

The Pensions Brief

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Issues affecting all schemes

Budget 2021

The [Budget](#) contained the following pensions-related announcements:

- The lifetime allowance will be frozen at its current level (£1,073,100) until the end of the 2025/26 tax year.
- The government will consult on draft regulations to make it easier for schemes to take up opportunities to invest in a broader range of assets within the DC default fund charge cap by smoothing certain performance fees over a multi-year period (see below for details of the consultation).

Action

No action required.

Pension Schemes Act 2021 – implementation

The pensions minister has published a [statement](#) setting out the timetable for implementation of the Act:

- Pensions Regulator powers and sanctions – consultations in spring 2021 (see below for details of two consultations) with the powers and sanctions in force in autumn 2021.
- Declaration of intent requirements – consultation later in 2021 with the requirements in force as soon as practical thereafter.
- DB funding requirements – consultation later in 2021 with the requirements in force at a date to be confirmed.
- Changes to transfer rights – consultation in early summer 2021 with the changes in force in early autumn 2021.

- Climate change-related governance and reporting requirements – consultation closed on 10 March with the requirements in force by November 2021.
- Framework for CDC schemes – consultation in early summer 2021 with the framework in force at a date to be confirmed.
- Pension dashboards service – consultation later in 2021 with delivery of the service in 2023.

Action

Employers and trustees should keep implementation of the Act under review.

General levy – new rates and structure

[Legislation](#) came into force on 1 April that sets the general levy for occupational and personal pension schemes for the 2021/22 – 2023/24 levy years. Following a government [review](#) of the levy, the legislation also introduces a new levy structure with separate rates for DB, DC, master trust and personal pension schemes.

Action

No action required.



Pensions Regulator codes of practice – consolidation

The Regulator is consulting on a draft new code of practice which consolidates 10 of its existing 15 codes into a single code. The draft code has five sections which between them contain 51 “modules”:

- The governing body
- Funding and investment
- Administration
- Communications and disclosure
- Reporting to the Regulator

The Regulator has also published an annex showing where information from the existing 10 codes has been incorporated into the new code and which modules contain new content.

The draft code also incorporates changes to reflect the requirement that was introduced in January 2019 for schemes to have an effective system of governance, including internal controls. Among other things, schemes with 100+ members will be required to conduct an “own risk assessment”.

Once the new code comes into force, the codes that are being replaced will be revoked in their entirety. The Regulator expects to bring the remaining codes into the consolidated code in due course.

The consultation closes on 26 May.

Action

Trustees should keep the progress of the consultation under review.

New Pensions Regulator powers – draft regulations

The government is consulting on two sets of draft regulations bringing into force changes to the Regulator’s powers under the Pension Schemes Act 2021:

- The first set provides further detail on the “employer resources test” for issuing a contribution notice, including what constitutes the employer’s resources and how they are to be determined, calculated and verified.
- The second set provides further detail in connection with the Regulator’s new information-gathering powers, including what information must be included in an interview notice and a proposed scale for the fixed and escalating penalties that the Regulator can issue to non-individuals who fail to comply with an information or interview notice. The Regulator’s new information-gathering powers are expected to come into force on 1 October 2021.

The consultation closes on 29 April.

Action

Employers and trustees should keep the progress of the consultation under review.



Investment and stewardship – integration of social factors

The government has launched a [call for evidence](#) on how trustees understand “social factors” and how they seek to integrate consideration of financially material social factors into their investment and stewardship activities. The call for evidence closes on 16 June.

Action

Trustees should keep the progress of the call for evidence under review.

IAS 19 – proposed changes

The International Accounting Standards Board is [consulting](#) on proposed changes to IAS 19. The changes are designed to enable companies to reduce “boilerplate” information in their accounts, giving investors more useful information. Among other things, the changes expand the disclosure objectives in IAS 19 while reducing the list of mandatory disclosures. The consultation closes on 21 October.

Action

Employers should keep the progress of the consultation under review.

Supporting employees with financial matters – guidance

The Financial Conduct Authority (FCA) and the Pensions Regulator have published an updated [guide](#) for employers and trustees on providing support to employees with financial matters without needing to be subject to FCA regulation.

Action

Employers and trustees may find the guide helpful when deciding the level of support that they can or wish to offer employees with matters involving their pension scheme.

Pensions Ombudsman – guidance

The Ombudsman has published:

- [Guidance](#) on its approach to the provision of factual information to members in respect of independent financial advisers by trustees, administrators and employers.
- A [factsheet](#) about the Ombudsman’s Early Resolution Service (ERS) which explains what the ERS is, how it operates and what applicants’ options are.
- An updated [factsheet](#) on how the Ombudsman investigates complaints.

Action

No action required.

Pensions dashboards – preparation

The Pensions Administration Standards Association has published [guidance](#) for schemes on how they can start preparing for the introduction of pensions dashboards. It has also published an accompanying one page [summary](#) of what schemes can do now to prepare.

Action

Trustees and administrators may find the guidance helpful when considering what preparations they need to make for the introduction of pensions dashboards.

Data management plans

The Pensions Administration Standards Association has published [guidance](#) on implementing a data management plan as a means of documenting scheme data and managing it effectively.

Action

Trustees and administrators may find the guidance helpful when considering how best to manage scheme data.

Money and Pensions Service – new offering

The Money and Pensions Service has [announced](#) plans to replace TPAS, PensionWise and the Money Advice Service with a new single offering, MoneyHelper, from June 2021.

Action

Trustees should keep progress of introduction of the new offering under review as member communications may need to be updated to refer to MoneyHelper rather than TPAS and PensionWise.

Overseas transfers – refusal of transfer request

The Pensions Ombudsman has [decided](#) that a trustee’s decision to refuse a transfer request on the basis that it could not determine whether the receiving scheme was a qualifying recognised overseas pension scheme (QROPS) amounted to maladministration. The trustee had conducted due diligence on the receiving scheme to determine whether it met the conditions to be a QROPS. However, it refused the transfer request because, as a matter of policy, HMRC does not guarantee that a scheme on the recognised overseas pension scheme (ROPS) list is also a QROPS.

While the Ombudsman accepted that this policy, and the potential tax consequences of a transfer to a scheme that was not a QROPS, added a greater degree of uncertainty to the trustee’s deliberations, he considered that it was an irrelevant factor and could not be used as a reason to negate the member’s statutory transfer right. The Ombudsman ordered the trustee to decide whether the receiving scheme was a QROPS and inform the member of its decision. In making its decision, the trustee should not take into account the possibility that HMRC might decide to withdraw the receiving scheme’s QROPS status in the future.

Action

No action required, but trustees and administrators should note that HMRC’s refusal to guarantee that a scheme on the ROPS list is also a QROPS is not grounds to refuse a statutory transfer request.



Issues affecting DB schemes

New criminal offences – Pensions Regulator approach

The Regulator is consulting on a draft policy setting out its approach to the investigation and prosecution of the following new criminal offences under the Pension Schemes Act 2021 and the interaction of those offences with the Regulator's other powers:

- Avoidance of a section 75 debt.
- Conduct risking accrued scheme benefits.

Among other things, the policy provides guidance on the material detriment test, secondary liability, the "reasonable excuse" defence, and clearance applications. The consultation closes on 22 April.

Action

Employers and trustees should keep the progress of the consultation under review.

GMP indexation – public service schemes

The government has confirmed that it has decided to discount guaranteed minimum pension (GMP) conversion as a long-term policy solution to the question of indexation of public service pensions and to make full GMP indexation the permanent solution. This approach will mean that public service schemes will be required to provide full indexation to members with a GMP who reach state pension age after 5 April 2021. The government's decision will also apply to any private sector schemes whose rules tie indexation to that applied in public service schemes.

Action

Trustees of private sector schemes whose rules tie indexation to that applied in public service schemes should ensure that full indexation is provided for members with a GMP who reach state pension age after 5 April 2021.

Discretionary pension increases – employer duties

The Pensions Ombudsman has decided that an employer's decision not to grant discretionary increases on pre-1997 pensions was not unreasonable. The member joined the scheme in 1966 and retired in 1995. The scheme rules at that time provided that pension increases were at the employer's discretion (save for GMPs which received statutory increases). In 1997, the scheme rules were amended to reflect the introduction of statutory increases for benefits accrued from April 1997. Discretionary increases on pre-1997 pensions were awarded from 1987 to 1999.

The member complained that the employer's decision not to award any discretionary increases on pre-1997 pensions after 1999, despite the scheme's good financial health, amounted to discrimination. The Ombudsman decided that the employer had reached its decision not to award increases in a proper way and the difference in treatment between members with pre- and post-1997 benefits arose from a legislative requirement rather than from a decision by the employer.

Action

No action required.

Issues affecting DC schemes

Default fund charge cap – performance fees

The government is consulting on draft regulations to allow occupational DC schemes to smooth performance fees within the charge cap in order to facilitate investment in illiquid investments. The regulations will come into force in October 2021. The consultation also includes a call for evidence on the current position on look-through in relation to charge cap compliance, as a potential barrier to investment in alternative asset classes.

The consultation follows up on the government's September 2020 consultation on improving outcomes for DC members and contains the government's response to the performance fee section of that consultation. The government is aiming to publish a response to this consultation alongside a response to the remainder of the September 2020 consultation, final draft regulations and statutory guidance, and a summary of responses to the call for evidence and next steps in June 2021.

The consultation closes on 16 April.

Action

Trustees should keep the progress of the consultation under review.

Mayer Brown news

Upcoming events

All events will take place as online webinars. For more information or to book a place, please contact [Katherine Carter](#).

- **Trustee Foundation Course**
15 September 2021
- **Trustee Building Blocks Classes**
16 June 2021 – Trustee discretions and decision-making
8 December 2021 – DC governance

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