MAYER | BROWN

July 2024

The Pensions Brief

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Dates to note over the next 12 months

22 September 2024

Requirement to prepare a funding and investment strategy applies for valuations from this date

31 January 2025

Deadline for schemes to send annual event report to HMRC (2023/24 tax year)

30 April 2025

Staged timetable for connection to the pensions dashboards ecosystem starts

18 June 2025

Pension scheme exemption from the clearing obligation for derivatives ends

Key:

- Important dates to note
- For information

Issues affecting all schemes

ESG – compliance review findings

The Pensions Regulator (TPR) has published the findings from its review of how trustees are complying with their wider ESG duties. The review concludes that while 99% of trustees of in-scope schemes provided weblinks to relevant ESG disclosures, too many smaller schemes opted for minimum compliance in relation to the content of those disclosures. TPR's recommendations include trustees:

- Dedicating sufficient time and resources to preparing their statement of investment principles (SIP) and implementation statement.
- Taking proportionate and appropriate actions to mitigate risks.
- Taking ownership of ESG activities.
- Where schemes are invested in pooled funds, reviewing fund manager policies on ESG-related issues.
- Providing more detail on policy to show they are considering specific ESG-related risks relevant to their scheme.
- Providing more scheme-specific detail on voting activity.
- Providing more detail on asset management arrangements.
- Considering going beyond climate change reporting.

Action

Trustees should take account of the review's recommendations when next updating their SIP or preparing their next implementation statement.

King's Speech – pensions content

The King's Speech announced that a Pension Schemes Bill will be laid before Parliament. The Bill will provide for:

- A system for the automatic consolidation of small deferred DC pots.
- A new value for money framework for DC schemes.
- A requirement for DC occupational pension schemes to offer a retirement income solution or range of retirement income solutions.
- Establishment of commercial DB superfunds.
- The Pensions Ombudsman to be a "competent" court for the purposes of making orders in relation to recoupment of overpayments.

Action

Trustees, employers and administrators should monitor the Bill's progress through Parliament.

Pensions review – launch of first stage

The government has announced the launch of the pensions review that was promised in Labour's election manifesto. The review is intended to:

- Boost investment.
- Increase pension pots.
- Tackle waste in the pensions system.

The first phase of the review will focus on identifying any further actions to drive investment that could be taken forward in the Pension Schemes Bill. The subsequent phase, to start later this year, will consider further steps to improve pension outcomes and increase investment in UK markets, including assessing retirement adequacy.

Action

Trustees, employers and administrators should monitor the progress of the review.

Digital administration – white paper

The Pensions Administration Standards Association has published a white paper on the current status of digital administration. The paper looks at:

- The current position in 2024.
- How the industry reached this position.
- Where the industry should go next in terms of automation and transformation of digital administration into the future.

Action

No action required.

Issues affecting DB schemes

DB funding – new code of practice

TPR has responded to its consultation on the draft revised DB funding code of practice. A number of changes have been made to the code including:

- Changes to reflect the final version of the regulations setting out the new funding and investment strategy requirements.
- Amendment of the definition of significant maturity so that it is a duration of 10 years for DB schemes and a duration of 8 years for cash balance schemes.
- Making it clear that decisions in relation to the scheme's actual investment allocation are not constrained by the notional investment allocation, both at low dependency and during the journey plan.
- Removal of prescription as to how trustees should test the high resilience of their low dependency investment allocation to allow trustees to carry out a suitable test for their scheme, provided they can be satisfied that it demonstrates low dependency on the employer.
- Replacing the formulaic test for determining the maximum level of risk that could be supported by the employer covenant with a principles-based approach.
- Changes to recognise the unique characteristics of open schemes, including greater flexibility in the assumptions that trustees can make for future accrual and new members and a new section that collates the guidance in the code for open schemes.
- Greater clarity on how to assess the reliability and covenant longevity periods.
- Clearer guidance on proportionality.

The finalised code has been laid before Parliament and is expected to come into force in early November. TPR acknowledges that there will be a regulatory gap between 22 September 2024, when the funding and investment strategy requirements come into force, and the date on which the code comes into force. TPR will communicate with schemes that have effective valuation dates in this period to give the support needed to limit disruption but expects that for many schemes any disruption will be minimal.

TPR has also responded to its consultation on its regulatory approach to DB funding. It will publish the final version of its regulatory approach in due course, as well as the final form of its template statement of strategy and a consultation on updated covenant guidance.

Action

Trustees and employers of DB or cash balance schemes with post-22 September 2024 valuations coming up in the next 12 months should review the finalised code and consider how they wish to approach the valuation in light of the new funding and investment strategy requirements and the code.

Contracted-out rights – validity of amendments

In June 2023, the High Court held that amendments to certain post-April 1997 contracted-out rights (section 9(2B) rights) that were not accompanied by the actuarial confirmation required under legislation (a section 37 confirmation) are void. The High Court also held that the requirement to obtain a section 37 confirmation applied to amendments to section 9(2B) rights in respect of both past and future service. The employer appealed this latter decision. The Court of Appeal has now upheld the High Court's decision.

Industry groups have been engaging with the government on the case. They have asked the government to make regulations retrospectively validating any amendment which is held to be void solely because a written actuarial confirmation was not received before the amendment was made (or where such a confirmation cannot now be located). The government has not as yet indicated what, if any, action it may take.

Action

Trustees of schemes that hold section 9(2B) rights should continue to monitor how the situation develops – in particular whether there is any government intervention – before taking any action. The exception to this is where the scheme is currently undertaking a transaction such as a buy-in or buy-out, a scheme merger or other bulk transfer, or a benefit change project. In those cases, trustees should speak to their legal advisers to understand the impact that the decision may have on the transaction.

Amendment powers – interpretation of proviso

The Court of Appeal has upheld the High Court's decision that, in addition to referring to the rights earned by past service up to the date of any amendment, the word "interests" in a proviso to the BBC Pension Scheme's amendment power refers to:

- Linkage of the value of past service rights to final salary.
- The ability of members to accrue future service benefits on the same terms as provided for under the Scheme immediately prior to any amendment.
- The ability of members to accrue any future service benefits under the Scheme.

Action

Trustees and employers of DB schemes with similar provisos to their amendment power should consider the implications of the decision for their scheme. They should take advice from their legal advisers in this regard.

DB superfunds – revised guidance

TPR has updated its guidance on DB superfunds. Among other things, the updated guidance includes revised expectations on capital release – this is now permitted when the total assets (in the pension scheme and the capital buffer) exceed minimum capital adequacy expectations as set out in the guidance. Additional safeguards have also been introduced to ensure a superfund does not pick favourable dates when markets are high to release capital and that there is a formal governance process around capital release.

Action

No action required.

Issues affecting DC schemes

2024/25 DC scheme return – guidance

TPR has published guidance on the 2024 DC scheme return. This guidance notes that questions have been added or updated on the following:

- Members who have left the scheme in the previous 12 months.
- The scheme's primary contact regarding pensions dashboard duties.
- The objectives set for investment consultants.
- The benefits offered by the scheme.

DC scheme return notices will be issued between August and December 2024.

Action

Trustees of DC schemes should ensure that they submit their completed scheme return by the date specified in the scheme return notice.

DC master trusts – TPR supervision

TPR has announced that it is evolving its supervision of DC master trusts to focus on investments, data quality and standards, and innovation at retirement. As part of its new approach, TPR will:

- Probe and challenge more on how a master trust's approach to investments delivers for members.
- Investigate how a master trust is seeking the best possible long-term risk-adjusted returns.
- Look more broadly at master trust investment governance practice and investment decision-making.
- Request deep dives into the systems and processes of master trusts.

Action

Trustees of DC master trusts should monitor TPR's evolution of its supervisory approach.

Mayer Brown news

Upcoming events

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

- **Trustee Foundation Course**
  11 September 2024
  11 December 2024
- **Trustee Building Blocks Classes**
  13 November 2024 – DB funding
- **Quarterly webinars**
  24 September 2024 – topic TBC
  27 November 2024 – topic TBC

Mayer Brown updates

- Mayer Brown has been shortlisted for the upcoming FT Innovative Lawyers Awards Europe 2024 for the General Code Compliance Tracker that it has developed. The Tracker is an online tool that enables trustees to (a) assess the extent to which they are compliant with the Code's requirements and (b) monitor and manage their compliance with the Code's requirements on an ongoing basis. For more information, please contact Katherine Carter.

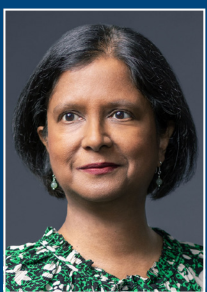
Mayer Brown Insights

- A "vote for change"? What we can expect for Employment, Pensions and Immigration after the UK election | Insights | Mayer Brown
- 1 October 2024 – important deadline for DC pension schemes | Insights | Mayer Brown

All our Insights are available here.

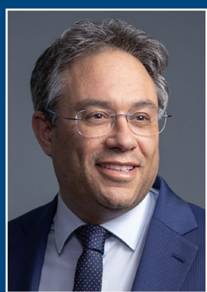
Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

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

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