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Current issues

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Articles this month:
Election circumspection
Dashboards update
Qualified support for novel DB products
Regulator looks to the future (it's only just begun)
HMRC newsletters: May 2024

Election circumspection

On 22 May 2024, the UK's Prime Minister, Rishi Sunak, called for a general election to be held on 4 July 2024. Parliament was prorogued (discontinued) on 24 May—requiring a last-minute change to the Whitsun recess—and then dissolved on 30 May. The next few months promise hustle and bustle for politicians and pundits, but bring uncertainty and inertia to the programme of pensions reform.

The pause

In the run-up to a general election, the Government and Civil Service enter a period of 'heightened sensitivity', also known as 'purdah', during which activity is generally limited. Ministers conventionally refrain from announcing new initiatives or taking major policy decisions. We should probably not, therefore, expect to hear anything new about, for example, the extension of collective money purchase schemes, the Mansion House initiatives, or changes to automatic enrolment; at least for a few months.

Collateral damage

DB Code

One potential casualty of the general election timing is the Pensions Regulator's Code of Practice on Funding Defined Benefits. It is due to have effect for valuations on and after 22 September 2024, to coincide with legislative changes. However, before a new Code of Practice can enter into force, it must be laid before Parliament for forty days, not counting periods of dissolution, prorogation or adjournment; and the Secretary of State for Work and Pensions must make orders specifying when it will come into effect. Parliament's summer recess was due to have begun on 24 July in the House of Commons and 26 July in the House of Lords, and to have lasted until 1 September, so the Regulator was hoping to pass the Code to the DWP soon, so that it could get the forty-day clock ticking. The new Parliament will convene on 9 July, though the State Opening is not expected to take place until the 17th. There should in theory be sufficient time between the constitution of the new Parliament and 22 September to satisfy the forty-day requirement, but, as noted, the day-count pauses during any significant breaks. The Code's prospects may therefore depend on what decisions are made about the summer recess (no doubt lots of MPs had their fortnight in Lanzarote already booked, and will be less than keen to lose their deposits). The timing or length of any recess could be adjusted to accommodate resumption of Parliamentary business.

Bills

Prorogation on 24 May, just two days after the general-election announcement, allowed just two days to deal with Parliamentary business already in progress, in a process known as the 'wash up'. Any Bills that have not passed before dissolution are lost, so there is often some horse-trading between Government and Opposition, and Commons and Lords, over what becomes an Act (and perhaps about its contents). The following Bills with pensions dimensions appear to have been lost in the rush to the exit:

- Data Protection and Digital Information Bill
- Economic Activity of Public Bodies (Overseas Matters) Bill
- Pensions (Special Rules for End of Life) Bill
- State Pension Age (Compensation) Bill
- Public Sector Exit Payments (Limitation) Bill

Regulations
His Majesty's Revenue and Customs (HMRC) was working on a further set of lifetime-allowance abolition regulations, to correct problems with the existing legislation. It is unclear whether all of the changes that are necessary could be made before the next Parliament: it depends to some extent upon the terms of the Act that contains the regulation-making power, and potentially the tax implications of the change that would be made.[1]

Reports
Caught out by the surprise election announcement, the House of Commons Work and Pensions Committee did not manage to produce a report on its inquiry into the Norton pension schemes and the Fraud Compensation Fund. Rather than let its findings go to waste, the Committee dropped them into a letter to the Secretary of State. It covers matters such as whether—

- the Pensions Regulator ought to have responsibility for overseeing scheme administrators, or some rule-making powers of its own (or both);
- an element of demand-led funding would help the Pensions Ombudsman clear its case backlog; and
- changes should be made to the Fraud Compensation Fund rules.

Whoever forms the next government will have a readymade list of unfinished pensions business to consider. The industry awaits indications from the Regulator and HMRC as to how they'll tackle the problems that the election-timing surprise has created for work in progress.

Dashboards update

Data standards

The Pensions Dashboards Programme (PDP) has updated its draft data standards for pensions dashboards developers to version 1.2. Several technical changes have been made following consultation with the pensions industry.

The standards set out the data requirements for finding and viewing pension information on pension dashboards. Once finalized (they must be signed off on by the Department for Work and Pensions), they must be adhered to by the trustees or managers of the pension schemes that are required to connect to the dashboards system (but see our comment below), and will also be relevant to dashboards providers.

The PDP has also published some frequently asked questions that include topics like what the data standards are, who they apply to and what they cover.

The standards are likely to change further as issues arise in testing, and as dashboards services develop over time (but there will be mechanisms in place to limit the frequency of changes). Although responsibility for compliance lies ultimately with scheme trustees or managers, in practice most will connect to the dashboards system via third parties, who will apply the standards on their behalf.

[1] For example, the *Finance Act 2024* empowers the Treasury to use regulations to make provisions connected with the abolition of the lifetime allowance charge, but specifies that they cannot *increase* liability to tax unless the regulations are laid before Parliament in draft and approved by the House of Commons. In the lexicon of Parliament, that sort of process for statutory instruments is known as an 'affirmative' procedure, and would appear to be precluded during dissolution. By contrast, statutory instruments subject to *negative* procedures, whereby they become or remain law in the absence of an annulment resolution, can be made even whilst Parliament is dissolved, but could not be laid before the Houses until a new Parliament is formed. For a trip down the rabbit hole of legislative procedure, see *Statutory Instrument Practice*, 5th Edition (November 2017), National Archives.

Progress report

The PDP has also published a new progress report summarizing its activity over the last six months and looking at the areas it is going to focus on in the coming months.

It reports that:

- volunteer participants will begin testing connection to dashboards later this year;
- a new pensions dashboard advisory group has been launched, which will provide advice on emerging operational delivery topics; and
- it is considering the how it will implement its approach to user testing once the first providers are connected and the system is live.

FCA rule change

The FCA has modified its rules so that the entities that it regulates (e.g. personal pension schemes) can connect to the dashboards system even if they only have the data ready for 80% of their members. The impetus appears to be a fear that large providers would otherwise hold off connecting until the last possible moment.

Dashboards 'reset' post mortem

The National Audit Office (NAO) has published its report on the delays in delivery of the pensions dashboards programme. It found that a lack of skills and ineffective governance within the Money and Pensions Service (MaPS) and the Department for Work and Pensions (DWP) contributed to delays. The report also notes that there was also a significant increase in the delivery cost of the programme from £235 million in 2020 to £289 million in 2023.

The report concludes with some lessons learned by the DWP, including clarifying its relationship and accountabilities with bodies such as the MaPs on programme delivery and ensuring that it provides them with adequate support.

Connection deferment

The DWP updated its guidance for scheme trustees or managers wishing to defer connection to the dashboards system, beyond the 31 October 2026 deadline, due to a planned change of administrator. The revised guidance includes a new hyperlink to a downloadable application form—and a reminder to complete the form before submitting it to the email address provided. Deferment of connection can only be granted once, for a maximum period of one year.

The application window will close on 8 August 2024, so anyone considering requesting deferral would need to decide and apply within the next two months.

Forthcoming (non-statutory) guidance

The Pensions Administration Standards Association (PASA)'s dashboards working group issued a spring update, promising guidance about

- how to meet dashboards obligations connected with additional voluntary contributions (the first phase of this guidance is due during the second quarter of 2024);
- a matrix of 'synthetic' test cases designed to illustrate the breadth of testing required for schemes (end of the second quarter of 2024);
- matching scheme records to data verified by the central identity service; and
- 'administration-readiness' topics such as query handling, management information and reporting, and member communications.

Qualified support for novel DB products

The Pensions Regulator published a blog post on Supporting innovation in savers' interests. In it, the Regulator talks about emerging market propositions that are now becoming (or may soon become) available to trustees of defined benefit (DB) pension schemes. It warns that such '*new DB models must offer both clear benefits and proper protections*'.

The blog post mentions two pieces of upcoming guidance from the Regulator. Its stance on profit-release mechanisms in commercial superfunds is to be announced soon; whilst guidance on new DB alternative arrangements, including capital-backed journey plans, will be issued later in the year.

The Regulator stresses its and the Government's support for innovation that offers better prospects for scheme members, if balanced with appropriate protection of their interests. On that latter note, it uses the blog to '*sound a note of caution*' about a suggested new proposition that would accept transfers from defined-contribution arrangements and provide a DB pension in return. It does not think that there should be any further development of the concept until questions about the protections available for members have been addressed.

It closes by advising that DB scheme trustees who are considering transfers into innovative arrangements are expected to discuss the matter beforehand with the Regulator's market oversight team.

Regulator looks to the future (it's only just begun)

The Pensions Regulator has published a new three-year corporate plan. Its main priorities for the period include raising standards of trusteeship, data quality and administration; value for money and decumulation in defined contribution (DC) schemes; and the new funding regime and emerging propositions for defined benefit (DB) schemes. The plan also mentions development of a framework for oversight of professional trustees, and talks about some firms becoming 'systemically important' due to mergers and acquisitions.

One of the areas of focus for 2024-25 will be 'embedding' the new DB funding code. The Regulator plans to issue guidance on the relevant processes, including the collection of new DB data, this year. (See our article, *Election abstraction*, also in this issue, for a possible setback to the Regulator's immediate plans for the Code.)

The Regulator's budget for 2024/25 is £10 million lower than for 2023/24, as a consequence of efficiency-savings commitments agreed in 2021.

HMRC newsletters: May 2024

His Majesty's Revenue and Customs (HMRC) has issued Pension Schemes Newsletter 160. Its contents cover:

lifetime allowance abolition—

- HMRC has created a web tool allowing people to answer a few questions and be advised whether to apply for a transitional tax-free amount certificate;
- the Newsletter provides some additional information about Real-Time Information (RTI) reporting of lump sums that exceed the new allowances;

relief at source (RAS)—

- there is a reminder for RAS scheme administrators about the 5 July 2024 deadline for their annual returns of information, and how to submit one;

the Managing Pension Schemes (MPS) service—

- HMRC again prompts scheme administrators to enrol for and migrate schemes to the online service;
- there is a call for volunteers for an MPS user panel, to help test the lifetime allowance protection look-up service that will be moved to the MPS service in 2025; and

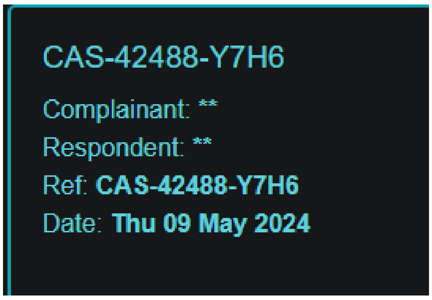
contacting Pension Scheme Services (PSS)

- the Newsletter advises that one should consult the available HMRC guidance for answers before contacting PSS;
- there is some indication of the sorts of questions that HMRC cannot or will not answer; and

- there are email addresses for groups dealing with MPS migration, feedback about the Pensions Tax Manual, the public service pensions (‘McCloud’) remedy, and RAS information returns, as well as hyperlinks to webpages for general queries and HMRC’s non-statutory clearance service.

And Finally…

It seemed to *AF*, for a moment, that the Pensions Ombudsman had taken his anonymization policy to the extreme last month, with this determination:



A more plausible explanation, with the benefit of hindsight, is that the Ombudsman's office is experiencing residual difficulties in its bid to get back on track after last year's cyber incident. We're happy to report that the problem was soon rectified, and sincerely hope that it's a good portent for the PO's bid to clear the determininations backlog resulting from the incident.

The linked determination turned out to be an entirely blank PDF, which would, admittedly, be a novel approach to minimizing the risk of personal-data breaches. We'd have included a screenshot of that, too, but white-on-white isn't the most visibly arresting combination, as anyone who's tried to spot a polar bear in a blizzard will attest (with the proviso that there may not be many such persons who have survived to bear[2] witness)…

[2] Pun recognized, but disavowed.

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