

Bulletin for Pensions Managers

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

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Pensions news

PPF 2017/18 LEVY DETERMINATION

The PPF has published its provisional 2017/18 levy determination and accompanying documents. Only limited changes have been made to the levy rules for 2017/18, including introduction of a mechanism for stakeholders to notify Experian where the move to FRS 101/102 would cause an artificial movement in their insolvency score rating.

The PPF has also confirmed that it will consider putting in place a special rule recognising the risk profile of schemes which cease to have a substantive sponsoring employer. As a result, the levy rules are not absolutely final, but the PPF only intends to change them in relation to this one area, if at all, and is encouraging schemes to act on the provisional rules published. The final 2017/18 levy determination will be published by 31 March 2017 at the latest.

The key levy deadlines are as follows:

- Submission of scheme returns – midnight on 31 March 2017
- Submission of asset-backed contribution arrangement, contingent asset, accounting standard change impact, and mortgage exclusion certificates

(and any required supporting evidence) – midnight on 31 March 2017

- Submission of deficit reduction contribution certificates – 5pm on 28 April 2017
- Certification of full block transfers – 5pm on 30 June 2017

The PPF has also published four new FAQs on the 2017/18 levy.

Action

Employers of DB schemes who are impacted by the move to FRS 101/102 should consider whether they wish to certify this impact.

Action

Trustees and employers of DB schemes should ensure that they put arrangements in place to meet the applicable levy deadlines, and should start planning what actions and documentation will be required well ahead of the relevant deadlines.

IORP II DIRECTIVE – NOW APPROVED

The directive has now been approved by the various EU legislative bodies and was published in the Official Journal on 23 December 2016. It is significantly longer than the IORP Directive that it replaces, and imposes a wide range of new requirements including in relation to, among other things:

- funding of cross-border schemes;
- cross-border bulk transfers;
- scheme governance;
- outsourcing; and
- disclosure of information.

The original proposal for the directive to contain new solvency rules for pension schemes has been abandoned. The directive must be implemented by member states by 13 January 2019.

Action

No action currently required – the extent to which UK schemes will be required to comply with the directive will depend on the Brexit withdrawal terms and whether the UK has officially left the EU by 13 January 2019.

PENSION SCHEMES BILL – FURTHER DEVELOPMENTS

The Bill is currently progressing through the House of Lords. During debate on the Bill, the Government confirmed, among other things, that:

- it will consult on regulations to disapply some or all of the master trust provisions for schemes whose only money purchase benefits are AVCs; and
- it is likely to consult on draft regulations in relation to the master trust authorisation and supervision framework in autumn 2017.

The House of Lords has also inserted a new clause requiring the Government to make provision for a “funder of last resort” where a master trust has insufficient resources to meet its winding-up costs. This amendment was opposed by the Government and may be reversed in the House of Commons.

Action

No action required.

AUTUMN STATEMENT 2016

The Autumn Statement contained the following pensions-related announcements:

- The Government will consult on options to tackle pension scams (see below for details of this consultation).
- The tax and employer NI advantages of salary sacrifice schemes will be removed from April 2017, except for arrangements relating to pension contributions, childcare, Cycle to Work and ultra-low emission cars.
- The money purchase annual allowance will be reduced to £4,000 from April 2017. A consultation on this proposal has been published and closes on 15 February 2017.
- A number of changes will be made to the tax treatment of foreign pensions.

HMRC has published draft Finance Bill 2017 provisions for consultation, together with draft explanatory notes. The pensions-related provisions include a clause

increasing the income tax exemption for employer-arranged pensions advice to £500. The consultation closes on 1 February 2017.

Action

No action required.

GMP EQUALISATION – PROPOSED NEW METHOD

The DWP has published a consultation on a proposed new methodology for equalising GMPs. The methodology involves converting the member’s accrued benefits into ordinary scheme benefits that do not include GMPs. The post-conversion benefits must have the same actuarial value as the pre-conversion benefits. However, when valuing the member’s pre-conversion benefits for service between 17 May 1990 and 5 April 1997, the actuary must compare that value with what the value would have been for a member of the opposite sex, and then use the higher figure.

The consultation also proposes a number of changes to the GMP conversion and contracting-out legislation. The consultation closes on 15 January 2017. For more information, please see our legal update.

Action

No action required.

PENSION SCAMS – PROPOSED NEW MEASURES

The Treasury and the DWP have published a consultation on proposals to tackle pension scams including:

- a ban on cold-calling in relation to pensions;
- changes to statutory transfer rights so that a statutory right will only exist where, among other things, a genuine employment link to the receiving occupational pension scheme can be demonstrated; and
- introduction of a requirement for small self-administered schemes to have an active company as sponsoring employer in order to register with HMRC.

The consultation closes on 13 February 2017.

In addition, TPAS has launched an online tool to give individuals guidance on pension scams and to help them identify whether an offer is a scam.

Action

No action required, but schemes may wish to consider making members aware of the TPAS online tool when communicating with them about transfers.

DC BULK TRANSFERS WITHOUT MEMBER CONSENT – CALL FOR EVIDENCE

The DWP has published a [call for evidence](#) on how the current rules on bulk transfers of DC benefits without member consent could be improved, and in particular how to reduce unnecessary burdens in occupational DC to DC bulk transfers whilst ensuring members are adequately protected. The call for evidence closes on 21 February.

Action

No action required.

GENERAL PENSIONS LEVY – 2017/18 RATE

The DWP has published a [consultation](#) on the rate of the general levy payable by occupational and personal pension schemes for 2017/18. The consultation proposes three possibilities – maintaining the current rate; reducing the rate for all schemes; or reducing the rate for larger schemes whilst maintaining it for smaller schemes. The consultation closes on 18 January 2017.

Action

No action required.

PUBLIC FINANCIAL GUIDANCE – CREATION OF SINGLE BODY

The Treasury and the DWP have published a [consultation](#) on their plans for a single public financial guidance body. The statutory pensions guidance functions currently performed by TPAS and Pension Wise would be transferred to this body. The Government does not expect to launch the new body before autumn 2018. The consultation closes on 13 February.

Action

No action required.

PAYMENT OF LUMP SUM DEATH BENEFITS TO A TRUST – PROVISION OF INFORMATION

HMRC has published [draft regulations](#) for consultation that, among other things, set out the information that the scheme administrator of a registered pension scheme must provide when certain lump sum death benefits are paid on or after 6 April 2016 to a trust. The consultation closed on 5 December.

Action

No action required.

DC PENSION SCHEMES – CAP ON EARLY EXIT CHARGES

The DWP has published a [response](#) to its consultation on the introduction of a cap on early exit charges in DC occupational pension schemes. The response confirms that the cap will be set at 1% for existing members and 0% for new members. The DWP will consult in early 2017 on draft regulations imposing the cap.

The FCA has published a [policy statement](#) which confirms that the cap for personal pension schemes will likewise be set at 1% for existing contracts and 0% for new contracts.

Action

No action required.

AUTOMATIC ENROLMENT – REVIEW

The DWP has [announced](#) the launch of a review of automatic enrolment. This will include a review of the alternative quality requirements for DB qualifying schemes; the certification requirements for DC qualifying schemes; and the level and scope of the charge cap that applies to default funds in DC qualifying schemes.

The announcement also sets out the automatic enrolment earnings thresholds for 2017/18:

- qualifying earnings band: £5,876 – £45,000; and
- earnings trigger: £10,000.

In addition, the Regulator has published [translations](#) of its template employer automatic enrolment letters in Bulgarian, Chinese (simplified and traditional), Latvian, Lithuanian, Polish, Romanian and Spanish. Employers can request translations in other languages.

Action

Employers should ensure that their payroll administration processes are updated to reflect the new earnings figures once they come into force.

RECORD-KEEPING – REGULATOR GUIDANCE

The Regulator has published a [quick guide](#) to record-keeping. The Regulator has also [announced](#) that it will start asking trustees to report on record-keeping in the scheme return.

Action

Trustees should consider reviewing their record-keeping measures in light of the Regulator's announcement, and may find the quick guide helpful in this respect.

INTEGRATED RISK MANAGEMENT (IRM) – GUIDANCE FOR SMALLER SCHEMES

The Regulator has published a [quick guide](#) to IRM and an IRM [checklist](#) that are aimed at smaller schemes and are designed to show trustees how they can benefit from IRM and how to get started.

Action

Trustees of smaller schemes may find the quick guide and checklist helpful when considering risk management.

DEFERRED PENSIONS – REVALUATION

The [order](#) specifying the revaluation percentages to be used when revaluing deferred pensions using the final salary method came into force on 1 January 2017.

Action

Schemes using the final salary method for revaluation should ensure that the percentages specified in the order are applied.

WORK AND PENSIONS SELECT COMMITTEE – REPORT ON DB SCHEMES

The Work and Pensions Select Committee has published its [report](#) on the regulation of DB pension schemes. The report makes a number of recommendations for change. These include introduction of a “nuclear deterrent” to avoidance whereby the Regulator would be given the power to issue punitive fines of up to three times the amount that could be demanded under the Regulator’s existing anti-avoidance powers.

Action

No action required.

SCOTTISH RATE OF INCOME TAX – GUIDANCE

HMRC has published a [technical note](#) setting out how various aspects of the income tax regime will interact with Scottish income tax powers when these come into force in April 2017. Among other things, this note contains draft regulations making consequential changes to pensions tax legislation.

Action

No action required, but scheme administrators may find the guidance useful.

EMPLOYER CONTRIBUTIONS TO OVERSEAS PENSION SCHEMES – TAX RELIEF

HMRC has published [guidance](#) for employers on when they can claim tax relief on contributions to overseas pension schemes.

Action

No action required, but employers who make contributions to overseas schemes may find the guidance helpful.

PENSION SCHEMES NEWSLETTER 83

HMRC has published [issue 83](#) of its Pension Schemes Newsletter. Among other things, this covers the pensions aspects of the Autumn Statement.

Action

No action required.

COUNTDOWN BULLETINS 21 AND 22

HMRC has published [issue 21](#) and [issue 22](#) of its Countdown Bulletin. Among other things, these provide further details of the closure scan that was due to run in December 2016, and Q&As on the GMP Checker.

Action

No action required.

MONARCH AIRLINES – REGULATED APPORTIONMENT ARRANGEMENT

The Regulator has published a [report](#) on the regulated apportionment arrangement that was entered into in relation to the Monarch Airlines Limited Retirement Benefits Plan to separate the Plan from the sponsoring employer. The Plan has now entered the PPF.

Action

No action required.

21ST CENTURY TRUSTEESHIP AND GOVERNANCE – REGULATOR ACTION

The Regulator has published a [response](#) to its consultation on what more it and the wider pensions industry could do in support of raising standards of trusteeship and governance. The response states that the Regulator will drive up standards by, among other things, more targeted education and tools, and tougher enforcement action against trustees who fail to meet the required standards.

Action

No action required.

Pensions finance

EMIR – EXTENSION OF PENSION SCHEME CLEARING EXEMPTION

The European Commission has passed a regulation amending EMIR to extend the pension scheme exemption from the central clearing requirements under EMIR until 16 August 2018.

The Commission has also published a report on its review of EMIR. Among other things, this announces that the Commission will consider whether the clearing exemption could be prolonged or made permanent without compromising on EMIR's objective of reducing systemic risk.

Action

No action required.

PENSION SCHEMES AND SOCIAL INVESTMENT

The Law Commission has published a call for evidence in connection with a project on social investment by pension schemes. The project builds on the Commission's 2014 report on the fiduciary duties of investment intermediaries, but focuses on DC schemes and asks when pension funds can be invested positively for social good. The call for evidence closed on 15 December.

Action

No action required.

NEW MEMBER OF MAYER BROWN PENSIONS GROUP

Following the November 2016 arrival of Jay Doraisamy in the Mayer Brown Pensions Group, we are delighted to announce that Duncan Watson has joined the Pensions Group as a senior associate in the pensions investment team, led by Edward Jewitt.

Duncan joins Mayer Brown from Deutsche Bank, where he was Vice President, Senior Counsel in the Asset Management division, responsible for a range of issues related to investment management. Duncan has significant experience advising on matters related to segregated mandates, funds and distribution.

At Mayer Brown Duncan will be a key member of our pensions investment team advising institutional pension schemes and their asset managers on investment management work, including all kinds of investment funds, LDI mandates, custody and stock lending. Our pensions investment team includes funds, financial services, tax and derivatives lawyers who work

as a single team with our Pensions Group. Clients include some of the UK's largest pension schemes including the BT Pension Scheme, the Electricity Supply Pension Scheme, the Santander (UK) Group Pension Scheme, the Merchant Navy Ratings Pension Fund, and the Prudential Staff Pension Scheme.

Pensions litigation

DEATHBED MARRIAGES – DISCRIMINATION

The Court of Justice of the European Union has held that a provision in an Irish pension scheme's rules which required the member to have married/entered into a civil partnership before age 60 in order for the member's spouse/civil partner to be eligible for a spouse's pension did not amount to discrimination on the grounds of sexual orientation or age. Civil partnerships were not legally recognised in the Republic of Ireland at the time that the member reached age 60.

OMBUDSMAN DETERMINATION – UNDERPAYMENTS

The Ombudsman has decided that where a member had been underpaid, he should have been offered the option to take the pension commencement lump sum to which he would have been entitled on retirement had his benefits been correctly calculated, even though more than a year had passed since his retirement meaning that the payment would be an unauthorised payment.

OMBUDSMAN DETERMINATION – DISCLOSURE OF INFORMATION ON INVESTMENT OF DB ASSETS

The Ombudsman has decided that a DB scheme was not under an obligation to provide a prospective member with information on the investments held by the scheme. The member had argued that as certain investments were against her religious beliefs, she should have been provided with information on the scheme's investments to enable her to make an informed choice about whether to join the scheme.

OMBUDSMAN DETERMINATION – DISCLOSURE OF INVESTMENT ON CETV CALCULATION BASIS

The Deputy Ombudsman has decided that trustees did not have a duty to inform a member who had received a statement of entitlement that they had changed the basis for calculating CETVs during the guarantee period, and that if he did not therefore complete his transfer application within the guarantee period, his CETV would reduce significantly.

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**

28 February 2017

16 May 2017

12 September 2017

5 December 2017

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**

13 June 2017 – topic to be confirmed

14 November 2017 – 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.

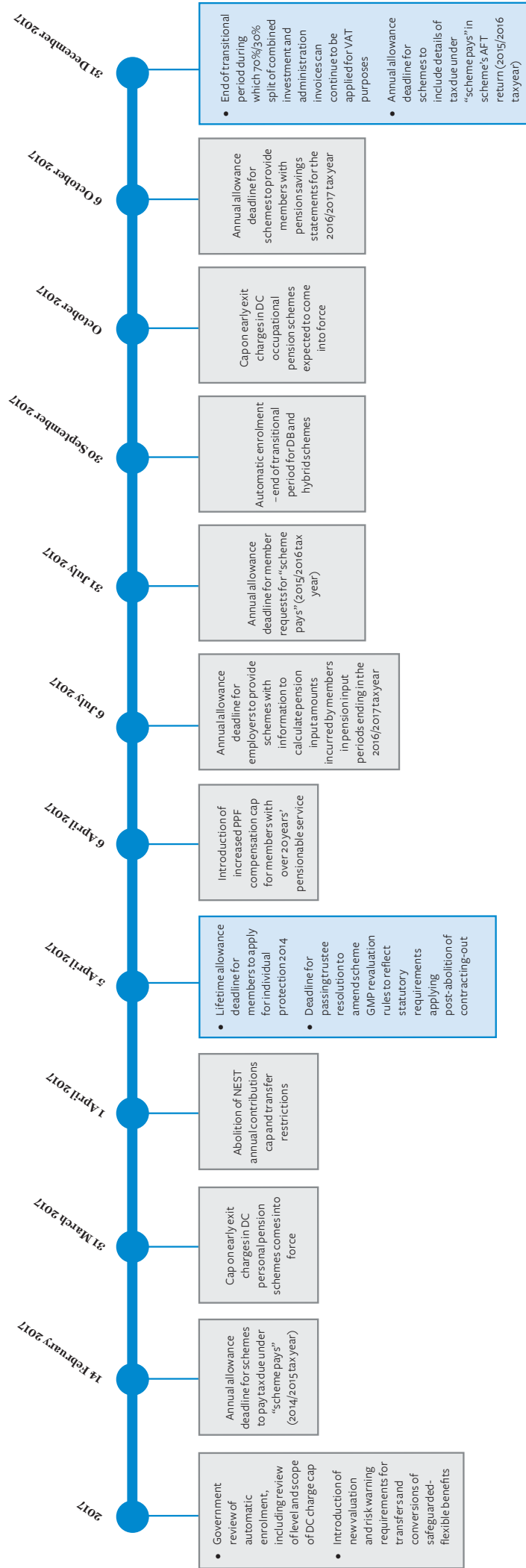
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Dates to note over the next 12 months



Key: Important dates to note For information

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