



Essential UK Pensions News

Briefing

November 2019

Introduction

Essential Pensions News covers the latest pensions developments each month.

Brexit deferral and General Election – what does it mean for pensions?

The UK's exit date from the EU has been postponed once more - this time from October 31, 2019 to January 31, 2020 (or such earlier time as Parliament may reach an agreement). The Budget, initially planned for November 6, 2019, has been cancelled. In addition, the calling of a general election on December 12, 2019 means that all legislation going through Parliament, including the Pension Schemes Bill 2019, has fallen. When re-introduced under the newly elected Parliament, the Bill may then be debated and amended. A change of Government could mean that there is a long delay before the Bill reaches Royal Assent, and there is likely to be a knock-on delay to the Pensions Regulator's consultation on the revised Db funding code.

On October 30, a private members' bill was introduced in the Lords by Lord Balfe, seeking to give the Pensions Regulator power to approve the payment of shareholder dividends and to remove the cap on the Pension Protection Fund compensation paid to members following the insolvency of the sponsoring employer. The proposal increasing the Regulator's powers is unlikely to get any further but the attempted amendment may have the effect of re-opening the drafting of the Bill post-election.

If our departure from the EU is accompanied by a Withdrawal Bill, (that is, leaving otherwise than under No Deal) the implementation date ending December 31, 2020 will apply. During the period up to that date, all EU law will continue to apply to the UK and it is possible that scrapping of the Pension Protection Levy cap will be included in this. In a current case involving the German version of the PPF (Bauer) the Advocate General has expressed the view that EU member states are required to establish systems that aim to protect pensions in full. If the AG's opinion is upheld by the ECJ, this could cause a further increase to PPF levies.

DWP consults on simpler annual benefit statements for workplace pensions

On November 1, 2019, the DWP published a [consultation paper](#) on simpler annual benefit statements for members of workplace pensions. The consultation looks at how to deliver better annual pension benefit statements that are shorter, simpler and set out information that is easy to understand in helping individuals to plan for the retirement they want. The deadline for responses is December 20, 2019.

It is structured around three issues:

- seeking views and evidence on the principle of short, simple, statements, and how adoption can be delivered through voluntary or mandatory approaches. Three options are suggested.
- the presentation of information on costs and charges that can help members identify how much they have paid for their pensions.
- ownership of the guidance on the assumptions used in statements and how they can help members identify if their savings are on track.

The consultation also seeks views on the relationship of simpler statements with innovative communication tools, including pension dashboards, and how to encourage savers to open their statements. It is aimed at:

- occupational and personal pension scheme providers, trustees and managers
- pension scheme members and beneficiaries
- other industry bodies and professionals
- civil society organisations
- any other interested stakeholders

Pensions investments: FRC launches revised UK Stewardship Code

The Financial Reporting Council has launched a revised [stewardship code](#), which raises its expectations on how money, including pension funds, is invested. The UK Stewardship Code 2020 is a substantial revision of the previous 2012 edition and takes effect from January 1, 2020.

The new Code sets high expectations of those investing money on behalf of UK savers and pensioners. In particular, the new Code establishes a clear benchmark for stewardship as the responsible allocation, management and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society.

There is a strong focus on the activities and outcomes of stewardship. There are also new expectations on the integration of investment and stewardship, including environmental, social and governance issues. The Code asks investors to explain how they have exercised stewardship across asset classes. For example, for listed equity, fixed income, private equity, infrastructure investments, and in investments outside the UK.

The Code consists of 12 principles for asset managers and asset owners, and six principles for service providers. These are supported by reporting expectations that indicate the information that should be publicly reported in order to become a signatory to the Code.

Organisations wanting to become signatories will be required to produce an annual Stewardship Report explaining how they have applied the Code in the previous 12 months. The FRC will evaluate Reports against its assessment framework, and those that meet the reporting expectations will be listed as signatories to the Code. To be included in the first list of signatories, organisations must submit a final Report to the FRC by March 31, 2021.

Task Force on Climate-Related Financial Disclosures to produce guidance

A new pensions industry working group has been set up to produce trustee guidance on climate-related issues. The working group will use recommendations from the Task Force on Climate-Related Financial Disclosures (TCFD). The DWP and the Department for Business, Energy and Industrial Strategy are part of the group, alongside the Pensions Regulator, trustees, consultants, investment managers, civil society groups and other representative bodies.

The group's role is seen as providing practical and accessible guidance to help trustees of all schemes integrate, manage and report on climate risk as part of their investment governance, using the TCFD's framework as a tool to do so.

The guidance is intended to help trustees identify, assess, manage and disclose their exposure to climate-related financial risks and opportunities. It follows the requirement for trustees to state their policies on financially material considerations, including climate change, as part of a scheme's Statement of Investment Principles with effect from October 1, 2019.

The group plans to publicly consult on draft guidance in early 2020. The Pensions Regulator will subsequently incorporate the key requirements into its code of practice in order to help trustees meet the expectation laid out in the Government's Green Finance Strategy.

HMRC publishes pension schemes newsletter 114: update on GMP equalisation working group guidance

On October 30, 2019, HMRC published [edition 114](#) of its regular Pension schemes newsletter, which includes the following items:

- GMP equalisation guidance** – HMRC’s GMP equalisation working group has announced its plans to publish guidance on issues relating to the annual and lifetime allowances (including lifetime allowance protections) in December 2019. However, this first part of the guidance will cover the lifetime allowance, LTA protection regimes (enhanced, primary etc) and annual allowance issues. What it will not cover (and in relation to which guidance will be produced later) is the payment of crystallised lump sums – trivial commutation, serious ill-health lump sums and small lump sums. The December guidance should provide further detail on when the second part of the guidance can be expected. There is, as yet, no date given for guidance on conversion tax issues, which HMRC admits “are proving more complicated to resolve”. This should mean that many schemes can make progress on their conversion and equalisation processes. However, the third Lloyds Bank hearing is not expected before late April/early May 2020, and this will focus on transfers in only rather than *de minimis* issues.
- New registrations** – between April 6 and September 30, 2019, HMRC received 903 applications to register new pension schemes, a 2 per cent reduction compared to the same period last year. Of these applications, HMRC has to date refused registration in about 11 per cent of cases.
- Scheme pays** – HMRC highlights new [guidance](#) it has published regarding the “scheme pays” facility that allows members who have incurred an annual allowance charge to opt for the charge to be paid by their scheme. The guidance covers both the mandatory and voluntary scheme pays options.

EMIR: Brexit regulations made – Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment etc and Transitional Provision) (EU Exit) (No. 2) Regulations 2019

EMIR (the European Market Infrastructure Regulation on over-the-counter (OTC) derivatives, central counterparties and trade repositories) requires certain classes of derivatives contracts to be cleared through a central counterparty. This requirement has a significant impact on a large number of counterparties that engage in derivatives trading, including both regulated and unregulated entities.

EMIR was amended by the EMIR Refit Regulation on June 17, 2019 and before this, provided an exemption from the clearing obligation for pension funds in the European Economic Area. This exemption was necessary as there is currently no appropriate technical solution for pension funds to clear all transactions covered by the clearing obligation through central counterparties. The EMIR Refit Regulation extended the exemption for EEA pension schemes to June 18, 2021.

The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment etc and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 were made on October 29, 2019 and come into force on the date the UK exits the EU.

These regulations are made under Section 8 of the European Union (Withdrawal) Act 2018, which enables a minister to make regulations dealing with deficiencies in retained EU law arising from the UK’s withdrawal from the EU. The Act operates to ensure that all directly applicable EU law, as it stands on exit day, will form part of UK law at exit.

The new regulations maintain the pension fund exemption, for both UK and EEA funds after exit, with an expiration date of June 18, 2023. HM Treasury can also extend the exemption by up to two years at a time if no appropriate technical solution for pension fund clearing has been found at that point.

Pensions Ombudsman determines trustee acted properly in agreeing to switch to CPI-based indexation: Mr R (PO-27867)

In this complaint, the Ombudsman needed to consider whether there had been an error of law or maladministration by the Trustee in agreeing to switch from RPI to CPI for the purposes of calculating increases to pensions in payment.

Mr R was a pensioner member of the scheme in question, the rules of which provided that increases were determined by reference to:

“The index of Retail Prices published by the Department of Employment or such other index as may from time be approved by the Revenue for the purpose of the Scheme.”

In July 2018 the scheme’s trustee announced that from March 2019 the annual rate of indexation for pension increases would change to CPI. Following an unsuccessful objection to the change through the scheme’s IDRPs, Mr R complained to the Ombudsman. Citing various cases including *Barnardo’s v Buckinghamshire and others* [2018], Mr R argued that the Trustee should not be allowed to change the index rate as from RPI to CPI because the RPI rate was still an active index produced by the Government.

The Ombudsman found that the trustee had considered the correct scheme rules, taken professional advice and considered the employer’s request for the change (following a scheme funding deficit revealed by the latest actuarial valuation) in a reasonable manner. The trustee had considered the interests of all the members and it was not unreasonable to change the basis of indexation and revaluation from RPI to CPI to improve the security of the scheme as a whole. In addition, the scheme members were advised of the change long before it was put in place and within the statutory time limits for disclosure.

The Ombudsman found there was a difference on the facts between Mr R’s position and that in the *Barnardo’s* case. In *Barnardo’s*, the Supreme Court held that the scheme rules only allowed an alternative index to be employed if RPI was discontinued, whereas Mr R’s scheme’s rules did allow for an alternative index to be used subject to having taken appropriate actuarial, covenant and legal advice. Therefore, the decision in *Barnardo’s* did not prevent the trustee from making the change from RPI to CPI.

Comment

This is the latest of several unsuccessful member complaints to the Ombudsman regarding a switch from RPI to CPI for revaluation or indexation increases. Such complaints now often rely on the general interpretation of the scheme rules, rather than representations made individually to members. In this case, while the Ombudsman considered the interpretation of the trust deed and rules, this determination is only binding on the parties to the complaint. The Ombudsman’s main focus here was on whether the trustee had properly exercised its powers (following the judgment in the 1988 case of *Edge and others v Pensions Ombudsman and another*).

DWP consultation on increasing schemes’ general levy – response deadline extended

Last month, we reported that the DWP was consulting on increasing schemes’ general levy. The general levy on occupational and personal pension schemes recovers the funding for the core activities of the Pensions Regulator, the Pensions Ombudsman and part of the activities of the Money and Pensions Service. This [consultation](#) seeks views on the DWP’s proposed options to raise the levy rates from April 1, 2020. The consultation deadline for responses has been extended from November 15, 2019 to November 29, 2019.

Opposite-sex civil partnerships – new regulations

The Civil Partnership (Opposite-sex Couples) Regulations 2019 come into force on December 31, 2019 and amend the Civil Partnership Act 2004 to extend civil partnerships to opposite-sex couples.

In England and Wales, same-sex couples have been able to register a civil partnership since December 21, 2015, which afforded them similar rights to married opposite-sex couples. Since the introduction of civil partnerships, the rights of same-sex couples to enter into marriage have been extended under the Marriage (Same Sex Couples) Act 2013.

The amending regulations come into force on December 31, 2019.

Comment

On July 4, 2019, in response to the Supreme Court's 2017 decision in favour of the member in *Walker v Innospec* the Government published a [statement](#) agreeing to implement the necessary changes for public sector pension schemes. Mr Walker had successfully taken the Innospec Pension Scheme to court because his civil partner would not be entitled to the same pension as if they had been an opposite sex couple. See our [previous briefing](#).

However, the Government's statement confirmed that the legislation would not be changed and that no further retrospective changes would be made to legislation to equalise survivor benefits. Private sector pension schemes are simply expected to follow the judgment to the extent that they do not already do so. The rationale given for this is that private sector schemes are individually responsible for ensuring that they are compliant with the judgment.

Now that amending regulations formalising opposite-sex civil partnerships will come into force at the end of the year, trustees should check their scheme's relevant definitions in relation to civil partnerships, marriage and survivors' benefits to ensure consistency with the new provisions.

DWP extends deadline for responses on consultation on increases to schemes' general levy

Last month, we reported that the DWP was consulting on increases to the general schemes' levy. This levy recovers the funding provided by the DWP in respect of the core activities of the Pensions Regulator, the Pensions Ombudsman and part of the activities of the Money and Pensions Service. The consultation seeks views on the DWP's proposed options to raise the levy rates from April 1, 2020.

Four options are set out in the [consultation](#):

- holding increase of 10 per cent of 2019/20 rates on April 1, 2020, further increases from April 2021 informed by a wider review of the levy
- phased increase in the levy over the three years commencing April 1, 2020
- phased increase in the levy over approximately ten years commencing April 1, 2020
- phased increase in levy over approximately ten years commencing April 1, 2021

The deadline for responses period has now been extended from November 15, 2019 to November 29, 2019.

Latest revaluation order 2019 published

The latest statutory revaluation order has been published, confirming the amount by which deferred pensions in occupational pension schemes using the final salary revaluation method should be revalued for those reaching retirement during 2020. The Occupational Pensions (Revaluation) Order 2019 comes into force on January 1, 2020.

The order specifies the minimum revaluation percentages that must be applied to preserved pensions for members reaching their scheme's normal pension age (NPA) in 2020. The appropriate revaluation percentage for a member depends on the number of complete years between the date the member left pensionable service and the date on which they reach NPA. Different revaluation provisions govern GMPs.

Under the statutory limited price indexation formula, the percentage increase for the most recent calendar year must match the increase in the CPI for the 12 months to September 30, capped at 5 per cent or 2.5 per cent according to whether pensionable service was completed before or after April 6, 2009.

CPI inflation was 1.7 per cent for the 12 months to September 30, 2019, and therefore the higher revaluation percentage for early leavers' pensions has been fixed at 1.7 per cent and the lower revaluation percentage has been capped at 1.7 per cent for the 2019 calendar year revaluation period. Revaluation percentages for calendar years running back to 1986 are also adjusted by the order to take the most recent year into account.

Issues in the pensions pipeline

New or changed items are in *italics*.

January 31, 2019 – *the UK is due to withdraw from the EU, although it is (currently) unclear exactly what form Brexit will take.*

October 1, 2019 – new SIP requirements beginning to come into force relating to environmental, social and governance (ESG) factors.

GMP Equalisation – GMPEWG conversion guidance has now been published although guidance from HMRC is still awaited.

Revised Funding Regime – consultation on a revised Code of Practice was expected “in the summer” with technical provisions expected to remain broadly as they are, with the main change being the addition of a secondary long-term funding target. However, now a General Election has been called with the result that the Pension Schemes Bill has been delayed and may be amended when the new Government is in place. The DWP and TPR will also postpone the progress of documentation for consultation on the new DB funding regime.

New Pension Schemes Bill – in the latest Parliamentary drama, a General Election has been called on December 12, 2019. The new Pension Schemes Bill includes provisions covering the Pensions Dashboard, the Regulator’s powers, and the revised Funding Regime, and its passage through Parliament has now been halted.

EMIR – see item above.

October 1, 2020 – new disclosure obligations apply for trustees in relation to scheme’s Statement of Investment Principles under the Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations 2019 following the transposition into UK law of the revised Shareholder Rights Directive (SDR II).

October 1, 2021 – new requirements apply for trustees to publish information on a publicly available, free website relating to voting and capital structure of investment companies under the Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations 2019 following the transposition into UK law of the revised Shareholder Rights Directive (SDR II).

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