Linklaters

APRIL | **2021**

Pensions in five: **Pension developments this month**

Pension Schemes Act 2021: recent developments

Criminal offences: The Pensions Regulator has published a draft policy on its approach to the investigation and prosecution of the new criminal offences under the Pension Schemes Act 2021. It has also published a consultation document seeking feedback on the draft policy.

The draft policy recognises that the new offences are intended to enable the Regulator to address more serious intentional or reckless conduct that was already within the scope of its contribution notice powers. Consequently, the Regulator does not expect a change to the kind of behaviour it investigates, but rather a change to the options available to it.

The consultation closes on 22 April and the final policy will be published later in the year.

Draft regulations: The government has published a consultation on two sets of draft regulations:

> The Pensions Regulator (Contribution Notices) (Amendment) Regulations 2021 which relate to the new employer resources test for issuing a contribution notice. They prescribe how the resources of a sponsoring employer are to be determined.

> The Pensions Regulator (Information Gathering Powers and Miscellaneous Amendments) Regulations 2021 which relate to the Pensions Regulator's new information-gathering powers.

The consultation closes on 29 April and the regulations are expected to come into force in October 2021.

Consultation in relation to trustees' policies and practices on "social factors"

The government has published a consultation seeking views on the effectiveness of occupational pension scheme trustees' current policies and practices in relation to social factors (the "S" in ESG). The government wants to assess how trustees understand social factors and how they seek to integrate considerations of financially material social factors into their investment and stewardship activities.

The consultation closes on 16 June 2021.

The Pensions Regulator's Climate Change strategy

The Pensions Regulator has published its climate change strategy. This sets out the Regulator's strategic response to climate change and how the Regulator thinks it can help trustees meet the challenges from climate change. Among other things, the strategy says that the Regulator intends to take the following actions:

> publish guidance on the Regulator's approach to the climate change requirements in the Pension Schemes Act 2021;

> follow this up in 2023 by sharing best practice TCFD reports, reviewing guidance and filling any gaps;

> include modules on climate change and stewardship in the Regulator's new modular code of practice;

> update the content on climate change in its trustee toolkit;

> add questions to the scheme return on web addresses of SIPs, implementation statements and TCFD reports; and

> publish on the Regulator's website an index of the web addresses of schemes' SIPs.

PDF Click here to download the mobile friendly PDF

Contacts

Claire Petheram
claire.petheram@linklaters.com

Tim Cox
tim.cox@linklaters.com

Rosalind Knowles
rosalind.knowles@linklaters.com

Philip Goss
philip.goss@linklaters.com

John Sheppard
john.sheppard@linklaters.com

To access our latest legal updates, publications, seminars and curated collections, sign up to our Client Knowledge Portal.

Fraud compensation levy

The PPF has confirmed that it will be charging a fraud compensation levy of 75p per member (30p for master trusts) in 2021/22. The fraud compensation levy funds the Fraud Compensation Fund (FCF), which is administered by the PPF. The FCF provides compensation to occupational pension schemes where the value of the scheme's assets has suffered a reduction attributable to an act or omission constituting an offence of dishonesty.

The levy was charged at 25p per member last year and is now sat at the maximum allowed under legislation. The reason for the increase is that the FCF has received claims with a total value of £40m (and is expecting to receive more claims) following the High Court decision in *Board of the Pension Protection Fund v Dalriada Trustees Limited*. The Court confirmed in that case that occupational pension schemes set up as part of a scam are eligible to claim from the FCF. The FCF currently has assets of £21.5m, so the increase in the levy is necessary to meet the claims.

The Pensions Regulator consults on a single code of practice

The Pensions Regulator has published a consultation on plans to combine its 15 current codes of practice into a single, shorter code. The first phase involves bringing 10 of the current codes together as one new code consisting of 51 shorter, topic-based modules.

This table shows the existing codes and which of them are being replaced by the new code:

Code of practice	Part of new code
01: Reporting breaches of the law	✓
02: Notifiable events	X
03: Funding defined benefits	X
04: Early leavers	✓
05: Reporting of late payment of contributions to occupational pension schemes	✓
06: Reporting of late payment of contributions to personal pension schemes	✓
07: Trustee knowledge and understanding (TKU)	✓
08: Member-nominated trustees/member-nominated directors – putting arrangements in place	✓
09: Internal controls	✓
10: Modification of subsisting rights	X
11: Dispute resolution – reasonable periods	✓
12: Circumstances in relation to the material detriment test	X
13: Governance and administration of the occupational trust-based schemes providing money purchase benefits	✓
14: Governance and administration of public service pension schemes	✓
15: Authorisation and supervision of master trusts	X

The consultation also incorporates changes introduced by the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018, the regulations that implement IORP II. These relate to effective systems of governance and the own-risk assessment.

The full draft of the new code is here and a table showing how information from the existing codes has been used in the draft is here.

The consultation closes on 26 May.

GC22499_F/04.21