

TRUSTEE KNOWLEDGE UPDATE

November 2023 – January 2024

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LEGISLATION

[Equal Treatment Regulations](#)

(4 December 2023)

These regulations codify the current legal position by amending the Equality Act 2010 to allow a notional (rather than actual) opposite sex comparator to be used where sex discrimination arose as a result of the effects of the GMP legislation. This is the effective hard-coding of the *Allonby* CJEU case. An equivalent amendment is made to section 171 of the Pensions Act 2004 in relation to PPF compensation payments.

The regulations also codify the 2017 Supreme Court judgment in *Walker v Innospec*, removing the pre-December 2005 service cut-off for same sex partners' benefits in Schedule 9 of EqA 2010.

The Pensions Minister has [confirmed](#) that the DWP has now completed its trawl of retained EU pension laws that are to be protected from sunset.

[Pension Protection Fund Compensation Regulations](#)

(4 December 2023)

These regulations amend Schedule 7, Pensions Act 2004 to ensure that PPF compensation meets the 50 per cent ongoing minimum set out in the *Hampshire* CJEU judgment. The PPF has published [draft guidance](#) on the detail. The regulations also formally remove the PPF compensation cap struck down in the *Hughes* case.

CONSULTATIONS AND DRAFT LEGISLATION

[Finance Bill 2023-24](#)

(29 November 2023)

The Finance Bill contains provisions (summarised in [Explanatory Notes](#) and an HMRC [Policy Paper](#)) abolishing the Lifetime Allowance (LTA) and setting out the new tax treatment of lump sums and lump

sum death benefits paid from registered pension schemes. The provisions make substantial amendments to Finance Act 2004 and Income Tax (Earnings and Pensions) Act 2003, and will come into force on 6 April 2024.

New Lump Sum Allowance and Lump Sum and Death Benefit Allowance

Each individual will have a Lump Sum Allowance (LSA) of £268,275 and a Lump Sum and Death Benefit Allowance (LSDBA) of £1,073,100. The LSA applies only to the payment of a Pension Commencement Lump Sum (PCLS) or Uncrystallised Funds Pension Lump Sum (UFPLS). Any funds taken as a PCLS or UFPLS will also count towards the LSDBA (as will serious ill-health lump sums and most authorised lump sum death benefits).

Points to note include:

- A PCLS can only be paid when all or part of the LSA is available, and all or part of the LSDBA is available. It may not exceed the 'permitted maximum' which is the lowest of (broadly) 25% of the value of the benefits being taken, and the available LSA and LSDBA.
- The Pension Commencement Excess Lump Sum (PCELS) replaces the Lifetime Allowance Excess Lump Sum (LTAELS). It is taxed at the recipient's marginal rate.
- The tax-free element of a Trivial Commutation Lump Sum (TCLS), Winding Up Lump Sum (WULS) and small lump sums will not be deducted from the LSA or LSDBA, but the individual must have LSA available in order to take the benefit.
- All Benefit Crystallisation Events (BCEs) will be removed from the legislation, and Relevant Benefit Crystallisation Events (RBCEs) introduced. RBCEs are the payment of relevant lump sums and lump sum death benefits taken onto account for the purposes of LSA and LSDBA.

- Authorised lump sums paid when no LSA or LSDBA is available will generally be taxed at the recipient's marginal income tax rate.

Transitional protection provisions will apply for those individuals with existing LTA and lump sum protections.

Transitional provisions

Where an individual has already used an amount equal to or greater than their LTA before 6 April 2024, no LSA or LSDBA is available from 6 April 2024. Where an individual had some LTA available immediately before 6 April 2024, 25% of the individual's previously used LTA is deducted from the available amount of the LSA and LSDBA (where appropriate). Where a serious ill-health lump sum or tax-free lump sum death benefit was paid before 6 April 2024 then 100% of the LTA used on that event is deducted from the LSDBA.

Members with complete and accurate records of the previous tax-free amounts they have received will be able to apply to the scheme for an alternative transitional calculation.

There are also transitional reporting provisions, requiring schemes to provide individuals with information after 6 April 2024 about BCE's occurring before that date.

New reporting requirements

The Provision of Information Regulations are amended to remove reporting and information requirements relating to BCEs and LTA, replacing them with similar requirements in respect of RBCes, LSA and LSDBA.

International aspects

A new 'overseas transfer allowance' will be introduced for transfers to QROPS equal to the level of an individual's LSDBA. Where a transfer to a QROPS exceeds the available allowance, the excess will be chargeable to the Overseas Transfer Charge.

Marginal rate tax charges on lump sums and lump sum death benefits paid in excess of either the LSA or LSDBA will apply where those payments are made from funds that have received UK tax relief.

Comment:

The Finance Bill contains 100 pages of amending legislation. Implementing these changes is likely to involve substantial administrative and communications work from schemes in the coming months. Some further guidance is expected from HMRC in due course. A key first step will be to ensure that wake-up packs for members due to retire from April onwards include a brief explanation of the new regime.

[The draft Funding and Investment Strategy Regulations](#)

(29 January 2024)

These draft regulations (published alongside the Government's [consultation response](#)) are due to come into force on 6 April 2024. The Government says that the first funding and investment strategy ('F&IS') for a DB scheme must be determined by the trustees within 15 months beginning with the effective date of the first actuarial valuation obtained on or after 22nd September 2024.

The regulations include a number of changes from the draft issued for consultation in July 2022. The key principles remain in place:

- trustees must calculate F&IS liabilities on the principle the scheme is fully funded on a **low dependency funding basis**, and invested in a **low dependency investment allocation**, by no later than the **relevant date** on which they achieve **significant maturity**;
- schemes must have a **journey plan** to get them there;
- in determining the F&IS, schemes must take into account specified matters and follow specified principles;

- trustees must produce a **statement of strategy** signed by the chair which includes the F&IS and a number of supplementary matters and must be sent to TPR.

The draft regulations also include a number of amendments to the Scheme Funding Regulations. These include:

- the actuarial valuation must include an estimate of the maturity of the scheme and an estimate of the funding level of the scheme with the liabilities calculated on a low dependency funding basis;
- in determining whether a recovery plan is appropriate, the trustees must follow the principle that deficits must be recovered as soon as the employer can reasonably afford and must consider the impact of the recovery plan on the sustainable growth of the employer.

The Government has made a number of changes from the draft regulations issued for consultation in July 2022 including:

- reducing volatility in the measure of scheme maturity by prescribing a fixed date - 31 March 2023 - on which the economic assumptions used to calculate maturity must be based;
- explicitly allowing open schemes to make reasonable allowance for new entrants and future accrual in scheme maturity calculations, subject to the trustees' assessment of the employer's financial ability to support the scheme;
- removing the express requirement that assets be invested so the cashflow from investments broadly matches payment of benefits and making clear that the objective to invest in line with the low dependency investment allocation does not apply to surplus funding;
- amendments to reinforce that investment decisions are not part of the F&IS and employers do not need to agree them;
- TPR will be able to set a different date of significant maturity for different descriptions of schemes.

TPR will be publishing a revised code of practice on DB funding, as well as revised Fast Track parameters.

HMRC

[Lifetime Allowance Guidance Newsletter](#)

(20 December 2023)

This Newsletter summarises the Finance Bill provisions abolishing the LTA from 6 April 2024 and some of the responses to the earlier consultation on draft clauses.

HMRC says that it is ready to support schemes through implementation of LTA abolition and [welcomes](#) views from industry on which points they could usefully cover in future communications.

[Newsletter 155](#)

(25 January 2024)

This newsletter acknowledges that further changes to the Finance Bill may be needed to address a number of points arising from lifetime allowance (LTA) abolition included unintended consequences for members of multiple schemes and scheme-specific lump sum protection. It also sets out:

- comfort that the regulation-making power to make further changes 'in connection with' LTA abolition sunsets on 5 April 2026 and is intended to allow policy outcomes to be met, not to introduce more widespread legislative changes without consultation;
- a number of FAQs on the operation of the lump sum provisions are to be expanded on in future HMRC communications;
- further communications on reporting requirements and transitional arrangements are considered a priority.

THE PENSIONS REGULATOR

[Cyber security principles for pension schemes](#)

(11 December 2023)

TPR has substantially updated its April 2018 guidance on cyber security, warning that schemes are at risk of targeted cyber-attacks due to the large amounts of personal data and assets they hold.

For the first time, TPR is asking trustees to report significant cyber-related incidents - those which are likely to result in:

- significant loss of member data
- major disruption to member services
- a negative impact on a number of other pension schemes or pension service providers.

Incidents should be reported on a voluntary basis, in an open and cooperative way, and as soon as reasonably practicable.

[General code of practice](#)

(10 January 2024)

TPR's General code of practice has been laid before Parliament and is expected to come into force on 27 March 2024. TPR's [final response to consultation](#) on the draft General code has also been published. The General code replaces ten of the existing codes of practice (including those on DC governance, breach reporting, internal controls and trustee knowledge and understanding).

The General code is divided into five main sections (the governing body, funding and investment, administration, communications and disclosure and reporting) with each section having a number of modules.

Much of the content of the General code reflects existing requirements and expectations of TPR. Many of the modules form part of TPR's expectations for trustees of schemes which are required by legislation

to operate an effective system of governance ('ESOG') which brings together many key aspects of running a scheme, with a focus on risk management.

A substantial new requirement will be for schemes with 100 or more members operating an ESGO to undertake an *own risk assessment* ('ORA') at least every three years, reviewing the effectiveness of their governance systems. The earliest schemes will be required to prepare and document their first ORA (as set out in [legislation](#)) is within 12 months of the end of the first scheme year beginning after the General Code is issued. For example, assuming the General Code comes into effect on 27 March 2024 as planned, the first ORA for a scheme with year end 31 March 2024 would need to be produced by 31 March 2026 at the earliest.

Key changes from the draft General code, published in March 2021, include:

- a specific limit on unregulated investments has been removed;
- greater emphasis on diversity and inclusion for trustee boards;
- clarification of the requirements for the trustee's remuneration policy and the removal of a requirement to publish it;
- removing the requirement for trustees to consider publishing meeting minutes.

Comment:

There will be much work for trustees to do in familiarising themselves with the General code and ensuring their scheme is compliant. The provisions are not always prescriptive, different approaches may be appropriate for different schemes and trustees can use their judgement as to what is a reasonable and suitable method of ensuring compliance for their scheme.

Scheme return: DB and hybrid schemes

(17 January 2024)

TPR has updated its information on completing the scheme return for DB and hybrid schemes. This year TPR are requesting additional information including:

- information on fiduciary managers and investment consultants;
- details of LDI liquidity and leverage and the controls put in place;
- details of the primary contact for dashboards issues; and
- information on AVC providers.

TPR will be sending out scheme return notices in late January or early February 2024 and they must be completed and submitted by **31 March 2024**.

Private markets investment

(24 January 2024)

TPR has issued its promised guidance for trustees of occupational pension schemes who are considering investing in private markets. The guidance describes the nature of private market assets, opportunities and risks, legal duties and key considerations. It also

contains specific sections for DB and DC schemes - the former makes clear that scheme maturity will have a strong bearing on whether trustees wish to invest in private market investments.

The guidance sets out TPR's views that:

- knowledge and information gaps can be structural barriers to considering private market assets and so trustees should review existing TKU and consider if further training or appointment of a professional trustee is required;
- trustees must regularly monitor investment performance, and all trustees could benefit from developing a liquidity risk management plan;
- where trustees decide private market investment may be appropriate, they should understand how key asset features affect the scheme's governance, administration and operations - there is a checklist of points to consider on this;
- where greater value could be delivered by investing in a wider range of opportunities but the scheme lacks the scale or governance to do so, trustees should consider the options of scheme consolidation or fiduciary management.