

Bulletin for Pensions Managers

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Pensions news

DEFINED AMBITION PENSIONS: CONSULTATION

The DWP has published a [consultation](#) on its proposals for defined ambition pensions. The proposals cover three categories:

- “Flexible DB”: the introduction of various flexibilities in the statutory requirements for DB schemes with the aim of allowing schemes to offer a “core” guaranteed benefit and “fluctuating” benefits (depending on the scheme’s funding level) on top. The flexibilities would only apply to future service benefits.
- “DC plus”: four possible models designed to give DC members greater certainty about their retirement income.
- Collective DC schemes.

The consultation closed on 19 December 2013.

Action

No action required.

DB SCHEME FUNDING: REGULATOR CONSULTATION

The Regulator has launched a [consultation](#) on its regulatory approach to DB schemes and DB scheme funding. In particular, the Regulator is consulting on:

- a revised [code of practice](#) on DB scheme funding;
- a new DB [regulatory strategy](#); and
- a revised DB [funding policy](#).

The regulatory approach and associated documents take into account the Regulator’s new statutory objective (as currently set out in the Pensions Bill 2013) to minimise any adverse impact on the employer’s sustainable growth when exercising its scheme funding functions.

The revised code of practice sets out nine key funding principles which apply to all DB schemes, including working collaboratively, managing risk, taking risk, taking a long-term view, proportionality, balance, good governance, fair treatment, and reaching funding targets.

The consultation closes on 7 February 2014 with the revised code expected to come into force in July 2014.

Action

No action currently required, but schemes currently undergoing valuations may wish to consider the extent to which they wish to take the provisions of the draft code into account.

AUTUMN STATEMENT 2013

The pensions-related announcements in the Autumn Statement included the following:

- The increase in SPA to 68 is likely to be moved forward from the current date of 2046 to the mid-2030s, and SPA could increase further to 69 by the late 2040s.

Action

No action required.

- The basis on which the income drawdown tables are formulated will remain unchanged following a GAD review.

Action

No action required.

- An individual protection regime will be put in place in respect of the 2014 reduction in the lifetime allowance (“LTA”) (see below for more details).

INDIVIDUAL PROTECTION: FINANCE BILL 2014

The Treasury and HMRC have published [draft legislation and explanatory notes](#) for the individual protection regime. HMRC has also published [guidance](#) on how the regime is intended to work.

Holders of individual protection will receive a protected LTA equal to the value of their pension savings on 5 April 2014 (subject to a maximum of £1.5m). Continued benefit accrual will not result in the loss of individual protection. Members will be able to apply for individual protection from 6 April 2014 until 5 April 2017.

It will be possible to hold both fixed and individual protection and, in a change to the consultation proposals, to hold both enhanced and individual protection. It will not be possible to hold both primary and individual protection.

Action

Schemes should:

- notify members of the availability of individual protection;
- prepare to provide benefit valuations for members who request them in order to obtain individual protection;
- ensure administration processes are updated to record those members holding individual protection; and
- check whether any references in scheme rules need to be updated to include individual protection.

CODE OF PRACTICE ON DC SCHEMES IN FORCE

The Regulator's new [code of practice](#) on the governance and administration of occupational DC trust-based schemes came into force on 21 November 2013. It is accompanied by, among other things, [regulatory guidance](#) and an [introduction](#) setting out the 31 DC quality features and where these are covered in the code and the guidance.

Action

Trustees of occupational DC and hybrid trust-based schemes should ensure that they are familiar with the new code.

AUTOMATIC ENROLMENT: 2014/2015 EARNINGS TRIGGER AND QUALIFYING EARNINGS BAND

The Pensions Minister has [announced](#) that the automatic enrolment earnings trigger will be increased to £10,000 for the 2014/2015 tax year. The qualifying earnings band will be set at £5,772 – £41,865. A [draft order](#) to this effect has now been laid before Parliament and will come into force on 6 April 2014.

Action

Employers subject to automatic enrolment in the 2014/15 tax year should check that payroll systems are updated to reflect the revised figures.

UPDATED AUTOMATIC ENROLMENT GUIDANCE

The Regulator has updated its [detailed guidance notes](#) on automatic enrolment to reflect the provisions of the legislative changes that came into force on 1 November 2013 (see our September/October 2013 [Bulletin](#)). The updated notes also include new guidance reflecting specific points raised with the Regulator by employers and their advisers since the launch of automatic enrolment.

Action

No action required, but employers with 2014 staging dates may find it useful to review the revised notes.

PPF: 2014/15 LEVY CONFIRMATION

The PPF has published its [2014/15 Levy Determination](#). The Determination confirms that the 2014/15 levy estimate will be £695 million, as originally proposed, and that schemes which did not re-certify their contingent assets for the 2013/14 levy year will be able to re-certify them for the 2014/15 levy year without having to submit the documentation required for a first certification provided certain conditions are met.

Action

Schemes which did not re-certify their contingent assets last year should consider whether they wish to do so this year in light of the more relaxed requirements.

PPF: 2014/15 LEVY DEADLINES

The submission/certification deadlines for the 2014/15 PPF levy are as follows:

- submission of scheme returns on Exchange: 5pm on 31 March 2014
- certification/re-certification of contingent assets: 5pm on 31 March 2014
- certification of deficit reduction contributions: 5pm on 30 April 2014
- certification of full block transfers: 5pm on 30 June 2014

Action

Schemes should ensure that they meet the above deadlines, where relevant. In particular, schemes wishing to use a new contingent asset for levy purposes should ensure that the process of obtaining and certifying that asset is started well ahead of 31 March 2014.

TECHNICAL CHANGES: CONSULTATION

The DWP has issued a consultation on draft regulations that make technical changes to simplify scheme administration, including clarification of the circumstances in which trustees can get a discharge when benefits are secured by annuity purchase and of when secured amounts can be commuted.

The consultation closed on 10 January 2014.

Action

No action required.

SAME SEX MARRIAGES: FIRST WEDDINGS

The Government has announced that the first same sex weddings will be able to take place, subject to Parliamentary approval of the necessary secondary legislation, from 29 March 2014, several months earlier than expected.

Action

Schemes will need to decide what policy they plan to adopt in respect of survivors' benefits for same sex spouses – they have the same minimum rights as civil partners, but schemes can choose to provide more generous benefits. Scheme rules should be reviewed to ensure they reflect the agreed policy.

LISTING RULES: CHANGES TO DIRECTORS' REMUNERATION REPORTING REQUIREMENTS

The FCA has published a policy statement setting out changes to the Listing Rules to remove requirements for the reporting of directors' remuneration (including pension benefits) that were duplicated by the new reporting requirements for quoted companies introduced from 30 September 2013 by the Department for Business, Innovation and Skills (see our May/June 2013 Bulletin).

The changes came into force with effect from 13 December 2013 for listed companies with financial years ending on or after 30 September 2013 and who had not published their annual report by 13 December 2013.

Action

Listed companies should ensure that annual reports for years ending on or after 30 September 2013 meet the new requirements.

IDENTIFYING STATUTORY EMPLOYERS: UPDATED REGULATOR STATEMENT

The Regulator has published a revised version of its statement on identifying statutory employers which it has updated in light of the Court of Appeal's decision in the *Olympic Airlines* case.

Action

No action required.

GMP RECONCILIATION: EXPANDED HMRC SERVICE

From April 2014 HMRC will provide its GMP reconciliation service to all schemes rather than just those that are winding-up. Schemes will be able to apply to the service from December 2013, but HMRC will not start to provide data until April 2014. Requests must be made by April 2016. The decision to make the service available to all schemes has been taken to assist schemes in light of the abolition of contracting-out.

Action

No action required, but schemes which hold GMPs should consider whether they wish to take advantage of the service.

RECORD-KEEPING: REGULATOR UPDATE

The Regulator has issued an update on scheme record-keeping stating that it will not impose targets for conditional data. The Regulator plans to review its record-keeping guidance in 2014.

Action

No action required.

SCOTTISH RATE OF INCOME TAX: HMRC UPDATE

HMRC has published an update on how the introduction of the Scottish rate of income tax will affect tax relief on pension contributions made by Scottish members.

Action

No immediate action required, but administrators should start planning how to adapt their payroll processes to reflect the introduction of the new rate of income tax in plenty of time.

REGULATOR ISSUES FSD WARNING NOTICES

The Regulator has issued financial support direction (“**FSD**”) warning notices to Guinness Peat Group in respect of two of the Group’s three DB pension schemes. The Regulator is still considering whether to issue a warning notice in respect of the third scheme.

Action

No action required.

Pensions litigation

RE STORM FUNDING LTD: MONETARY LIMITS OF CNS

The High Court has held that, if more than one contribution notice (“**CN**”) is issued in respect of a scheme following non-compliance with an FSD:

- the aggregate maximum liability under those CNs can exceed the amount of the s75 debt in the scheme; and
 - an aggregate sum in excess of the s75 debt can be recovered under those CNs.
-

PENSIONS REGULATOR V DESMOND: APPLICATION OF STATUTORY TIME LIMIT FOR CNS

The Court of Appeal in Northern Ireland has overturned the Upper Tribunal’s decision that, due to expiry of the six year look-back period, it would not be appropriate for it to direct the Regulator to issue a CN to a party to whom the Determinations Panel had previously decided not to issue a CN. The decision follows the similar Court of Appeal decision (in relation to FSDs) in *LB Re Financing v Lehman Brothers Pension Scheme Trustees*.

ATP PENSIONSERVICE V SKATTEMINISTERIET: VAT ON MANAGEMENT SERVICES PROVIDED TO DC SCHEMES

The Advocate General in this case has held that an occupational pension scheme should be considered a “special investment fund” (meaning management services provided to the scheme would be exempt from VAT) if the scheme pools the assets of several members, allows risk to be spread over a range of securities and, most importantly, the members bear the investment risk. It is for the national courts to decide whether a scheme meets these criteria.

DEPUTY PENSIONS OMBUDSMAN DETERMINATION – THEW: BRIDGING PENSIONS AND SPA

The Deputy Ombudsman has held that trustees were entitled to stop a member’s bridging pension at the age specified in the scheme rules where this age no longer corresponded to the member’s state pension age (“**SPA**”) due to the recent changes to SPA.

Mayer Brown events

If you are interested in attending any of our events, please contact Katherine Dixon (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**

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 Class**

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.

- **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.

Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this bulletin.

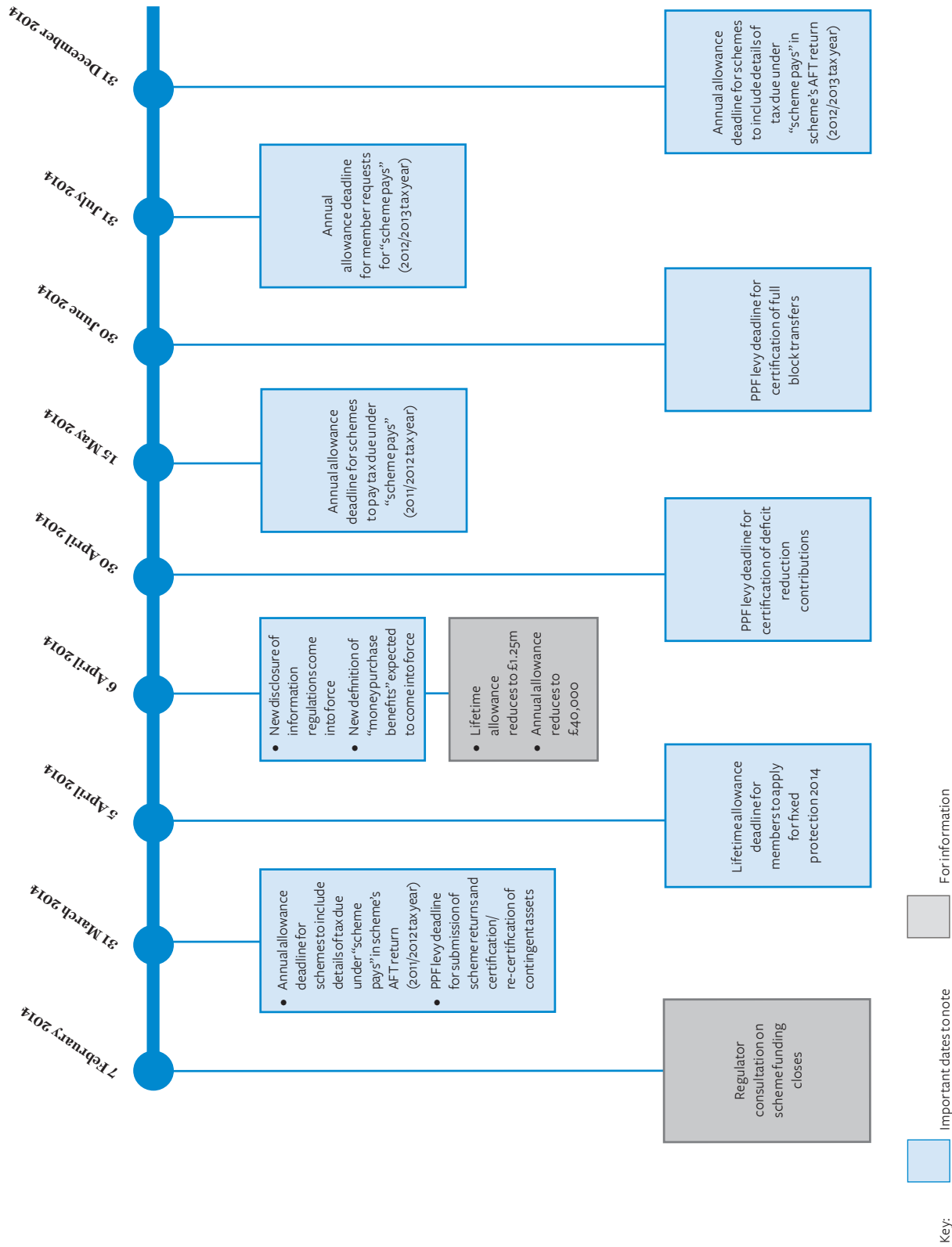
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Dates to note over the next 12 months



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This publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek legal advice before taking any action with respect to the matters discussed herein.

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