

# THE MONTH IN PENSIONS

Keeping you on the cutting edge of  
developments in pensions

MARCH 2021



## YOU WAIT FOR ONE CONSULTATION ...

For over two years, pensions policy had to take a back seat to more pressing government business. Brexit, COVID-19 and then Brexit again - all took precedence over new primary legislation. With the passing of the Pension Schemes Act 2021, the blockage has been cleared. In response, the pensions industry is being showered by a cornucopia of consultations. The Department for Work and Pensions (DWP) has three open consultations, covering measures to permit schemes to smooth performance fees, strengthening The Pension Regulator's (TPR) powers on contribution notices and information gathering and scheme trustee's current policies and practices in relation to social factors. The DWP is not the only part of government publishing on pensions, with various government departments and ministries pushing forward with plans to remedy public sector pensions in the wake of the *McCloud* judgment.

TPR is also moving quickly in the wake of the Pension Schemes Act 2021 receiving Royal Assent. This month, TPR opened consultations on its approach to the investigation and prosecution of new criminal offences and on a single code of practice. All of this amounts to hundreds of pages of consultation (TPR's single code consultation alone is almost 200 pages long). But this is just the start, with a steady flow of consultations, draft regulations, guidance and legislation expected over the coming months and years. Pensions policy teams might have lost some time to unexpected events, but they are now making up for it. The result will be a major overhaul to how pensions work in the UK.

### TRUSTEESHIP AND GOVERNANCE

#### TPR launches consultation on draft single code of practice

TPR is consulting on the first phase of a new single code of practice. The draft code consists of 51 shorter, topic-based modules to replace 10 of the existing 15 codes of practice relating mainly to governance and administration.

The draft code contains more detail on some topics, including cybersecurity and also new modules on stewardship and climate change. It also sets out details of how schemes should establish and carry out the processes required by the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018 (in relation to the effective system of governance and "own-risk assessment" requirements).

There is to be a separate consultation later this year on a draft DB funding code (which will ultimately form part of the single code). The codes on notifiable events, the material detriment test and the modification of subsisting rights are also yet to be included. Future consultations are also expected to cover areas such as master trusts

and collective defined contribution (CDC) schemes. The draft code does not currently contain any modules that draw from provisions in the Pension Schemes Act 2021 (PSA 2021) either. However, necessary changes arising from PSA 2021 will be covered in later phases of the new code.

- [Click here or visit tinyurl.com/GWLG210317](https://tinyurl.com/GWLG210317) for TPR's 'New code of practice consultation' (17 March 2021).

#### DWP consults on information gathering powers

DWP is consulting on regulations covering the extension to its information gathering powers. The regulations:

- set out the information that TPR will have to provide in interview request notices;
- clarify that the premises of all employers in multi-employer schemes are potentially in scope for wider inspection powers; and
- set out the level of fixed (£400) and escalating penalties (£200 (for individuals) and £500 - £10,000 (for non-individuals)) that will apply for breaches of TPR's information gathering powers.

- [Click here or visit \[tinyurl.com/GWLG210318A\]\(https://www.gov.uk/government/consultations/strengthening-the-pension-regulator-s-powers-contribution-notice-and-information-gathering-powers-regulations-2021\)](https://www.gov.uk/government/consultations/strengthening-the-pension-regulator-s-powers-contribution-notice-and-information-gathering-powers-regulations-2021) for the DWP's consultation 'Strengthening The Pension Regulator's Powers: Contribution Notice and Information Gathering Powers Regulations 2021' (18 March 2021).

## FUNDING, INVESTMENT AND THE PPF

### TPR consults on employer resources test regulations

The DWP is consulting on regulations in respect of the employer resources test (one of two new tests for contribution notices introduced by the Pension Schemes Act 2021). The draft The Pensions Regulator (Contribution Notices) (Amendment) Regulations 2021 (the Regulations) set out what constitutes an employer's resources and how the value of the employer's resources is to be determined. The DWP has decided to use Normalised Annual Profit Before Tax (NAPBT) as the measure of value. The consultation sets out an explanation for this choice together with more information on how the DWP envisages it will be applied in practice. The consultation closes on 29 April 2021.

- [Click here or visit \[tinyurl.com/GWLG210318A\]\(https://www.gov.uk/government/consultations/strengthening-the-pension-regulator-s-powers-contribution-notice-and-information-gathering-powers-regulations-2021\)](https://www.gov.uk/government/consultations/strengthening-the-pension-regulator-s-powers-contribution-notice-and-information-gathering-powers-regulations-2021) for the DWP's consultation 'Strengthening The Pension Regulator's Powers: Contribution Notice and Information Gathering Powers Regulations 2021' (18 March 2021).

### DWP consults on diversification of DC investment portfolios

Following September 2020's consultation on improving outcomes for members of DC schemes, the government has issued a partial response, with a focus on how performance fees affect charges, and is also consulting on further draft regulations to facilitate the diversification of DC investment portfolios into a wider range of assets including illiquid assets such as private equity or venture capital. This follows commitments made in March's Budget Statement. These further regulations would change the way performance fees are dealt with in relation to the DC charge cap, to give trustees flexibility to smooth performance fees over a longer period. Additionally, as 'look-through' can be seen as a barrier to investment in alternative asset classes, the government is also now calling for evidence about how this affects investment choices.

- [Click here or visit \[tinyurl.com/GWLG210318\]\(https://www.gov.uk/government/consultations/incorporating-performance-fees-within-the-charge-cap\)](https://www.gov.uk/government/consultations/incorporating-performance-fees-within-the-charge-cap) for DWP's consultation 'Incorporating performance fees within the charge cap' (18 March 2021).

## PENSIONS POLICY

### TPR issues its revised 15 year strategy for the future

TPR has issued a revised 15 year 'strategy for the future'. In it, TPR notes that 'DB schemes and members will continue to be at the forefront of our minds, but that our resources will be focused

across savers in both DB and DC schemes'. The publication follows a consultation in October 2020. TPR's five strategic priorities revolve around the following themes:

- security of savers' money;
  - value for money;
  - scrutiny of decision making;
  - embracing innovation; and
  - bold and effective regulation.
- [Click here or visit \[tinyurl.com/GWLG210310A\]\(https://www.gov.uk/government/consultations/tpr-strategy-pensions-of-the-future\)](https://www.gov.uk/government/consultations/tpr-strategy-pensions-of-the-future) for TPR's strategy paper 'TPR Strategy: Pensions of the future' (10 March 2021).

### No surprises for pensions in the March Budget statement

On 3 March 2021, the Chancellor of the Exchequer delivered his Budget Statement. The full text of the Budget confirms that:

- the Coronavirus Job Retention Scheme will continue until the end of September 2021. Once again, employers will be required to make a contribution towards the cost of the furlough scheme, but only from July 2021. The contribution will be tapered, at 10% of the cost of unworked hours in July 2021, rising to 20% for August and September 2021); and
- pensions lifetime allowance will be frozen at its current level of £1,073,100 until April 2026.
- [Click here or visit \[tinyurl.com/GWLG20210303A\]\(https://www.gov.uk/government/consultations/hm-treasury-budget-2021\)](https://www.gov.uk/government/consultations/hm-treasury-budget-2021) for HM Treasury's Budget 2021 documents webpage.

## APRIL 2021 IN PENSIONS

- **1 April 2021** - TPR lifts COVID-19 easement for reporting late contribution payments.
- **7 April 2021** - Final deadline for judicial review application against RPI/CPIH reform.
- **22 April 2021** - TPR's consultation on draft policy concerning new criminal offences closes.
- **29 April 2021** - Consultation on draft regulations concerning regulatory contribution notices and information-gathering powers closes.
- **30 April 2021** - Interim provision in the EU-UK trade and co-operation agreement for transmission of personal data to the UK ends.