

## Bulletin for Pensions Managers

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### Pensions news

#### DISCLOSURE OF INFORMATION: NEW REGULATIONS

Regulations designed to consolidate, simplify, update and, where possible, harmonise disclosure requirements have been laid before Parliament and will come into force on 6 April 2014.

The regulations also make various changes to the disclosure regime including:

- requiring schemes which operate a “lifestyling” strategy to provide information on that strategy;
- changes to the requirements for statutory money purchase illustrations;
- extending schemes’ ability to provide information electronically; and
- removing most of the disclosure requirements relating to personal pension schemes that duplicate FCA disclosure requirements (some pensions-specific disclosure requirements remain).

#### Action

Schemes should review their disclosure processes ahead of 6 April 2014 to identify any changes that they may need or wish to make.

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#### AUTOMATIC ENROLMENT: TECHNICAL CHANGES

Regulations making various technical changes to the automatic enrolment regime have been laid before Parliament. Most of the changes came into force on 1 November 2013, with the remainder coming into force on 1 April 2014.

Among other things, the regulations:

- change the way in which pay reference periods are defined;
- make contribution payment deadlines consistent for all new joiners to automatic enrolment schemes;
- clarify the requirements as to the form and content of opt-out notices;
- extend the deadline for enrolling eligible jobholders from one month to six weeks following the automatic enrolment date; and
- clarify the DB test scheme standard.

The DWP plans to consult in due course on formal proposals for exceptions to the employer automatic enrolment duty.

#### Action

Employers and any schemes being used for automatic enrolment should update their processes as necessary to reflect the changes.

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#### AUTOMATIC ENROLMENT: CONSULTANCY CHARGING

Regulations banning consultancy charging in automatic enrolment schemes have come into force. They apply to business agreed on or after 10 May 2013, but the DWP is consulting on extending the ban to schemes that agreed business before that date.

#### Action

Schemes and employers who are entering into consultancy agreements (or who have entered into agreements since 10 May 2013) should ensure that costs under those agreements are not passed on to scheme members.

#### Action

Schemes and employers who have consultancy charging arrangements in place that pre-date 10 May 2013 should keep the DWP’s consultation on the extension of the ban under review.

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## PENSIONS BILL 2013: AMENDMENTS

The Government has tabled various amendments to the Pensions Bill 2013 including provisions to:

- allow the Government to cap and/or prohibit charges, and to impose governance and administration standards;
- make minor adjustments to the statutory employer power to amend schemes to reflect the increase in employer NICs following the abolition of DB contracting-out;
- abolish short service refunds in DC schemes; and
- implement the increased PPF compensation cap for long-serving members.

### Action

No action required.

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## NEW DEFINITION OF “MONEY PURCHASE BENEFITS”: CONSULTATION

The DWP has published a [consultation](#) on [draft regulations](#) setting out the transitional provisions to apply when the new statutory definition of “money purchase benefits” is brought into force.

The intention is that the new definition will come into force on 6 April 2014 and will have effect from 1 January 1997. The regulations are designed to provide easements that mean schemes should not need to revisit certain decisions made between 1 January 1997 and 6 April 2014. However, some issues remain unclear. For more information, please see the first article in our [November 2013 Trustee Quarterly Review](#). The consultation closes on 12 December 2013.

### Action

Schemes should start considering whether they hold any benefits which will be recategorised in light of the new definition and, if so, what action they need to take in respect of those benefits.

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## CHARGING IN DC PENSION SCHEMES: CONSULTATION

The DWP has published a [consultation](#) on proposals relating to charging in DC pension schemes. In addition to various proposals on disclosure of charges, the proposals include:

- capping charges in default funds in qualifying schemes;
- banning active member discounts in qualifying schemes;
- banning consultancy charging in all qualifying schemes; and
- banning adviser commissions in all qualifying schemes.

The consultation closed on 28 November 2013.

### Action

No action required.

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## REGULATOR: “DOUBLE COUNTING” AND ASSET-BACKED CONTRIBUTIONS

The Regulator has issued a [statement](#) warning schemes against “double counting” whereby employer debt payments are used to settle payments due under the schedule of contributions or vice-versa. The Regulator’s view is that double counting is not permitted by pensions legislation and may trigger a whistle-blowing and/or notifiable events duty.

Unfortunately, the statement is not very clear about what it means by “double counting”. It seems to us that the Regulator’s real concern here is where trustees informally treat an employer debt payment as settling contributions that the schedule of contributions still requires, or informally count regular contributions under the schedule as pre-paying an employer’s s75 debt. We do not think the statement should be read as saying that it is unlawful in principle for a schedule of contributions to provide for higher or lower employer contributions depending on whether another employer makes a specified employer debt payment, or that any whistle-blowing duties arise if trustees give effect to a schedule like that.

### Action

Schemes that have previously double counted employer debt payments, or are intending to do so, should review their decision in light of the statement.

The Regulator has also issued [guidance](#) on asset-backed contribution structures (“ABCs”). In addition to setting out its expectations of trustees who are considering entering into an ABC, the guidance also notes that “*where trustees have entered into an ABC which does not contain an adequate underpin, we would expect trustees and employers to rectify this situation as soon as practicably possible*”.

### Action

Schemes that are considering entering into an ABC should take the statement into account in their discussions with the employer.

### Action

Schemes that have already entered into an ABC should consider whether their underpin arrangements are appropriate in light of the statement.

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### FAIR DEAL: NEW POLICY FINALISED

The Treasury has published its finalised [guidance](#) on how the new Fair Deal policy will work. As previously announced, transferring staff will now be entitled to remain in their existing public sector scheme with the private sector employer becoming a participating employer in the relevant scheme.

### Action

Contractors entering into new outsourcings or retenderings should take advice on their obligations under the new policy.

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### PPF: 2014/15 LEVY

The PPF has issued its draft [Determination](#) for the 2014/15 levy year. The current levy framework will remain unchanged, but the levy estimate has increased by 10% to £695m.

Although policy changes are limited, the rules on the recertification of contingent assets (“CAs”) which were not recertified in the previous levy year have been adjusted. Rather than needing to be certified as a new CA for 2014/15, they can be recertified in the same way as CAs that were recertified for 2013/14 provided certain conditions are met.

### Action

Schemes wishing to certify or re-certify contingent assets for 2014/15 should confirm the relevant requirements once the PPF publishes its final Determination.

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### PENSIONS LIBERATION: HMRC REGISTRATION AND TRANSFER PROCESS CHANGES

HMRC has [announced](#) various changes to its processes for the registration of new schemes and the transfer of benefits between registered schemes in an effort to combat pensions liberation.

### Action

No action required.

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### OFT STUDY OF DC WORKPLACE PENSIONS MARKET

The OFT has published its [study](#) of the DC workplace pensions market. The study identifies two main concerns with the current market: (a) weakness of the “buyer” side, largely due to employees’ lack of understanding of pensions, and (b) the complexity of pension products. These weaknesses combine to reduce competition on charges and quality. The study makes various recommendations to improve the market.

### Action

No action required.

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### DC CONTRIBUTIONS: CODES OF PRACTICE IN FORCE

The Regulator’s revised Codes of Practice 5 and 6 on the reporting of late payment of contributions to [occupational](#) and [personal](#) DC pension schemes have come into force.

### Action

Employers and those responsible for administering DC schemes should review the new Codes to understand their obligations under them.

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### DWP: REVISED AUTOMATIC ENROLMENT GUIDANCE

The DWP has updated the following in its series of guidance notes on automatic enrolment for employers and actuaries:

- employer [guidance](#) on certifying defined benefit and hybrid pension schemes
- actuary [guidance](#) on certifying defined benefit and hybrid pension schemes
- [guidance](#) on certifying money purchase pension schemes

### Action

Employers and actuaries preparing to certify schemes for automatic enrolment may wish to review the updated guidance.

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### REGULATOR: AUTOMATIC ENROLMENT MATERIALS

The Regulator has updated its materials for trustees on automatic enrolment, included publishing a [new quick guide](#) for trustees of schemes whose employer is approaching their staging date.

### Action

Employers who are approaching their staging date and are planning to use their occupational pension scheme to meet their automatic enrolment obligations may wish to draw the trustees' attention to the new quick guide.

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### REGULATOR: NEW TRUSTEE GUIDE

The Regulator has published a [guide](#) to help new trustees get to grips with their role. It is designed for trustees who have recently been appointed or anyone who is considering becoming a trustee.

### Action

Schemes may wish to make new trustees aware of the guide.

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### HMRC: PENSION SCHEMES NEWSLETTER 59

HMRC has published issue 59 of its Pension Schemes Newsletter. The issue covers:

- fixed protection 2014;
- a new [online tool](#) for individuals to use to check whether they may have exceeded the annual allowance; and
- the new QROPS reporting forms.

### Action

Schemes/employers may wish to make members/employees aware of the new annual allowance checking tool.

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### DWP: MEMBER TRACING AND BULK LETTER FORWARDING SERVICE

The DWP has updated its [guidance](#) on its member tracing and bulk letter forwarding service and [accompanying documents](#).

### Action

Schemes planning to undertake a member tracing exercise using the DWP service should read the updated guidance and ensure that they use the updated forms.

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### SCOTTISH INDEPENDENCE: REPORT ON PENSIONS

The Scottish government has published a [report](#) setting out its proposals in relation to pensions in the event of Scottish independence. Among other things, the report proposes that discussions on appropriate transitional arrangements to address the impact of the cross-border funding requirements on schemes which become cross-border as a result of Scottish independence should start immediately.

### Action

No action required.

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## AUTUMN STATEMENT 2013

The Chancellor will deliver the 2013 Autumn Statement on 5 December 2013.

### Action

No action required.

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## Pensions finance

### FIDUCIARY DUTIES OF INVESTMENT INTERMEDIARIES: CONSULTATION

The Law Commission has issued a [consultation](#) on the fiduciary duties of investment intermediaries. The consultation uses pensions as the example, and traces the chain of intermediaries from the prospective pensioner/saver to the registered shareholder of a UK company.

The consultation closes on 22 January 2014 and the Law Commission plans to produce a report by June 2014.

### Action

No action required.

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## Pensions litigation

### HK DANMARK V EXPERIAN

The ECJ has [held](#) that an age-related contribution scale in a Danish DC pension scheme was capable of objective justification. The ECJ held that the reasons given for using an age-related scale, such as helping older workers build up retirement savings more quickly, were legitimate, but that it was for the national court to decide whether the difference in treatment that arose was proportionate and necessary to achieve those aims.

The ECJ also held that the exemption in the EU Framework Directive that permits the use of age-related criteria in actuarial calculations does not apply to age-related contributions in DC schemes.

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### PI CONSULTING (TRUSTEE SERVICES) V PENSIONS REGULATOR

The High Court has [held](#) that nine pension schemes suspected of being pension liberation schemes fall within the statutory definition of “occupational pension scheme”. As a result, transfers to those schemes should be authorised transfers for tax purposes and the schemes are within the scope of the Pension Regulator’s powers.

The judgment is likely to be of only limited assistance to schemes considering transfer requests to schemes which may be pension liberation schemes. It relates only to the nine schemes in question and, although the Regulator intervened in the schemes due to pension liberation concerns, the parties agreed that the Court would only be asked to consider whether the schemes were occupational pension schemes and not whether they were shams.

The Pensions Ombudsman is expected to decide shortly on a number of cases involving pensions liberation, including examples both where the trustees refused or delayed a transfer, and where the transfer was made and the member has complained that the trustees should not have made it.

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### ICM COMPUTER GROUP V STRIBLEY

The High Court has held that a scheme equalisation amendment that set out the NRD during the *Barber* window but that omitted to state that the NRD would be 65 following closure of the *Barber* window should be construed as including words to that effect as this was what a reasonable reader looking at the amendment and with the background knowledge of the *Barber* and *Coloroll* decisions would have understood the amendment to have meant.

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### SCOTTISH BORDERS COUNCIL V INFORMATION COMMISSIONER

The First Tier Tribunal has [overturned](#) a fine of £250,000 imposed by the Information Commissioner on the Scottish Borders Council for a serious breach of the Data Protection Act 1998. The breach arose out of a security failure by a subcontractor of the Council who had been engaged to scan pension records. Original files containing the pension records were found in and around a supermarket recycling bin.

The Tribunal agreed that the breach was serious but, unlike the Commissioner, considered that the breach was not likely to cause substantial damage or distress since there was little likelihood that the data would fall into the public domain and/or that it would be used to effect identity theft. While it therefore concluded that no fine could be imposed, the Tribunal was not prepared to simply allow the appeal by the Council. Instead it said that it would consider issuing an enforcement notice or taking some other action.

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#### PENSIONS OMBUDSMAN DETERMINATION: BROWNE

The Ombudsman has held that the failure of trustees to obtain sufficient information to enable them pay a lump sum death benefit within the two year period specified in the Finance Act 2004 (which resulted in an unauthorised payments charge of 40% and an unauthorised payments surcharge of 15% being levied on the lump sum) amounted to maladministration. The Ombudsman directed the trustees to pay the amount of the tax charge to the executors of the member's estate.

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#### Mayer Brown events

If you are interested in attending any of our events, please contact Katherine Dixon ([kdixon@mayerbrown.com](mailto:kdixon@mayerbrown.com)) or your usual Mayer Brown contact. All events take place at our offices at 201 Bishopsgate, London EC2M 3AF.

- **Trustee Foundation Course**

10 December 2013

25 February 2014

20 May 2014

16 September 2014

9 December 2014

Our Foundation Course aims to take trustees through the pensions landscape and the key legal principles relating to DB funding and investment matters, as well as some of the specific issues relating to DC schemes, in a practical and interactive way.

- **Trustee Building Blocks Classes**

17 June 2014 – topic to be confirmed

18 November 2014 – topic to be confirmed

Our Building Blocks Classes look in more detail at some of the key areas of pension scheme management. They are designed to be taken by trustees who have already taken our Foundation Course.

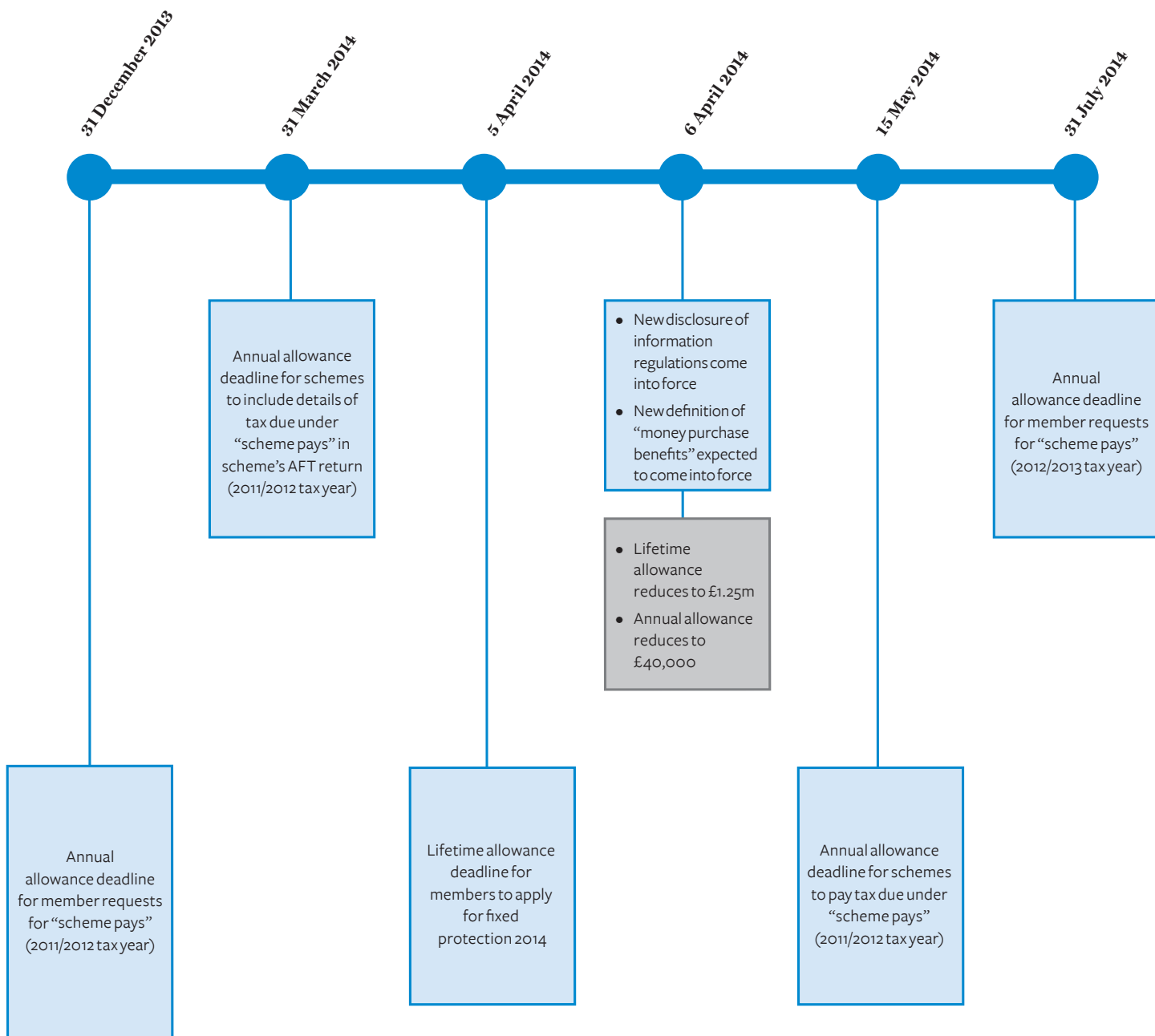
- **Annual Pensions Forum**

2 April 2014

Our Annual Pensions Forum takes a look back at some of the key developments over the last 12 months and looks forward to expected developments in the coming year.

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## Dates to note over the next 12 months



Key:  Important dates to note  For information

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