SLAUGHTER AND MAY/

PENSIONS ESSENTIALS

July 2025

QUICK LINKS

One Bunhill Row
London EC1Y 8YY
United Kingdom
T: +44 (0)20 7600 1200

PENSIONS ADEQUACY REVIEW

The Government has launched a new Pensions Commission to explore why people are not saving enough for retirement and what can be done to facilitate saving more. The Commission is due to report in 2027 and "will examine the pension system as a whole and look at what is required to build a future-proof pensions system that is strong, fair and sustainable".

Almost twenty years ago, a pensions commission was asked by the then government to consider whether private pensions were likely to deliver adequate incomes in the future. The commission concluded that although pensioner income compared well to that of previous generations (because of the prevalence of final salary benefits), private pension provision was in "*serious and probably irreversible decline*". The commission also recognised that there were behavioural barriers to people saving more without compulsion and that employers no longer believed that a generous pensions offering was necessary for recruitment.

The recommendation of the commission was that workers should be automatically enrolled into a pension scheme and that total contributions should be 8%, with 3% coming from the employer. These proposals were enacted in the Pensions Act 2008 and a phased introduction was started in October 2012. Minimum contributions under the auto-enrolment regime are currently 8% of qualifying earnings (between £6,240 and £50,270) with 3% from the employer.

An analysis of auto-enrolment issued by the Government earlier this month shows that more than 22 million people are now saving into a private pension scheme, up from 10 million in 2012. However, the report also shows that 50% of those earning between £10,000 and £20,000 are only saving at the auto-enrolment minimum level and that average DC contribution rates fell sharply when auto-enrolment was introduced.

The terms of reference for the new Pensions Commission says: "*private pension income for individuals retiring in 2050 could be 8% lower than those retiring in 2025*". It also refers to figures from the PLSA which suggest that 3 out of 4 people are not on track to have a moderate income in retirement and that the gender gap in pensions remains high. A separate policy paper examines the impact of auto-enrolment in more detail together with why future pensioners remain at risk of poverty.

The Pensions Commission is tasked with considering the long-term future of the pensions system, including:

- outcomes and risks for future pensioners through to 2050 and beyond;
- how to improve retirement outcomes, especially for those on the lowest incomes and at the greatest risk of poverty;
- the role of private pension provision and wider savings;
- the long-term challenges of supporting an ageing population; and
- proposals beyond the current Parliament to ensure financial security in retirement.

It is not clear whether the state pension system is within the scope of the review or not, but it would seem an opportunity lost if it was not. There is certainly no mandate to review whether the triple lock remains affordable or appropriate.

Clearly, auto-enrolment could be a mechanism for delivering change. However, nowhere is there a reference to the 2017 review into auto-enrolment which also concluded that it would not deliver an adequate retirement income for many and recommended dropping the age of eligibility to 18 (from 22) and removing the lower earnings limit for contributions so that they were paid from the first £1 earned. Legislation to facilitate these proposals was enacted in 2023 but the required regulations were never issued. As a result, it is tempting to wonder whether asking the same questions 8 years on will actually lead to different outcomes, or indeed any outcomes at all.

Practical points:

- *Watch out for calls for evidence from the new Pensions Commission.*
- *Look out for the final report due in 2027 and possible changes to auto-enrolment.*

INHERITANCE TAX ON INHERITED PENSIONS AND DEATH BENEFITS

In its October 2024 budget, the Government said that unused pension funds and death benefits would become liable to inheritance tax from April 2027 and the obligation to account for this tax would fall on scheme administrators. The industry had concerns about the extent and workability of these proposals and the Government has now issued more details about how these proposals will work, along with draft legislation.

In October 2024, the Government announced as part of the budget that from 6 April 2027, "*inherited pensions [will be brought] into inheritance tax*". More detail was set out in a technical consultation paper issued by HMRC from which it appeared that almost all lump sum death benefits (including discretionary lump sum death benefits), as well as unused DC assets and dependants' annuities could be brought within the ambit of inheritance tax (**IHT**), although there was a distinct lack of clarity about what was intended to be covered.

The consultation paper also made it clear that the obligation to pay the new IHT liability would fall on scheme administrators (which for tax purposes are usually the trustees), with a requirement for a deceased member's personal representatives to send the scheme administrator a statement providing the details needed to calculate the IHT due. Many commentators queried how workable these proposals would be, particularly given the proposed timeframes and pointed out that they could result in the unnecessary payment of IHT.

A response to that consultation has now been issued, along with an HMRC policy paper and draft legislation. They provide some welcome clarifications and changes to the original proposals:

- **Benefits in scope:** IHT will be chargeable on monies payable from a scheme on a member's death, including unused DC funds and death benefits. However, there are exceptions.

  All death in service benefits payable from registered pension schemes will be out of scope, regardless of whether they are payable on a discretionary or non-discretionary basis. Currently, the majority of such benefits are payable under discretionary trust to ensure they fall outside the member's estate for IHT purposes but this will no longer be necessary. Schemes may therefore want to consider changing the distribution of death in service benefits to remove the element of discretionary distribution in some cases.

  The exception explicitly only applies to death in service benefits as opposed to lump sums payable on death in retirement or deferment. Continued life cover is not uncommon for deferred members where they remain in employment following a closure to accrual. It is to be hoped that HMRC will treat such members as active members for these purposes and within the scope of the death in service exemption - further clarification on this point would be welcome.

  Pensions payable to dependants and spouses directly from the scheme or from a separate joint life annuity are out of scope of the new requirements. It is not clear from the draft legislation what the position is in relation to any joint life annuity held by a scheme where the recipient is not themselves exempt from IHT (as spouses and civil partners are), although the consultation response suggests these should not be in scope.

It is also worth noting that the new provisions apply to payments from registered schemes and therefore death benefits from unregistered schemes will also be out of scope.

- **Liability for and payment of IHT:** In a change from the initial proposals, a deceased member's personal representatives will primarily be liable for reporting and paying IHT on unused pension funds and death benefits, although they can recover it from the relevant beneficiaries if necessary. However, there are other options for the payment of any IHT which a beneficiary can select: they can direct the scheme administrator to pay the IHT on their behalf if it is £4000 or more; or they can pay the IHT directly.

  Scheme administrators will need to pay any IHT due from them within 3 weeks of receiving the notice from the beneficiary asking them to do so and informing them of the amount, otherwise they will become jointly liable for the IHT. If the amount of IHT they are asked to pay is less than £4000, they have a discretion whether to make the payment or not.

- **Information requirements:** Scheme administrators will need to provide a member's personal representatives with information about the "as at death" value of any in-scope unused pension funds or death benefits within 4 weeks of receiving notification of the member's death and once it has been determined who the beneficiaries are, what the split between exempt and non-exempt beneficiaries is. HMRC want the pensions industry to provide clear guidance and support to beneficiaries in respect of any IHT that may be due on their benefits and what the options are for paying it. Further draft information sharing regulations are expected.

These proposals will add to the administrative burden on schemes when a member dies and will need to be built into administration processes.

Practical points:

- *Watch out for more details on these proposals and guidance from HMRC*
- *Administrators should start to consider how they will factor these requirements into the process for paying benefits on death.*

TAKING RELEVANT FACTORS INTO ACCOUNT IN TRUSTEE DECISION MAKING

A recent Privy Council decision considered when trustee decisions can be set aside if they failed to take all relevant considerations into account when exercising a discretionary power. It is a useful reminder for trustees of the need to make sure they identify relevant factors when making decisions and to take advice when appropriate.

The legal position: Generally, the courts can only intervene in the exercise of discretionary powers by trustees in very limited circumstances and cannot substitute their own views for those of the trustees.

Historically, one of the circumstances where the court could intervene was where "*it [was] clear that [the trustees] would not have acted as they did had they not failed to take into account considerations which they ought to have taken into account, or taken into account considerations which they ought not to have taken into account*" (Sieff v Fox). This was referred to as "*the rule in Hastings-Bass*" and it allowed trustees to apply to the court where, for example, they had failed to properly understand the consequences of a decision they had made.

In 2011, the Supreme Court concluded in Pitt v Holt that the rule in Hastings Bass was somewhat narrower than it had previously been interpreted, particularly in a pensions context. The court held that for it to apply, "*the inadequate deliberation on the part of the trustees must be sufficiently serious as to amount to a breach of fiduciary duty… It is not enough to show that the trustees' deliberations have fallen short of the highest possible standards, or that the court would, on a surrender of discretion by the trustees, have acted in a different way.*"

Where a trustee has taken professional advice in relation to an issue (and is not acting outside the scope of their powers or in breach of general legal requirements), the court is unlikely to find the trustee in breach of any duty to take relevant matters into account if the failure arises only because the advice was incorrect. Trustees do not have a duty only to act on correct advice. Furthermore, they do not have a duty to be "right", only to act properly.

If there is a breach of duty, the court can intervene and declare an exercise of a discretionary power void. The Supreme Court considered in Pitt v Holt the circumstances in which it would be appropriate for the court to intervene and whether it would do so only if it could be shown that the trustees "would" have acted differently if they had properly considered the issues or if it was enough to show that they "might" have acted differently. The court concluded that "*as a matter of principle there must be a high degree of flexibility in the range of the court's possible responses… To lay down a rigid rule of either 'would not' or 'might not' would inhibit the court in seeking the best practical solution...*"

Dawson-Damer v Grampian Trust Company: The Privy Council was asked to apply Pitt v Holt and consider whether the trustees of a family trust were in breach of trust in failing to properly consider the financial position of a potential beneficiary when disposing of trust assets and what the consequences of any such failure should be.

The Privy Council held that following Pitt v Holt, there are two separate stages in considering the application of the rule in Hastings Bass:

- Was there a breach of fiduciary duty in failing to consider relevant information or considering irrelevant information? Any alleged inadequate deliberation must be sufficiently serious as to amount to a breach of fiduciary duty. It was not enough to show that the deliberation fell short of the highest possible standards.
- What were the consequences of that breach? The court has a discretion how to respond to any breach of trust and as part of this will consider the causal effect of the breach on the decision made.

In this case, the Privy Council concluded that the trustee had not properly taken into account the needs and wishes of the relevant beneficiary so there was a breach of trust. However, it could not be said that had the trustee taken them into account "*the decision would have been, or even might have been, different*". As a result, the Privy Council did not set aside the dispositions of trust assets.

Relevance to pension schemes: Both the Privy Council decision and the older Supreme Court decision show the importance of making sure that trustees identify all relevant factors when reaching a decision and ignore irrelevant ones. They also illustrate the importance of taking advice when necessary as part of a proper decision making process.

Practical points:

- *Ensure a robust process is in place for discretionary decision making.*
- *Seek advice where necessary on how to determine relevant and irrelevant factors.*

STATE PENSION AGE REVIEW

The Government has announced a review of state pension ages and whether the planned increase to 68 between 2044 and 2046 remains appropriate.

State pension age is currently 66 for both men and women but is set to gradually rise to 67 between 2026 and 2028 and then to 68 between 2044 and 2046.

The Pensions Act 2014 requires the government to review "*whether the rules about pensionable age are appropriate, having regard to life expectancy and other factors that the Secretary of State considers relevant*" at least every six years. Although it is only 2 years since the conclusion of the last review, that review recommended that the next one should be carried out within two years of the next parliament when the long term impact of the COVID pandemic was likely to be better understood .

The new review will consider whether the rules around pensionable age are appropriate, based on the latest life expectancy data and other evidence. It will take into account a report from the Government Actuary's Department (**GAD**) as well as an independent report which considers matters such as intergenerational fairness, the long term sustainability of the state pension and international experience.

The terms of reference for the GAD report say that it should examine life expectancies and what proportion of adult life (which is treated as starting at 20) an individual can expect to spend in retirement. The aim is that around 32% of adult life should be spent in retirement, if the figure is higher, state pension age may be increased. GAD is also tasked with reviewing whether the rise in state pension age to 68 from 2044 remains appropriate.

Practical points:

- *Watch out for the outcome of the review.*
- *Be aware that minimum pension age is linked to state pension age and aims to be within 10 years of it.*

PENSIONS REGULATOR OBJECTIVES

The Pensions Regulator has updated its 3 year corporate plan to set out a number of core things it aims to deliver over the next year which align with the proposals in the Pension Schemes Bill.

Corporate plan: TPR has updated its 2024-2027 corporate plan to reflect the Pension Schemes Bill and the need to prepare for it. The core things that TPR intends to deliver are fairly familiar and include:

- **Good governance:** Raising standards of trusteeship through a new trustee strategy, expanding market oversight to the largest professional trustee firms and working to bring trusteeship into line with other professions and corporate governance standards.
- **Investment:** Improving investment governance and systemic risk management, including through updated ESG strategies as well as helping government understand and prioritise the kinds of growth opportunities that UK pension schemes will find attractive. TPR has separately announced that it will work with industry to develop and test a voluntary net zero transition plan template that can be used by occupational pension schemes.
- **Data:** Making sure that trustees are ready for the dashboards and challenging schemes who may not meet expectations. A recent blog says that only around 50% of schemes are confident about the data they hold for the dashboards and TPR intends to launch a campaign urging schemes to do more. It will also streamline data requirements for scheme returns and work on ensuring trustees have effective cyber resilience in place.
- **Enforcement:** The shift towards a more prudential style of regulation will continue, "*addressing risks not just at an individual scheme level, but also risks that impact the market and wider financial ecosystem*". TPR will be clearer on the outcomes it wants and use swift enforcement action if schemes ignore warnings.
- **Value for members:** Working with the FCA to complete a new value for money framework as well as ensuring that small DC schemes (with assets of less than £100 million) comply with the requirement to undertake a detailed value for members assessment.
- **Retirement outcomes:** Helping to deliver new retirement options for DC members and to address the issue of small DC pots via appropriate information on the dashboards. On the DB side, supporting the development of a clear framework for the return of surplus to employers "*to enhance member outcomes*".
- **Consolidators:** Defining a clear framework for DB superfunds, delivering a risk-based approach to the supervision of master trusts and reviewing "*the regulatory capital reserving requirements to ensure they are proportionate*".

Practical points:

- *Watch out for more from TPR in relation to its proposed regulatory activity.*
- *Be aware of proposals in relation to trusteeship.*

FINE IMPOSED ON MASTER TRUST FOR BREACH OF NOTIFICATION REQUIREMENTS

The Pensions Regulator has imposed £100,000 in penalties in relation to the NOW master trust for failures to comply with statutory obligations to notify it about communications failures. It is the first time the Regulator has taken action against an authorised master trust for a failure to report to it.

Legal requirements: Legislation requires master trust trustees, those with power to appoint them, scheme funders, scheme strategists and a variety of other people to report "significant events" to TPR "*as soon as reasonably practicable*". Regulations list what events will be treated as significant and include "*a failure of the systems or processes used in running the scheme which has a significant adverse effect on the security or quality of data or on service delivery*".

This sits alongside the whistleblowing requirements which require trustees, employers, those involved in the administration of a scheme, master trust scheme strategists and funders and others to notify TPR where they have reasonable cause to believe "*a duty which is relevant to the administration of the scheme… has not been or is not being complied with, and [it]… is likely to be of material significance to the Regulator in the exercise of any of its functions*".

The penalty for breaching either requirement is up to £5000 for an individual or £50,000 for a company.

Determination: NOW Pensions (**NPL**), the scheme funder and scheme strategist and **NPTL**, the master trust trustee have each been given penalties of £50,000 for failing to correctly report significant events and breaches of law to TPR.

Between April 2019 and May 2021, NPL became aware of a number of communication failures which impacted around 64,000 member communications, around 38,500 of which were mandatory. After investigation, NPTL was told about the issues. A whistleblowing report was made to TPR in October 2021 but no significant event report was made.

TPR considered that the report was made outside a reasonable timeframe. In February 2022, it opened an investigation and requested further information. NPL then identified a further failure to deliver statutory communications which was immediately reported but again, no significant event report was made.

The determinations panel has concluded, in agreement with the parties, that there were 3 separate failures to notify a significant event and two failures to whistleblow (one relating to the timing of the first report). A decision was made to impose a £50,000 penalty for the failures on each of NPL and NPTL.

Lessons for other schemes: TPR says that the determination highlights a number of general issues to be aware of:

- The importance of engaging with it.
- The need to be clear on key governance responsibilities, including statutory reporting requirements.
- Failure to send timely and accurate information to members puts them at risk. The communication failures in this case caused both financial and non-financial harm to members and potential members and took away opportunities to make decisions about pensions.
- Failure to tackle a problem in a timely way could lead to more risk to members. Significant events and breaches of law should be reported early and problems should be rectified quickly and prevented from escalating.
- Robust systems and processes around member communications are indicators of a well-governed scheme. Administrative and governance failures could indicate other issues. Master trusts should monitor their systems and processes to ensure they are sufficient for the scheme to run effectively.
- Parties to a master trust should understand what a significant event is, who has the duty to report it and when.
- Schemes should ensure they have the correct contact information for their members.

Practical points:

- *Be aware of all statutory reporting requirements relevant to the scheme and who they apply to.*
- *Ensure robust governance processes are in place around member communications.*

CLIMATE CHANGE

The Department for Energy Security and Net Zero has issued a consultation which looks at transition plans for financial institutions and large companies, setting out how they intend to get to net zero. It is anticipated that this information will be useful for pension schemes. In addition, the consultation paper says that the climate change reporting regime for pension schemes is under review and consideration is being given to transition plans for schemes.

Trustees of master trusts and occupational pension schemes with assets of £1 billion or more are required to identify, assess and manage climate-related risks and opportunities in relation to their scheme. They must also report on what they have done online and make various public disclosures. This includes reporting on how the scheme's investment portfolio aligns with the Paris Agreement goal of limiting the increase in the global average temperature to 1.5 degrees Celsius above pre-industrial levels.

In addition, a scheme's statement of investment principles must cover the trustees' policies in relation to financially material ESG considerations (including but not limited to climate change). Trustees must also prepare an implementation statement, which provides information around engagement and describes voting behaviour by or on behalf of the trustees. The implementation statement must be made public.

The Government has issued three consultation papers which look at corporate reporting in relation to sustainability, one of which focuses on requiring financial institutions and larger companies to put in place transition plans setting out their strategic plan to get to net zero.

The consultation suggests that transition plans will be useful for pension schemes as they are exposed to climate-related risks through their investments and trustees should consider "*understand the different implications of transition risks and physical risks for their portfolios. Information from transition plans has the potential to be transformative for pension funds… particularly in supporting governance bodies, trustees and managers (as well as their investment service providers), to integrate financially material risks and opportunities into investment considerations, thereby enabling better informed decisions.*"

In addition, the consultation paper says that DWP will undertake a review of the climate change reporting regime for occupational pension schemes later this year and will consider the impact of the current climate disclosure regime and potential next steps on climate change reports.

DWP has also asked TPR to assess the practicalities of transition plans for pension schemes. TPR is convening an industry working group and will present findings to DWP later this year.

Practical points:

- *Watch out for developments in relation to climate change reporting.*
- *Ensure your scheme has adequate governance in place around climate change and sustainability.*

WATCH LIST

For upcoming developments see our Pensions: What's Coming webpage.

	Topic	Details	Relevant dates
1.	**Collective defined contribution schemes**	The Government has consulted on the possibility of permitting CDC schemes for unconnected employers, paving the way for commercial providers to offer such schemes.	Regulations to be issued in Autumn 2025 to come into force in 2026.
2.	**Dashboards**	Trustees of the majority of registrable UK schemes with active and/or deferred members will need to ensure that their scheme is connected to the dashboard eco-system over the next 16 months.	Compulsory connection deadline of 31 October 2026 for schemes with 100+ active and/or deferred members at year end between 1 April 2023 and 31 March 2024. Detailed staging timetable set out in DWP guidance.
3.	**Decumulation options - DC**	The Pension Schemes Bill will require trustees to provide access to a default retirement solution for DC members.	Provisions in Pension Schemes Bill due to be enacted in 2026 with regulations also anticipated in 2026. Phased implementation from 2027.
4.	**Default funds - DC**	The Pension Schemes Bill will require multi-employer master trusts and GPPs used for auto-enrolment to have a main default fund with assets of £25 billion. It also sets out a regime for the approval and supervision of such funds.	Provisions in Pension Schemes Bill due to be enacted in 2026. Requirements in force in 2030 with transitional provisions to 2035.
5.	**Notifiable events on corporate activity - DB**	It appears TPR has ceased work on the notifiable events code of practice so it is not clear whether there will be any further developments.	No dates are known as to when or if any progress will be made. It seems this change may have been dropped.
6.	**Small pots consolidation - DC**	The Pension Schemes Bill provides for the consolidation of dormant DC pots of £1000 or less. Consolidators are likely to be DC master trusts.	Provisions in Pension Schemes Bill due to be enacted in 2026. Consolidators selected in 2029 and consolidation to start in 2030.
7.	**Superfunds - DB**	The Pension Schemes Bill sets out a framework for the authorisation and supervision of superfunds and transfers to them. The possibility of a public consolidator is still being considered.	Provisions in Pension Schemes Bill due to be enacted in 2026 with regulations anticipated in 2027. Coming into force in 2028 alongside a new code of practice.
8.	**Surplus - DB**	The Pension Schemes Bill will repeal the requirement to have passed a resolution before April 2016 to retain a power to distribute ongoing surplus and include a new statutory power to amend scheme rules to allow a refund.	Provisions in Pension Schemes Bill due to be enacted in 2026 with draft regulations also anticipated in 2026. Requirements in force in 2027 and guidance issued.

	Topic	Details	Relevant dates
9.	**Tax issues**	Draft legislation has been published in relation to inheritance tax (IHT) on inherited benefits and death benefits (excluding lump sum death in service benefits).	IHT changes are anticipated from 6 April 2027.
10.	**Value for money - DC**	Pension Schemes Bill allows for regulations to set out a new value for money framework for occupational pension schemes.	Provisions in Pension Schemes Bill due to be enacted in 2026 with regulations also anticipated in 2026. First new assessments and published data in 2028.
11.	**Virgin Media regulations - DB**	Regulations expected to allow actuaries to retrospectively certify an amendment to contracted-out benefits where historic confirmation cannot now be found.	Possibly later this year but no firm date.

London
T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels
T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong
T +852 2521 0551
F +852 2845 2125

Beijing
T +86 10 5965 0600
F +86 10 5965 0650