

## Bulletin for Pensions Managers

Welcome to the September/October 2014 issue of our Bulletin for Pensions Managers. This issue covers developments to the end of October 2014.

In this issue:

1. Pensions news
4. Pensions finance
5. Pensions litigation
5. Mayer Brown events
6. Dates to note over the next 12 months

---

### Pensions news

#### PPF 2015/16 – 2017/18 LEVY TRIENNIUM

The PPF has published a [statement](#) confirming the levy framework for the next three years from April 2015.

Among other things, the statement confirms that, in contrast to the PPF's consultation proposals, the PPF will accept an asset-backed contribution ("ABC") arrangement irrespective of the type of underlying asset, provided that the arrangement can be given an insolvency value using the particular valuation approach required by the PPF.

Other changes include:

- new certification wording for parent company guarantees whereby trustees will have to certify a fixed amount that the guarantor could pay; and
- a new requirement for schemes that list themselves as last man standing ("LMS") schemes on Exchange to confirm that they have taken legal advice confirming their LMS structure.

The PPF's levy estimate for 2015/16 is £635m (almost 10% lower than the 2014/15 levy estimate). The PPF also [published](#) the draft 2015/16 Levy Determination and accompanying documents for consultation. The finalised Determination should be published in December.

#### Action

Schemes with parent company guarantees and/or ABC arrangements and LMS schemes will need to factor the new certification requirements into their planning.

---

#### PPF EMPLOYER INSOLVENCY SCORES: WEBSITE LAUNCHED

The PPF has launched a [website](#) where sponsors of DB and hybrid schemes can find out their insolvency risk score under the new risk rating system that the PPF has developed with Experian to replace the Dun & Bradstreet scores with effect from 31 October 2014.

#### Action

Schemes may wish to check the website to confirm their new employer insolvency score.

---

#### TAXATION OF PENSIONS BILL

This [Bill](#) has been laid before Parliament. It will put in place the tax-related aspects of the changes announced in the 2014 Budget under which, from April 2015, members with DC benefits (meaning here money purchase or cash balance rights) will be able to draw down those benefits as cash from age 55. For more information on the Bill, please see our recent [legal update](#).

The Bill is accompanied by [explanatory notes](#) and draft HMRC [guidance](#). The Treasury has also published a [briefing note](#) which aims to explain in a simple way what the Bill does.

#### Action

Schemes with DC benefits will need to consider the extent to which they wish to offer the new flexibilities to members.

#### Action

Whether or not schemes intend to offer the new flexibilities, they should start planning what changes will need to be made to scheme processes, communications and administration in light of the reforms well ahead of April 2015.

---

## PENSION SCHEMES BILL: GOVERNMENT AMENDMENTS

The Government has laid a series of [amendments](#) to the Pension Schemes Bill. Some of these provide for the guidance guarantee announced in the 2014 Budget and, among other things, confirm that the guidance service will be funded by a levy on FCA-authorized entities.

The amendments also give members a statutory right (a) to transfer money purchase and cash balance benefits up to the point of crystallisation and (b) to transfer those benefits in isolation from any defined benefits that they have in the same scheme.

Various amendments are also proposed to the defined ambition and collective pensions provisions of the Bill. Among other things, these are intended to clarify how the scheme funding, employer debt and other protection legislation will apply to the different categories of pension scheme described in the Bill.

### Action

Schemes should plan what changes will need to be made to scheme processes, communications and administration in light of the guidance guarantee and transfer reforms. Schemes may need to take advice to understand how the transfer reforms will affect them.

---

## GUIDANCE GUARANTEE PROVIDERS ANNOUNCED

The Treasury has [announced](#) that the guidance guarantee will be provided by the Citizens Advice Bureau (who will provide face to face guidance) and the Pensions Advisory Service (who will provide guidance over the telephone). The Government will also develop an online service.

### Action

No action required.

---

## DC SCHEMES: NEW GOVERNANCE STANDARDS AND CHARGING RESTRICTIONS

The DWP has published a [command paper](#) confirming its proposals for governance standards and charging restrictions in workplace pension schemes that provide DC benefits and consulting on draft regulations implementing the changes for occupational pension schemes. The consultation closed on 14 November 2014 and the regulations are intended to come into force in April 2015.

The FCA has published a [consultation](#) on rules introducing the charging restrictions for contract-based schemes (it has already consulted on rules imposing the governance standards on contract-based schemes).

This consultation closes on 31 December 2014 and the FCA expects to publish the finalised rules in February 2015.

### Action

No action currently required, but schemes with DC benefits should start considering what changes they may need to make to reflect the new requirements.

---

## DC GOVERNANCE STANDARDS AND CHARGING RESTRICTIONS: REGULATOR STATEMENT

The Regulator has published a [statement](#) in response to the DWP Command Paper on DC governance standards and charging restrictions. The Regulator will provide guidance for trustees of DC schemes and will update the DC code of practice in 2015 once the new legislation is in place. In the meantime, the Regulator has said that trustees should continue to follow the current code.

### Action

No action required.

---

## DC SHORT SERVICE REFUNDS: ABOLITION DATE

The DWP has [confirmed](#) that the abolition of short service refunds from DC occupational pension schemes will be brought into force in October 2015.

### Action

No action currently required, but DC schemes will need to consider what changes will be required to their administration systems to reflect the abolition.

---

## 2014 DB/HYBRID SCHEME RETURN: NEW QUESTIONS

The Regulator has added new questions to the DB/hybrid scheme return requiring details of:

- the financial assumptions used by schemes that have declared a surplus;
- value-at-risk calculations undertaken; and
- ABC arrangements.

The Regulator has published a [checklist](#) for DB/hybrid schemes, and an example 2014 scheme [return](#).

### Action

DB/hybrid schemes should ensure that they have the necessary information from their scheme actuaries and advisers to complete the return.

## AUTOMATIC ENROLMENT EARNINGS THRESHOLDS: CONSULTATION

The DWP has published a [consultation](#) on the level at which the automatic enrolment earnings trigger and qualifying earnings band should be set for the 2015/2016 tax year. The DWP's preference is for:

- the earnings trigger to remain tied to the income tax threshold; and
- the qualifying earnings band to remain tied to the National Insurance lower and upper earnings limits.

The consultation closed on 25 November 2014.

### Action

No action required.

---

## PENSIONS ACT 2014: PROVISIONS BROUGHT INTO FORCE

A number of the provisions of the Pensions Act 2014 have been brought into force, including provisions:

- amending the automatic enrolment transitional period for hybrid schemes (from 11 September 2014); and
- introducing alternative automatic enrolment quality requirements for DB schemes (from 12 September 2014).

### Action

No action required.

---

## REGULATOR: EXERCISE OF AUTOMATIC ENROLMENT ENFORCEMENT POWERS

The Regulator has published its latest quarterly automatic enrolment compliance and enforcement [bulletin](#) which notes an increase in the number of times that the Regulator has exercised its enforcement powers. In particular, the Regulator has used its power to levy fines for non-compliance for the first time, issuing fines to three employers.

### Action

No action required.

---

## NEST: REMOVAL OF CONTRIBUTIONS CAP AND TRANSFER RESTRICTIONS

The DWP has published a [consultation](#) on draft regulations to remove the annual contributions cap and transfer restrictions that currently apply to NEST from 1 April 2017. The consultation closed on 29 October 2014.

### Action

No action required.

---

## "FIT AND PROPER" TEST FOR SCHEME ADMINISTRATORS: GUIDANCE

HMRC has published [guidance](#) on the requirement that applies from 1 September 2014 for a scheme administrator to be a "fit and proper person". HMRC will assume that all persons appointed as scheme administrator meet the fit and proper requirements unless they hold or obtain information causing them to question that assumption. For these purposes, the scheme administrator in an occupational pension scheme is usually the trustees.

### Action

No action required.

---

## OMBUDSMAN UPDATE ON PENSIONS LIBERATION COMPLAINTS

The Ombudsman has published an [update](#) on the pensions liberation complaints that it is handling. As of 24 October, the Ombudsman had received around 140 complaints in relation to pension liberation, almost 90% of which relate to blocked transfers. The Ombudsman hopes to publish its decisions on these complaints this autumn.

### Action

No action required.

---

## HMRC COUNTDOWN BULLETIN ISSUE 3

HMRC has published issue 3 of its Countdown Bulletin. The issue reminds schemes that there are only 18 months until the abolition of contracting-out, and urges schemes to progress their GMP reconciliation work, noting that to date HMRC has received a much lower than expected number of GMP reconciliation requests.

### Action

Schemes which have not already started their GMP reconciliation work should do so sooner rather than later. HMRC will not accept reconciliation requests made after April 2016.

---

## REGISTERED PENSION SCHEMES MANUAL: UPDATES

HMRC has published various [updates](#) to the RPSM which mainly reflect the provisions of the Finance Act 2014.

### Action

No action required.

---

## PENSION SCHEMES ONLINE: GUIDANCE

HMRC has published detailed [guidance](#) for scheme administrators and practitioners on how to use its Pension Schemes Online service.

### Action

In-house scheme administrators may find the guidance useful.

---

## HMRC PENSIONS NEWSLETTER 65

HMRC has published issue 65 of its Pensions Newsletter. Among other things, the issue covers the fact that all HMRC's pension schemes content has moved from the HMRC website to the GOV.UK website from the end of September.

### Action

No action required.

---

## PPF TECHNICAL NEWS ISSUE 6

The PPF has published [issue 6](#) of its Technical News publication. Among other things, the issue covers the implications for the PPF of the coming into force of the new definition of money purchase benefits.

### Action

No action required.

---

## MG ROVER GROUP: S89 REPORT

The Regulator has published a [s89 report](#) on its actions in relation to the MG Rover Group Senior Pension Scheme. Following the issuing of a financial support direction ("FSD") warning notice in December 2013 to MGR Capital (which had purchased a portfolio of vehicle finance agreements with former MG Rover Group customers), a settlement has been agreed under which MGR Capital will pay just over £8m into the pension scheme. The Regulator expects this sum to allow the scheme to wind up outside the PPF, and is no longer seeking to issue an FSD against MGR Capital.

### Action

No action required.

---

## MONARCH GROUP RESTRUCTURING DEAL: PPF STATEMENT

The PPF has published a [press release](#) in connection with Monarch Group's announcement that it has agreed a restructuring deal under which an investment company will acquire a 90% interest in the Group with the remaining 10% being acquired by the PPF. The Group's pension scheme will enter a PPF assessment period.

### Action

No action required.

---

## Pensions finance

### KAY REVIEW: IMPLEMENTATION PROGRESS REPORT

BIS has published a [progress report](#) on the implementation of the recommendations in the Kay Review.

Among other things, the report sets out the Government's response to the recommendations made by the Law Commission in its review of the fiduciary duties of investment intermediaries. The Government has accepted the majority of these recommendations and in particular:

- the Regulator will update its investment guidance in 2015 to reflect the Law Commission's conclusions on the factors that trustees should take into account when setting an investment strategy; and
- the Government will consult on changes to the Investment Regulations to amend the reference to "social, environmental or ethical considerations" to ensure that it more clearly reflects the distinction between financial and non-financial factors, and to amend the regulations governing the SIP to require trustees to state their policy (if any) on stewardship.

### Action

No action required.

---

### INSURANCE POLICYHOLDER PROTECTION RULES: PROPOSED CHANGES

The PRA has published a [consultation](#) on proposed changes to its insurance policyholder protection rules. Among other things, it is proposing to:

- increase the limit for FSCS compensation in the event of an insurer failing to 100% of cover for certain products including annuities; and
- provide FSCS protection post-transfer for policyholders who have outstanding protected claims against an insurer whose claims were covered by the FSCS before their policies transferred to a successor firm.

The consultation closes on 6 January 2015.

### Action

No action required.

---

## UK-NETHERLANDS AGREEMENT ON TAX TREATMENT OF CIFS

HMRC has [announced](#) that it has reached an agreement with the Dutch tax authorities on how the UK-Netherlands double taxation convention will apply to charities and pension schemes that invest in a common investment fund (“CIF”). The agreement allows a CIF which is established in the UK and which receives Dutch source income and gains to claim the benefit of the convention on behalf of UK pension scheme and charity investors in the CIF. This will avoid the need for each of those investors to claim the benefit of the convention individually in order to avoid a double tax charge.

### Action

Schemes which invest in a CIF which receives Dutch source income and gains should check that the CIF will claim the benefit of the convention on their behalf.

---

## Pensions litigation

### GRIFFIN V PLYMOUTH HOSPITAL NHS TRUST: COMPENSATION FOR PENSIONS LOSS

The Court of Appeal has [decided](#) that the Employment Appeal Tribunal had incorrectly applied the simplified approach to a claimant’s pension loss rather than the substantial loss approach. The substantial loss approach generally results in a higher pension loss compensation figure than the simplified approach.

The Court held that the substantial loss approach should be followed because:

- the claimant had been employed by the NHS for a significant period of time;
- the claimant had specialist skills that meant she was likely to have remained with the NHS for her entire career; and
- even though the claimant was likely to find alternative employment, it was unlikely to offer her membership of a final salary pension scheme.

The court also noted that, although the [guidance](#) used by employment tribunals for calculating pension loss is extremely valuable, it should not be assumed that following it will always be the correct approach.

## Mayer Brown events

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

- **Trustee Foundation Course**

9 December 2014

24 February 2015

19 May 2015

15 September 2015

1 December 2015

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**

16 June 2015 – topic to be confirmed

17 November 2015 – 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.

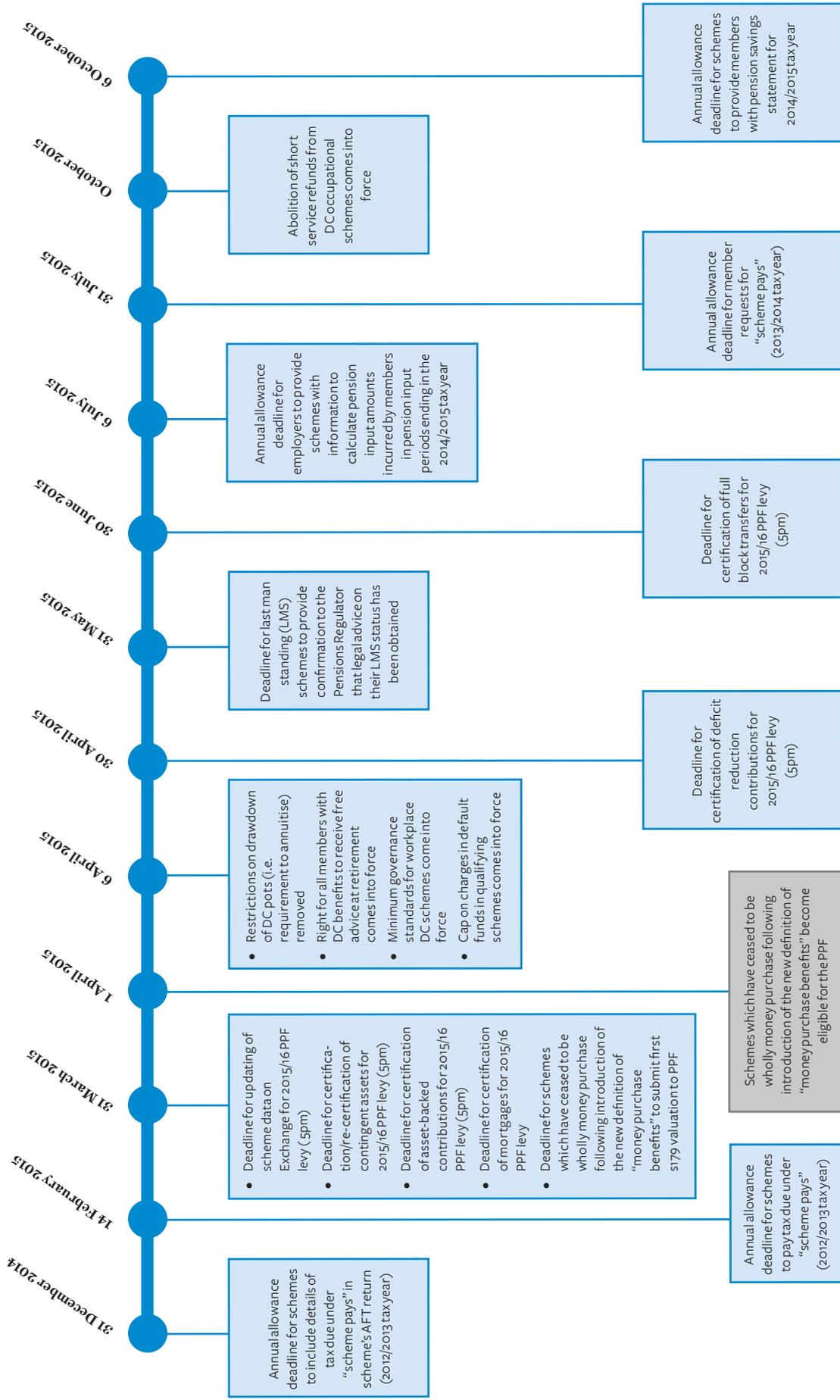
***Ian Wright***

Partner, London

E: [iwright@mayerbrown.com](mailto:iwright@mayerbrown.com)

T: +44 20 3130 3417

# Dates to note over the next 12 months



Key:  Important dates to note

For information

## About Mayer Brown

Mayer Brown is a global legal services provider advising clients across the Americas, Asia and Europe. Our geographic strength means we can offer local market knowledge combined with global reach. 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, DAX and Hang Seng 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.

Please visit [www.mayerbrown.com](http://www.mayerbrown.com) for comprehensive contact information for all Mayer Brown offices.

Mayer Brown is a global legal services provider comprising legal practices that are separate entities (the "Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP and Mayer Brown Europe-Brussels LLP, both limited liability partnerships established in Illinois USA; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales (authorized and regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown, a SELAS established in France; Mayer Brown JSM, a Hong Kong partnership and its associated legal practices in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. Mayer Brown Consulting (Singapore) Pte. Ltd and its subsidiary, which are affiliated with Mayer Brown, provide customs and trade advisory and consultancy services, not legal services. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

© 2014 The Mayer Brown Practices. All rights reserved.