MAYER | BROWN

November 2023

The Pensions Brief

At a glance...

Issues affecting all schemes

▲ **LIFETIME ALLOWANCE ABOLITION**
Legislation laid before Parliament

▲ **OVERPAYMENTS**
High Court decision on recoupment

▲ **AUTUMN STATEMENT**
Pensions aspects

▲ **TRUSTEE SKILLS**
Response to call for evidence

▲ **LIFETIME PENSION PROVIDER**
Call for evidence on a lifetime provider model

PENSIONS DASHBOARDS
FAQs on data response deadlines

Issues affecting DB schemes

▲ **PRODUCTIVE FINANCE**
Response to call for evidence

▲ **DERIVATIVES**
Call for evidence on clearing exemption

ALTERNATIVE FUNDING ARRANGEMENTS
Pensions Regulator blog post

Issues affecting DC schemes

▲ **DECUMULATION SERVICES**
Response to consultation

▲ **SMALL DC POTS**
Response to consultation

DC MASTER TRUSTS
Review of regime

▲ Action required
▲ Monitor development

Dates to note over the next 12 months

31 January 2024

Deadline for schemes to send annual event report to HMRC (2022/23 tax year)

31 March 2024

PPF levy deadline for submission of scheme returns, contingent asset and asset-backed contribution certificates and special category employer applications

2 April 2024

PPF levy deadline for submission of supporting contingent asset documents

6 April 2024

- Abolition of lifetime allowance comes into force
- New DB statutory funding regime expected to come into force

30 April 2024

PPF levy deadline for submission of deficit reduction contribution certificates and exempt transfer applications

30 June 2024

PPF levy deadline for submission of full block transfer certificates

Key:

Important dates to note

For information

Issues affecting all schemes

Lifetime allowance – abolition

The Finance Bill has been laid before Parliament. Its pensions-related provisions include:

- Abolition of the lifetime allowance (LTA).
- Changes to the taxation of lump sums and lump sum death benefits.
- Changes to the taxation of lump sums paid by overseas pension schemes.
- Changes to the overseas transfer charge.
- Changes to the rules governing LTA protections.
- Changes to scheme reporting obligations.
- Transitional provisions, in particular in relation to the treatment of benefits taken before 6 April 2024.

The provisions will come into force on 6 April 2024. Accompanying explanatory notes and an HMRC policy paper have also been published.

The new regime in summary

The legislation remains broadly as set out in HMRC's consultation on the draft legislation. From 6 April 2024 the concept of the LTA will be removed from legislation and a new regime for the tax treatment of lump sums and lump sum death benefits will be introduced. A new "lump sum allowance" of £268,275 (i.e. 25% of the current LTA) and a new "lump sum and death benefit allowance" of £1,073,000 (i.e. the current LTA) will be created. Individuals will not pay tax where the non-taxable element of lump sums they receive does not take them above these levels. To the extent that the otherwise non-taxable element of a lump sum exceeds these levels, it will be taxed at the recipient's marginal rate (except where protections apply). The allowances will be personal rather than scheme limits and will not take into consideration the payment of regular pension income.

Post-consultation changes

Some changes have been made following the consultation, including:

- The tax-free element of a trivial commutation lump sum, winding-up lump sum or small lump sum will not now count towards the new lump sum allowance. However an individual must have available lump sum allowance to be able to take those lump sums.
- A new type of lump sum, the pension commencement excess lump sum (PCELS), will be introduced. It is intended to be similar to the current LTA excess lump sum. However, it can only be paid in connection with the individual becoming entitled to the associated pension and if the individual has exhausted their lump sum allowance. There is a cap on the maximum PCELS that can be taken. A PCELS will be taxed at an individual's marginal rate.

Action

Trustees and administrators should consider what changes they will need to make to their scheme's administration processes and member communications in light of the changes. They should also consider whether a standalone member communication on the changes should be issued, in particular to those approaching retirement.

Action

Trustees and employers should consider whether any elements of their scheme's benefit design should be amended in light of the changes. They should also consider whether any current scheme projects, e.g. GMP conversion, may be affected by the changes.

Action

Employers should consider whether any changes are required to their employee communications on pensions. They should also consider whether any special arrangements put in place in light of the LTA, e.g. for employees whose benefits have reached the LTA, should be revisited.

Overpayments – recoupment

If trustees wish to recover an overpayment by equitable recoupment (i.e. by deducting the overpayment from future pension instalments), and the member disputes the amount to be recouped, either in total or from each pension instalment, the trustees must obtain an order of a competent court to enforce the recoupment. The Court of Appeal has upheld the High Court's decision that the Pensions Ombudsman is not a competent court for these purposes.

Action

Trustees and administrators should note the decision and ensure that their scheme's procedures for recovering overpayments are consistent with it.

Autumn Statement – pensions aspects

The Autumn Statement contained various pensions-related announcements, including:

- The government will launch a call for evidence on a lifetime provider model which would allow individuals to have contributions paid into their existing pension scheme when they change employer.
- The Financial Conduct Authority will consult on new value for money (VFM) rules for contract-based schemes in spring 2024. It will work closely with the government and the Pensions Regulator (TPR) for consistency with the development of legislative requirements for trust-based schemes. In the meantime, actions from TPR will strengthen their existing supervisory approach.
- The authorised surplus payments charge will be reduced from 35% to 25% from 6 April 2024.
- The government will commit £250 million to two successful bidders in the Long-term Investment for Technology and Science (LIFTS) initiative, subject to final agreement. It will also establish a new Growth Fund within the British Business Bank to give pension schemes access to opportunities in the UK's most promising businesses.

The Statement also announced responses to the various consultations launched in July 2023 as part of the Mansion House Reforms – these are discussed separately below. For more information, please see our legal update.

Action

Trustees, employers and administrators should monitor implementation of the announcements.

Trustee skills and capability – call for evidence response

The government has responded to its call for evidence on how trustee skills and capability could be improved and barriers to effective investment decision-making removed. The response concludes that while trustees would benefit from more support, guidance and training, one of the key barriers to achieving better long-term outcomes for members is a damaging and continual focus on cost and minimising all risks. There are several areas where immediate action will be taken, including:

- TPR will put in place a trustee register.
- TPR's General Code will set accreditation for professional trustees as an expectation.
- TPR will update its investment guidance, including providing additional guidance on investment decisions and alternative assets.
- TPR will provide further information for employers on what factors should be assessed when they are selecting a pension scheme.

Action

Trustees and employers should monitor implementation of these actions.

Lifetime pension provider – call for evidence

The government is calling for evidence on whether a lifetime pension provider model would improve outcomes for savers. Under the lifetime provider model, rather than employers selecting the scheme to which they contribute on behalf of employees, they would contribute to the employee's chosen scheme. A form of central architecture would allow employers to identify which scheme the employee is using as their lifetime provider, rather than the employee being required to inform their employer of their lifetime provider. The government anticipates that exemptions would be required where an employer provides a better offering than the lifetime provider.

The call for evidence also covers the potential benefits of encouraging or requiring employers to automatically enrol their employees into a scheme offering a collective DC (CDC) option and whether there is merit in considering a potential CDC lifetime provider model. The call for evidence closes on 24 January 2024.

Action

Trustees, employers and administrators should monitor the outcome of the call for evidence.

Pensions dashboards – data response times

The Pensions Dashboard Programme (PDP) has published FAQs on the required response times for provision of value data. The FAQs cover:

- The 3/10-day rule in legislation.
- Application of the 3/10-day rule.
- The situation where the user requests their values after some time has passed.
- How the 3/10-day rule differs from response times set in PDP standards.
- The penalties for exceeding the 3/10-day rule.

Action

No action required, but trustees and administrators may find the FAQs helpful.

Issues affecting DB schemes

Productive finance – investment by DB schemes

The government has responded to its call for evidence on how investment by DB schemes in productive finance could be increased while maintaining benefit security for members. The response concludes that the government will:

- Introduce measures to make extraction of surplus while a scheme is ongoing easier.
- Establish a public sector consolidator run by the Pension Protection Fund (PPF) by 2026.

The government will consult this winter on the detail of these measures, including design, eligibility, safeguards, and the viability of introducing an option for schemes to pay a higher PPF levy in return for 100% benefit protection by the PPF.

Action

Trustees and employers should monitor publication of the government's consultation.

Derivatives – clearing exemption

The government is calling for evidence on the exemption for pension schemes from the clearing obligation under the European Market Infrastructure Regulation (as incorporated into UK law). The information collected will be used to inform the government's review of the exemption and its final policy decision on the future of the exemption. The call for evidence closes on 5 January 2024.

Action

Trustees and employers should monitor the outcome of the call for evidence.

DB funding – alternative arrangements

TPR has published a blog post on alternative DB funding arrangements (in particular, capital-backed journey plans). Among other things, this notes that:

- TPR will issue guidance in the new year on such arrangements.
- TPR expects trustees to engage proactively and early with TPR (and the PPF if applicable) so they can assess the proposed arrangement – this assessment will take two to six months.
- Any additional investment risk taken needs to be balanced against the level of capital put in place, and the trustees should have ultimate say over the appropriate level of risk taken.
- Trustee boards need to have sufficient collective knowledge and skill to navigate the pros and cons of the arrangement and not be conflicted. They should consult their advisers where appropriate.

Action

No action required.

Issues affecting DC schemes

Decumulation services – consultation response

The government has responded to its consultation on a proposed framework for supporting DC members in their decumulation choices. The response confirms that DC schemes will be required to offer a decumulation solution, or set of solutions, which are suitable for their members in general and consistent with the pensions freedoms. When they come to access their benefits, members will have the option to either choose the (or one of the) default solutions offered by the scheme or to access their benefits in one of the other manners permitted under the pension freedoms by transferring to another scheme. Schemes will need to offer their chosen solution(s) in-house, or partner with another supplier who can provide them.

The government will legislate at the earliest opportunity to impose these duties. In the meantime, it will encourage schemes to voluntarily develop a decumulation offering or enhance their current services. To support this, TPR will publish interim guidance to show how the objectives of these policies can be met without legislation.

Action

Trustees, employers and administrators should monitor implementation of the new requirements, including the publication of TPR's guidance.

Small DC pots – default consolidation

The government has responded to its consultation on proposals for the introduction of a default consolidator solution to deal with small DC pots. The response confirms that the default consolidator model will be introduced in broadly the same form set out in the consultation. Schemes will be required to transfer DC pots of £1,000 or less which have been deferred for at least 12 months into one of multiple default consolidator schemes. A central clearing house will notify the scheme of the consolidator to which the transfer should be made.

An industry delivery group will be created to work through the issues that implementing the consolidator model presents, with the intention that this group will provide proposals to the government for consideration in late 2024.

Action

Trustees and administrators should monitor implementation of the default consolidation solution.

DC master trusts – review

The government has carried out a review of the authorisation and supervision regime for DC master trusts, including areas where the regime may need to be updated. Among other things, TPR will:

- Seek an increased flow of more timely asset management and investment information.
- Expect trustee boards to have appropriate levels of expertise in investments.
- Work to define and identify schemes reaching a systemically important size and consider what additional oversight these schemes may require.
- Consider how to mitigate against potential conflicts of interest arising from multiple trustee appointments.

The government may consider legislative changes, including addition of the chief investment officer to the list of "fit and proper" persons and addition of risk notices to the authorisation and supervision regime.

Action

No action required.

Mayer Brown news

Upcoming events

For more information or to book a place, please contact Katherine Carter.

- **Trustee Foundation Course**
  6 March 2024
  5 June 2024
  11 September 2024
  11 December 2024
- **Trustee Building Blocks Classes**
  15 May 2024 – topic TBC
  13 November 2024 – topic TBC
- **Quarterly webinars**
  20 March 2024 – topic TBC
  26 June 2024 – topic TBC
  24 September 2024 – topic TBC
  27 November 2024 – topic TBC

Mayer Brown updates

Jay and Andrew are delighted to let you know that:

- Dian Smith, legal secretary in our Pensions Group, was named "Frontline Hero of the Year" at the Pensions Management Institute's Pinnacle Awards 2023. The award recognises the work Dian does not only in supporting our Pensions Group, but also in the pro bono space. Andrew commented: "This is fantastic, and well-deserved industry recognition. Very many congratulations to Dian".
- Joel Silverstein, currently a trainee solicitor at Mayer Brown, will be joining our Pensions Group as an Associate upon his qualification in March 2024. We look forward to introducing Joel to our clients.

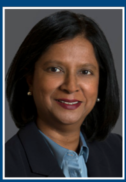
Mayer Brown legal updates

- Autumn Statement 2023 – pensions aspects

Our legal updates from the last three months are available here.

Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

For more information about the Pensions Group, please contact:



Jay Doraisamy

Co-Head of Pensions, London
E: jdoraisamy@mayerbrown.com
T: +44 20 3130 3031

Andrew Block

Co-Head of Pensions, London
E: ablock@mayerbrown.com
T: +44 20 3130 3366