SLAUGHTER AND MAY/

PENSIONS ESSENTIALS

May 2024

QUICK LINKS

GENERAL ELECTION

The prime minister has called a general election for the 4 July 2024 and parliament will be dissolved on 30 May. This will undoubtedly have implications for the pensions proposals which have been consulted on in recent months (including accessing surplus, consolidation and collective defined contribution schemes), if only in relation to timing. In addition, if the government changes, a new government is likely to have a pensions policy agenda of its own.

There are a number of areas in relation to existing policy where the general election is likely to have implications for occupational pension schemes. The key ones are set out below.

Scheme funding: Although the regulations for the new DB funding regime are already in place, we are still awaiting the final code of practice which will set out the Regulator's expectations and how schemes will determine when they will reach significant maturity. The requirement to have a funding and investment strategy in place will apply 15 months from the effective date of the first valuation on or after 22 September 2024 which would mean that ideally the code should be in place before then. However, the code must lie before parliament for 40 days and periods when it has been dissolved or is in recess don't count. That means there is not enough time for the code to be in place by September so it remains to be seen whether the timing in the regulations will be revised or if we will just have to wait a little bit longer for the final version of the funding code (which we understand is ready to publish).

Refund of surplus in ongoing schemes: In March this year, the government consulted on proposals to facilitate the repayment of surplus in ongoing schemes with the idea that this would encourage schemes to invest in productive capital as any resulting surplus would not be trapped in the scheme. Any repayment would be subject to appropriate safeguards on benefits. The Labour Party indicated in its Financing Growth plan that it will continue to pursue the current government's agenda of encouraging pension schemes to invest in UK equities and growth assets so it is possible that whatever the outcome of the election, the surplus proposals may see the light of day, but the timing is likely to be pushed back.

Collective defined contribution schemes: Following a consultation in January, developments were expected later this year which would have allowed the introduction of commercial CDC schemes as an alternative decumulation offering. It is not clear what a new government's policy would be in this area so we will just have to wait and see. The Labour Party said in its Financing Growth plan that it would conduct a general review of the pensions landscape to evaluate whether the current framework "*will deliver sustainable retirement incomes for individuals*" so it may be that CDC would still fit within this agenda.

Consolidation: In its corporate plan published earlier this month (see below), the Pensions Regulator said that it continued "*to observe consolidation in the pensions industry*" and welcomed "*the shift towards fewer, larger, well-run schemes in the market that offer the ability to invest across a range of assets in their members' interest and have the scale to offer administrative efficiency and good governance*." Both the Labour and Conservative Parties appear committed to supporting this agenda but it is not clear whether a Labour government would take forward the current proposals for the PPF to act as a public consolidator.

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Automatic enrolment: In 2017, a review of auto-enrolment recommended that the qualifying age threshold should be lowered from 22 to 18. It also recommended that the lower limit on the qualifying earnings band (the earnings on which contributions are paid and currently between £6,240 and £50,270) should be removed so that contributions are paid from the first pound earned. In 2023, legislation was brought into force which will allow regulations to make these changes and the government said last year that it intended to consult on their implementation "*at the earliest opportunity*". No regulations have so far been issued but the Act received cross party support during its passage through Parliament so it seems likely that any new government would consider issuing the necessary regulations fairly quickly, assuming that their legislative agenda has sufficient parliamentary time to do so. It is also possible that any new government might carry out a more fundamental review of whether the current regime is likely to provide most employees with an adequate income in retirement.

Lifetime allowance: HMRC has indicated that further regulations are needed to clarify some of the details around the abolition of the lifetime allowance and the operation of the new lump sum allowances that have replaced it (see our briefing for more details). These regulations are now on hold and it is not known what approach a Labour government would take to the lifetime allowance as it was not in favour of its abolition. In addition, it is possible that they might contemplate wider pensions tax reform and fundamental changes to the existing regime.

Practical points:

- *Be aware that upcoming pensions legislation is likely to be delayed and may not happen at all.*
- *Watch out for more developments in the Autumn.*

PENSIONS OMBUDSMAN ON EQUALISATION

The Deputy Pensions Ombudsman recently considered whether a deed retrospectively changing normal retirement ages to equalise them at age 65 for all service was valid where the scheme also provided an uplift for service between 17 May 1990 and the date of the amending deed.

On 17 May 1990, the European Court decided in *Barber v Guardian Royal Exchange Assurance Group* that where an occupational pension scheme had different retirement ages for men and women, that amounted to unlawful sex discrimination. Later cases clarified that equalisation was only required for benefits accrued after 17 May 1990 and retirement ages could be equalised at the less advantageous (usually male) retirement age, but benefits accrued between 17 May 1990 and the effective date of equalisation (the Barber Window) had to be calculated by reference to the better (usually female) retirement age. In addition, the courts have held that it is not generally possible to close the Barber Window with a retrospective deed of amendment.

A recent Deputy Ombudsman determination considered these equalisation requirements. In November 1990, members of the Avis UK Pension Plan were told that the Plan's normal retirement date would be equalised at 65 for men and women for all service, having previously been 65 for men and 60 for women. They were also told that where they retired early, with employer consent, any actuarial reduction would be calculated by reference to age 60. The deed making the amendment was executed in November 1992. The Plan amendment power permitted retrospective amendments.

Mrs E joined the Plan in 1986 and was made redundant in December 1992. She sought to retire in 2019 at age 64. It appears that early retirement practices in the Plan had evolved over time (although the determination does not provide details about this) and that the trustees had continued to obtain advice on equalisation. E was informed that her normal retirement date was 65, but an uplift would be applied to her benefits in the Barber Window (17 May 1990 to November 1992). E claimed that the whole of her benefit accrued up to November 1992 should be calculated by reference to a normal retirement age of 60.

The Deputy Ombudsman agreed with the adjudicator that the *Barber* judgement did not impose any requirements on how benefits earned prior to 17 May 1990 had to be treated. Equalisation case law did not prevent the trustee from retrospectively increasing female members' normal retirement ages to age 65 for pre-17 May 1990 service where that was permitted under the Plan rules. In addition, the restrictions on modifying accrued rights in section 67 Pensions Act 1995 only came into force on 6 April 1997 and so did not apply to the changes made to normal retirement age by the 1992 deed.

The determination is based on a very specific set of facts and so has limited direct relevance to most schemes. However, the acceptance of such a fundamental retrospective change to benefits is surprising. Trustees must exercise amendment powers for a proper purpose and there was no discussion about whether a retrospective change of this nature would amount to a proper use of powers and be consistent with fiduciary obligations.

***Practical points*:**

- *If the validity of an equalisation deed is raised, take advice.*
- *Retrospective amendments may be subject to statutory and fiduciary constraints.*

DASHBOARD UPDATE

The pensions dashboards continue to gather momentum in advance of the longstop connection date of 31 October 2026. The Pensions Regulator has said that schemes need to ensure that their data is dashboard ready. The Pensions Dashboard Programme has updated its technical standards for connection and the Pensions Administration Standards Association is intending to publish a raft of guidance later this year to help schemes get ready for the dashboards.

The CEO of the Pensions Regulator recently said that schemes must ensure that they get the basics right on data quality to ensure they can deliver on their obligations in relation to the pensions dashboards. In addition, the Regulator intends to go "*out into the market, at scale, to ensure schemes have high quality data*" and engage with "*hundreds of schemes [to ask] them to account for how they are measuring and improving their data and… taking action where trustees are failing to meet… expectations*."

Having good quality data will help trustees ensure that they are able to meet their dashboard obligations, match members with "find requests" they receive from the dashboards and supply the required information about benefits. Work to ensure that this data is available and searchable should already be well underway.

The Pensions Dashboards Programme (**PDP**) has published updated data standards which cover the data requirements for finding and viewing pensions information. The PDP says that the standards are intended to help schemes and third party organisations connecting to the dashboards on their behalf "*to build a common set of message handling tools to receive and reply with data*". Compliance with these data standards is mandatory and trustees should ensure that whoever is dealing with dashboard compliance on their behalf has regard to them.

In due course, the PDP will also publish final versions of other dashboard standards which will cover technical, reporting and design issues, as well as a code of connection, made up of security, service and operational standards.

For trustees looking for additional help with complying with their dashboard obligations, the Pensions Administration Standards Association (**PASA**) has said that it intends to issue further guidance on the dashboards which will cover additional voluntary contributions; testing dashboard readiness once systems are set up; the matching criteria used to match find requests to members; and ensuring scheme administration can cope with the volumes of member requests for additional information that might follow on from the dashboards.

Note that it is not yet known what date the dashboards will go live to members (the "dashboard available point"). However, the government is required to give the industry six months advance notice of when this will be – which seems likely to be late 2026 or sometime in 2027.

***Practical points*:**

- *Watch out for further guidance from PASA.*
- *Consider if more work needs to be done on scheme data.*
- *Monitor dashboard workstreams.*

PENSIONS REGULATOR UPDATE

The Pensions Regulator has issued its corporate plan setting out its priorities for the next three years. It is intending to focus on the new DB funding regime, value in DC schemes and driving the consolidation agenda.

The Pensions Regulator's intentions in relation to its workstreams over the coming years are relevant to trustees and sponsors because it highlights the level of engagement they can expect from the Regulator and in what areas.

The Regulator says that its proposed work includes:

- Implementing the new DB funding regime which "*includes engagement with the market to discuss expectations and how to demonstrate compliance*". As said above, there may be some delays in this area as a result of the general election.
- Supporting schemes to prepare for their new dashboard duties by providing guidance and contacting schemes to explain what action they need to take.
- Supporting consolidation including driving value across DC schemes and developing the joint FCA and Regulator value for money framework; working with the PPF to assess new options as they emerge; and engaging with the market to ensure good quality consolidation vehicles, such as the emergent CDC market. The Regulator's recently published analysis of occupational DC schemes indicates that consolidation is already happening as the number of DC and hybrid schemes with 12 or more members decreased by 11% over the last year while the number of members increased by 9%. Slightly worryingly, the Regulator also reports that there was little growth (1%) in assets per member in 2023 (down from an annual growth of 10 to 20% in the previous three years, possibly as a result of market volatility over the period).
- Recognising the challenges related to LDI and working with other regulators to ensure that the pensions industry does not pose a systemic risk to the wider financial system. However, for the moment, it does not appear that there is likely to be additional regulation in relation to LDI.
- Working with the industry to ensure trustees meet expectations and that they have an effective system of governance, including appropriate levels of risk governance. This will include developing a framework for oversight of professional trustee firms, given their increasing role in the market.

Practical points:

- *Watch out for more on the Regulator's expectations of professional trustees.*
- *Watch out for more on DB funding and DC value for money.*

WATCH LIST

For upcoming developments see our new pensions horizon scanning webpage. Note that the dates in this table may all be delayed as a result of the July general election.

No	Topic	Effective date or expected effective date	Further information/action
1	Changes to DC scheme governance and disclosure	Late in 2024.	Consultation expected on phased introduction of new value for money framework for all DC schemes (excepting some small schemes). Draft regulations to extend CDC to multi-employer schemes expected in 2024.

No	Topic	Effective date or expected effective date	Further information/action
			Proposals on consolidators for small DC deferred pots expected late 2024, a taskforce has been set up.
2	DB consolidation	Legislation "as soon as Parliamentary time allows", for new compulsory framework for superfunds. Public consolidator to be established by 2026, consultation on features closed on 19 April 2024.	TPR updated interim guidance - issued August 2023. Consultation is ongoing on PPF becoming a public consolidator and the conditions that should attach to its operation as such.
3	Changes to pensions tax allowances	Lifetime allowance removed on 6 April 2024 and two new tax-free cash allowances introduced.	Further amending Regulations expected in 2024/25.
4	Repayment of surplus	The reduction in the tax charge took effect on 6 April 2024. Consultation closed on 19 April 2024.	Tax charge on repaying surplus reduced from 35% to 25%. Consultation has closed on facilitating repayment of surplus in ongoing schemes and appropriate safeguards for members.
5	Funding and investment strategy requirements for DB schemes	Legislation came into force 6 April 2024. Funding and investment strategy in place 15 months from date of the first valuation obtained on or after 22 September 2024. Revised Code of Practice from TPR expected to be published later in 2024.	Consultation on covenant guidance expected later in 2024. TPR has consulted on the form of the strategy statement.
6	Notifiable events for DB schemes on corporate and financing activity	Significant uncertainty about publication of Government response to consultation on draft Notifiable Events (Amendment) Regulations.	TPR will consult on update to Code of Practice 2 (Notifiable Events) and accompanying guidance once DWP have published their finalised regulations and consultation response.

No	Topic	Effective date or expected effective date	Further information/action
7	Pensions dashboards	Compulsory connection deadline of 31 October 2026 for schemes with 100 or more active and/or deferred members at year end between 1 April 2023 and 31 March 2024; staging timetable set out in DWP guidance. Application for deferral (in limited circumstances existing at 9 August 2023) must be made by 8 August 2024.	All registerable UK-based schemes with active and/or deferred members.
8	Corporate transparency	The Economic Crime and Corporate Transparency Act 2023 introduces requirements on identity verification, corporate directors and limited partnerships. The requirement to have a registered email address and for registered offices to meet certain requirements came into force on 4 March 2024. Other provisions are due to come into force later in 2024.	All corporate trustees and schemes using Scottish Limited Partnerships. More detail about what the Act requires can be found in our briefing.

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