HERBERT SMITH FREEHILLS

PENSIONS PLANNER

YOUR GUIDE TO FUTURE DEVELOPMENTS

AUTUMN 2023

Contents

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Introduction

It has been a significant period for pension schemes in the UK, bookended by the Chancellor's Mansion House speech in July and his recent Autumn Statement. Along with the speeches and statements has come a barrage of consultations and calls for evidence and it has, at times, been a struggle even for dedicated pension practitioners to keep up. We have therefore pulled together all the changes and proposals in our new Quarterly Review which we hope trustees, sponsors and advisers will find helpful and informative.

And yet, as highlighted in our Timeline and Spotlight sections, there are still more consultations and changes to come. In the next few weeks, we are expecting the final regulations setting out new funding and valuation requirements on long-term objectives and statements of strategy. The Pension Regulator's new Defined Benefit Funding Code will likely follow shortly thereafter, and we understand the 'Combined Code' is still waiting in the wings for Ministerial sign-off. There is also the small matter of the abolition and replacement of the Lifetime Allowance from 6 April 2024.

With thanks to Dan Saunders, Mark Howard, Sophie Pamplin and Will Atkinson for their hard work and help in pulling it all together.

Michael Aherne, Pensions Partner

Quarter in review

Update on the Mansion House Reforms

In July 2023, the Chancellor, Jeremy Hunt, set out a number of policy initiatives - the so-called 'Mansion House reforms' - which seek to reform both defined benefit (DB) and defined contribution (DC) pension schemes and how they invest on behalf of pensioners.

The stated policy aims for the reforms (known as the "golden rules") are to:

- secure the best possible outcomes for pension savers,
- prioritise a strong and diversified gilt market, and
- strengthen the UK's competitive position as a leading financial centre.

The UK has one of the largest pension markets (in terms of assets under management) in Europe and the Government considers that the way in which those assets are being invested is limiting returns and outcomes for savers.

The Government is seeking to achieve this by increased pension scheme consolidation (to maximise efficiencies of scale and mitigate concentration risks) and allocations to 'productive finance' assets (including through the Mansion House Compact – see below).

In many ways, this is a continuation of the work that came out of the Patient Capital Review in 2016-2017 which led to initiatives such as the Long-Term Asset Fund (**LTAF**) and changes to the automatic enrolment charging cap regime to exclude performance fees.

Whilst the King's Speech 2023 did not include any legislative proposals relating to the Mansion House reforms or pensions, it remains the Government's position that the reforms will be introduced either through existing regulation-making powers or where parliamentary time allows.

In his Autumn Statement, the Chancellor made additional proposals in relation to the Mansion House reforms (see further below). The Shadow Chancellor, Rachel Reeves, has also indicated Labour will pursue similar policy objectives and will carry out a "*sweeping review*" of the UK's pension system should it come into power.

For more on the Chancellor's original Mansion House speech and reforms see our blog post **here**.

Mansion House Compact

In connection with his proposed reforms, the Chancellor has supported the "Mansion House Compact" between some of the UK's biggest DC pension providers.

The agreement commits signatories to the objective of allocating 5% of pension fund assets to unlisted shares by 2030, although notably there is nothing in the Compact which requires any allocation to UK businesses or companies.

The Government estimates that up to £50 billion of new capital could be unlocked by the Compact initiative which could achieve the "dual aim" of increasing returns for UK pension savers whilst providing additional capital for fast growing businesses and infrastructure in the UK (although there is nothing in the Compact which requires investment in UK assets).

The original nine signatories to the Compact were Aviva, Scottish Widows, L&G, Aegon, Phoenix, Nest, Smart Pension, M&G and Mercer. DC providers Aon and Cushion have more recently signed up to the Compact.

Value for Money framework

The outcome of the Value for Money (VfM) consultation was published on 11 July 2023.

The VfM framework is designed to drive and require consolidation of underperforming DC schemes and to shift the focus in the DC pension sector from 'cost' to 'value'.

The DWP will continue to work with the Financial Conduct Authority (FCA) and the Pensions Regulator (TPR) to implement the VfM framework, which is intended to be done in phases. The implementation of the VfM framework will require primary legislation (when parliamentary time will allow).

On 22 November 2023, amongst the announcements released alongside the Autumn Statement, the Government stated that the FCA would be consulting in spring 2024 "*on the next steps of the new Value for Money Framework*". It looks less likely that the new legislation to implement the VfM framework will become law before the general election.

Closely related to the VfM framework is the Government's support for the establishment of collective DC (CDC) schemes. The Government intends to extend the CDC scheme so that non-associated multi-employer CDC schemes may be formed (i.e. CDC commercial master trusts). The DWP is seeking to produce draft regulations to expand CDC provisions in due course.

Decumulation

Decumulation is the ability of a member to take benefits from a scheme. A consultation was launched in July 2023 by the DWP to consider how savers could better understand and implement their pension choices – including drawdown, lump sum payments and annuities (or products which offer a mix of options).

Whilst the DWP recognises that there are many ways in which schemes support their members, it also recognises that this support is not universal and that some schemes do not offer the full range of decumulation offerings available (and require a transfer-out to another arrangement if the members want to take advantage of them).

The Government's consultation response was published on 22 November 2023 and confirmed its intention to place a duty on trustees to offer decumulation services. Under the proposal, trustees will be required to either offer decumulation options in-house or partner with a supplier who can offer such services (rather than require a transfer-out). Schemes will also be required to offer a 'backstop' decumulation solution, based on the general profile of their members. The DWP has suggested that CDCs could also be used to provide decumulation solutions.

However, as the original consultation had said that the Government would seek to legislate "*when parliamentary time allows*", it is difficult to see when these changes will be enacted before the General Election. The Government has indicated that it will work with TPR to issue guidance on "*how the objectives of the policies can be met without legislation being in place*".

A recent blog from Louise Davy, Interim Director of Regulatory Policy, Analysis and Advice at TPR, has built upon the consultation. In the blog Louise states:

"*The pensions market is evolving rapidly towards fewer, larger, and better run pension schemes. Our vision, shared by government, is that, over time, all workplace schemes should become full-service providers. This would involve providing services for saving into a pension, accessing pension savings and post-retirement support.*

Some DC schemes will not have the skills, capability, or appetite to do this, and trustees running those schemes should be asking themselves tough questions and consolidating in savers' interests."

See **here** for Louise Davy's blog post in full.

Small Pots

Included in the consultation on decumulation was a consultation on deferred small pots. Under the Government's proposal, small pots with a maximum size of £1,000 would be eligible for automatic consolidation 12 months after the last contribution was made.

On 22 November 2023, the Government confirmed its intention to take a multiple default consolidator approach to tackle the small-pots issue. The Government estimates this will benefit the average saver by £700 by retirement. The Government response also confirms that it is intended that a central clearing house be created to act as an intermediary and inform schemes where to transfer an eligible pot. An "industry delivery group" will be created to support the Government work through the complex issues to deliver this solution, which include looking at the role and function of the clearing house, the design of the transfer system and the authorisation and monitoring of the default consolidator schemes.

The Government also announced in the Autumn Statement the idea of a "pot-for-life", based on the Australian model of 'stapling', to end the small pots problem for new savers (See also our blog post **here** on the Autumn Statement). The Government has launched a new call for evidence, '*Looking to the Future: Greater Member Security and Rebalancing Risk*' to look at this further. The call for evidence also addresses collective defined contribution (CDC) schemes and whether there could be synergies between "pot-for-life" and "whole-life" CDC schemes which spread risk between the whole membership of the scheme throughout both the accumulation and decumulation phase.

While the "pot-for-life" is an interesting idea, many commentators have noted the numerous technical challenges in implementing it and warn that the change could have significant consequences (foreseen and unforeseen). Again, it is unlikely that any actual legislative change will be made prior to the General Election.

The Government Responds to 'Options for Defined Benefit Schemes'

The DWP's call for evidence on DB schemes closed on 5 September 2023. It was broadly focussed on how best to ensure pension scheme money is working for savers, sponsoring employers, and the UK economy. The DWP were particularly interested in:

1. How investment by DB schemes in 'productive finance' might be incentivised whilst also maintaining appropriate security of benefits.
2. How both employers and trustees could be incentivised to maintain a surplus in their schemes.
3. Whether consolidation might be viable for DB schemes, in particular, through a public consolidator. The DWP suggested that the PPF might act as a consolidator which could boost investment in 'productive finance'.

The Government has now responded to the call for evidence (on 22 November 2023). Principally, the DWP will be:

- Making changes to the DB funding code to support a *"less risk-adverse"* approach to investing in productive finance.
- Working with schemes to facilitate the extraction of surpluses that may build up if scheme assets are invested productively, while protecting member benefits. This is to encourage the 'running on' of schemes, rather than buyout.
- Expanding the role of the PPF to run a 'limited public consolidator' of schemes that are unattractive to commercial providers, on an opt-in basis.

For more on the call for evidence and other Mansion House reform consultations see our blog post **here**.

The Government Responds to 'Pension Trustee Skills, Capability and Culture: A Call for Evidence'.

In July 2023, the DWP and HM Treasury jointly requested evidence from trustees, advisers, and other stakeholders regarding pension trustees' skills and decision-making. This request followed the Mansion House speech: the Government hopes that by improving trustees' technical capabilities, pension scheme capital will be capable of being invested in companies in the UK to a greater extent than is currently the case.

The DWP was particularly concerned with trustee knowledge and understanding in smaller schemes: these schemes are potentially at greater risk of weaker governance structures, which may prevent trustees properly considering complex investment decisions.

The Government's response to the call for evidence was published alongside the Autumn Statement on 22 November 2023 and identified a number of areas for *"immediate action"*:

- Develop a register of trustees, which will enable TPR to regulate trustees more effectively and improve communication of information and guidance to trustees.
- Continue to encourage the accreditation of professional trustees and review whether legislation should be enacted to mandate accreditation.

- Update TPR's investment guidance for trustees, in particular, to address trustee understanding of alternative investments.
- Guidance for employers of factors which should be assessed when selecting a pension scheme.

Having trustees with good technical knowledge and sound decision-making skills may sound like a very positive thing in principle. But there are concerns within the industry that focusing solely on this goal will negatively affect other important factors which contribute to an effective trustee board. For instance, raising the accreditation requirements could limit the diversity of willing participants to retirees or professional trustees. It is an accepted tenet of good decision-making that effective decisions come from a blend of diverse skills and backgrounds. It was noted in the Government's response that many respondents had emphasised this aspect of scheme effectiveness.

Likewise, it has been discussed that accreditation is a poor measure of effectiveness in a DB scheme; for instance, a trustee's ability to weigh different factors and interests carefully and come to a rationale decision is not easy to assess.

Action: For noting that further guidance will be issued by TPR. The Government has decided not to make accreditation mandatory for all trustees for the time being, but this is being kept under review.

Defined Benefit Superfunds

In the wake of the Chancellor's Mansion House speech, the Government issued a response to its December 2018 consultation on implementing a statutory regime for the regulation of defined benefit (DB) consolidator vehicles, known as 'superfunds'.

The new statutory regime will both authorise and supervise superfunds. DB superfunds are seen as a way of reducing risk, increasing the likelihood of members receiving their benefits, and securing more productive investments.

The new regulatory regime for superfunds will require both primary and secondary legislation. The Government has not committed to a specific timetable for introducing the necessary legislation, saying only that (again) it will look to bring forward legislation "*as soon as parliamentary time allows*".

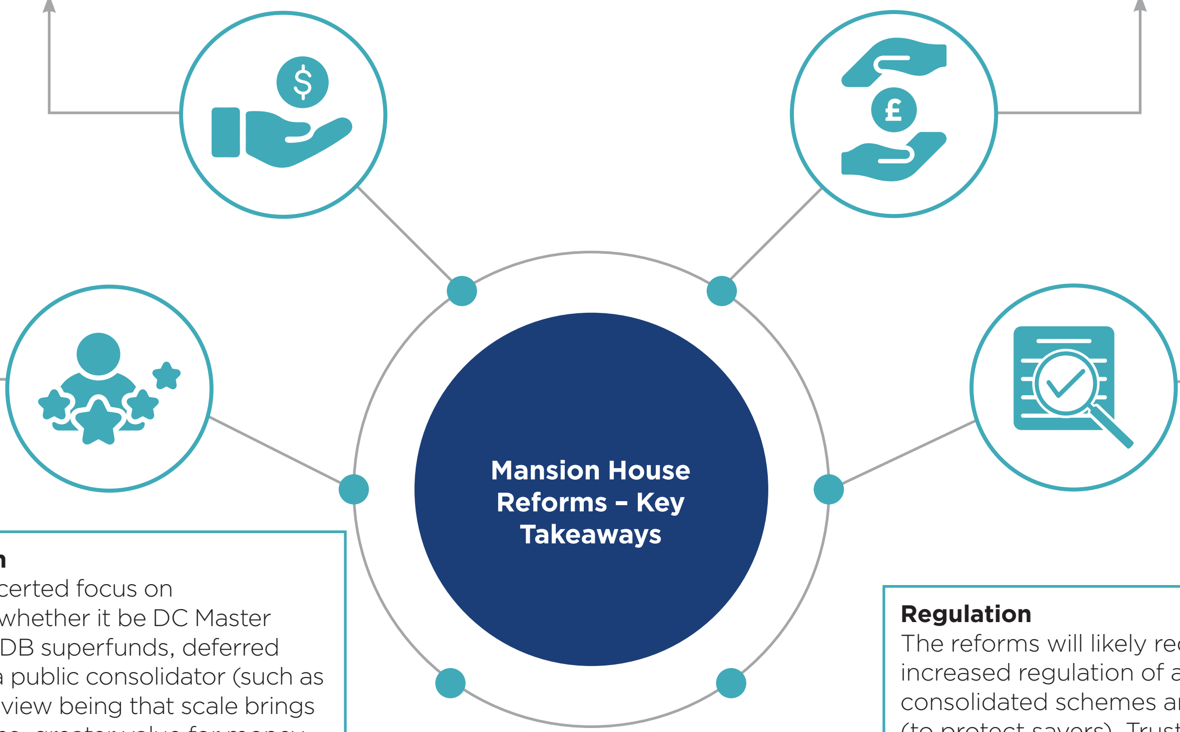
In the meantime, TPR's recently updated supervisory regime will continue to apply (see further below on the updated Pension regulator guidance). One superfund, Clara, has already been assessed successfully by TPR and has recently completed its first transaction (see below). The Government is encouraging other potential superfunds to come to market when they are ready to do so.

For more information in relation to the consultation response, see our blog post **here**.

Mansion House Reforms – Key Takeaways

Investment and Stimulating UK Growth
The Government is seeking to unlock the investment power of UK pension funds. There is a particular focus from Government on investment in 'productive finance' i.e. equity capital and finance supporting high growth business (such as start-ups in tech and life sciences) and infrastructure investments.

Increasing Returns
A key aim in implementing these reforms is increasing returns for savers, particularly returns over the long term (20-30 years). The Government considers the current investment returns UK pension savers receive are materially below comparators in Europe, Australia, and the US.



Consolidation
There is a concerted focus on consolidation whether it be DC Master Trusts, CDCs, DB superfunds, deferred small pots or a public consolidator (such as the PPF). The view being that scale brings cost efficiencies, greater value for money (via scheme 'buying power') and increased diversification (to mitigate downside risks).

Regulation
The reforms will likely require increased regulation of approved/consolidated schemes and trustees (to protect savers). Trustees should be alive to these changes and seek advice where necessary.

The King's Speech

Whilst, as is detailed above, the Government had suggested that many of the reforms detailed above would be introduced "*when parliamentary allows*", the recent King's Speech did not include a pensions bill.

According to reports, government officials have said the legislation was not included due to a lack of parliamentary time. The Government made a number of pension announcements in the Autumn Statement – but other than Finance Act changes, legislation is looking unlikely until after the election (See below for our comments on the Autumn Statement).

Some progress may be made on the Mansion House reforms through the introduction of regulations, but the more substantive changes (for example a regime for DB superfunds and a clearing house to consolidate small pots) would require primary legislation to implement.

Potential Labour reforms

Rachel Reeves has set out that Labour, if elected, would carry out a sweeping review of the UK's pension system. Adopting a similar outlook to the current government, Reeves suggested that the UK's pension market could be used to provide more capital to fast-growing businesses and acts as a stimulus for growth.

The Shadow Chancellor has stated that a Labour government would build on the Mansion House reforms by introducing a state-backed DC scheme for DC pension funds to invest a proportion of their assets in alongside the British Business Bank (similar to the 'Growth Fund' that has been announced by the Chancellor in the Autumn Statement - see below). Reeves also suggested Labour would go further on consolidation by empowering TPR to drive out poorly performing pension schemes and mandate transfers and mergers.

Autumn Statement: Overview

The Chancellor announced pension reform details in the Autumn Statement on 22 November. This included:

- From 6 April 2024, the authorised surplus repayment charge, payable on any surplus funds returned to an employer, will be reduced from 35% to 25% (which is aligned with the current corporation tax rate). The Government will also consult on whether changes to the rules of return of surplus could incentivise well-funded defined benefit schemes to invest in assets with higher returns.
- A March 2025 deadline for accelerated consolidation of LGPS asset pools, with the goal of there being fewer pools with assets exceeding £50 billion. The Government will also be revising the guidance for the pools so that there is an *"allocation ambition"* of 10% in private equity. This is estimated to unlock around £30 billion for investment in private equity by the end of the decade.
- The FCA will be consulting in spring 2024 on the next steps of the new Value for Money Framework.
- A commitment of £250 million under the Long term Investment for Technology and Science **(LIFTS)** initiative which was previously announced. This aims to provide over £1 billion of new investment from pension funds into UK science and technology companies. There was also support for university spin-out companies and a new Growth Fund is also being established within the British Business Bank "*to give pension schemes access to opportunities in UK's most promising business*".
- Reform of Solvency II which will allow the insurance industry to be able to invest in a greater range of productive assets. Schemes undertaking buy-outs usually carry out a covenant assessment of the proposed insurer and these may need to focus more on the investment approach of the insurer and the specific risks that this may bring.
- A consultation on whether the Pension Protection Fund "*can act as a consolidator for schemes unattractive to commercial providers*".
- A call for evidence on a long-term vision for workplace pension saving in the UK, including whether a lifetime provider (or "pot-for-life") model would improve outcomes for savers, how the CDC market can be grown, and whether there are synergies between the two. The lifetime provider model "*would allow individuals to have contributions paid into their existing pension scheme when they change employer*".

Further details are available on our blog post **here**.

Autumn Statement: The Government Launches Fresh Calls for Evidence

The Government has announced three new calls for evidence, as well as the promised consultations already noted above, as part of the package of reforms set out in the Autumn Statement:

- *Looking to the Future: Greater Member Security and Rebalancing Risk* (Deferred Small Pots) (see above)
- *Pension Fund Clearing Exemption* – pension funds are currently exempt from clearing derivative contracts used to hedge risks. This exemption currently applies until 18 June 2025 and the call for evidence is addressing whether a longer-term policy approach ought to be adopted.
- On facilitating surplus extraction and establishing a public sector consolidator. This will be published Q4 2023 / Q1 2024.

Please see our timeline (p.14-15) for the relevant closing dates for responses.

Clara-Sears Pension Deal

While the new DB superfund regime is not yet in force, the UK's first DB superfund deal was cleared by TPR on 6 November 2023, in the first transaction of its kind in the UK.

Under the deal, almost 10,000 members of the Sears Retail Pension Scheme were transferred to Clara Pensions. The deal will see Clara make £3 million of capital available to the Sears Plan. Clara intends to use the existing assets of the Sears Plan and the additional capital to generate returns to pay pensions and ultimately reach buyout with an insurer.

It is understood that Clara has a number of other deals in the pipeline.

BBC v BBC Pension Trust Ltd

This case concerned the construction of the amendment power in the BBC Pension Scheme. The amendment power provides that no alteration or modification shall take effect as regards active members "*whose interests are certified by the Actuary to be affected thereby*".

The BBC, which is currently paying an employer contribution rate of 42.3% of DB members' salaries – three times the rate in 2010 – wanted to understand the extent it which it was able to make detrimental changes to the current benefit basis (for example, closure to future accrual of benefits).

The Arguments

The BBC contended that active members' "*interests*" only extended to their past service rights, not to interests which are yet to be earned. Under the scheme, the members had no legal right to gain further benefits through future service, so the 'hope' of a member doing so was distinct from a crystallised "*interest[s]*". The BBC supported this argument by referring to where "*interests*" appears in the Definitive Deed of 1949, that is, in the provisions concerning the winding up of the scheme. Accordingly, the BBC argued that "*interests*" could relate only to past service benefits.

In contrast, the representative beneficiary argued that the natural meaning of "*interests*" affords a wide scope of protection. For instance, it was reasoned that "*interests*" has a broader meaning than "*rights*". The representative beneficiary also argued that a member in 1949 would have had an interest in future benefits, as their focus would have been on benefits at the time of retirement.

Judgment

The High Court found against the BBC and for the representative beneficiary. The court held that as a matter of ordinary language, "*interests*" included rights earned by past service, any linkage of the value of past service rights to final salary, and future service benefits. The court held the protection of actuarial certification in the amendment power itself suggested future service benefits would fall within "*interests*".

Comment: Whilst it is important to remember that this case turned on the specific wording of the relevant amendment power, it is worth noting the approach taken by Mr Justice Johnson (a former HSF partner) and his willingness to look back to the introduction of the amendment power in 1949. Mr Justice Johnson has given permission for BBC to appeal the decision and we expect the matter to come before the Court of Appeal in 2024.

Pensions Ombudsman Finds in Favour of Trustee in Surplus Complaint

The Pensions Ombudsman (PO) has given his determination in a complaint by a pensioner member against the Water Companies (Pension Fund) Trustee Company, with Bristol Water plc as the sponsoring employer. The scheme's surplus consisted of assets worth approximately £12 million. Under the scheme rules, the Trustee could, in consultation with the employer use any such surplus to augment the member's benefits, "*if it considers it just and equitable to do so*". Thereafter, any remaining assets would be returned to the employer.

The Trustee adopted the position that the surplus ought to be returned to the employer. The Trustee recognised that the employer had paid significant additional contributions (amounting to over £16 million between 2005 and 2016) and had borne all the downside risk for the duration of the scheme. In contrast, the members had not had to bear any downside risks. The members would receive their promised benefits in full, with most being fully inflation-linked. On this basis, the Trustee determined that it was only fair and reasonable to return the surplus to the employer.

The decision was the subject of a complaint to the PO. The argument was made that the Trustee was not acting in the interests of the scheme's members and was thus in breach of its fiduciary duties.

The PO had to decide if the Trustee's decision not to augment member benefits with the proceeds of the surplus was perverse.

The PO found in favour of the Trustee because the PO observed that the Trustee had followed the correct process in reaching its decision by considering all potentially relevant factors, including but not limited to:

- the views of the employer
- the source and size of the surplus
- member's reasonable expectations

Comment: This determination offers welcome guidance on the complex and difficult issue of discretionary decision-making. With the improved funding position of schemes, surpluses are becoming increasingly common and further claims and litigation are likely as trustees, members and sponsors grapple with the difficult questions arising out of how to deal with those 'extra' assets. Again, the Mansion House reforms may play a part here - particularly if legislation is amended or introduced to make it easier for sponsors to access pension scheme surpluses or to take 'upside' risk from their pension schemes.

The Pensions Regulator Issues Fine for Failures to Comply with Climate Risk Reporting Obligations

TPR has issued the first fine to pension scheme trustees for failing to publish their annual climate change report in accordance with statutory reporting deadlines. Under the law, schemes with £1 billion or more in net assets must produce an annual report on their management of climate change risks within seven months of the most recent scheme year-end.

The DWP's guidance on the regime requires trustees to carry out the following activities "*as far as you are able*":

- Undertake scenario analysis
- Obtain Scopes 1, 2 and 3 greenhouse gas emissions and other data relevant to metrics
- Use data obtained to calculate chosen metrics
- Use metrics to identify and assess climate-related risks and opportunities
- Measure the performance of the scheme against selected targets

After receiving the first round of reports in 2022, TPR has issued a fine of £5,000 to the trustee of the ExxonMobil Pension Plan. It is understood that the trustee had in fact produced and uploaded the report by the relevant deadline (31 July 2022), but a faulty URL meant it was not published on a publicly accessible site until 10 August 2022. The fine was issued in May 2023.

Such a breach necessitates a fine of £2,500 under the legislation. However, TPR decided - in accordance with its monetary penalties policy - that this would be doubled because the ExxonMobil Pension Plan is run by a corporate trustee.

Action: In issuing the fine, TPR was following its own published guidance, i.e. that failure to comply with mandatory reporting requirements will incur mandatory fines (with discretion to increase in aggravating circumstances). It is interesting however, that the first recipient of such a fine is a high-profile oil and gas company.

The PPF Publishes a Consultation on The Levy Rules For 2024/25

In the consultation paper, the Pension Protection Fund (PPF) announced that it is in a "*very strong financial position*" and intends to substantially reduce the levy charged to pension schemes for the next financial year, subject to finalising the rules. The key figures can be found in the table (right).

The governing legislation relating to the PPF limits the amount it can increase the levy by each year. This is intended to protect levy payers from sharp increases in the levy. Accordingly, looking to the future, the PPF plans to hold the levy at or above £100 million, subject to a significant change in the risks faced by the PPF or the legislative context. This level of funding should allow the PPF to increase the levy in response to any future funding challenges.

This report marks a positive step positive step toward the Fund's goal of simplifying the levy while maintaining stability.

There is a separate consultation being undertaken by the DWP in relation to the General Levy (see further below).

Comment: As a result of the reduced levy, the PPF expects "*almost all*" levy payers to see their levy fall compared to last year. The consultation closed on 30 October and the PPF intends to publish the final rules in December 2023.

Levy for 2024/2025

Levy Estimate for 2024/25 = a reduction of 50% on the levy for 2023/24 **£100m**

The Levy Scaling Factor: 2024/25 = **0.4%** (Compared to 0.37% in 2023/24)

The Scheme Based Multiplier = **0.000015 %** (Compared to 0.000019% in 2023/24)

The risk-based levy cap = to remain at **0.25 %** of scheme liabilities.

Levy payers expecting a lower levy than last year = **99%**

DWP Publishes Draft Guide on ESG Factors in Trustee Decision-Making

The DWP has published a draft guide on how the pensions sector can better engage with social factors in their decision making. The guide has four main sections:

- **An Introduction to Social Factors:** explaining why social factors are important for investing in accordance with trustee's fiduciary duties.
- **Data Considerations:** setting out available data sources that trustees can use.
- **A Framework for Addressing Social Factors:** including baseline, good and best practice.
- **Recommendations for Various Stakeholders:** including trustees, professional advisors and service providers, asset managers, government, regulators, and companies.

Overall, the guide sets out more than 30 recommendations. The DWP taskforce will be consulting on the draft guide until 1 December 2023, and organising roundtables as part of the process.

If you wish to respond to the draft guidance, you can find the consultation draft at <https://www.taskforceonsocialfactors.co.uk/report/> and respond to the TPR at consultation@taskforceonsocialfactors.co.uk. Alternatively, please speak to your usual HSF contact.

TPR Updates DB Superfund Guidance

TPR has published revised guidance in relation to DB superfunds, three years since the interim guidance on setting up and running a DB superfund was last updated. The revised version of the guidance includes:

- Changes to improve the transfer process for schemes transferring to a superfund, including extending the period for the 'Gateway'.
- Clarification of TPR's funding expectations, as the discount rate is amended from gilts+0.5 per cent to gilts+0.75 per cent.
- An updated position on profit extraction, signalling that TPR wants to engage further with the pensions industry on how this system will work, and will issue an update "*in due course*".
- General clarification on TPR's expectations for the assessment process (including collective competence and a new appendix which consolidates information on supervision).

In its review, TPR explains that it has '"*kept saver security as our primary focus, whilst creating changes that should allow for the development of a superfund market*". It was noted that there is more still to do.

Pensions (Extension of Automatic Enrolment) Act 2023 receives Royal Assent

On 18 September 2023, the Pensions (Extension of Automatic Enrolment) Bill received Royal Assent following the successful passage of the private members bill through parliament.

The introduction of auto-enrolment in 2012 resulted in almost 11 million people enrolling in pension schemes. With these changes, the Government hopes that figure will increase further.

The Act does not make substantive changes to the law but introduces a regulation-making power for the Secretary of State. It will enable the Secretary of State to create new regulations to:

- Reduce the lower age limit for auto-enrolment from 22 to 18
- Remove the Lower Earnings Limit of £10,000 of qualifying earnings so that contributions apply "*from the first pound earned*"

These changes will materially affect the average pension pot, especially for those soon to turn 18 and low earners. Government calculations suggest that someone earning £20,000 at the age of 18 and paying into their pension until the age of 66 could end up with £159,000 more because of the changes (depending on investment returns). A worker earning £30,000 could be up to £199,000 better off.

The Government has inferred that the average earner's pension could increase by up to nearly 50% if they choose to save across their entire career. A minimum wage earner could see their pension pot increase even further by a predicted 85%.

It is important to note that these figures rely on individuals paying into their pensions from age 18 until the state pension age, without any breaks. Nonetheless, these small changes are likely to have a life-changing impact on some individuals, who may be able to retire earlier and remain financially stable for their whole retirement.

There will be no changes for now as the Government will need to consult on how and when the powers under the Act could be used. No timetable for implementing the changes has been set.

Looking broadly at the automatic enrolment space, it has been reported that a future Labour Government under Kier Starmer would be likely to extend the law. The Fabian Society (a Labour Party Think Tank) recently produced a paper which included a pension solution for self-employed individuals. It is hoped that "*in five years you could have a solution, working with HMRC as to some form of self-employed auto enrolment with pension funds*".

Comment: The Act is an enabling provision only, and regulations are required to bring it into force. However, employers should consider what the financial impact of the changes might be and how easily they could be implemented within the employer's existing automatic enrolment vehicle/provider.

Timeline

November – December 2023
Climate Change
UN Climate Change Conference, COP28, takes place in Dubai.

1 December 2023
ESG Investing
DWP closes consultation on draft ESG Guide.

December 2023
PPF
PPF to announce proposals on levy rules for 2024/25. Most schemes will see a decline in their total levy.

December 2023
TPR
DB funding and investment strategy regulations expected to be published.

5 January 2024
DWP
'Call for Evidence: Pension Fund Clearing Exemption' closes.

24 January 2024
DWP
Call for Evidence 'Looking to the Future: Greater Member Security and Rebalancing Risk' closes.

2024
DWP, Pensions Regulator and FCA
Introducing a common framework for assessing value for money in workplace defined contribution schemes. Schemes will have to publish their results each October.

Early 2024
Online Safety Act 2023
Ofcom is due to publish detailed Codes of Practice on the implementation of the Online Safety Act 2023.

2023

2024

1 April 2024
Funding
Expected that the Pensions Regulator's new DB funding code and changes to scheme specific funding requirements (e.g. long term funding objectives and aligned statements of strategy) will come into force for schemes with valuation effective dates on and after this date (delayed from 1 October 2023).

6 April 2024
Tax
Abolition of lifetime allowance and introduction of new tax-free allowances (Finance (No.2) Act 2023).

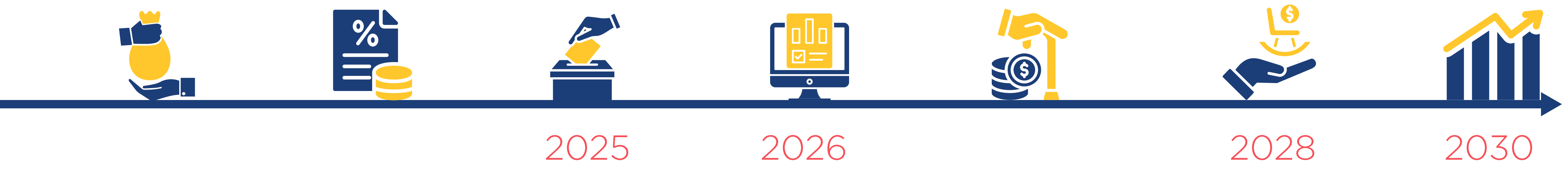
28 January 2025
General Election
The next general election must take place by this date. It marks five years from the day the current Parliament first met (17 December 2019), plus the time required to run an election campaign.

31 October 2026
Longstop date for Pensions Dashboards
The mandatory deadline for schemes to connect to pensions dashboards has been extended. The public may have access to the dashboards at an earlier date (Dashboards Available Point).

2026-2028
State Pension Age
Increases to 67.

6 April 2028
Increase in normal minimum pension age
Increase in normal minimum pension age to 57 (DB/DC). This change affects people born after 6 April 1971.

2030
RPI
RPI will be aligned to CPIH from 2030 with no compensation for holders of index-linked gilts.



In the spotlight

Next 3 months

Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023

We expect the finalised funding and investment strategy regulations to be published this year and to take effect from April 2024. The new regulations are anticipated to have an immediate funding impact on some employers and, where there is a valuation scheduled for 2024, the trustee and employer will have very little time, from publication of the finalised regulations, to navigate what may in some cases be quite complex funding issues, as well as agree a long-term funding strategy.

Further, with no indication as to when the finalised DB Funding Code will be published, there is clearly a risk of confusion within the industry as to how TPR will interpret and seek to enforce the regulations.

Engaging early with advisors is essential and trustees should consider whether to engage their covenant advisers to assist in producing the statement of strategy.

Action: Trustees and sponsors with valuation effective dates on or shortly after April 2024 should be thinking now about their approach to the new long-term funding objective and statement of strategy requirements (even though the regulations and codes of practice are still subject to finalisation).

Abolition of the Lifetime Allowance

The lifetime allowance (LTA) is the maximum amount a member can accrue in their registered pension schemes over their lifetime without incurring tax consequences. An individual will use a part of that allowance each time a 'benefit crystallisation event' occurs, such as taking a pension or turning 75. The Finance (No 2) Act 2023 abolished the lifetime allowance charge.

As part of the Autumn Statement, the Government confirmed that the Autumn Finance Bill will abolish the LTA completely from 6 April 2024. The LTA is being replaced with tax-free lump sum allowances. The 'individual's lump sum' and 'death-benefit allowance' will cover lump sums payable to the member and to their estate upon their passing. The total allowance (which will apply per member and across all schemes) is to be set at the current level of the LTA at £1,073,100.

The Government's statement on the LTA has addressed many of the concerns the industry had raised over the draft regulations implementing the abolition. However, it didn't address a number of issues including whether there would be a statutory override for schemes who have hardcoded LTA provisions in their rule and where the burden of reporting and paying tax will lie in relation to lump sum death benefits.

Action: We will need to wait for the publication of the Finance Bill (which is expected shortly) for the detail. Trustees should obtain legal advice on how the revised tax regime will operate and interact with their scheme rules once the draft legislation has been published.

First Use of Retained EU Law Act 2023 in a Pensions Context

Two sets of regulations have been laid before Parliament for approval which will codify into UK law certain EU law rights.

The first set of regulations will:

- Remove the requirement for an actual opposite-sex comparator to establish whether there is discrimination caused by the GMP legislation for post-May 1990 service (in relation not only to benefits provided under an occupational pension scheme but also the PPF compensation).
- It will also require schemes to pay equal survivors' benefits to spouses and civil partners regardless of whether they are opposite or same-sex couples.

The second set of regulations will:

- Require the PPF to pay compensation in line with the decision in *Hampshire v Board of the Pension Protection Fund*. As a result, the PPF will be required to pay at least 50% of the benefits the person would have been entitled to under the scheme's rules. This will apply from the assessment dates on or after 1 January 2024.
- It will also remove the PPF compensation cap for assessment dates on or after 1 January 2024.

In the spotlight

Next 3 to 12 months

Virgin Media Ltd v. NTL Pension Trustees II Ltd and others [2023]

Permission has been granted for Virgin Media to appeal the High Court decision on Section 37, handed down in June 2023. We expect the case to come before the Court of Appeal in the first half of 2024.

By way of reminder, at first instance the High Court found that section 37 renders invalid and void any amendment to the scheme's rules which related to what are known as "section 9(2B) rights", in so far as it was introduced without the required written actuarial confirmation that the scheme would continue to satisfy the relevant statutory standard after the amendment was made. The court also found that section 9(2B) rights related to future service rights as well as accrued benefits based on past service.

The case will be of industry-wide significance as it has the potential to render void past changes such as benefit changes where section 37 certificates were not obtained. This is particularly relevant for schemes currently going through, or thinking about going through, buy-in and buy-out exercises where it is important to properly understand the scheme's liabilities and benefits for the purpose of producing the relevant benefit specification and data set and giving the necessary warranties and representations to the insurer over the accuracy of that information.

Key Dates for the Levy Year 2024/2025

31 March 2024 - submit scheme reports and contingent asset certificates and to TPR.

31 March 2024 - submit ABC certificates and special category applications to the PPF.

30 April 2024 - submit exempt transfer applications to the PPF.

30 April 2024 - certify deficit reduction contributions with TPR.

30 June 2024 - certify full block transfers with TPR.

Online Safety Act Becomes Law

On 26 October 2023, the Online Safety Bill 2023 received Royal Assent. The bill is now an Act of Parliament.

The purpose of the Act is to require technology firms to have moderating systems and processes to deal with harmful material. A company is within the bill's scope if it distributes user-generated material to other users or is a search engine, which includes Facebook, X, Instagram, and Google. It is hoped that this will minimise the length of time that illegal content is present and accessible.

In the world of pensions, there are hopes that this Act will curb the rise of online fraud, which targets pensioners and their pension savings through scam advertising. Research from B&CE, provider of The People's Pension, shows that more than £14 billion may have already been stolen from pension savers in the UK.

The Department for Work and Pensions and other pensions groups have been campaigning for this change for the last few years, given the "*devastating financial and psychological harm that scams have been causing*". The Rt Hon Stephen Timms MP said, "*it is only right that those internet giants, which have been profiting from hosting fraudulent adverts, should be compelled to take action.*"

Much of the detail about the implementation of the Act is to follow in Codes of Practice. Ofcom has promised its first Codes of Practice on illegal harms duties within 100 days of the OSA's enactment. A careful review of all guidance and available content will be necessary for service providers to understand the extent to which they are within the scope of the OSA.

The fines for non-compliance with the Act may reach up to the higher of £18 million or 10% of annual global turnover, and the service provider executives may also face criminal liability.

Action: Schemes should keep a look out for the Codes of Practice due to be published in 2024 and update their safety policies and advice accordingly.

The Government Proposes to Increase the General Levy

While pension schemes can look forward to a reduction in the PPF levy (see p.11) the Government is seeking to increase the General Levy. As TPR and the PO are in deficit, the Government has published a consultation (which closed on 13 November 2023) and proposals on how changes to the General Levy might meet the deficit:

Option 1:

An alternative proposal is to maintain the current structure of the General Levy and freeze rates up until 2026/2027. However, increases in the General Levy rate would likely follow, as the DWP estimates a £200 million deficit should the General Levy remain the same.

Option 2:

The first proposal is to maintain the current structure of the levy but increase rates by 6.5%.

Option 3:

The final proposal, which is favoured by the Government, is to increase rates by 4% per year for all pension schemes and to charge schemes with memberships of less than 10,000 members (as of April 2026) an additional premium. This proposal aligns with the Mansion House reforms, which seek to encourage consolidation of poorly run small schemes.

Industry leaders have been generally critical of 'Option 3' as the additional premium would be unjustly harsh on small schemes, regardless of how well they are run (the ostensible goal of the reforms). Society for Pensions Professionals (SPP) opposes Option 3 and suggests that the Government's focus on consolidation does not pay sufficient attention to whether this is an appropriate option for the scheme.

The SPP has stated its preference would be to retain the current structure of the General Levy and increase rates by 6.5%, as set out in Option 2. The Association of Professional Pension Trustees (APPT) agrees that Option 2 is preferable but notes that it could support Option 3 if the additional premium were cut.

The Government aims to introduce reforms to the General Levy from 2024.

UN Climate Change Conference – Dubai 2023 (COP28)

The United Arab Emirates will host the 28th UN Climate Change Conference of the Parties (COP28) in Dubai from 30 November to 12 December 2023.

At COP28, attention will focus on the results of the first Global Stock Take Report (GST), the primary mechanism by which progress under the Paris Agreement 2015 is assessed.

It is hoped that the conference will aid efforts to:

- encourage governments to develop a roadmap to accelerate climate action to meet the Paris Agreement's goals.
- operationalise the Loss and Damage Fund (established at COP27). This Fund will support those countries disproportionately impacted by the climate crisis, paid for by wealthier nations.

The UK Government and many UK businesses and schemes will likely announce several climate-related initiatives in the run-up to COP28.

Action: Trustees, providers, and asset managers should monitor developments before and after the COP28 conference particularly with respect to any changes to climate change related disclosures which might inform "best practice" when it comes to scheme disclosure requirements.

Notes

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