Current issues

January 2022

Articles this month:

CMP draft legislation consultation response

The Department for Work and Pensions (DWP) has announced the outcome of a consultation exercise on the secondary legislation necessary to establish an authorisation and supervision regime for collective money purchase (CMP) schemes.[1]

CMPs

Collective money purchase, also known as collective defined contribution (CDC), schemes are seen as a potential way of providing members with better outcomes than are available from traditional money purchase schemes. They do so by pooling risks during the pre- and post-retirement stages. As with an ordinary money purchase scheme, the employer has certainty over future contributions, so CMP provision is less risky for sponsors than defined benefits (DB). The scheme aims to provide its members with a certain level of pension, but they have no legal entitlement to particular rates or amounts of benefits. Instead of making the sponsor liable for the balance of the cost of financing DB, members' pensions are subject to periodic actuarial adjustment to maintain the balance with the available assets.

Primary legislation

The *Pension Schemes Act 2021* contains provisions intended to accommodate CMP within the UK's pensions system. The primary goal of the legislation is to enable the creation of a CMP scheme designed by Royal Mail Group and the Communication Workers Union, but the Government hopes that others will follow their example.

Secondary legislation

In July 2021, the DWP published draft Regulations which would establish an authorization and supervision regime for collective money purchase schemes.[2]

In light of responses to the consultation, the Government has made some changes to the Regulations, to make the provisions clearer and to better reflect its policy intentions. The Regulations have been laid before Parliament and are intended to come into force on 1 August 2022.

---

[1] <www.gov.uk/government/consultations/the-occupational-pension-schemes-collective-money-purchase-schemes-regulations-2021/outcome/government-response-to-the-consultation-on-draft-regulations-to-support-part-1-of-the-pension-schemes-act-2021-and-associated-consequential-changes>.
[2] See *Current Issues August 2021*, <www.hymans.co.uk/insights/research-and-publications/publication/current-issues-august-2021/>.

Future developments

The Pensions Regulator is expected to publish a draft CMP Code of Practice for consultation purposes in January 2022. A second set of Regulations, making consequential changes to the pensions legislation, is expected in February.

Initially, the CMP option will be available only to individual employers or groups of connected employers. Once the experiences of the CMP pioneers have been assessed, however, the Government is prepared to permit a wider variety of structures, such as industry-wide schemes, commercially operated master trusts, and decumulation-only arrangements. The Pensions Minister's foreword to the consultation outcome says that the DWP has '*already begun engagement with interested parties to understand their proposals for multi-employer schemes.*'

The foundations for the introduction of this new category of benefit are almost there, but the constraints that will apply to CMP schemes initially will limit their appeal and potential reach.

DWP backs GMP-conversion amendments

The *Pension Schemes (Conversion of Guaranteed Minimum Pensions) Bill*, which seeks to fix some of the inconsistencies in the primary legislation on conversion of GMPs into ordinary scheme benefits, had its Second Reading in the House of Commons on 26 November 2021.[3] Although it is a Private Members' Bill, it has the support of the Government, and therefore has a good chance of becoming law.

The GMP-conversion option was introduced in April 2009, but in practice lay fallow until October 2018, when the *Lloyds* judgment confirmed the necessity of equalizing pensions for GMP-derived differences. Alongside revived interest in conversion has come renewed criticism of the drafting of the legislation.

The Bill is sponsored by Margaret Ferrier, the Independent Member of Parliament for Rutherglen and Hamilton West. It would—

- clarify the application of the legislation to survivors' pensions, and give the Department for Work and Pensions the power to set out the relevant conditions in regulations (the original legislation is clearly *intended* to cover survivors' GMPs, but its phrasing is flawed);
- allow regulations to specify the requirements for consent to GMP conversion (the legislation currently says that the relevant scheme employer must agree, but does not cater for the possibility of that employer having ceased to exist); and,
- remove the obligation to notify Her Majesty's Revenue and Customs (a procedural requirement that has since become irrelevant).

The judge who made the *Lloyds* ruling reasoned around the cracks in the conversion legislation. Nevertheless, it is unsatisfactory to say the least, and perhaps downright off-putting for some, to face a consequential task whilst equipped with wonky tools or dodgy instructions. We hope the Bill survives to sort out some of the issues.

Ordinarily, the prospects of a Private Member's Bill are only slightly better than those of the proverbial snowball in Hell. They are often used to raise awareness of issues, rather than with any expectation that they will receive Royal Assent. In this case, there were hints of Government support for the amendments: it seemed as though the DWP had been unusually helpful with the drafting of the Bill and its explanatory notes. This suspicion was put beyond doubt by Pensions Minister Guy Opperman at the Bill's Second Reading in the Commons.

[3] <bills.parliament.uk/bills/2907>.

Funding regs consultation in spring '22, draft Code in late summer

A blog on the Pensions Regulator's website indicates that the Department for Work and Pensions (DWP) will consult on defined benefit (DB) funding and investment regulations in the spring of 2022.[4] The Regulator's draft Code of Practice is now set to follow in late summer.

David Fairs, the Regulator's Executive Director of Regulatory Policy, Analysis and Advice, suggests that it is rethinking its proposal to use the 'Fast Track' specifications as the measure of risk in 'Bespoke' funding plans. The Regulator wants to provide '*room for schemes to approach risk in a way that is consistent with their individual circumstances.*' It is also contemplating how best to incorporate covenant assessments into both Fast Track and Bespoke.

As others have noted, the timing of the second stage of consultation on the revised funding Code has repeatedly slipped, having been expected in 2020[5], then '*later in 2020*'[6], '*in the second half of 2021*'[7], '*towards the end of the year*'[8], and now '*in late Summer of 2022.*' While this may be frustrating, fairness leads us to point out that the Regulator always made progress contingent on the passage of the underlying legislation. The *Pensions Schemes Act 2021* did not receive Royal Assent until February, its funding provisions are not yet in force, and (as the blog indicates) the Government's secondary legislation is not likely to surface before the daffodils. Other events during the last couple of years might have had some effects on people's expected timings too.

Revised Code of Practice on Contribution Notices

The Pensions Regulator's revised Code of Practice 12: *Contribution Notices—Circumstances in Relation to the Material Detriment Test, the Employer Insolvency Test and the Employer Resources Test* came into effect on 25 November 2021.[9] The updated Code reflects the new employer insolvency and employer resources tests for the imposition of contribution notices, which were introduced by the *Pension Schemes Act 2021,* and came into force on 1 October 2021.

The final version of the Code takes into account comments received in response to the May 2021 consultation[10] and is unchanged from the finalised draft published on 28 September 2021[11]. An updated version of the Regulator's code-related guidance, *Material detriment, employer insolvency and employer resources*, has also been published.[12]

PPF levies 2022/23

The Pension Protection Fund (PPF) has confirmed the details of its levies for 2022/23.[13] The levy estimate has been reduced to £390m, £130m less than the estimate for 2021/22.

At the time of the levy consultation exercise, which commenced in September 2021, the PPF estimated the total levies for 2022/23 at £415m. The writedown is mainly because, for 2022/23 only, those schemes that experience risk-based levy rises will have the increases capped at 25 per cent of their 2021/22 bills, in recognition of the exceptional circumstances of the pandemic and the very significant insolvency-score movements that are affecting a small number of employers. The PPF's projections indicate that more than 80 per cent of levy payers will pay *less* than they did last year.

[4] <blog.thepensionsregulator.gov.uk/2021/12/15/db-code-taking-the-time-to-deliver-the-right-funding-measures>.
[5] <blog.thepensionsregulator.gov.uk/2019/05/09/protecting-db-savers-our-expectations-are-clear>.
[6] <www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/db-funding-code-of-practice-consultation.ashx>.
[7] <www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/db-funding-code-of-practice-consultation-interim-response.ashx>.
[8] <www.pensionsage.com/pa/PLSA-IC-21-DB-funding-code-to-be-operational-in-late-2022-early-2023.php>.
[9] <www.thepensionsregulator.gov.uk/en/document-library/codes-of-practice/code-12-circumstances-in-relation-to-the-material-detriment-test>.
[10] <www.thepensionsregulator.gov.uk/en/media-hub/press-releases/2021-press-releases/tpr-seeks-views-on-how-it-will-apply-new-contribution-notice-tests>.
[11] <www.thepensionsregulator.gov.uk/en/document-library/consultations/code-of-practice-12-consultation>.
[12] <www.thepensionsregulator.gov.uk/en/document-library/code-related-guidance/material-detriment-test>.
[13] <www.ppf.co.uk/levy-payers/levy-2022-23>.

Review of State pension age begins

The Department for Work and Pensions (DWP) has begun a statutory review of State pensionable age SPA.[14] It has commissioned reports from the Government Actuary's Department (GAD) and a team led by Baroness Neville-Rolfe, and will consider regional and group differences in life expectancy.[15]

The focus is likely to be on the timing of the move toward SPA 68, which is currently set to affect people born after 5 April 1977, and be completely phased in for those born after 5 April 1978.

[14] <www.gov.uk/government/news/second-state-pension-age-review-launches>.
[15] <questions-statements.parliament.uk/written-statements/detail/2021-12-14/hcws480>.

And Finally…

A happy new year to all of our readers.

That's it.

No, seriously.

Look, if you're waiting for a punchline, you're going to be here an awfully long time, with nothing to show for it.

Move along now, there's nothing to see here…