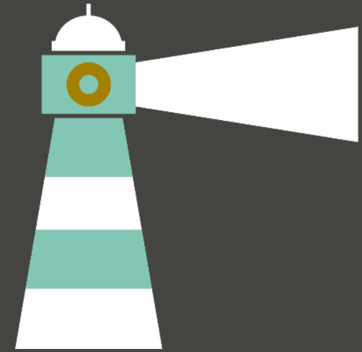
BRIEFING

What's Happening in Pensions

Issue 113 – December 2024



Travers Smith Pensions Sector Group

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Rectification of amendment execution: The High Court has allowed rectification of scheme documents where amending documents had arguably not been fully executed and where an amending document was missing.

Economic Crime and Corporate Transparency Act 2023: The new criminal offence of failure to prevent fraud will come into force on 1 September 2025. The Government has published guidance which contains recommended procedures that an organisation can put in place in order to meet its obligations. A Companies House outline transition plan sets out a provisional timetable for (among other things) new rules on identity verification for directors.

PENSIONS RADAR: You may also be interested in the latest edition of Pensions Radar, our quarterly listing of expected future changes in the UK law affecting work-based pension schemes.

SUSTAINABILITY MATERIALS: Our Sustainable finance and Investment Hub includes a section on ESG and sustainable finance issues for pension schemes and their sponsors.

The Budget – pensions and inheritance tax

The significant pensions announcement in the new Government's first Budget was that it intends to bring into the inheritance tax (IHT) regime "most unused pension funds and death benefits". Although principally aimed at DC pension funds, it will also extend to some defined benefit lump sum death benefits.

Budget documents can be found here: https://www.gov.uk/government/publications/autumn-budget-2024 and here: https://www.gov.uk/government/collections/autumn-budget-2024-tax-related-documents

The Government announced that it "will bring unused pension funds and death benefits payable from a pension into a person's estate for inheritance tax purposes from 6 April 2027. This will restore the principle that pensions should not be a vehicle for the accumulation of capital sums for the purposes of inheritance, as was the case prior to the 2015 pensions reforms.".

This is not just about DC pots: some DB lump sum death benefits will also be in scope. And it will affect very many more people (or rather their survivors) than those who use pension funds to avoid IHT.

A consultation sets out proposals but asks for responses only on the mechanics, not the tax policy. This closes on 22 January 2025.

Funds paid from registered pension schemes are currently outside a person's estate, and so not subject to IHT, so long as the recipient(s) is/are chosen at the discretion of the trustees or managers. Commonly, members can nominate their preferred recipient(s) but this is not binding on the trustees/managers. For schemes where the nomination is binding, however, the death benefit is within the individual's estate and so is subject to IHT (depending on the value of the estate and whether payment is to the spouse or civil partner or not). The Government proposes to remove that distinction so that all funds paid from registered pension schemes fall within the member's estate and are potentially subject to IHT.

The Government's concern here is that DC pensions are being used by some people for passing on capital sums outside of the IHT regime. But this is not just about DC pension pots: some defined benefit lump sums will also be in scope (for example 5- or 10-year pension guarantees). It could also catch some lump sum death-in-service benefits but the consultation is not clear on this: it includes death in service benefits as being in scope but later says that benefits payable under life policies will not be caught by the changes. It seems that unregistered schemes (for example, excepted group life schemes) are out of scope. It is unclear, however, whether this is intended and, if so, the policy justification for it.

Broadly, IHT is charged at 40% on estate assets above £325,000 – which figure is being frozen until at least April 2028 (furthermore, broadly, any unused nil-rate band following the death of an individual can be transferred to their surviving spouse or civil partner).

It seems that the exemption for assets passed to the individual's spouse or civil partner will extend to the newly in scope assets (i.e. it would appear that a death benefit paid to an individual's spouse or civil partner would not be subject to IHT under the new regime).

Annex B to the consultation lists the categories of benefits that are in and out of scope. The text after the table adds important qualifications. To summarise this very broadly:

The following benefits are out of scope:

- Dependant's scheme pension (DB or DC) – just subject to income tax
- Charity lump sum death benefit (but this was already normally exempt)

The following benefits are in scope:

- Dependants'/nominees'/successors' annuities and short-term annuities
- Dependants'/nominees'/successors' drawdown funds

- Dependants' drawdown pensions and lump sums
- DB lump sum death benefits (e.g. death in service lump sum) (but see below)
- Pension/annuity protection lump sums (e.g. 5- or 10-year guarantees)
- UFPLS death benefits
- Trivial commutation lump sum death benefit (DB or DC)
- Unauthorised payments

But the text following the table excludes benefits from life policy products "purchased with pension funds or alongside them…". That raises questions about standalone life assurance schemes and self-insured schemes.

Pension schemes and providers will be liable to pay any IHT due. They will be concerned about the complicated processes they will need to undertake in order to establish their IHT liability, including apportionment between themselves and the estate, correcting underpaid IHT when additional assets are discovered, and about the potential for delays to payments of benefits and the liability for interest on IHT paid more than six months after the death. This is principally what the consultation questions are about.

In some scenarios, including in particular on death after reaching age 75, there is potential for income tax to be payable on the residual benefit payable after any IHT due has been deducted.

Currently, the income tax treatment of inherited DC funds is different depending on whether the individual died before or after their 75th birthday. If the death is on or after age 75 then income tax is payable on the pot by the beneficiary, as and when it is withdrawn. On death before age 75, there is no income tax payable at all (provided payment is made within two years of death). In either case, IHT is not currently payable if the benefit is payable under discretionary trusts.

It appears that the income tax treatment will not change, which means that in some circumstances income tax on the residual benefit would be payable in addition to the IHT charge.

DB funding regime

The Pensions Regulator's new DB funding code of practice came into force on 12 November 2024, following approval by Parliament. As previously reported, the new regime applies to valuations with effective dates on or after 22 September 2024.

The Regulator's new digital platform for submitting valuations, recovery plans, statements of strategy etc. will not be available until Spring 2025. Schemes have therefore been advised to delay submissions until that is available (but not delay completing the valuation). Valuations with effective dates before 22 September 2024 fall under the old regime and submissions should be made in the way that schemes are used to.

The Regulator has also published formally the final details of the tests and conditions a scheme must satisfy if it wishes to use the 'fast track' assessment route under the new regime. The Regulator once again stresses that use of the alternative 'bespoke' route is equally acceptable. This follows a consultation (see WHiP Issue 99), the outcome of which was published previously (see WHiP Issue 111).

The Regulator has also published long-awaited updated covenant guidance. This reflects the new regime, under which there are new expectations of trustees as regards assessing and monitoring covenant strength, the reliability period and covenant longevity.

After a useful introduction section, there are sections on:

- Identifying employers
- Assessing cash flow
- Prospects
- Determining the reliability period and covenant longevity period
- Contingent assets
- Recovery plans

- Determining the covenant inputs required to assess supportable risk
- Monitoring

The Regulator expects all trustees to read applicable sections of the guidance in full. There are a number of areas where the operation of the guidance will, we expect, be fleshed out and clarified between the pensions industry and The Pensions Regulator over the coming months and years. A good example of this are the provisions developing the concept of a "look-through" guarantee and how its treatment for journey plan and recovery plan purposes differs from the treatment afforded to other types of guarantee.

This replaces entirely the previous (August 2015) edition of the guidance. The Regulator mentions that the guidance may be revised in light of any feedback received.

See our February 2024 briefing for more detail of the new funding regime.

Pensions Review – DC and LGPS consolidations

Alongside the Chancellor of the Exchequer's Mansion House speech on 14 November, the Government published the interim report from phase 1 of the Pensions Review. This was accompanied by consultations on consolidation initiatives that will affect DC pension providers and the Local Government Pension Scheme. Both these initiatives are intended to increase investment in infrastructure and other drivers of economic growth such as private equity. They will do this by enabling scale via consolidation.

The consultations both close on 16 January 2025.

Since then, it has been reported that the Government is putting on hold phase 2 of the review, which was to have addressed adequacy.

DC master trusts and GPPs

The consultation here affects workplace pension providers including master trusts and group personal pension providers. Employers' private trust-based schemes are not in scope: it is intended that the forthcoming 'value for money' assessment and reporting requirements will drive consolidation there (see WHiP Issue 111).

For master trusts and personal pensions (usually group personal pensions) used for automatic enrolment, the Government intends to impose a minimum default arrangement asset value and maximum number of default arrangements. This would be in place from 2030 at the earliest, perhaps with some phasing-in. Legislation could be included in the forthcoming Pension Schemes Bill, expected next Spring.

Smaller providers that cannot meet the requirements would need to consolidate. The Government anticipates that the current total of around 30 DC master trusts and 30 GPP providers would reduce significantly.

The Government considers that the benefits from scale can be found where there is a pool of assets under management of between £25 billion and £50 billion but the "true benefits" apply above that level. But it asks questions around what minimum size of fund is appropriate and at what level the minimum size requirement should apply (for example, default arrangement or default fund). Proposing a maximum number of default arrangements is similarly designed to consolidate funds in order to facilitate investment in more 'productive' asset classes. There are questions around what the right maximum number is.

It also asks whether differential pricing should be prohibited within the same default, i.e. master trusts and providers charging different fees to different customers for investment in the same product. Though there are of course different costs to providers depending upon the size of the business given to them by the customer.

The Government recognises that legislation is needed in order to allow personal pension providers to transfer members without their consent. (There is already legislation in respect of such transfers between occupational pension schemes.) A section of the consultation therefore considers what might be required here and the safeguards and supervision that would be appropriate. It notes that such legislation would also be of application in respect of transfers due to the value for money requirements and small pot consolidation.

Another question raised in the consultation is whether there should be a legal duty on employers to consider overall value when selecting a scheme and a duty on them to review their choice periodically, for example every five years. It

also moots the idea of employers having to nominate a director to be responsible for "ensuring the pension arrangement delivers good value retirement outcomes for staff".

And the question is raised, not for the first time, of whether benefit consultants providing advice on pension scheme selection and/or investment strategy should be regulated.

As yet, there are no proposals to mandate any degree of investment in the UK or in any particular asset classes.

In light of these and other developments in the DC environment, the Pensions Regulator's Chief Executive, Nausicaa Delfas, has announced that the Regulator's approach to regulation of DC schemes is shifting to a more prudential style, addressing risks not just at an individual scheme level but also systemic risks to the wider financial ecosystem.

Local Government Pension Scheme (England and Wales)

This consultation concerns mandatory full Local Government Pension Scheme (LGPS) asset pooling. The 86 funds which make up the Local Government Pension Scheme (England and Wales) will be required to pool their assets in new 'megafunds'. The timescale for this is not clear.

This initiative has been strongly influenced by models in Canada and Australia, where they see far greater pension fund investment in infrastructure than is seen in the UK. To date, in response to earlier government initiatives, only around 39% of the funds' nearly £400 billion of assets have been pooled (into eight current pools). The Government has therefore decided that mandating is required.

LGPS fund administering authorities will be required to delegate in full the implementation of their investment strategy to the relevant pool and to take their principal investment strategy advice from it. They will also be required to transfer legacy assets to the management of the pool.

Each LGPS fund's administering authority will be required to specify a high-level objective for investment in their local economy, including a target range for investment as a proportion of the fund, with 5% given as an example.

The pools will be required to be authorised and regulated by the Financial Conduct Authority.

Lifetime allowance abolition

The Pensions (Abolition of Lifetime Allowance Charge etc) (No. 3) Regulations 2024 have been made and have come into force, following approval by Parliament under the affirmative procedure.

This completes the Government's exercise of correcting identified issues with the legislation that abolished the lifetime allowance and introduced the lump sum allowance, lump sum and death benefit allowance and overseas transfer allowance. As for the other recent regulations, the regulations apply to the whole of the current tax year and subsequent ones. See WHiP Issue 112 for more detail.

Pensions dashboards

Standards and code of connection

The Pensions Dashboards Programme (PDP) has published updated reporting standards. This document sets out the requirements on schemes and providers, and dashboard providers, for generating, recording and reporting data. This includes information for security protection, tracking performance, and helping regulators to monitor compliance with legal obligations. The PDP does not expect to make further changes before seeking formal approval from the Secretary of State.

New content provides further information on the use of illustration dates, including where different types of benefit are payable (for example DB and DC) or benefits are payable from different dates, and on matching criteria.

Minor changes have also been made to data standards and the code of connection.

The PDP has also published a view data model, indicating the structure of a view response.

FCA rules for dashboard providers

The FCA has published a policy statement and final rules and guidance on the regulatory framework applicable to pensions dashboard providers.

But providers will have to wait. As reported in WHiP Issue 112, the Money and Pensions Service (MoneyHelper) dashboard will be prioritised: the Government wishes to see that dashboard operating for an unspecified period before commercial dashboards will be permitted to launch.

DB and hybrid scheme returns

The Pensions Regulator has issued an update to inform DB and hybrid schemes of new questions in their scheme returns, which are to be submitted by 31 March 2025.

New questions include the following:

- **Scheme member data quality (section previously called 'Record-keeping')**
  Questions regarding the quality of scheme member data, more in line with the Regulator's expectations and its general code of practice. Trustees are asked to confirm whether they have measured the scheme’s common or scheme specific data in the last year (rather than in the past three years).
- **Scheme membership details**
  The Regulator asks for more recent information regarding scheme members. This is used to calculate the general levy for the year beginning 1 April 2025.
- **Investment consultants**
  There are new questions about the performance of investment consultancy providers, including against set objectives, and whether objectives have been reviewed (and if not, why not).

Using pension benefits to satisfy judgment debts

In *Manolete Partners PLC v White*, the Court of Appeal has ruled that the courts cannot require a person who is the subject of a judgment debt to draw benefits from their occupational pension scheme with a subsequent additional requirement that the payment be made to the creditor in order to satisfy the debt.

Mr White, the only member of a small self-administered pension scheme (an occupational pension scheme) of which he and his son are the trustees, owed nearly £1 million to Manolete Partners pursuant to an unsatisfied judgment debt. That firm sought an order from the High Court requiring Mr White to draw his benefits from the scheme as a lump sum. They intended thereafter to make a separate application for an order requiring him to pay that lump sum to them in part satisfaction of the debt. The High Court made the requested order but the Court of Appeal has ruled that, in the circumstances, it was not within the court's power to do so.

The basis for the Court of Appeal's decision was that section 91(2) of the Pensions Act 1995 provides that where an entitlement to a pension or right to a future pension cannot be assigned (which is generally the case), *"… no order can be made by any court the effect of which would be that he would be restrained from receiving that pension".*

Manolete had sought to avoid this prohibition by ultimately seeking an order that the sum be paid to an account in Mr White's name, with a separate order to be sought afterwards requiring him to make the onward payment to them. The Court of Appeal looked at the purpose of the legislation and ruled that the courts could not give the order sought in the knowledge that Mr White would not receive the benefit of the payment.

In other recent cases as well as in this one, the High Court has taken the opposite view on this question and allowed pension scheme assets to be accessed by creditors in this way. Though there are reasons to conclude that the other cases were not wrongly decided, which the Court of Appeal outlines in the judgment, this decision makes clear the law in this area.

Rectification of amendment execution

In *Ballard and others v Buzzard*, the High Court has allowed rectification of scheme documents where amending documents had arguably not been fully executed.

The Radley College Pension and Assurance Scheme could be amended by a signed declaration in writing. Amendments to pension increase rules in 2001 and 2005 had been declared in writing but there were questions about the signatures on the documents. There were five scheme trustees but the scheme administrators prepared declarations with signature spaces for only four. Four of the trustees had signed where indicated. The fifth trustee had not clearly signed as a trustee but had signed where indicated for the principal employer.

The judge was satisfied on the evidence presented that:

- Although a fully signed copy of one of the amending documents could not be found, there had been one (or maybe even two) but it had been lost at some point in the last 23 years.
- The fifth trustee intended that his signature was added in his capacity as a trustee as well as being for the principal employer.

Having so decided, the judge was happy to order rectification of the signature provisions. He also ordered rectification of a 2006 consolidating deed that had erroneously failed to reflect the 2005 amendment: it was clear from (among other things) undisputed witness evidence and from a recital in the deed that there was no intention to reverse that amendment.

Economic Crime and Corporate Transparency Act 2023

Failure to prevent fraud

The Economic Crime and Corporate Transparency Act 2023 introduced a new criminal offence, the 'failure to prevent fraud' offence (FTPF Offence) (see WHiP Issue 112). Regulations will bring into force the relevant sections of the Act on 1 September 2025.

This FTPF Offence is modelled on existing offences of failure to prevent bribery and failure to prevent the facilitation of tax evasion. It holds certain corporate entities criminally liable for fraud committed by their associates unless the company has reasonable procedures in place to prevent fraud.

The Government has published Guidance to organisations on the offence of failure to prevent fraud which contains some of the recommended procedures that an organisation can put in place to prevent fraud arising on the part of the organisation and its associates and, importantly, to help avail themselves of a defence where a FTPF Offence occurs.

Our Operational Risk and Environment Group has produced a briefing on the FTPF Offence: 'Failure to prevent fraud guidance published – what to businesses need to do now?'.

To summarise in broad terms, there are two heads under which in scope organisations will be liable for the new offence.

Firstly, large in scope organisations will be liable if:

- fraud is committed (within a list of frauds set out in the legislation);
- by an associated person;
- intending to benefit that organisation or a person to which it provides services; and
- the organisation does not have reasonable fraud prevention procedures in place.

A 'large organisation' is one that meets at least two of the following criteria (in the financial year that precedes the year the FTPF Offence occurred): turnover of more than £36 million, total assets of more than £18 million, and more than 250 employees. It is unlikely that trustee companies themselves will meet the test for a 'large organisation'. Trustee companies themselves are not expected to generate any turnover or employ large numbers of employees, and any assets will be held on trust.

Secondly, in scope organisations with any employees (whether or not they constitute a 'large organisation') will be liable if:

- an employee of the in scope organisation commits a fraud offence (within the list set out in the legislation);
- intending to benefit that organisation; and
- the parent undertaking of the in scope entity is a 'large organisation'.

The offence under this head is that the fraudulent act is committed by an employee. This will exclude any organisations which do not employ staff, such as director-only trustee companies, from its remit, although some trustee companies which have some employees could potentially be in scope.

In essence, the 'failure to prevent fraud offence' could make corporates liable for the acts of others in a similar way to the UK's Bribery Act, including where a UK-based employee commits fraud and the employing organisation is based abroad.

Similarly to the Bribery Act, what equates to "reasonable fraud prevention procedures" requires judgement, and companies will need to ensure that something pragmatic and sensible is in place. We can help with this if required.

Identity verification

Companies House has published an outline transition plan for reforming the role of Companies House in connection with the Economic Crime and Corporate Transparency Act 2023. The plan includes a provisional timetable for changes to be effected (dependent on suitable Parliamentary time).

This anticipates that (among other things):

- By Autumn 2025, identity verification will be compulsory on incorporation for new directors (and new people with significant control (PSCs)) and there will be a 12-month transition period in respect of existing directors and PSCs.
- By Spring 2026, identity verification will be required for those filing any document and third-party agents filing on behalf of a company will be required to be registered as an authorised corporate services provider.

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