

Bulletin for Pensions Managers

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Pensions news

PENSION SCHEMES ACT 2015

This [Act](#) has now received Royal Assent. Among other things, it provides for:

- the recategorisation of pension schemes as DB schemes, DC schemes and shared risk schemes;
- a legislative framework for collective benefit pension schemes;
- a framework to establish the guidance guarantee service;
- a requirement for individuals who wish to transfer defined benefits to a DC or cash balance scheme, or to convert defined benefits to DC or cash balance benefits, to take appropriate independent advice;
- changes to statutory transfer rights to give members a right to transfer their money purchase benefits in isolation, their cash balance benefits in isolation or their defined benefits in isolation. The right to transfer money purchase and cash balance benefits will continue until the member first crystallises benefits in that category. The right to transfer defined benefits will continue until 12 months before normal pension age.

Accompanying [explanatory notes](#) have been published.

For more information on the changes to transfer rights, please see our [guidance note](#).

Action

Trustees should consider what changes are required to their administration processes and member communications to reflect the changes to statutory transfer rights.

CHARGES AND GOVERNANCE IN DC SCHEMES

[Regulations](#) have been laid before Parliament that, among other things, impose:

- minimum governance standards for all DC schemes – these will come into force on 6 April 2015;
- a cap on charges in DC “default arrangements” in schemes that are “qualifying schemes” for automatic enrolment purposes – this cap will come into force on 6 April 2015; and
- a ban on active member discounts in DC qualifying schemes – this ban will come into force on 6 April 2016.

The DWP has published an accompanying consultation [response](#). The Regulator has published an essential [guide](#) for trustees to the new requirements. The DWP has also published [guidance](#) on the charges cap.

Further [regulations](#) amend the main regulations to ensure that in most cases AVC-only arrangements will not be subject to the charges cap. A brief [consultation](#) was conducted.

The regulations only apply to occupational pension schemes – similar restrictions will apply to workplace contract-based schemes under FCA rule [amendments](#). Among other things, these require the providers of workplace contract-based schemes to set up and maintain independent governance committees.

For more information on the new requirements and their implications, please see our [guidance note](#) and [client alert](#).

Action

As a matter of urgency, trustees of DC qualifying schemes should identify any default arrangements and determine whether they comply with the charging restrictions..

APRIL 2015 REFORMS: STATUTORY AMENDMENT POWERS

Regulations have been laid before Parliament that provide for a range of consequential amendments in connection with the April 2015 reforms including powers for trustees to amend their scheme rules by resolution to:

- offer the new DC flexibilities and to charge members (with employer consent);
- provide for the conversion of cash balance benefits to money purchase benefits to allow those benefits to be designated for flexi-access drawdown (with employer consent); and
- prevent trustees being required to transfer defined benefits if the member has not complied with the requirement to take appropriate independent advice.

The regulations come into force on 6 April 2015.

For more information on the new DC flexibilities, please see our [guidance note](#).

Action

Trustees should consider whether they wish to use these powers to amend their rules and should discuss any proposals with the employer.

APRIL 2015 REFORMS: DB TO DC TRANSFERS AND CONVERSIONS

Regulations have been laid before Parliament which set out the details surrounding the appropriate independent advice requirement for DB to DC/cash balance transfers and conversions including that:

- the requirement for members to obtain appropriate independent advice will not apply where the member's CETV is less than £30,000;
- the adviser must provide written confirmation to the trustees that advice has been provided to the member; and
- trustees must check that the adviser is appropriately authorised by the FCA to provide the advice.

The regulations come into force on 6 April 2015.

In addition, an order has been laid before Parliament that makes the provision of appropriate independent advice a regulated activity from 6 April 2015.

The Regulator has published a consultation on draft guidance for trustees of DB schemes on transferring defined benefits to a DC/cash balance scheme and converting defined benefits to DC/cash balance benefits. The guidance covers reducing a member's transfer value and how to apply for more time to carry out a transfer. It also covers the requirement to take appropriate independent advice. The consultation closed on 17 March 2015.

For more information on the changes to transfer rights, please see our [guidance note](#).

Action

Administration processes and member communications in DB schemes should be updated to reflect the new requirement to take appropriate independent advice. Trustees of DB schemes may find the finalised Regulator guidance useful when considering transfer/conversion requests.

APRIL 2015 REFORMS: DISCLOSURE OBLIGATIONS

Regulations have been published which provide for a range of amendments to scheme disclosure obligations to reflect the April 2015 reforms, including the requirement to "signpost" members to the Pension Wise guidance guarantee service. The regulations come into force on 6 April 2015.

In addition, there will be a "second line of defence" after the guidance guarantee to enable individuals to make the correct decision when accessing their DC benefits. For trust-based schemes, draft guidance from the Regulator recommends that trustees give members generic risk warnings on the four main ways in which DC benefits can now be taken. This guidance also covers the other new disclosure obligations to which schemes will be subject from April 2015.

The FCA has published a policy statement setting out the more stringent rules to which providers of contract-based schemes will be subject in connection with this "second line of defence". These rules will come into force on 6 April 2015.

The Treasury has now launched the Pension Wise website, and the DWP has published guidance for members on the new DC flexibilities.

For more information on the new DC flexibilities, please see our [guidance note](#).

Action

Trustees should consider what changes are required to their administration processes and member communications to reflect the new disclosure requirements..

PPF 2015/16 LEVY: FAQs

The PPF has published [FAQs](#) on a range of issues relating to the 2015/16 levy including mortgage exclusion certificates, asset-backed contribution (“ABC”) arrangement certificates, and last man standing (“LMS”) schemes.

The PPF has also published [guidance](#) highlighting particular issues for trustees to be aware of in relation to the assessment of guarantor strength when certifying Type A contingent assets (group company guarantees).

For more information on the 2015/16 PPF levy, please see our [guidance note](#).

Action

No action required, but trustees of LMS schemes and of schemes which have an ABC arrangement and/or a group company guarantee may find the FAQs/guidance useful.

AUTOMATIC ENROLMENT: TECHNICAL CHANGES

[Regulations](#) have been laid before Parliament that make a range of changes to the automatic enrolment regime including:

- a new alternative quality requirement for DB schemes;
- simplification of the employer information provision requirements; and
- an exemption from the employer automatic enrolment duty for certain categories of worker.

The regulations come into force on 1 April 2015. The DWP has published an accompanying consultation [response](#).

For more information on the automatic enrolment changes, please see our [guidance note](#).

The Regulator has also published its latest quarterly automatic enrolment compliance and enforcement [bulletin](#). This shows that the Regulator issued fixed penalties for non-compliance to over 160 employers in Q4 2014 compared to just three employers over Q1-Q3 2014.

Action

Employers of DB automatic enrolment schemes which are contracted-out should consider whether their scheme will satisfy the new alternative DB quality requirement once contracting-out is abolished.

Action

Employers should consider what changes they may wish to make to their automatic enrolment processes and employee communications to reflect the simplification of the information provision requirements.

Action

Employers should consider whether they wish to take advantage of the exemption from the automatic enrolment duty for any of the relevant categories of worker.

BANK RING-FENCING: PENSIONS REGULATIONS

[Regulations](#) came into force on 5 March 2015 that restrict the types of multi-employer schemes and pension liability sharing agreements that ring-fenced banks can participate in. Among other things, the regulations:

- give the trustees of a multi-employer scheme in which a ring-fenced bank participates power to modify the scheme (with employer consent) to enable the ring-fenced bank to meet its obligations under the regulations; and
- require a ring-fenced bank to make a clearance application to the Pensions Regulator before making restructuring arrangements that are likely to be materially detrimental to a pension scheme of which the bank is an employer.

The ring-fencing provisions apply to banks from the later of 1 January 2026 or the fifth anniversary of the date on which the bank becomes a ring-fenced bank.

The Treasury has published an accompanying consultation [response](#).

Action

No immediate action required, but schemes with a participating employer who will be subject to the ring-fencing provisions should factor the pensions-related requirements into their longer term scheme planning.

PPF ADMINISTRATION LEVY: 2015/16 – 2017/18

Regulations have been made which set the PPF administration levy that occupational pension schemes are required to pay for the financial years from 2015/16 – 2017/18. The DWP has also published an accompanying consultation response.

In addition, an order has been made that sets the PPF levy ceiling for 2015/16 at £947,610,293.

Action

No action required.

PENSIONS LIBERATION: HMRC UPDATE

HMRC has published an update on pension liberation. This summarises the existing action that HMRC has taken to combat the problem, and the further work that HMRC is doing, including plans to require the provision of additional information and declarations during the scheme registration process and to change the information that must be provided to HMRC when a scheme changes its structure or range of numbers of members.

Action

No action required.

ABOLITION OF CONTRACTING-OUT: EMPLOYER AMENDMENT POWER

The employer power under the Pensions Act 2014 to amend schemes to reflect the abolition of contracting-out has been brought into force from 23 February 2015. In addition, regulations setting out how this power can be exercised have been laid before Parliament and will come into force on 6 April 2015. The DWP has published an accompanying consultation response.

HMRC has also published issues 5, 6 and 7 of its Countdown Bulletin.

Action

Employers of schemes that are currently contracted-out will need to consider what changes, if any, they wish to make to reflect the increased employer NICs that will result from the abolition of contracting-out, and whether they wish to use the statutory power to make them.

Action

Trustees of schemes that hold GMPs should ensure that they submit their GMP reconciliation requests to HMRC by 6 April 2016.

HMRC: PENSION SCHEMES NEWSLETTER 67

HMRC has published issue 67 of its Pension Schemes Newsletter. Among other things, this issue provides further detail on the operation of PAYE in connection with payments made under the new DC flexibilities.

Action

No action required.

DC SHORT SERVICE REFUNDS AND SMALL POTS

An order has been laid before Parliament that brings the abolition of short service refunds from DC schemes for members with more than 30 days' service into force from 1 October 2015.

In addition, the DWP has published a policy paper outlining its plans for the automatic transfer system for small DC pots which is to be introduced from October 2016. The system will only apply to pots in default funds. The system will initially operate on an "opt-in" basis before moving to an "opt-out" basis. The initial phase will also operate as a trial phase in which only a limited number of schemes selected by the DWP will participate.

Action

DC schemes should consider what changes will be required to their administration processes to reflect the abolition of short service refunds.

Pensions finance

DWP: CHANGES TO INVESTMENT REGULATIONS

The DWP has published a consultation on proposed legislative changes to implement recommendations from the Law Commission's report on the fiduciary duties of investment intermediaries. The consultation seeks views on:

- how the statutory requirement for a scheme's statement of investment principles to state the extent to which social, environmental or ethical factors are taken into account could be amended so that it more clearly reflects the distinction between financial and non-financial factors; and
- whether trustees should be required to either comply with the Stewardship Code or to explain why they have not done so.

The consultation closes on 24 April 2015 with any legislative changes expected to be made in 2016.

Action

No action required.

EMIR: EXEMPTION FROM CENTRAL CLEARING REQUIREMENTS

The European Commission has published a [report](#) that recommends extending the exemption for pension schemes from central clearing requirements for over-the-counter derivative transactions under EMIR for a further two years. The exemption is currently due to expire in August 2015.

Action

No action required.

Pensions litigation

TRUSTEE DUTIES AND WHETHER SCHEMES ARE OPEN OR FROZEN

The High Court has [held](#) that the duty to act in the best interests of the beneficiaries should not be regarded as a standalone trustee duty, but must instead be considered in the context of the purpose of the scheme and the benefits it has been established to provide. The purpose of a pension scheme is to pay members the benefits due under the scheme rules. As long as the primary purpose of securing those benefits is furthered and the employer covenant is sufficient to fulfil that purpose, trustees can properly take into account the employers' interests when exercising their powers if they consider it appropriate.

The Court also held that the question of whether a final salary scheme is open or frozen under the employer debt legislation depends on whether members are still accruing additional years of pensionable service. In this case, as the accrual of years of pensionable service had ceased, the scheme was therefore frozen, even though members continued to benefit from enhanced revaluation under the rules for as long as they remained in particular employments.

REMEDIES FOR BREACH OF DUTIES OF GOOD FAITH AND TRUST AND CONFIDENCE

The High Court has handed down its [judgment](#) on the remedies available to members of the two IBM pension schemes in respect of IBM's breaches of the *Imperial* duty of good faith and the contractual duties of trust and confidence.

Broadly, the Court decided that:

- the non-pensionability agreements are unenforceable and members are in principle entitled to damages;
- the exclusion notices, which purported to exclude members from the schemes (thereby closing the schemes to accrual), are voidable and liable to be set aside at the election of the member, and members are in principle entitled to damages and equitable compensation;
- any member who retired earlier than they otherwise would have as a result of the new restrictive early retirement policy is entitled in principle to damages and equitable compensation, and IBM cannot rely on the new policy in relation to members who would have been entitled to greater benefits had the old policy continued to apply;
- members are entitled to damages for IBM's breach of the contractual duties of trust and confidence in the manner in which it conducted the statutory consultation process; and
- any damages or equitable compensation must take account of any other remedies granted to the members in respect of IBM's breaches of its duties.

IBM intends to seek permission to appeal both last year's liability judgment and the remedies judgment.

OVERPAYMENTS AND CHANGE OF POSITION

The High Court has [held](#) that where a member was aware that he could potentially be receiving an overpayment and could make a simple enquiry to confirm whether or not this was the case, the member did not have a change of position defence to a subsequent attempt to recover the overpayment.

The Court did however hold that a six year limitation period applied to the recovery as, with reasonable diligence, the scheme administrator could have discovered the error earlier than it did.

PENSIONS LIBERATION

The Ombudsman has upheld three scheme providers' refusals of transfer requests from personal pension schemes to suspected pensions liberation vehicles on the basis that the members did not have a statutory transfer right. For more details, please see our [client alert](#).

The Ombudsman has also published an update on the pensions liberation complaints that it is handling. It is considering a complaint from a member who transferred to a suspected liberation vehicle that the transferring trustees should not have allowed the transfer and expects to publish its decision in the first half of 2015.

PAYMENT OF DEATH BENEFITS WITHIN TWO YEARS

The Ombudsman has decided that a scheme should have made a member's widow aware, when requesting documents relating to the member's death from her, that death benefits need to be paid within two years' of the member's death in order to be an authorised payment. The Ombudsman directed the scheme administrator to reimburse the widow for the unauthorised payment charge and unauthorised payment surcharge that resulted from the payment being made after the two year period had expired.

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**

19 May 2015

15 September 2015

1 December 2015

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**

16 June 2015 – topic to be confirmed

17 November 2015 – 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**

29 April 2015

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.

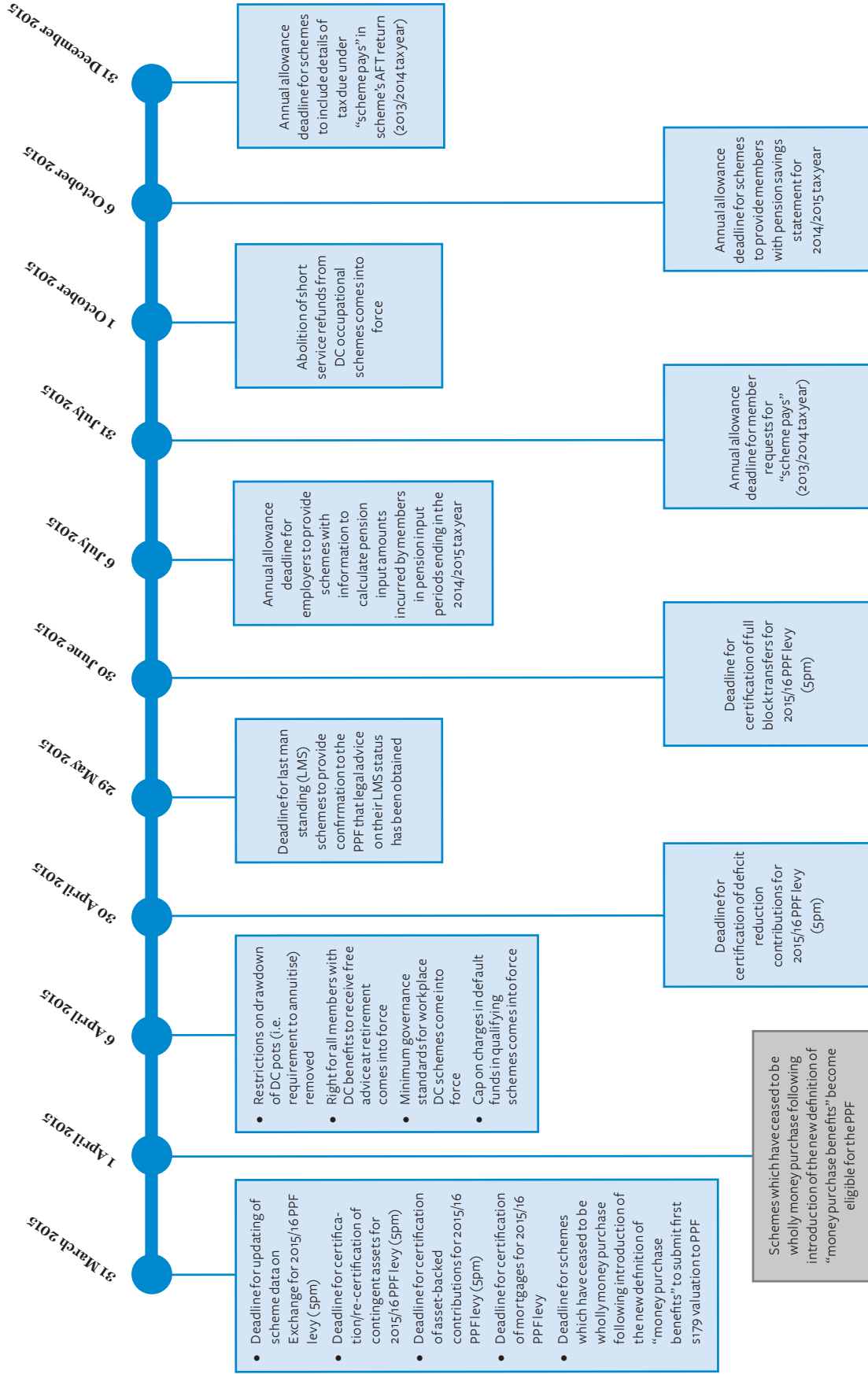
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Dates to note over the next 12 months



Key: Important dates to note

For information

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