

## Bulletin for Pensions Managers

Welcome to the May/June 2017 issue of our Bulletin for Pensions Managers. This issue broadly covers developments to the end of June 2017.

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### Pensions news

#### MONEY LAUNDERING – NEW PENSION SCHEME TRUSTEE OBLIGATIONS

New regulations on money laundering and terrorist financing came into force at the end of June. Under the regulations, trustees are required to hold information on the scheme's "beneficial owners" and, where the scheme pays certain taxes, to provide this information to HMRC by 31 January 2018. The precise details that must be held by trustees and disclosed to HMRC are unclear, but the pensions industry is liaising with the Treasury and HMRC on this issue, and guidance from HMRC is expected.

For more information, please see our legal update.

#### Action

We would advise trustees to hold off taking any action in respect of the new obligations until HMRC has published its guidance.

#### SAFEGUARDED-FLEXIBLE BENEFITS – TRANSFERS AND CONVERSIONS

Regulations have been made which introduce a requirement for schemes to provide tailored risk warnings to members wishing to transfer/convert safeguarded-flexible benefits which explain the likely impact of surrendering potentially valuable guarantees.

Draft regulations have also been laid before Parliament which simplify the process for valuing safeguarded-flexible benefits for the purposes of determining whether the requirement to take independent financial advice on a transfer/conversion of those benefits applies.

Both sets of regulations will come into force on 6 April 2018.

The DWP has also published a response to its September 2016 consultation on the changes.

#### Action

Schemes providing safeguarded-flexible benefits should amend their transfer/conversion processes to reflect the valuation changes and new risk warning requirements from April 2018.

#### PUBLIC FINANCIAL GUIDANCE – RESTRUCTURING

The Financial Guidance and Claims Bill has been laid before Parliament. It creates a single public financial guidance body which will replace TPAS, Pension Wise and the Money Advice Service. It will be funded from existing levies on occupational pension schemes and financial services providers. Accompanying explanatory notes have been published.

The Treasury has also published a response to its December 2016 consultation on the creation of a single public financial guidance body.

#### Action

No action currently required.

## DB FUNDING – REGULATOR 2017 STATEMENT

The Regulator has published its 2017 DB funding [statement](#) – this is primarily aimed at schemes undergoing valuations with an effective date between 22 September 2016 and 21 September 2017. The Regulator has also published a [summary](#) of the statement's key messages. A particular theme in the statement is the importance of schemes receiving fair treatment compared to the employer's shareholders.

### Action

DB schemes undergoing valuations with an effective date between 22 September 2016 and 21 September 2017 should review the statement. Other DB schemes may also find the statement useful.

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## DC SCHEMES – CAP ON EARLY EXIT FEES AND BAN ON MEMBER-BORNE COMMISSION ARRANGEMENTS

The DWP has published a [response](#) to its April consultation on draft regulations:

- imposing a cap on early exit fees in DC schemes; and
- extending the ban on member-borne commission arrangements in DC qualifying schemes for automatic enrolment purposes to pre-April 2016 arrangements.

The response confirms that the cap and ban extension will come into force on 1 October.

An early exit fee is any fee imposed on a member aged 55 or over who wants to take his or her DC benefits, convert them into other benefits, or transfer them to another scheme, which would not be imposed if the member had reached normal pension age.

Responsibility for complying with the cap will lie with the person imposing the early exit fee.

Responsibility for complying with the extended ban on member-borne commission arrangements will lie with the scheme's service providers. Service providers will generally be required to send trustees written confirmation that they are complying with the extended ban by 31 March 2018.

### Action

Schemes providing DC benefits should consider whether they impose any fees which would be caught by the cap on early exit fees.

### Action

Qualifying schemes providing DC benefits should check that they have received written confirmation of compliance with the extended ban on member-borne commission arrangements from their service providers by 31 March 2018.

## REGULATOR – TRUSTEE PENALTIES FOR REPORTING FAILURES

The Regulator has published a [press release](#) warning trustees of the potential penalties they face if they fail to submit their scheme return or (in the case of schemes with DC benefits) to prepare their chair's annual governance statement by the relevant deadline. The Regulator issued 173 fines in 2016 in connection with such failures.

### Action

Trustees should ensure that they file their scheme return and (where relevant) prepare their chair's annual governance statement by the relevant deadline.

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## PENSION SCHEMES NEWSLETTERS 87 AND 88

HMRC has published [issue 87](#) and [issue 88](#) of its Pension Schemes Newsletter. Among other things, these confirm that HMRC's view is that an email request to use the DC pensions advice allowance is a request in writing, but that the decision on whether to accept an email request lies with the scheme administrator.

### Action

No action required.

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## GMP RECONCILIATION – FURTHER PASA GUIDANCE

The PASA has released its third tranche of [guidance](#) on GMP reconciliation. This covers the approach to reconciliation for members who were in active membership when contracting-out ceased on 5 April 2016.

### Action

No action required.

## Pensions finance

### ASSET MANAGEMENT – FCA MARKET STUDY

The FCA has published the final [report](#) of its asset management market study. The report identifies a number of concerns, including that price competition is weak in a number of areas of the industry; investors are not always clear what the objectives of funds are; fund performance is not always reported against an appropriate benchmark; and concerns about the way the investment consultant market operates.

The report also includes details of the remedies that the FCA proposes to address these concerns. These include:

- strengthening the duty on fund managers to act in the best interests of investors;
- supporting the disclosure of a single, all-in-fee to investors and the consistent and standardised disclosure of costs and charges to institutional investors;
- recommending that the DWP remove barriers to pension scheme consolidation and pooling; and
- recommending that the Treasury considers bringing investment consultants into the FCA's regulatory perimeter.

The FCA has published a [consultation](#) on implementing certain of these remedies. The consultation closes on 28 September.

#### Action

No action required.

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### SOCIAL INVESTMENT – LAW COMMISSION REPORT

The Law Commission has published a [report](#) on pension schemes and social investment. The report notes that investment in property and infrastructure has the potential to provide financial returns for schemes and to address social concerns at the same time. However, unlike in other countries, in the UK DC schemes are not investing in social investments. While there are no legal or regulatory barriers to social investment by schemes, the report identifies a number of structural and behavioural barriers, and makes various recommendations, including that:

- the law should be amended to require pension schemes to report on their policies on evaluating social impact, considering members' ethical concerns, and exercising stewardship powers;

- the Regulator and the FCA should consider providing further guidance on how pension schemes can manage illiquid investments, such as investments in infrastructure; and
- the Government should consider taking steps to address barriers to consolidation of DC pension schemes so they are more able to invest in illiquid assets.

#### Action

No action required.

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## Pensions litigation

### SAME SEX SPOUSES' PENSIONS – UK LEGISLATION INCOMPATIBLE WITH EU LAW

The Supreme Court has [ruled](#) that paragraph 18 of Schedule 9 to the Equality Act 2010 is incompatible with EU law and must be disapplied. Paragraph 18 provides that, where a member of an occupational pension scheme dies leaving a surviving same sex spouse or civil partner, the scheme is only required to provide a spouse's pension in respect of the member's service from 5 December 2005. For more information, please see our [legal update](#).

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### DISCRETIONARY PENSION INCREASES AND TRUSTEE DUTIES – THE BA CASE

The High Court has [rejected](#) BA's claim that the trustee of the Airways Pension Scheme invalidly exercised the scheme's amendment power to introduce a trustee power to pay discretionary increases and that the trustee's subsequent exercise of the power to award a 0.2% discretionary increase in 2013 was invalid.

BA has been granted leave to appeal the decision, and the High Court has granted an injunction preventing the trustees from paying out the 0.2% increase until the appeal has been decided. The Court of Appeal hearing is likely to take place in mid-2018.

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### GMP EQUALISATION – COURT PROCEEDINGS

The trustee of three Lloyds Banking Group pension schemes has issued High Court proceedings to determine whether the trustee is required to equalise GMPs and, if so, how equalisation should be effected. The hearing is unlikely to be held before the second half of 2018.

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## ILL-HEALTH REVIEWS – APPLYING THE CORRECT TEST

The Deputy Ombudsman has decided that trustees applied an incorrect test when reviewing and deciding to suspend a member's ill-health pension. The Deputy Ombudsman held that there is an underlying principle that, once a pension has been put into payment, it is payable for life unless, where an ill-health pension is concerned, the payment of that pension is no longer justified by reason of an improvement in the member's condition. As such, when applying a discretion under scheme rules to vary, reduce or suspend a member's ill-health pension, trustees must be able to point to a change of circumstances in relation to the member's ill-health to support exercise of that discretion. In this case, the trustees had simply considered whether the member still met the ill-health test, rather than considering whether his circumstances had changed since the ill-health pension was originally awarded.

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## Mayer Brown events

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

- **Data Privacy Bootcamp – the GDPR and pension schemes**  
6 September 2017  
Mayer Brown partners Mark Prinsley, Oliver Yaros and Jay Doraisamy will explore the new requirements under the European General Data Protection Regulation and provide a detailed assessment of the ten steps that pension schemes need to take to get ready to comply with it by 25 May 2018.
- **Trustee Foundation Course**  
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**  
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.

- **Annual Pensions Conference**

3 October 2017

Our Annual Pensions Conference will look at some of the challenges facing employers and trustees of occupational pension schemes in the current economic and regulatory environment.

- **Pensions Group Drinks Party**

2 November 2017

Our drinks party for clients and other industry contacts will be held at the Tower of London and will include a tour of the Crown Jewels.

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## THE VIEW FROM MAYER BROWN – PENSIONS PODCASTS

Every month Richard Goldstein, a partner in our Pensions Group in London, places a spotlight on key developments that could affect your scheme in a podcast. Just 10-15 minutes long and available on iTunes, the podcasts provide a quick and easy way to stay on top of current issues in pensions law.

Listen to or subscribe to The View from Mayer Brown Pensions Podcasts via iTunes here:



Please note – subscribing above will only work on a device with iTunes installed. Alternatively if you don't have iTunes you can access the podcasts via our website.

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## A GLOBAL GUIDE TO RETIREMENT PLANS & SCHEMES

We have recently launched the latest in our series of global guides, *A Global Guide to Retirement Plans & Schemes*.

The Guide provides an overview of the laws relating to the regulation of retirement plans and schemes in 50 key countries. Each chapter provides a general outline of the country's social security system and the main rules governing employer-sponsored retirement plans/schemes.

The Guide draws on the input of lawyers from across our global Employment & Benefits Group, as well as our network of best friend law firms. It is available via the Mayer Brown [website](#) as an eBook/web reader and as an interactive PDF.

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***

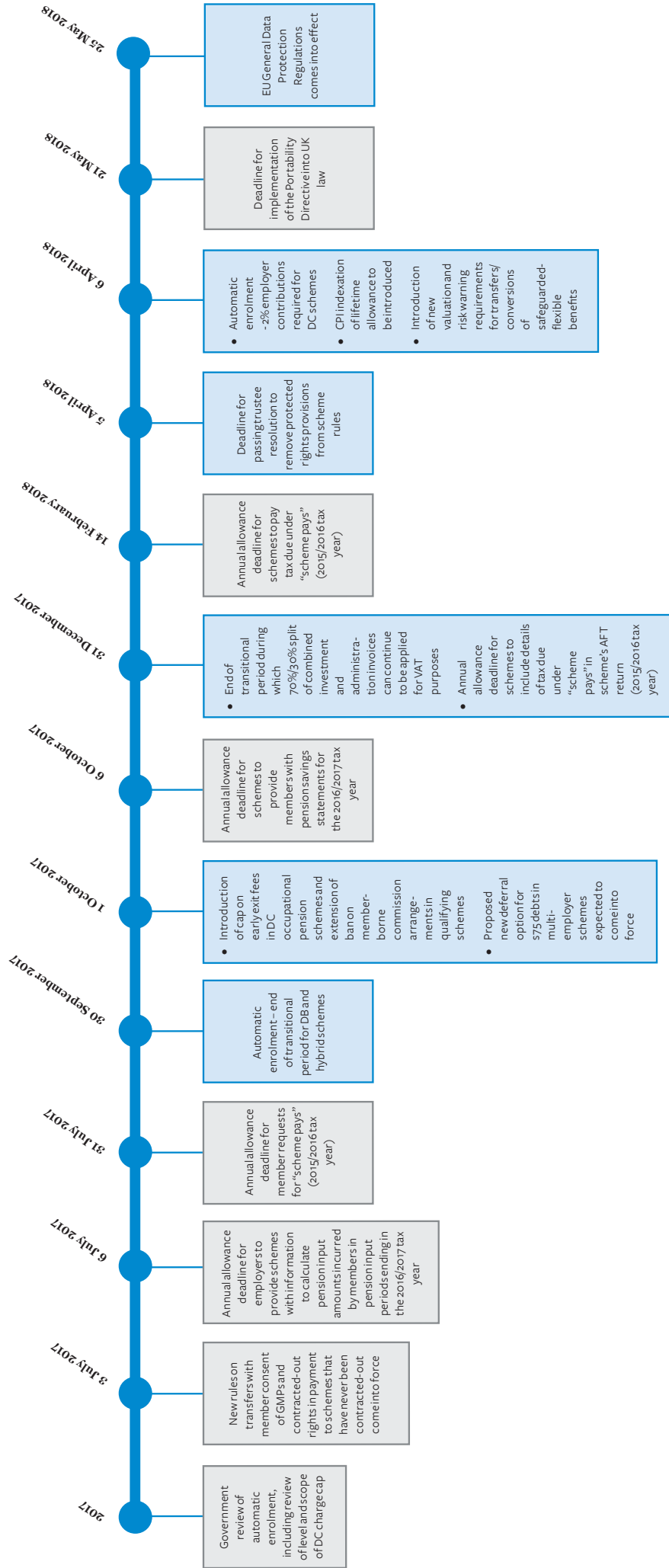
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# Dates to note over the next 12 months



Key:  Important dates to note  For information



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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, CAC 40, DAX, Hang Seng and Nikkei 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.

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