

REGULATORY BAROMETER

1st May 2021



ABOUT THIS DOCUMENT

The purpose of this document is to provide an overview of current and upcoming regulatory matters that may be of interest to the Operators/Administrators of personal pension schemes (and in some matters, the Administrators/Practitioners of SSAs). For each item there is a brief summary including the source (i.e. regulatory/legislative changes) along with the relevance to firms, timelines and suggested actions the firm may wish to consider. Where applicable, also included is a reference to where further information can be obtained.

The symbols (below) are RAG-rated to indicate the impact of each of the items:

- Red = High impact
- Amber = Medium impact
- Green = Low impact.



The RAG-ratings are purely indicative and it will be for firms to decide the relevance and impact based on their circumstances.

This document is high-level and is not a substitute for taking relevant professional/legal advice. Rather, we hope this document will be useful in assisting firms in their regulatory planning and our aim is to provide updates on a quarterly basis.

CONTENTS

FCA Matters

Vulnerable Clients	4
Investment Pathways (Data Collection)	5
Drawdown pensions - annual statements	6
SM&CR/Conduct Rules	7
Covid-19 Resilience testing/analysis	8

HMRC Matters

Managing Pension Schemes Service	9
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Information Commissioner's Office

EU Equivalence	10
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Other Matters

Pensions Schemes Act 2021	11
NMPA Consultation	12



Vulnerable Clients



The FCA issued their Finalised Guidance [FG21/1] on the fair treatment of vulnerable customers on 23 February 2021. This applies to all regulated firms and the FCA have stated that firms can expect to be asked to demonstrate how their business model, culture and actions ensures fair treatment of vulnerable customers.



As this guidance applies to all firms, this includes the operators of personal pension schemes. Members of personal pension schemes are equally liable to vulnerability as any other product, albeit the age profile of scheme members will have an impact.



There is no specific timeline for this guidance to be considered and implemented although firms are reminded that 'Principle 6 - Customers' interests' applies to all firms at all times meaning that if not already done so, firms should be taking account of the FCA's guidance, especially given the scrutiny promised by the FCA.



Within their guidance, the FCA have outlined six actions that firms should be taking, linked to: 1) Understanding customers' needs; 2) Evaluating the skills and capability within the firm; 3) Considering the impact of product service and design on vulnerable clients; 4) Building vulnerable client support into customer service; 5) Ensuring that client-facing communications take account of vulnerable customers; and, 6) An ongoing monitoring and evaluation process is in place to assess the firm's understanding of vulnerable clients and how the firm's actions 1-5 have affected outcomes for vulnerable consumers.



Further information:

- [FCA Finalised Guidance](#) - this links to the complete guidance for firms.
- **Enhance updates:** '202101 Regulatory Update FG21.1 vulnerable customers' - this provides an overview for Sipp firms of the finalised guidance; and, '202009 Regulatory Update GC2003 vulnerable customers' which sets out questions that personal pension scheme operators should be considering when thinking about their approach to vulnerable clients.

Investment Pathways (data collection)



The investment pathway process took effect from 1 February 2021 and firms should have now fully implemented the process. The next steps firms should be thinking about is evaluating how the process is working and collating data that the FCA has indicated they will collect from firms.



In relation to investment pathways, record-keeping rules apply to both pathway-exempt firms; and, those who manufacture or distribute pathway investments.



Whilst the FCA has not yet announced when and how it will collect data about investment pathways, firms should be ready to supply data as and when requested from the FCA, whether this be via an information request, or a more formalised periodic reporting requirement.



As the FCA has stipulated the record-keeping requirements in relation to investment pathways, it is suggested that firms test their ability to extract the required information based on the data already held since 1 February 2021. The SIPP administration system is likely to have been configured to provide the data, however arguably it is beneficial to test the reporting functionality prior to any FCA data requests.



COBS 19.10.46R, 19.10.47G and 19.10.48G provides the record-keeping requirements for the investment pathway process.

Drawdown pensions - annual statements



The enhanced disclosure process for those scheme members in drawdown (capped or flexi-access) took effect from 1 February 2021 and firms should have now fully implemented the process, meaning that (where applicable) certain disclosures are required for members invested in a pathway investment; and, for all members, costs and charges disclosure.



This applies to all personal pension providers who have members in drawdown.



This process should already be in place, however we are aware that some firms were struggling to obtain the costs and charges information.



It is anticipated that the FCA will at some point seek to evaluate how well the actions stemming from the Retirement Outcomes Review, such as Investment Pathways and disclosures such as Costs & Charges, have been implemented. Consequently, firms should be confident that this process is in place and working as it should.



COBS 16.6.7AR to COBS 16.6.13G provides details of the requirements for drawdown pensions annual statements.

SM&CR - Conduct Rules



For solo-regulated firms, conduct rules training was required to be delivered to all/most personnel by 31 March 2021. Now that deadline has passed, the FCA may well start to enquire of firms as to how conduct rules are being embedded within and monitored by firms.



This applies to all personal pension scheme/SIPP providers.



Other than the 31 March 2021 deadline that has already passed, there is no specific timescale applying to this matter. Rather, it is something that firms should be thinking of applying ongoing.



From a senior manager function (“SMF”) perspective, there is a responsibility to ensure proper conduct is embedded into the firm’s culture. There will be different ways of ensuring this, including staff engagement, management information and considering risks, which are then mapped to (and hopefully mitigated by) the firm’s conduct. Here, SMFs can think about the identification of risk; how personnel are encouraged/supported to deliver good conduct; and, the SMF’s oversight of the firm’s conduct. The five conduct questions mentioned in the FCA speech (*see the link below*) should be considered.



Further information:

Within the FCA Handbook, COCON 4.1 and 4.2 provide practical guidance on both individual and senior manager conduct rules.

Further information can also be found in the Enhance documents ‘201909 Conduct Rules Senior Manager Briefing’. Also recommended is reading a speech made by Mark Steward, the FCA’s Director of Enforcement and Market Oversight, which amongst other things sets out five conduct questions firms should ask, along with some case studies.

[Compliance, Culture and Evolving Regulatory Expectations](#)

- Speech by Mark Steward, Executive Director of Enforcement and Market Oversight

Covid-19 Resilience testing/analysis



The FCA have published Policy Statement 21/3 'Building operational resilience'. While this is aimed at larger firms (banks, building societies, recognised investment exchanges etc.) it is clear from previous impact surveys (four to date) from the FCA that the regulator is keen to ensure that all regulated firms have demonstrated resilience through the coronavirus pandemic.



SIPP operators have routinely been included within the FCA's impact surveys.



Save for any further impact surveys, there is no specific time-scale linked to this item, rather it is something that should be considered ongoing.



Accepting that firms will be familiar with remote and/or reduced office working; and, that in some cases, firms may be considering allowing more people back into the office, it is suggested that firms continue to monitor service delivery; and, maybe start to evaluate what worked well/not so well during the height of the pandemic.



Further information:

- [PS21/3](#) - which outlines the main principles in relation to operational resilience.
- The '20204 Operational Resilience Manager Briefing' and '20200403 Covid-19 Resilience Self-assessment Template' issued by Enhance last year may be useful where firms do wish to evaluate their current situation.

Managing Pension Schemes Service



HMRC have issued their March 2021 newsletter on the progress of the migration from Pension Schemes Online (“PSO”) to the Managing Pension Schemes Service (“MPSS”).



These changes apply to all pension scheme administrators and practitioners. Scheme administrators will be required to migrate pension schemes to the new service in due course. For migrated pension schemes new Accounting for Tax returns should be submitted on the MPSS. Event Reports and Pension Scheme Returns should be completed via PSO. HMRC will shortly start an ongoing programme of deleting credentials for users who have not signed in to PSO for 3 years.



HMRC have timelines for each of the stages of the migration. Pension scheme administrators should ensure that they have signed in recently to PSO to ensure the scheme administrator credentials are not deleted. Later this year scheme administrators will be able to view a list of pension schemes that need to be migrated to MPSS and in Spring 2022 will have the ability to migrate by providing up to date information on the scheme (HMRC have provided a list of the information they will need in appendix C of their March 2021 newsletter).



Providers should ensure that they have signed into PSO for all scheme administrator IDs that they use, this is probably more relevant for SSAS schemes as there may be multiple scheme administrator IDs. Scheme administrators can also use the information supplied in Appendix C of the newsletter to determine the extent of the project of migrating all schemes to MPSS, again this is likely to be a larger task for SSAS scheme providers.



Further information:

HMRC’s March 2021 newsletter and Appendix C can be found below:

- [HMRC March 2021 Newsletter](#)
- [HMRC Appendix C](#)

Transfer of data - EU



Following Brexit and the end of the transition period, the EU GDPR was written into UK legislation by the European Union (Withdrawal) Act 2018 and is now known as the UK GDPR. Data gathered before 01 January 2021 will be subject to EU GDPR as it stood at 31 December 2020 ('frozen GDPR'). Thereafter, as the UK is classed as a 'third-country' by the EU, in relation to transfers of data from the EU to the UK, an 'adequacy' decision is required to confirm the EU is satisfied the UK will process and protect data to the same standard as the EU. The European Data Protection Board has published its opinion on adequacy - Opinion 14/2021.



Transfers of data from the UK to the EEA are not restricted. UK adequacy regulations include the EEA and all countries covered by the European Commission adequacy decisions. The UK intends to review these adequacy regulations over time. Transfers of data from the EEA to the UK can flow freely for 4 to 6 months during which the EU Commission will launch the procedure to adopt an adequacy decision with the UK. In the absence of such a decision data transfers must comply with EU GDPR rules. Organisations that process data in the UK and EEA or are in the UK and offer goods or services to individuals in the EEA, will be subject to both the EU GDPR and UK GDPR. It is not envisaged that many SIPP (or SSAS) administrators routinely process data in the EEA.



The UK GDPR took effect from 1 January 2021. The EU agreed a bridge of a maximum of 6 months during which data can flow freely from the EEA to the UK whilst the adequacy decision (above) for the UK is considered.



Providers that process data in the EEA and the UK or which offer services to individuals in the EEA should consider their data protection policy, including privacy notices, to ensure these are aligned with both UK and EU GDPR rules. They may also need to appoint a representative in the EEA to deal with European authorities. Providers that process data that has been transferred from the EEA to the UK will need to assess whether action should be taken to enable the continued transfer of data in the event of the end of the bridge period without an adequacy decision being agreed. All providers should ensure that legacy data collected about individuals living outside the UK that falls under the frozen GDPR can be identified in the event that an adequacy decision is not authorised by the EEA. All providers should review privacy information and other data protection documents to update any references to the EU. Firms should monitor the Information Commissioner's Office website for any updates on the EU's final decision.



Further information:

The ICO have the following pages in relation to data protection and the EU-UK trade deal:

- [ICO Data Protection and the EU-UK Trade Deal](#)
- [Data protection after the end of the Brexit transition period for small businesses and organisations](#)

The ICO have a useful interactive tool that can be used to identify which data protection laws apply:

- [End of transition - interactive tool for small businesses](#)

The following provides further details on when a European representative should be appointed:

- [European representatives](#)

The EDPB opinion can be found here::

- [Opinion 14/2021](#)

Pension Schemes Act 2021



The Pension Schemes Act 2021 ("the Act") received Royal Assent on 11 February 2021.



The provisions primarily relate to occupational pension schemes, however the Act includes draft regulations in relation to the Pensions Dashboard which in time will impact on most pension providers, who will be required to share members' information with the Dashboard. Ceding scheme trustees will also be granted the power to refuse transfer-out requests where there are concerns about the destination scheme, particularly linked to pension scams.



Many of the provisions are either currently being consulted on, or will be consulted on later this year. The broad timetable is contained in Parliamentary Statement from the pensions minister, Guy Opperman (see information source below).



It is suggested that the main items of interest to personal pension scheme providers is the enhanced powers of trustees to refuse pension transfers and the provision of information to the pensions dashboard. This latter item is unlikely to take effect until 2023, however pension administrators no doubt will wish to keep a watching brief on these items.



Further information sources include:

- [Pension Schemes Act 2021](#)
- [The Parliamentary statement from Guy Opperman](#) - which summarises the objectives of the Act.
- [Explanatory Notes](#)
- There are also a number of good summaries provided by pension law firms that can be found by entering "Pension Schemes Act 2021" into a search engine.

OTHER MATTERS

Normal minimum pension age (“NMPA”)



The Treasury has consulted on affording to certain scheme members protection against the rise in the NMPA to 57 from 2028.



The consultation proposes that members of a pension arrangement as at the date of the consultation - 11 February 2021 - would retain the ability to take benefits from age 55.



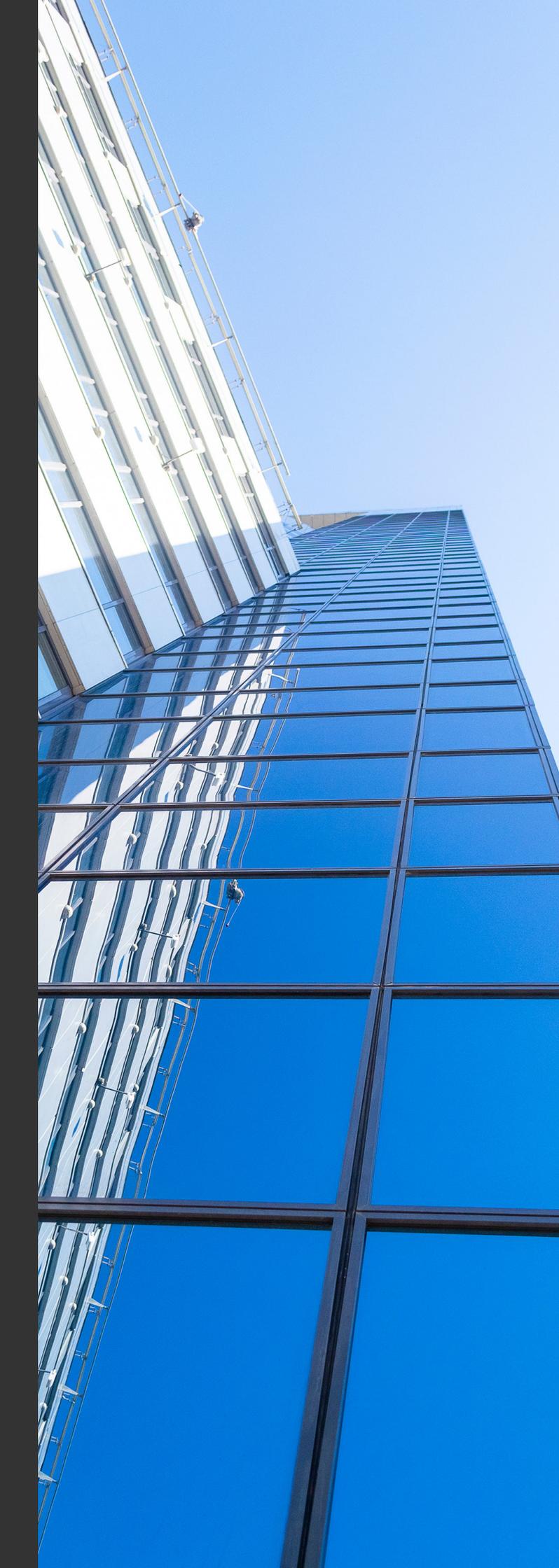
The revised NMPA does not take effect until April 2028, however if the consultation is accepted without change, then the date of 11 February 2021 will become key in determining whether a member had scheme benefits at that date (in order to qualify for the protected NMPA of 55).



As this is predicated on a consultation paper, the Treasury approach may change. The consultation has now closed and the finalised conditions will be published in due course. A controversial aspect of the consultation was that where a member was a member of a scheme on 11 February 2021 and therefore qualified for the ‘protection’, this could be lost on transfer away from the scheme unless the transfer was part of a block-transfer. This may require a warning notice to be supplied to certain members contemplating a transferout.



[Increasing the normal minimum pension age: consultation on implementation](#)



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