

Bulletin for Pensions Managers

Welcome to the May/June 2016 issue of our Bulletin for Pensions Managers. This issue broadly covers developments to the end of June 2016.

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Pensions news

BREXIT – PENSIONS IMPLICATIONS

On 23 June, the UK voted to leave the EU. Exactly when the UK will leave, and its future relationship with the EU, are currently unclear.

The immediate consequences for occupational pension schemes in the UK of the Brexit vote are likely to be felt in the investment arena. In terms of the legal impact, the extent to which UK schemes will continue to need to comply with EU legislation following Brexit will depend on the precise withdrawal terms negotiated by the UK.

In any event, EU rules affecting occupational pension schemes have generally been incorporated into UK legislation and will not fall away automatically. It is unlikely that there will be much appetite to repeal or reform this legislation significantly, given that much of it deals with equal treatment, scheme funding and wider member protection principles. In the longer term, however, less wide-ranging adjustments are possible in some areas.

For more information, please see our [client alert](#). The Regulator has also published a [statement](#) for trustees on Brexit.

Action

Trustees of DB schemes should review their investment and funding strategies and their view of the employer covenant on an ongoing basis to ensure that they remain appropriate in light of Brexit (but avoiding knee-jerk reactions). Any contingency plans should also be reviewed and updated as necessary.

Action

Trustees of DC schemes should monitor the impact of Brexit on the investment options available under the scheme on an ongoing basis and consider whether any changes are required.

QUEEN'S SPEECH – PENSIONS BILL

The Queen's Speech [announced](#) a Pensions Bill which will, among other things:

- impose a cap on early exit fees in trust-based DC schemes;
- increase the regulation of master trusts; and
- establish a new pensions guidance body.

Action

No action required.

EARLY EXIT CHARGES IN DC SCHEMES – CAP

The FCA has published a [consultation](#) setting out its proposals for a cap on early exit charges in contract-based personal pension schemes. The consultation proposes a cap of 1% for existing personal pension contracts and 0% for new personal pension contracts. The consultation closes on 18 August.

The DWP has published a related [consultation](#) on its proposals to cap early exit charges in trust-based pension schemes that provide flexible benefits. The consultation proposes mirroring the FCA cap. The consultation closes on 16 August.

Action

No action required.

BRITISH STEEL PENSION SCHEME – PROPOSALS

The DWP has published a consultation on proposals designed to help the British Steel Pension Scheme as part of a wider package of Government support for UK Steel. The consultation is in response to proposals made by the Scheme trustees which are supported by Tata Steel UK. The proposals cover possible ways of separating the Scheme from Tata Steel UK; legislative intervention to allow the trustees to reduce the indexation and revaluation of pensions; and easements to the statutory requirements that apply on bulk transfers without member consent. The DWP has published an accompanying factsheet. The consultation closed on 23 June.

Action

No action required.

IORP II DIRECTIVE – TEXT FINALISED

The text of the IORP II Directive has been agreed by the European Commission, the Council of Europe and the European Parliament. The directive will apply to occupational pension schemes and will replace the IORP Directive (largely implemented in the UK by the Pensions Act 2004).

The directive will impose new requirements in relation to, among other things:

- cross-border schemes;
- transfers;
- governance, including risk management, outsourcing and internal audit; and
- member benefit statements.

The directive will now be laid before the European Parliament for formal approval. It will then be published in the Official Journal at which point it will come into force. Member states will have two years from that date to implement it. The extent to which the UK is required to implement its provisions will depend on the Brexit withdrawal terms that are negotiated – and whether the UK has officially left the EU by its implementation date.

Action

No action required.

CHAIR'S DC GOVERNANCE STATEMENT – FIRST FINE FOR NON-COMPLIANCE

The Regulator has issued the first fine for non-compliance with the statutory obligation for DC schemes to produce a chair's annual governance statement. The legislation imposes a mandatory fine of up to £2,000 for non-compliance. The scheme in question notified the Regulator of its failure to produce the statement and received the minimum mandatory fine of £500.

Action

Trustees of schemes that provide non-AVC money purchase benefits should ensure that their annual reports for scheme years ending on or after 6 July 2015 include the required chair's governance statement.

AUTOMATIC ENROLMENT – REGULATOR ENFORCEMENT ACTION FOR NON-COMPLIANCE

The Regulator has published a report on the enforcement action it took in relation to an employer's failure to comply with its automatic enrolment duties.

Action

No action required.

AUTOMATIC ENROLMENT – REGULATOR LIST OF AVAILABLE SCHEMES

The Regulator has announced that it will publish a list of group personal pension plans that are open to any employer for use in connection with automatic enrolment. Schemes will need to meet certain criteria to be included on the list.

Action

No action required, but employers looking for a scheme to use for automatic enrolment may find the list useful.

NEST – RULE CHANGES

NEST has published a response to its January 2016 consultation on proposed changes to its rules. With one exception, all of the proposed changes will be made, including letting NEST pay uncrystallised pension funds lump sums, and removing the annual cap on contributions and the restrictions on transfers.

Action

No action required.

STATE PENSION AGE – GUIDANCE FOR TRUSTEES

The DWP has published an [information note](#) for trustees on changes to state pension age and communications with members.

Action

No action required, but trustees, administrators and pension managers may find the note useful when answering member queries about changes to state pension age.

REGULATOR – PROSECUTION POLICY

The Regulator has published a [response](#) to its consultation on its draft policy on prosecutions for criminal offences involving workplace pensions. The finalised [policy](#) has also been published.

Action

No action required.

LOCAL GOVERNMENT PENSION SCHEME – INTRODUCTION OF “FAIR DEAL”

The Government has published a [consultation](#) on draft regulations amending the LGPS to introduce the “Fair Deal” for staff in the LGPS who are compulsorily transferred to another service provider. The consultation closes on 20 August.

Action

No action required.

PENSION SCHEMES NEWSLETTER 79

HMRC has published [issue 79](#) of its Pension Schemes Newsletter. Among other things, this notes that Royal Assent to the Finance Bill will be later than in previous years.

Action

No action required.

COUNTDOWN BULLETINS 17 & 18

HMRC has published [issue 17](#) and [issue 18](#) of its Countdown Bulletin. These include an update on the Scheme Reconciliation Service, and information and FAQs on the GMP Checker.

Action

No action required.

Pensions litigation

IMPLIED CONTRACT BETWEEN GROUP COMPANIES – SECTION 75 INDEMNITY

The Court of Appeal has [upheld](#) the High Court’s decision that there was an implied contract between two group companies under which one company was obliged to pay all costs in respect of staff seconded to it by the other company, and that these costs included the section 75 debt arising from the other company’s insolvency.

BULK TRANSFERS WITHOUT MEMBER CONSENT – FACTORS TO BE CONSIDERED BY THE ACTUARY

In the context of bulk transfers without consent, the High Court has [held](#) that the scheme actuary cannot take the security of benefits in the receiving scheme into account when certifying whether benefits under the receiving scheme will be “broadly, no less favourable than the rights to be transferred”.

EXECUTION OF INCORRECT DEED – RECTIFICATION GRANTED

The High Court has [granted](#) an application for summary judgment seeking rectification of a pension scheme trust deed and rules where an earlier draft, rather than the finalised draft, of the trust deed and rules was prepared and executed. The Court ordered rectification of the trust deed and rules so as to reflect the finalised draft agreed by the parties.

PRINCIPAL EMPLOYER SUBSTITUTION POWER – REQUIREMENTS FOR EXERCISE

When considering a scheme rule about replacing the principal employer (a “substitution power”), the High Court has decided that it was not necessary to imply into the rule a requirement for that power to be exercised in writing. The substitution power was silent on how it should be exercised. The Court concluded that there was no need to imply a “degree of formality” into its exercise, given that the trust deed had set out formalities for exercising other scheme powers, making it unlikely that formal requirements for the exercise of the substitution power had been omitted in error. The Court considered that the question was not whether some degree of formality would be reasonable, but whether formality was necessary to give business effect to the trust deed – in this case it was not.

INDIVIDUAL CLAIMING A DEFERRED PENSION – BURDEN OF PROOF

The High Court has rejected an appeal against a Pensions Ombudsman determination that an individual was not entitled to a deferred pension from a DB pension scheme. Among other reasons, the Court rejected the appeal because the Ombudsman's finding that the individual was not a member of the scheme was a finding of fact and therefore the Court could not overrule it. The Court also noted that, where there is no documentary evidence that an individual is a member of a scheme, it is for the individual to show that he or she is a member, because a scheme cannot be expected to prove that an individual of whom it has no record is not a member. The position may be different if the scheme accepts that the individual is a member, but the scheme cannot demonstrate the level of the individual's entitlement because it does not have records that it should have kept.

PENSIONS OMBUDSMAN – PUBLICATION OF ADJUDICATOR OPINIONS

The Ombudsman has announced that it has started publishing opinions issued by its adjudicators if those opinions are:

- appealed to the Ombudsman or Deputy Ombudsman; or
- considered to be of interest.

In addition, all determinations published in future will generally be anonymised.

Mayer Brown events

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

- **Trustee Foundation Course**

13 September 2016

6 December 2016

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**

15 November 2016 – 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.

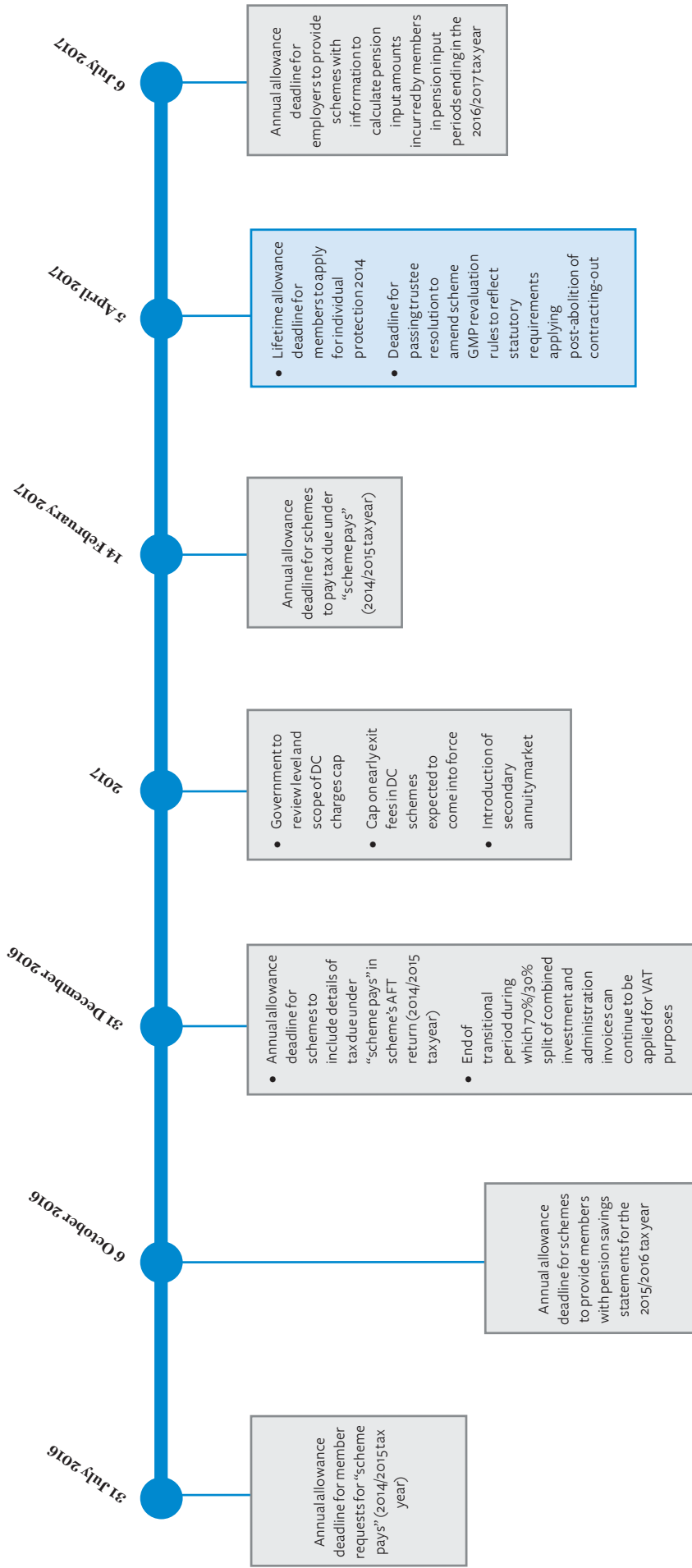
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Dates to note over the next 12 months



Key: Important dates to note For information

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