

# The Pensions Brief

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Act receives Royal Assent

▲ DATA TRANSFERS TO THE EEA

Draft European Commission data protection adequacy decision

▲ NORMAL MINIMUM PENSION AGE

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### OVERSEAS TRANSFERS

Legislation exempting transfers to Gibraltar from the overseas transfer charge

### PENSIONS REGULATOR ENFORCEMENT

50% increase in enforcement activity over the last quarter

### TRUSTEE MEETING MINUTES

Pensions Ombudsman decision on disclosure of meeting minutes to members

▲ Action required

▲ Follow development and keep under review

### Issues affecting DB schemes

#### GMP EQUALISATION

Industry guidance on tax issues in connection with GMP equalisation

#### AUTOMATIC ENROLMENT

Government review of the alternative quality requirements for DB and hybrid schemes



## Issues affecting all schemes

### Pension Schemes Act 2021

The [Act](#) has now received Royal Assent. It introduces important changes including:

- Enhanced Pensions Regulator enforcement powers (including new criminal offences).
- Additional DB scheme funding requirements.
- Changes to transfer rights.
- New climate change-related governance and reporting requirements.
- A structure for a pensions dashboard service.
- A framework for collective money purchase pension schemes.

For more information, please see our [legal update](#). The government plans to consult on regulations implementing the Act's provisions over the course of this year.

#### Action

Employers and trustees should keep the progress of implementation of the Act's provisions under review.

### Data protection – transfers of data to the EEA

The EU-UK Trade and Cooperation Agreement provides for a further Brexit transitional period of up to six months from 1 January 2021. During this time the UK is not a third country for the purposes of the European General Data Protection Regulation (EU GDPR).

The European Commission (EC) has now published a [draft adequacy decision](#) in favour of the UK with the aim of completing the adoption process by 30 June 2021. If the draft adequacy decision is adopted within this timeframe, then when the further transitional period ends, transfers of personal data to and from controllers and processors in the UK and EEA will be able to continue as they do currently, i.e. as if the UK were still an EU member state.

However, if the draft decision is not adopted by 30 June 2021, and no alternative bridging mechanism is put in place, EEA-based third parties will be required to implement an appropriate transfer mechanism under the EU GDPR for transfers of personal data to the UK after that date (although UK pensions schemes would be able to transfer personal data to the EEA without additional transfer mechanisms). If this were to be the case, trustees would need to take steps to ensure transfer mechanisms required under the EU GDPR are put in place with EEA-based third parties.

For more information, please see our [legal update](#).

#### Action

Trustees should keep the progress of the EC's adoption of the draft adequacy decision under review.



## Normal minimum pension age – increase

The government is consulting on a protection regime under which members of registered pension schemes who have an unqualified right as at 11 February 2021 to take benefits at an age below 57 would retain that right once normal minimum pension age increases to 57 in 2028. An unqualified right means that the member does not require anyone’s consent to take their benefits.

The protected pension age would apply to benefits accrued in the relevant scheme before and after 2028. Members would be able to take benefits in reliance on their protected pension age and carry on working. In addition, members would not be required to take all their benefits under the scheme.

The consultation closes on 22 April.

### Action

Trustees should keep the progress of the consultation under review.

## Overseas transfers – Gibraltar

Legislation came into force on 18 February that maintains the exclusion from the overseas transfer charge for recognised transfers to qualifying recognised overseas pension schemes (QROPS) established in Gibraltar following Brexit.

### Action

Trustees should ensure that their schemes’ transfer processes reflect the continued exclusion from the overseas transfer charge of recognised transfers to QROPS in Gibraltar

## Pensions Regulator – enforcement activity

The Pensions Regulator has published its quarterly compliance and enforcement bulletin, covering October – December 2020, which shows that the Regulator’s use of its statutory powers increased by nearly 50% overall from the previous quarter. This increase was in line with the Regulator’s expectations as automatic enrolment enforcement is returning to normal levels following measures put in place in March 2020 to support employers struggling with the immediate impact of the Covid-19 pandemic.

### Action

No action required.

## Trustee meeting minutes – disclosure to members

The Pensions Ombudsman has decided that minutes of trustee meetings at which the trustees discussed how they might exercise a discretion under the scheme rules were not documents that “supplement or alter in any way” the scheme’s trust deed and rules for the purposes of the disclosure legislation. The trustees were therefore not obliged to disclose them to a member who had requested them.

### Action

No action required.

## Issues affecting DB schemes

### GMP equalisation – tax issues

The Pensions Administration Standards Association has published good practice [guidance](#) for schemes on tax issues that may arise in connection with equalisation of guaranteed minimum pensions (GMPs).

#### **Action**

Trustees and employers may find the guidance helpful when considering their approach to GMP equalisation. However, they should ensure that they take legal advice on the approach that they decide to adopt.

### Automatic enrolment – quality requirements

The government has [responded](#) to its review of the alternative automatic enrolment quality requirements for DB and hybrid schemes. The government is required to review these requirements every three years. The government has concluded that the requirements should remain unchanged. The next review of the requirements will take place in 2023.

#### **Action**

No action required.

## Mayer Brown news

### Upcoming events

All events will take place as online webinars. For more information or to book a place, please contact [Katherine Carter](#).

- **Trustee Foundation Course**  
17 March 2021  
15 September 2021
- **Trustee Building Blocks Classes**  
16 June 2021 – Trustee discretions and decision-making  
8 December 2020 – DC governance

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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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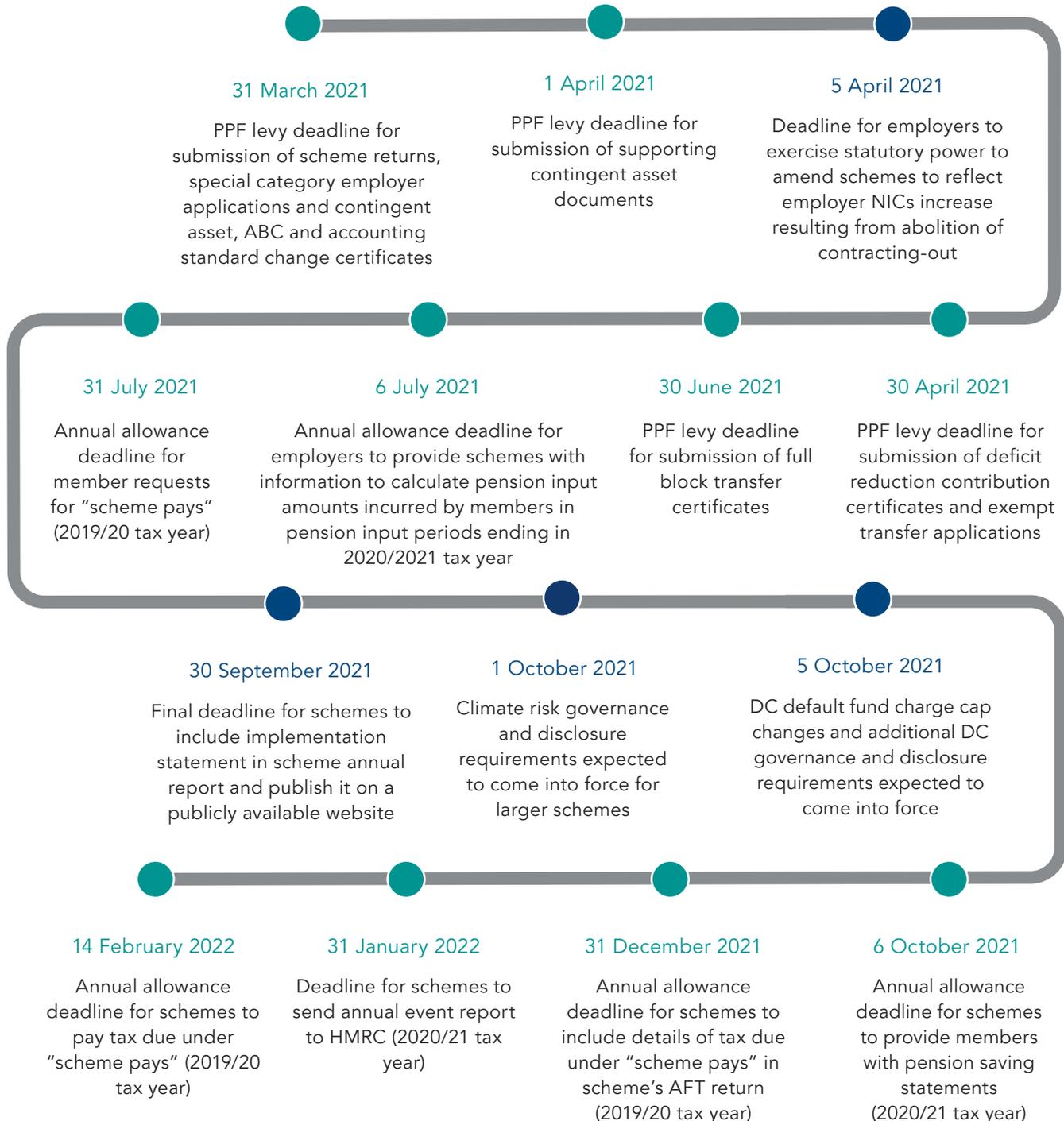
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## Dates to note over the next 12 months



**Key:**

- Important dates to note
- For information

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