CLIFFORD

CHANCE

UK PENSIONS UPDATE – JUNE 2024

In this edition, we discuss the upcoming general election and what this could mean for pensions. We also consider the Pensions Regulator's recently published corporate plan and the increased scrutiny on trustee duties, as well as recent technical amendments made to reflect the abolition of the Lifetime Allowance (LTA) and the new securitisation regulations.

Content

1. The General Election
2. The Regulator's corporate plan
3. Increased scrutiny on trustee duties
4. Clarification on the Lifetime Allowance abolition
5. Progress on securitisation Regulations

1. THE GENERAL ELECTION

Following the Prime Minister's announcement that a general election will be held next month, there has been much speculation in the industry about what the result could mean for pensions. While the Conservatives' and Liberal Democrats' manifestos were published earlier this week, Labour's is expected later this week.

We take a look at what we know so far and the potential pensions implications.

- **The revised defined benefit (DB) funding regime**: The regulations[1] and provisions of the Pension Schemes Act 2021[2] which bring the requirements of the revised DB funding regime into play came into force from 6 April 2024 and apply to valuations with effective dates on and after 22 September 2024. However, the Pensions Regulator's draft DB Funding Code is still in flux. Consultation on the draft Code closed in 2023 and the Pensions Regulator was expected to lay the new Code in Parliament this month in order to give the necessary 40-day period for the Code to come into effect ready for the September implementation date. However, in light of the dissolution of Parliament on 30 May, this is no longer possible. It is expected the Code will be picked back up by the new government following the Summer recess, but it does mean that schemes with valuation dates shortly after 22 September may be working (at least in the short-term) without the finalised Code.
- **Future changes to pensions taxation**: There is speculation that a review of pensions taxation may be high on the agenda for a new government. In terms of what we know so far, the Conservatives have pledged to launch a new "Triple Lock Plus" to guarantee that both the state pension and the tax-free personal allowance for pensioners will always rise with the highest of inflation, earnings or 2.5%. In their manifesto, the Conservatives also pledge to introduce a new "Pensions Tax Guarantee" under which they commit to not introduce any new taxes on pensions, to maintain the 25% tax free lump sum and maintain tax relief on pension contributions at their marginal rate. Labour previously indicated they would reverse the abolition of the LTA (shortly after it was announced at the 2023 Budget). However, they have reportedly dropped this pledge coming into the election and it is not expected to be included in their manifesto expected later this week.
- **Expansion of auto-enrolment:** The Pensions (Extension of Automatic Enrolment) Act 2023 gained Royal Assent in September, giving the Secretary of State powers to make regulations to: (i) reduce the age 22 limit for being auto-enrolled/re-enrolled; and (ii) reduce/remove the lower end of the qualifying earnings band. However, regulations are needed to bring these powers into force. Query whether these will be progressed by a new government – it is likely there

---

1 *The Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2024*
2 *Section 123 and Schedule 10 of the Pension Schemes Act 2021*

will be industry pressure to do so, but whether it will be a priority action remains to be seen. The Liberal Democrats' manifesto includes reviewing pensions rules for 'gig economy' workers.

- **Options for DB schemes:** Following Mansion House and the Autumn Statement, there has been a swathe of consultations and proposals covering potential changes to surplus rules and the establishment of a consolidator run by the Pension Protection Fund (**PPF**), as well as the promise of a permanent regulated regime for DB superfunds "as soon as parliamentary time allows" (please see our July 2023, December 2023 and March 2024 editions of the UK: Pensions Update for more details). While the parties have not commented formally on any of these items yet in the run-up to the election, it is possible that some of these developments could be put on hold or even shelved completely. The Labour party has made it clear that it intends to carry on the current government's reforms aimed at boosting UK growth, but so far has not commented in more detail.
- **Notifiable events and declaration of intent regime:** Regulations are still needed on the detail of the "declaration of intent" regime and to make changes to the list of events which will be notifiable to the Pensions Regulator (see our September 2021 edition for more details). The Department for Work and Pensions (**DWP**) consultation on the draft regulations closed in October 2021, but a response to that consultation is still not forthcoming (previously expected in 2022). It is possible this is something that may be further delayed.
- **Data Protection and Digital Information Bill:** The Bill which proposed various amendments to the UK General Data Protection Regulation and Data Protection Act 2018 was dropped in the Parliamentary wash-up period.
- **Value for money and pot for life:** As discussed in previous editions of the UK: Pensions Update (see March 2024 edition for more details), the government was intending to bring forward requirements for defined contribution (**DC**) schemes to publicly disclose the breakdown of their asset allocations as part of the value for money (**VFM**) framework. In coordination with the Financial Conduct Authority, the government was intending to legislate to apply the VFM framework across the market and provide the Pensions Regulator with new powers to ensure key disclosures are in place by 2027. The government was also committed to exploring a lifetime provider model for DC schemes and expanding collective DC schemes. It remains to be seen whether these proposals will be taken forward.
- **Pensions dashboards**: There has been doubt cast over whether the ultimate dashboard connection deadline of 31 October 2026 could get pushed back. There is still work to be done by the government to ensure the necessary dashboard infrastructure is in place ready for schemes to connect, so if this slips down the priority list, it is possible the deadline could be delayed.

2. THE REGULATOR'S CORPORATE PLAN

At the beginning of last month, the Pensions Regulator published its corporate plan, setting out its key priorities for 2024-2027. The Regulator describes the industry as being in a period of change – one where the pensions market is rapidly shifting towards fewer, larger schemes – a shift which is welcomed by the Regulator. However, this brings with it new risks and opportunities.

The Regulator's priorities for the period are mainly focused on developing its VFM framework and implementing the new DB funding regime. In particular, for the coming year, key priorities will include:

Protecting savers' money	• Implement new DB funding regime • Support the DWP and PPF on options for DB schemes (including surplus sharing and a new public sector consolidator) • Work with the DWP on potential legislation for superfunds • Develop VFM framework
Enhancing the pensions system	• Continue work on pensions dashboards • Address administration and data quality issues • Focus on the quality of trusteeship and governance

Innovation in savers' interests	• Collaborate with government and industry on decumulation products and pathways • Deliver a regulatory framework for collective DC models

Looking beyond 2024-25, the Regulator will be shifting focus from embedding the DB funding regime towards the delivery of the DC VFM framework, enhancing workplace pensions through high standards in administration and governance and the promotion of innovation across the sector – most notably in tackling deferred small pots and decumulation solutions.

The publication of the Regulator's corporate plan was followed a few weeks later by a statement from the Chief Executive, Nausicaa Delfas, delivered at a Professional Pensions Live event, in which she warned that poorly performing schemes will be under greater scrutiny to ensure expectations are met. The speech was focused on driving up standards and improving VFM and transparency through the dashboards framework.

3. INCREASED SCRUTINY ON TRUSTEE DUTIES

Last month, the Work and Pensions Committee published correspondence with the Minister for Pensions, Paul Maynard, relating to pension scheme trustees and fiduciary duties. This confirmed that a number of roundtable sessions will be held (last month and this month) to discuss further trustees' investment duties, with a particular focus on trustees' consideration of Environmental, Social, and Governance (**ESG**) factors.

How trustees consider ESG factors when making investment decisions has become somewhat of a hot topic in recent years for several reasons, including new potential risks and opportunities associated with ESG investments, and new governance and reporting requirements on trustees in this area. This has resulted in some misleading statements being made, both in the media and the wider pensions industry, regarding the ability of trustees of pension schemes to take into account non-financial factors when making investment decisions.

Broadly, the current position is that pension trustees' generally have a duty to consider beneficiaries' best financial interests. Trustees also need to consider their fiduciary duty of prudence when investing. For a DB scheme, that means looking to meet the DB promise, and for DC members allowing them to accumulate an adequate pot of cash at retirement. Trustees also need to follow a legally 'proper' decision-making process, and to put personal views to one side, when investing. As a result, from a legal standpoint, ESG factors, if **financially material**, should be considered by trustees. If the trustees themselves do not have the necessary expertise to assess such factors in the context of specific investment decisions, then they must rely on advice from their appointed investment advisers and/or managers.

It will be interesting to see what comes out of the roundtable sessions and whether there is any appetite from the government to interfere with the current position.

4. CLARIFICATION ON THE LIFETIME ALLOWANCE ABOLITION

Following the Finance Act 2024 gaining Royal Assent (see our March 2024 edition of the UK: Pensions Update for more details), regulations[3] came into force on 6 April 2024, designed to cure certain issues with the legislation that abolished the LTA.

These regulations made a number of changes, including clarifying when a pension commencement excess lump sum (**PCELS**) may be paid. The amended legislation now provides that to qualify as a PCELS:

- The member must become entitled to it in connection with becoming entitled to a relevant pension (note there is no specified minimum level of pension specified);
- It is paid when an individual has no available lump sum allowance or no available lump sum and death benefit allowance;
- It is paid within the period beginning 6 months before and one year after the day the member becomes entitled to it;
- It does not reduce the rate of payment of any pension in payment;
- It is paid when the member has reached normal minimum pension age (or the ill-health condition is met);

[3] *The Pensions (Abolition of Lifetime Allowance Charge etc) Regulations 2024*

- It does not qualify as another form of authorised lump sum (meaning that if, for a DC arrangement, a member *could* be paid an uncrystallised funds pension lump sum, they cannot be paid a PCELS); and
- It cannot be paid in respect of contracted-out rights.

HMRC's LTA abolition FAQs published on 25 April provide some further information and confirm that it will not be compulsory for schemes to offer the PCELS. Where schemes wish to offer the PCELS and cannot amend their rules, there is a provision in the Act which provides for references to the lifetime allowance excess lump sum in scheme rules to be read as references to a PCELS, which may be of assistance. Note that this provision ceases to have effect on 5 April 2029.

There is also a wider statutory override provision in the Act (ceasing to have effect in 2029) which provides that the amendments made by the Act do not affect the interpretation of any "relevant rule" of a registered pension scheme. A "**relevant rule**" for this purpose is a rule which imposes a limit on the amount of a benefit payable under the scheme to or in respect of a member by reference to the member's LTA, the standard LTA or the LTA charge (with these terms having the meanings they had immediately before 6 April 2024).

The pensions industry had raised issues regarding the unintentional consequences that the new regime could have for schemes to the extent their rules are written to limit benefits by reference to the LTA. While the statutory override provision is likely to be of some assistance here, HMRC has identified a technical error in the drafting and the provision is more limited than the industry may have hoped. Potentially affected schemes will need to carefully consider the wording of their rules and take advice as necessary.

Further regulations are also expected to address a number of other minor technical changes concerning the LTA abolition. However, given the upcoming general election, it remains to be seen if and when these will be progressed.

5. PROGRESS ON SECURITISATION REGULATIONS

Last summer, HM Treasury published a near final version of the draft Securitisation Regulations 2023 for technical consultation. These regulations were intended to replace the existing EU Securitisation Regulation[4] which is currently retained in UK law post-Brexit. Amongst other things, the draft regulations would have imposed certain due diligence requirements on trustees of UK occupational pension schemes where they hold a securitisation position (i.e. where trustees invest in securitisations directly and are therefore considered to be acting as institutional investors). These requirements are not new, but a restatement and amendment of pre-existing requirements that applied under the EU Securitisation Regulation, with some changes having been made to tailor the draft regulations to the UK.

The final regulations (the Securitisation Regulations 2024) were made at the end of January. However, these omitted the specific provisions relating to pensions.

More recently, HM Treasury published the Securitisation (Amendment) Regulations 2024, which were made on 22 May. These will, for the large part, come into force on 1 November 2024 and will amend the 2024 regulations in several respects, including to insert provisions into the 2024 regulations to impose the pensions requirements referred to above.

[4] *Regulation (EU) 2017/2402*

C L I F F O R D

C H A N C E

CONTACTS

Hywel Robinson
Partner

T +44 20 7006 8387
E hywel.robinson
@cliffordchance.com

Clare Hoxey
Partner

T +44 20 7006 8899
E clare.hoxey
@cliffordchance.com

Sarah McAleer
Partner

T +44 20 7006 8808
E sarah.mcaleer
@cliffordchance.com

Louise Oliver
Director – Pensions

T +44 20 7006 4152
E louise.oliver
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2024

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Delhi • Dubai • Düsseldorf • Frankfurt • Hong Kong • Houston • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague • Riyadh* • Rome • São Paulo • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

*AS&H Clifford Chance, a joint venture entered into by Clifford Chance LLP.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.