

THE PENSIONS BRIEF

At a glance...

Issues affecting all schemes

CYBER SECURITY ▲

Pensions Regulator guidance on the steps that trustees should be taking in relation to cyber security

21ST CENTURY TRUSTEESHIP

Guidance on advisers and service providers added to the Pensions Regulator's web resource

AMENDMENT FORMALITIES AND RECOVERY OF OVERPAYMENTS

High Court decision on the validity of amendments where the correct formalities were not followed, including comments on limitation periods when recovering overpayments

▲ Action required

▲ Follow development and keep under review

Issues affecting DB schemes

DB FUNDING ▲

Pensions Regulator's 2018 DB funding statement

PPF COMPENSATION

Advocate-General opinion on whether the PPF compensation regime fully complies with EU law

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DC BULK TRANSFERS WITHOUT CONSENT ▲

Government guidance on the new rules on DC bulk transfers without consent that came into force on 6 April 2018

MASTER TRUST AUTHORISATION ▲

Launch of a Pensions Regulator authorisation readiness review service

Issues affecting all schemes

Cyber security

The Pensions Regulator has published [guidance](#) on the steps that trustees should be taking to protect scheme members and assets against cyber security risks. These include:

- having sufficient understanding of the scheme’s cyber risk;
- putting sufficient controls in place to minimise the risk of cyber incidents;
- assuring themselves that all third party suppliers have put sufficient cyber security controls in place;
- maintaining a cyber security incident response plan;
- being clear on how and when cyber security incidents will be reported to the trustees and others, including regulators; and
- regularly testing and reviewing the scheme’s cyber security controls, processes and response plan.

Action

Trustees should review the guidance and consider whether they need to make any changes to their cyber security arrangements.

Failure to follow amendment formalities and recovery of overpayments

The High Court has [held](#) that changes made to a pension scheme in 1992 to introduce higher pension increases were valid despite a failure to observe the correct amendment formalities. The Court held that the changes were validated by a 1993 trust deed and rules which were expressed to have retrospective effect to 1990.

The Court also commented that recovery of overpayments by adjustment of future pension payments is not subject to the six year limitation period that applies when seeking to recover overpayments by way of repayment.

Burgess and others v BIC UK Limited [2018] EWHC 785 (Ch)

Action

No action required, but trustees and employers should ensure that they check and follow the proper formalities when making scheme amendments. Trustees may also wish to bear in mind the Court’s comments on limitation periods when deciding how to recover overpayments.

21st century trusteeship – advisers and service providers

The Pensions Regulator has added [guidance](#) on advisers and service providers to its 21st century trusteeship [web resource](#).

Action

No action required, but trustees may find the guidance useful when managing their adviser/service provider arrangements.



Issues affecting DB schemes

Annual DB funding statement

The Pensions Regulator has published its 2018 DB funding [statement](#) which is targeted at schemes undergoing valuations with an effective date between 22 September 2017 and 21 September 2018. Key messages include:

- the need for trustees to take action that is appropriate to their scheme's employer covenant category;
- the importance of schemes being treated fairly compared to shareholders, and the need for trustees to be alert to covenant leakage; and
- the need for trustees to monitor risks and take action where required.

The statement also notes various areas of risk that trustees should be considering, including discount rates, transfer activity, scheme maturity, and Brexit uncertainty. The Regulator has also published a [summary](#) of the statement.

Action

Schemes with an effective valuation date between 22 September 2017 and 21 September 2018 should review the statement and factor it into their funding negotiations. Other schemes may also find the statement helpful.

PPF compensation – compliance with EU law

The Advocate-General of the Court of Justice of the European Union (CJEU) has [concluded](#) that the EU Insolvency Directive requires member states to ensure that, where an employer enters insolvency, each member of its occupational pension scheme(s) receives at least 50% of their benefits under the scheme. If the Advocate-General's opinion is confirmed by the CJEU, it would mean that the PPF compensation regime does not fully comply with the Insolvency Directive as some members with particularly large pensions may receive less than 50% of their benefits as a result of the PPF compensation cap and the restrictions that the PPF applies to pension increases.

Hampshire v PPF [2018] EUECJ C-17/17-o

Action

No action required.



Issues affecting DC schemes

DC bulk transfers without consent

The government has published [guidance](#) for trustees on the new rules on DC bulk transfers without consent that came into force on 6 April 2018. The guidance covers topics including:

- trustee duties;
- the legislative requirements that apply to DC bulk transfers without consent; and
- good practice for bulk transfers.

Action

Trustees who are considering a bulk transfer without consent of DC benefits should review the guidance.

Master trust authorisation

The Pensions Regulator has [published](#) details of a master trust readiness review service that it is launching. The service will enable schemes which are subject to the master trust authorisation requirement to submit a draft authorisation application to the Regulator who will then provide feedback about the quality of the application. The Regulator has also published accompanying [forms and guidance](#). The readiness review service will be available from early May until 15 June 2018.

Action

Trustees of master trusts should consider whether they wish to use the readiness review service and, if so, should submit their draft authorisation application by 15 June 2018.



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

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 – trustee discretions and decision-making
(FULLY BOOKED)
13 November 2018 – internal controls and risk management

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: UK Pensions Law Podcasts

Every month Richard Goldstein, a partner in our Pensions Group, 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.

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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 Brief.

For more information about the Pensions Group, please contact:



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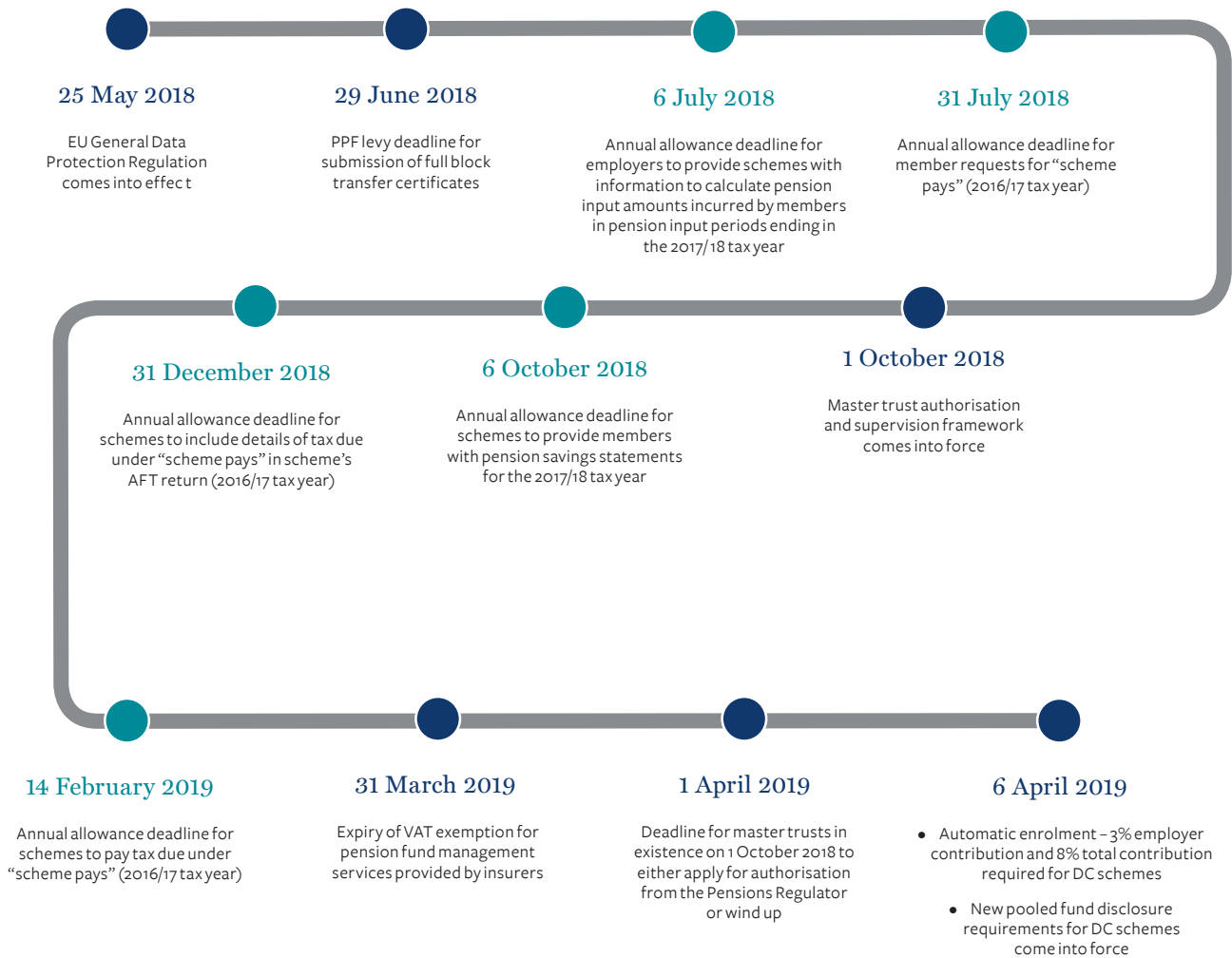
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Dates to note over the next 12 months



Key:

- Important dates to note
- For information

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