

## Bulletin for Pensions Managers

Welcome to the July/August 2015 issue of our Bulletin for Pensions Managers. This issue covers developments to the end of August 2015.

In this issue:

Pensions news	1
Pensions litigation	3
Mayer Brown events	4
Dates to note over the next 12 months	5

---

### Pensions news

#### FINANCE BILL 2015-16

The Finance Bill has been laid before Parliament. It implements a number of the changes announced in the Summer Budget, including:

- the tapering of the annual allowance for high earners (and the connected alignment of pension input periods with the tax year); and
- changes to the tax treatment of some lump sum death benefits.

The Bill is accompanied by explanatory notes.

#### Action

Schemes and employers should begin planning for the introduction of the tapered annual allowance, including considering what changes may be required to administration processes and member communications, and whether any special member communications are required.

---

#### ABOLITION OF CONTRACTING-OUT – FURTHER REGULATIONS

Regulations have been laid before Parliament that set out the rules that schemes holding contracted-out rights must comply with following the abolition of contracting-out. The regulations will largely come into force in April 2016.

An accompanying consultation response confirms, among other things, that schemes will not receive a statutory power to amend their rules to deal with state pension-related provisions.

In addition, HMRC has published issue 9 of its Countdown Bulletin to the end of contracting-out. This provides responses to the remainder of the queries raised during the two DWP/HMRC Pension Conferences in April and May 2015.

#### Action

Schemes holding contracted-out rights should be considering what changes they will need to make to their rules, administration processes and member communications to reflect the abolition of contracting-out.

#### Action

If they have not already, schemes holding GMPs should apply to HMRC's Scheme Reconciliation Service before 6 April 2016.

---

#### DEATH BENEFITS – PROVISION OF INFORMATION

Regulations have been laid before Parliament that make changes to the information that scheme administrators are required to provide to personal representatives on a member's death to reflect the pension reforms introduced in April 2015. The regulations came into force on 1 September 2015, but have effect from the 2015/16 tax year.

#### Action

Schemes should ensure that their administration processes are updated to reflect the new requirements.

---

## PENSIONS TAX LEGISLATION – AMENDMENTS

Regulations have come into force that amend pensions tax legislation to create an exemption for trust-based schemes with more than 500 employers from the prohibition on a sponsoring employer being the scheme auditor. (Equivalent changes were made to DWP pensions legislation in 2014.) The regulations came into force on 1 September 2015, but have effect from 6 April 2014.

An order has been laid before Parliament for approval that amends tax legislation to allow for differences in tax rates between Scotland and the rest of the UK that may arise from the introduction of the Scottish rate of income tax. It includes appropriate adjustments to the annual allowance and “scheme pays” legislation.

### Action

No action required.

---

## EMPLOYER COVENANT – REGULATOR GUIDANCE

As promised in its 2015 annual DB funding statement, the Regulator has published guidance on assessing and monitoring the employer covenant. Among other things, the guidance contains sections:

- designed to assist trustees who are planning to carry out their own covenant assessment (rather than appointing a professional covenant assessor);
- setting out particular considerations for non-associated multi-employer schemes; and
- setting out particular considerations for not for profit organisations.

### Action

Trustees should review the guidance, particularly those currently undertaking or about to undertake a covenant review.

---

## PENSION TRANSFERS – CONSULTATION

The Treasury has published a consultation on how to improve the pension transfer process, including the issue of early exit charges. The consultation asks for views on how to make the transfer process more efficient, and for evidence on the level and types of exit charges. If there is clear evidence of excessive early exit charges for people aged 55 or over, the Government may consider imposing a legislative cap on such charges. The consultation runs until 21 October 2015.

### Action

No action required.

---

## DC GOVERNANCE – REGULATOR REMINDER AND FAQs

The Regulator has issued a reminder to trustees of the need to take action to meet the new DC governance standards introduced in April 2015. The Regulator has also published a series of FAQs on trustee duties in relation to DC governance.

### Action

Trustees of DC schemes should ensure that they have taken any action necessary to comply with the new DC governance standards, and may find the FAQs helpful.

---

## HMRC – PENSION SCHEMES NEWSLETTERS AND PENSION SCHEMES ONLINE

HMRC has published issue 70 and issue 71 of its Pension Schemes Newsletter. Among other things, these cover:

- an update on the 2016 annual and lifetime allowance changes;
- details of the proposed 2016 fixed and individual protection regimes;
- a recent stakeholder forum on the Recognised Overseas Pension Schemes list; and
- further information on HMRC’s attempts to combat pensions liberation.

HMRC has also published an updated version of its user guide for Pension Schemes Online.

### Action

No action required.

---

## PENSION SCAMS – DEVELOPMENTS

The Regulator has added new material to its Scorpion campaign. It has also added a new pensions scam example to the “Running a scheme” module in the Trustee Toolkit.

In addition, the Government has announced that the trustees of the Capita Oak Pension Scheme and the Henley Retirement Benefit Scheme have been wound up by the High Court following an Insolvency Service investigation.

### Action

No action required.

---

## PRE-PACK ADMINISTRATIONS – PPF GUIDANCE

The PPF has published a guidance note on its approach to pre-pack administrations where the same insolvency practitioner intends to continue as the office holder in the subsequent liquidation or company voluntary arrangement.

## Action

Employers considering a pre-pack administration may wish to review the guidance.

---

### AUTOMATIC ENROLMENT – DEVELOPMENTS

The Regulator has published guidance for small employers on choosing a pension scheme to use for automatic enrolment. The guidance includes a list of schemes that have received master trust assurance under the joint Regulator/ICAEW framework.

The Regulator has also updated its automatic enrolment compliance and enforcement strategy and policy.

Lastly, the Regulator has confirmed that it will launch a tool to assist small and micro employers who use HMRC's Basic PAYE Tools to comply with their automatic enrolment duties.

## Action

No action required, but small employers may find the Regulator's guidance and tool helpful.

---

### ACCESS TO FINANCIAL ADVICE – MARKET REVIEW

The Treasury and the FCA have launched a review into how the financial advice market can work better for customers, building on the April 2015 pension reforms. The review will lead to a consultation in autumn 2015 with a view to producing proposals ahead of the 2016 Budget.

## Action

No action required.

---

## Pensions litigation

### LOSS OF TAX APPROVAL – CALCULATION DATE FOR TAX CHARGE

The Supreme Court has held that, where a pension scheme has lost tax approval, the resulting tax charge payable by the scheme administrator is to be assessed by reference to the tax year in which approval was lost and not the tax year in which the loss of approval was notified to the scheme administrator.

---

### APPROVAL OF COMPROMISE – APPOINTMENT OF TRUSTEES TO REPRESENT BENEFICIARIES

The High Court has approved a compromise to settle a potential dispute regarding whether a scheme had moved from a DB to DC benefit structure, and whether this had triggered the scheme's winding-up. The court also agreed to appoint the employer to represent those

beneficiaries who might have wished to argue that the benefit change and triggering of winding-up had occurred, and the trustees to represent those beneficiaries who might have wished to argue the contrary. Although the judge acknowledged that there was no previous authority to appoint trustees under a representation order for the purposes of approving a compromise, he was satisfied that it was appropriate in this case to do so.

---

### ILL-HEALTH EARLY RETIREMENT – CALCULATION OF PENSION

The Employment Appeal Tribunal has held that an employment tribunal had acted perversely in deciding that trustees had treated a disabled member who took ill-health early retirement unfavourably by reason of his disability when calculating his pension on the basis of the part-time salary he actually received, rather than the full-time salary he would have received had he not been forced to reduce his hours as a result of his disability.

---

### OMBUDSMAN DETERMINATION – EQUALISATION OF GMPs

The Ombudsman has rejected a complaint from a member that his pension, and in particular his GMP, had not been calculated correctly in accordance with sex equality legislation. The Ombudsman decided, among other things, that the trustees were entitled to continue to defer taking action to equalise GMPs whilst the issue of GMP equalisation generally remains unresolved.

---

### OMBUDSMAN DETERMINATION – PENSIONS LIBERATION

The Ombudsman has rejected a complaint regarding a personal pension scheme provider's refusal to comply with a transfer request to a suspected pensions liberation vehicle. The Ombudsman decided that the member did not have a statutory transfer right as the transfer payment would not have been used to secure "transfer credits" in the receiving scheme. The member did not have a transfer right under the scheme rules.

This is the first decision by the new Ombudsman relating to a transfer that was blocked on pensions liberation grounds. In it, he has adopted an essentially identical approach as the previous Ombudsman to assessing whether a statutory transfer right exists and to the question of whether, if a statutory right does exist, it is overridden by regulatory or other guidance.

---

## 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**

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**

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.

---

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

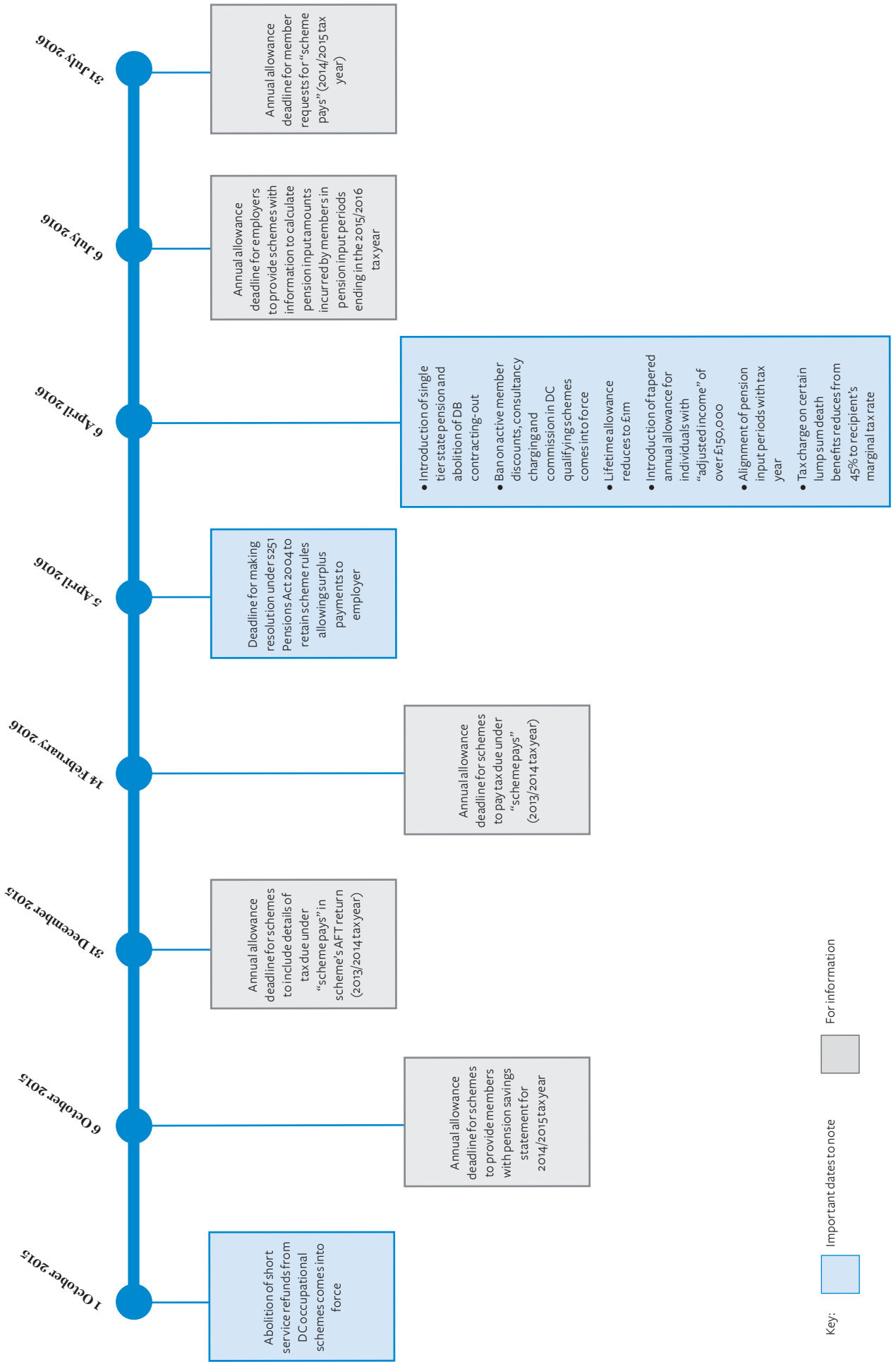
***Ian Wright***

Partner, London

E: [iwright@mayerbrown.com](mailto:iwright@mayerbrown.com)

T: +44 20 3130 3417

# Dates to note over the next 12 months



## About Mayer Brown

Mayer Brown is a global legal services provider advising clients across the Americas, Asia and Europe. Our geographic strength means we can offer local market knowledge combined with global reach. We are noted for our commitment to client service and our ability to assist clients with their most complex and demanding legal and business challenges worldwide. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest banks. We provide legal services in areas such as banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; US Supreme Court and appellate matters; employment and benefits; environmental; financial services regulatory and enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

Please visit [www.mayerbrown.com](http://www.mayerbrown.com) for comprehensive contact information for all Mayer Brown offices.

Mayer Brown is a global legal services provider comprising legal practices that are separate entities (the "Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP and Mayer Brown Europe-Brussels LLP, both limited liability partnerships established in Illinois USA; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales (authorized and regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown, a SELAS established in France; Mayer Brown Mexico, S.C., a sociedad civil formed under the laws of the State of Durango, Mexico; Mayer Brown JSM, a Hong Kong partnership and its associated legal practices in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. Mayer Brown Consulting (Singapore) Pte. Ltd and its subsidiary, which are affiliated with Mayer Brown, provide customs and trade advisory and consultancy services, not legal services. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

© 2015 The Mayer Brown Practices. All rights reserved.