

# The Pensions Brief

At a glance...

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Finance Act 2024 receives Royal Assent

▲ CYBER SECURITY

Pensions Regulator report into Capita cyber breach

▲ AUTOMATIC ENROLMENT

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## Issues affecting DB schemes

▲ PRODUCTIVE FINANCE

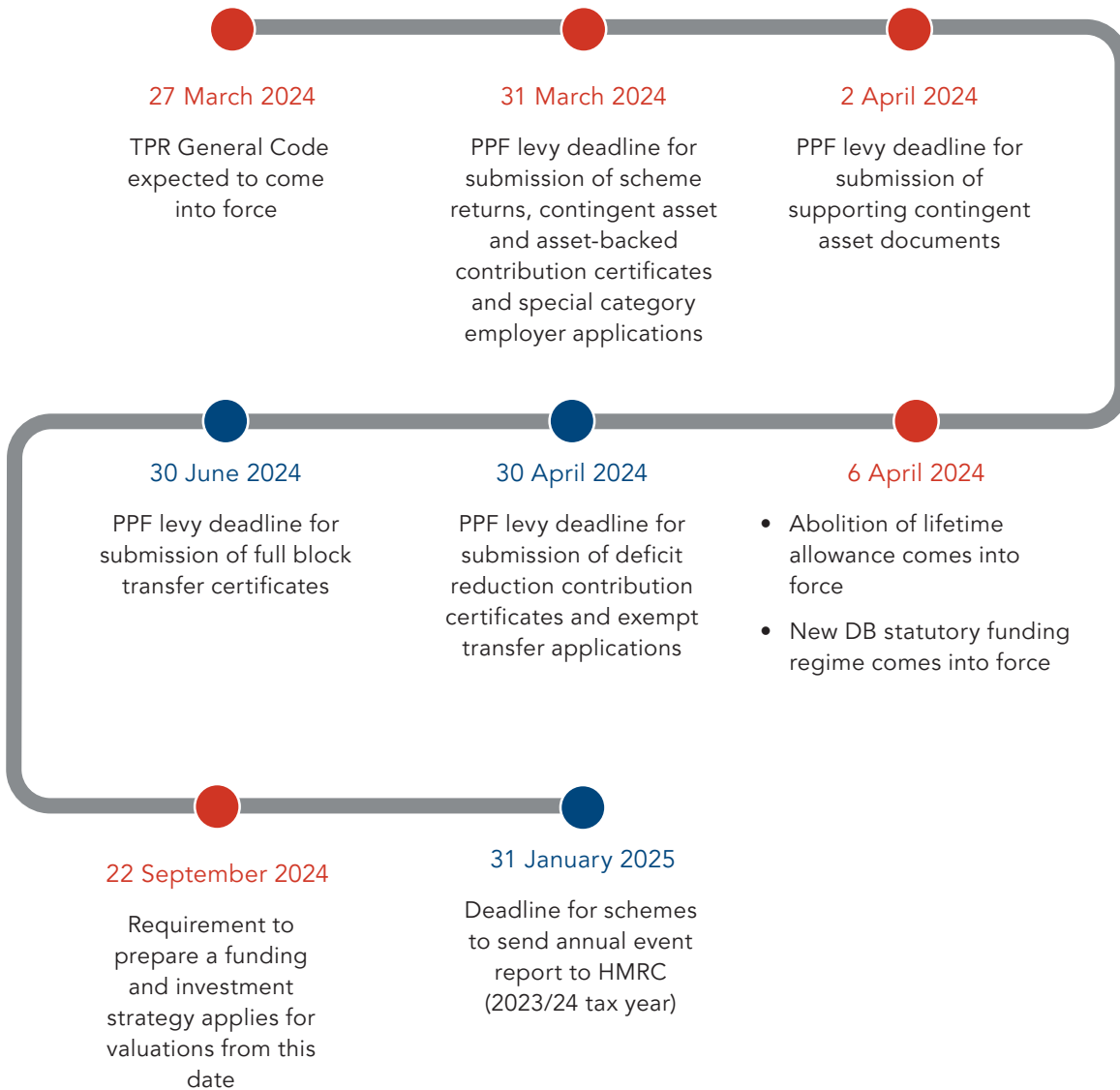
Consultation on surplus extraction and a public consolidator

▲ Action required

▲ Monitor development



## Dates to note over the next 12 months



**Key:**

- Important dates to note
- For information

## Issues affecting all schemes

### Lifetime allowance abolition – legislation and guidance

The Finance Act 2024, which provides for the abolition of the lifetime allowance (LTA) and introduction of the new tax regime for lump sums and lump sum death benefits from 6 April 2024, has received Royal Assent. HMRC has confirmed that a number of changes will need to be made to the Act to ensure that its provisions correctly reflect the intended policy. These changes will be made by regulations which have yet to be published.

HMRC has also published two further LTA guidance newsletters ([February](#) and [March](#)). These include FAQs and further guidance on a range of topics including:

- Pension commencement excess lump sums (PCELS) – in particular, the cap on the amount of a PCELS will be removed.
- Transitional tax-free amount certificates.
- Reporting obligations.
- LTA protections and enhancement factors.

#### Action

Trustees, employers and administrators should continue their preparations for abolition of the LTA and introduction of the new lump sum regime. They should also monitor publication of the HMRC regulations (and announcement of any further changes to the legislation), as well as publication of further HMRC guidance.

### Cyber security – Pensions Regulator report

The Pensions Regulator (TPR) has published a [report](#) on the actions it took following the cyber breach experienced by Capita in early 2023. The report also sets out the steps that TPR expects trustees to take in the event of a cyber incident and emphasises the importance of schemes having robust cyber security and business continuity plans in place. For more information, please see our [legal update](#).

#### Action

Trustees and administrators should review the report and consider whether any changes are required to their scheme's cyber security arrangements.

### Automatic enrolment – earnings figures and alternative quality requirements

The government has [announced](#) that the 2023/24 automatic enrolment earnings figures will be retained for 2024/25, meaning they will be:

- Earnings trigger: £10,000.
- Qualifying earnings band: £6,240 – £50,270.

The government has also [published](#) the findings of its 2023 review of the automatic enrolment alternative quality requirements. This includes a response to its May 2023 call for evidence on the operation of the alternative quality requirements for DB and hybrid schemes. Following the review, the government has concluded that no changes are needed to the requirements.

#### Action

Employers should ensure that their payroll processes continue to reflect the correct earnings figures.

### Pensions dashboards – “view” data

The Pensions Dashboards Programme has published [FAQs](#) on “view” data. The FAQs cover:

- What view data is.
- What the view data journey is.
- Whose responsibility it is to ensure data accuracy.

#### Action

No action required, but trustees and administrators may find the FAQs helpful.

### Provision of incorrect information – liability

The Pensions Ombudsman (TPO) has [upheld](#) a complaint about the provision of incorrect information by a scheme regarding the entitlement of a member’s cohabiting partner to a survivor’s pension. The member contacted the scheme when he received a terminal diagnosis to ask what benefits his partner would be entitled to following his death. He was told that she would be eligible for a survivor’s pension. Following the member’s death, the scheme refused to pay a survivor’s pension to the partner because, although the scheme rules provided for payment of a survivor’s pension to cohabiting partners, this only applied to members in service on or after 1 April 2008, and the member had left service in 1991.

TPO decided that, although the scheme rules did not entitle the partner to a survivor’s pension, a defence of estoppel by representation applied because:

- The scheme had made a clear and unequivocal representation that marriage was not a requirement for payment of a survivor’s pension to a cohabiting partner. As a result, the member had a reasonable expectation that the scheme would provide his partner with a pension on his death and that there was no need for him to marry her to safeguard her financial future.
- It was reasonably foreseeable that the member would rely on the information given to him in the telephone call without requesting confirmation in writing. He was not given any other information that might have caused him to question the accuracy of the representation, nor was he signposted to the scheme rules or asked to read the scheme booklet. In view of that context and the prognosis of his illness, it was reasonable for him to rely on the telephone call alone, rather than continue to make more detailed enquiries.
- The member had acted on the incorrect information to his partner’s eventual detriment.

TPO ordered the scheme to pay a survivor’s pension to the member’s partner (including arrears to the date of the member’s death) and to pay her £2,000 for the severe distress and inconvenience caused.

#### Action

No action required.



### ESG – TPR blog post

TPR has published a [blog post](#) on the need for trustees to think about how they can further develop their approach to managing wider ESG-related risks and opportunities. Key points include:

- Trustees should continue to improve their understanding of wider material ESG considerations and, if appropriate, revise their scheme policies.
- Trustees would do well to familiarise themselves with the recommendations of the UK Transition Plan Taskforce, the Taskforce for Nature-related Financial Disclosures and the Taskforce for Social Factors.
- Good transition plans will support trustees.
- Failure to account for climate-related risks and opportunities and, where material, nature and social factors, puts members at risk and schemes need to integrate ESG reporting into their core governance operations to ensure they are fit for the future.

#### Action

No action required, but trustees may find the post helpful when considered wider ESG-related risks and opportunities.

### Climate change – trustee fiduciary duties

The Financial Markets Law Committee has published [guidance](#) for trustees on their fiduciary duties in the context of sustainability and, in particular, climate change. The guidance provides a general explanation of the legal position and the uncertainties and difficulties that exist.

#### Action

No action required.

### HMRC pension scheme return – guidance

HMRC has published [guidance](#) for scheme administrators on changes to the pension scheme return that are being made from the 2024/25 tax year. The key changes are as follows:

- From 6 April 2025 schemes will be required to use the Managing Pension Schemes service to file their return. It will no longer be possible to use the Pension Schemes Online service.
- Schemes will be asked to provide more information than for previous returns.
- Depending on the size of the scheme, different information will be required as part of the return.

#### Action

No action required, but scheme administrators may find the guidance helpful.



## Issues affecting DB schemes

### Productive finance – investment by DB schemes

The government is consulting on the details of the measures that it announced in the Autumn Statement 2023 to increase investment by DB schemes in productive finance. The proposals include:

- Introduction of a statutory power for schemes to amend their rules to allow surplus payments while the scheme is ongoing or introduction of a statutory power to make payments.
- Changes to the tax regime to allow trustees to make one-off surplus payments to members.
- Relaxation of the rules on surplus distribution in ongoing schemes (whilst ensuring sufficient member benefit protection).
- Introduction of additional trustee guidance on the issues to be considered in relation to extraction of surplus.
- Introduction of an option for employers to pay a higher PPF levy in exchange for a 100% level of PPF compensation.
- The design of a public sector consolidator to be run by the PPF, including eligibility criteria and safeguards.

The consultation also includes a short survey for DB schemes aimed at gathering information on the level of interest in the new policies. The consultation closes on 19 April 2024.

#### **Action**

Employers and trustees should monitor the outcome of the consultation.



## Mayer Brown news

### Upcoming events

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

- **Trustee Foundation Course**
  - 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 – The Pensions Regulator’s General Code: who, what, when?](#)
  - 26 June 2024 – topic TBC
  - 24 September 2024 – topic TBC
  - 27 November 2024 – topic TBC

### Mayer Brown updates

Senior Associate [Henry Corrigan](#) has been appointed to the Association of Pension Lawyers’ Communications Committee. The APL represents more than a thousand UK pensions lawyers, and the Communications Committee is responsible for managing the APL’s website and its e-newsletters.

### Mayer Brown Insights

- [TPR report – Key steps trustees should take if a cyber security incident occurs | Insights | Mayer Brown](#)
- [Abolition of the lifetime allowance – Excepted group life assurance arrangements for death in service benefits | Insights | Mayer Brown](#)

All our Insights 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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