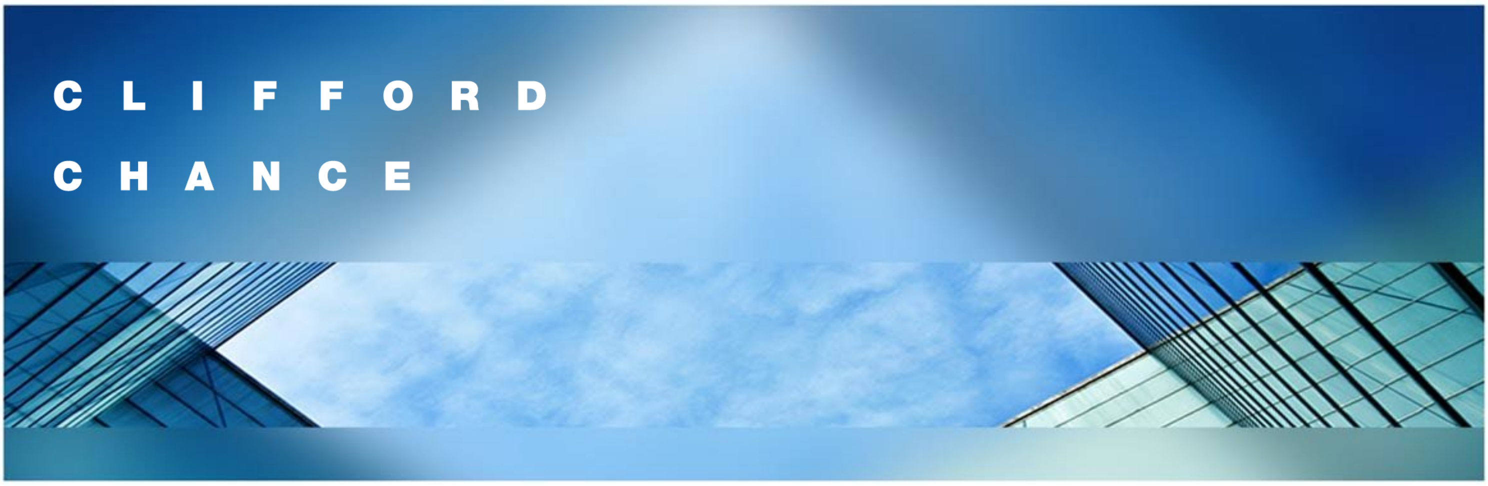

UK: PENSIONS UPDATE – MARCH 2021

1. PENSION SCHEMES ACT 2021 UPDATE

The start of 2021 has seen activity from both government and the Pensions Regulator ("**tPR**") impacting a wide range of stakeholders involved with pension schemes. Please see our February 2021 briefing for details regarding the Pension Schemes Bill receiving royal assent to become the Pension Schemes Act 2021 (the "**PSA 21**") and our March 2021 briefing regarding tPR's consultation on its prosecution policy for exercising its criminal sanctions powers. We now have some further clarity on when the various provisions of the PSA 21 may be brought into force (and some initial regulations have been published – see below). We have updated our previous table summarising the expected 'in force' dates for the various key changes made by the PSA 21 in the Annex.

2. REGULATIONS RELATING TO PENSION SCHEMES ACT 2021 POWERS PUBLISHED

On 18 March 2021 the Department for Work and Pensions (the "**DWP**") launched a consultation on two sets of regulations relating to tPR's contribution notice ("**CN**") powers and its enhanced information gathering powers, following changes introduced by the PSA 21.

"employer resources test"

Of particular note are the draft regulations on the new "employer resources test" ground on which tPR can issue a CN as introduced by the PSA 21. Broadly, this may apply where tPR is of the opinion that an act or failure to act reduced the value of the resources of the employer and that reduction was material relative to the amount of the estimated section 75 debt in relation to the scheme. The draft regulations[1] provide that, for the purposes of the new test, the value of the resources of the employer will be determined, calculated and verified using a three-stage process. Rather surprisingly, this essentially involves determining the normalised profits of the employer before tax (based on the latest annual accounts excluding any exceptional or non-recurring items) and calculating the change in such profits (determined from various sources, such as subsequent annual accounts or management accounting information) attributable to the act or failure. It will then be for tPR to put forward it's argument on materially relative to the estimated section 75 debt, based on the specific facts.

> *"The profitability measure is not perfect however, and neither are the alternatives that have been considered"*
> DWP consultation

[1] The Pensions Regulator (Contribution Notices) (Amendment) Regulations 2021

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A number of other options were considered by the DWP to assess the resources of the employer (net assets, covenant value, covenant strength and profitability) but despite acknowledging the drawbacks of the selected method, the DWP considered that there were no simpler, or less subjective, alternatives. It is disappointing that the DWP did not liaise with stakeholders before publishing the draft regulations, given a test based on employer profitability is likely to create great uncertainty (and it's difficult to see how this uncertainty is balanced by the requirement for tPR to consider reasonableness when exercising its CN powers).

Information gathering powers

The consultation also outlines the draft regulations[2] around the changes to tPR's information gathering powers, including the power to require someone to attend an interview, an extension to the purposes for which an inspector may enter premises and introducing new fixed or escalating penalties which may be imposed for non-compliance.

The draft regulations provide that where tPR gives notice requiring a person to attend an interview, such notice must cover when and where the interview will take place, why tPR wishes to conduct the interview, the interviewee's rights and responsibilities, and how the information obtained can be used. It will also list the potential consequences for the interviewee by way of sanction, in the event of non-compliance.

"*The aim of tPR's information gathering powers is to ensure it can collect the information needed to enforce pensions legislation and protect members' benefits*"
DWP Consultation

Failure to comply with information gathering powers by tPR has always been a criminal offence. Changes made by the PSA 21 allow tPR to issue fixed and escalating penalties for non-compliance with information gathering provisions, as an alternative to a criminal prosecution. The consultation proposes a single, escalating scale of penalties in the same format that exists for master trusts, with the rate for the first day on which the escalating penalty will apply of £500, increasing cumulatively on each subsequent day by that amount until, after 20 days, the daily rate is £10,000 (note for individuals it is £400 fixed and then £200 for each day while non-compliance continues).

3. PENSIONS REGULATOR CONSULTS ON SINGLE CODE OF PRACTICE

On 17 March 2021 tPR published its draft single code of practice for consultation. The consultation represents the first phase in tPR's objective of consolidating its existing 15 codes of practice into a single code, and consolidates and abbreviates 10 of its current codes of practice into 51 shorter, topic-based modules. The single code sets out tPR's expectations of the conduct and practice of those who must meet the requirements set out in pensions legislation. While there is no specific penalty for failing to follow tPR's code of practice, the consultation notes that tPR may rely on the codes in legal proceedings, as evidence certain requirements have not been met.

Unsurprisingly given the recent changes made by the PSA 21, the codes of practice on notifiable events, funding defined benefits and circumstances relating to the material detriment test are three of the five codes not yet transposed (tPR has confirmed its plans to include the remaining codes in due course).

The new code incorporates changes introduced by the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018 (the governance regulations) (i.e. the requirement for schemes to have an "effective system of governance" and for private sector schemes with more than 100 members to carry out their "own risk assessment"). The modules also include new content on issues such as cyber security, environmental, social and governance ("**ESG**") issues and schemes' remuneration policies.

The consultation closes on 26 May 2021 and tPR will also be holding a virtual workshop to discuss the new code of practice in small breakout groups.

[2] The Pensions Regulator (Information Gathering Powers and Miscellaneous Amendments) Regulations 2021

4. PENSIONS REGULATOR PUBLISHES CORPORATE STRATEGY

On 10 March 2021 tPR published its corporate strategy (together with a response to its related discussion paper), setting out its five strategic priorities and how it will pursue these over the next 15 years (see table below). The key theme is a change of focus from a scheme-based view to one that puts the saver at the heart of its work. In particular, the strategy document identifies a couple of key trends which tPR thinks will shape the future regulatory framework:

- ***Trustees:*** a shift in the trustee model towards the appointment of sole professional trustees; an expectation of diversity amongst decision-makers and growing demand for effective stewardship of investments as a means of delivering sustainable benefits.
- ***Industry:*** an expectation that the economic impact of COVID-19 will speed-up consolidation and the development of alternatives to traditional defined benefit ("**DB**") schemes.

Theme	Strategic Goal	TPR's activities include
Security	To ensure savers' money is secure	• Work to ensure DB schemes are fully funded to meet promises made to savers with reliance on the PPF as needed • Drive consolidation • Intervene quickly where contributions aren't being paid promptly/accurately • Work to protect savers from scammers and cyber-crime • Ensure security of assets in defined contribution ("**DC**") schemes
Value for money	To ensure savers get good value for their money	• Work to establish common standards on value for money, setting clear expectations and sharing good practice • Actively pursue value for money with intervention where expectations are not met
Scrutiny of decision-making	To ensure decisions made on behalf of savers are in their best interests	• Scrutinise decisions made on behalf of savers that pose a heightened risk to the quality of outcomes • Increased focus on managing exposure to economic risks (including ESG risks) • Expect decisions to be fair and transparent and encourage diversity amongst decision-makers • Explore the increasing number of decisions made by employers, including the selection of pension products and support offered to assist savers' decision-making • Improve access to guidance and where appropriate, advice.
Embracing innovation	Ensure market innovates to meet savers' needs	• Work with the market on the development of alternatives to traditional DB schemes, decumulation products for DC schemes and establishing collective defined contribution ("**CDC**") schemes
Bold and effective regulation	To ensure tPR is a bold and effective regulator	• Take opportunities to align regulation and minimise burden, adopting a principles-based approach where appropriate • Act quickly and be "tough" where expectations are not met

5. SETTLEMENT REACHED IN SILENTNIGHT ANTI-AVOIDANCE CASE

This case related to the acquisition of the Silentnight business by a private equity firm (HIG) in 2011. Silentnight's pension scheme was in deficit and the sale resulted in the business being separated from the scheme. The recent settlement with tPR follows a long history of investigations which started in 2011 and involved two Warning Notices being issued in respect of tPR's exercise of its CN powers and a failed judicial review attempt by the targets. TPR's case was that the HIG group, who had acquired the scheme employers' bank debt, used their position as lender to bring about the unnecessary insolvency of Silentnight in order to buy its business out of administration at an undervalue, while leaving its defined benefit pension scheme behind. The settlement reached will involve the targets paying £25million to the scheme (considerably less than the £96.4million sought in the second Warning Notice). The scheme remains in deficit and despite the settlement is likely to enter the Pension Protection Fund ("**PPF**").

TPR says it considered various factors in deciding to settle, including the value of the financial sum being made immediately available to the scheme and "*the risk of litigating complex regulatory actions with the potential for prolonged periods of legal challenge*". The report indicates that some of the arguments put forward to demonstrate the targets' "association" for the purposes of being able to issue a CN were novel arguments (the targets weren't shareholders of the scheme employers, which tPR notes is the common route of association). TPR maintains in the report that these were valid arguments but admits they had not previously been tested in court.

While tPR states in the report that it wouldn't expect lenders to bring about unnecessary insolvencies and so wouldn't ordinarily anticipate targeting them with its powers, it also notes that tPR will be alert to and pursue any cases where it believes an unnecessary insolvency is brought about to sever a scheme from its employer. The ambiguity and complexity of the 'novel' arguments tPR was seeking to make in this case have to some extent been removed by the PSA 21 given 'association' with an employer is not needed for the exercise of tPR's new criminal sanctions powers – it is precisely this type of scenario the new powers are designed to capture with greater ease of prosecution by tPR (and other authorities).

6. RECTIFICATION AND RPI – HAS THE BAR BEEN LOWERED?

It has been reported that on Friday 19 February 2021 the High Court handed down its judgment in a significant pension scheme rectification hearing relating to the Iggesund (UK) Pension Scheme (the formal judgment is yet to be published). The proceedings centred on a power under the pension scheme's rules which enabled the scheme actuary to select an alternative to the Retail Prices Index ("**RPI**") for the purposes of pensions indexation. This power was unintentionally deleted from the rules following a rules update exercise, with the effect that RPI was hardwired into the rules as the basis for calculating increases to pensions in payment and deferred pensions. The High Court has ordered the power to be reinstated into the rules pursuant to the principles of legal rectification.

The case perhaps suggests a lower bar for rectification than practitioners might have thought. In this case, rectification was granted on the basis that there was no evidence that the parties had intended to have the effect that resulted from the deletion of the actuary's power to determine another index to RPI (i.e. no evidence that they had intended to hardwire RPI into the rules). There was no positive evidence that the parties did <u>not</u> intend that result either, but the fact that they had not been aware of what they were doing seems to have been found to be enough.

In practice, subject to publication of the judgment, this case may be useful given there may be a range of cases where RPI appears to be entrenched on the face of a set of pension scheme rules, but little evidence as to how it got there. Employer and trustees in such positions who wish to move away from RPI may find it useful to consider the circumstances of how the wording was originally introduced.

7. POTENTIAL JUDICIAL REVIEW OF RPI ALIGNMENT WITH CPIH

The trustees of the BT Pension Scheme, Ford Pension Schemes and the Marks and Spencer Pension Scheme have announced that they have been granted an extension of time in which to consider whether to seek a judicial review of the government's decision to align RPI with the Consumer Prices Index including owner occupiers' housing costs ("**CPIH**") from 2030. It has been suggested that this extension expires on 7 April 2021.

It is expected that aligning RPI with CPIH may negatively affect defined benefit pension schemes and their members (e.g. if the value of assets relative to liabilities falls where RPI index-linked gilts or other assets are being used to hedge CPI liabilities, and noting that pension increases are often linked to RPI).

Stakeholders will be interested in whether the judicial review is actioned, but in the meantime should consider what steps they need to take, assuming the change to RPI will go ahead in 2030 (given statements in the government's response to consultation on the proposed alignment of RPI with CPIH from 2030 that it will keep the impact on pension schemes "under review" is likely to provide little practical comfort).

8. SUPERFUND TAX FRAMEWORK TO BE REVIEWED

The government has said it will be reviewing the appropriate taxation framework for DB pension superfunds (see its Tax Policies and Consultations (Spring 2021) update). It was confirmed that work on the DB superfund tax framework will proceed alongside the development of the regulatory regime, which is already underway and that the approach to taxation will be informed by the features of the permanent regulatory regime. The update notes that superfunds are an innovative area and that "*it should not be assumed that the tax regime that currently applies to entities and transactions in the Superfund structure or the pension schemes that have transferred to the Superfund will remain unchanged*". It remains to be seen what this means in practice and whether the government are signposting a forthcoming different tax treatment for such arrangements.

9. CONSULTATION SMOOTHING PERFORMANCE FEES AND LOOK-THROUGH

As reported in UK: Pensions Update – September 2020, the government has been consulting on changes to regulations and statutory guidance designed to strengthen what DC scheme trustees must consider when assessing their scheme's 'value for members' and to encourage DC consolidation. On 19 March 2021, the DWP published its consultation on proposed measures to allow DC schemes to smooth performance fees within the charge cap and a call for evidence on look-through. The consultation also contains the DWP's response to the performance fee section of the September 2020 consultation and consults on consequential draft regulations (the remainder of the response is expected in June 2021).

Incorporating performance fees in the charge cap	• Performance fees shall be exempt from pro-rated charge cap calculations for members whose membership does not extend to a full year (proposal to be implemented with wording similar to that consulted on in September 2020). • Provisions to be introduced to enable multi-year rolling/averaging period, to accommodate performance fees for the purposes of the charge cap calculation (illustrative examples are included in the consultation). • An option to include a five-year moving average for performance fees as an alternative to the in-year performance fees accrued to be introduced (as per the September 2020 consultation). • Exemption of physical asset costs from the charge cap will apply to all investment structures, whether direct or indirect, individual or pooled fund, closed or open-ended (as per the September 2020 consultation with some minor changes to the wording consulted on).
Call for evidence on look-through	• Currently trustees of DC schemes should "*look-through*" any fund of funds or pooled investment vehicles, no matter the type of funds such vehicles invest in, to also consider the costs paid by the pooled vehicle manager as it invests in other funds (known as the underlying investments). • The DWP is seeking views on whether this acts as a barrier to investment in certain asset classes (e.g. venture capital and growth equity) and what solutions could be considered.

The consultation closes on 16 April 2021.

10. CONSULTATION ON INCREASING NORMAL MINIMUM PENSION AGE

On 11 February 2021 HM Treasury published a consultation confirming the intention to legislate to increase normal minimum pension age ("**NMPA**") from age 55 to age 57 on 6 April 2028. The proposal is to jump straight from age 55 to age 57 from April 2028 (with no phasing in-between), although there will be some protections afforded for those with an existing right to take benefits earlier than age 57.

Key points to note include:

Protection of existing scheme rights	• Members of registered pension schemes who have an existing "*unqualified right*" under their scheme rules as at 11 February 2021 to take pension benefits earlier than age 57 will be protected from the increase to the NMPA in 2028 (with no need to apply for such protection). • Protection will be individual and scheme specific and will apply to pre and post 2028 benefits under that particular scheme (protection won't apply to other schemes where there was no existing right held). • No requirement to actually retire to take early payment of benefits (as is the case for those with a protected pension age of 50). • Crystallisation of all benefits under the scheme is not needed. • Protection will be retained on a transfer provided it qualifies as a 'block transfer'.
Impact on previous protected pension ages?	• Individuals with an existing protected pension age (i.e. of earlier than age 55) will see no change in respect of their current pre-age 55 protections.
Are there any exemptions?	• The increase in NMPA will not apply to members of the armed forces, police and fire service pension schemes.
When will the changes be implemented?	• Schemes would be free to decide how and when to move to the new NMPA of age 57 by 2028 and could choose to do so before 2028.
Will there be future increases to NMPA?	• The government doesn't intend to link NMPA rises automatically to SPA increases at this time (but notes it's appropriate for the NMPA to remain around 10 years under state pension age).

The Consultation closes on 22 April and the intention is to publish draft legislation this summer.

11. DWP RESPONDS TO CLIMATE RISK CONSULTATION

On 27 January 2021 the DWP published its response to its August 2020 consultation which proposed to introduce new requirements for trustees to assess and report on the financial risks of climate change within their investment portfolios (see UK: Pensions Update – September 2020 for more details). The response also includes a new consultation on two sets of draft regulations to implement the new requirements which impose new governance and disclosure requirements on trustees, along with some draft statutory guidance (which will operate on a "comply or explain" basis). The consultation closed on 10 March.

The intention is for the new regulations to come into force from 1 October 2021, although the requirements are being phased in, according to the size of a scheme's "relevant assets". The new requirements are detailed, but key points to note include:

The proposals will not attempt to direct trustees in their investment decisions; there is no change in the legal requirements regarding trustees' investment duties (trustees should remain mindful that climate change is only a relevant factor for trustees to the extent it affects financial performance/risk).

Both DB and DC schemes are in scope, as are master trusts and superfunds (albeit currently only if they meet the relevant asset threshold test).
The new requirements will be phased in: • only the very largest schemes, being those with £5bn or more of relevant assets at the end of the first scheme year to end on or after 1 March 2020, must meet all the climate change governance requirements from 1 October 2021 (or, if later, the date on which the trustees obtain audited accounts for that scheme year);
• authorised master trusts and CDC schemes must meet all the climate change governance requirements from 1 October 2021 (no asset-threshold applies); • schemes with relevant assets of £1bn or more at the end of the first scheme year to end on or after 1 March 2021 will be subject to the requirements from 1 October 2022 (or, if later, the date on which the trustees obtain audited accounts for that scheme year).
Broadly, "*relevant assets*" is defined as the total amount of the net assets of the scheme recorded in the audited accounts for the scheme year (less the value of the scheme's assets represented by bulk and individual annuity contracts).
The response says that for sectionalised schemes, the asset threshold is intended to apply at scheme level, rather than at section level.
The requirements will continue to apply to schemes when in PPF assessment and during winding-up.
The DWP still intends to take stock in 2023 and consult in 2024 before deciding whether to extend the regime to schemes with fewer than £1bn assets.

12. DWP LAUNCHES CALL FOR EVIDENCE ON SOCIAL ELEMENT OF ESG INVESTING

On 24 March 2021 a 12 week call for evidence was launched seeking views on how pension scheme trustees understand social factors and how they are included in their ESG policies. Social factors include issues of diversity and inclusion, remuneration practices, and workforce conditions. Trustees are subject to certain statutory requirements, including that they must prepare a statement of investment principles ("**SIP**") which contains their policies in relation to financially material considerations (including ESG factors), and the requirement to have a policy on non-financial matters (see UK: Pensions Update – September 2018 for more details). While climate change matters seem to have dominated ESG concerns, the DWP considers focussing on social factors could help trustees manage financial and other risk factors, including reputational damage and litigation costs.

As expected, in practice many SIPs do not differentiate between ESG factors, and contain wording which reflects the limited role trustees can in practice play in this area. The DWP is therefore hoping that responses to the call for evidence will help inform on the steps needed to ensure that trustees are better able to meet their ESG obligations. The call for evidence closes on 16 June 2021.

13. CONTINUED APPLICATION OF CMA INVESTMENT ORDER

The draft Occupational Pension Schemes (Governance and Registration) (Amendment) Regulations 2019 amend current legislation to integrate the order produced by the Competition and Markets Authority ("**CMA**") into pensions law – see UK: Pensions Update – June 2019 for details of the Order. Consultation on the draft regulations ran from 29 July 2019 to 2 September 2019, but the DWP is yet to publish its response.

Broadly, the regulations:

- will require trustees of occupational pension schemes, subject to certain limited exceptions, to carry out a tender process for fiduciary management services and set objectives for their investment consultants; and
- will allow tPR to oversee the requirements.

CLIFFORD CHANCE

The consultation page has been updated stating that publication of the consultation response and the final regulations has been delayed and are now expected to be published in the first half of 2022. Until then, the page refers to the need to continue to comply with the CMA Order itself.

As we reported in UK: Pensions Update – December 2020, this includes the requirement for trustees to submit and certify a compliance statement to the CMA confirming that they have complied in all material respects with the requirements of the Order and reasonably expect to continue to do so – this will therefore need to stay on trustees' radars for 2022.

14. BREXIT IMPACTS OTC DERIVATIVES FOR UK PENSION SCHEMES

The European Commission (the "**Commission**") is consulting on extending the transitional period under Article 89(1) of the European Market Infrastructure Regulation ("**EMIR**") for another year[3]. EMIR provides a temporary exemption for certain pension schemes from the obligation to clear over-the-counter ("**OTC**") derivatives while efforts continue to develop viable technical solutions that would allow certain pension schemes to meet the cash variation margin calls of central counterparties. The Commission is proposing to prolong the existing exemption by an additional year, to 18 June 2022, and the consultation closes to responses on 13 April 2021.

However, for UK pension schemes, the position regarding OTC derivatives following Brexit is not straightforward. UK pension schemes no longer benefit from the exemption under EMIR, as the Commission has not extended the scope of the exemption to UK pension schemes trading with EU entities. Under the UK equivalent of EMIR, HM Treasury has extended the exemption for certain pension schemes (until at least June 2023) and included both UK and EEA pension schemes within its scope (such that UK entities within the scope of UK EMIR that trade with EEA pension schemes which benefit from the UK exemption will not have to clear those derivatives transactions while the exemption remains in place).

The result is that UK pension schemes will benefit from an exemption from the clearing obligation under UK EMIR in respect of OTC derivatives they enter into with a UK financial counterparty, but if a UK pension scheme enters into or materially amends an OTC derivative transaction subject to EMIR with an EU financial counterparty, they will no longer be able to benefit from the EMIR exemption. It may be that there are other exemptions that could apply (e.g. being below a certain threshold), but pension schemes will need to seek advice as to whether such exemptions are available.

15. BREXIT IMPACTS JURISDICTION CLAUSES

Brexit has thrown up a number of practical issues for parties[4], including the question of the enforceability of an English judgment in a particular EU Member State following the end of the transition period on 31 December 2020. Prior to the end of the transition period, the Brussels I regulation (recast) applied and provided for judgments given in one EU Member State to be enforced in all other Member States with no need for any further intermediate measures – following the end of the transition period this ceased to apply. This means that, whether an English judgment will be enforceable in a particular EU Member State will depend on the law of that Member State, unless a party can benefit from the Hague Judgments Convention (the "**Convention**") (which broadly applies where there is an exclusive jurisdiction clause in favour of the states which are contracting parties to the Convention). Where the Convention applies, judgments given by the chosen courts will be enforceable in the contracting states.

The UK acceded to the Convention in its own right from 1 January 2021 (although it had been a member as a part of the EU from 1 October 2015), meaning that an exclusive jurisdiction clause agreement in favour of the English courts concluded on or after 1 January 2021 should lead to a judgment in England that will be enforceable in EU Member States (the procedure for enforcement will not be quite as straightforward or quick as under the Brussels I Regulation but it should still be efficient).

For agreements entered into prior to 1 January 2021 (or afterwards but with a non-exclusive jurisdiction clause), the parties will need to consider whether they are comfortable arguing that the Convention still applies to UK agreements entered into

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3 See previous UK: Pensions Update briefings in March 2019, June 2019 and December 2020.

4 See our Brexit Topic Guides on the financial markets and the implications for businesses across all sectors and regions and also our dedicated Brexit Hub for the latest news and developments.

after 1 October 2015 (which, while claimed by the UK, the EU considers incorrect) or seek advice as to whether the relevant Member State provides a general law means to enforce an English judgment. If neither option is workable, re-execution of contracts may be the best way forward.

For UK pension schemes with PPF guarantees, the PPF is not requiring schemes to re-execute guarantees entered into prior to 1 January 2021 (even though the PPF's standard forms have historically contained a non-exclusive jurisdiction clauses and so would not benefit from the Convention). However, the PPF website notes that trustees who benefit from guarantees backed by EU guarantors, are likely to need to submit an updated legal opinion regarding the enforceability of that contingent asset when recertifying for the 2021/22 levy year (although this can be done by way of a short form new opinion on the basis of enforceability only). The PPF standard form guarantee has also been updated, and the contingent asset guidance confirms that an amendment to a contingent asset entered into before 1 January 2021 to include an English/Scottish/Northern Ireland courts exclusive jurisdiction clause would be a permissible change.

16. EXTENSION FOR REGISTRATION OF EXPRESS TRUSTS

The Association of Taxation Technicians and the Chartered Institute of Taxation have published confirmation from HMRC that the deadline for registration of the trusts required to register with HMRC's Trust Registration Service ("**TRS**") under the Fifth Money Laundering Directive has been extended until summer 2022.

The Fifth Money Laundering Directive expanded the scope of HMRC's TRS, by requiring trustees or agents of all UK (and some non-EU resident express) trusts to register these trusts with the TRS, whether or not the trust has incurred a UK tax consequence – such trusts were required to be registered by 10 March 2022.[5] However, as we have reported previously, helpfully certain trusts are excluded from the obligation to register with TRS (broadly including registered pension schemes and death benefit only trusts), albeit unregistered schemes which incur a tax consequence will still need to register with the TRS.

At a meeting on 11 March, HMRC reportedly confirmed that registrations will now open in summer 2021, rather than March 2021 as originally planned. The legislation is expected to be amended to provide a period of approximately 12 months for registration from the date when the system opens.

5 See our January 2020, March 2020 and September 2020 briefings for further background.

ANNEX

New offence	In force?	Are detailed regulations needed?[6]	Other information (e.g. steps expected before coming into force)
Changes to the notifiable events regime	Sections 108 and 109 **No**	Yes	Regulations are needed on the detail of the 'declaration of intent' regime and to make the changes to the list of notifiable events. The regulations have not yet been published. TPR's Code of Practice on Notifiable Events will also need to be revised. Consultation on draft regulations on the duty to give notices and statements to tPR in respect of certain events expected later this year, for commencement as soon as practical thereafter.
Extension of the Contribution Notice regime	Sections 103 to 106 **No**	Yes	Regulations are needed to clarify the detail of the employer resources test. Regulations were published on 18 March 2021. A TPR Code of Practice on the new tests is required (or TPR may revise its existing Code on the material detriment test). Consultation on draft regulations ends on 29 April 2021, with tPR's powers and the criminal offences measures expected to commence in the autumn.
New criminal offences with 7-year custodial sentences	Section 107 **No**	No	TPR's guidance is due to be finalised prior to the new provisions coming into force, and a consultation on the draft guidance is expected shortly. Consultation on the majority of draft regulations expected this spring with tPR's powers and the criminal offences measures expected to commence in the autumn.
Extended information-gathering powers	Sections 110 to 112 **No**	No	Consultation on the draft regulations published on 18 March 2021 ends on 29 April, with tPR's powers and the criminal offences measures expected to commence in the autumn.
£1M civil financial penalties and other new offences	Section 115 **No**	No	It is hoped TPR's guidance will be finalised prior to the new provisions coming into force, and a consultation on the draft guidance is expected shortly. Consultation on the majority of draft regulations expected this spring with tPR's powers and the criminal offences measures expected to commence in the autumn.
Changes to scheme funding legislation	Schedule 10 **No**	Yes	Regulations are needed on the detail of the 'statement of strategy'. The regulations have not yet been published.

6 That is, are detailed regulations needed beyond those required by the Secretary of State to bring the provisions into force.

New offence	In force?	Are detailed regulations needed?[6]	Other information (e.g. steps expected before coming into force)
			TPRs second consultation on its DB Funding Code of Practice is expected in the second half of 2021 (according to TPR's blog post on 17 February).
			Consultation on draft regulations on DB funding expected later this year, following promised engagement with key interested parties working closely with colleagues at tPR as they develop the revised funding code, which will also be subject to a full public consultation.
Climate related disclosures	Section 123 **No**	Yes	Regulations are needed on the detail of the requirements to promote effective governance of schemes with respect to the effect of climate change. Draft regulations and statutory guidance were published for consultation on 27 January 2021 (closing on 10 March 2021). Proposed to come into force on 1 October 2021.
Right to a cash equivalent transfer value	Section 125 **No**	Yes	Regulations are needed on the new conditions on trustees making statutory transfers. The regulations have not yet been published. Consultation on draft regulations for scams and collective defined contribution schemes expected in early summer, with commencement on the scams measures from early autumn 2021.
Collective Money Purchase Schemes	Sections 1 to 102 and Schedules 1 to 6 **No**	Yes	Regulations are needed to detail the framework for how collective money purchase schemes will work. Illustrative regulations were published during parliamentary debate but are subject to change. TPR will also need to publish its authorisation criteria. Consultation on draft regulations for scams and collective defined contribution schemes expected in early summer, with commencement on the scams measures from early autumn 2021.
Establishment of Pension Dashboards	Sections 118 to 122 **No**	Yes	Regulations are needed to detail the framework for how pension dashboards will work. It was previously suggested to target voluntary participation from 2022 and schemes and providers to be mandated to connect to a dashboard from 2023. Consultation on proposed regulations for the pensions dashboard expected later this year with draft regulations laid before Parliament for debate in 2022. Delivery remains on track for 2023 in line with the plans published by the pensions dashboards programme.

C L I F F O R D

C H A N C E

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