

Bulletin for Pensions Managers

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Pensions news

AUTOMATIC ENROLMENT LEGISLATION

On 1 October 2012, the phased implementation of the automatic enrolment regime began, with the bulk of the remaining automatic enrolment legislation which was not already in force, coming into force. This includes provisions amending the stakeholder pension regime.

There is no longer a requirement to provide access to a designated stakeholder pension scheme, but where employees are already contributing to a designated stakeholder pension scheme on 1 October 2012, the employer is required to continue operating a payroll deduction facility to enable those employees to continue contributing to that scheme. The employer is not required to operate a payroll deduction facility in respect of any employees who were not contributing to the scheme via payroll deduction on 1 October 2012.

Action

Ensure that payroll deductions continue in respect of any employees contributing to a stakeholder scheme on 1 October 2012.

Action

Consider amending the employment documentation given to employees to remove any reference to access being provided to a stakeholder pension scheme.

AUTOMATIC ENROLMENT EARNINGS THRESHOLDS FOR 2013/2014

The DWP has issued a [consultation](#) on the level at which the earnings trigger and the qualifying earnings band should be set for the 2013/2014 tax year. The consultation proposes that:

- the earnings trigger should be set at £9,205, keeping it aligned with the PAYE threshold;
- the qualifying earnings band should be set at £5,720 to £41,450, keeping it aligned with the lower and upper earnings limits.

The consultation closed on 17 October 2012 and the final figures will be confirmed around the time of the Autumn Statement.

Action

If subject to auto-enrolment in the 2013/14 tax year, check that payroll systems are updated to reflect the revised earnings trigger and qualifying earnings band for 2013/2014 once these figures are confirmed.

REGULATOR CHECKLIST ON RECORD-KEEPING

The Pensions Regulator has published a record-keeping progress [checklist](#) and a set of [FAQs](#) on common data to help trustees achieve the Regulator's scheme data targets by the end of the year. The Regulator also held a [webinar](#) on the topic.

Action

If they have not already done so, schemes should liaise with their administrators on what action (if any) is required to meet the Regulator's data targets.

REGULATOR WINDING UP GUIDANCE

The Regulator has updated its winding up guidance to encourage trustees and administrators to adopt a £2 “tolerance level” when reconciling the scheme’s GMP records with those held by HMRC. For more information please see the [guidance](#). The Regulator plans to carry out a fuller review and update of its winding up guidance in 2013.

Action

Schemes holding GMPs which are in the process of, or about to start, winding up, should consider whether to adopt the suggested £2 tolerance level.

MAINTAINING CONTRIBUTIONS TO DC SCHEMES

The Pensions Regulator has issued a [consultation](#) on changes to its codes of practice on reporting late payment of contributions to DC pension schemes (Codes of Practice 5 and 6) and new accompanying guidance.

Rather than focusing solely on reporting late payment of contributions, the revised codes of practice focus on maintaining contributions and include new sections dealing with the monitoring of contribution and the information to be provided to members.

The consultation closes on 6 December 2012. For more information, please see our [client alert](#).

Action

No action required.

SCHEME FUNDING AND DISCOUNT RATES

The Pensions Regulator has rejected calls by the NAPF to allow schemes to lift discount rates to mitigate the impact of the current low level of gilt yields. The Regulator’s view is that the funding regime already offers schemes sufficient flexibilities to achieve affordability. In support of this view, the Regulator has recently published a [report](#) looking at how schemes have used these flexibilities in practice.

Action

No action required.

PPF LEVY 2013/2014

The PPF has published a [consultation](#) on its levy estimate for the 2013/2014 levy year. The consultation proposes to set the levy estimate at £630 million. This is a 15% increase on the 2012/2013 levy estimate but is below the maximum 25% increase which the PPF is entitled to impose.

£630 million is also the amount which the PPF expects to collect in 2012/2013. The expected actual amount collected is higher than the levy estimate largely due to a significant number of contingent assets either not being re-certified or being rejected by the PPF.

The consultation closed on 2 November 2012.

Action

No immediate action required, but schemes wishing to use a contingent asset for levy purposes should ensure that the process of obtaining and certifying that asset is started well ahead of the 31 March 2013 deadline.

PPF DIRECTED TO RECONSIDER DECISION TO REJECT CONTINGENT ASSET

The Deputy PPF Ombudsman has [directed](#) the PPF to reconsider its decision to reject a Type B(ii) contingent asset (security over real estate) on the grounds that the PPF’s guidance on the valuation of Type B(ii) contingent assets was unclear and that she was therefore unable to say that the PPF had taken all relevant and no irrelevant matters into account when making its decision.

Action

No action required.

CHANGES TO BRIDGING PENSIONS AND RPI/CPI AMENDMENTS

The DWP has published a [consultation](#) on the draft Occupational Pension Schemes (Miscellaneous Amendments No.2) Regulations 2013 which:

- make various minor technical amendments regarding indexation requirements; and
- introduce a power for trustees to amend scheme rules relating to bridging pensions to reflect the increase in SPA where the scheme rules would prevent such an amendment. Exercise of the power would be subject to employer consent and would require member consultation.

The consultation closed on 14 November 2012.

Action

No action required.

PROPOSED CHANGES TO CALCULATION OF RPI

The Office for National Statistics has issued a [consultation](#) on possible changes to the way in which the RPI is calculated. Some of the changes could result in the RPI moving much closer to the CPI and therefore potentially reducing scheme deficits for schemes whose increases to pensions in payment and/or revaluation of deferred pensions are calculated by reference to the RPI.

The consultation closes on 30 November 2012.

Action

No immediate action required, but schemes in which revaluation and/or increases are calculated by references to RPI should keep the progress of the consultation under review. If the way in which RPI is calculated is changed, such schemes may wish to inform members.

IORP DIRECTIVE REVIEW

The European Insurance and Occupational Pensions Authority (“**EIOPA**”) has launched its quantitative impact study (“**QIS**”) on the impact of the European Commission’s proposals for a revised IORP Directive. The QIS is expected to run until mid-December. EIOPA expects further QISs to be necessary before a revised IORP Directive can be published.

Action

No action required.

GMP EQUALISATION

Comments by Steve Webb indicate that the proposed statutory amendments requiring GMP equalisation will be going forward, but that the DWP is considering ways of minimising the burden on schemes such as looking at whether there is any way of limiting the extent to which schemes have to backdate the equalisation.

Action

No immediate action required.

REINVIGORATION OF OCCUPATIONAL PENSIONS

Steve Webb has announced that a paper on the reinvigoration of occupational pensions will be published this autumn. The paper will include more information on the concept of “defined ambition” pension schemes.

Action

No action required.

Pensions finance

FATCA: PENSION SCHEME EXEMPTION

HM Treasury and the US Internal Revenue Service (“**IRS**”) have signed an [intergovernmental agreement](#) on improving international tax compliance and the implementation of FATCA.

FATCA is a piece of US legislation which would impose a 30% withholding tax on US income earned by a non-US “financial institution” unless it agrees to give information to the IRS about US citizens and taxpayers who have an interest in it. As FATCA is very widely drafted, it could treat UK pension schemes as financial institutions – and impose the 30% tax on their US investment returns – if any scheme member, or even any dependant of a scheme member, is a US citizen or taxpayer.

The intergovernmental agreement seeks to exempt most UK pension schemes, including all registered pension schemes from the scope of FATCA.

Action

No immediate action required, but schemes with US-based investments (including through pooled funds) should continue to monitor developments as they may still need to provide evidence of their exemption from FATCA to the managers of those investments.

ESMA GUIDELINES ON SECURITIES LENDING

The European Securities and Markets Authority has indicated that it may clarify the guidelines which it recently issued on securities lending by pooled funds. The guidelines require all securities lending revenues, net of operational costs, to be paid by the fund manager to the fund and are due to come into force in February 2013.

Whilst the guidelines should in theory mean that investors in the fund see a greater return, concerns have been expressed that lack of clarity in the guidelines as to what constitute “operational costs” may mean those costs can be manipulated to allow the fund manager to continue to receive a profit.

Action

No action required.

Pensions litigation

WHEELS COMMON INVESTMENT FUND TRUSTEES LTD V HMRC

The Court of Justice of the European Union (“CJEU”) heard this case on 12 September 2012. The case concerns whether pension schemes should pay VAT on their investment management services.

The pensions press has reported that the EC intervened at the CJEU hearing to express its view that schemes should pay VAT. Whilst the EC’s view is not determinative, commentators believe that it makes it more likely that the CJEU will hold that VAT should be paid.

The CJEU’s ruling is expected sometime in the next six months.

Action

No action required.

IN THE MATTER OF SEA CONTAINERS SERVICES LTD (IN LIQUIDATION) [2012] EWHC 2547

The High Court has considered the construction of a stand-alone letter issued by the employer to certain female members of the Sea Containers 1983 Pension Scheme (the “Scheme”) as part of arrangements to equalise benefits following the *Barber* decision.

The letter provided that “*should [the member] still elect to retire at her previous retirement age of 60, the Company shall provide a pension at age 60 equivalent to that which would have been available prior to the Pension Scheme changes which were introduced on 1 August 1994 [the equalisation changes]*”.

The court held that:

- a member could only benefit if she retired at age 60 from service with Sea Containers Services Limited (“SCSL”) or a group company and took an immediate pension;
- the terms of the letter could only be enforced against SCSL; and
- all benefits payable under the Scheme, including any accrued after age 60, should be taken into account in determining the amount payable under the terms of the letter. Benefits payable under any other pension arrangements should not be taken into account.

Action

No action required, but schemes wishing to enter into contractual agreements with members on their pension benefits should ensure that the terms of those agreements are clearly stated.

IBM UNITED KINGDOM PENSIONS TRUST LIMITED V IBM UNITED KINGDOM HOLDINGS LIMITED & OTHERS [2012] EWHC 2766

The High Court has granted rectification of the trust deed and rules of the IBM Pension Scheme to remove an employer consent requirement for retirement from active service between ages 60 and 63. However, the court refused to allow the trust deed and rules to be rectified to remove the employer consent requirement for retirement from deferral.

Whilst recent cases such as the *Industrial Acoustics* case have indicated that rectification proceedings can be completed more quickly and cheaply than in the past, this case demonstrates that where the facts took place many years ago and are in dispute, a lengthy hearing and significant levels of witness evidence will still be required.

A further case on whether IBM breached its duty of trust and confidence when making pension changes in 2009 is due to be heard in early 2013.

Action

No action required.

*THE PROCTER & GAMBLE COMPANY V SVENSKA
CELLULOSA AKTIEBOLAGET SCA [2012] EWHC 1257*

Svenska Cellulosa Aktiebolaget (“SCA”) has been granted leave to appeal against the High Court’s decision in its dispute with Procter & Gamble.

The dispute involves the extent to which early retirement rights under the Procter & Gamble Pension Fund transferred to SCA following SCA’s purchase of a Procter & Gamble business and is the first case to consider the transfer of such rights in the context of a private sector pension scheme.

Action

No action required.

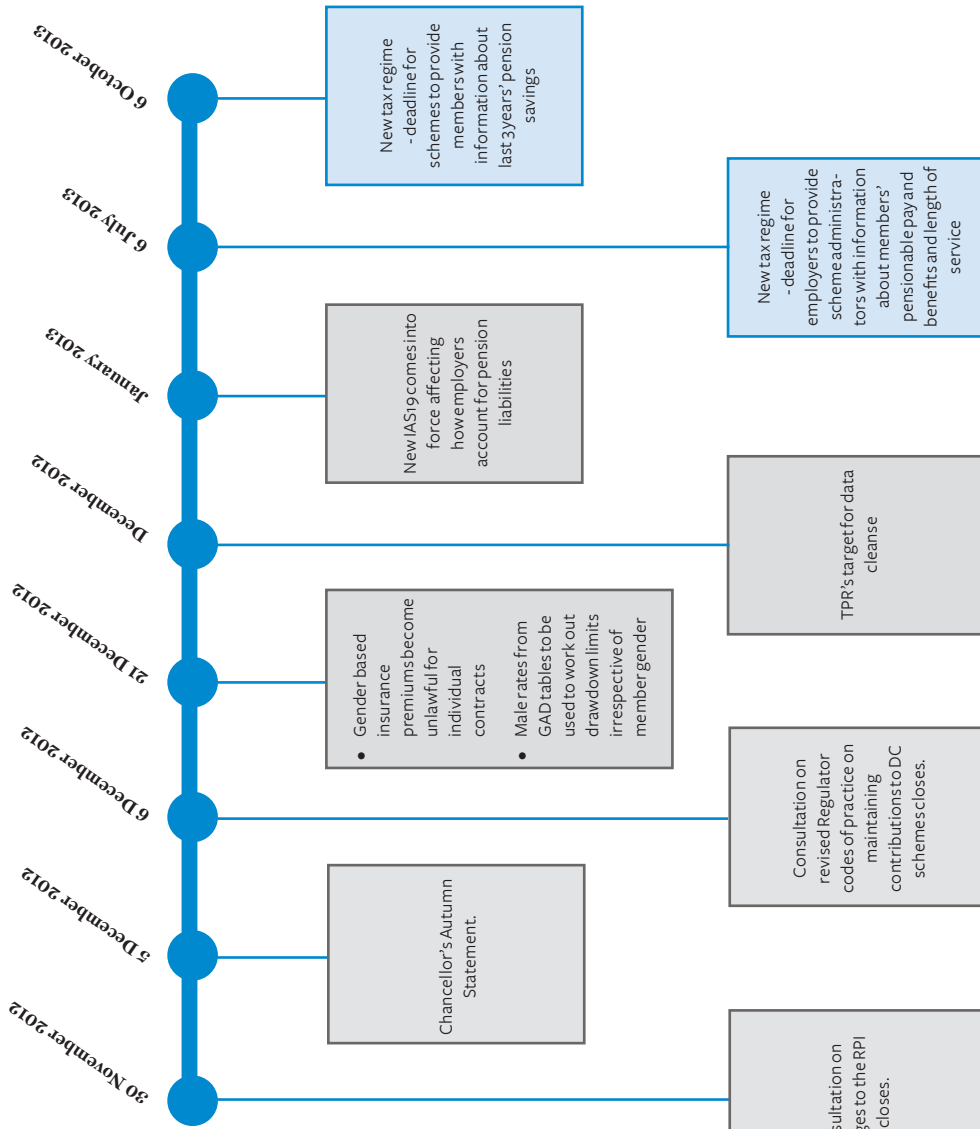
Mayer Brown events

TRUSTEE FOUNDATION COURSE

- Tuesday 4 December 2012
10.15am – 12.45pm, followed by lunch
201 Bishopsgate, London EC2M 3AF
- Tuesday 26 February 2013
10.15am – 12.45pm, followed by lunch
201 Bishopsgate, London EC2M 3AF

For further details, please contact Katherine Dixon (kdixon@mayerbrown.com).

Dates to note over the next 12 months



Key: Important dates to note For information

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