Essential UK Pensions News

United Kingdom | Publication

May 2021

Introduction

Essential UK Pensions News covers the key pensions developments each month.

Legislation

Queen's Speech is largely silent on pensions

The Queen's Speech on May 11, 2021 confirmed plans to extend the dormant assets scheme to cover unclaimed pension assets, to increase the mandatory retirement age for judges and to resolve age discrimination issues in public sector pensions following the *McCloud* and *Sargeant* litigation. It was otherwise silent on pensions, ignoring topics such as the net pay anomaly, small pots and superfunds. This is perhaps not surprising given the amount of work still to be done to implement the provisions of the Pension Schemes Act 2021.

Following substantial industry concern that the Online Safety Bill mentioned in the speech would not address online financial fraud, the Government followed up with a written statement to say this would now be covered. The Work and Pensions Committee has been urging the Government to take effective action over online pension scams. Concerns remain about whether what is now proposed will go far enough.

Governance

DWP review shows DC chair's statements are not working as intended

The DWP has conducted a post-implementation review of the regulations governing the annual statement that the chair of trustees has to produce for DC schemes and arrangements. It has acknowledged that those statements are not working as intended. The fact that the enforcement regime includes mandatory fines means that the Pensions Regulator has had to issue fines for very minor flaws. The statements have become too long, complex and costly to produce which is at odds with the stated aims of the legislation, for example member engagement.

This conclusion will no doubt be welcomed by trustees who have had to grapple with the significant compliance burden of producing a fully compliant DC chair's statement each year.

The DWP will be reconsidering the approach to these statements, including the Pensions Regulator's involvement. However, the timing for this has not yet been confirmed.

DWP consults on simpler annual benefit statements

The DWP is consulting over new requirements for the format and length of annual benefit statements issued to members of DC-only workplace pension schemes used for auto-enrolment. The aim is to improve member engagement by making the statements shorter and simpler (not more than one double-sided sheet of A4 paper), more consistent and easier to compare. A template statement has been provided for feedback.

The new requirements will apply to statements issued from April 6, 2022. This timing is likely to be tight for a number of schemes and their administrators. Schemes affected by this development will need to plan ahead and start work early on a new, compliant statement.

The consultation closes on June 29, 2021.

Transfers and scams

DWP consults on additional conditions for statutory transfers

The DWP is consulting on draft regulations which would introduce new conditions for statutory transfers from occupational and personal pension schemes (to apply in addition to existing requirements). This is to address widespread industry and governmental concern that currently trustees and managers have insufficient powers to block transfers where they believe that the receiving scheme is being used as a scam vehicle.

The DWP proposes that the trustee or manager of the transferring scheme should not be able to make a statutory transfer unless at least one of the following additional conditions has been met:

- The transfer is to a type of scheme which presents a low scams risk, namely a public service scheme, an authorised master trust, an authorised collective money purchase scheme or a scheme operated by an FCA-authorised insurer,
- The member can demonstrate an "employment link" with the receiving scheme, or a "residency link" if transferring to a Qualifying Recognised Overseas Pension Scheme, or
- No "red flags" or "amber flags" are present, or if "amber flags" are identified the member has taken specific scams guidance provided by the Money and Pensions Service (MaPS).

Proposed red flags
An unauthorised person has provided financial advice to the member or has recommended that the member makes the transfer
The member made the transfer request after an unsolicited approach
The member has been offered an incentive to transfer
The member has been put under time pressure to transfer
The member fails to respond to an information request from the trustee or manager relating to the flags or refuses to take MaPS scams guidance where there is an amber flag

Proposed amber flags
The receiving scheme includes high risk or unregulated investments
Fees charged by the receiving scheme are unclear or high
The investment structures of the receiving scheme are unclear, complex or unorthodox
The receiving scheme includes overseas investments or an overseas adviser has advised the member on them
The trustee or manager is aware of a high volume of requests to transfer from their scheme to a single receiving scheme and/or involving a single adviser

This development will be broadly welcomed by the industry as there is a growing problem with scam activity and trustees have often been frustrated by their inability to intervene. However, the new regime will require trustees and managers to exercise their judgment in transfer cases and it is not yet clear what ramifications the new rules will have for transfer timings. This will inevitably increase their legal risk.

Trustees should keep a watching brief for the final regulations and for further guidance from the Pensions Regulator, the FCA and industry groups such as the Pension Scams Industry Group. They should also review their transfer processes carefully, paying particular attention to their due diligence and information gathering processes. They may also want to seek advice on their risk and liability.

The consultation closes on June 9 and the DWP wants to introduce the regulations in "autumn 2021".

FCA consults on "stronger nudge" to pension guidance

The FCA is consulting over new rules to make FCA-regulated pension providers 'nudge' members to Pension Wise for guidance before they access their DC pension savings. Currently pension providers have to signpost members to Pension Wise but take up remains low.

The FCA proposes that, where members want to transfer their benefits to another scheme in order to access their DC savings, the pension provider must first:

- Refer the consumer to Pension Wise guidance
- Explain the nature and purpose of Pension Wise guidance
- Offer to book an appointment on the member's behalf
- Record whether the member declined the offer to receive Pension Wise guidance (opted out), received it or sought regulated advice

The consultation document also invites views (without firm proposals currently) on whether there should be:

- a cooling off period for members who opt out of a Pension Wise appointment before they can access their DC savings. This is to ensure that declining the appointment is not the quickest way to accessing savings; and/or
- an earlier nudge to guidance, before members are eligible to access their DC savings.

The proposed nudge would be limited to consumers wanting to access their savings or to transfer them in order to access them and would not apply to those who transfer for other reasons such as to consolidate their savings or to move to a lower cost provider.

The FCA also intends to collect data from pension providers to support supervision of the proposed rules and help both it and industry understand consumer behaviour, including the reasons why people might choose to opt out from Pension Wise guidance.

The FCA's consultation references draft regulations along similar lines for occupational pension schemes, but these have not yet been published for consultation.

For further information please read our financial services blogpost.

FCA to continue review of firms' pension transfer advice

In a "Regulatory Initiatives Grid" summarising ongoing initiatives by key financial services regulators, the FCA has said it will continue reviewing DB to DC transfer advice until at least spring 2022. This could mean further enforcement action to provide redress to clients who have received poor transfer advice.

Reducing the number of unsuitable and ill-advised transfers out of DB schemes clearly remains a priority for the FCA.

PASA announces DC Transfer Working Group

The Pensions Administration Standards Association (PASA) has announced a new DC Transfer Working Group, which will aim to drive improvement in transfers between DC arrangements (both trust- and contract-based), both UK and overseas.

PASA is concerned that the time taken and processes followed vary greatly, undermining member trust. The group expects to publish guidance in early 2022.

Investment

Consultation on TCFD disclosures for asset managers expected soon

The FCA has confirmed it will publish proposals in June to require asset managers, life insurers and FCA-regulated pension providers to make climate-related disclosures in line with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). The final rules are expected to be published in the last quarter of 2021, so the timing is still broadly as expected.

Proposals to extend climate-related disclosure rules to standard listed issuers are also expected from the FCA in June.

The application of climate change disclosure requirements to asset managers and investee companies is likely to help trustees with their own disclosures, as information becomes more readily available and focussed.

FCA consults on new type of long-term asset fund

Following statements from the Government about its aim to encourage pension schemes to invest in the UK's economic recovery, the FCA has proposed a new type of open-ended long-term asset fund. Aimed at experienced retail investors and DC pension schemes, the intention is to enable schemes and others to invest efficiently in long-term, illiquid assets such as venture capital, private equity, private debt, real estate and infrastructure.

Trustees may wish to keep an eye on this development and discuss it further with their investment advisers if such funds become available to pension schemes. Amendments may also be needed to the DC charge cap to facilitate this type of investment, which is the subject of a separate consultation.

The long-term asset fund consultation closes on June 25, 2021 and a final policy statement is expected at the end of the year.

For further information please read our financial services blogpost.

Work and Pensions Committee calls for evidence on stewardship

The Work and Pensions Committee is seeking views on how the Government's approach to pension scheme stewardship compares to approaches taken internationally and what more can be done to help schemes make climate-conscious investment decisions. For example are suitable financial products available and do there need to be international reforms to financial reporting to ensure schemes have the information they need to assess climate change risks?

The call for evidence closes on June 18, 2021.

TPR and the PPF consult on collection of asset class information

The Pensions Regulator and the Pension Protection Fund are jointly consulting on changing the asset class information which DB schemes provide each year through the scheme return. The Regulator uses the information to measure investment risk and the PPF uses it to help calculate the PPF levy.

They propose adopting a "proportionate approach", reflecting that smaller schemes may have more limited resources and simpler investment strategies. This means smaller schemes would see only minor changes to information requests while larger schemes would be asked for more "granular" information. The largest schemes (over £1.5bn of section 179 liabilities) would also continue to carry out the bespoke stress calculation required by the PPF levy rules.

The consultation closes on June 10, 2021.

Action needed by pension schemes in preparation for end of LIBOR

The FCA continues to encourage all market participants to take steps to stop using the London Inter-Bank Offered Rate (LIBOR) as it will no longer be supported from December 31, 2021.

As that date draws closer, pension schemes which use LIBOR as a benchmark against which to assess the investment performance of their managers will need to amend their investment management agreements if they have not already done so.

Pension schemes which have derivative or longevity contracts which still refer to LIBOR should ensure they have discussed with their investment consultants and legal advisers what steps (if any) are needed to address this.

The FCA and Bank of England recently issued a statement supporting and encouraging market users and liquidity providers in the sterling exchange traded derivatives market to switch the default traded instrument to SONIA instead of LIBOR from June 17, 2021. This should facilitate pension schemes switching away from LIBOR but also underscores the need to urgently do so, or to review exposures in this regard.

Industry trends

TPR and FCA joint call for input about the pension consumer journey

Auto-enrolment and DC pension freedoms revolutionised DC savings by encouraging more savers into pensions and giving them more choice about access to their savings at retirement. Now the Pensions Regulator and the FCA are calling for evidence about what to do between the start and end points – how pension savers be better supported to make good decisions along the way.

Ideas include:

- Harnessing the current enthusiasm for ESG by better aligning pensions with millennial values,
- Changing the way auto-enrolment contributions work so that the percentage a member contributes rises along with each pay increase,
- Maximising innovations like apps and dashboards,
- Making it easier for employers to guide members to good choices, and
- Supporting employers to make better choice of pension scheme.

The deadline for feedback is June 30, 2021.

The Pensions Regulator publishes its 3-year corporate plan (2021-2024)

The Pensions Regulator's plan for the next three years promises to focus on:

- implementing the Pension Schemes Act,
- combatting scams, and
- developing a framework for measuring value for money.

The Regulator also plans to continue work on the superfunds regime, supporting the DWP to develop the legislative framework for superfunds, which it anticipates being introduced from 2022/23.

Government to extend a loan to the PPF for fraud cases

The Government has introduced the Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill. This would permit it to make a loan (estimated to be £200 to £250 million) to the Pension Protection Fund (PPF) in order to cover compensation payments by the Fraud Compensation Fund following the recent *Dalriada* case. The expectation is that the fraud compensation levy paid by pension schemes will need to rise further in future in order to repay this loan over time. The Government plans to consult on future levy rates this autumn.

PPF confirms it will change valuation assumptions

Following a consultation, the PPF has confirmed it will change its valuation assumptions, in order better to align them with estimated pricing in the bulk annuity market. It will slightly amend its proposed mortality assumptions following consultation feedback.

The changes are expected to improve the aggregate PPF funding ratio and improve the PPF-basis funding level of many schemes.

Pension issues in the pipeline

Development	Expected timing	Suggested action*
Lifetime Allowance frozen	From April 6, 2021 to at least April 2026	Update member communications and administration systems.
Deadline for tender process for fiduciary managers	June 9, 2021	This deadline will apply to certain fiduciary manager appointments which did not follow a competitive tender process. Seek advice on whether this deadline applies and conduct a tender process.
Deadline for requesting final GMP data cuts from HMRC	July 31, 2021	Contact HMRC ASAP if final data cut not yet received.
Climate change risk governance and disclosure requirements start to apply	October 1, 2021 for first wave of schemes (assets of £5BN and above and all master trusts) October 1, 2022 for second wave of schemes (assets of £1BN and above) Requirements may be extended to smaller schemes (assets under £1BN) from late 2024 or early 2025 – TBC	Develop project plan for implementing governance structures and reporting. Smaller schemes to consider whether to comply on a voluntary basis.
Requirement for trustees to publish an implementation statement online	For DB schemes: October 1, 2021 For DC and hybrid schemes (100+ members): As soon as accounts have been signed after October 1, 2020 (and no later than October 1, 2021)	Liaise with investment consultants and managers to gather relevant information to begin preparation of implementation statement and plan website publication.
Requirement for trustees to publish information on voting behaviour and capital structure of investee companies online	October 1, 2021	Liaise with investment consultants and managers to gather relevant information to begin preparation of information and plan website publication.

Development	Expected timing	Suggested action*
New stronger powers for the Pensions Regulator (under the Pension Schemes Act 2021), including new criminal offences, come into force	October 2021	Employers and trustees to carefully consider pension scheme ramifications of any corporate activity from point of view of new powers. Carefully document decisions. Review governance structures and policies/protocols to minimise risk of breaches.
Requirement for trustees of smaller DC schemes (assets of less than £100 million) annually to assess the value provided to their members and, where they conclude value not provided, to consider winding up	October 2021? (for scheme years ending after 5 October 2021) Consultation outcome and final regulations awaited.	Trustees to consider whether their DC scheme is in scope for the new requirements (final version still TBC). Prepare for value assessment (if relevant) and for reporting in chair's statement and scheme return to the Pensions Regulator. If value assessment unlikely to be met, consider options for DC members.
Trustees of all DC schemes to report on net investment returns in the chair's statement	October 2021? (for scheme years ending after 5 October 2021) Consultation outcome and final regulations awaited.	Gather relevant information and prepare for reporting (final requirements still TBC).
Statutory transfers: additional requirements	Autumn 2021	Review processes and assess trustee legal risk, in the light of the draft regulations, published for consultation May 14, 2021.
New simpler annual benefit statements for DC schemes used for auto-enrolment	April 2022	Keep watch for final rules and prepare new form of statement in time for April 2022 (if applicable). Consultation running from May 17 to June 29, 2021.
Notifiable events: changes to current regime	Spring 2022?	Update or implement a notifiable events protocol for employers and trustee to minimise risk of breaches
Regulator's new single Code of Practice comes into force, including a requirement for an annual "own risk assessment"	2022? Consultation ends May 26, 2021	Check scheme and employer are compliant with the Code's requirements. Consider planning first "own risk assessment", if relevant.

Development	Expected timing	Suggested action*
Climate change risk governance and disclosure requirements start to apply for: asset managers, life insurers, FCA-regulated pension schemes standard listed companies	2022? Consultations expected June 2021; final rules expected Q4 2021.	For noting only. Information from asset managers and investee companies may become more readily available which would help trustees with their own disclosures.
DB scheme funding: changes to requirements	2022/2023?	Consider scheme's long term objective and journey plan and discuss with employers. Look out for second consultation, expected late 2021, and consider implications with advisers.
Legislative framework for superfunds	2022/2023?	Look out for draft regulations and a consultation in due course.
Pension Dashboards	2023	Look out for consultation, late 2021. Develop action plan for getting data ready for dashboard.
Rise in normal minimum pension age from 55 to 57	April 6, 2028	Look out for draft legislation (expected summer 2021). Take advice on which members benefit from the new protected pension age (of 55). Update member communications.
RPI reform and switch to CPIH	2030	Take advice on implications for DB schemes and necessary actions.

* This table sets out some indicative action points that trustees and employers may wish to consider but should not be read as a comprehensive plan of action or client-specific advice. Should you wish to discuss these issues further, please contact the Norton Rose Fulbright LLP pension team who will be happy to assist.

Contacts

Lesley Browning
Partner | London
+44 20 7444 2448 | +44 77 1030 3311
lesley.browning@nortonrosefulbright.com

Shane O'Reilly
Partner | London
+44 20 7444 3895
shane.o'reilly@nortonrosefulbright.com

Julia Chirnside
Senior Knowledge Lawyer | London
+44 20 7444 3238
julia.chirnside@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have more than 3700 lawyers and other legal staff based in Europe, the United States, Canada, Latin America, Asia, Australia, Africa and the Middle East.

Law around the world

nortonrosefulbright.com