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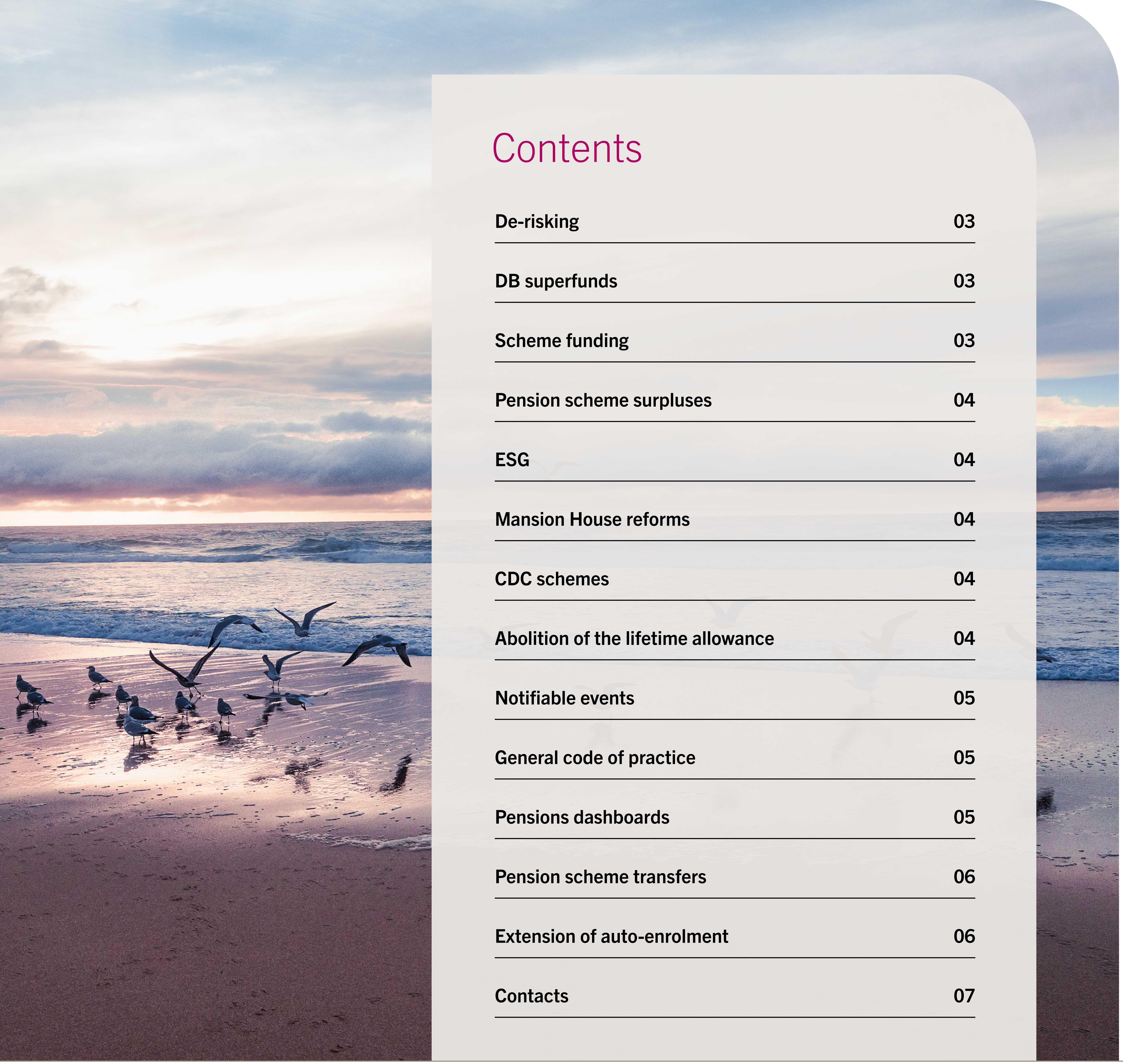
Pensions Legal Outlook 2024



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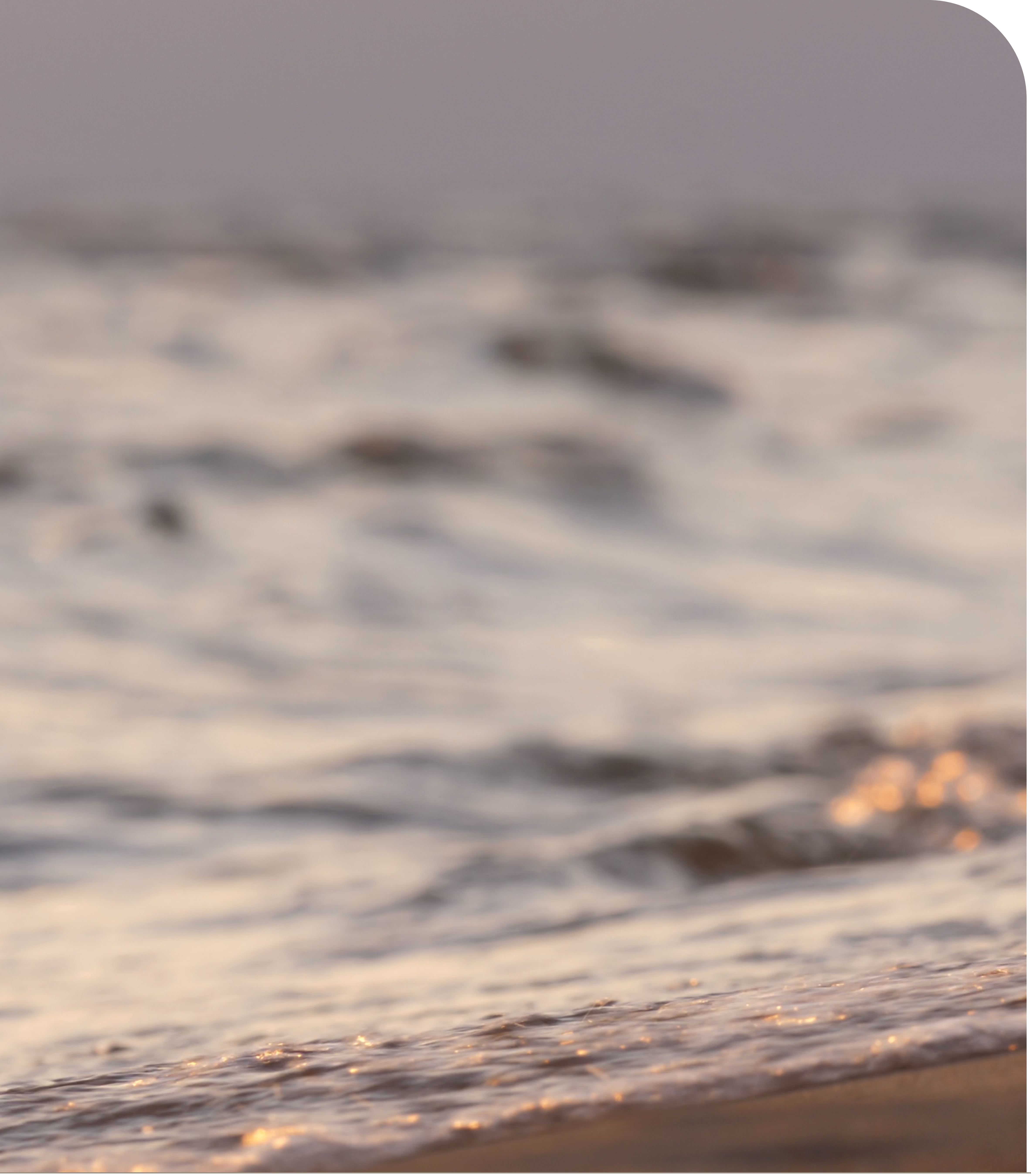
Introduction

In our Pensions Legal Outlook, we predict the key issues for occupational pension scheme trustees and sponsoring employers in 2024.

Some of the topics covered below have been key themes for the last few years, including buy-ins and buy-outs and ESG. Others are long-awaited developments which may finally come to fruition in 2024, including scheme funding, notifiable events and the Pensions Regulator's general code of practice. We also cover several growing areas of interest, such as pension scheme surpluses and collective defined contribution schemes.



De-risking

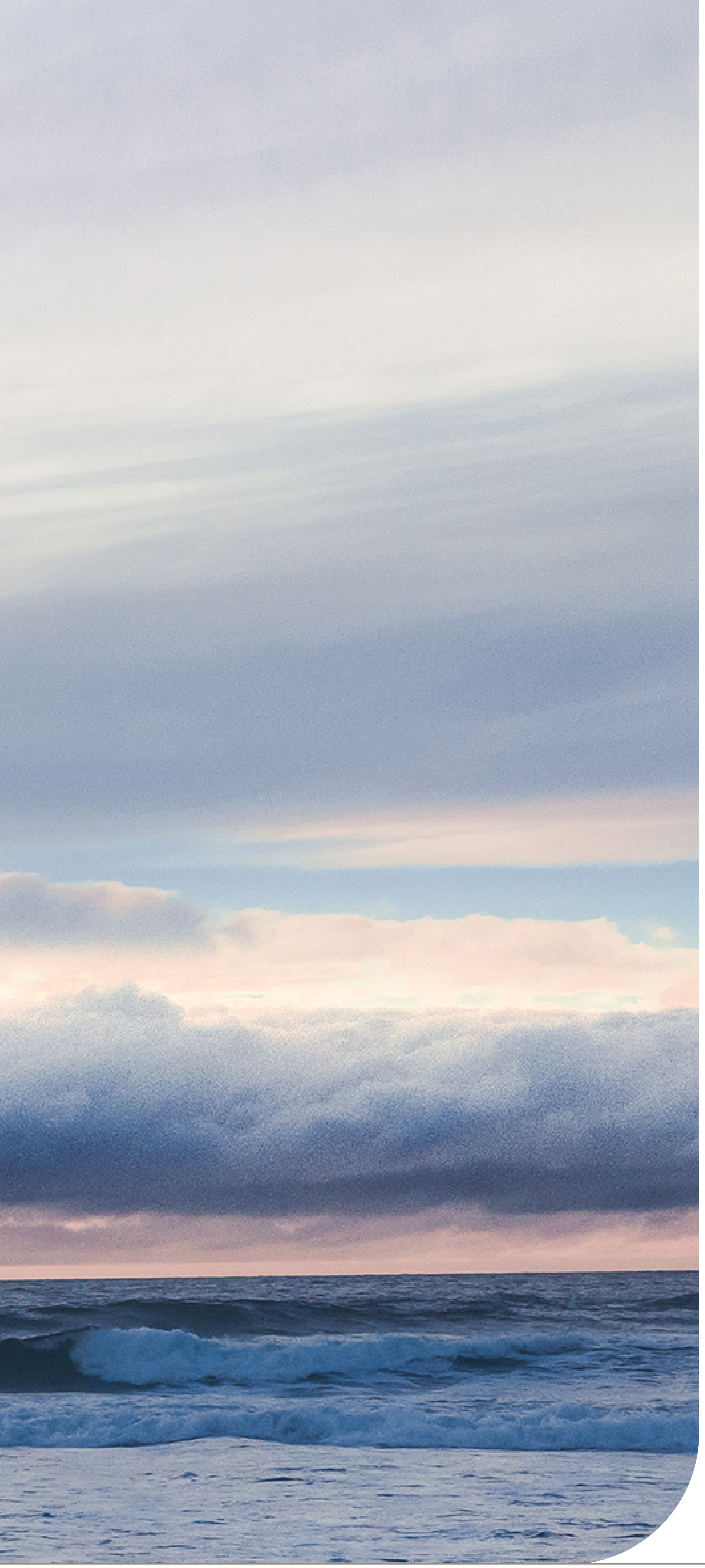
2023 was another busy year for buy-ins and buy-outs, with the largest buy-in to date earlier in the year, a new insurer entrant and further longevity swaps, including the first to cover members still accruing benefits. The volume of deals for this year is expected to be £50bn. This does not look like it will be slowing down, with an even higher volume expected in 2024 and more new insurers predicted to enter the market. Trustees and employers should continue to be well prepared ahead of approaching the busy market, including preparing the benefit specification early on and considering whether there are any illiquid assets that will need to be dealt with.

DB superfunds

The Government has published the long-awaited response to its 2018 consultation on a legislative framework for the regulation of defined benefit (DB) "superfund" consolidation schemes. This confirms the Government's intention to proceed with primary and secondary legislation to provide for a new compulsory framework applicable to superfunds and other relevant models of consolidation. However, it is likely to be some time before the legislative framework is in place. In the meantime, the Pensions Regulator has established an interim process for assessing DB superfunds. To date, only one DB superfund (Clara-Pensions) has been assessed by the Regulator as meeting its expectations and only one scheme (the Sears Retail Pension Scheme) has transferred into a superfund. Now that we have seen the first transaction completed, we expect more to follow.

Scheme funding

Following a consultation on draft regulations in 2022 and a Pensions Regulator consultation on a draft code of practice in 2023, a new scheme funding regime is finally expected to come into force in 2024. In a nutshell, it is proposed that schemes will be required to target full funding on a low dependency funding basis and aim to be invested in a low dependency investment allocation by the time they are significantly mature. Trustees will have to set out their strategy for achieving this in a "funding and investment strategy" and report this to the Regulator (together with lots of detailed information) in a "statement of strategy". Given the passage of time since the new regime was first mooted and the very different circumstances in which schemes find themselves today, it is possible that some aspects of the original proposal will change before it reaches the statute book.



Pension scheme surpluses

As funding levels across the UK's DB pension schemes improve, with many schemes now in surplus, trustees and employers are increasingly likely to face decisions on how to manage surpluses. The Government has said it will launch a consultation this winter on measures to make it easier to repay surpluses to employers. The Government has also confirmed that the authorised surplus payments charge will be reduced from 35% to 25% from 6 April 2024. Trustees and employers will watch these developments with interest.

ESG

ESG remains a hot topic for trustees. While in-scope schemes will now be familiar with the requirement to align their governance processes and disclosures with the Task Force on Climate-related Financial Disclosures (TCFD) recommendations, trustees should continue to focus on improving their disclosures, particularly as better quality data becomes available. Trustees should also continue to monitor wider ESG developments. For example, the Taskforce on Nature-related Financial Disclosures (TNFD) has recently published the final version of its recommendations on a framework to identify, assess, manage and disclose nature-related issues, while the Taskforce on Social Factors has published a draft guide for consultation, which includes a number of recommendations for how trustees can better consider and incorporate social factors into their investment and stewardship decision-making. Trustees may wish to consider adopting the recommendations of both.

Mansion House reforms

Earlier in the year, the Chancellor of the Exchequer, Jeremy Hunt, delivered his Mansion House speech, setting out a package of reforms known as the "Mansion House reforms". The overall aim of the reforms is to support growth across the economy by unlocking capital for high-growth companies and increasing returns for savers. Reforms to the UK pensions market featured prominently and have the potential to impact significantly on trustees and employers. They include a new value for money assessment framework for defined contribution (DC) schemes, a proposed automated consolidation solution to the problem of small pots and a new decumulation framework to support individuals at the point when they access their pension savings. The Autumn Statement built on the Mansion House proposals, but ultimately legislation will be required to implement many of the proposed reforms and they will therefore take some time to come to fruition. In the meantime, we expect the Pensions Regulator to nudge schemes towards taking action via guidance.

CDC schemes

The Government has published a response to its consultation on extending collective defined contribution (CDC) provision beyond single or connected employer schemes to accommodate unconnected multi-employer schemes. The response confirms that the Government intends to consult on draft regulations to extend CDC provision in this way. It also says the Government is committed to creating provision for CDC decumulation products and will continue to work with the industry on this. The Government clearly wants to encourage the establishment of new CDC schemes, which it believes can invest more effectively by pooling assets. We are starting to see more schemes and employers explore this option, and it is likely that these developments will encourage this growing interest.

Abolition of the lifetime allowance

The pensions-related announcements in the Spring Budget 2023 were the most significant for some years and included the announcement that the lifetime allowance would be abolished from 6 April 2024. The Government has since published draft legislation to repeal the provisions of the Finance Act 2004 relating to the lifetime allowance. But the changes go further than this and include the introduction of two new allowances for lump sums. For many registered pension schemes, the changes are likely to have an impact on the benefits and options provided by the scheme, and it may be necessary to amend scheme rules as a result. Thinking through the implications is going to be a key priority for trustees and employers in the early part of 2024.

Notifiable events

The Pension Schemes Act 2021 set the scene for significant changes relating to employers' reporting obligations, the intention being to alert the Pensions Regulator and trustees at an earlier stage to financial decisions which could impact on the pension scheme. In practice, the vast majority of employers already inform trustees about significant business transactions and discuss with them the impact (if any) on the scheme, but employers will need to adapt their approach to ensure compliance with the detail and timing of the new requirements. The Government consulted on draft regulations setting out the detail of these changes in 2021 and they were initially expected to come into force in April 2022. However, we are still awaiting a response to the consultation. Will we finally see the new notifiable events regime coming into force in 2024?

General code of practice

The Pensions Regulator consulted in 2021 on its work to combine the content of 10 of its current codes of practice into a single, shorter code consisting of 51 topic-based modules. It was initially expected that the new code would become effective in summer 2022, but this timetable has been delayed and we are now expecting the code to come into force in 2024.

Two key changes included in the code relate to the requirement for trustees to establish and operate an effective system of governance (known as an ESOG) and for trustees of schemes with 100 or more members to carry out and document an "own-risk assessment" (ORA) of their ESOG. The draft code also includes several other new and amended expectations. Trustees will need to carry out a gap analysis to ensure all the requirements are being met.

Pensions dashboards

The initial timetable for pensions dashboards, the online platforms which will allow users to view information from multiple pensions in one place, would have seen the largest schemes connecting to the dashboards ecosystem from August 2023. However, last minute regulations replaced the original staging profile, staging deadlines and connection window with a single connection deadline of 31 October 2026. Guidance on a non-mandatory staging timetable is still awaited at the time of writing. However, we expect that schemes will be asked to start connecting from autumn 2024. Trustees should therefore continue to take steps to ensure they are as "dashboard ready" as possible, particularly in terms of the quality and completeness of their scheme data.

Pension scheme transfers

A new regime for pension scheme transfers came into force in 2021. Under the new regime, trustees must not comply with a transfer request unless one of the conditions set out in the legislation is met. A key feature of the new regime is the system of red and amber flags: in order to proceed with a transfer, trustees must decide that none of the red flags are present and, if the trustees decide that any of the amber flags are present, the member must take pension transfer scams guidance from the Money and Pensions Service. In practice, problems have arisen as a result of one of the red flags (which applies where the member has been offered an incentive to make the transfer) and one of the amber flags (which applies where there are overseas investments included in the receiving scheme). The Government has published a review which recognises these issues and confirms further work will be undertaken with the pensions industry and the Pensions Regulator to consider if changes could be implemented to the regulations to improve the pension transfer experience, without undermining the policy intent. While no timescale has been provided, we hope to see these issues addressed in 2024.

Extension of auto-enrolment

The Pensions (Extension of Automatic Enrolment) Act 2023 amends the Pensions Act 2008 to enable the Secretary of State to make regulations to reduce the lower age limit at which otherwise eligible workers must be automatically enrolled and re-enrolled into a pension scheme by their employers (with the policy intent being to reduce the lower age limit from 22 to 18) and remove the lower earnings limit from the qualifying earnings band so that contributions are calculated from the first pound earned. The Government has said that it hopes to consult on the draft regulations imminently, with the consultation expected to cover the implementation approach and timing. Employers and trustees should monitor developments in this area during 2024.

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