

In Sight

a quarterly pensions publication

May 2021

This quarter's round-up

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Consultation on a single code of practice

The Pensions Regulator has started the first phase of its long-awaited consultation on a new single code of practice.

The Regulator is initially consulting on consolidating ten of its existing codes of practice into an online code that deals mainly with the governance and management of pension schemes. The new draft code updates existing requirements and incorporates changes introduced by the 2018 governance regulations, as well as other new material as outlined on the next page.

The remaining codes of practice will be brought into the code in due course but continue to apply for now. These relate to notifiable events, funding defined benefits, modifying subsisting rights, the material detriment test and master trusts.

Continued on next page

The new single code is aimed at all pension schemes: defined benefit (DB) and defined contribution (DC), occupational schemes and personal pensions, private sector and public sector. Some aspects only apply to schemes with more than 100 members, although the Regulator notes that other schemes may wish to consider these requirements as best practice.

The content is made up of five core sections:

The governing body: this covers board structure and activities, knowledge and understanding, value for members, advisers and service providers, risk management and scheme governance.

This section includes the new requirements for:

- schemes to establish and operate an effective system of governance, including the requirement to perform an annual own risk assessment (ORA); and
- written policies on key areas of governance, including a remuneration policy and a risk management policy.

Funding and investment: this covers investment governance, investment decision making, investment monitoring, statements of investment principles (SIPs); and default arrangements and charge restrictions. There is also new material on implementation reports, stewardship and climate change.

Administration: this covers scheme administration, information handling, IT and contributions. The new material includes transfers, data monitoring and cyber controls.

Communication and disclosure: this deals with information to members and public information. The new material focuses on general principles for communications, scams and audit requirements.

Reporting to the Regulator: this final section covers regular reporting and whistleblowing. Most of this material is already in existence.

Next steps

The consultation runs until 26 May. We anticipate that the new code will come into effect later this year.

Action

We suggest consideration of the new code be added to trustee business plans later this year.

Pension Schemes Act – next steps

The Pension Schemes Act 2021 received royal assent in February, as anticipated in the [February edition](#) of In Sight. The main provisions will require regulations to bring them into effect and add further details. This is the current state of play and expected timescales:

Topic	Consultation timing	Expected to be in force
Climate change governance and reporting	Consultation has taken place (see page 3)	October 2021 for largest schemes
New criminal offences	Consultation has taken place (see page 4)	Autumn 2021
New powers for the Pensions Regulator	Consultation has taken place (see page 5)	Autumn 2021
Limiting transfer rights to help prevent pension scams	Early summer	Early autumn 2021
CDC scheme framework	Early summer	To be confirmed
Extended notifiable events framework	2021	As soon as practicable
Scheme funding – including statement on long term funding and investment strategy	Later this year	2022 or 2023
Pensions dashboard provisions	Later this year	2023

Climate risk

Climate risk governance and reporting

The Department for Work and Pensions (DWP) has been consulting on detailed proposals for trustees to have effective governance and risk management measures to address climate change risks and opportunities. Draft regulations and draft statutory guidance have now been published to implement the higher-level policy proposals that were consulted on last year (as covered in the [November 2020 edition](#) of In Sight).

The regulations will require trustees to meet climate governance requirements in line with the 11 recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), and to report on how they have done so. Trustees will be required to publish their TCFD report on a publicly available website and to include a link to it in other documents.

There are some changes to the proposed scope and timing of the requirements, which are now:

- Schemes with £5 billion or more in assets on their first scheme year-end date on or after 1 March 2020 (previously 1 June 2020), along with all master trusts and CDC schemes (irrespective of the value of their assets), will be required to implement the new climate governance requirements from 1 October 2021 and to report on these within seven months of the first scheme year-end date on or after that date.
- Schemes with £1 billion or more in assets on their first scheme year-end date on or after 1 March 2021 (previously 1 June 2021), will have another year to comply, with implementation from 1 October 2022 and reporting within seven months of the first scheme year-end date on or after that date.
- Extension of the requirements to smaller schemes will be subject to further consultation in the second half of 2023.

Trustees will also need to have regard to the statutory guidance. This describes activities as things that trustees either must do (required by legislation), should do (departures from the guidance must be explained in the TCFD report) or may choose to do (following the guidance is encouraged but not required).

Further support is available in non-statutory guidance from the Pensions Climate Risk Industry Group (PCRIG), which has now been issued following a separate consultation last year. Trustees are urged to familiarise themselves with the framework of the guidance and with the separate *Quick Start Guide*.

The PCRIG guidance also includes a practical guide to support trustees to assess their investment consultants on their climate competency. This guide was originally produced by the Investment Consultants Sustainability Working Group – a collaboration between 17 firms (including Aon) formed in 2020, who are taking action to support and accelerate sustainable investment initiatives in the UK.

Action

[All trustees should consider the impact of climate change risks on the management of their scheme.](#)

[Trustees with assets of more than £1 billion can now work out when they will become subject to the new legal requirements – and consider how they will comply and what advice they will need.](#)



Regulator's new climate change strategy

The Pension Regulator has published a new climate change strategy, calling on trustees to take action to protect savers from climate risk. The document outlines the Regulator's approach to climate change and how it plans to help trustees meet the resulting challenges.

A core part of the Regulator's work on climate change will relate to the above regulations that will require climate risk disclosures in line with the TCFD recommendations; the Regulator will be publishing guidance outlining its approach to these regulations, and may take enforcement action against those not meeting their legal duties.

The strategy also covers the Regulator's expectations that all trustees will comply with existing requirements to publish their statement of investment principles, including policies on environmental, social and governance (ESG) considerations, as well as their implementation statement.

A stronger Pensions Regulator



The Pension Schemes Act 2021 gives the Pensions Regulator various new powers and introduces new criminal offences and civil penalties.

Approach on new criminal offences

The Regulator is consulting on its draft policy for using its powers in relation to the two new criminal offences under the Act:

- avoidance of employer debts to pension schemes; and
- conduct risking accrued scheme benefits.

An unlimited fine and/or imprisonment could be imposed for these offences.

There has been concern that the new powers are broadly drafted and could affect routine corporate activities and trustee decisions. However, ministers confirmed that the offences were 'not intended to achieve a fundamental change in commercial norms or accepted standards of corporate behaviour'. Instead the Regulator understands that the powers were aimed at addressing the more serious conduct that is already largely within the scope of its contribution notice (CN) powers. The Regulator expects to use the new powers broadly in the same circumstances to those for current CNs, although the criminal offences can be committed by anyone (other than appointed insolvency practitioners).

David Fairs, the Regulator's Executive Director of Regulatory Policy, Analysis and Advice, has subsequently blogged on this issue, noting the heated debate about these new powers. He reiterates that the intent is not to change accepted standards of corporate behaviour and stresses that the Regulator will not overstretch the intent and purpose behind its new powers.

Reasonable excuse

The draft policy sets out factors considered significant in relation to what would amount to a reasonable excuse, to serve as a defence against prosecution. It provides examples of scenarios under which the following reasonable excuses might apply:

- Where the detrimental impact might be considered an incidental consequence of the act (or omission).
- Where the detrimental impact of the action has been fully mitigated.
- Where inadequate mitigation was provided, but there was no viable alternative that would have avoided or reduced the detrimental impact.

Selecting cases for investigation and prosecution

The Regulator sets out some examples of situations where it would consider prosecution, such as where:

- The primary purpose of the conduct is the abandonment of the scheme without provision of appropriate mitigation.
- Significant financial gains have been unreasonably made, or there has been some other unfairness in the treatment of the scheme.
- The trustees, the Regulator and/or the Pension Protection Fund have been misled or not appropriately informed.

There are other factors that might be relevant (when considered with the full circumstances) – for example the extent of communication and consultation with the trustees, and communication with the Regulator.

The Regulator notes that the courts will ultimately decide the correct interpretation of the law, and that its policy may not reflect the interpretation of other prosecuting authorities. The policy will be updated over time to reflect court decisions as well as the Regulator's experience.

The consultation closed in April. The final policy will be published later this year, in advance of the new powers coming into force, which is expected to take place in the autumn.

Consultation on new powers

The DWP has been consulting on the details of both the employer resources test, which will be a new means of determining whether a contribution notice (CN) can be issued, and the Regulator's new information gathering powers.

Contribution notice – employer resources test

The Act extends the grounds for issuing a CN, by adding a new 'employer resources test'. The DWP proposes that this test will be based on the impact on an employer's profitability of an act or failure to act. The change in normalised annual profit before tax (NAPBT) will be assessed, excluding exceptional and non-recurring items, and this will be compared to the scheme's buy-out debt to assess materiality. In due course, the Regulator's code of practice and related guidance will provide further information on how the test will be applied.

Information gathering and fines

The consultation also sets out the DWP's proposals for:

- the interview notice that the Regulator must provide to require attendance at interview;

- further provisions in respect of inspection of premises powers, for multi-employer schemes; and
- fixed and escalating penalties that might be imposed for non-compliance with information gathering requests (as an alternative to criminal proceedings). The fixed penalty will be £400. The escalating penalty will be £200 per day for individuals; for other entities the penalty will be on a scale increasing from £500 on the first day up to a daily rate of £10,000 from day 20.

The consultation closed in April. The new powers are expected to be in force in October.

Action

Given the significant penalties potentially involved, all those involved in the operation of pension schemes should consider the draft policy relating to criminal offences and other new powers.

Employers in particular will want to ensure that relevant decision makers are aware of the new offences and powers, and consider the impact on relevant activity that might take place after the new provisions are in force, ensuring appropriate controls are in place to identify and manage activity that is potentially at-risk.

Other regulatory news

A blueprint for the future

The Pensions Regulator has set out its corporate strategy for the next 15 years, following a consultation last year. Its new strategy reflects a fundamental shift in pension saving from DB to DC, but also focuses on the short-term challenge of protecting members during recovery from the coronavirus pandemic.

The Regulator's analysis looks separately at different generations of saver, recognising that they will face different life circumstances and challenges: Baby Boomers (born between 1946 and 1964), Generation X (1965 to 1984) and Millennials (1985 to 2004). From this, five strategic priorities have emerged: security of members' savings, value for money, scrutiny of decision-making, embracing innovation, and bold and innovative regulation. These priorities will form a core part of the Regulator's annual corporate planning going forward.

Regulator publishes settlement policy

The Pensions Regulator has published its settlement policy, which sets out its approach for negotiating and concluding settlements in return for not pursuing regulatory or civil enforcement action. The policy applies to employers, trustees or anyone else who is a target of, or directly affected by, such action.

Guidance on advice and support to members

The Pensions Regulator and the Financial Conduct Authority have jointly published an updated *Guide for employers and trustees on providing support with financial matters without needing to be subject to FCA regulation*.

The key points are:

- Employers/trustees can continue to provide information to help members understand their options for accessing benefits;
- Employers/trustees can continue to arrange access to FCA-regulated advice i.e. put in place a preferred IFA;
- Factual numerical information about what members can do with a DB transfer value can be provided but illustrative figures should not be provided.

Action

Employers and trustees can use the guidance to understand the extent of any additional information they can provide to members without it being formal advice.

Changes to DB transfer advice

The FCA has published new guidance on what is expected from financial advisers delivering advice on transfers out of DB schemes – this is intended to improve the suitability of DB transfer advice. The rules are broadly as consulted on last year, focusing on the processes that should be put into place to ensure these firms deliver suitable advice.

DC charge cap and performance fees



As promised at the March budget, the DWP has been consulting on two issues relating to the DC charge cap that are intended to make it easier for schemes to invest in a broader range of assets.

A 0.75% charge cap applies to default arrangements in schemes that provide money purchase benefits and are being used as qualifying schemes (to satisfy an employer's automatic enrolment duties). Accessing the most illiquid, highest risk investments – such as venture capital and private equity – can often involve paying performance fees to investment managers. It is recognised that

current methods of assessing charge cap compliance permit only a narrow range of performance fees. The proposals would allow schemes to smooth performance fees over a five-year period when testing charges against the cap.

Another perceived barrier to investment in alternative asset classes is the requirement, when checking compliance with the charge cap, to look-through any fund-of-funds or pooled investment vehicles to the costs of the underlying investments. The consultation seeks views on the treatment of these look-through costs and whether they act as a barrier to investment.

The consultation contains the DWP's response to the performance fee section of its September 2020 consultation on improving outcomes for members of DC schemes. That paper also proposed wider measures designed to encourage the consolidation of smaller schemes into larger schemes. The Government aims to publish a response to this latest consultation – and to the remainder of the September consultation – in June 2021. Its intention is that the resulting regulations will come into force in October 2021.

Actions

Various changes from this series of consultations are intended to come into force in October, including a more extensive value for members assessment. Therefore, trustees should start thinking about whether they will be impacted, and what actions may be needed to prepare. Most of the changes will affect 'relevant schemes' i.e. broadly schemes that provide money purchase benefits other than just AVCs.

Investment news



Call for evidence on social element of ESG

The DWP has called for evidence on how pension scheme trustees understand and deal with social factors in their environmental, social and governance (ESG) policies.

The aim is to increase understanding of what is currently being done, and what more could be done, to ensure both the risks and opportunities presented by social factors are adequately considered by schemes; and to inform the government on the steps needed to ensure that trustees are better able to meet their legal ESG obligations. The call for evidence closes on 16 June 2021.

CMA Order – DWP regulations further delayed

The Competition and Markets Authority (CMA) requires trustees to set objectives for their investment consultants and carry out competitive tender processes for fiduciary management services. In previous editions of In Sight, we have highlighted the need for trustees to comply with the requirements of the CMA's Investment Consultancy and Fiduciary Management Market Investigation Order 2019 and to submit their first compliance statement by 7 January 2021.

DWP regulations, which would broadly move the main trustee requirements of the CMA Order into pensions legislation, have not yet been finalised. The COVID-19 crisis has delayed work on this and the DWP recently announced its revised expectation that the regulations will not be published until the first half of 2022. In the meantime, trustees must continue to comply with the requirements of the CMA Order.

This means that trustees will have to submit their next annual compliance statement to the CMA (by 7 January 2022), rather than through their pension scheme return.

Consultation on increasing NMPA to 57



The government has been consulting on proposals to raise the normal minimum pension age (NMPA) from 55 to 57 in 2028, with some protections.

NMPA is the earliest age at which pensions and lump sums may be drawn from a registered pension scheme without incurring unauthorised payments charges, except for ill-health and transitional cases. The NMPA from 6 April 2006 to 5 April 2010 was 50; it increased to 55 on 6 April 2010.

Last year, the government confirmed that the NMPA will rise to 57 from 6 April 2028, as originally announced in 2014. In February, it began consulting on how this would be implemented. The government believes that raising the NMPA to age 57 could encourage individuals to save longer for their retirement and so help ensure that they have financial security in later life.

In preparation for the previous NMPA increase from 50 to 55 in 2010, protections were applied to members of occupational pension schemes who on 5 April 2006 had an actual or prospective right (under scheme rules in place on 10 December 2003) to a benefit from an age of less than 55. Individuals with such an existing protected pension age will see no change to their current protections.

For the increase to 57, it is proposed that the protection regime will cover all types of registered pension scheme. A member who has an unqualified right under the scheme rules at the date of the consultation (11 February 2021) to take pension benefits at an age below 57 will be protected from the increase in 2028.

The government considered the option of protecting only accrued pension benefits up to 2028 but concluded that effectively splitting a pension scheme benefit into two parts would create unnecessary complexity – so the proposed protection will apply to all of a member's benefits under the relevant scheme.

Unlike the protection provided in 2010, the consultation proposes that individuals with a protection in relation to the 2028 increase will be able to draw benefits under the scheme while they are still working and that there will be no requirement to take all benefits under a scheme on the same date.

Individuals would retain their protection as part of a block transfer. However, unless any exceptions are introduced, it appears that protection may be lost for any other transfer made after 11 February 2021.

The consultation closed on 22 April 2021. Draft legislation is planned for this summer with legislation to be included in the subsequent Finance Bill.

Action

Trustees should consider amending communications to note the change, so that members have ample warning and are aware of any protected pension age.

GMP equalisation – guidance on tax

We have previously reported on the High Court’s judgment in the Lloyds Bank GMP equalisation case. The cross-industry GMP Equalisation Working Group (GMPEWG), which was launched to assist the industry with the implications of this ruling, has now published a *Guidance Note on Tax Issues* for equalising for the effects of GMPs.

The GMPEWG suggests possible approaches for dealing with the tax issues and provides helpful member examples showing how trustees might apply these in practice. The main areas covered are:

Pensions in payment and the lifetime allowance: scheme administrators should consider the appropriate process to identify whether any GMP equalisation uplift may have resulted in a lifetime allowance (LTA) charge. The GMPEWG expects that for most members, a pragmatic approach is to assume that no LTA charge is payable.

Arrears: trustees must deduct tax on the aggregated arrears payment in the tax year in which it is paid, but members can ask HMRC to spread their tax payments over past years which may reduce the total tax paid.

Trivial lump sums: in most cases, the GMPEWG suggests that trustees might assume that any uplift payable in respect of past trivial commutation payments does not increase the member’s benefits above the relevant triviality limit.

Conversion: the tax consequences of equalisation using GMP conversion are not addressed in any detail. The GMPEWG intends to publish separate guidance but urges trustees to take advice on these issues.

Action

The publication of the guidance provides schemes with a further resource to help progress their GMP equalisation exercises.



COVID-19 update

Job retention scheme extended again

The Coronavirus Job Retention Scheme (CJRS) for furloughed employees has been extended until 30 September 2021.

Until 30 June, the government will continue to pay a grant of 80% of wages for unworked hours (capped at £2,500 per month); employers remain responsible for employer National Insurance contributions and pension contributions. The grant will reduce to 70% for July (with employers contributing 10%), and to 60% for August and September (with employers contributing 20%).

Mortality projections and COVID-19

Following consultation, the Continuous Mortality Investigation (CMI) has published its latest mortality projections model, CMI_2020.

As reported in the [February edition](#) of In Sight, the CMI has modified the method used in this version of its model due to the impact of the coronavirus pandemic on mortality rates during 2020, which were well outside the range of year-on-year changes seen in the past 40 years. Consequently, no weight has been placed on the 2020 data within the CMI_2020 model.

Action

Trustees and employers using the CMI model for their DB scheme’s mortality assumptions should discuss the implications with their actuary.

News round-up

Budget 2021

The Spring Budget included the announcement that the lifetime allowance will be frozen at its existing level of £1,073,100 until April 2026, rather than it being linked to inflation as usual.

Wider tax changes may also have an indirect impact on pensions, including:

- An increase in corporation tax to 25% from April 2023;
- Freezing of income tax thresholds (and the National Insurance upper earnings limit) after 2021/22, until April 2026; and
- The freezing of the inheritance tax threshold until 2026.

There was also an announcement that the government will consult on whether certain costs within the charge cap affect pension schemes' ability to invest in a broader range of assets – see page 6.

Action

[Trustees should review and update member communications on pensions taxation, in relation to the freezing of the lifetime allowance.](#)

Increase in general levy

Following consultation, the government has changed the structure and rates of the general levy that is paid by occupational and personal pension schemes.

This levy funds the Pensions Regulator, The Pensions Ombudsman, and the pensions-related activities of the Money and Pensions Service. Expenditure has risen due to increased activity and initiatives such as pensions dashboards. A planned increase in the levy from 1 April 2020 was withdrawn in the light of the COVID-19 pandemic.

The levy calculation still depends on the number of members in the scheme. However, from 1 April 2021, there are four separate sets of levy rates – for DB, DC, master trust and personal pension schemes – that are intended to reflect the levels of supervisory attention required for these different scheme types. For 2021/22, the increases are 5% for master trusts and personal pensions, and 10% for DB and other DC schemes. Higher increases will then apply for 2022/23 and 2023/24, with DB schemes having the biggest increase.

Inquiry into pensions freedoms

Last year the Work and Pensions Committee (WPC) launched a three-part inquiry into the impact of the pension freedoms and the protection of pension savers. The money purchase flexibilities introduced in 2015 aimed to give members more choice over how and when they could access their retirement savings. The broad investigation is looking at how such people are protected as they move from saving for retirement to using these pension savings.

- Part one of the inquiry looked at pension scams and what more can be done to prevent them. The WPC finished taking evidence on this part in January and has published a report, calling on the government to act quickly and decisively to combat scams and warning that the scale of the problem is underestimated by commonly cited figures. A key recommendation is for tighter online regulation.

- In February the WPC moved on to the second strand of its inquiry – accessing pension savings – looking at how savers are prepared and protected to move from saving for retirement to using their pension savings. The WPC is interested in the options that are open to people when they come to access their pensions, the advice and guidance that is available, and the information needed to make informed choices about retirement products. The call for written evidence closes on 14 May.
- The third and final part of the inquiry, looking at saving for later life and what more needs to be done to help people plan and save for retirement, will start later in 2021.

Schemes urged to share data on scams

The pensions minister, Guy Opperman, has called on pension schemes to join him in the fight against scammers targeting people's retirement savings. In a letter to around 90 pension schemes, he highlighted the importance of sharing scam data with the Pension Scams Industry Group (PSIG), to establish a clearer picture of the scale of the issue. PSIG's industry forum shares information on potential scams but needs more schemes to be a part of it – schemes can join directly or via their administrator.

Separately, the PSIG has updated its code of good practice on combating pension scams. Key changes include the introduction of a new letter from The Pensions Regulator for members considering transferring from a DB scheme to a DC scheme. Version 2.2 is effective from 1 April 2021 and includes a framework document, practitioner guide, resources pack and technical guide. PSIG expects to produce a further update later in the year when regulations supporting the Pension Schemes Act 2021 (see page 2) are published.

Action

[Trustees should familiarise themselves with the updated code, and ensure that robust processes are in place to deal with transfer requests and to minimise the risk of scams. They should also discuss with their administrator the sharing of information on pension scams.](#)

New MoneyHelper brand

The Money and Pensions Service (MaPS) plans to launch a new consumer service this summer called MoneyHelper. MoneyHelper will be a single source of money and pensions guidance, whether over the phone, online or face-to-face. This new brand will replace the legacy brands of the Money Advice Service, the Pensions Advisory Service and Pension Wise. Pension Wise, which provides guidance for people aged 50 and over about their pension options, will continue as a named service under the new brand.

MaPS will begin to roll out MoneyHelper from early June 2021. A toolkit and guide will be produced to help with the changeover and from this point members will be automatically redirected from the legacy brands' websites to MoneyHelper.

MaPS will continue as a corporate brand, through which the guidance body will engage with industry. MoneyHelper will be the consumer face of the guidance body.

PLSA stewardship guide and voting guidelines 2021

In March the Pensions and Lifetime Savings Association (PLSA) published its stewardship guide and voting guidelines for 2021. This annual publication provides practical guidance for schemes considering how to exercise their vote at annual general meetings (AGMs). This year the PLSA has focused on making sure the guidelines remain relevant amid the challenges posed by COVID-19 and a fast-moving regulatory environment.

This latest version warns that pension fund investors must be watchful this AGM season as to how company responses to the COVID-19 pandemic have affected their governance and workforce practices. The PLSA has also strengthened its guidance on what it expects from companies on reporting in line with the Taskforce of Climate Related Financial Disclosures (see page 3); and confirms its position on virtual AGMs, and executive pay.

Cases

Uber – worker status

In February, the Supreme Court dismissed an appeal from Uber, and confirmed previous judgments that Uber drivers are ‘workers’ rather than self-employed. Being workers gives them certain employment rights, including with regards to workplace pension provision.

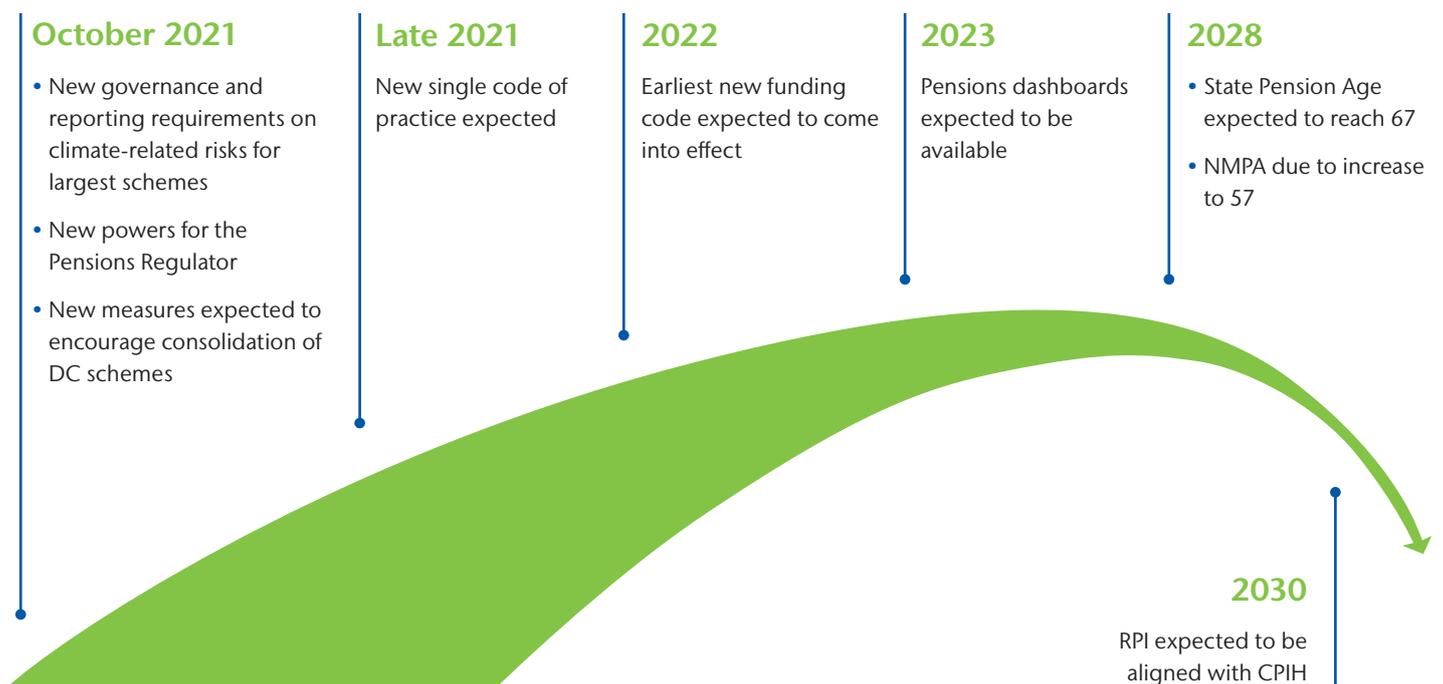
Although the implications for pensions were unclear, Uber has since announced that it will automatically enrol drivers meeting the auto-enrolment criteria into a qualifying scheme.

RPI challenge

The trustees of the BT, Ford and Marks and Spencer pension schemes are seeking a judicial review of the decision (on which we reported in the [February edition](#) of In Sight) to align RPI with CPIH from 2030. The trustees of these DB schemes believe that the implications of the government’s decision have not been fully considered.

On the horizon

Here are some key future developments likely to affect pensions:



Training and events

Dates currently scheduled for our pensions training seminars are set out below.

Please contact us to discuss your training needs: pensionstraining.enquiries@aon.com

You can find a copy of our training brochure and book online at: www.aon.com/pensionstraining

Pensions training courses	Dates
Defined Benefit – part 1: webinar, equivalent to one day	14-15 December
Defined Benefit – part 2: webinar, equivalent to one day	15-16 June
Defined Contribution: webinar, equivalent to one day	22-23 September
Pension Governance Committee: webinar, half day	18 May (am) 16 November (am)
Defined Benefit Trustee Essentials: two day residential in Surrey	7-8 July 13-14 October

Other events

Aon participates in a variety of sector-specific conferences and exhibitions as well as holding regular seminars, webinars, conferences and events focusing on key issues of client interest.

To find out more about our events, go [here](#).

Contacts

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