

Bulletin for Pensions Managers

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

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Pensions news

PPF – 2018/19 LEVY DETERMINATION

The PPF has published its finalised 2018/19 Levy Determination. The following levy deadlines will apply for the 2018/19 levy:

- Submission of hard copy contingent asset documents – 5pm on 29 March 2018
- Submission of scheme returns, contingent asset certificates, asset-backed contribution (ABC) certificates, mortgage exclusion certificates and supporting evidence, accounting standard change certificates, and special category employer certificates – midnight on 31 March 2018
- Submission of deficit reduction contribution certificates and exempt transfer applications – 5pm on 30 April 2018
- Submission of full block transfer certificates – 5pm on 29 June 2018

Action

Schemes should ensure that they file all relevant information and paperwork by the above deadlines, in particular schemes wishing to certify a contingent asset or ABC arrangement.

AUTUMN BUDGET 2017

The Autumn Budget contained the following pensions-related announcements:

- CPI indexation of the lifetime allowance will commence from April 2018 as expected, with the 2018/19 lifetime allowance being set at £1.03m.
- Tax relief for employer premiums paid into life assurance products or certain overseas pension schemes will be modernised from April 2019 to cover policies when an employee nominates an individual or registered charity as their beneficiary.

Action

Schemes should ensure that the change in the lifetime allowance is reflected in their administration processes, and may wish to consider notifying members of the new allowance.

FINANCE (NO 2) ACT 2017

This Act has received Royal Assent. It provides for:

- reduction of the money purchase annual allowance from £10,000 to £4,000; and
- replacement of the current £150 income tax and NICs exemption for employer-funded pensions advice with a new £500 exemption that also covers advice on general financial and tax issues relating to pensions.

Both measures have retrospective effect from 6 April 2017.

Action

Schemes should ensure that the change in the money purchase annual allowance is reflected in their administration processes and, if they have not done so already, may wish to consider notifying members of the new allowance.

MONEY LAUNDERING – EXTENSION OF HMRC REGISTRATION DEADLINE

HMRC has [announced](#) that the deadline for registering with the Trust Registration Service and providing the information required under the Money Laundering Regulations 2017 has been extended to 5 March 2018 for all schemes [other than](#) schemes which are not registered with HMRC for self-assessment and which have incurred an income tax or capital gains tax liability in the 2016/17 tax year. For more information, please see our [legal update](#).

Action

Schemes should establish with urgency whether they are required to register with, and provide information to, HMRC under the Money Laundering Regulations and, if they are, they should ensure that they comply with the registration and provision of information obligations by the relevant deadline.

CONTRACTED-OUT RIGHTS – BULK TRANSFERS TO SCHEMES THAT HAVE NEVER BEEN CONTRACTED-OUT

The Government has published a [consultation](#) on draft regulations making changes to the rules governing bulk transfers of contracted-out rights. The changes are intended to permit bulk transfers of contracted-out rights to schemes that have never been contracted-out in certain circumstances. Among other things, the transfer would be subject to the conditions that:

- the rights of the members are not adversely affected; and
- the same protections that apply under the transferring scheme are provided by the receiving scheme.

The consultation closes on 17 January 2018, and the regulations are intended to come into force on 6 April 2018.

Action

No action required.

MASTER TRUSTS – AUTHORISATION AND SUPERVISION REGIME

The Government has published a [consultation](#) on draft regulations to implement the master trust authorisation and supervision framework set in the Pension Schemes Act 2017. The draft regulations set out details of:

- the scope and application of the framework (including various exemptions);
- the process for obtaining authorisation;
- the criteria that must be satisfied in order to obtain authorisation; and
- controls and ongoing monitoring.

The consultation closes on 12 January 2018. The draft regulations are intended to come into force on 1 October 2018.

Action

Schemes with non-associated employers that provide any form of DC benefit should confirm whether they are subject to the master trust regime.

FINANCE BILL

A new [Finance Bill](#) has been laid before Parliament. Among other things, it provides for new HMRC powers to refuse to register or to de-register:

- schemes with dormant sponsoring employers (from 6 April 2018); and
- master trusts which have not been authorised by the Pensions Regulator (from the date that the master trust authorisation regime comes into force).

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

Action

No action required.

AUTOMATIC ENROLMENT – 2017 REVIEW AND 2018/19 EARNINGS FIGURES

The Government has published a [report](#) on its 2017 review of the automatic enrolment regime. The report announces, among other things, plans to:

- lower the age at which jobholders become eligible for automatic enrolment from 22 to 18; and
- remove the lower end of the qualifying earnings band.

The Government does not anticipate introducing these changes until the mid-2020s. The Government broadly does not propose to change the alternative quality requirements for schemes, although it will consider adjusting the legislation so that the cost of accruals test for DB schemes can be used where active members have voluntarily opted to accrue benefits on a scale that would otherwise fail the test.

The Government has also published its [review](#) of the earnings trigger and qualifying earnings band for the 2018/19 tax year. The review proposes that the figures for 2018/19 should be set as follows:

- earnings trigger: £10,000
- qualifying earnings band: £6,032 – £46,350 (the NICs lower and upper earnings limits)

Action

Employers should ensure that their automatic enrolment processes are updated to reflect the new earnings figures when these come into force.

ANNUAL CHAIR'S DC GOVERNANCE STATEMENT – REGULATOR GUIDANCE

The Pensions Regulator has published a [quick guide](#) to preparing the chair's annual DC governance statement.

Action

No action required, but schemes that are subject to the requirement to produce an annual chair's DC governance statement may find the guide helpful.

RECORD-KEEPING – REGULATOR GUIDANCE

The Pensions Regulator has published quick guides on [measuring](#) and [improving](#) scheme data.

Action

No action required, but schemes may find the guides useful, especially in light of the fact that DB and hybrid schemes are now required to report on the quality of scheme data in the scheme return.

SCHEME PLANNING – SAMPLE DOCUMENTS

The Pensions Regulator has published a [sample business plan](#) and [sample annual planner](#) as part of its drive to raise standards of scheme governance.

Action

No action required, but schemes may find the sample documents useful.

AUTOMATIC RE-ENROLMENT – ONLINE EMPLOYER TOOL

The Pensions Regulator has launched a [tool](#) to help employers find their key automatic re-enrolment dates.

Action

No action required, but employers may find the tool useful.

AUTOMATIC ENROLMENT – FURTHER PROSECUTIONS FOR NON-COMPLIANCE

The Pensions Regulator has [announced](#) the launch of its second criminal prosecution for failure to comply with the employer automatic enrolment duties.

Action

No action required, but employers should ensure that they are complying with their automatic enrolment duties.

TAKEOVER CODE – AMENDMENTS

The Takeover Panel has published [amendments](#) to the Takeover Code which would require an offeror, when announcing a firm intention to make an offer, to state in the announcement what its intentions are with regard to the target company's business, employees and pension scheme. The amendments took effect from 8 January 2018.

Action

No action required.

SCOTTISH INCOME TAX – NEW RATES

The Scottish Government has announced that the following income tax rates will apply to Scottish residents in the 2018/19 tax year:

- Under £11,850: 0%
- £11,850 – £13,850: 19%
- £13,851 – £24,000: 20%
- £24,001 – £44,273: 21%
- £44,274 – £150,000: 41%
- Over £150,000: 46%

HMRC has published draft regulations and an explanatory memorandum for consultation that make changes to the way in which scheme administrators are required to administer relief at source to reflect the introduction of the Scottish rate of income tax. The consultation closed on 31 December, and the draft regulations are intended to come into force on 6 April 2018.

HMRC has also published a pension schemes relief at source for Scottish income tax newsletter.

Action

Schemes should liaise with their administrators about the changes that will be required to their administration processes to reflect the new Scottish income tax rates, and may wish to consider notifying members of the new rates.

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 2018.

Action

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

PENSION SCHEMES NEWSLETTERS 93 AND 94

HMRC has published issue 93 and issue 94 of its Pension Schemes Newsletter. Among other things, these contain information on how relief at source will be administered in light of the introduction of a separate Scottish rate of income tax from April 2018.

Action

No action required, but schemes may find the information on relief at source useful.

COUNTDOWN BULLETIN 31

HMRC has published issue 31 of its Countdown Bulletin.

Action

No action required.

Pensions finance

PENSION FUNDS AND SOCIAL INVESTMENT – GOVERNMENT RESPONSE

The Government has published an interim response to the Law Commission's June 2017 report on pension funds and social investment. The response sets out, among other things, plans to clarify the legislation around:

- consideration by pension schemes of broader long-term financial risks;
- the ability of pension schemes to consider members' non-financial or ethical concerns; and
- the role of engagement alongside voting as an important aspect of the stewardship of pension scheme assets.

The Government will consult in 2018 on the necessary legislative changes.

Action

No action currently required.

DC CHARGES CAP – OUTCOME OF REVIEW

The Government has announced that, following its review of the DC charges cap, it will not make any changes to the cap's level or scope. The next review of the cap will take place in 2020.

Action

No action required.

INVESTMENT IN INNOVATIVE FIRMS AND ILLIQUID ASSETS

The Government announced in the Autumn Budget that it will seek to give pension schemes confidence that they can invest in assets supporting innovative firms as part of a diverse portfolio. The Pensions Regulator will clarify its guidance on investments with long-term investment horizons. The Government's response to its consultation on financing growth in innovative firms also announced that a working group will examine issues including barriers to DC pension investment in illiquid assets.

Action

No action required.

Pensions litigation

VAT TREATMENT OF PENSION FUND MANAGEMENT SERVICES PROVIDED BY NON-INSURER INVESTMENT MANAGERS

The High Court has held that:

- as a matter of EU law, pension fund management services provided by investment managers that were not authorised to conduct insurance business were not exempt from VAT during the period from 1 January 1978 to 30 September 2013;
 - if the Court is wrong on the above issue, as a matter of EU law, the trustees' claim for reimbursement of the wrongly charged VAT would be against the investment managers rather than HMRC; and
 - if the Court is wrong on both of the above issues, the trustees would have a claim against HMRC, but that claim would be subject to a four year limitation period.
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GENDER REASSIGNMENT – ENTITLEMENT TO STATE PENSION

In a reference from the Supreme Court to the Court of Justice of the European Union, the Advocate General has published an opinion stating that the requirement that existed prior to the introduction of same sex marriages in the UK for a transgender woman to annul their marriage in order to obtain a full gender recognition certificate and thereby obtain a state pension payable from age 60 was unlawful discrimination on the grounds of gender contrary to the Equal Treatment Directive as a cisgender woman could obtain payment of her state pension from age 60 regardless of whether or not she was married.

RECOVERY OF OVERPAYMENTS IN RELIANCE ON LEGAL ADVICE AS TO RULE INTERPRETATION

The Ombudsman has decided that it was not maladministration for trustees to seek legal advice regarding the correct interpretation of a scheme's pension increase rule and, in reliance on that legal advice, to seek recovery of overpayments which the trustees discovered had been made as a result of the pension increase rule being incorrectly interpreted in the past.

EMPLOYER LIABILITY FOR OFFER OF UNREDUCED EARLY RETIREMENT PENSION

The Ombudsman has decided that where an employer had offered a member an unreduced early retirement pension as part of a severance package, it was contractually obliged to honour that offer, even though it had been made on the basis of incorrect advice from the scheme administrator that no additional funding from the employer would be required. The letter offering the member the severance package made no mention of the offer being conditional on there being no additional cost to the employer, and the employer was therefore bound to honour the offer irrespective of the additional cost. The Ombudsman also decided that, regardless of the error on the part of the scheme administrator, it should have been apparent to the employer that an error had been made when no additional funding was advised.

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**

27 February 2018

15 May 2018

11 September 2018

11 December 2018

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

12 June 2018 – topic to be confirmed

13 November 2018 – 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.

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.

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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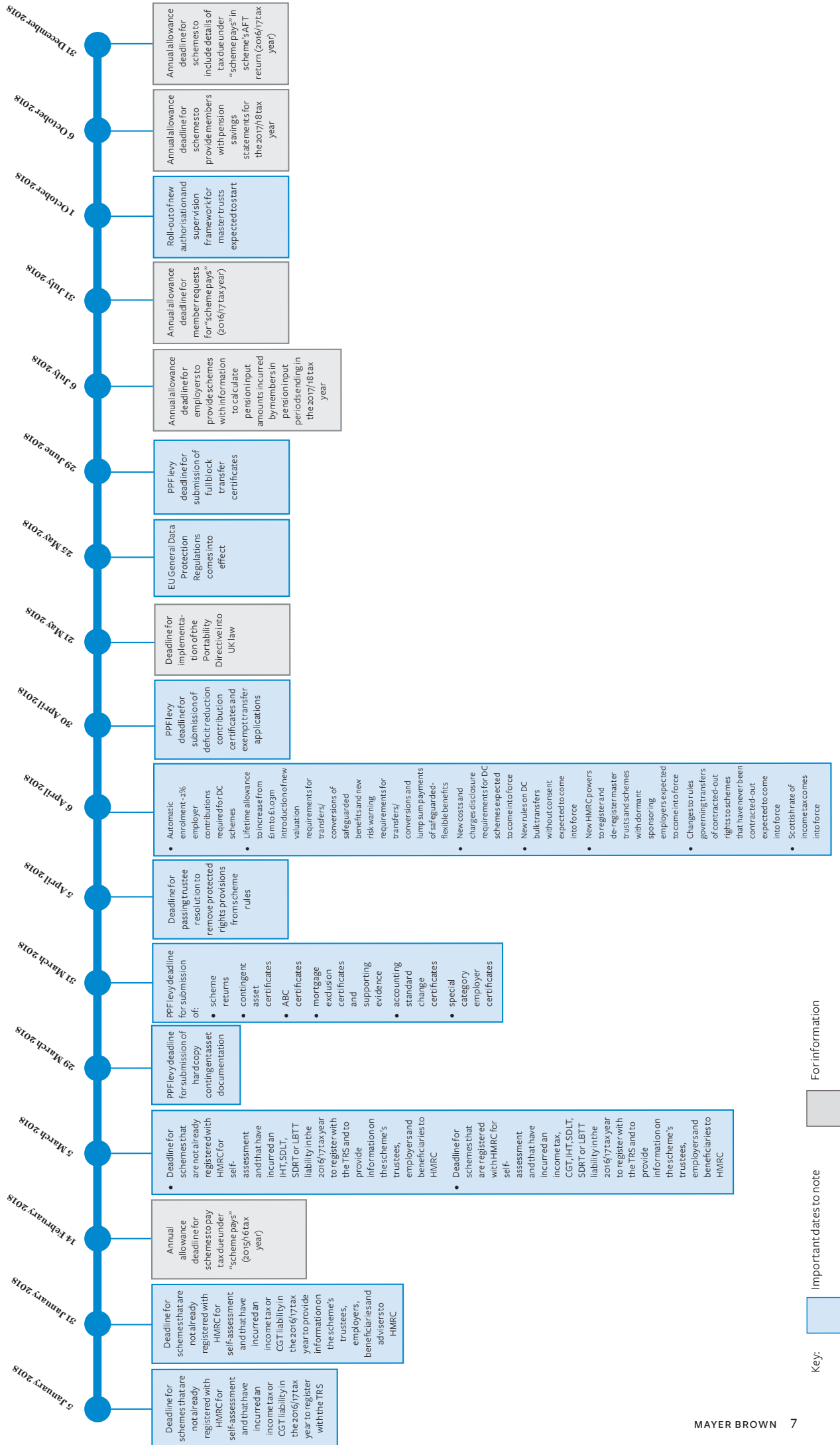
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Dates to note over the next 12 months



Key: Important dates to note For information

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