

The Pensions Brief

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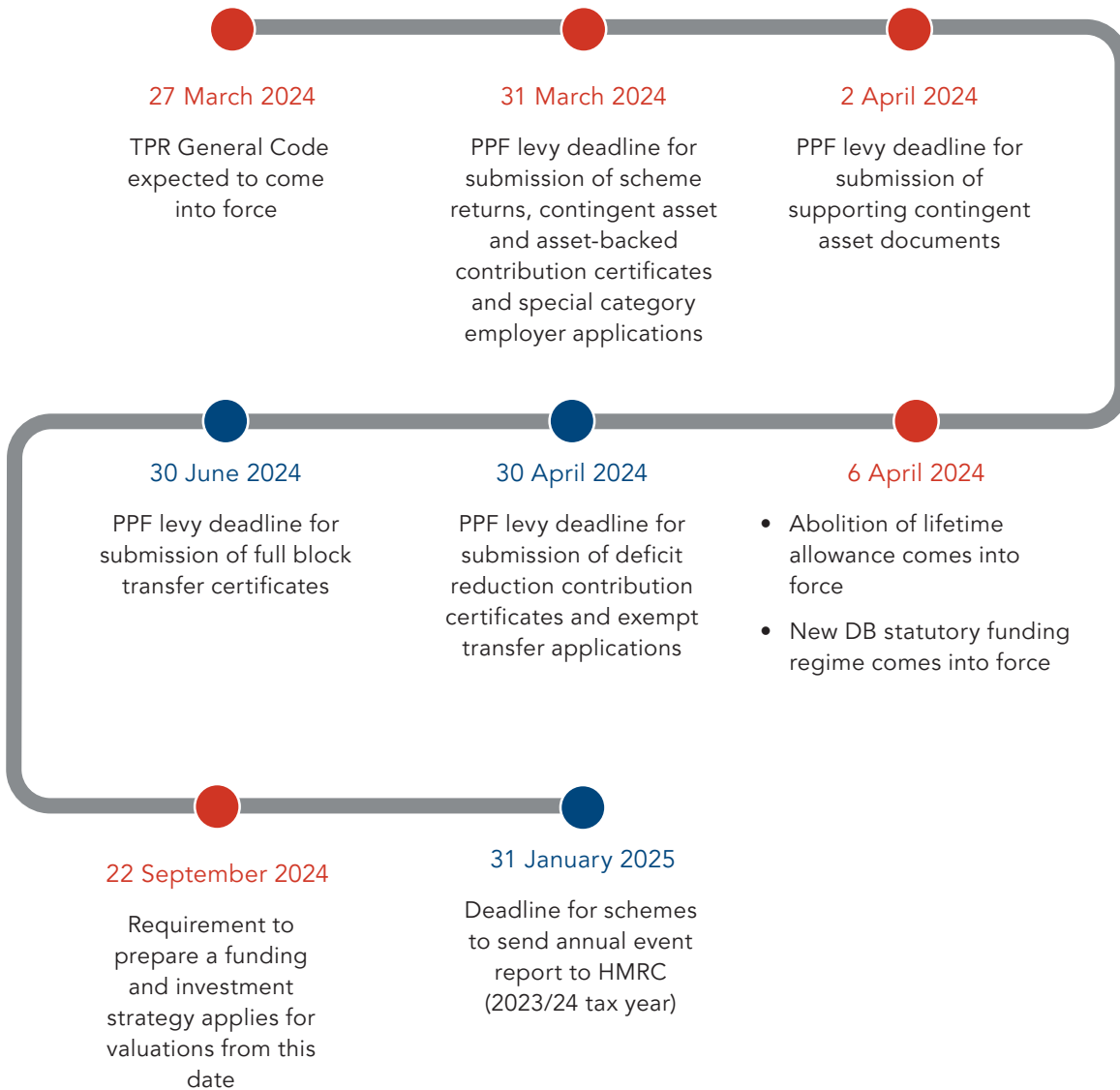
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Dates to note over the next 12 months



Key:



Important dates to note



For information

Issues affecting all schemes

General Code – final version published

The Pensions Regulator (TPR) has published the final version of its new [General Code](#) and an accompanying consultation [response](#). The Code consolidates ten of TPR’s existing codes of practice and sets out the requirements that schemes need to meet in order to have an effective system of governance (ESOG) in place. The Code has been laid before Parliament for approval and is expected to come into force on 27 March 2024.

A wide range of changes have been made to the Code. However, in the main these are clarificatory in nature, involve the adding of additional detail and/or involve the renaming or restructuring of modules. The module numbers have also been removed.

Other key changes include:

- Clarification that the remuneration policy should only cover costs for which the trustees are directly responsible and does not have to set out the levels of remuneration paid. The requirement to publish the policy online has also been removed.
- Relaxation of the own risk assessment (ORA) timetable so that schemes will be able to complete the ORA on their own timetable and to complete different sections of the ORA at different times, provided the ORA is carried out in its entirety at least every three years. In addition, the requirement to complete the first ORA within 12 months of the Code coming into force has been removed. Instead, the first ORA must be completed by the deadline specified in regulations (which at its earliest will be within 12 months of the end of the first scheme year that begins after the Code comes into force).

For more information, please see our [legal update](#).

Action

Trustees should review the Code and consider what steps they need to take to comply with the ESOG requirements and the other matters in the Code.

Abolition of the lifetime allowance – further guidance

HMRC has published a [newsletter](#) which includes responses to a number of queries that have been raised about the abolition of the lifetime allowance (LTA) and the new lump sum regime. These cover topics including small and trivial commutation lump sums and transitional tax-free amount certificates. The newsletter also confirms that HMRC will aim to issue further guidance every two weeks.

Action

No action required, but trustees and administrators may find the newsletter helpful in their preparations for the abolition of the LTA.



Private markets investment – TPR guidance

TPR has published [guidance](#) for trustees on investing in private markets. The guidance covers:

- A general overview of the classes of private market assets.
- The opportunities and risks that private market assets can present.
- The legal duties of trustees when investing.
- Key considerations and specific matters to consider as trustees of DB and/or DC schemes.

For more information, please see our [legal update](#).

Action

No action required, but trustees may find the guidance helpful when considering private markets investment opportunities.

Pensions dashboards – FAQs

The Pensions Dashboards Programme has published FAQs on the [dashboards ecosystem](#) and on [“find” data](#). The FAQs cover:

- The central digital architecture.
- The different components of the ecosystem.
- How dashboard users interact with the central digital architecture.
- What find data is.
- How find data is used for data matching.
- What the find data journey is.

In addition, the statutory prohibition on trustees being indemnified out of scheme assets in respect of civil penalties imposed under the pensions dashboards legislation came into force on 1 January 2024.

Action

No action required.

Invalid amendments – severability

The High Court has [decided](#) that, when considering whether a partially invalid amendment that infringes the scheme’s amendment power can be severed to save a partially valid amendment:

- The court must be satisfied that the parties to the amendment would not have entered into it had they known the true scope of the amendment power.
- This involves an objective rather than a subjective investigation.

Action

No action required.



Issues affecting DB schemes

Funding and investment strategy – regulations finalised

Finalised regulations setting out the detailed requirements for the funding and investment strategy have been laid before Parliament. The regulations will come into force on 6 April 2024 and schemes will be required to prepare their first funding and investment strategy within 15 months of the first valuation with an effective date falling on or after 22 September 2024.

The government has also responded to its consultation on the draft regulations. The regulations have been amended to, among other things:

- Provide assurance that investment in the sustainable growth of the employer’s business is a matter to consider alongside the affordability principle.
- Make it explicit that open schemes can take account of new entrants and future accrual when determining when the scheme will reach significant maturity.

Action

Trustees and employers of schemes with upcoming valuations should establish whether the requirement to prepare a funding and investment strategy will apply for their next valuation. Trustees and employers should also monitor publication of TPR’s revised DB funding code of practice which will provide important additional guidance on the strategy requirements.

DB/hybrid scheme return – new content

TPR has published guidance on the 2024 DB/hybrid scheme return. This notes that questions have been added to the return on:

- Compliance with the statutory requirements on setting objectives for investment consultants and appointment of fiduciary managers.
- The scheme’s liquidity and leverage and the controls it has in place.
- The scheme’s primary contact with regard to pensions dashboard duties.
- The scheme’s AVC provider(s).

Scheme returns must be submitted by 31 March 2024.

Action

No action required, but trustees may find the guidance helpful when completing their 2024 scheme return.



Conversion of final salary benefits – validity

The High Court has decided that amendments in 1992 to convert final salary benefits to money purchase benefits were valid. Under the amendments, a money purchase section was established, and members aged under 40 were moved into that section with their accrued final salary benefits being converted into money purchase benefits. Members aged between 40 and 44 were given the option to join the money purchase section (with the attendant conversion of their accrued final salary benefits). Members aged 45+ remained in the final salary section.

The court was asked to consider a range of issues including:

- Whether the interim amending deed, with attached explanatory booklets, effectively established the money purchase section and converted the relevant members' benefits – the court held that it did.
- Whether a restriction in the scheme's amendment power which prohibited amendments which "*would prejudice or impair the benefits accrued in respect of membership up to that time*" invalidated the conversion of the final salary benefits – the court held that it did not, but that it did not permit the final salary link to be broken for members transferring into the money purchase section and that a final salary underpin therefore applied. The court considered whether this underpin should be calculated on a prospective basis (i.e. undertaking a present-day comparison of the money purchase and final salary benefits to calculate any shortfall) or on a retrospective basis (i.e. calculating any shortfall in the actual transfer value, taking account of subsequent actual salary growth, and then adding interest). The court held that the retrospective approach should be adopted.
- Whether the amendments constituted unlawful age discrimination – the court held that they did not as they pre-dated the date on which the age discrimination legislation came into force.

Action

No action required.

Mayer Brown news

Upcoming events

For more information or to book a place, please contact [Katherine Carter](#).

- **Trustee Foundation Course**
 - [6 March 2024](#)
 - 5 June 2024
 - 11 September 2024
 - 11 December 2024
- **Trustee Building Blocks Classes**
 - 15 May 2024 – Trustee discretions and decision-making
 - 13 November 2024 – DB funding
- **Quarterly webinars**
 - 20 March 2024 – topic TBC
 - 26 June 2024 – topic TBC
 - 24 September 2024 – topic TBC
 - 27 November 2024 – topic TBC

Pro bono and CSR

- [Edward Jewitt](#) was part of a Mayer Brown team that assisted a Z2K client with their appeal against the government's decision to reject their Personal Independence Payment (PIP) claim. The government had rejected both the Daily Living and Mobility components of the client's claim. The appeal was successful and the client was granted the standard rate for both the Daily Living and Mobility components. The funds will provide the client with greater financial stability and hopefully improve her quality of life.
- [Liam Kellett](#) has continued to volunteer with Weavers Adventure Playground. His recent volunteering has included coaching football and hockey, supervising an assault course, and liaising with the Playground and a creative agency to produce a new website and branding for the Playground.

Mayer Brown legal updates

- [Governance fit for the 21st century – General code of practice | Insights | Mayer Brown](#)
- [TPR guidance on private markets investment | Insights | Mayer Brown](#)

Our legal updates from the last three months 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.

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