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Dashboards deadline recedes to October 2026

The Department for Work and Pensions (DWP) has laid draft Amendment Regulations that would fix 31 October 2026 as the deadline for connection of schemes to the pensions dashboards system. The revised legislation would no longer assign different connection deadlines to pension schemes according to their type and membership numbers: the DWP intends instead to provide statutory guidance.

Background

Pensions dashboards are intended to enable scheme members and their authorized representatives to see details of all of their pension entitlements in one place, online. The trustees and managers of occupational pension schemes will be obliged to connect to the dashboards infrastructure that is being established by the Money and Pensions Service (MaPS), and provide information for dashboards users whom they have matched with scheme members.

Trustees' dashboards obligations are laid out in the Pensions Dashboards Regulations 2022.[1] Most notably, for present purposes, the Regulations currently contain a 'staging profile' that specifies the deadlines by which trustees must ensure that their schemes are hooked up to the system. Those deadlines range from 31 August 2023 to 31 October 2025, depending on the category of scheme and the numbers of its 'relevant' (active and deferred) members at the scheme year-end that falls between 1 April 2020 and 31 March 2021. The obligation applies only to schemes with 100 or more relevant members.

On 2 March 2023, the DWP announced a '*reset*' of the scheduled timetable, explaining that 'More time is needed to deliver this complex build, and for the pensions industry to help facilitate the successful connection of a wide range of different IT systems to the dashboards digital architecture.'

[1] SI 2022 No. 1220.

The reset in detail

The draft Pensions Dashboards (Amendment) Regulations 2023 would delete the staging profile with its deadlines, and related concepts like the ‘connection window’ (generally, the month leading up to a scheme’s staging deadline), substituting a single connection deadline of 31 October 2026. They would allow the Secretary of State for Work and Pensions to issue guidance about connection, either alone or with the MaPS or Pensions Regulator.

The draft Amendment Regulations would also remove the option to apply for early connection, which would become redundant with the elimination of the staging profile and connection window. They would also extend the period in which trustees or managers may apply to the Secretary of State to defer connection, to within twelve months of the date on which the Amendment Regulations come into force.

The reference date for determining whether the new 31 October 2026 deadline applies to a scheme (for example, whether it has enough relevant members) would become the scheme year-end date that falls between 1 April 2023 and 31 March 2024 (inclusive). The deadline for a new scheme or one that grows to have 100 or more relevant members at a scheme year-end date on or after 1 April 2024 will be the later of six months from the end of the scheme year in which the scheme grows to 100 or more relevant members and 31 October 2026. Similar deadline changes would apply to schemes that drift out of scope of the dashboards-connection obligation, for example because they have fallen into an assessment period for entry into the Pension Protection Fund.

Guidance

The Pensions Minister, Laura Trott, told Parliament that the DWP would ‘collaborate’ with the pensions industry this year to produce statutory guidance that allows the necessary flexibility to ensure that the dashboards project can be completed effectively. According to Pensions Dashboards Programme FAQs, the guidance will set out the DWP’s expectations for when schemes should connect to the dashboards system: in effect, this will be a replacement staging profile. Compliance will not be strictly mandatory, but trustees will be legally required to '*have regard to*' the guidance, so would need a ready explanation for any departures from it.

The Regulator's has revised the section of its Pensions Dashboards: Initial Guidance headed When your scheme needs to connect with dashboards to conform to the new deadlines. In a blog post it urges trustees to Make time to get your data dashboards-ready, despite the recession of the deadlines.

The benefits of dashboards can only be realized with comprehensive and reliable member data. It’s imperative that third-party administrators with multiple schemes to connect can schedule the work efficiently. If the deletion of the staging profile leads trustees to defer that work, there could be a concertina effect as the October 2026 deadline approaches. We hope that the DWP’s statutory connection guidance will avoid that eventuality (and look forward to seeing details sooner rather than later).

Rule change without 'section 37 certificate' declared void

The High Court in England and Wales has said that amendments made in 1999 to the rules of a contracted-out salary-related scheme were invalid, because the changes were introduced without the actuarial confirmation that was required at the time.[2] The same issue may affect other schemes that altered the terms of benefit accrual in the period from 6 April 1997 to 5 April 2016, and may find that the change was ineffective, and their liabilities not what they had assumed.

Legislation

Legislation says that the rules of a contracted-out (nowadays, a *formerly* contracted-out) scheme 'cannot be altered unless the alteration is of a prescribed description.'[3] The prescribing of exceptions is accomplished by regulations. At the time in question, the regulations prohibited rule amendments affecting 'section 9(2B) rights', attributable to service between 6 April 1997 and 5 April 2016, unless (amongst other things) the scheme actuary had confirmed in writing to the trustees that the scheme could still pass the 'reference scheme test' for contracting out.[4]

Regulations can also retrospectively validate alterations that would otherwise be rendered void by the general prohibition of alterations. However, no regulations retrospectively validating changes to section 9(2B) rights were ever made.

The regulations that applied at the relevant time in this case were revised several times. They were eventually replaced, to take account of the abolition of salary-related contracting out on 6 April 2016. The requirement for actuarial confirmation was removed at that time.

Case history[5]

The rules of the scheme at the centre of the case were revised and consolidated in 1999. In 2021, the trustees realised that the necessary actuarial confirmation might not have been obtained.

If the rule changes were invalid, one consequence would be that revaluation in deferment for a subset of members' benefits continued to be in accordance with the Retail Prices Index rather than the Consumer Prices Index. The trustees estimated in 2021 that the cost of the mistake would be around £10m, in the context of total liabilities of £600m. The problem for the parties is seemingly not so much the direct financial implications of the error, but that the lingering uncertainty over members' benefit entitlements is impeding plans for buying out the scheme's liabilities with an insurer.

The scheme's principal employer agreed to ask the Court whether the 1999 changes are valid in the absence of actuarial confirmation. It argued that the amendments were effective, whilst a representative beneficiary argued that they were not; the trustees remained neutral. The hearing took place on 2 and 3 May 2023.

Decision

The judge concluded that an amendment made without the required actuarial confirmation is void. She said there was 'no ambiguity' in the wording of the legislation, and nothing to suggest that it could be interpreted so that a non-compliant alteration could be regarded as valid and effective.

The judge was asked other questions that were more specific to the scheme, the attempted amendments, and the legislation that applied at the time. She decided that the invalidity affected benefits earned before and after the date of amendment, and that it extended to all of the alterations to section 9(2B) rights, not just those that would or might adversely affect members.

The Court was not asked for a ruling on whether an otherwise void amendment could be 'cured' by actuarial confirmation provided afterwards. The litigants have been unable to locate any confirmation relating to the changes, and so the judge was asked to proceed on the basis that it was not given. However, that has not been conclusively determined. The judge was told that there might be additional investigations into whether (and if so, when) actuarial confirmation was provided.

We don't know whether there will be further instalments of this litigation, or an appeal against the decision. We understand that the employer is considering asking the Court whether otherwise defective alterations to section 9(2B) rights can be

[2] *Virgin Media Limited v NTL Pension Trustees II Limited & Others* [2023] EWHC 1441 (Ch).
[3] Section 37(1) of the Pension Schemes Act 1993.
[4] The Occupational Pension Schemes (Contracting-out) Regulations 1996 (SI 1996 No. 1172); see regulation 42(2). The actuary's confirmation is commonly described as a 'section 37 certificate', though the word 'certificate' is not mentioned in the legislation.
[5] Taken partly from the case report and partly from 'Frequently Asked Questions' published by the trustees on their website for scheme members <www.mypension.com/ntlplan/faqs/>.

saved by confirmation given later and, if so, whether the effect would be retrospective to the original date of the amendments or would only apply from the confirmation date.

There'll be other examples of amendments made without confirmation that schemes could continue to pass the reference scheme test, or for which the fading of institutional memories (and written records) simply make the matter difficult to determine. As in this case, the issue might come to the fore when buy-out is on the horizon, or it could be when the scheme is assessed for entry into the Pension Protection Fund or during due diligence for mergers and acquisitions.

Inappropriate independent advice?

The Department for Work and Pensions (DWP) has completed a post-implementation review of the requirement for authorized financial advice for certain types of benefit transfer. There is the prospect of a lighter-touch approach for less-risky transactions.

Background

Since 6 April 2015, legislation has required that pension scheme members obtain 'appropriate independent advice' before transferring (or converting) 'safeguarded benefits' with a view to acquiring 'flexible benefits'.[6] The goal was to increase levels of informed decision-making. The most common example of such a transaction is the transfer of defined-benefit pension rights to obtain money-purchase benefits.

Members do not need advice if the safeguarded benefits are valued at no more than £30,000. Before a transfer can proceed, the transferring pension scheme's trustees[7] are required to determine whether or not the exception applies and tell the member. If advice is required, they must also ensure that an adviser from a firm with the necessary regulatory permission has confirmed the provision of advice specific to the proposed transaction.

Trustees must assume that transferring members intend to obtain flexible benefits unless they confirm otherwise.

Findings

In its review of the legislation, the DWP concludes that the policy intent underlying the obligation has been met and remains appropriate, but that the requirement might be disproportionate for some low-risk transfers. It has heard concerns about whether the £30,000 benchmark remains appropriate, and the difficulty and costs of obtaining financial advice. The DWP will therefore work with the Pensions Regulator, FCA, Treasury and industry representatives to examine whether changes could improve the member experience, without undermining the policy objective.

It's unclear what the DWP considers to be a 'low-risk transfer' in this context, given that the goal of the legislation was to reduce the risk of members unthinkingly giving up valuable DB rights for the promise of greater flexibility. The Government's go-to white-listed transfer destination in recent years has been an authorized master-trust, but that minimizes the risk of scams, not o'er-hasty decision-making in general.

The £30,000 threshold for advice seems low—one can say the same for the limit on commutation of 'trivial' benefits, with which it lines up—especially when one considers the costs and availability of financial advice on smaller transfer values. Right now, with transfer values reduced by high gilt-yields, the limit has seldom looked more generous.

[6] Section 48 of the *Pension Schemes Act 2015*, and the *Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015* (SI 2015 No. 742).
[7] Or the managers of non-trust-based schemes.

Government to consider tweaks to troublesome transfer rules

The DWP has carried out a scheduled review of the additional conditions for statutory transfers that it introduced in 2021. It concludes that the original policy intention remains appropriate, but acknowledges the industry's concerns about some of the transfer-scam 'warning flags'. It will work with the pensions industry and the Pensions Regulator to consider if changes could be made without undermining the policy.

The Conditions for Transfers Regulations[8] introduced new provisos to the statutory right to transfer, to reduce instances of pension scheme members being defrauded of their retirement savings. Certain types of arrangement, such as public-service pension schemes and authorized master trusts are deemed to be low-risk destinations, and transfers into them can proceed once the scheme's status is confirmed. The circumstances of tther transfers must be scrutinized for the presence of 'red flags' and 'amber flags'. A red flag, such as regulated activities conducted by an unauthorized adviser, unsolicited direct marketing, or the offer of an incentive or application of pressure to transfer, will stop the transfer proceeding under the statutory rules. If an amber flag is raised, for example when the member has no employment link to an occupation scheme, or if there are risky investments or unusually high fees, the member must undergo a guidance session with the Money and Pensions Service (MaPS) before the statutory transfer can go ahead. Failure either to provide the requisite evidence of MaPS guidance or to respond properly to a request for information will also constitute a red flag.

The DWP reviewed approximately 290,000 transfers and observations made by pensions-industry representatives. Amongst the latter, there was broad consensus that the original policy intent remains appropriate and that the Regulations are the correct means of achieving it. However, concerns were expressed about the practical application of some of the rules, particularly the interpretation of the red flag when transfers are incentivized and an amber flag when a receiving scheme has overseas investments. They are thought to be obstructing transfers even when transferring scheme administrators and trustees have no concerns. Respondents also noted that the additional due-diligence checks and long waiting times for guidance appointments are extending transfer-completion times, and that some transferors are being required to attend multiple guidance sessions when trying to consolidate pensions from different sources. There is some feeling that the evidence required to establish an employment link to a destination occupational scheme may be excessive.

We're pleased to read that the DWP is open to tweaking the 2021 rules if they can reduce transfer frustrations without weakening the safeguards against fraud. The current state of affairs, in which trustees and administrators are *encouraged to consider using non-statutory powers as a workaround* is clearly sub-optimal.

Commons Committee pushes for reassessment of funding reforms

The House of Commons Work and Pensions Committee published a report on its inquiry into Defined benefit pensions with Liability Driven Investments (LDI). The (almost literally) show-stopping recommendation is that the Department for Work and Pensions (DWP) and Pensions Regulator 'should halt their existing plans for a new funding regime, at least until they have produced a full impact assessment for the proposals, including the impact on financial stability and on open DB schemes.'

The Committee also wants the DWP and Regulator to produce a detailed account of the events of September and October 2022 involving LDI and their effects on scheme funding levels. Its other recommendations are that:

- the Regulator requires reporting of LDI data and engages with trustees based on the results;
- the DWP makes progress on legislation for DB consolidation vehicles and improved governance standards, and in the meantime considers restricting use of LDI (perhaps based on some test of trustee understanding);
- the DWP brings investment consultants fully under the aegis of the FCA, by the end of this Parliament;
- the FCA reviews whether LDI funds have followed guidance issued in April 2023, and the Regulator provides trustees with 'a simple mechanism for monitoring LDI'
- the DWP and Regulator develop a plan, by end-October 2023, for monitoring LDI resilience, and a timeline and resourcing plan for enhancing the Regulator's digital capabilities;
- the DWP and Regulator consult on new disclosure requirements about LDI usage, allowing collation of details such as investment type, maximum leverage, compliance with minimum resilience standards, asset allocations by growth, and matching assets;

[8] *The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021* (SI 2021 No. 1237).

- the DWP and Regulator report by end-October 2023 on how they intend to work with other regulators to improve management of systemic risks; and
- the DWP reports back to the Committee by end-January on how it plans to give the Regulator a financial-stability remit.

Governments don't always accept Select Committee recommendations, but they are expected to respond, generally within two months.

Public-sector pensions update

A whistle-stop tour of developments affecting public-service pensions provision in June 2023.

No new LGPS climate obligations this year

Lee Rowley, Parliamentary Under-Secretary of State for Local Government and Building Safety, said that the Department for Levelling Up, Housing and Communities (DLUHC) would not impose upon English and Welsh Local Government Pension Scheme (LGPS) funds, for the financial year 2023/24, any requirements for the governance or disclosure of climate-related financial risks.

McCloud remedy tax guidance

His Majesty's Revenue and Customs published guidance on the tax implications of the rectification of '*McCloud*' discrimination in the public sector.

McCloud in Scotland

The Scottish Public Pensions Agency (SPPA) is consulting on proposed changes to the LGPS north of the border, concerning the '*McCloud*' remedy. As well as updating the plans it set out in an earlier exercise, the SPPA's consultation document raises some supplementary issues—covering similar ground as those laid out by the DLUHC in May 2023 for the LGPS in England and Wales.

Draft Regulations were also published as part of the latest consultation exercise. The period for responses lasts until 31 July 2023.

Anti-BDS Bill

The DLUHC announced the introduction to Parliament of an Economic Activity of Public Bodies (Overseas Matters) Bill, which would prevent public organizations from pursuing boycott, divestment and sanctions (BDS) campaigns against foreign states. The Bill contains clauses specific to the investment decisions of LGPS funds.

The Government signalled its intention to legislate after a Supreme Court ruling in 2020 said that it had exceeded its powers when giving anti-BDS instructions to LGPS funds.[9] The Bill would prohibit decision-makers from applying considerations related to particular foreign territories in ways that would lead reasonable observers to conclude that their decisions were influenced by political or moral disapproval of foreign-state conduct. The Bill makes exceptions for some types of considerations, covering issues such as modern slavery, human trafficking and bribery. It also allows the Government to make addition exceptions to the general prohibition, but not where they would relate to Israel, the Occupied Palestinian Territories, the Occupied Golan Heights, which were the subjects of the Supreme Court case.

Michael Gove, the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations, set out his position on some of these matters in a letter to Lisa Nandy, his opposite number is the Shadow Cabinet.

The Scheme Advisory Board for the LGPS in England and Wales responded to the announcement of the Bill by saying that:

> [The LGPS] *is a well-funded and well-run scheme. Administering authorities take their statutory and fiduciary duties around the investment of pension funds very seriously. They also take very seriously their duties under the Equality Act*

[9] *Palestine Solidarity Campaign v Secretary of State for Housing, Communities and Local Government* [2020] UKSC 16.

to foster good relations between different communities and to eliminate discrimination. As far as the Board is aware, there is no evidence that any LGPS fund has instituted inappropriate politically motivated boycott or divestment policies.

LGPS SAB annual report

The LGPS Advisory Board for England and Wales has published its tenth Scheme Annual Report. The Report provides information on the state of the LGPS as at 31 March 2022.

DfE expands academy guarantee

According to a Written Statement made to the House of Commons, the Department for Education (DfE) has extended the LGPS guarantee for academy trusts to include outsourced contracts such as catering services. The Minister for Schools, Nick Gibb, says that will reduce academy trusts' set-up costs, simplify their administrative processes and remove requirements for bonds.

The guarantee, which was put in place in 2013, provides assurances to LGPS administering authorities, enabling them to treat academies like local-authority-maintained schools rather than high-risk employers. It is explained in DfE guidance.

DB Annual Funding Statement Analysis

The Pensions Regulator has published some analysis of the data behind its 2023 Annual Funding Statement, which focused on private-sector defined benefit schemes with valuation dates between 22 September 2022 and 21 September 2023. The results suggest that this sample of schemes was— generally—better funded than at the valuation dates three years previously, primarily because of significantly increased gilt yields.

As of 31 March 2023, the Regulator estimates, for example, that:

- 76% of the schemes were in surplus;
- 52.6% of schemes had moved from a deficit position at the time of their previous valuations to a state of surplus; and
- of those schemes still in deficit, 79% could retain or reduce their existing deficit-reduction-contribution levels.

However, the Regulator acknowledges that the overall rosy picture masks considerable variation from scheme to scheme. The most material differences are attributed to the extent of schemes' hedging of interest-rate and inflation risks (funding improvements for those without interest-rate hedges will be higher than for those that were fully hedged), and their investment in growth asset classes.

The Regulator also recognizes that employer affordability has significantly reduced since the last round of actuarial valuations, and that covenant strength has been affected by national and international developments and economic conditions.

Possible extension to PPF

The Pension Protection Fund (PPF) has responded to reports that the Government is considering extending its current remit—providing a safeguard for members of defined benefit schemes where the sponsoring employer fails—to allow it to act as a consolidator scheme for smaller, poorly performing defined benefit schemes.

Using the PPF as a consolidator scheme was one of several ideas mooted in the Departmental review of the PPF, published in December 2022 and has also been discussed in a recent report (*Investing in the Future: Boosting Savings and Prosperity for the UK*) by the Tony Blair Institute for Global Change.

The PPF welcomed the opportunity 'to work with government and the wider industry to explore the various options and be part of the potential solution', but said that that delivering the best outcomes for current PPF members and levy payers remains its priority. It also notes that any change to the PPF's role is likely to be outside its current statutory remit, and as such would require a legislative change.

HMRC newsletters: June 2023

Pensions Schemes Newsletter 151, from His Majesty's Revenue and Customs (HMRC) covers these items:

- HMRC's annual allowance calculator has been updated for the changes in the 2023/24 tax year to the allowance, the money purchase annual allowance, and adjusted income for the tapered annual allowance.
- His Majesty's Treasury has amended clauses in the Finance (No. 2) Bill clauses dealing with the abolition of the lifetime allowance charge in 2023/24 to make the new rules for stand-alone lump sums (SALS) work as intended. In short, the part over the maximum SALS payable on 5/4/2023 is subject to marginal-rate income tax, but the whole amount is still a SALS and therefore an authorized member payment.
- HMRC gives guidance on how PAYE should be applied to SALS, and how to report payments pending updates to the Real Time Information system. HMRC wants the necessary changes to payroll systems to be made by 30 September 2023, but gives an email address for correspondence if that is not possible.
- There is the now-familiar entreaty to migrate schemes from Pension Schemes Online to its successor, Managing Pension Schemes, which will be necessary for various future reports and returns. Filing deadlines are given, as an extra goad to action.
- Event reporting for 2023/24 will be available on MPS 'this summer'.

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