

Bulletin for Pensions Managers

Welcome to the May/June 2014 issue of our Bulletin for Pensions Managers. This issue covers developments to the end of June 2014.

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Pensions news

PENSION SCHEMES BILL: DEFINED AMBITION

This Bill has been laid before Parliament. It provides for (among other things):

- a new definition of “pensions promise” and related new definitions of DB, shared risk (i.e. defined ambition) and DC schemes;
- minor amendments to existing legislative requirements (e.g. on preservation, revaluation and transfers) to ensure that these requirements apply in the appropriate way to the new scheme categories;
- the legislative framework to enable collective DC schemes to operate in the UK;
- a regulation-making power to ban transfers from public sector DB schemes to DC schemes; and
- removal of the requirement for the Regulator to maintain a register of independent trustees.

Explanatory notes to the Bill have also been published. The DWP has also published a response to its consultation on defined ambition pensions.

In the 2014 Queen’s Speech, the government also announced plans for a Pensions Tax Bill to introduce the new flexibilities announced in the 2014 Budget on how individuals can access their DC pots.

Action

No action required, but employers may wish to bear the new shared risk and CDC options in mind when planning future pension provision.

NEW MONEY PURCHASE BENEFITS DEFINITION: IN FORCE

An order has been laid before Parliament bringing the new definition of “money purchase benefits” into force on 24 July 2014.

In addition, the regulations implementing the new definition of money purchase benefits, which were laid before Parliament in May, have been withdrawn and have been replaced by two sets of regulations which together contain the same provisions. Both sets of regulations are also now in force.

The DWP has published a revised response to its consultation on the initial draft of the regulations with references to the new regulations.

Action

The implications of the new definition depend heavily on the particular circumstances of the scheme in question. Trustees who have not already done so should therefore take advice as soon as possible on how the new definition will affect their scheme.

DB FUNDING: REVISED CODE OF PRACTICE

The Regulator has published a response to its consultation on regulating DB schemes, together with the following documents:

- revised Code of Practice 3 on funding defined benefits – this came into force on 29 July;
- a guide to the revised code;
- the Regulator’s DB regulatory strategy; and
- the Regulator’s DB funding regulatory and enforcement policy.

Changes made to the final version of the code, strategy and policy from the consultation drafts include:

- demonstrating more clearly a more proportionate and positive stance with regard to risk;
- ensuring that proportionality is properly referenced and emphasised throughout the code;
- shortening the code;
- renaming the Balanced Funding Outcome indicator the “Funding Risk Indicator”, and stressing that it is just one of a broad range of risk indicators used for case selection; and
- making it clear that the Regulator is not exclusively focusing on large schemes.

The Regulator is also considering issuing additional guidance for charities and non-associated multi-employer schemes.

Action

Employers and trustees, particularly those currently involved in valuations, should review the revised code to ensure that they understand the Regulator’s expectations with regard to DB funding.

DB FUNDING: REGULATOR’S 2014 ANNUAL FUNDING STATEMENT

The Regulator has published its 2014 annual funding [statement](#). The statement applies to schemes with effective valuation dates between 22 September 2013 and 21 September 2014. It emphasises, among other things, the need for:

- trustees to use the flexibilities in the funding regime to set funding strategies that are appropriately tailored to the circumstances of the scheme and the employer and that represent a balanced outcome;
- an open dialogue and collaborative working between trustees and employers;
- trustees to manage the risks to their schemes through a proportionate application of an integrated approach to risk management; and
- trustees to be in a position to evidence how they have taken a proportionate approach to employer covenant assessment.

The statement also states that schemes should take the new code into account in the valuation process, and notes that the continuing low interest rate environment means that schemes may need to plan for a longer period of lower yields than previously expected.

Action

Schemes to whom the statement applies should factor it into their valuation discussions. Other schemes may also find it useful to review the statement.

ABOLITION OF CONTRACTING-OUT: CONSULTATION

The DWP has published a [consultation on regulations](#) setting out details of the employer statutory override power to amend schemes to reflect the increased employer NICs cost that will result from the abolition of contracting-out. The regulations set out how employers can use the power, the calculations that actuaries will need to carry out, how those calculations should be carried out, and what actuarial certification will be required.

The consultation also covers a second set of [regulations](#) which set out the rules that formerly contracted-out schemes will need to follow once contracting-out is abolished.

The consultation closed on 2 July 2014.

Action

No action required.

NEW PPF LEVY FRAMEWORK AND INSOLVENCY RISK MANAGEMENT MODEL: CONSULTATION

The PPF has published a [consultation](#) and accompanying [appendix](#) on the insolvency risk measurement model that it has developed with Experian, its new insolvency risk score provider, and on its plans for the new levy framework for the levy years from 2015/16 to 2017/18.

The framework proposes new approaches to the treatment of asset-backed contributions, parental guarantees and associated last man standing schemes for levy purposes. The consultation closed on 9 July 2014.

Action

No action required.

OUT OF CYCLE PPF VALUATIONS TO REFLECT NEW MONEY PURCHASE BENEFITS DEFINITION

Following a short [consultation](#), the PPF has published a [response](#) setting out its policy on out of cycle s179 valuations to reflect the new definition of money purchase benefits. The PPF has concluded that:

- schemes should consider whether they have any benefits that are affected by the new definition;
- if they do have any affected benefits, ask their scheme actuary to assess the impact on funding; and
- if the impact is material they may need to carry out an out-of-cycle s179 valuation – a material impact is an increase in the latest s179 valuation’s deficit or a reduction in the latest s179 valuation’s surplus that is more than 10% in relative terms and more than £5 million in absolute terms.

Action

Trustees of schemes with benefits affected by the new definition should consider whether they need to carry out an out of cycle s179 valuation.

VAT RECOVERY: NEW HMRC GUIDANCE

HMRC has published a further [brief](#) on its policy on VAT recovery in light of the *PPG* and *ATP* cases. The brief notes that HMRC will need to review its policy for DC schemes in light of the *ATP* case, and that it is considering whether to also make further changes to the policy outlined in Brief 06/14.

HMRC plans to publish further guidance in the autumn. In the meantime the transitional arrangements outlined in Brief 06/14 (which were due to terminate in August 2014) will continue to be available.

Action

Schemes should consider whether they wish to take advantage of the extension of the transitional arrangements.

TRANSFERS OF PENSIONS IN PAYMENT ON A DAY: TAX TREATMENT

[Regulations](#) have been published which protect the tax treatment of a pension in payment on A Day that is transferred to another scheme. The regulations came into force on 1 July 2014, but apply to transfers made on or after 6 April 2014.

Action

No action required.

DWP GUIDANCE ON CERTIFYING AUTOMATIC ENROLMENT SCHEMES

The DWP has published revised versions of its guidance on the certification (for automatic enrolment purposes) of:

- [money purchase schemes](#); and
- DB and hybrid schemes (for [employers](#) and [actuaries](#)).

Action

Employers who are already subject to the automatic enrolment duties or who are approaching their staging date may wish to review the revised guidance.

AUTOMATIC ENROLMENT: EMPLOYER REGISTRATION PROCESS

The Regulator has renamed the registration process that employers must undertake once they become subject to the automatic enrolment duties as a “declaration of compliance”. The Regulator has published a [guide](#) on the change. There has been no change to the employer statutory duties.

Action

Employers approaching their staging dates may wish to review the guide.

RECORD-KEEPING: REGULATOR'S 2014 SURVEY

The Regulator has published the [results](#) of its 2014 record-keeping survey which show, among other things, a slow down for the first time in the rate at which schemes are taking action to measure their common data.

The Regulator has also opened a further four investigations into schemes covered by its 2013 thematic review of record-keeping in addition to the seven investigations it had already commenced.

Action

No action required.

PENSIONS INDUSTRY STAKEHOLDER FORUM MINUTES

HMRC has published the [minutes](#) of the 17 April 2014 meeting of the Pensions Industry Stakeholder Forum. The meeting covered a range of topics, including the Budget announcements and an update on the Annual Allowance Charge (Amendment) Order.

Action

No action required.

COMBINED BENEFIT STATEMENTS: GUIDANCE

The DWP has published a [guide](#) for employers, providers, trustees and administrators on combined benefit statements. The guide explains what combined benefit statements are, how they can benefit members, and how to provide them.

The DWP has also published forms for [employers/providers](#) and [administrators](#) to use when applying for details of members' state pension entitlements for inclusion in the statement. This information will be provided free of charge.

Action

Schemes that are planning to issue combined benefit statements may find the guide useful, and should ensure that they use the correct forms when applying for details of members' state pension entitlements.

Pensions litigation

LOCK V BRITISH GAS HOLDINGS: INCLUDING COMMISSION IN HOLIDAY PAY

The Court of Justice of the European Union has recently decided that where a worker has a contractual right to commission that is calculated by reference to sales achieved by the worker, the statutory holiday pay paid to the worker must take that commission into account. In other words, employers must pay commission during periods of annual leave to workers with contractual commission entitlements.

The decision may have implications for occupational pension schemes depending on whether or not commission payments are pensionable. For more information on the pensions implications, please see our [legal update](#).

CLYDE & CO V BATES VAN WINKELHOF: LLP MEMBERS ARE "WORKERS"

The Supreme Court has [decided](#) that a former equity partner in a limited liability partnership ("LLP") was a worker for the purposes of the Employment Rights Act 1996 and was therefore entitled to bring a whistleblowing claim. The decision overturns a Court of Appeal decision to the contrary.

The definition of "worker" under the Employment Rights Act 1996 is very similar to that used in the Pensions Act 2008 for automatic enrolment purposes, and the decision therefore suggests that members of LLPs are eligible for automatic enrolment if they meet the other criteria necessary to qualify as eligible jobholders.

NHS BUSINESS SERVICES AUTHORITY V LEEKS: INHERENT LIMITATIONS IN AUTOMATED SYSTEMS

The High Court has decided that the concept of “maladministration” can apply to “unreasonable limitations” inherent in a scheme’s automated systems. The appeal arose out of a Pensions Ombudsman determination which held that a scheme administrator’s failure to notify a member that she had reached her maximum benefit accrual entitlement and could therefore retire immediately on an unreduced pension was due to inherent limitations in the scheme’s automated systems and amounted to maladministration. The administrator had argued that maladministration did not apply to inherent limitations in automated systems.

OMBUDSMAN DETERMINATION: GREGORY – PROVISION OF MISLEADING INFORMATION

The Pensions Ombudsman has decided that a scheme administrator could not rely on statements made in the FAQs document in a transfer information pack to defend a claim of maladministration. The Ombudsman held that a member would not necessarily have read the document as FAQs are designed as a way of finding further information, not as a way of finding information for the first time. The member did not in fact read the FAQs and the Ombudsman held that the administrator could not therefore rely on the document.

OMBUDSMAN DETERMINATION: CLIFT – RECOVERY OF OVERPAYMENTS

The Deputy Pensions Ombudsman has decided that trustees were time-barred from recovering an overpayment where they could have discovered the overpayment earlier had they acted with “reasonable diligence”.

The Deputy Ombudsman also held that the trustees were in breach of section 91, Pensions Act 1995 in reducing the member’s pension to recover the overpayments when the member had not agreed to this course of action.

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**

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**

1 October 2014 – risk management and the importance of internal controls

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.

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

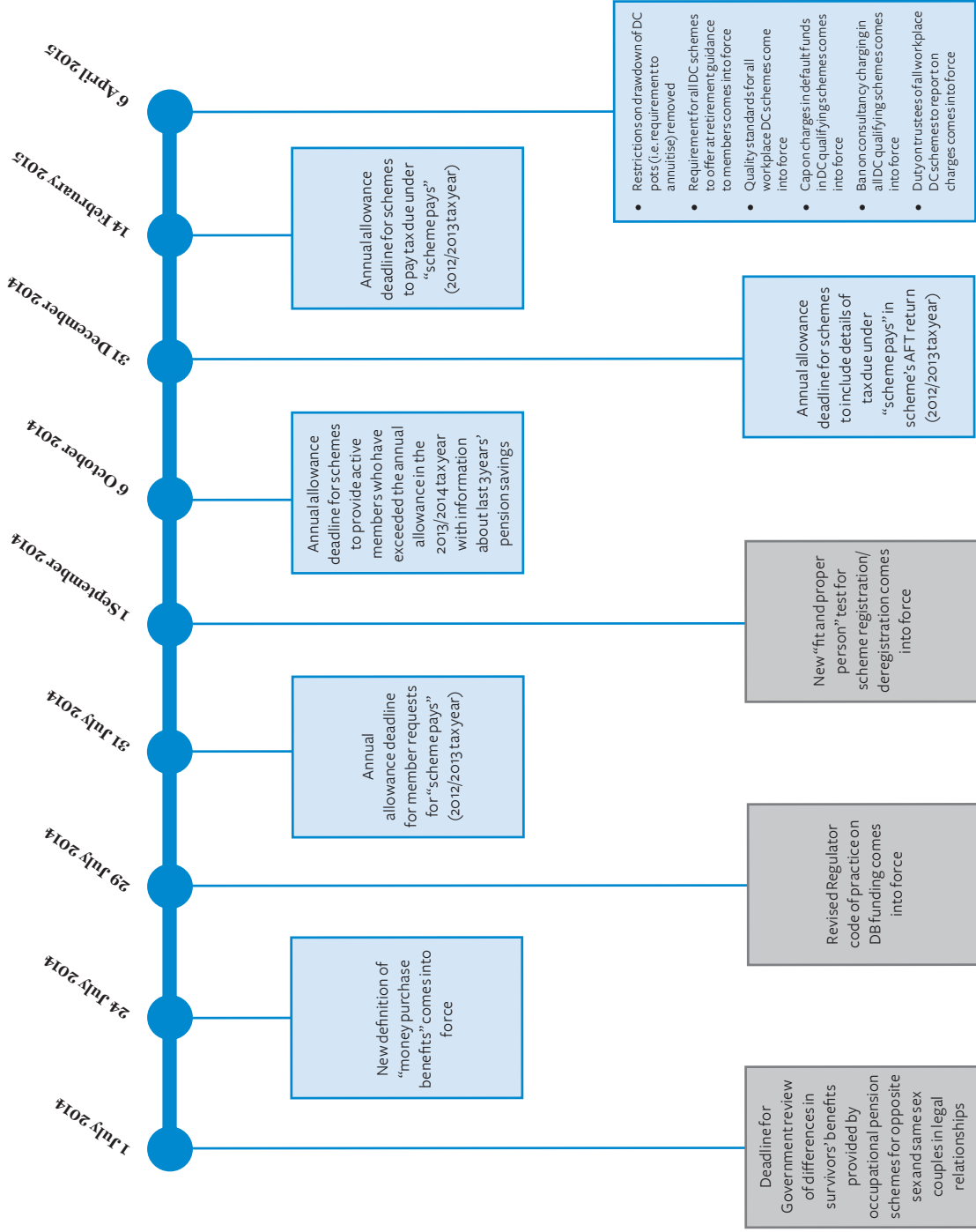
Ian Wright

Partner, London

E: iwright@mayerbrown.com

T: +44 20 3130 3417

Dates to note over the next 12 months



Key: Important dates to note For information

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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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