



DECEMBER 2020

Pensions Round-Up

Contents

Introduction	3
Information relating to pensions and COVID-19	4
Brexit and occupational pension schemes.....	5
The Pensions Regulator and the Pension Protection Fund.....	6
Department for Work and Pensions.....	8
Pensions dashboards.....	10
Other news	11
On the horizon	12
Contact details	13

Introduction

Welcome to the latest edition of DLA Piper's Pensions Round-Up newsletter in which we provide an overview of developments in pensions legislation and regulatory guidance.

In this edition we look at key developments from December 2020 including the following.

- **Information relating to pensions and COVID-19:** an update to the Pensions Regulator's guidance on automatic enrolment and DC contributions.
- **Brexit and occupational pension schemes:** an update about the Pensions Regulator's guidance for cross-border schemes; and an update from the PPF.
- **The Pensions Regulator:** a blog post reflecting on responses to the Regulator's first consultation on its DB funding code; and information about the scheme return for DB and mixed benefit schemes.
- **Pension Protection Fund:** an update about the PPF's consultation on the 2021/22 levy; and the publication of the Purple Book 2020.
- **Department for Work and Pensions:** the launch of a working group to address stewardship barriers; a consultation about proposed changes to the structure and rates of the general levy; and a report from the small pots working group on recommendations to tackle deferred, small pots.

- **Pensions dashboards:** the publication of the first version of the guide on pensions dashboards data standards.
- **HMRC:** the publication of HMRC's latest pension schemes newsletter.
- **On the horizon:** a timeline of some of the key future developments in pensions to help employers and trustees plan ahead.

If you would like further information about any of the issues raised in this edition of Pensions Round-Up, please get in touch with Cathryn Everest or your usual DLA Piper pensions contact. Contact details are at the end of this newsletter.



Information relating to pensions and COVID-19

The Pensions Regulator

AUTOMATIC ENROLMENT AND DC CONTRIBUTIONS

On 8 December the Regulator updated *Automatic enrolment and DC pension contributions: COVID-19 guidance for employers* by adding a new section about keeping contact details up to date. This new section notes that, as a result of the pandemic, businesses may have restructured and personnel may have changed, some of whom may have been designated as contacts for the purpose of communications from the Regulator. The Regulator states that it is important that it has the right contact details, either with the employer or an adviser working on the employer's behalf, as without this information, vital messages may not reach the right people and compliance may be at risk. The guidance provides a link to the relevant page of the Regulator's website for nominating a contact for communications from the Regulator.

In the [October 2020 edition of Pensions Round-Up](#) (page 4) we reported that it had been announced that the Coronavirus Job Retention Scheme (CJRS) had been extended until the end of

March 2021 and the Regulator had updated its guidance to reflect the position from 1 November 2020. From 1 November 2020, the level of the CJRS grant is 80% of employees' wages for hours not worked, capped at GBP2,500 per month (with the cap being proportional to the hours not worked). The employer contribution element of the CJRS was due to be reviewed in January 2021. However, on 17 December HM Treasury announced that this review had been brought forward to allow businesses to plan ahead for the remainder of the winter and the New Year, and that the CJRS has been extended until the end of April 2021, with the government continuing to pay 80% of wages for hours not worked. As has been the case since August, employers cannot claim for employer National Insurance Contributions or pension contributions.

REPORTING DUTIES – A REMINDER

As we reported in the [September 2020 edition of Pensions Round-Up](#) (page 4), 1 January 2021 marks a change to the Regulator's approach in relation to reporting late payment of contributions (other than deficit repair contributions).

In April, the Regulator introduced easements in relation to reporting requirements including that, in recognition of the challenging environment for employers, it asked providers and trustees to report late contribution payments at 150 days late, rather than the 90 days set out in its codes of practice.

In September, the Regulator updated its guidance to state that, from 1 January 2021, it is asking DC schemes and providers to revert to reporting payment failures that are 90 days, rather than 150 days, outstanding. Whilst the Regulator expects all schemes to return to 90 day payment failure reporting as soon as possible after 1 January 2021, it acknowledges that this change will have an impact on systems and processes. It is therefore allowing up to 1 April 2021 for schemes that may need the extra time to make the necessary adjustments and work with employers to bring any outstanding contributions up to date. However, the guidance states that 90 day reporting will become mandatory for all providers from 1 April 2021.

Brexit and occupational pension schemes

With the transition period in relation to the UK's withdrawal from the EU ending on 31 December 2020, during December, a number of updates were published which are relevant to occupational pension schemes.

- On 18 December the Pensions Regulator made some minor updates to information about the end of the transition period in its guidance for cross-border schemes. The guidance notes that the law that governed UK-EU/EEA cross-border occupational pension scheme arrangements during the transition period ceases to apply from 1 January 2021. The guidance sets out the steps that those who currently run, or employers that contribute to, such a scheme must take for the end of the transition period. The Regulator also states that it will revise the guidance in early 2021 on how trustees of schemes that were previously authorised and approved to operate cross-border should manage the cross-border aspects of their schemes for the post-transition period.
- On 24 December the DWP updated its guidance on benefits and pensions for UK nationals in the EU, EEA or Switzerland, including to add information about UK State Pension from 1 January 2021. This guidance, and the DWP's guidance on benefits and pensions for EEA and Swiss citizens in the UK, was also updated on 31 December to reflect that the transition period has ended. In both sets of guidance, the section relating to UK workplace pensions states

that UK law allows for workplace pensions to be paid overseas and that the government does not expect this to change because the UK has left the EU. This section also states that: "If your workplace pension is paid into a UK bank account, your bank should contact you if they need to change the way you receive your pension because the UK has left the EU".

- On 18 December the PPF published a news story about the impact of Brexit on the schemes that it protects stating that, if a scheme's employer is based in an EU country, and fails, it is still possible for the scheme to enter the PPF. It states that employers based in an EU country will be in the same position as non-EU overseas employers. The PPF states that: "If you're a trustee of a DB pension scheme and you think your EU-based sponsoring employer is at risk, you should discuss in advance with your legal advisers the steps to take to enter the PPF".

It is also worth noting that regulations made in 2019 containing technical changes to UK pensions legislation to ensure that it continues to operate effectively following the UK's withdrawal from the EU came into force at the end of the transition period. Changes made include: (1) updating references that reflect a tripartite system (which differentiates between the UK, the EEA and 'overseas') to address distinctions made between EU/EEA Member States and overseas entities that will no longer apply; (2) updating references to the UK being an EU or EEA Member State; and (3) removing the requirement for UK occupational pension

schemes to obtain authorisation from the Pensions Regulator for cross-border activities and revoking the regulations relating to such cross-border schemes.

An issue for consideration by trustees of occupational pension schemes in relation to Brexit is data protection and any transfers of personal data that take place between the UK and the EU. On 28 December the Information Commissioner's Office (ICO) published a statement which notes that the Trade and Cooperation Agreement with the EU will allow personal data to flow freely from the EU (and EEA) to the UK, until adequacy decisions have been adopted, for four to six months. The ICO states that: "As a sensible precaution, before and during this period, the ICO recommends that businesses work with EU and EEA organisations who transfer personal data to them, to put in place alternative transfer mechanisms, to safeguard against any interruption to the free flow of EU to UK personal data". The ICO recommends that these alternative safeguards are put in place before the end of April. The ICO's statement also includes that, as previously announced, the UK has, on a transitional basis, deemed the EU and EEA EFTA States to be adequate to allow for data flows from the UK.

Further information on issues for trustees of occupational pension schemes to consider in relation to the UK's withdrawal from the EU is included in our October 2020 publication [The impact of "Brexit" on UK pensions](#).

The Pensions Regulator and the Pension Protection Fund

DB funding code

On 8 December the Regulator published a blog post entitled *DB funding code: busting a few myths*, in which its Executive Director of Regulatory Policy, Analysis and Advice reflects on the responses to its first DB funding code consultation. Points of note in the blog post include the following.

- The Regulator received around 130 responses to the consultation and, having read these, is reflecting on whether any of the principles that it set out need to be adjusted. As it advised schemes to do in its last Annual Funding Statement, the Regulator is thinking through the different economic scenarios that may be encountered and, only once it has completed that, will it start thinking about the parameters it sets for Fast Track.
- The Regulator thinks it is reasonable to give immature schemes room to invest in more volatile, but higher return-seeking, assets. However, it states that immaturity alone is not sufficient to justify this approach. The Regulator expects “a covenant to be strong enough to provide the support a scheme would need to get back on track over time should things not turn out as hoped.”
- The blog post notes that open schemes are likely to be at the immature end of the DB universe and have a much longer journey to low dependency, so they should be able to invest with greater freedom than more mature schemes. It states that “the crunch question is... should

trustees be able to assume that the scheme will remain open forever and so adopt an investment strategy that reflects this and take credit for those returns in their funding?”. The blog post states that it is not the Regulator’s place to give a view on the ongoing discussions around the Pension Schemes Bill, but that it is right that it explains how it has approached this issue in its consultation.

- Also in relation to open schemes, the blog notes that it “seemed elegant” to the Regulator “that a truly open scheme could not mature, would not be expected to de-risk and would be able to continue to invest in a long-term way”. However, a scheme that started to experience lower levels of new entrants and began to mature “would start to recognise that the period to ride out volatility was reducing and therefore plan some de-risking”.
- The blog post states that, under the Bespoke route, the Regulator could see perfectly acceptable scenarios where open schemes propose to fund and invest based on their expectation that they will remain open, but trustees should be able to evidence to the Regulator how they could, among other things, manage the risk of their scheme closing or maturing faster than expected. It goes on to state that, using the Bespoke route “may mean more regulatory engagement but, in many cases, there is unlikely to be any (or only minimal) additional engagement if the thinking has been done, is clearly explained and well documented”.

Pension scams

In the [November 2020 edition of Pensions Round-Up](#) (page 4), we reported on the launch of the Regulator’s ‘pledge to combat pension scams’ campaign. Trustees, advisers and providers can sign up to the pledge through the Regulator’s website to show their commitment to combat pension scams. Pledgers use the Regulator’s resources and online education tools to understand what they can do to protect savers, with the six pledge steps including regularly warning members about pension scams, and taking appropriate due diligence measures and documenting pension transfer procedures. When the six pledge steps are met, pledgers can self-certify to demonstrate to their members and to the pensions industry that they are following the pledge principles.

On 23 December the Regulator published a press release reporting that, a month on from the launch of the campaign, 117 pledges have been made and a further 37 of those that pledged have also self-certified to confirm that they have adopted stringent practices on due diligence, member warnings and reporting scams. The press release also notes that the Trustee Toolkit scams module, which the Regulator launched as part of the campaign, has seen 1,220 take-ups.

Scheme returns

The Regulator has updated the information on its website about scheme returns for DB and mixed benefit schemes. The Regulator states that it will issue scheme

return notices from the middle of February 2021 and, once schemes receive their notice, they will have until 31 March 2021 to complete and submit it to the Regulator. The Regulator has also published an example scheme return for schemes to familiarise themselves with and gather the information that they might need.

The Regulator also states that, if it updates its systems, two additional questions may be included for DB only schemes asking them to provide: (1) a website link to the published Statement of Investment Principles; and (2) their assessment of the employer covenant grade and where it would fall in the Regulator's grading system. The Regulator will confirm the final questions in February, before the scheme return notices are issued.

PPF levy 2021/22

On 29 September the PPF published a consultation on its proposals for the calculation of 2021/22 levies. The consultation contained two core policy proposals: (1) a small scheme adjustment, so that the levy for schemes with less than GBP20 million in liabilities will be halved, in order better to reflect their risk to the PPF, with the reduction to be tapered so that only schemes with GBP50 million or more in liabilities will be charged in full; and (2) the cap on the risk-based levy will be reduced from 0.5% of liabilities to 0.25%. The consultation closed on 24 November.

The final rules are due to be published in January 2021 but, on 15 December, the PPF published an update confirming that the levy rules will implement the small scheme adjustment and the reduction in the risk-based levy cap and will continue to measure insolvency risk on the basis in use since April, using credit ratings and the PPF specific insolvency risk model operated by Dun & Bradstreet. The update also confirms the levy estimate of GBP520 million for 2021/22, which is the amount that had been referred to in the September consultation. The PPF states that the advance confirmation of its plans should help with the planning of any risk reduction measures ahead of the deadlines at the end of March 2021. It will publish the final, binding, levy rules for 2021/22 in January, as well as a policy statement summarising the responses received and the PPF's conclusions.

Purple Book

On 2 December the PPF published the fifteenth edition of the Pensions Universe Risk Profile (The Purple Book) which provides data on DB pension schemes in the private sector. The main analysis in the Purple Book 2020 is based on the most recent scheme returns submitted to the Regulator by 31 March 2020. These covered a dataset of 5,318 schemes, which the PPF states represents virtually all PPF-eligible schemes and PPF universe liabilities.

The Purple Book looks at scheme demographics, scheme funding, funding sensitivities, insolvency risk, asset allocation, risk reduction, the PPF levy 2019/20, claims and schemes in assessment, PPF compensation 2019/20 and PPF risk developments. For the Purple Book 2020, the PPF has introduced a new interactive feature which allows users to select their own datasets and download graphs as images.

Findings reported in the Purple Book 2020 include that: (1) there were estimated to be 5,327 PPF-eligible schemes as at 31 March 2020, which is a reduction from 5,436 as at 31 March 2019; (2) the aggregate funding ratio on a section 179 basis decreased from 99.2% to 94.9%; (3) on an estimated full buy-out basis, the net funding position worsened to a deficit of GBP668.5 billion from a deficit of GBP644.9 billion, although the funding ratio improved slightly from 71.5% to 71.8%; (4) the proportion of schemes open to new members is unchanged from the figure of 11% in Purple Book 2019; (5) the proportion of schemes closed to future accrual increased from 44% to 46%; and (6) 395 contingent assets were submitted to the PPF for the 2020/21 levy year, which is a reduction from 419 for the 2019/20 levy year, with the reduction largely due to fewer Type A contingent assets being certified for PPF levy purposes.

Department for Work and Pensions

Stewardship

On 1 December the Minister for Pensions and Financial Inclusion announced the launch of a new working group to address stewardship barriers (the Taskforce on Pension Scheme Voting Implementation). The DWP states that, currently, when pension schemes invest in pooled funds, they surrender their rights to vote at the Annual General Meetings of the companies they invest in, and the working group will look at ways to correct this practice and ultimately improve trustees' stewardship of the companies they are investing in. The DWP goes on to state that the working group will be tasked with: (1) helping drive solutions to voting system issues, with specific reference to addressing present obstacles; (2) increasing the number of asset managers who are prepared to engage with their clients' preferences; and (3) recommending regulatory and non-regulatory measures to ensure the convergence of asset managers' approaches to voting policy and execution with trustees' policies. The full membership and terms of reference for the group will be published in due course.

A speech given by the Minister for Pensions and Financial Inclusion to the Association of Member Nominated Trustees announcing the launch of the working group also notes that he is taking forward a recommendation of the UK Sustainable Investment and Finance Association of a central directory of Statements of Investment Principles, supported by the Pensions Regulator and the DWP.

General levy

On 16 December the DWP published a consultation (which closed on 27 January) on proposals for changes to the structure and rates of the general levy on occupational and personal pension schemes from April 2021, 2022 and 2023.

The general levy recovers the funding provided by the DWP in respect of the core activities of the Pensions Regulator, the activities of the Pensions Ombudsman and part of the activities of the Money and Pensions Service. Levy rates were last increased in 2008/09, were reduced by 13% in 2012/13 and have remained at the same level for most schemes since then. Between 2013 and 2018 the cumulative surplus in the levy reduced and, since 2018, the cumulative balance has moved to deficit. The deficit is expected to reach GBP80 million by 2021 and the DWP estimates that, if levy rates were to remain unchanged, there would be a deficit of around GBP230 million at the end of 2023/24. Following an October 2019 consultation, on 4 March 2020, the DWP confirmed that the government would increase levy rates by 10% from 1 April 2020 for schemes with more than 11 members, with further increases from April 2021 to be informed by a wider review of the levy. Regulations were made to give effect to the April 2020 increase but, on 27 March, the DWP announced that, given the unprecedented circumstances following the COVID-19 outbreak, the regulations were being revoked and the levy rates would not therefore increase on 1 April 2020.

The December 2020 consultation states that the government has protected schemes from increases in the levy for eight years, even though expenditure exceeded revenue throughout that period. However, it states that action to start to bring costs and revenue back into balance "is now inescapable and is an appropriate and reasonable response to the levy deficit". The government intends to pursue a broad aim of bringing the levy into balance by the middle of the decade and recovering the deficit in full by the end of the decade. The consultation covers levy rates for the three years up to 2023/24. It sets out three options that the DWP has considered, two of which involve changes to the structure of the levy in order better to reflect the current focus of the regulatory regime.

Option 1 in the consultation, which is the DWP's preferred option, involves: (1) introducing separate sets of levy rates for DB schemes, DC schemes other than master trusts, master trusts and personal pension schemes (currently there are two sets of levy rates, one for occupational pension schemes and one for personal pension schemes); (2) moderate increases in the levy for 2021/22 of 10% for DB schemes and DC schemes other than master trusts and 5% for master trusts and personal pension schemes; and (3) higher increases in the levy rates for 2022/23 and 2023/24, with the consultation including a table setting out the proposed rates. Given the relative complexity of DB schemes and the fact that the supervisory focus continues to be on such schemes, larger levy rate increases are proposed for DB schemes as against other scheme types.

Option 2 involves increasing levy rates and introducing a separate, lower set of levy rates for master trusts. Under this option, there would be three sets of levy rates, one for master trusts, one for DB and DC schemes and one for personal pension schemes. The consultation reports that the government: (1) is not attracted to this option because it would not reflect the relative complexity of DB schemes or the past and current focus of the supervisory regime on such schemes; and (2) is attracted to the creation of a new levy rate for master trusts, pitched at a lower level than the rates for other occupational scheme types, but within the proposed restructuring under option 1.

Option 3 involves increasing levy rates but retaining the existing levy structure. The consultation states that the government is not attracted to this option because retaining the existing structure does not address representations received following the 2019 consultation.

Small pots

In September 2020 the DWP announced that the government had launched a cross-sector working group with industry to assess and make recommendations, as an interim step, on ways to tackle deferred, small pension pots. On 17 December the working group published its report which: sets out the small, deferred pots challenge; provides analysis of member-led solutions and scheme-led solutions; discusses the issue of micro pots; considers what systematic and administrative processes are necessary to support large-scale transfer and consolidation solutions; and sets out suggested next steps. The working group's

recommendations include the following.

- The pensions industry, government and regulators should continue to explore and enable opportunities for member-initiated consolidation, with proportionate member safeguards, particularly in respect of deferred, small pots above a certain value.
- However, member-led consolidation alone is unlikely to change the trend in the growth of DC deferred, small pots. The pensions industry, working jointly with government, should therefore prioritise action on enabling automatic and automated large-scale low-cost transfers and consolidation for the automatic enrolment mass market.
- The pensions industry should establish operational focussed groups to investigate and address administrative challenges which will be necessary to underpin mass transfer and consolidation systems. The groups should focus on areas including scoping the core minimum viable administrative processes including data matching, common standards and identifying requirements for a low-cost bulk transfer process, with the aim of making an initial update available in summer 2021.
- The working group states that consolidation models can be prioritised, but final decisions should be informed and developed following the industry's investigation and examination of administration processes and systems. There are two automatic transfer and consolidation models that the group states should be prioritised for low

value, small pots – the default small pot consolidation scheme and the automatic pot follows member model. The working group recommends that the DWP, working with the pensions industry, should start to develop an initial cost/benefit analysis in the latter half of 2021 to help to further assess the models.

The report includes a foreword by the Minister for Pensions and Financial Inclusion in which he notes that the working group's analysis and conclusions provide a framework to enable progress. The foreword to the report also includes that: (1) it is clear from the group's work that more needs to be done by pension providers, working together with regulators and government, to overcome administrative challenges; (2) the Minister supports the work by providers and others on developing proof of concept trials; (3) alongside working with the pensions industry, the government will consider the outcomes from the Work and Pensions Committee's examination of the issues; (4) the government will also carefully examine international practices to understand approaches most likely to work within the UK landscape; and (5) taken together, this will provide a stronger foundation for change over the medium term. He states that the analysis is a significant step forward in finding workable solutions to tackle small pots, which he is going to study in detail with the DWP in 2021.

This is the latest initiative aimed at tackling the issue of small pots and it seems that we can expect some progress on proposed solutions during the course of 2021.

Pensions dashboards

Data standards

On 15 December the Pensions Dashboards Programme (PDP) published *Data standards guide*, which is the first version of the usage guide for pensions dashboards data standards, as well as an introduction to data standards, which provides an overview. The purpose of the guide is to allow pension providers early sight of the data elements, to enable them to assess the availability and quality of these data items and see how their benefit types may best map to the standard data elements listed. The term “pension providers” is used in the guide to encompass all pension data holders and providers, that is, pension providers, schemes, administrators and integrated service providers. The PDP is calling on providers “to improve their data and get it in shape for their customers and members to access via dashboards”.

SCOPE

The PDP states that the guide covers the data for finding and viewing information about any pensions that individuals have not yet accessed. This includes individuals’ uncrystallised pensions for all UK pensions and, for DC pensions, a remaining balance after any uncrystallised funds pension lump sums have been withdrawn. State pensions are also in scope of pensions dashboards but, as this version of the usage guide has been developed for pension providers, it does not yet include references to state pension. The PDP also notes that the scope excludes all UK pensions which have been through any type of benefit crystallisation event (for example, DB pensions in payment and DC pensions which have been annuitised or are in drawdown) and all pensions within non-UK pension arrangements.

FIND AND VIEW DATA

The data standards guide covers the data elements required to find and view basic information about an individual’s pensions. There are three levels of optionality of data: mandatory, which is data that must be provided in all circumstances; conditional, which is data that must be provided in particular circumstances; and optional, which is data that can be provided if it is relevant and available.

The PDP explains that “find data” is the information pension providers will receive from the pensions dashboards ecosystem, elements of which they will need to use to match people to their pensions. Find data includes first name, surname, date of birth, current address and National Insurance number. The PDP states that it will be up to each pension provider to determine the matching rules they wish to apply, based on their knowledge of the data they hold. The answers to FAQs published alongside the data standards guide include that the PDP will engage with providers in relation to the data elements they would need to be able to match against to identify an individual’s pension. The PDP states that this is important in order to ensure that there is sufficient coverage and to identify whether it needs to provide additional guidance on when to match. The PDP also notes that it is aware that there are industry bodies addressing this challenge, which plan to issue guidance of their own.

It explains that “view data” is the information that pension providers will have to return to individuals to see on dashboards. View data elements include: administrative data, such as details of the pension

arrangement and the organisation administering it; and value data, which is an estimate of the annual income the individual might receive in retirement and the current pot value for DC pensions.

The PDP’s introduction to data standards states that it will continue to user test the data elements and notes that, although there is more work to do to fine tune how the data elements will be implemented in practice and develop them into technical standards, it does not expect the basic list to change. It states that the list of data elements therefore provides the pensions industry with sufficient certainty to start the process of preparing its users’ data for integration with pensions dashboards.

ACTIONS FOR PROVIDERS

The PDP’s introduction to data standards also sets out the following actions for pension providers: (1) work with their administration system function to understand what personal data items are most appropriate for their scheme to match on; (2) ensure all pensions for which they are responsible are recorded digitally, with the chosen match data items accurately in place; (3) ensure they can return correct information for all the data items relating to the pension type and that they hold the required information; (4) plan how they would like dashboard users to interact with them, so that they can return the most appropriate contact information when needed; and (5) ensure they can return information on an individual’s estimated retirement income amount, along with the calculation date and the date payable, in accordance with existing disclosure regulations.

Other news

HM Treasury – Budget date

On 17 December the Chancellor announced that the government will publish the Budget on Wednesday 3 March 2021. HM Treasury states that the Budget “will set out the next phase of the plan to tackle the virus and protect jobs and will be published alongside the latest forecasts from the Office for Budget Responsibility”.

Corporate directors

The Small Business, Enterprise and Employment Act 2015 makes provision to prohibit the use of corporate directors but the provisions have not yet been commenced. These provisions are potentially relevant to pension schemes which have a corporate trustee in place, where that corporate trustee has another company or legal entity in place as a director.

On 9 December the Department for Business, Energy and Industrial Strategy published a consultation which states that, in the context of the government now looking at a wide-ranging package of measures aimed at improving corporate transparency and reforming the companies register, now is “an opportune time to move to commence the powers taken in 2015”. However, it states that it must first revisit the question (which has been the subject of

previous consultations) of how to define exceptions to the prohibition. The consultation states that the government intends to bring forward regulations that create a ‘principles’ based exception and that, in essence, the principles envisaged as a starting point are that a company can be appointed as a director if: (1) all of its directors are, in turn, natural persons; and (2) those natural person directors are, prior to the corporate director appointment, subject to the Companies House identity verification process. The consultation closes on 3 February.

HMRC pension schemes newsletter

In the [May 2020 edition of Pensions Round-Up](#) (pages 9 to 10), we reported on an Upper Tribunal judgment concerning relief from income tax at source on contributions to a self-invested personal pension scheme (SIPP) which were made by members transferring shares in companies to the SIPP. In summary, the Upper Tribunal allowed HMRC’s appeal, concluding that transfers of non-cash assets are not “contributions paid” for the purpose of the relevant statutory provision on relief from income tax. However, the judgment noted that there were statements in HMRC’s Pensions Tax Manual (PTM) which were consistent with the Respondent’s opposing case.

On 3 December HMRC published pension schemes newsletter 126 which provides an update in relation to this case including that: (1) the Upper Tribunal interpreted the section of PTM042100 on “Giving effect to cash contributions” in a way that was contrary to its intended meaning; (2) in light of the Upper Tribunal’s comments, HMRC has clarified the guidance in the PTM “to try to help customers better understand HMRC’s long-standing approach to pension contributions made pursuant to a contractual offset agreement”; and (3) following the Upper Tribunal’s decision, HMRC is continuing to review in-specie cases and consider what it means for those who have already claimed and received relief.

Other issues covered by pension schemes newsletter 126 include: (1) a reminder that, to help scheme administrators who are experiencing difficulties in getting the valuations needed for pension scheme returns as a result of the COVID-19 pandemic, HMRC has not issued, and will not be issuing, any notices to file pension scheme returns for 2019/20; and (2) an update on the issuing of notification of residency status reports for schemes operating relief at source and what schemes should do if they do not receive a report in January 2021.

On the horizon

DATE	DEVELOPMENT
Unknown	In 2017 the Government published a response to its consultation on equalisation for the effect of GMPs . In April 2019 the DWP published guidance on how the GMP conversion legislation could be used to achieve equality going forwards, which notes that the Government is considering changes to this legislation to clarify certain issues. Further guidance is expected from the cross-industry GMP Equalisation Working Group.
	In February 2020 the Regulator published the response to its July 2019 consultation on the future of trusteeship and governance . Action points that the response identifies include that the Regulator will review and update its code of practice on Trustee Knowledge and Understanding, review the Trustee Toolkit and establish and lead an industry working group to find ways of supporting schemes to take steps to improve trustee diversity.
	The Government response to its consultation on pensions dashboards was published in April 2019. Provisions in relation to dashboards are included in the Pension Schemes Bill. Following a July 2020 Call for Input, the Pensions Dashboards Programme published an initial version of the data standards in December 2020.
	The Government response to its consultation on Collective DC schemes was published in March 2019. A framework for CDC schemes is included in the Pension Schemes Bill.
	In August 2017 the Government confirmed that it will proceed with proposals to limit the statutory right to transfer in order to tackle pension scams . Regulation-making powers are included in the Pension Schemes Bill.
	An Order made by the Competition and Markets Authority came into force in December 2019 implementing remedies set out in its report on the investment consultants market. In July 2019 the DWP published a consultation on draft regulations to integrate certain remedies into pensions legislation, but the regulations have not yet been made.
	Following the publication of its October 2020 Statement of Policy Intent entitled Stronger Nudge to Pensions Guidance , the DWP is expected to publish a consultation on draft regulations to implement its proposals.
2021	The Pension Schemes Bill includes provisions on climate change risk which set out powers to make regulations imposing requirements on trustees in relation to governance and disclosure. A consultation on policy proposals was published in August 2020 and a further consultation on draft regulations is expected in early 2021. The final version of the Pensions Climate Risk Industry Group's non-statutory guidance on aligning pension schemes with TCFD recommendations is also expected to be published.
2021	Regulations to implement provisions of IORP II in relation to governance came into force in January 2019 with the detail of the new requirements to be set out in a code of practice. The Regulator will be reviewing its codes to reflect the regulations. It plans to combine the content of its 15 current codes to form a single, shorter code. The Regulator is planning to launch a formal consultation in early 2021.
2021	Following the DWP's 2018 DB White Paper , provision on the Regulator's powers is included in the Pension Schemes Bill. The Regulator's second consultation on its DB funding code , which will focus on the draft code itself, is expected to be published in 2021 along with a business impact assessment.
2021	The DWP is expected to publish a consultation on a mandatory approach to simpler annual benefit statement templates for DC schemes used for automatic enrolment.
October 2020 – October 2021	Following recent changes to the legislation on investment and disclosure, Annual Reports produced on or after 1 October 2020 will have to include implementation statements . The information to be included in these statements depends on whether the scheme is a relevant scheme or a DB scheme. The first report for DB schemes and certain information for relevant schemes must be published by 1 October 2021.
October 2021	In September 2020 the DWP published a consultation on proposals to improve outcomes for DC members which looks at issues including assessing value for members, consolidation and the charge cap. The consultation closed on 30 October and it is proposed that the regulations will come into force on 5 October 2021.

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