from that directive.

Cross-border schemes: The Pensions Regulator has issued guidance for the around 40 UK-based cross-border pension schemes and for UK employers who are currently contributing to a cross-border scheme based in the EEA in the event of a no-deal Brexit.

CORPORATE TRANSACTIONS WEBINAR

Travers Smith partner David James participated in a recent webinar on pensions issues in corporate transactions, focusing on matters in scope of the new Pension Schemes Bill (see below). This can be viewed here.

Pension Schemes Bill

The announcement of a Pension Schemes Bill in the Queen's Speech on 14 October was followed by the first reading and publication of the Bill. The content includes provisions on: DB scheme funding and investment strategy; new grounds and non-compliance penalties for contribution notices; new criminal offences for putting benefits at risk; new notifiable events and harsher penalties; transfer scam protections; pensions dashboards; collective money purchase benefits; and PPF compensation for transfer credits.

Status

Political events will determine the progress or otherwise of the Bill. The Bill fell away when Parliament was dissolved for the general election. The Pensions Minister has said that the Bill enjoys cross-party support. If the Conservatives win the election, the Bill is likely to be reintroduced quickly; if another party or parties form a new government, higher legislative priorities might lead to delay.

The Bill follows the government's February 2019 consultation response (see our briefing note "Confirmed government plans for the protection of DB pension schemes") but the Bill differs in several respects from what was then announced.

Content

The key content of the Bill is as follows.

DB funding and investment

Trustees of a DB scheme will have to have a "funding and investment strategy". This is a strategy for ensuring that benefits can be provided over the long term. It will have to include a targeted funding level(s) to be achieved by a particular date(s) and information on the investments intended to be held as at particular dates. The detail is left to future regulations.

After determining or revising such a strategy, trustees will have to prepare a "statement of strategy": this must describe the funding and investment strategy (in terms agreed by the employer (or perhaps in consultation only where trustees have unilateral power to set contributions)). It will also (in consultation with the employer) have to include information on: the extent it has been successfully implemented; steps to be taken to remedy and deficiencies; the main risks in implementing the strategy and how they will be mitigated or managed; and reflections on any relevant significant decisions.

Scheme funding technical provisions will have to be calculated in a manner consistent with the strategy. Trustees will have to send copies of actuarial valuations to the Regulator. The Regulator will be able to require trustees to revise their funding and investment strategy in accordance with its direction if it thinks they have failed to comply with the legislation.

See below for news on what the Pensions Regulator is expected to propose in the forthcoming revised code of practice on DB scheme funding.

Contribution notices

There will be two new contribution notice trigger tests that the Pensions Regulator will be able to apply in relation to an act or failure to act (these are drafted as alternatives to the existing material detriment and section 75 debt avoidance tests, which will continue to be available):

- Employer insolvency test: This test is whether, if a section 75 employer debt had fallen due immediately after the act or failure to act, the act or failure to act would have materially reduced the amount of the debt likely to be recovered by the scheme.

  A statutory defence will apply where the Regulator is satisfied that due consideration was given in advance and it was reasonable to conclude that there would not be a material reduction in the likely recovery. Where the party considered that there might be such a reduction, all reasonable steps must have been taken to eliminate or minimise the potential for the act or failure to have such an effect.

  For this test to apply, the value of scheme assets must have been less than the value of liabilities (on the section 75 basis) immediately after the act or failure to act as estimated by the Pensions Regulator. There is a further separate statutory defence in this regard.

- Employer resources test: This test is whether the act or failure to act reduced the employer's resources by an amount that is material, relative to the estimated section 75 employer debt.

  A statutory defence will apply where due consideration was given in advance and it was reasonable to conclude that there would not be a reduction in the employer's resources. Where the party considered that there might be a reduction, all reasonable steps must have been taken to eliminate or minimise the potential for the act or failure to have such an effect.

There appears to be a good deal of overlap between these two tests and the retrospective (or otherwise) effect is not spelled out.

The effective date for the calculation of a contribution notice amount will become the last day of the scheme year to fall before the Regulator's decision to issue the warning notice (rather than, as it is now, the date of the act or failure to act).

There will also be a new relevant matter for the Regulator to consider when assessing whether or not it is reasonable to impose a contribution notice. This will be the effect of the act or failure on the value of scheme assets or liabilities (including those of a transferee scheme).

New sanctions for failure to comply with a contribution notice without reasonable excuse will be an unlimited criminal fine or a civil penalty of up to £1 million.

New offences

There will be two new criminal offences relating to pension scheme benefits. These are very broad but there will be defences. Commission of either offence can result in an unlimited criminal fine and/or imprisonment of up to seven years, or a civil penalty of up to £1 million. The Regulator (as well as the usual criminal authorities) will be able to prosecute. Again, the retrospective (or otherwise) effect is not indicated. Contrary to the consultation, which suggested an offence based on "wilful or reckless behaviour", the bill outlines two offices as follows:

- Avoidance of employer debt: An offence is committed where there is an act, failure to act or course of conduct that intentionally and without reasonable excuse:
  - prevents the recovery of the whole or part of a section 75 employer debt (or contingent debt);
  - prevents a section 75 employer debt from becoming due;
  - compromises or otherwise settles a section 75 employer debt; or
  - reduces the amount of a section 75 employer debt that would otherwise become due.
- Conduct risking accrued scheme benefits: An offence is committed where, without reasonable excuse, there is an act, failure to act or course of conduct that detrimentally affects in a material way the likelihood of accrued scheme benefits being received. To be held responsible, a person must have known or ought to have known that the act, failure or course of conduct would have that effect.

Anyone who knowingly assists in any such conduct is also in scope of these offences.

These are similar to existing contribution notice grounds. For contribution notices, Regulator guidance gives comfort but comfort is not so easily achieved in relation to a criminal offence, especially as it is not only the Regulator who will be able to prosecute. The exact ambit of the defences to the criminal offences is also unclear.

Notifiable events and Regulator investigations

There will be new notifiable events (ie, events that have to be notified to the Regulator). There is, however, no detail in the Bill on what they will be or about the timing of notifications. The detail will be in regulations and industry consultation is expected. The government's consultation response indicated that they will be 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 "granting of security on a debt to give it priority over debt to the scheme". It also indicated that a "declaration of intent" will be required to be given in such circumstances to the Regulator and the trustees by the transaction's "corporate planners". Details are awaited but this could be required to include an explanation of the transaction and details of how any detriment to the scheme is to be mitigated.

Notifications made to the Regulator will also have to be given to the scheme trustees.

The Regulator will be able to impose civil penalties of up to £1 million for breaches of the notifiable events requirements (including the existing ones). There are also offences, with the same penalties, of knowingly or recklessly giving false or misleading information to the Regulator or to trustees.

The Regulator will also have new powers to interview and inspect premises, with new fixed and escalating penalties for non-compliance that are also extended to breaches of the existing provision of information requirements.

Transfers

With a view to combating pension transfer scams, the government will be able to prescribe that the statutory transfer right is subject to conditions relating to the member's employment or place of residence and to the provision of evidence about those matters.

Pensions dashboards

There is legislation to facilitate the establishment of pension dashboards. Regulations may require trustees and other pension providers to supply information. No further detail on this is included in the Bill.

Collective money purchase benefits

The largest part of the Bill is concerned with establishing a framework to allow schemes to provide collective money purchase benefits (no longer referred to as collective defined contribution) in compliance with a specified model.

The model operates as an occupational pension scheme for single or associated private sector employers. 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.

This is being introduced to allow Royal Mail to set up such an arrangement for its staff. Other employers may use the same framework but will not have design flexibility. Arrangements will need to be authorised by the Pensions Regulator, with requirements similar to those under the master trusts authorisation regime.

PPF compensation

Legislation is aimed at changing PPF compensation legislation retrospectively to reflect policy intent, following *Beaton v Board of the Pension Protection Fund*, in which the High Court ruled that a fixed pension (not added years) DB transfer credit is effectively, to affected members' advantage, treated as a separate benefit.

There is nothing in the Bill on the regulation of DB scheme consolidators (or "superfunds"). Provisions could be added later by government amendment, if it settles its position in time. We await the government's response to its [date] consultation (see WHiP Issue 74).

There is also nothing in the Bill on the previously proposed changes relating to financial support directions, nor in relation to GMP equalisation or conversion.

DB funding

The first of two Pensions Regulator consultations on DB scheme funding was expected to be published shortly after the Bill was published. This consultation will be on a new DB funding framework, with the second consultation being on a new code of practice or sections of a single overarching code. This first consultation was delayed until January 2020, in light of the coming general election, though that is only a tentative date.

David Fairs of the Pensions Regulator (TPR) gave a conference speech in which he gave some detail of what the Regulator will propose. There will be a "twin track" approach: "fast track" (mainly for the smallest schemes) and "bespoke":

> "Under Fast track, we will set out simple qualitative and quantitative rules and methodologies, call them compliance tests if you like. There will be some scheme specificity embedded in these rules, such as for instance variations by maturity and covenant. Schemes opting for this route will be considered compliant with part 3 funding subject to a few checks by TPR.
>
> We are unlikely to engage further with the scheme. We think this will be of particular benefit to the 2,000 or so small schemes that have fewer than 100 members and less access to advice.
>
> Some schemes may go down the Bespoke route, either by choice, or because they cannot comply with Fast track. In this option, there will be more flexibility to take account of unique or unusual scheme or covenant features; more sophisticated approaches or to take additional risk, providing the trustees explain, in the DB statement announced in the White Paper, why their approach is compliant and can evidence that the additional risk they are taking is managed and mitigated.
>
> So 'Bespoke' would mean much more flexibility but more onus on trustees to explain their decisions and more regulatory scrutiny. If the Bespoke arrangements are not compliant, we would consider whether it is appropriate to take enforcement action."

As regards long-term objectives (LTOs), the Regulator will propose that schemes should progressively reduce their reliance on the employer covenant over time and reach a position of low dependency by the time they are "significantly mature". The Regulator will define this and set out its view of what low dependency funding should look like under the fast track.

It will consult on a low dependency funding basis with a discount rate in the range of gilts + 0.25% to gilts + 0.5%. Under the proposed definition of "significant maturity", a scheme of typical maturity now would reach its LTO in 15 to 20 years' time. Schemes would not be required to be fully funded on their LTO until significantly mature but should have a journey plan in place. The Regulator will consult on key drivers of journey plans such as maturity and covenant and on possible shapes for journey plans.

See our briefing note, Confirmed government plans for the protection of DB pensions for background.

Equalisation and retrospective amendments

The European Court has given its decision in *Safeway Limited v Newton and Safeway Pension Trustees Limited*, concerning equalisation and retrospective benefit reduction amendments. It has ruled that EU law prohibits a scheme, in the absence of objective justification, from adopting a measure which retroactively raises women's pension ages to be the same as men's, even where the amendment is permitted by national law and the scheme trust deed. In the absence of a settlement, the Court of Appeal can now be expected to consider the objective justification question and an additional argument about the effect of UK law.

Facts

In September 1991, following the European Court's 1990 *Barber* decision but before the clarification in the *Coloroll* and other cases in 1994, Safeway issued an announcement saying that pension ages would be equalised at 65 for men and women. Before that, they were 60 for women and 65 for men. The change was confirmed by another announcement on 1 December 1991 but the scheme rules were not amended until a deed was executed on 2 May 1996.

The scheme's amendment power required amendments to be made by supplemental deed but allowed amendments to take effect "from a date specified in the Supplemental Deed which may be the date of such Deed or the date of any prior written announcement to Members of the alteration or addition or a date occurring at any reasonable time previous or

subsequent to the date of such Deed so as to give the amendment or addition retrospective or future effect as the case may be".

All of the relevant events took place before section 67 Pensions Act 1995 (which now restricts adverse retrospective amendments) was in force.

Initial Court of Appeal decision

In October 2017, the Court of Appeal agreed with the High Court that the amendments were not made until the deed was executed in 1996. It added that it is "undoubted" that accrued benefits can be retrospectively reduced with an appropriate amendment power unless EU equality laws prohibit such action. (This is now subject to section 67, as noted above.)

The European Court had concluded in *Smith v Avdel Systems Limited (1994)* that "Article 119 of the Treaty precludes an occupational scheme … from retrospectively raising the retirement age for women in relation to periods of service completed between 17 May 1990 and the date of entry into force of the measures by which equality is achieved in the scheme in question". Its judgment did not, however, refer to the scheme's amendment power and the Court of Appeal concluded that there is doubt about whether the European Court took into account the possibility of a retrospective amendment power.

The Court of Appeal therefore held that EU law as it applies in this case is not clear. In other words, the Court of Appeal was not sure what the European Court would say, if it were to consider all the arguments, in a case where there is a clear retrospective power of amendment: would it really say that the advantaged class – women – have their benefits for the Barber "window period" upgraded from defeasible (ie, subject to reduction or removal by a retrospective amendment power) to indefeasible (ie, incapable of being reduced or removed) rights? It therefore referred to the European Court the question whether the *Smith v Avdel Systems Limited* decision established a principle which would turn defeasible rights into indefeasible rights.

See WHiP Issue 67 for more on the Court of Appeal judgment.

European Court decision

The European Court reframed the question and ruled as follows:

> "Article 119 of the EC Treaty (now, after amendment, Article 141 EC) must be interpreted as precluding, in the absence of an objective justification, a pension scheme from adopting, in order to end discrimination contrary to that provision resulting from the fixing of a normal pension age differentiated by gender, a measure which equalises, with retroactive effect, the normal pension age of members of that scheme to that of the persons within the previously disadvantaged category, in respect of the period between the announcement of that measure and its adoption, even where such a measure is authorised under national law and under the Trust Deed governing that pension scheme."

This is different from the Advocate General's opinion, which the Court was not bound to follow.

As to the objective justification referred to, the judgment says:

> "… it is possible that measures seeking to end discrimination contrary to EU law may, exceptionally, be adopted with retroactive effect provided that, in addition to respecting the legitimate expectations of the persons concerned, those measures are in fact warranted by an overriding reason in the public interest. In particular, according to settled case-law, the risk of seriously undermining the financial balance of the pension scheme concerned may constitute such an overriding reason in the public interest …
>
> In the present case, although the referring court mentions in the order for reference that the financial consequences of the dispute in the main proceedings amount to approximately GBP 100 million, it does not state that the retroactive equalisation of the NPA of the members of the pension scheme at issue in those proceedings to that of the persons within the previously disadvantaged category was necessary to prevent the financial balance of that pension scheme from being seriously undermined. Since the file before the Court does not include any other information such as to establish that the measure concerned was in fact warranted by an overriding reason in the public interest, there seems to be no objective justification for that measure. It is nevertheless for the referring court to verify that such is the case."

Further argument

There may therefore be further argument and a decision in the Court of Appeal as to whether or not the financial balance of the Safeway scheme would be seriously undermined if the retroactive amendment is declared invalid.

It is also contended by Safeway that section 62 of the Pensions Act 1995 (which wrote an equal treatment rule into schemes from 1 January 1996) had equalised pension ages at 60 and that the amendment made by the May 1996 deed was therefore only to raise both men's and women's pension ages from 60 to 65. Accordingly, only domestic law questions of retrospective amendment arose, not EU law questions of equalisation. The High Court dismissed that argument and that decision was appealed. The Court of Appeal deferred a decision on this point until after the European Court has ruled.

Unless the parties agree to settle, we must wait for another Court of Appeal judgment in this case before we know the final outcome of this litigation.

GMP equalisation – industry guidance on equalisation methods

The industry GMP equalisation working group has published guidance for trustees on equalisation methods.

The guidance focuses on methods C (year by year approach) and D2 (GMP conversion) as described in the *Lloyds Banking Group* judgment (see our briefing note GMP equalisation: court ruling). It outlines advantages of and issues with each approach.

As regards some of the more difficult areas, the guidance says the following:

Tax issues

- It is expected that most schemes will choose to wait for the publication of HMRC guidance (see below) on the difficult tax issues before implementing a full equalisation project.
- When, under the year by year approach, a pension in payment needs to be reduced, the adjustment might be timed to coincide with an annual increase in order to avoid any reduction that would be contrary to the Finance Act 2004 rules for registered pension schemes.

Choice of approach

- Schemes may apply different approaches to different categories of member, eg, active members, deferred pensioners and pensioners. For pensions not yet in payment, trustees may decide to operate GMP conversion when they commence because at this point, revaluation rates and member retirement choices will not have to be assumed.
- DC schemes with GMP underpins present particular issues, some of which are considered in the guidance. Advice will always be needed in these cases but the guidance says that GMP conversion looks like the better approach.

Transferred benefits and no further liability cases

- Trustees may wish to delay a decision on what to do in respect of historic transfers out, pending the expected further decision in the *Lloyds* case in 2020. This should not delay implementation of other equalisation work.
- In other cases where the scheme, except in respect of GMP equalisation, has no further liability, trustees may decide not to incur costs in trying to review and, where applicable, provide additional benefits. They would, however, need to consider any claims made in respect of such cases.
- As regards transferred-in benefits, the approach may differ depending on whether the transfer in question was an individual transfer of a cash sum or was pursuant to a bulk transfer agreement (eg, a scheme merger or following a corporate transaction).
  - The guidance says that receiving schemes will not be in a position to assess the need to equalise in respect of individual transfers and the onus will be on the member to establish their claim.
  - As regards bulk transfers, it is suggested that the receiving scheme is required to take action, though data issues may arise (in which case schemes might decide to estimate inequalities).

Where there was a merger or bulk transfer agreement or a corporate transaction agreement, this may include a negotiated provision for a party to make a GMP equalisation payment to the receiving scheme in certain circumstances.

Conversion

- The statutory rules for GMP conversion require employer consent. In many cases the relevant employer will not be known or may not now exist. The guidance suggests that the pragmatic approach is for the employers currently responsible for funding the scheme to consent.
- Where a scheme converts GMPs, it needs to provide a prescribed minimum level of contingent survivors' pension to the member's widow/widower or surviving civil partner. It has been pointed out to the government that this requirement can result in a materially higher level of survivor pension than pre-conversion for certain schemes (for example where the death in deferment survivor's pension is only the GMP minimum).

Miscellaneous

- Legal advice should be taken if a scheme forfeiture clause is to be relied upon to avoid paying arrears of underpaid benefit. Where the year by year equalisation approach is adopted, any non-payment of arrears might – if the individual lives long enough – be negated by the way future pension instalments are calculated.
- There will be cases where a member's options have been restricted to ensure the benefit paid at least covered the member's GMP (for example prohibiting early retirement on a reduced pension or restricting a lump sum commutation payment). In practice it will not be possible to compensate the member for the loss of these opportunities even though they would have been available to a comparator.
- Spouses' pensions of course need to be considered. Pensions payable to other dependants and to children do not include GMPs but their values are based on the member's pension. Accordingly, where the member's pension includes a GMP, those survivors' pensions can also be tainted by unlawful inequality and need to be considered.

It is intended that the guidance will be updated when there are material developments. Further guidance on other GMP equalisation matters will follow.

This industry group is chaired by the Pensions Administration Standards Association (PASA) and comprises representatives from the legal, advisory, actuarial, data and trustees sectors. This includes our Head of Pensions, Daniel Gerring, who is a member of the main group and chairs the tax sub-group. The guidance has no particular legal standing but is intended to represent an industry consensus about best practice so that following it may reduce the risk of claims against trustees. The guidance is not intended to cover every issue that every scheme may encounter.

GMP equalisation - HMRC guidance

Many schemes are waiting for HMRC guidance before taking benefit equalisation method decisions, to avoid creating adverse tax consequences for some members. There are particular questions about the operation of the annual and lifetime allowances, and the potential loss of lifetime allowance protections.

HMRC pension schemes newsletter 114 says that HMRC is intending to publish high level guidance on these issues in December 2019. At that time it will also give an update on progress with regard to other GMP equalisation tax issues.

Stewardship Code

The Financial Reporting Council (FRC) has published its revised Stewardship Code. This will take effect on 1 January 2020, replacing the UK Stewardship Code 2012.

Key changes in the new Code noted by the FRC include:

- "An extended focus that includes asset owners, such as pension funds and insurance companies, and service providers as well as asset managers. This will help align the approach of the whole investment community in the interest of end-investors and beneficiaries.
- A requirement to report annually on stewardship activity and its outcomes. Signatories' reports will show what has actually been done in the previous year, and what the outcome was, including their engagement with the assets they

invest in, their voting records and how they have protected and enhanced the value of their investments. This greater transparency will allow clients to see how their interests are being served.

- Signatories will be expected to take environmental, social and governance factors, including climate change, into account and to ensure their investment decisions are aligned with the needs of their clients.
- Signatories are now expected to explain how they have exercised stewardship across asset classes beyond listed equity, such as fixed income, private equity and infrastructure, and in investments outside the UK.
- Signatories are required to explain their organisation's purpose, investment beliefs, strategy and culture and how these enable them to practice stewardship. They are also expected to show how they are demonstrating this commitment through appropriate governance, resourcing and staff incentives."

DB investment guidance

The Pensions Regulator has updated its investment guidance for DB scheme trustees. This replaces the March 2017 version (see WHiP Issue 64) and reflects subsequent legal and market developments.

It includes new or substantially revised sections on:

- investment delegation structures;
- stewardship;
- sustainability, financially material factors and non-financial factors, including members' views; and
- impact investment and patient capital.

Investment guidance for DC schemes was updated in June 2019 (see WHiP Issue 76).

RPI and CPI

The Chancellor of the Exchequer has responded to the UK Statistics Authority's (UKSA) request to his predecessor that he agree to proposals for reform of the Retail Prices Index (RPI).

The UKSA proposed that publication of RPI be stopped and that in the meantime it should be changed so that it is aligned with the Consumer Prices Index including owner-occupied housing costs (CPIH). Under current legislation, the UKSA is able to make this change unilaterally from 2030; before then, the Chancellor's consent is needed. The Chancellor agrees that reform is needed but takes the view that it cannot be done soon due to the impact on users and the economy. There will be a consultation in January 2020 on whether to make this change before 2030, but not before 2025, and on technical issues.

The House of Lords' Economic Affairs Committee concluded in January 2019 that the UKSA risks breaching its statutory duty by continuing to publish RPI figures after having admitted that RPI is flawed but saying that it will not fix it. RPI lost its designation as a National Statistic in 2013. The UKSA said that it had not proposed any changes because the Chancellor of the Exchequer would reject them. The government was also accused of "index shopping" to suit its purposes. The Committee urged the government within five years to pick one measure of price inflation for all its purposes. It also urged the government to issue Consumer Prices Index (CPI)-linked gilts.

In a March 2019 letter only now published, the UKSA wrote to the previous Chancellor recommending that the publication of RPI be stopped (which would require primary legislation) and that in the interim the shortcomings of RPI be addressed by bringing the methods of CPIH into it, ie, "to turn the RPI into CPIH by another name". CPIH is the same as CPI but includes owner-occupiers' housing costs. Legislation allows the UKSA to make this change unilaterally from 2030, when the last relevant index-linked gilts mature. Before then, the Chancellor's consent is required, as this step would (as confirmed by the Bank of England in accordance with a statutory requirement) be both "fundamental and materially detrimental" to the holders of those index-linked gilts.

The Chancellor has now responded to the UKSA. He recognises that there are flaws in RPI and that maintaining public trust in official statistics is important. But concerns about the impact on users and on the economy mean that he is not minded to put forward legislation to remove the requirement for UKSA to produce and publish RPI figures. As regards the proposal to align RPI with CPIH, the same concerns mean that he will not agree to this happening before February

2025. The government will, however, consult publicly on whether this change should be made from a date other than 2030 and, if so, when between 2025 and 2030. It will include consultation on technical issues. The consultation will begin in January 2020 and the government and UKSA will publish a response before the Spring Statement and the end of the financial year.

The Chancellor has also responded the House of Lords' Economic Affairs Committee. This letter confirms (as first announced in the October 2018 Budget) that the government's objective is that CPIH will become its headline measure of price inflation "over time". (In the October 2018 Budget, the government said that public sector pension schemes would move from CPI to CPIH "when and where practicable".) The letter also says that the government has no current plans to stop issuing gilts linked to RPI (or, by implication, to start issuing gilts linked to CPI).

Pension protection levy

The PPF has consulted on its proposed 2020/21 pension protection levy determination and accompanying appendices and guidance.

This is the third year of a triennium, meaning that major changes are not expected, save in exceptional circumstances. There are no significant changes in approach but:

- there will be changes to the requirements for the content, though not the overall approach, of guarantor strength reports;
- there will be an express prohibition on a service company (ie, broadly a company constituted to provide services to scheme employers and which derives its income from such activities) being a guarantor; and
- there is a new information note for actuaries on calculating any interim allowance for GMP equalisation liabilities when preparing a section 179 valuation.

The 2020/21 levy estimate is around 8% higher than the current expected total levy collection for 2019/20 (which itself is 15% higher than the PPF had estimated). There is no adjustment in respect of any increase in the PPF's compensation liabilities arising from the *Hampshire* case (see WHiP Issue 72), concerning the PPF compensation cap, or from the possibility of an adverse finding in the German *Bauer* case (see WHiP Issue 76), concerning the provision of less than full protection.

The PPF says that the anticipated levy collection increase is due to declines in gilt yields resulting in larger deficits and the increased likelihood of employer insolvencies. It says that individual scheme levies will only change where their own underfunding or insolvency risk has changed. Employers and guarantors should therefore check for changes in their insolvency scores and consider whether to seek to mitigate any anticipated levy increase for their scheme.

General levy

The government is consulting (until midday on 29 November 2019) on options for increasing the general levy on occupational and personal pension schemes from April 2020. This may lead to significant increases.

This levy is charged to cover the funding of activities of the Pensions Regulator, Pensions Ombudsman and the Money and Pensions Service. The government seeks views on four options, the first of which is its preferred option:

- a holding increase of 10% from 1 April 2020, with increases from April 2021 informed by a wider review;
- a phased increase over the three years commencing 1 April 2020, under which levies would increase by 45%, 125% and 245% (all based on the 2019/20 rate), with rates thereafter determined by a further review;
- a phased increase over nine years, commencing 1 April 2020, with a 25% increase from 1 April 2020 and subsequent 20% increases (all based on the 2019/20 rate), with rates thereafter determined by a further review; or
- a phased increase over eight years commencing 1 April 2021, with no increase from 1 April 2020 but a 30% increase from 1 April 2021 and subsequent 25% increases (all based on the 2019/20 rate), with rates thereafter determined by a further review.

The government also proposes a one-off increase in the flat rate levy paid by schemes with between two and eleven members.

DC annual benefit statements

The government is consulting on approaches to achieving simple annual DC benefit statements for workplace pensions. Questions include whether adoption of a template format should be mandatory and whether to require details of deducted costs and charges to be included. The consultation closes on 20 December 2019.

Multi-employer schemes and employer departures

The Pensions Regulator has updated its guidance on managing employer debts when an employer leaves a multi-employer scheme. The update is primarily to include guidance on deferred debt arrangements (see WHiP Issue 70).

Investment stewardship and disclosure

The government has published a Shareholders' Rights Directive II Fact Sheet. This purports to summarise what trustees need to do to comply with the investment governance and disclosure requirements that derive from that directive, which started to come into force on 1 October 2019 (see WHiP Issues 73 and 76)).

Trustees should take advice on the legislative requirements as they affect their scheme as in our view the summaries do not capture all the detail about how the new legal requirements apply.

Cross-border schemes

The Pensions Regulator has issued guidance for the around 40 UK-based cross-border pension schemes and for UK employers who are currently contributing to a cross-border scheme based in the EEA in the event of a no-deal Brexit.

If the UK leaves the EU without a withdrawal agreement, the legislation that currently governs cross-border occupational pension schemes in the UK will cease to apply from that day.

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