EVERSHEDS SUTHERLAND

Spring into action

Pensions Agenda

Spring 2024

1. The lifetime allowance has gone

The lifetime allowance was abolished on 6 April 2024. To the extent they haven't already, schemes need to:

- ensure their administrative processes and systems are updated to reflect the new tax regime; and
- update their member communications.

Trustees should also consider how the abolition of the LTA impacts their scheme's rules. **Transitional regulations** contain provisions that maintain the effect of limits on benefits that work by reference to the lifetime allowance until the end of the 2028/29 tax year. However, scheme rules will need to be amended in due course to ensure any such limits continue to apply beyond that.

HMRC plans to make further amendments to the Finance Act 2004 and underlying legislation shortly (backdated to 6 April 2024) to address areas where they do not reflect the policy intention. HMRC has **indicated** some members may want to delay taking or transferring their benefits until these changes are made.

Action – Finalise the changes to your systems, processes and member comms to reflect the new tax regime. Continue to monitor future guidance and updates issued by HMRC. Review your scheme rules and identify what changes need to be made.

2. General Code in force

The General Code is now in force. The Code is designed to improve scheme governance by clarifying and updating the Pensions Regulator's (TPR) expectations on how schemes should be run.

As well as updating existing requirements, the Code sets out TPR's expectations in a number of new areas, including what schemes should do to comply with the legal requirement to have an 'effective system of governance' and to produce a regular 'own risk assessment'.

Action – Identify gaps in your scheme's existing governance arrangements. Put in place a project plan to address these, prioritising areas that pose the greatest risk to your scheme and members.

3. New funding requirements in force

The new funding requirements for DB schemes came into force on 6 April 2024. This includes new requirements for trustees to:

- put in place a long-term funding and investment strategy to ensure their scheme reaches a low dependency funding level by the time it is significantly mature; and
- calculate their technical provisions in accordance with this strategy.

The new requirements will apply to valuations with an effective date on or after 22 September 2024.

TPR is due to publish its new DB funding Code this summer alongside final guidance on its new twin track approach to reviewing scheme's funding arrangements and on the form and contents of the new statement of strategy. TPR is also due to consult this summer on new covenant guidance.

Action – Keep an eye out for the new funding Code and related guidance and consider how the new requirements will impact your next valuation.

4. Pension dashboards connection dates confirmed

The DWP has issued updated **guidance** on connecting to pension dashboards which includes a revised connection timetable. The largest schemes are due to connect from 30 April 2025.

Although the timetable is not mandatory, schemes are expected to be ready to connect to the dashboards ecosystem by their connection date, other than in exceptional circumstances.

As well as preparing their data, schemes also need to set their policy for matching members with their benefits and consider how to manage the risks associated with the dashboards.

Action - Check your scheme's revised connection date and put an action plan in place, allowing sufficient time to review and cleanse your dashboard data. Ensure your dashboard obligations are reflected in new and existing service and IT provider contracts – our **briefing** gives more information on this.

5. Relaxing rules on use of surplus

The tax charge payable on a return of surplus to an employer was reduced from 35% to 25% from 6 April 2024.

The government is also consulting on making the rules relating to the distribution of surplus from ongoing schemes more flexible. This is designed to make it easier for DB schemes to make a payment to employers or members out of surplus assets and/or use a surplus to enhance members' benefits. However, it is unlikely any changes will be implemented before the General Election.

Action – Look out for the response to the consultation on reforming the rules on the use of surplus and consider how this might impact your scheme.

6. Creating a public sector consolidator

The government has said it wants to establish a public sector consolidator for DB schemes that are unattractive to commercial providers by 2026.

Although a public consolidator would focus on smaller DB schemes, the consultation indicates it may be open to larger or more complex schemes that may not be able to secure members' benefits with a commercial provider. The consultation also suggests the consolidator might be an option for underfunded schemes, where an employer enters into a suitable funding agreement.

To help minimise complexity and costs, the government is proposing the consolidator would be able to offer a small number of standardised benefit structures but without reducing the headline value of members' benefits.

The consolidator would be run by the PPF. Although it would be kept separate from the PPF's existing funds.

It is unclear whether a Labour government would take this forward and, if so, whether it will commit to the same timetable.

Action - Monitor developments.

7. Date set for Virgin Media appeal

The appeal in the Virgin Media case, relating to the validity of amendments to a formerly contracted-out salary related scheme where there is no evidence a section 37 confirmation was obtained from the scheme actuary, is due to be heard on 25 June 2024. Therefore, the judgment can be expected sometime in the autumn.

The appeal will focus on one aspect of the High Court's decision - whether the requirements of section 37 applied to changes affecting future service benefits as well as those affecting past service benefits. The High Court held that they did. Therefore, the outcome of the appeal will be important in determining the potential extent of this issue for affected schemes.

Action - Consider whether you need to carry out a review of historic amendments to your scheme in advance of the appeal. Even where a detailed review is not required, a high level review can help to identify the extent of any issues that may need to be addressed or to alleviate concerns. It can also help identify any limitation issues that may need to be considered.

8. New decumulation duties for DC schemes

The government has indicated it plans to place a duty on trustees of schemes that provide money purchase benefits to offer a range of decumulation options to their members, including a suitably designed default option. Trustees would either need to offer these services in-house, or partner with a third party who could provide these services.

Any new statutory duty is unlikely to be introduced before the General Election. However, in advance of this, the government has said that trustees can expect guidance from TPR outlining its expectations in this area.

Action – Look out for TPR's guidance and, where relevant, consider how your scheme might comply with any new regulatory expectations.

9. New corporate identity and reporting requirements

The Economic Crime and Corporate Transparency Act 2023 contains new corporate governance and reporting requirements.

The requirements are coming into force in stages. They include a requirement for directors, persons with significant control of a company, and those filing information at Companies House to verify their identity. It is expected this requirement will come into force later this year.

The Government has also said it will bring into force existing legislation that restricts the use of corporate entities as directors. It remains to be seen how this will impact corporate trustees that have a corporate entity as a director. However, it is expected there will be an exception to permit companies to have one layer of corporate directors in certain circumstances.

For details of the new requirements that are already in force see our **briefing**.

Action – Monitor when these new requirements come into force and take steps to ensure compliance.

10. Small pots consolidation moves closer

The government has confirmed it plans to implement a multiple default consolidator model to reduce the growing number of small deferred DC pension pots.

An industry delivery group has been set up to advise on the design and implementation of this solution. The group is due to provide an interim update to Ministers by Spring / Summer 2024, with proposals for Ministers to consider in late 2024.

Action – Schemes that provide money purchase benefits should monitor developments.

Key dates

Date	Change	Action
April/May 2024	Further amendments to the Finance Act 2004 related to the abolition of the lifetime allowance due to be made.	Look out for the next set of amending regulations.
25 June 2024	Date of appeal hearing in Virgin Media case.	Look out for the judgment in autumn 2024.
31 July 2024	FCA rules on sustainability disclosure requirements and investment labels come into force.	Look out for use of these labels on any funds in which you are invested.
Summer/Autumn 2024	New identity requirements for directors and restrictions on corporate directors expected to come into force.	Monitor when new requirements come into force and take steps to comply.
Summer/Autumn 2024	Changes to UK GDPR made by Data Protection and Digital Information Bill may come into force.	Monitor progress of Bill through Parliament.
22 September 2024	New statutory funding requirements and new funding Code apply to valuations from this date.	Watch out for the final Code and TPR guidance.
30 April 2025	First connection date for pension dashboards.	Confirm your scheme's connection deadline.
31 October 2026	Long-stop date for connecting to pension dashboards.	Put in place a project plan to ensure you scheme is ready to connect by its connection date.
6 April 2028	Normal minimum pension age will rise from age 55 to 57, but some members will retain a right to retire at 55.	Assess impact on your scheme. Decide when and how to tell members if the age at which they can access their benefits will change.
2030	RPI likely to be aligned with CPIH.	Review likely impact on scheme investments and benefits.

For more information on how we can help you please contact your usual Eversheds Sutherland adviser or:

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