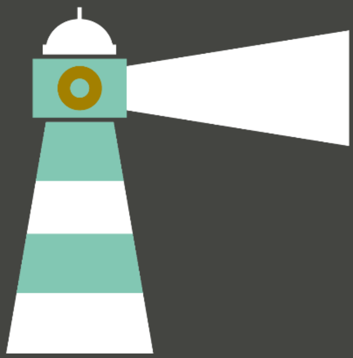
BRIEFING

What's Happening in Pensions



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Finance Act 2022 – normal minimum pension age and other provisions: The Finance Act 2022 has received Royal Assent. It raises normal minimum pension age from 55 to 57 on and from 6 April 2028. Some transitional protections are provided.

TPR climate change guidance: The Pensions Regulator has added an appendix to its guidance on climate-related governance and reporting, giving a step-by-step example of the actions trustees in scope of the duties and their advisers could consider taking in order to follow the legislation and guidance.

TPR DC communications guidance: The Pensions Regulator has updated the text on DC retirement communications in its 'Communicating and reporting: DC schemes' guidance, to reflect the new requirements to give a 'stronger nudge' to Pension Wise guidance.

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GMP conversion Bill: The Pension Schemes (Conversion of Guaranteed Minimum Pensions) Bill is making progress through Parliament. This private Member's Bill seeks to make it easier to use GMP conversion, in particular as a way of facilitating GMP equalisation, and is supported by both the Government and the Opposition.

GMP revaluation: The Government has confirmed that the fixed GMP revaluation rate will be reduced from 3.5% to 3.25% for leavers after 5 April 2022. It has also laid regulations to implement the decision.

PPF compensation cap and age discrimination - Tribunal decision: An Employment Tribunal is considering an age discrimination claim regarding the application of the PPF compensation cap to benefits accrued before 1 December 2006, when the age discrimination legislation came into force. In a preliminary decision, the Tribunal decided that the claim can proceed

Collective DC schemes: The Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022 have been made and come into force on 1 August 2022.

Fraud compensation levy: Regulations increase the levy ceiling for the fraud compensation fund significantly from 1 April 2022.

PENSIONS RADAR: You may also be interested in the latest edition of Pensions Radar, our quarterly listing of expected future changes in the UK law affecting work-based pension schemes.

SUSTAINABILITY MATERIALS: Our Sustainable Business Hub includes a section on ESG and sustainable finance issues for pension schemes and their sponsors.

Russia / Ukraine

The Pensions Regulator has published short guidance for trustees on issues potentially arising from the conflict in Ukraine and the associated sanctions against Russian entities and individuals.

Noting that the situation is developing, it sets out what the Regulator currently expects trustees to consider when reviewing exposure risks. This includes:

- *"for defined benefit (DB) schemes, the short-term liquidity needs and how those needs might be affected by margin calls and the need to meet short-term member benefit payments*
- *whether the employer or sponsor of the scheme has been affected, which for DB schemes may have consequences for the employer covenant: for example through any direct impacts to employer operations, through wider trading links where suppliers or customers are impacted, or through broader macroeconomic factors such as increased inflation, rising fuel prices or foreign exchange risks*
- *the likely impact of these events on your scheme's investments including short/medium-term risks*
- *in light of the potential heightened risk of cyber-attacks in the current environment, whether your cyber safety procedures remain adequate or need further consideration*
- *the potential for heightened risk of financial crime, including scams, and whether related processes and procedures should be reviewed*
- *whether investments remain aligned with the policies and principles set out in your statement of investment principles, including environmental, social and governance considerations"*

Trustees must also of course ensure that they comply with UK Government sanctions, which are broad in scope.

The Regulator also says that trustees should communicate with members "to let them know the steps you are taking to manage risks to the scheme. You can help them by urging them not to rush decisions and providing them with clear, relevant and timely information so they can make informed decisions.".

Finally, the Regulator asks trustees to tell it about any significant issues or challenges that they or their sponsoring employer are facing as a result of the ongoing conflict.

Pensions dashboards

Government consultation

The Government is consulting on "indicative" draft regulations regarding pensions dashboards. The proposals cover the requirements for occupational pension scheme trustees, which are onerous, and a staging timetable for connecting to the dashboard infrastructure. They also address the qualifying requirements for dashboards providers.

Pensions dashboards are intended to allow individuals to see all of their future pension entitlements from various sources in one online place. The public will not be able to access the dashboard until at least 2024 but most schemes are required to act well in advance of that. This is to ensure that, on launch, most individuals will be able to find information about most, if not all, of their entitlements.

The following is an outline of the proposed regime as it will affect occupational pension schemes. It does not cover the requirements for dashboard providers, which initially just means the Money and Pensions Service (MaPS). Note that the draft regulations are, unusually, described as "indicative", so there is potential for significant changes before they are finalised.

In scope schemes and staging

Occupational pension schemes will be required to register and cooperate with MaPS in connecting with the dashboard infrastructure and respond to "find" and "view" requests (see below).

Schemes in scope, at least for now, are all UK registrable schemes with at least 100 active and deferred members (i.e. not including pensioners and survivors) as at their scheme year end date that fell between 1 April 2020 and 31 March 2021. Other schemes can connect voluntarily, with permission: they may be required to connect from 2026 but this is not in the draft regulations. There are provisions regarding schemes with fewer than 100 relevant members that grow and so fall into scope later.

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. (They have been given more time in order to address their *McCloud* age discrimination issues.) Staging continues until 31 October 2025: there is a full timetable in Schedule 2 of the draft regulations. Note that a hybrid scheme's staging date is the earlier of what would otherwise be its DC and DB staging dates, for the whole scheme. (A scheme with DB benefits in which all the DC benefits derive from additional voluntary contributions is treated as DB rather than hybrid.)

Early connection is possible, with the permission of MaPS (which will consult with the Pensions Regulator). Postponement may be possible in some exceptional circumstances but only once and the application must be made within 12 months of the regulations coming into force: here permission must be granted by the Secretary of State, after consultation with the Pensions Regulator and MaPS.

State pension information should be available from the outset.

Connecting and matching

There is a one month window (three months for the largest master trusts, who are the first to stage) in advance of a scheme's staging date for them to "connect" with the MaPS "ecosystem" by registering software and interfaces that meet the Pensions Dashboards Programme's published standards (see below) and having regard to guidance published by MaPS and/or the Pensions Regulator. Clearly, schemes need to discuss how they will do this with their administrators or software providers.

The dashboard system will not itself hold information. Rather, it will process "find" and "view" requests. A "find request" is generated when an individual uses a dashboard. All relevant occupational pension schemes will then be sent an individual's personal information and must seek to "match" the individual, i.e. check if that person is an active or deferred member of their scheme. They must do this based on matching criteria that they have decided in advance – PASA data matching convention guidance will help with this.

If there is a match, the scheme must create and register a "pension identifier" (or "PeI"). It must then return "view data" in respect of the member for display on the dashboards, after checking view request permissions against a "consent and authorisation service" provided by MaPS. If there is a partial match then the individual must be invited to contact the scheme so that this can be investigated.

The Secretary of State or Pensions Regulator will publish guidance on matching.

Data and information

Regarding a member's benefits, the "value data" information to be returned is different in respect of money purchase and non-money purchase benefits:

- Money purchase: Here, the information that must be returned is:
  - An accrued pot value
  - An annualised income value (ignoring future contributions and growth)
  - (If held) the pot value projected to normal pension age
  - A projected annualised income value

  The last three of these only need to be provided from 1 October 2023 and once a statutory illustration has been produced. A future update of the FRC's actuarial standard TM1, concerning statutory money purchase illustrations, will address how the projections are to be made: a consultation on this is underway.

Projections are not required if the member is within two years of normal pension age and in some circumstances where the pot value is less than £5,000.

- Non-money purchase: Here, the information that must be returned is:
  - For active members, an accrued value as at the illustration date and a projected value for service to normal pension age but with no salary increases. No projection is required for members within two years of normal pension age.
  - For deferred members, an accrued value, valued to the illustration date. There may be the option for an alternative approach where the scheme does not revalue annually: in any event, schemes which only calculate revaluation at retirement, which is all that the law requires, might need to create new processes in order to be able to comply. No projected value is required for deferred members.

  The "value" here refers to the annual pension figure and any separate pension commencement lump sum.

There are separate provisions for cash balance and collective money purchase benefits.

In all cases, the figures can be up to 12 months old: this is to allow existing calculation processes to be used. If such figures are not already available, there is a three day deadline for providing money purchase data and a ten day deadline for non-money purchase data.

Schemes are no longer required to provide information once benefits have begun to be paid, even in part. The exception is where a member has taken only an uncrystallised funds pension lump sum (UFPLS).

Schemes will also have to supply additional data in three categories:

- "Administrative data", including (among other things) the name of the scheme, the nature of the benefit, member status and normal pension age.
- "Contextual information", including (among other things) as to attaching survivor benefits and pension increases.
- "Signpost data" for a website where (to the extent required by law) information on costs and charges, the scheme's statement of investment principles and its implementation statement can be viewed.

General

The draft regulations also include record keeping requirements and enforcement and penalty provisions. The Pensions Regulator will be the supervising authority. Penalties are discretionary, not compulsory.

The Government expects to lay the final regulations before Parliament in autumn 2022. The FCA is consulting on corresponding rules for personal pension providers and will consult in the summer on its rules for dashboard providers.

Pension Dashboards Programme and PLSA materials

There is a large amount of information on the Pensions Dashboards Programme (PDP) website. The PDP has most recently published the following new documentation to accompany the Government consultation. These relate to the standards that it will be issuing on behalf of MaPS under the above regulations:

- Data usage guide
- Design standards scope
- Reporting standards scope
- Technical standards
- Code of connection guide

The links can all be found here.

Separately, the PLSA has produced "Pensions dashboards A to Z", a useful guide for the pensions industry, including as to the decisions that schemes need to make.

Finance Act 2022 – normal minimum pension age and other provisions

The Finance Act 2022 has received Royal Assent. Sections 9 to 11 contain provisions:

- increasing normal minimum pension age from 55 to 57 on and from 6 April 2028, with some transitional protections;
- on deadlines for mandatory 'scheme pays' for annual allowance charges where pension input amounts increase retrospectively; and
- in relation to the lifetime allowance consequences of public sector scheme age discrimination remedies.

No amendments were made during the passage of the Bill.

Normal minimum pension age

Normal minimum pension age (NMPA) is the lowest age at which registered pension scheme benefits can generally be taken without incurring an unauthorised payments tax charge. It is currently age 55 but under the Act it will rise to age 57 on and from 6 April 2028.

Individuals are protected against the increase if, immediately before 4 November 2021 (the date the consultation outcome was announced), they had an existing unqualified right to take benefits from earlier than age 57. This must be pursuant to scheme rules that were in place on 11 February 2021 (the date of the original consultation about the increase) but there is no need for the individual to have been a member at that time. Such persons will have a protected pension age of 55 or 56 (as the case may be).

It may be that protection only applies to a member in certain circumstances (i.e. circumstances where there is no consent requirement in the scheme rules where otherwise one would apply, for example on early retirement following redundancy). Existing HMRC guidance on earlier pension age protections addresses this situation and also the position in circumstances where active members can retire early without consent but deferred members cannot (or vice versa) – which it considers to be different.

There are also protections following transfers, as follows:

- Block transfers: Members whose benefits are transferred as part of a block transfer will continue to benefit from protections that would have applied to them under the transferring scheme. The protection also extends to any existing benefits under the receiving scheme and benefits accrued under it in the future. This applies to block transfers since 11 February 2021. Unlike earlier protections for pension ages, there is no need for the transfer to be made within 12 months of the individual joining the receiving scheme.
- Individual transfers: Protected members will retain their protection following a future individual transfer but on a ring-fenced basis: the protection does not apply to any other benefits or future accrual under the receiving scheme. This applies to individual transfers made on or after 4 November 2021.

  There is not (as originally proposed) a window of opportunity for individuals to transfer from a scheme with no unqualified right to take benefits from before age 57 into a scheme that confers such a right, and thereby benefit from that right. The exception to this is for transfers made on or after 4 November 2021 in execution of a request made before that date.

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

We expect transitional regulations in due course to address the position of individuals who have reached age 55 but not age 57 by 6 April 2028, to avoid the situation where they can pass their NMPA and draw benefits but the NMPA increase would then make benefit payments unauthorised.

The existing protections for pension ages below age 55 continue to apply. Note that some of the conditions for the new protections are different, so a member who loses a protected pension age under the earlier conditions, for example following an individual transfer, may nevertheless be protected under the new legislation.

HMRC pension schemes newsletter 136 included a section with provisional guidance on the draft legislation, including what HMRC considers to be an "unqualified right" to take benefits before age 57 for these purposes. These issues may need careful consideration in certain circumstances. More comprehensive guidance, in the form of an update to the Pensions Tax Manual, has not yet been published.

Trustees should take steps to inform affected members.

Mandatory 'scheme pays' for annual allowance charges

The Act also includes provisions to facilitate the Government's remedies for the public sector pension reform age discrimination found by the Court of Appeal in the *McCloud* and *Sargeant* cases (see WHiP Issue 74). The provisions are not, however, limited to such schemes.

The Government's remedies include an option that could result in additional annual allowance charges for members in respect of earlier tax years. The Act accordingly provides for an extension of the time limit for a member to notify the scheme that they wish to use the mandatory 'scheme' pays' option, where it is available. The deadline for the scheme to report and pay the charge is also extended.

This applies where there is a retrospective change to a member's pension input amount for the purposes of the annual allowance. It may, therefore, be helpful for members of other schemes in other circumstances when benefit entitlements are being corrected.

HMRC is consulting on draft regulations connected with this.

Public sector age discrimination remedies

The Act also gives the Government power to amend legislation in certain ways in respect of other consequences of the public sector age discrimination remedies. This is likely to include measures regarding the lifetime allowance (including enhanced and fixed protection – see HMRC pension schemes newsletter 137) and the payment of authorised additional pensions and lump sums.

TPR climate change guidance

The Pensions Regulator has added an appendix to its guidance on climate-related governance and reporting (see WHiP Issue 93), giving a step-by-step example of the actions trustees in scope of the duties and their advisers could consider taking in order to follow the legislation and guidance.

The Regulator says that the appendix "is intended to help develop understanding of how trustees and advisers might approach implementing the requirements of the new regulations at a practical level. The example provides information relevant to trustees and advisers of any scheme seeking to comply with the new regulations.". The content of the example provides an indication of how much there is for trustees to consider and do in this area.

TPR DC communications guidance

The Pensions Regulator has updated the text on DC retirement communications in the 'Communicating and reporting: DC schemes' guidance, to reflect the new requirements to give a 'stronger nudge' to Pension Wise guidance (see WHiP Issue 93).

This includes an update of Appendix 2, which includes examples of the type of declarations that trustees may wish to include in their retirement documentation for members to complete. The guidance also now includes pension flexibilities information migrated from separate guidance dating back to April 2015.

Automatic enrolment figures 2022/23

The Government has published the outcome of its review of the automatic enrolment earnings trigger and qualifying earnings band for 2022/2023. Both the trigger and the earnings band are being frozen at their current level.

The outcome of this is as follows:

- The earnings trigger will again be £10,000 pa.
- The qualifying earnings threshold will remain at £6,240 pa. This means that it will no longer be aligned with the National Insurance lower earnings limit, which is rising to £6,396 pa for 2022/23.

- The qualifying earnings upper limit will also remain at £50,270. But the National Insurance upper earnings limit is similarly frozen for 2022/23, so there will still be alignment here.

GMP conversion Bill

The Pension Schemes (Conversion of Guaranteed Minimum Pensions) Bill is making progress through Parliament. This private Member's Bill seeks to make it easier to use GMP conversion, in particular as a way of facilitating GMP equalisation.

The Bill would amend the GMP conversion legislation in the Pension Schemes Act 1993 to provide more flexibility in relation to (a) who has to consent to a conversion exercise (currently the legislation refers to the consent of the 'employer') and (b) the amount of the survivor pension that has to be provided post-conversion. However, almost all of the practical detail would be left to be prescribed by regulations.

The Bill has Government and Opposition support but needs to complete its passage in the remaining weeks of the current Parliamentary session if it is to become law, which it appears to be on course to do. In the committee stage debate, the Pensions Minister promised a full consultation of the industry on the content of the regulations, followed by a debate on them in the House of Commons.

GMP revaluation

The Government has confirmed that the fixed GMP revaluation rate will be reduced from 3.5% to 3.25% for leavers after 5 April 2022. It has also laid regulations to implement the decision.

PPF compensation cap and age discrimination - Tribunal decision

Members of the T&N Retirement Benefits Pension Scheme have brought an age discrimination claim in the Employment Tribunal against the trustee regarding the application of the PPF compensation cap to their benefits accrued before 1 December 2006, when the age discrimination legislation came into force. The T&N Retirement Benefit Scheme is in a PPF assessment period and is the same scheme involved in the previous High Court proceedings about the levels of PPF compensation in *Hampshire* and *Hughes* (see WHiP Issues 72 and 90).

In this latest case, the trustee argued that the claimant members' service all pre-dated the introduction of the age discrimination legislation on 1 December 2006 and so the legislation did not apply to their benefits (there is an exception in the legislation for benefits deriving from pensionable service before that date). The Tribunal decided, however, that this aspect of the legislation was not compatible with the EU Equal Treatment Directive it was implementing and so should be disapplied, drawing an analogy with the *Walker* decision on death benefits payable to surviving civil partners (see WHiP Issue 65).

Because of the legal status of Employment Tribunal decisions, this ruling is not an immediate change in pensions law for other schemes. It is also possible the decision may be appealed to the Courts. We are continuing to monitor this case.

Collective DC schemes

The Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022 have been made and come into force on 1 August 2022.

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

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

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

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

Separately, the Pensions Regulator has consulted on a draft code of practice on the authorisation and supervision of CDC schemes.

Fraud compensation levy

The Occupational Pension Schemes (Fraud Compensation Levy) (Amendment) Regulations 2022 increase the levy ceiling for the fraud compensation fund (FCF) significantly from 1 April 2022.

The levy rates for 2021/22 were 75p per member (30p for authorised master trusts). The levy ceiling will now be £1.80 per member (65p for master trusts).

This follows a recent case, *Board of the Pension Protection Fund v Dalriada Trustees Ltd (2020)*, in which the High Court held that members of some occupational pension schemes who were the victims of pension scams are covered by the FCF, significantly increasing its liabilities.

The Pension Protection Fund, which administers the FCF, raised the levy to the maximum amount for 2021/22 (see WHiP Issue 88). These regulations allow much larger increases.

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