EVERSHEDS SUTHERLAND

Change is in the air

Pensions Agenda

Autumn 2023

1. Abolition of the lifetime allowance

HMRC's consultation on the proposed changes to the UK pensions tax regime related to the abolition of the lifetime allowance from 6 April 2024 has now closed. The final legislation is still awaited. If the changes are introduced from the start of the 2024/25 tax year, as expected, schemes will have very little time to update their operational and administrative processes, payroll systems, member communications and scheme rules to reflect these significant changes.

Action – Identify the changes you will need to make to your systems, processes, member comms and scheme rules to implement the proposed changes and put in place a project plan. Speak to your administrator and other service providers now to ensure you are at the front of the queue, as all schemes will need to implement these complex changes at the same time.

2. Improving climate change scenario analysis

The Pensions Regulator has highlighted shortcomings it considers undermine the integrity of existing climate change scenario analysis. This includes a tendency to downplay the full scope of the risks and uncertainties associated with climate change and a failure to take account of the shortening time horizons for taking action. The Universities Superannuation Scheme has recently published details of work it has done with the University of Exeter to develop four new scenarios which are designed to be more useful for investment decision-making.

Action -If you need to carry out climate change scenario analysis, discuss with your advisers how robust your existing scenario analysis is and how it could be improved. Ensure your scheme's trustees receive suitable training so they feel confident to question and challenge their advisers on climate related risks and the output from climate scenario analysis.

3. Updating DC SIPs

Trustees of DC schemes will now be required to include their policy on investing in illiquid assets in the statement of investment principles (SIP) for their default investment fund. This requirement will apply where a default SIP is updated after 1 October 2023 (or by 1 October 2024 at the latest). Details of any illiquid investments together with the age profile of the members in relation to which they are held need to be included. If a scheme does not invest in illiquid assets the trustees will need to explain why not, and whether they have any plans to do so in the future.

Action – Ensure you are ready to comply with these new requirements where your default SIP is updated after 1 October this year.

4. Historic scheme amendments may be void

In June, the High Court confirmed scheme amendments may be void where the rules of a scheme contracted out on a final salary basis between April 1997 and April 2016 were amended without written confirmation from the actuary that the statutory contracting-out requirements continued to be met. This decision has been appealed. However, some schemes may still need to take action in advance of this - for example, where they are planning to complete a buy-in or move to buy-out in the near future.

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

5. Funding and surpluses

The DWP is still hoping to lay the new funding Regulations this Autumn ready for them to come into force in April 2024. In the meantime, there is an increasing focus on how sponsors can prevent trapped surpluses arising within their scheme. Some schemes with existing surpluses are also considering how this may be utilised. Alongside this, the DWP is exploring ways in which the statutory rules on the use of surplus could be updated to encourage investment in productive finance by DB schemes.

Action - Assess whether your scheme is on track to meet its long-term objective and how the risks associated with trapped surplus should be managed. Consider engaging with the DWP over how the rules on use of surplus could be modified to help schemes and sponsors.

6. End game options increasing

The Regulator has updated its guidance for DB superfunds and its guidance for trustees and sponsors considering a superfund transfer. The Government has also confirmed it intends to introduce a legislative authorisation and supervision regime in due course. The updated guidance eases the tests that must be met before a scheme can transfer to a superfund. Under the new rules, schemes are permitted to transact even if they can afford to buy-out, where they cannot currently access the buy-out market. A recent paper from the Association of Consulting Actuaries highlights alternative capital backed arrangements that are also being developed to help schemes achieve their funding goals.

Action - Consider whether any of these emerging options may be appropriate for your scheme, where a buy-out is not viable.

7. General Code anticipated

We understand the new General Code has been ready to be laid before Parliament for several months. The reason for the delay is unknown. We still expect the new Code to be introduced. It will come into force approximately two months after it has been laid. The Code will set out the internal controls and governance processes schemes are expected to have in place and how these should be monitored and reviewed.

Action - Keep an eye out for the new Code. Once it is laid, carry out a gap analysis to identify any additional or updated governance processes that may be required.

8. Auto-enrolment expansion moves closer

The Pensions (Extension of Automatic Enrolment) Act 2023 has received Royal Assent. It gives the government power to extend auto-enrolment to workers who are over age 18. The Act also enables the government to remove the lower earnings limit on qualifying earnings, meaning member and employer auto-enrolment contributions will be payable from the first pound earned. The government is expected to launch a consultation on its plans to use these powers shortly.

Action - Assess how the costs of auto-enrolment for your organisation may be impacted by these changes.

9. Preparing for pension dashboards

The Pensions Regulator is urging schemes to continue preparing for pension dashboards even though the long-stop date for connecting has been pushed back to 31 October 2026. The staging dates by which schemes will be expected to connect to the dashboards ecosystem in advance of this deadline are due to be set out in guidance, which is still awaited.

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

10. Advice guidance boundary to be reviewed

The FCA has confirmed it is carrying out a review of the advice guidance boundary with HM Treasury. In the meantime, it has issued clarification on what firms and other organisations can do within the existing rules, without providing a personal recommendation. The FCA plans to publish a policy paper on this in the Autumn.

Action - Consider whether the FCA's clarification affects the support your scheme is comfortable providing to members in relation to their pension and retirement choices.

Key dates

Date	Change	Action
Autumn 2023	The Pensions Regulator has indicated it intends to lay the new General Code of Practice before Parliament in the Autumn – no date has been specified.	Once laid, carry out gap analysis to identify what new governance processes might be required.
Autumn 2023	FCA to issue policy paper on the advice guidance boundary.	Watch out for any proposed changes or further clarifications.
1 October 2023	New version of AS TM1 which sets out the assumptions for money purchase illustrations comes into force.	Update DC benefit projections, where necessary.
1 October 2023	New disclosure requirements on illiquid investments apply when updating default fund SIPs.	Take into account when updating your default fund SIP.
1 October 2023	For scheme years ending from 1 October 2023, Chair's statements will need to provide information on default fund asset allocation.	Consider when preparing your DC Chair's statement.
7 November 2023	Although a Pensions Bill is not expected in the first King's speech, all eyes will be on the government's agenda for the remainder of this Parliament.	Watch out for any surprises.
22 November 2023	The Autumn Statement is likely to include an update on the Mansion House reforms and the abolition of the lifetime allowance.	Watch out for any further details on these pension reforms.
21 March 2024	Existing contracts providing for overseas data transfers need to be updated to include new safeguards.	Identify affected contracts and required amendments.
April 2024	New statutory funding requirements and Code due to come into force.	Watch out for final details.
6 April 2024	Lifetime allowance due to be abolished and two new allowances introduced.	Prepare implementation plan and watch out for final legislation.
Spring 2024	Possible expansion of auto-enrolment regime.	Watch out for DWP consultation and draft legislation.
31 October 2026	Long-stop date for connecting to pension dashboards.	Watch out for draft guidance with scheme specific staging dates.
6 April 2028	Normal minimum pension age will rise from age 55 to 57, but some members will retain a right to retire at 55.	Assess impact on your scheme. Decide when and how to tell members if the age at which they can access their benefits will change.
2030	RPI likely to be aligned with CPIH.	Review likely impact on scheme investments and benefits.

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

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