

# **Pensions Lessons for Trustees 2023**

**What Has Happened to the Pensions Timetable?**



*Dear Trustees,*

*Our annual back-to-school themed publication is designed to help with your business planning. It contains a reminder of recent developments, suggests what action you should take and highlights what is on the horizon.*

*In our publication, we ask, "What has happened to the pensions timetable?" Some key developments have not progressed as expected, while others have moved rapidly up government and regulatory agendas. Pensions is definitely a political hot potato at the moment!*

*Please let us know if you have any questions on these important issues.*

*Kind regards,*

*Squire Patton Boggs Pensions Team*





Welcome to the new academic year! Here is your pensions timetable for the coming week. It might not be fully reflective of the national curriculum, but most of it looks like fun.

We invite you to click on each topic to see what the lesson has in store.

Monday	Tuesday	Wednesday	Thursday	Friday
<b>Yoga</b> Mansion House Reforms – Trusteeship	<b>Woodwork</b> Mansion House Reforms – Defined Contribution (DC) Schemes	<b>Photography</b> Pensions Dashboards	<b>World Book Day</b> Data Protection and Cybersecurity	<b>Show-and-Tell</b> New DC Disclosures
L	U	N	C	H
<b>Domestic Science</b> Mansion House Reforms – Defined Benefit (DB) Schemes	<b>Law</b> Section 37 Confirmation	<b>Orchestra Rehearsal</b> ESG	<b>Chemistry</b> Retained EU Law	<b>School Concert</b> On the Horizon
	<b>Football Training</b> General Code of Practice		<b>Chess Club</b> Pensions Tax Changes	

## Mansion House

Chancellor Jeremy Hunt’s Mansion House speech on 10 July 2023 launched a wide-ranging review of pension policy. The review covered a number of developments that are seemingly unconnected but are united by the government’s intention to “boost outcomes for savers and increase funding liquidity for high growth companies through reforms to the UK’s pension market.”

A package of documents issued after the speech included responses to consultations, new consultations and calls for evidence. Our Pensions partners share their views on the reforms in our recent publication [Thoughts on the Mansion House Package of Reforms](#).

# Mansion House Reforms – Trusteeship

## Timetable – Monday Morning. Yoga.

A yoga session might be just the thing to get your week off to a good start. Please take a few deep breaths before limbering-up to read the government’s latest thoughts on pension trusteeship.



## A Call for Evidence to Improve the Skills and Capabilities of Pension Trustees and Remove Barriers to Making Effective Investment Decisions

### What Is the Issue?

The Department for Work and Pensions (DWP) and HM Treasury (HMT) are giving the issue of pension “trusteeship” a thorough workout. They issued a [call for evidence](#) to stretch out the evidence base around trustee capability and other barriers to trustees doing their job in a way that is effective and results in the best outcomes for savers. The DWP will be considering the role of trustees generally, and HMT is examining trustees’ investment decision-making processes.

The call for evidence questions whether there should be a certain proportion of accredited trustees on every trustee board and/or whether the government should mandate that all trustees must be accredited. There is a clear strategy to consolidate the market and move towards professional trustees, with the government saying that its long-term vision is to have a smaller number of schemes, each with a professional trustee.

The call for evidence focuses on trustees’ skills and capabilities in an investment setting. It questions whether advisers are providing suitable advice to trustee boards or whether the quality of advice is holding trustees back from making better investment choices (including considering productive finance). The government is seeking information on whether the current framework and guidance on fiduciary duty is sufficient to help trustees make decisions in the best long-term interest of savers. It says, “Ultimately investment decisions are a matter for trustees in line with their fiduciary duty to manage ‘risk and reward’ in their members’ best interests. This includes whether an investment in their assessment is expected to lead to additional value that outweighs the expected costs to members. Whilst we recognise that the primary purpose of fiduciary duty is to protect the interest of savers, we are concerned that there may be a risk averse culture in the

application of this duty, or even a perception that fiduciary duty means capital preservation at all costs.”

### Which Occupational Schemes Are Affected?

This call for evidence applies to DB, DC and hybrid schemes.

### What Should Trustees Do Now?

Trustees will naturally be interested in this examination of their role. Does trusteeship need to be stretched and bent into shape? Trustees may wish to respond to future calls for evidence or consultations. No action is required at this stage, but the direction of travel should be noted.

### What Is Next?

The Pensions Regulator (TPR) has updated its [DC investment governance guidance](#). It has said that it plans to produce new guidance on investing in productive finance soon, and to update its DB investment guidance in the autumn.

### Comment

The focus on investment duties ties in with the government’s [2023 Green Finance Strategy](#), in which it said that a working group of the Financial Markets and Law Committee would be established to consider issues around further clarifying pension trustees’ fiduciary duties. The working group is expected to revisit the extent to which pension trustees are able to take into account non-financial factors when making investment choices.

The government is clearly keen for trustees to consider a wider breadth of investments, including illiquid assets, as part of their portfolio. Trustees should understand the exit terms of illiquid asset investments and assess how these fit with any de-risking plans, such as buyouts.

It is very important to seek legal advice before signing investment agreements. In the aftermath of the mini budget in 2022 and the subsequent liability-driven investment crisis, we noted some systemic issues in fund documents and investment management agreements that added to the problems faced by trustees at a difficult time: these could have been addressed (or at least, understood) before agreements were signed.

# Mansion House Reforms – DB

## Timetable – Monday Afternoon. Domestic Science.

**What is cooking? Quite a lot when it comes to the future of DB pension schemes. The government is considering changing a few recipes – will they satisfy the refined palate of the pensions industry?**



## A Call for Evidence on Options for DB Schemes

### What Is the Issue?

The [call for evidence](#) on options for DB schemes caused a bit of a stir. It seeks to build an evidence base around how trustees of DB schemes could use assets more flexibly and includes “exploring consolidation options and DB’s role in investment that provides equity capital and finance for businesses in the UK including start-ups, infrastructure and private equity, as well as longer-term investments, typically in illiquid assets.”

The call for evidence raises questions around how to incentivise trustees to invest in innovative projects, infrastructure and unlisted UK equities (i.e. productive finance). It considers how to incentivise employers to generate scheme surpluses that might be invested in productive finance and it looks at whether the Pension Protection Fund (PPF) could/should be used as a form of DB consolidator that would be run separately from the main PPF fund.

### Which Occupational Schemes Are Affected?

The call for evidence is looking at options for DB schemes.

### What Should Trustees Do Now?

Trustees will, no doubt, be interested in the questions around generating and accessing surplus. No specific action is required at this stage.

### What Is Next?

The call for evidence is to inform the government’s understanding so it can consider future policies. It is likely that there would be a consultation exercise before any such policies are implemented. Trustees may wish to throw their opinions into the mix, if a consultation emerges.

### Comment

Sponsoring employers may be sceptical of the notion that they have a wider duty to generate surpluses within pension funds they do not control (as opposed to their own businesses) and invest these surpluses in line with the government’s agenda. Meanwhile, trustees do not owe fiduciary duties to the broader economy or society: as the law currently stands, their primary duty is to provide members with their promised benefits (taking into account the employer’s interests, where appropriate). Any options that are dished-out for increasing investment in productive finance will need to be suitably attractive to trustees, which means that it needs to be tasty for the members of their pension scheme.

# Consultation Outcome – DB Pension Scheme Consolidation

## What Is the Issue?

This [outcome document](#) responds to a consultation exercise the DWP carried out in 2018. This issue seemed to go a bit cold, but is now heating up again, with the government saying that it will bring in permanent superfund legislation as soon as parliamentary time allows. The structure of DB superfunds will include the following:

- They will be occupational pension schemes, authorised and regulated by TPR.
- Members would continue to benefit from the PPF.
- Schemes with buyout funding levels of 70% to 90% are expected to be most suitable for transfer to a superfund. It is expected that the entry price into a superfund will be approximately 10% below the price of insurance buyout.
- The link to a ceding employer will be severed or substantially altered, while the employer covenant will be replaced by a capital buffer provided through external investment that sits within the superfund structure.
- There will be a mechanism to enable returns to be payable to persons other than members or service providers.
- The regime will impose intervention triggers. The triggers will control profit-taking, recapitalisation/taking on new schemes and transfer of the capital buffer and, where necessary, will enforce the wind up of a scheme or section.
- Superfunds will not be required to target buyout, but they must have a long-term objective against which TPR will measure the fund's performance.

## Which Occupational Schemes Are Affected?

These superfunds are for DB pension schemes.

## What Should Trustees Do Now?

If trustees are considering future de-risking options, the superfund regime may be of interest.

## What Is Next?

Most of the changes will require primary and secondary legislation when parliamentary time allows. Amendments will also be made to the Occupational Pension Schemes (Scheme Funding) Regulations 2005 to accommodate requirements specific to superfunds. TPR will produce a new legally enforceable superfund code of practice.

## Comment

The government has decided that bigger is better in terms of fund size (think strawberry gateau, rather than cupcake) and it sees larger and better-run pension funds as a good source of potential investment in productive finance.

The government has said that members must have no further recourse to the ceding trustees in the event that they would have been better off not transferring to a superfund, provided that the trustees reached the decision in compliance with their trust law duties. There is no indication at present as to whether this means there would be a statutory discharge for trustees. The proposed legislative requirement, however, to ensure that trustees take legal, actuarial, investment and covenant advice before determining their scheme's suitability for entry into a superfund will give trustees useful guidance and this might provide the support for a legal discharge from future liability. Although the recipe is still being refined, and the price reduction against buyout is disappointingly plain vanilla, trustees could give careful and cautious consideration to superfunds.

## A Consultation on the Local Government Pension Scheme (LGPS): Next Step for Investments

### What Is the Issue?

A smorgasbord of changes are proposed in the LGPS [investments consultation](#). First, the government says that it wants to see an accelerated transition towards fewer asset pools to maximise benefits of scale. It proposes an asset transition deadline of March 2025. Second, the government proposes requiring funds to have a plan to invest up to 5% of assets to support levelling up in the UK.

Third, the government is proposing all funds should have an "ambition" for 10% investment in private equity. The consultation also makes proposals for implementing those parts of the Competition and Markets Authority order in relation to the investment consultancy and fiduciary management market investigation order 2019 that are relevant to the LGPS.

## Which Occupational Schemes Are Affected?

This consultation only affects the LGPS.

## What Should Administering Authorities Do Now?

No action is currently required, but administering authorities may wish to respond to the consultation either individually or together with their pooling partners.

## What Is Next?

Consultation closes on 2 October 2023 and the government has 12 weeks to provide its response, or an update on timings for a response.

## Comment

Mandating particular asset classes feels like a backward step and raises similar matters of principle about the government dictating investment strategy to the boycotts/sanctions issue (where in 2020 the Supreme Court overturned a government ban on LGPS funds making investment decisions that go against UK defence or foreign policy – although the government is currently legislating to reverse that ruling). While pooling has already achieved significant cost benefits and improved governance, the proposals will effectively change the menu before the full benefits of the current pooling guidelines have been realised.





# Mansion House Reforms – DC

## Timetable – Tuesday Morning. Woodwork.

It takes time, patience and skill to craft a block of wood into something beautiful or useful. These same attributes are required by government, regulators and the pensions industry who are all whittling away at three important DC developments. In all cases, there is a lot more refining to be done before these initiatives can be polished off.



## Value for Money (VFM): A Framework on Metrics, Standards and Disclosures

### What Is the Issue?

Government and regulators are focused on achieving the best possible outcomes for DC scheme members. In recent years, there has been a drive to chisel away at member-borne costs and charges, especially in the default funds of schemes used for automatic enrolment. The emphasis is now changing from cost to overall value.

As part of the Mansion House package of pension reforms, the DWP, TPR and the Financial Conduct Authority (FCA) issued their [joint response to consultation](#) on how they are carving out a new VFM framework on metrics, standards and disclosures. This is still very much “work in progress”.

In summary, the new framework would require trustees to measure their scheme’s investment returns, costs, charges and quality of service against standard metrics. According to the consultation response, trustees would be expected to ask themselves searching questions such as: “Do we have the scale and expertise needed to access better outcomes? Can we compete with the biggest and best schemes in the market? Is my investment strategy diversified and seeking to take advantage of the full range of asset classes, such as, infrastructure, private markets, and venture capital that have the potential to deliver higher returns for savers?”

The new VFM framework would enable trustees, independent governance committees and employers to assess how their scheme measures up against other schemes. TPR would be able to identify underperforming schemes and would have new powers to force these schemes to exit the market. The regulators are exploring whether VFM data could be collated into a single directory to allow easy comparisons to be made.

The new framework will eventually replace the current value for member assessments. In the meantime, trustees should continue to comply with existing requirements.

### Which Occupational Schemes Are Affected?

Initially, the new VFM framework would apply to DC workplace “default” arrangements (although the definition of a “default” arrangement may be refined for this purpose) and it is proposed that legacy DC schemes would also be in scope at this initial phase. Over time, the framework would apply more widely, across member self-select options, non-workplace pensions, collective DC (CDC) schemes and pensions in decumulation.

### What Should Trustees Do Now?

Trustees with DC arrangements (especially those with schemes used for automatic enrolment, or with legacy schemes) should monitor developments and may wish to respond to future consultations or calls for evidence.

### What Is Next?

More work needs to be done before a timeframe for introducing the new VFM framework can be established and it is likely that this will take several years to evolve. Changes will be made to primary legislation when parliamentary time allows. Further details on the phased introduction, the types of pension scheme funds in scope during each phase, and other elements of the framework will be set out in secondary legislation and will be subject to consultation.

### Comment

When the new VFM framework is introduced, DC schemes of all sizes will be subject to the same assessment. Some small or medium-sized DC schemes, however well-run, may not compare favourably with larger schemes and may need to consider consolidating if improvements cannot be made.

The government is planning to cut out some dead wood: it recognises that there will be a lot of overlap between the chair’s statement and the new VFM requirements. The government will consider how the requirements of the chair’s statement could be managed down, and ultimately phased out, as the VFM framework is phased in.

# Consultation and Response to Call for Evidence – Helping Savers Understand Their Pension Choices

## What Is the Issue?

In view of the significant growth in the number of people saving into an occupational DC scheme, and the increased options available to them following the introduction of pension freedoms, the government is exploring how pension savers can be given greater support and choice when making decisions about how they want to access their pension savings.

This [consultation and response](#) follows the 2022 call for evidence, in which the government asked the pensions industry a range of questions about the assistance that members need to make informed decisions on how to use their pension savings. It also asked what support schemes provide to members and what decumulation products are offered (or could be offered in future). It is not surprising that many members struggle to see the wood for the trees following the introduction of the freedom and choice reforms. The DWP has concluded that many pension schemes need to do more to support members. It is now consulting on the introduction of a new duty on trustees to offer decumulation solutions, suitable for their members. Trustees may either offer these services in-house or partner with another supplier.

The consultation asks a broad range of questions about how this duty should operate, including how trustees should develop their scheme's decumulation offering, and the practicalities of partnering with other suppliers to offer a wider range of products. The government also indicates that it wishes to encourage the inclusion of CDC arrangements in the range of decumulation options offered by schemes and asks what the government can do to help a CDC-in-decumulation market emerge.

The government aims to legislate to introduce the new duty when parliamentary time allows. However, it sees value in individuals being offered extra support "sooner rather than later" and intends to work with TPR to issue guidance on the need to offer decumulation products to members.

## Which Occupational Schemes Are Affected?

The DWP still needs to do some sanding down, as it is unclear exactly how far its proposals will extend (and there is a consultation question about whether legislation should only apply to master trusts in the first instance), but the consultation is broadly targeted at DC occupational pension schemes.

## What Should Trustees Do Now?

Trustees should look out for the guidance. They should consider their scheme's decumulation options and how they support members, in light of this guidance.

## What Is Next?

This document is a partial response to a large call for evidence; pieces of the jigsaw are still missing. The DWP will respond "in due course" to questions around information, guidance and communications that were also asked as part of that call for evidence.

## Comment

There is a clear overlap between this consultation and the response to consultation on extending opportunities for CDC pension schemes, in which the government states "we are committed to moving forward with creating provision for CDC decumulation only products".

# Ending the Proliferation of Deferred Small Pots

## What Is the Issue?

The number of small deferred DC pension pots has grown exponentially since the introduction of automatic enrolment and potential consolidation solutions have been under discussion for a number of years. These small pots are uneconomical to administer and they are a particular concern for master trusts. The [response](#) to the DWP's recent call for evidence notes that the scale of the problem is worse than previous estimates suggested. The government has now put forward some firmer proposals for automatic consolidation, broadly as follows:

- DC pots in the default funds of automatic enrolment schemes will be in scope for automatic consolidation (excluding DC pots with attaching guarantees).

- A pot will be eligible for automatic consolidation if it is less than £1,000 and no contribution has been made to it for 12 months. (The £1,000 limit will be subject to regular review by the secretary of state.)
- The concept of "pot follows member" will not be pursued. It is proposed that there will be multiple authorised consolidator schemes.
- A central clearing system will be set up to handle part of the consolidation process. The clearing system will designate a recipient consolidator scheme if the member does not make a choice.
- Members can opt out of automatic consolidation.

## Which Occupational Pension Schemes Are Affected?

Occupational pension schemes used for automatic enrolment and providing DC benefits will be in scope.

## What Should Trustees Do Now?

Trustees of schemes that may become consolidator vehicles should pay close attention to developments and consider engaging with future consultations or calls for evidence. Trustees of other schemes that are in scope should monitor developments.

## What Is Next?

The DWP plans to introduce primary legislation as soon as parliamentary time allows. Further consultation will be carried out before regulations are introduced. More practical issues are expected to come crawling out of the woodwork: a delivery group will drill deeper into the points of detail.

There is currently no timetable for implementation.

## Comment

This solution will not stop new, small deferred DC pots from arising; the government will consider how to address this problem as a separate issue.

Automatic consolidation of small pots should be a positive development that will help members keep track of their pension savings.



# Pension Scheme Amendments – What Happens If There Is No Section 37 Confirmation?

## Timetable – Tuesday Afternoon. Law.

As a student of law, you will appreciate the complex nature of our legal system and the fact that not all questions can be answered with certainty while challenges are being raised. *Nota bene.*



### What Is the Issue?

In the recent High Court case of [Virgin Media v. NTL Pension Trustees](#), the judge ruled that amendments to benefits in schemes that were contracted out on the reference scheme test basis between 6 April 1997 and 5 April 2016 are void if they were made without written confirmation from the scheme actuary that the scheme would continue to meet the reference scheme test. The background and implications of this judgment are summarised in our [newsletter](#). Permission to appeal the ruling has been granted.

### Which Occupational Schemes Are Affected?

Schemes that were contracted out on the reference scheme test basis.

### What Should Trustees Do Now?

Trustees should consider the position of their scheme carefully before deciding whether past scheme alterations should be revisited, or whether to wait for the outcome of the appeal.

In some circumstances, trustees may not be able to wait for the outcome of the appeal – if trustees are entering into an arrangement such as a buy-in or buyout of benefits, the parties should consider and understand the risks, and the terms of any residual risk insurance.

### What Is Next?

We await the outcome of the appeal.

### Comment

We are aware that representations have been made to the DWP, which has the power to issue regulations that would validate, with retrospective effect, rule alterations that would otherwise be void under section 37 of the Pension Schemes Act 1993. We do not know whether the DWP would consider exercising this power.

# General Code of Practice

## Timetable – Tuesday After School. Football Practice.

**Following the England Lionesses’ valiant attempt in the World Cup final, we expect football practice to be well attended in the coming weeks. Will TPR score a success and get the code of practice into the back of the net before the end of 2023, or will it need extra time?**



### What Is the Issue?

Football may have (nearly) come home, but TPR’s [draft general code of practice](#) is still on the training field. We anticipate that it will come into force in late 2023, following a series of delays (but this is not certain). The general code consolidates and updates 10 of the existing codes of practice. It also contains a layer of new governance requirements, stemming from legislation that came into force in January 2019, mandating the operation of an “effective system of governance including internal controls”. TPR expects trustees to have documentary evidence of good governance and the general code sets out the policies, procedures and other documents that should be in place – otherwise there may be a red card shown and a penalty awarded.

The draft code of practice was issued for consultation in March 2021 and a short interim response to consultation was published in August 2021. The final code is unlikely to change materially from the draft code, as it is based on legislation and established regulatory principles. However, one change that TPR has already signalled is that the final version should be easier for LGPS funds to navigate, making it clearer which provisions are intended to apply.

### Which Occupational Schemes Are Affected?

The general code will apply to all types of schemes.

### What Should Trustees Do Now?

Some trustees have made good progress based on the draft code and are in a good position to be compliant soon after

the code comes into force. Other trustees may have hit the “pause” button due to delays with the code, and others may have taken the decision not to prioritise general code compliance until the final code is published.

All trustees should be positioned for action to achieve compliance in a timely manner when the general code comes into force, with plans that are ready to pass the fitness test. The scheme’s legal adviser can help with establishing a reasonable and proportionate approach for each scheme, which should help with time and resource allocations.

### What Is Next?

We are waiting for the final code of practice to be laid before Parliament.

### Comment

The delays in getting the final code before Parliament have inevitably led to a loss of momentum for some trustees who were making good progress, and other scheme priorities may have emerged in the meantime. We would be happy to share our experience of successful strategies to get this work back on target. In the meantime, trustees may like to listen to our [webinar recordings](#) as a reminder of the key issues.



# Pensions Dashboards

## Timetable – Wednesday Morning. Photography.

**We invite you to a lesson in photography. When pensions dashboards go live to the public, the whole industry will be brought under a zoom lens. Dashboards will provide individuals with a snapshot of their pensions information, but in order to present the general public with a relatively simple image, a lot of hard work is going on behind the scenes to perfect the composition and adjust the shutter speed.**



### What Is the Issue?

When pensions dashboards are operational, members of the public will be able to see their occupational, personal and state pension information side by side on an online portal. Trustees are legally required to connect their scheme with the dashboards ecosystem and to comply with data requirements (such as making sure that a member's accrued and estimated pension values can be supplied). The dashboards programme has recently been "re-set" and the regulations that contained staging dates for each scheme have been amended. Revised regulations now require each scheme with 100 or more active members to connect with dashboards by 31 October 2026. However, trustees must have regard to guidance (which is not yet published) that will place expectations around connection dates to ensure that all schemes are onboarded by 31 October 2026 in a staggered way that avoids capacity crunches. So, effectively, the staging dates in regulations will be replaced by new staging dates set out in guidance, and TPR will monitor compliance with the guidance. It is not yet known whether, as previously, allowance will be made in the expected timescales for public service schemes, to reflect the ongoing implementation of the *McCloud* age discrimination remedy.

### Which Occupational Schemes Are Affected?

Occupational pension schemes with 100 or more relevant members (i.e. deferred and active members) at the scheme yearend that falls between 31 March 2023 and 1 April 2024 must comply with dashboards requirements. Schemes with fewer than 100 members will be covered by future legislation.

### What Should Trustees Do Now?

Trustees should continue to prepare for dashboards connection and be mindful of the [initial guidance](#) issued by TPR and the [draft standards](#) on the Pensions Dashboards Programme website. Trustees should look out for the guidance that will set out expected connection dates and plan accordingly. It is important to keep a focus on data accuracy and continue to improve data standards, if necessary.

### What Is Next?

Consultation is expected before the end of this year on the guidance that will contain expected connection dates.

### Comment

Dashboards project plans may have become blurred around the edges a little, due to the uncertainty around connection dates. However, project plans can be brought into focus again in the coming months when the staging guidance is finalised. It is important that trustees keep records of their efforts to connect with dashboards so that they can provide evidence to TPR if problems arise.

# An Update on Environmental, Social and Governance (ESG) Issues for Trustees

## Timetable – Wednesday Afternoon. Orchestra Rehearsal.

In the music room, our school orchestra is having its final practice session before heading off to perform in a regional competition.

Trustees conducting ESG compliance are also addressing a complex score. We highlight below some of the issues that need to work in harmony alongside other scheme priorities.



### What Is the Issue?

Developments in relation to ESG continue apace.

### Taskforce on Climate-related Financial Disclosures (TCFD) Reporting

Since 1 October 2022, trustees of trust schemes with assets of £1 billion or more as of 1 March 2021 became subject to mandatory governance and reporting requirements in line with the recommendations of the TCFD. This took the requirements up an octave, as previously they only applied in respect of trustees of schemes with assets of £5 billion or more, authorised master trusts and authorised CDC schemes.

As part of their compliance with the TCFD requirements, trustees who are subject to the regime are now also required to select and calculate a portfolio alignment metric for the assets of their scheme. A portfolio alignment metric is defined as being a metric that evaluates the alignment of the scheme's assets with the goal of limiting the increase in the global average temperature to 1.5 degrees Celsius above preindustrial levels.

TPR has undertaken its first [review of TCFD reports](#). TPR reviewed 71 TCFD reports and said that, overall, it found an encouraging level of engagement with the requirements, with only a small number that were disappointing in quality. TPR said that there were several areas of good practice, and it has flagged some common areas for improvement, including providing more background information on a scheme so that the disclosures are easier to interpret. Trustees who are not fully compliant must be prepared to face the music – TPR has discretion to issue penalties of up to £5,000 per individual trustee and £50,000 per corporate trustee where there has been a failure to comply with the statutory disclosure requirements.

### 2023 Green Finance Strategy

Earlier in the year, the government published its updated [Green Finance Strategy](#). This follows on from its 2019 paper. It sets out how the government hopes to orchestrate the investment that it needs to meet its climate and nature

objectives, which it estimates to be an additional £50 billion to £60 billion of capital investment every year during the 2020s and 2030s. The Mansion House proposals add more whistles and bells to the government's wish list.

The strategy notes that the UK's regulatory framework will also come under scrutiny, with the government working with regulators to ensure that the framework supports the growth of green finance.

Of particular importance to pension trustees is the government's intention to re-examine trustees' fiduciary duties (as addressed in the Mansion House proposals), and a renewed focus on stewardship (see below).

### Assessing the Quality of ESG Data

As part of the Green Finance Strategy, the government [launched a consultation](#) on whether ESG ratings providers should be regulated. That consultation closed on 30 June 2023 and the government's response is awaited.

In recognition of the fact that concerns around the transparency, quality and reliability of ESG ratings and data products are emerging, a new industry group was established to develop a code of conduct for ESG data and ratings providers. The steering committee of the ESG Data and Ratings Working Group (DRWG) is made up of representatives from Moody's Analytics, M&G, Slaughter & May and the London Stock Exchange. The DRWG produced a [draft code](#) in July 2023. It is seeking feedback on the draft code by 5 October 2023, with a view to publishing the final code by the end of 2023.

Both of these initiatives should provide more certainty around data quality when trustees are considering ESG policies and TCFD governance requirements.

### Stewardship and Implementation Statements

Last year, the DWP published guidance for trustees on producing statements of investment principles (SIPs) and implementation statements to help all schemes get into the same groove.



The part of the guidance that relates to the implementation statement is statutory guidance, which trustees must have regard to. In its Green Finance Strategy paper, the government says that the DWP will check whether schemes are complying with that guidance in the autumn of 2023. The government chimed in further, saying that it plans to liaise with TPR, the FCA and the Financial Reporting Council to review the regulatory framework for effective stewardship. The UK Stewardship Code is also in the process of being updated, and TPR and the DWP have been asked to input into a review of that code. In its DC and DB investment guidance, TPR encourages trustees to become a signatory to the UK Stewardship Code.

During the 2022-23 financial year, TPR trumpeted-out its new campaign to raise trustees' awareness of their legal duties in relation to reporting on ESG matters and why it is important. As part of that campaign, TPR is checking whether trustees of occupational pension schemes with 100 or more members have made their SIP and implementation statement publicly available, free of charge, online. TPR will start by checking that the links provided in scheme returns do link to the most recent documents and that those documents are publicly available.

### **Do Not Forget the "S"**

In February, the DWP launched the Taskforce on Social Factors to support pension scheme engagement with social factors in ESG investing. This follows on from a [consultation and response](#) published by the DWP in July 2022 on consideration of social risks and opportunities by occupational pension schemes. In that consultation, it was recognised that there is limited data and guidance available to trustees when assessing the "S" in ESG – essentially, there is a missing beat in the ESG bar. We understand that the aim of the taskforce is to assist pension trustees in identifying, assessing and managing social risks and opportunities. In a House of Lords debate on 29 June 2023, it was noted that the taskforce is expected to produce guidance in November 2023.

### **Which Occupational Schemes Are Affected?**

ESG investing and considerations are relevant to trust-based DB, DC and hybrid schemes, with many principles also being relevant for statutory schemes.

The Department for Levelling Up, Housing and Communities (DLUHC) consulted on an equivalent reporting regime for the LGPS in 2022. Although DLUHC announced there will be no changes before April 2024, LGPS funds can still prepare by considering the private sector obligations that are likely to be similar.

### **What Should Trustees Do Now?**

Trustee boards that are not yet required to report in line with the recommendations of the TCFD may wish to keep under review the extent of their voluntary compliance with the requirements. The direction of travel is that this is likely to become a requirement at some point for most or all occupational pension schemes.

Trustees of schemes with 100 or more members should check that their most recent SIP and implementation statements are easily accessible online. It sounds obvious, and we do not wish to harp on about it, but when we ran a spot check of some of our client schemes, there were a handful of schemes where communication had broken down between the investment consultants and the scheme administrators and the most recent implementation statement had not been uploaded.

Trustees should consider broadening their understanding of stewardship issues, for example by undertaking training on the UK Stewardship Code.

### **What Is Next?**

There are several more consultations in the pipeline.

The government is expected to consult on new sustainability disclosure requirements for pension schemes, and it indicated in its Green Finance Strategy that it would consult on a green taxonomy in autumn 2023. This is a set of standards so that investors can understand how "green" an investment is.

The government is also set to consult in late 2023 on the introduction of requirements for the UK's largest companies to disclose their climate change transition plans to become net zero, if they have them. In anticipation of this, the UK Transition Plan Taskforce recently undertook a consultation exercise on its proposed disclosure framework and implementation guidance, responses to which will be considered in the next stage of the framework development.

The framework makes recommendations for companies and financial institutions to develop gold-standard transition plans, while the implementation guidance sets out the steps to develop and disclose a transition plan. This should assist pension trustees in understanding and comparing how well the companies in which they propose to invest are doing.

Finally, the Taskforce on Nature-related Financial Disclosures is due to publish its risk and opportunity management and disclosure framework in September 2023, so watch this space.

### **Comment**

There is much more to ESG investing than considering climate change, as evidenced by the government's consultation on social factors. And do not forget reputational risks (caught by the "S" or "G") that could affect the value of an investment. See a [blog post on lessons learned from the Odey crisis](#) by Pensions partner Clifford Sims. It is important that these issues do not play second fiddle to environmental considerations.

The ESG landscape is continually evolving. Trustees will, no doubt, need to rely, to some extent, on their advisers to keep them on top of regulatory and legislative changes, not to mention shifting views on what constitutes an appropriate ESG investment. In its consultation response on social factors, the DWP said, "in light of Ukraine, investors' thinking about ESG is also evolving. This time last year, industries such as defence and nuclear (both civil and defence) were seen as no-go areas for ESG funds but the situation has changed and ESG investing should change with it."

Trustees cannot play this by ear: there is no room for complacency. TPR has ramped up its drive to ensure that trustees have appropriate knowledge and understanding and that they are factoring ESG considerations into their investment choices. As part of this, TPR has said that it will be carrying out spot checks on the actual content of schemes' implementation statements in the autumn.

You may find the resources below useful:

[#How2DoPensions Quick Guide on ESG](#)

[#How2DoPensions Quick Guide on TCFD Reporting](#)

[ESG Library of Resources](#)

# Data Protection and Cybersecurity

## Timetable – Thursday Morning. World Book Day.

**We highlight a number of important issues under the general umbrella of “data protection and cybersecurity”. We have given this section a theme of World Book Day – a day on which children dress as characters of their choice, united by the common theme of literature. It is a day on which parents face impossible tasks – like how to turn their small child into a convincing giant.**

**We wish that cybercrime only existed in works of fiction, but, sadly, it is becoming increasingly sophisticated, with trustees finding themselves in the role of safe-guarders of the pension scheme data. We hope that our 10 action points help trustees to focus on some pertinent issues. So, if you are sitting comfortably, we will begin.**



### What Is the Issue?

The prologue is as follows: recent high-profile data breaches have highlighted the importance of pension schemes' compliance with data protection legislation. Pension scheme trustees are in a relatively vulnerable position, as they tend to rely heavily on service providers to process their scheme's personal data, as part of ensuring that the scheme operates effectively. However, trustees ultimately remain accountable for ensuring that the processing activities carried out by service providers on their behalf comply with data protection legislation, and are liable in the event of breach. If there is a data breach event, pension scheme trustees also need to be ready to leap into action to mitigate the damage caused by the breach, respond to questions from members and other individual beneficiaries, and liaise with TPR and the Information Commissioner's Office (ICO).

We provide below some suggestions regarding how trustees can seek to prevent data breach events and to ensure that, if a breach does occur, they are best placed to provide an effective response. We also flag actions that pension scheme trustees should be taking now to comply with recent developments in data protection legislation and regulation.

### Which Occupational Pension Schemes Are Affected?

All occupational pension schemes are affected.

### What Should Trustees Do Now?

#### Chapter 1. Check the ICO Register

Trustees, as data controllers, need to pay a fee to the ICO. Failure to do so risks a fine of up to £4,000 and appearing on a public list of defaulters. Trustees can [check the ICO's register of fee payers](#), register if they do not appear on it, and should schedule annual payments and checks on their business plan.

#### Chapter 2. Refresh Policies, Procedures and Scheme Documentation

When the EU's General Data Protection Regulation (EU GDPR) was first introduced in 2018, many pension scheme trustees adopted policies and procedures, and adapted scheme documentation and member communications, to ensure that their pension schemes met the new requirements. However, these documents need to be kept under review to ensure that they remain effective and relevant, and comply with fast-evolving legislation. We have, for example, recently updated pension scheme data protection documentation and third-party contracts to accommodate the extra processing now required to action a transfer request, and to reflect the post-Brexit adoption of the UK GDPR either (i) in place of the EU GDPR or (ii) alongside EU GDPR where a scheme's members include individuals who are in the EU, plus new requirements concerning transfers of personal data outside the UK (see below). Trustee training should also be scheduled, so trustees will be able to properly action their scheme's data protection policies and procedures.

#### Chapter 3. Adopt a Data Breach Response Plan

Pension schemes with an up-to-date data breach response plan were better positioned to cope with the fallout from recent data breach events. If there is a response plan already in place, has it been adapted to accommodate changes in scheme processes or service providers, and has it kept pace with fast-evolving cybercrime practices? Equally importantly, has it been tested by means of a breach simulation exercise? We have run realistic data breach exercises for a number of clients and have seen significant improvement when gaps or vulnerabilities exposed by the exercise are addressed.



#### Chapter 4. Keep Data Mapping Records Up to Date

It is important that trustees closely monitor which organisations/service providers have access to the personal data relating to their pension scheme, in case those organisations'/providers' systems are compromised. Do not overlook former service providers that have been used by the pension scheme in the past; it is not uncommon for a service provider to retain a pension scheme's personal data following the termination of its retainer. Tidy up loose ends and comply with "data minimisation" obligations under the UK GDPR by ensuring that pension scheme personal data that is no longer required has been deleted securely.

#### Chapter 5. Carry Out Data Protection Impact Assessments (DPIAs)

[Guidance](#) from the ICO states it is "good practice" to carry out a DPIA for major projects that require the processing of personal data. If pension scheme trustees are planning an exercise involving high-risk or large-scale data processing, such as a buyout/buy-in or a change in scheme administrator, then a DPIA is strongly recommended. A DPIA should help identify and address cybersecurity concerns arising from the project. Should a data breach occur, the DPIA will also form part of the trustees' audit trail, demonstrating compliance with data protection legislation and the ICO's expectations.

Note also that TPR has stated in its initial guidance on pension dashboards that matching, combining or comparing data from multiple sources requires a DPIA under the UK GDPR. Trustees should, therefore, carry out a DPIA before connecting with the pensions dashboards ecosystem (or updating an existing DPIA to refer to this extra processing).

#### Chapter 6. Review Transfers of Personal Data Outside the UK

There have been a number of recent developments that mean trustees should examine the safeguards in place in respect of transfers of pension scheme personal data outside the UK. As a starting point, trustees should confirm with their service providers whether personal data relating to the pension scheme is transferred outside the UK by the service provider or by their sub-processors (including if an entity outside the UK has access to personal data stored within the UK, or if personal data is stored "in the cloud"). Any transfers outside the UK should be recorded in the pension scheme's data mapping records. The trustees should also understand what protections are in place to safeguard that personal data. If relying upon contractual protections (such as standard contractual clauses (SCCs) or binding corporate rules), a transfer risk assessment should be carried out to assess whether those contractual protections are effective in practice, in line with the *Schrems II* court ruling.

If the trustees (and/or their processors) are relying upon SCCs that were based on the old EU version of those clauses, then the clock is ticking to update those provisions in line with the UK's new international data transfer agreement (the deadline is 21 March 2024). If the pension scheme's personal data is being transferred from the EU to outside the European Economic Area, then the deadline for updating the SCCs to the revised EU version has already passed.

Where personal data is transferred to the US, including to cloud service providers with data centres in the US, trustees need to consider the scope and effect of the recent "adequacy decision" in relation to the EU-US Data Privacy Framework (DPF). DPF applies only where personal data is transferred to a US organisation that is listed by the US Department of Commerce as a "DPF Participant." The DPF list is publicly available and UK/EU data exporters are responsible for checking the list before a transfer takes place. Where (as will often be the case) the US data importer/recipient is not a DPF Participant, the transfer will be lawful only if SCCs or binding contractual rules are in place. Trustees should also note that the adequacy decision made in July 2023 is an EU decision. While it includes provision for a "UK extension", transfers from the UK to the US will be covered by DPF only when Parliament has made the necessary regulations – this is likely to be in autumn 2023. For now, therefore, UK to US transfers still require both SCCs and a supporting transfer risk assessment.

#### Chapter 7. Adopt Data Sharing Agreements

The ICO's [code of practice](#) on data sharing states that the ICO considers it "good practice" to have a data sharing agreement in place where controllers share personal data with other controllers. In the pensions context, many of our trustee clients have put in place data sharing agreements with their schemes' sponsoring employers. It is also advisable for the parties involved in a buy-in/buyout project to sign up to data sharing agreements, as the process is likely to involve either a change of data controller or the addition of a new independent or joint data controller.



## Chapter 8. Seek Advice When Signing Up to New Service Provider Terms

Many pension scheme trustees will recall working with legal advisers to ensure that agreements with service providers met the requirements of the EU GDPR, back in 2018. Going forward, when signing up to any new or revised service provider terms, pension scheme trustees should check that:

- The agreements meet the requirements of the UK GDPR
- The trustees are adequately protected (for example, in the event of a data breach) and the agreements curtail what service providers can do with the scheme's personal data (for example, how long service providers can retain the data after the termination of their services, the extent to which the personal data can be shared with sub-processors and whether personal data can be transferred outside the UK)

## Chapter 9. Review Data Breach Prevention and Cybersecurity Measures

Recent data breach events have brought into sharp focus the need for trustees to actively monitor their service providers' cybersecurity measures. They should not automatically assume that their providers have this in hand. TPR's guidance on cybersecurity principles for pension schemes provides some useful pointers. For example, TPR expects cyber risk to be included on risk registers and reviewed at least annually. Trustees should be seeking reassurance from pension scheme administrators regarding cybersecurity testing, resilience and measures in place to mitigate the impact of a data breach and staff training. We expect there to be more guidance from TPR on the measures trustees should take to reduce cyber risk in the forthcoming general code of practice.

## Chapter 10. Prepare for Pensions Dashboards

Compliance with the new pensions dashboards obligations will introduce an extra layer of processing of personal data relating to the pension scheme. Existing procedures, policies and documentation should be updated to accommodate this. For example, trustees should consider whether the privacy notices issued to members cover processing activity in connection with pensions dashboards. In addition, if new service providers are given access to scheme personal data (or existing service providers expand the scope of their processing activities), then this will need to be recorded in data maps and agreements with those service providers will need to be reviewed. Note also the comments above regarding TPR's expectations on carrying out DPIAs

### What Is Next?

Data protection legislation continues to evolve and new chapters keep emerging. The Data Protection and Digital Information (No. 2) Bill is currently making its way through Parliament. If the bill is enacted in its current form, it is likely that existing data protection documentation will need to be updated to reflect its provisions and use of new terminology.

As mentioned above, we also expect that TPR's general code of practice will contain a number of recommendations concerning data protection. There is a specific section in the draft code that refers to trustees adopting measures to reduce cyber risk.

### Comment

By way of epilogue, we can conclude that there is certainly a lot for trustees to think about in terms of data protection and cybersecurity. Will we ever be able to consign cyber crime to the past and view it as a piece of "horrible history"?





# Retained EU Law

## Timetable – Thursday Afternoon. Chemistry.

**It is fair to say that the government has struggled to get the chemistry right in terms of dealing with retained EU law. We welcome you to this afternoon’s class, which is practical experimentation based on recently developed theory. Please put on your goggles and masks and sit towards the back of the lab – this could turn into a fizz-whizz-pop-bang lesson.**



### What Is the Issue?

Significant changes have been made to UK law, which will take effect on 31 December 2023.

When the UK withdrew from the EU, the government put in place legislation that effectively took a snapshot of EU law as of 31 December 2020 and this became known as “retained EU law”; which was incorporated into UK law.

In September 2022, the government introduced into Parliament the Retained EU Law (Revocation and Reform) Bill. This was interchangeably referred to as the “Brexit Freedoms Bill” and the “Bonfire of EU laws”. As originally drafted, the bill would have revoked the majority of retained EU law with effect from the end of 31 December 2023, unless action was taken to preserve it. This proved to be the most controversial part of the bill – in fact, it was pretty explosive. During its passage through Parliament, the government amended the bill so that, rather than the majority of retained EU law falling away on 31 December, only specific retained EU laws set out in a schedule would be revoked with effect from the end of 31 December 2023. Ministers of state and devolved authorities have the power, until 31 October 2023, to preserve into UK law any of the laws specified in the schedule.

The bill received Royal Assent on 29 June 2023 and became the [Retained EU Law \(Revocation and Reform\) Act 2023](#) (the Act).

Approximately 600 pieces of retained EU law will be revoked by the Act with effect from the end of 2023.

In addition to this, the government maintains a [dashboard of retained EU law](#). This is intended to be an authoritative (but not comprehensive) dashboard of all retained EU law. It is, however, a working document – as more retained EU law is identified, it is periodically added to the dashboard. The dashboard currently lists over 4,900 pieces of retained EU law.

With certain exceptions, ministers of state and devolved authorities have power under the Act to revoke, restate or replace any retained EU law on the dashboard that is not automatically revoked on 31 December 2023. This power will last until 23 June 2026 (the 10th anniversary of the EU referendum vote). The dashboard will be updated and a report presented to Parliament every six months, until 23 June 2026, to explain which laws have been amended, revoked or replaced.

The Act makes provision for EU case law to no longer be binding on UK appeal courts. If there is an element of EU law in any matter that comes before the courts, which does not get overturned or appealed, the attorney general would have a six-month window in which to appeal the decision. This means that the parties to such a case would not have any certainty as to the outcome until the attorney general’s window for appeal has closed. This power to interfere in a court decision did not previously exist in UK law.

### Which Occupational Schemes Are Affected?

All occupational pension schemes could be affected.

### What Should Trustees Do Now?

At the time of publication, no pensions law has been revoked, amended or replaced as a consequence of the Act. The government has previously said that it does not intend to implement the *Bauer* decision, but that it will retain the *Hampshire* decision. Both of these were decisions of the Court of Justice of the European Union relating to PPF compensation levels. Trustees may wish to keep progress on the retained EU law dashboard under review in case any pensions-specific updates are made to it.

## What Is Next?

The retained EU law dashboard identifies which government department is responsible for assessing each piece of retained EU law. The DWP currently has responsibility for 223 pieces of law that it needs to consider. If it wishes to amend or revoke any of that law, it will need to do so before 23 June 2026.

While the key date to remember is 31 December 2023, some provisions of the Act (such as EU case law ceasing to be binding on UK appeal courts) will only come into force once an effective date is set out in commencement regulations.

## Comment

Many elements of pensions law derive from the EU, whether through regulations (think PPF, and new governance requirements leading to the general code of practice) or case law (think *Barber* and *Beckmann*). There is, therefore, scope for this Act to have a significant impact on pensions law. At the time of publication, however, no changes have yet been made that would impact how occupational pension schemes currently operate.

The progress of the Act through Parliament has been volatile. The Act gives greater powers to government ministers and devolved authorities than the House of Lords would have liked. The Lords asked the Commons several times to amend the Act in order to provide greater parliamentary scrutiny in the event that a minister or devolved authority were to use powers granted by the Act to revoke, replace or restate any retained EU law. This request was refused. It remains to be seen whether any amendments made by government ministers are administrative or substantive.

Our blog post [Is the Clock Ticking for UK Pensions Law?](#) contains additional comment.





# Changes to the Lifetime Allowance (LTA)

## Timetable – Thursday After School. Chess Club.

**Are you a grandmaster of chess? If so, your problem-solving skills could be an advantage when trying to square off some of the complexities surrounding the abolition of the LTA. It is far from black and white!**



### What Is the Issue?

In an unsurprising opening move, the chancellor announced various pensions tax changes at the [Spring Budget 2023](#), including:

- Abolition of the LTA charge from 6 April 2023
- Abolition of the LTA itself from 6 April 2024
- A new cap on pension commencement lump sums at £268,275 for those without LTA protections
- An increase in the annual allowance from £40,000 to £60,000
- An increase in the money purchase annual allowance from £4,000 to £10,000
- An increase in the minimum tapered annual allowance from £4,000 to £10,000
- An increase in the adjusted income threshold from £240,000 to £260,000

### Which Occupational Schemes Are Affected?

The change in allowances impacts all registered occupational pension schemes, including private sector and public sector arrangements. Indeed, much of the grand masterplan behind the removal of the LTA was to encourage over 50s, especially workers within the NHS, back into the workforce.

### What Should Trustees Do Now?

Trustees should assess the impact of the changes on their pension schemes. Particular caution should be exercised where schemes have incorporated the annual or lifetime allowances into their benefit structures.

Trustees should expect an increase in questions from members. They should check with their administrators that systems are equipped to deal with the changes and that accurate information is provided to members and other beneficiaries. They should also check the text of pension scheme statements, booklets, announcements and websites and consider whether any of the current allowances are hard coded into scheme documentation.

The measures associated with the abolition of the LTA could impact GMP equalisation and conversion projects, so seek advice if you are in the middle of one of these. Equally, it might have an impact on the desirability of continuing with excepted group life assurance-only schemes. Trustees may also find employers seek to re-enrol employees, whose pension savings were impacted by the LTA, back into registered pension schemes.

### What Is Next?

HMRC has published [draft legislation for Finance Bill 2024](#), which includes proposed amendments to the Finance Act 2004 to take account of the abolition of the LTA from 6 April 2024 and consequential amendments. The closing date for consultation on the draft provisions is 12 September 2023. The draft legislation is accompanied by a [policy paper](#) on abolishing the LTA, including commentary on HMRC's proposals regarding how lump sums and lump sum death benefits will be taxed in the absence of the LTA, the position in relation to individuals with LTA protections or enhancement factors, and changes to benefit crystallisation events.

## Comment

Significant amendments are proposed to tax legislation, flowing from the consequences of abolishing the LTA. The policy proposals include the introduction of an individual “lump sum and death benefit allowance”, set at the same level as the present lifetime allowance, of £1,073,100. As a general rule, this will limit the amount that can be paid tax-free (from all of an individual’s registered pension schemes) as authorised lump sums and lump sum death benefits. Where the £1,073,100 allowance is exceeded, the excess will be taxed at the individual’s or beneficiary’s marginal rate. It is also intended that this new allowance will sit alongside a separate “lump sum allowance”, limiting the maximum tax-free amount that an individual can receive as certain lump sums, including Pension Commencement Lump Sums and Uncrystallised Funds Pension Lump Sums. HMRC has indicated that this lump sum allowance will be set at £268,275, unless relevant protections apply.

There is also concern around proposed changes that seem to have been introduced by stealth in relation to benefit crystallisation events 5C and 5D. Currently, if a member dies before age 75, in certain circumstances it is possible for the member’s pension fund to be accessed by a beneficiary, via an annuity or drawdown fund, tax-free. Under HMRC’s proposals it appears that, for the types of arrangement currently caught by benefit crystallisation events 5C or 5D, the benefits would instead become taxable at the beneficiary’s marginal rate from April 2024.

While HMRC says that its proposals are “expected to have a negligible impact on businesses administering registered pension schemes”, there is concern within the pensions industry that this will not be the case. Systems will need to be updated and member communications altered, and there is only a short window of time available to finalise the new measures before 6 April 2024. Any steps that trustees do take to address the proposed changes will also need to be tempered by the fact that the abolition of the LTA has proved politically controversial and there is the possibility that it might be reversed, depending on the outcome of the next general election.

In short, this is not a position that the pensions industry was expecting to address. We hope that HMRC will consider industry concerns fully, as a position of “stalemate” will not be helpful for anyone, least of all scheme members and beneficiaries.



# New DC Disclosures

## Timetable – Friday Morning. Show-and-Tell.

**A popular class-time activity for younger children, show-and-tell involves showing a favourite possession to the class and talking about it. Did you ever do this? If so, it may have been your very first attempt at public speaking. Under new disclosure requirements, DC trustees now have to show-and-tell their illiquid asset investments and asset class allocations.**

### What Is the Issue?

We would like to remind trustees of schemes with DC benefits that new disclose and explain requirements came into force on 6 April 2023. In relation to DC default funds, trustees are required to disclose and explain:

- Their policies on illiquid assets investments in the scheme’s default statement of investment principles (SIP) (to be included in the first default SIP published after 1 October 2023 and by 1 October 2024 at the latest)
- The asset class allocation of their default fund(s) in their annual chair’s statement (from the first scheme year ending after 1 October 2023)

### Which Occupational Schemes Are Affected?

The requirements apply to “relevant schemes” under the Occupational Pension Schemes (Scheme Administration) Regulations 1996. This definition catches most DC schemes/ sections, except executive schemes, self-administered schemes with fewer than 12 members, public service schemes, and schemes where the only DC element stems from additional voluntary contributions.

### What Should Trustees Do Now?

Trustees should make sure that the new disclosures are incorporated into the default SIP and chair’s statement. New disclosure requirements also apply to any performance-based fees incurred in relation to default arrangements. See the DWP’s [statutory guidance](#), and the recently updated [DC investment governance guidance](#) and [DC communicating and reporting guidance](#). Seek advice if necessary.





# On the Horizon

## Timetable – Friday Afternoon. School Concert.

**We end the week with our very own school concert, “Trustees’ Got Talent”, because we would like to applaud the brilliant jobs that so many of you do to protect the interests of scheme members and to serve the pensions industry. The curtain has raised on our variety talent show, so go and break a leg!**



## Extension of Automatic Enrolment

Laura Trott, the pensions minister, is juggling a lot of plates. She said that the government will consult in the autumn on timings and regulations implementing the provisions of the Pensions (Extension of Automatic Enrolment) (No. 2) Bill (if passed). This is a private member’s bill that is currently progressing through Parliament with government backing. It would introduce powers to allow the DWP to make regulations to (1) lower the age for automatic enrolment from the current age of 22 and (2) lower or remove the lower earnings limit for “qualifying earnings”. There is no provision in the bill to lower or remove the £10,000 earnings trigger.

## Notifiable Events

Is there a magician in the house? Did someone make the notifiable events amendments disappear? Apparently not, but the changes outlined in our [Pensions Act 2021 newsletter](#) have still not progressed. The DWP [consulted](#) on the changes almost two years ago, but has not yet responded to that consultation. In a [letter](#) to the Work and Pensions Committee in April 2023, it was stated that government and TPR want to “evaluate all options” before proceeding.

## CDC Multi-Employer Schemes

Current legislation allows for single or connected employer CDC schemes to be established. The government is committed to the concept of multi-employer CDC schemes. It plans to issue draft legislation in the autumn that will cover whole-life multi-employer CDC schemes (and will also address some points on multi-annual adjustments and scheme wind up that are relevant to single employer CDC schemes). A framework for decumulation-only CDC schemes will be considered and addressed separately – a contortionist may be needed to bend this into shape, as “no clear-cut, simple answers have emerged” for decumulation-only CDC schemes at this stage.

## Transfers and Scams

The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 came into force in November 2021 and introduced a new system of red or amber flags to indicate a risk of a pension scam. A statutory transfer cannot proceed if a red flag is raised, and the member must obtain guidance from MoneyHelper if an amber flag is raised. These regulations have caused a lot of practical problems for the pensions industry, as flags are often raised when a receiving scheme is legitimate. The pensions industry had hoped that the DWP’s recent review of the regulations would help to resolve the practical issues, but the government has simply said that it will consider these issues further in conjunction with industry and TPR. It feels like the choir is singing out of tune on this important issue.

See our [newsletter](#) for a more detailed explanation.

## A Smarter Regulatory Framework for Financial Services

The government’s [policy paper](#) marks the start of a phased programme to bring retained EU law governing the financial services sector into the UK’s domestic system. This is much more than a technical legal drafting exercise: HMT identified the UK’s exit from the EU as an opportunity to develop the attractiveness of the UK as a financial centre and is now turning its attention to the detail. The comprehensive set of reforms have an ambitious timetable – the government wants to see “significant progress by the end of the year” (and the government does not tell jokes about these things). Look out for more!

## DB Funding

We are still waiting for the outcome of consultation on draft funding and investment regulations, which supplement the Pension Schemes Act 2021 requirements for trustees of DB schemes to put in place a funding and investment strategy and produce a written statement of strategy. The regulations and the DB funding code of practice will be introduced at the same time, and, according to a statement in [TPR's Corporate Plan for 2023-24](#), this will be April 2024. The latest delay (from October 2023) stems from the September 2022 LDI liquidity crisis, and the need to consider recommendations from the Work and Pensions Committee and the House of Lords Industry and Regulators Committee. It looks like there is some careful choreography going on here.

## Guaranteed Minimum Pension (GMP) Conversion

The Pension Schemes (Conversion of Guaranteed Minimum Pensions) Act 2022 received Royal Assent on 28 April 2022, but we are still waiting for regulations to bring the main provisions of the act into force. These provisions include clarification that the legislation applies in respect of survivors, as well as "earners", authorisation for the secretary of state to issue regulations specifying which entities (i.e. employers) will need to consent to a GMP conversion exercise, and the removal of the requirement to notify HMRC of GMP conversion. We are not sure why these regulations are arriving late to the show – hopefully the DWP will clarify the position at some point.

## VAT

In February 2023, a technical [consultation on the VAT treatment of fund management services](#) closed and the outcome is awaited. HMT and HMRC said that the intention is to codify the existing position following the UK's exit from the EU. We will award marks out of 10 when this is finished.

## Closing Comment

We hope that you have found this publication to be a useful round up of pensions developments. Our [thought leadership library](#) contains many free resources, including #How2DoPensions guides, quarterly Hot Topics publications, weekly updates, webinars, thought leadership campaigns and much more.

Are you on our mailing list? If not, please [register](#) to receive regular pensions updates.

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