Pensions law: what does 2022 have in store?

Our top picks of expected developments in 2022

Introduction

We saw big changes last year in the world of pensions law, not least the introduction of new criminal powers for the Pensions Regulator (**Regulator**) and increased civil penalties for breaches of both new and old law. While we await to see how these powers are exercised in practice, the industry can expect further developments in a number of areas over the next year. In particular:

- The extension of the notifiable events framework;
- The Regulator's single code of practice;
- Defined benefit funding;
- ESG (including climate change);
- Challenge to the proposal of RPI to be aligned with CPIH;
- Consolidation (of both defined benefit and defined contribution schemes); and
- Collective money purchase schemes.

Extension of notifiable events framework – **6 April 2022**

The government has consulted on draft regulations that will extend the notifiable events regime which **employers with defined benefit pension schemes will need to be aware of**. It is expected that these changes will come into force on **6 April 2022**.

Additional events to be notified
The draft regulations introduce two new notifiable events:

- a "decision in principle" by an employer to sell a material proportion of its business or assets.
- a "decision in principle" by an employer to grant or extend certain security over its assets which will be ranked above the pension scheme on an insolvency.

The timing of notification
Under the draft regulations, the new events (and the existing corporate sale event) are triggered once a "decision in principle" has been reached. This is defined as the stage before any negotiations have even been entered into and is intended to provide the Regulator with an earlier warning compared to current notifiable events.

Additional information to be notified
The draft Regulations provide that new notice and statement requirements will apply to the two new notifiable events listed above, as well as to the current corporate sale notifiable

event. These obligations bite once the main terms of those events have been proposed. For these three notifiable events there would therefore be a two-stage process.

For more information, please see our briefing here.

The Regulator's draft single code of practice – **Summer 2022**

Trustees will need to consider undertaking a review of their internal policies and procedures to ensure they are compliant with the Regulator's proposed new single code of practice. In addition to ensuring their current procedures comply with the code's requirements, there are new requirements set out in the draft code that trustees will need to consider. It is expected the code will come into force in **Summer 2022**.

For more information, please see our briefing here.

Defined benefit funding – **Summer 2022**

Back in 2020, the Regulator issued a consultation on a revised funding code of practice for defined benefit pension schemes. The Regulator is keen for schemes to focus on long-term funding in order to ensue pension scheme members have the best chance of receiving the benefits they expect. During this consultation the Regulator proposed a twin-track compliance approach to valuations under either a 'fast-track' or 'bespoke' approach to the valuation process.

It was expected that the second consultation on the new code would occur in Spring this year, at the same time as the DWP publishes its consultation on new funding regulations. However, the Regulator has now confirmed that the second consultation on the draft code will occur after there has been a chance for responses to the DWP consultation. The second consultation is now expected in **Summer 2022** and will include a draft of the code for consideration and comment.

The existing funding regime remains in place until new regulations and the new code come into force. For more information, please see the Regulator's blog here.

Collective money purchase schemes – **1 August 2022**

The legal framework for collective money purchase (**CMP**) schemes, a new type of pension scheme in the UK, is set to come into force on 1 August 2022. CMP schemes provide benefits in the form of regular income for members, paid out of available assets of the scheme so there cannot be a deficit (unlike a defined benefit scheme). For more detail on CMP schemes and the legal framework, see our please see our briefing here.

CMP schemes will be subject to the Regulator's supervisory regime, similar to the supervision of master trusts. This regime will be set out in the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022. These regulations have been laid before Parliament and are expected to come into force on 1 August 2022. The Regulator is expected to consult on a code of practice on CMP schemes in January 2022.

The driving force behind the legislation was a CMP scheme proposed by Royal Mail and the Communication Workers Union. This may become the first CMP scheme. Although wider demand for CMP schemes may be limited initially, with employers continuing to favour more traditional schemes and master trusts, their popularity may well start to grow following introduction of the relevant legislation.

ESG (including climate change)

We can expect ESG matters to remain high on the agenda of members, trustees and regulators in 2022.

Regulator's single code of practice - **Summer 2022**

The Regulator's draft single code of practice includes modules on stewardship and climate change. It is clear this is an area that trustees are expected to have on their agenda.

Extension of TCFD governance and disclosure requirements – **1 October 2022**

Starting from 1 October 2022, the requirement for certain occupational schemes to comply with governance and disclosure requirements in line with the recommendations set out by the Task Force on Climate-related Financial Disclosures (**TCFD**) will be extended to schemes with assets of £1 billion or more. For more information, please see our briefing here.

Disclosures relating to alignment with Paris Agreement goal – **1 October 2022**

There is also a consultation underway on amending legislation to require trustees of certain schemes to calculate and disclose a portfolio alignment metric describing the extent to which their investments are aligned with the goal of limiting the increase in the global average temperature to 1.5C above pre-industrial levels.

The consultation proposes new draft guidance which sets out stewardship and ESG best-practice in relation to the Statement of Investment Principles and DWP's expectations across the Implementation Statement.

The consultation closes on 6 January 2022 with the new legislative requirements proposed to come into force on 1 October 2022. The requirements would apply immediately to schemes with assets of £1 billion or more, authorised master trusts and authorised collective money purchase schemes. For more information please see the consultation document here.

Regulator guidance on climate change governance

The Regulator has published guidance on climate change governance, which can be found here. The guidance is aimed at schemes which have to comply with the TCFD reporting and governance requirements (discussed above). This will be extended to schemes with assets of £1 billion or more from 1 October 2022.

The guidance sets out what the Regulator will take into account when determining whether trustees have met the requirements of the climate regulations and taken account of the DWP's statutory guidance. The guidance sets out what trustees need to do and report on in their annual TCFD report. It provides example steps for trustees to take and also discusses how the Regulator will approach imposing fines for any non-compliance.

Challenge to the proposal of RPI to be aligned with CPIH – **Summer 2022**

We previously reported that the composition of the Retail Prices Index (**RPI**) was set to change from 2030 to be calculated using the same methods and data sources as the Consumer Price Indices, including owner occupiers' housing costs (**CPIH**). Given RPI has historically been higher than CPIH, this would impact pension schemes (particularly defined benefit pension schemes) in two ways:

- by reducing the value of any RPI linked assets; and
- by reducing any liabilities linked to RPI (for example, indexation and revaluation calculated on the basis of RPI).

The overall effect this will have on the funding of a scheme will depend upon the nature of the liabilities in the scheme, how those liabilities have been hedged and the asset portfolio of the scheme.

However, the trustees of the BT Pension Scheme, Ford Pension Schemes and Marks and Spencer Pension Scheme have sought to challenge the decision to align RPI with CPIH due to concerns that it will erode members' benefits and also the value of RPI-linked assets. The trustees applied to the High Court for judicial review. Their application has been approved and the hearing is expected to take place in the **summer of 2022**.

Consolidation – **Throughout 2022**

Defined benefit

The end of 2021 saw the first defined benefit 'superfund', Clara Pensions, being approved by the Regulator. A transfer of a defined benefit pension scheme to a superfund severs the link between the employer(s) and the scheme at a price which, in theory, should be more affordable than a scheme buy-out. For more information on transferring to a superfund, please see our brochure here.

Defined contribution

It is expected that 2022 will see an increase in the consolidation of defined contribution schemes, not least of all due to the new 'value for member' requirements imposed on trustees of smaller defined contribution occupational schemes and the increasing burden of pension scheme governance.

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