SLAUGHTER AND MAY

Pensions and Employment: Pensions Bulletin

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For more information, or if you have a query in relation to any of the above items, please contact the person with whom your normally deal at Slaughter and May or Bridget Murphy

Watch List

The Watch List is a summary of some potentially important issues for pension schemes which we have identified and where time is running out (or has recently run out), with links to more detailed information. New or changed items are in **bold**.

No.	Topic	Deadline	Further information/action
1.	Severance payments and tapered annual allowance pitfall	From 6th April, 2016	Pensions Bulletin 16/06 2.1 Since 6th April, 2016, the £40,000 annual allowance for high income individuals is reduced by way of a taper to a minimum of £10,000 for those with income of £210,000 or more. 2.2 For the taper to apply, the individual must have UK taxable income in 2016/17 of: ♦ £110,000 “threshold” income, and ♦ £150,000 “adjusted” income. 2.3 Any taxable element of a termination package counts towards both threshold and adjusted income. A taxable termination payment could therefore catapult an individual over the £150,000 limit, resulting in a tax charge for the member on pension provision already made. 2.4 There may be scope for timing taxable termination payments to straddle tax years but care would be needed in view of anti-avoidance provisions. Termination procedures should be reviewed to build in a process to identify and manage this point.
2.	Members who intend to apply for Fixed Protection 2016 (“FP 2016”) must have stopped accruing benefits (note that fixed protection may be lost on joining a registered life cover arrangement)	6th April, 2016	Pensions Bulletin 15/16
3.	Abolition of DB contracting-out: Rule amendments needed Note: Statutory power to amend, retrospective to 6th April, 2016, expires on 5th April, 2017	6th April, 2016	If your scheme was contracted-out on 6th April, 2016 and currently has active members accruing benefits (and who continued to accrue benefits after 5th April, 2016 in the scheme), then your scheme will, more likely than not, require a rule amendment effective from 6th April, 2016 to prevent the inadvertent addition of an additional underpin to the accrued GMPs of those active members. See further Pensions Bulletin 16/03.
4.	Put in place register of persons with significant control (“PSC”) for trustee company where trustee is a corporate	6th April, 2016	Pensions Bulletin 16/03
5.	Ban on member-borne commissions in DC schemes used for auto-enrolment	5th July, 2016 at the latest	Trustees must notify “service providers” if the scheme is being used as a “qualifying scheme” for auto-enrolment purposes and some or all of the benefits are money purchase. Pensions Bulletin 16/04.
6.	Cyclical re-enrolment	Within 6 month window by reference to third anniversary of employer’s staging date	For example employers with a 2013 staging date must complete cyclical re-enrolment process between December 2015 and June 2016. Publication available to clients on request from usual pensions contact.
7.	First Chair’s annual governance statement	Within 7 months of end of scheme year (for scheme years ending on or after 6th July, 2015)	For example, schemes with a 31st December year end must submit statement by 31st July, 2016. Client note dated June, 2015 available from Dawn Holmes.

No.	Topic	Deadline	Further information/action
8.	"Brexit"	Referendum held on 23rd June, 2016	8.1 Supreme Court ruled[1] on 24th January, 2017 (8/3) that Article 50 notice triggering 2 year exit period requires an Act of Parliament to authorise the Government to serve that notice. 8.2 Consider potential impact on pension schemes. Client publications available on Slaughter and May website.
9.	DC Code of Practice 13 on governance and administration takes effect	28th July, 2016	Schemes offering money purchase benefits (including money purchase AVCs, insofar as the legislation applies) must familiarise themselves with the revised Code.
10.	GMP equalisation		
10.1	Lloyds Trade Union announces intention to bring GMP equalisation class action	August 2016	We will continue to monitor developments in this litigation, said to be worth £300 million which has implications for all schemes with GMPs accrued in the period 17th May, 1990 to 5th April, 1997.
10.2	DWP publishes consultation proposing methodology for equalising GMPs	28th November, 2016	Pensions Bulletin 16/19
11.	Civil partner/same sex spouse pensions: retroactivity pre-5th December, 2005		
11.1	CJEU decision in *Parris v. Trinity College, Dublin*	Decided on 24th November, 2016	A 'death bed marriage' scheme rule did not indirectly discriminate on sexual orientation grounds. Pensions Bulletin 16/18
11.2	Provisional date for Supreme Court to hear appeal in *Walker v. Innospec*	March, 2017	To establish whether survivor benefits for civil partners will be retroactive to a date before the Civil Partnership Act 2004 came into force.
12.	EMIR - Derivatives: New requirements to exchange variation margin	1st March, 2017	If investment manager uses over-the-counter derivatives, check investment manager has arranged for trustee to comply. Pensions Bulletin 17/01 **See item X below.**
13.	**New 25% tax charge on certain transfers to QROPS**	**9th March, 2017**	**Transfers to QROPS in execution of requests made before 9th March, 2017 are not subject to the new tax charge.** **See VI below.**
14.	PPF Levy		
14.1	Measurement Time for submission of scheme data for 2017/18 PPF levy changed	31st March, 2017	Pensions Bulletin 16/14
14.2	Submission deadline for most certificates and scheme return	31st March, 2017, midnight	Pensions Bulletin 17/01
15.	**Pensions Advice Allowance expected introduction date**	**6th April, 2017**	Pensions Bulletin 17/04
16.	Gender pay gap information - Regulations expected to be in force on 6th April, 2017		Assess impact of pension provision on requirement to publish information designed to highlight any gender pay gaps. See Pensions Bulletin 17/03 and Employment Bulletin 17/03.
		4th April, 2018	Deadline for reporting above information.
17.	HMRC's existing practice on VAT and pension schemes ends (please see our item on this in Pensions Bulletin 16/13)	31st December, 2017	Employers should consider taking steps to preserve, or even enhance, their pensions-related VAT cover.
18.	Data protection: New Regulation	25th May, 2018	Pensions Bulletin 16/05 Employment Bulletin 16/15 As data controllers, trustees will need to ensure that compliance with the EU General Data Protection Regulation is achieved by this date.
19.	Further EMIR exemption extension for pension scheme arrangements	16th August, 2018	Pensions Bulletin 17/01

[1] This was predicted in our client seminar on 23rd November, 2016 (albeit 11/0, not 8/3)

No.	Topic	Deadline	Further information/action
20.	IORP II expected transposition deadline	12th January, 2019	Pensions Bulletin 16/11

New Law

I. Green Paper on DB pensions

A. General

1. The Government's Green Paper on private sector DB pensions, entitled "**Security and sustainability in defined benefit pension schemes**", was published on 20th February, 2017. Responses are invited by 14th May, 2017.

2. The paper concludes that:

   2.1 there is no "significant structural problem" with the regulatory and legislative framework for DB schemes; and

   2.2 the available evidence does not appear to support the view that DB pensions are generally "unaffordable" for employers.

   Comment (1): The paper notes that comparing deficit reduction contributions with profit before tax is a consistent method for considering general affordability trends across DB schemes.

   Comment (2): However, the Government acknowledges that measuring affordability for a particular employer is not an exact science.

B. Funding and investment

1. It is not clear that, in general, discount rates being used are unduly pessimistic.

2. There is no strong evidence that there is a systemic issue with the current flexibilities around funding.

3. The triennial valuation is not a significant problem for most schemes but the present 'one size fits all' approach may not be the best use of scheme or Regulator resources.

4. The Government wants to explore whether there is scope to encourage or facilitate schemes to make "more optimal" investment decisions and to mitigate any barriers to greater use of alternative asset classes.

5. Further research on the quality of trustees' investment decision-making is to be commissioned.

C. Employer contributions and affordability

1. The Government does not believe that "across the board" action is needed to reduce members' benefits to relieve financial pressure on employers.

2. There may be a case for sponsors with significant resources but substantial deficits to make faster progress in repairing these.

3. But the Government is considering options for "stressed" schemes and their sponsoring employers. Options include:

   3.1 allowing struggling employers to separate more easily from their scheme (by widening the criteria for regulated apportionment arrangements);

   3.2 cutting or renegotiating benefits;

   3.3 more intensive support from the Pensions Regulator; and

   3.4 enhancing the powers of the Regulator so it can separate the scheme from the employer or wind the scheme up in specific circumstances.

   Comment: Defining 'stressed' schemes will not be straightforward. The Paper suggests that only 5% of members will be in such a scheme.

4. The paper considers the possibility of allowing a scheme to run on without an employer and looks at whether a Central Discontinuance Fund could be established to manage the benefits of such schemes.

5. It also raises the possibility of relaxing trivial commutation rules.

6. The Government is seeking views on whether:

   - indexation should be suspended in some circumstances, and

   - a statutory override should be introduced, to allow schemes to move to a different index for pension increases and revaluation.

D. Member protection/Regulator's powers/Role of trustee

1. The paper considers whether the Regulator should take a more proactive role in scheme funding and be more explicit about the level of risk it is appropriate for a scheme to take.

2. The DWP's view is that a blanket requirement on parties to obtain Clearance from the Regulator ahead of any planned corporate actions would be disproportionate.

3. The paper notes that if a Clearance regime were imposed in certain specified circumstances, it would need to be very narrowly limited to avoid potentially significant disadvantages to business.

4. As regards information gathering by the Regulator, the Government is considering whether to:

   4.1 impose a duty on all parties responsible for a scheme, to co-operate with the Regulator, and

   4.2 provide the Regulator with the power to interview relevant parties.

5. Options to strengthen the position of trustees include requiring:

   5.1 trustees and employers to agree and publish a joint statement of objectives, or

   5.2 formal consultation with trustees when the scheme is severely underfunded and the sponsor is considering making dividend payments.

E. Consolidation of schemes

1. The Government's view is that there is a strong case for greater voluntary aggregation of smaller schemes into consolidation vehicles, to reduce costs and improve investment options and governance.

2. The Government has rejected the idea of running "super-fund" consolidation vehicles, preferring instead for innovation to come from the pensions industry, perhaps with structures or incentives provided by Government.

Comment (1): The Green Paper mirrors the Regulator's concerns about schemes spending more on dividends than on contributions to their DB schemes. Please see Pensions Bulletin 16/11 which covers the relationship between excessive dividends and the Regulator's power to issue contribution notices.

Comment (2): The Green Paper refers to the Work and Pensions Select Committee report on DB schemes (please see Pensions Bulletin 17/01) which suggested that the Regulator should have power to add punitive fines to contribution notices or financial support directions so that the fine trebles the original demand.

Comment (3): The Government considers that such fines could lead to the Regulator being overwhelmed with clearance applications, or corporate activity being halted or at least delayed.

Comment (4): A letter dated 20th February, 2017, from Richard Harrington MP, Minister for Pensions, to Frank Field MP (who chairs the Select Committee) also outlines the Government's concerns about adopting punitive fines: "*We are concerned that such punitive fines, as you describe, could damage corporate groups with DB pension schemes by stifling finance and investment, particularly because of the increased risk to investors.*"

Comment (5): The Government does not entirely reject the possibility of introducing punitive fines, however. The paper envisages that narrow time limits for Regulator action would need to be set and any new powers for the Regulator would need to be proportionate and workable, not detrimental to the economy.

II. PPF consultation on proposed levy rule for schemes without substantive sponsor - 2017/18 Levy Determination

1. The PPF has published its consultation (dated 20th February, 2017) on a proposed levy rule for schemes without a substantive sponsor. The proposed rule is to be included in the 2017/18 Levy Determination.

2. The consultation closed on 6th March, 2017.

3. The PPF intends the new approach to apply only to schemes that continue to run on without a substantive sponsor. To be in scope, the scheme must have entered into an ongoing governance arrangement between 1st January, 2017 and 31st March, 2018.

4. The paper states that the PPF reserves the right to recalculate a levy that has been calculated and issued earlier in 2017/18 on the conventional basis.

5. The PPF points out that it does not rule out developing its approach to apply to a wider range of schemes in the future.

6. The consultation paper proposes using an adaptation of a commonly used pricing model for valuing put options. This is because the PPF considers its assurance that it will meet the cost of any shortfall needed to pay PPF compensation is equivalent to the PPF selling a put option to the scheme.

7. The PPF also propose that the levy payable by these schemes would never be less than the amount that would be charged if the standard levy rules were applied.

8. The PPF is keen to point out that it is not indicating that it will support any particular approach to restructuring (through a regulated apportionment arrangement ("**RAA**"), or otherwise), that would result in a scheme with no substantive sponsor.

9. The consultation paper notes that the Green Paper on DB pensions (please see above) seeks views on widening the criteria for RAAs. The PPF therefore may need to develop its approach in the future, in response to developing Government policy, and the operation of the new method once introduced.

10. As regards the existing levy rules that modify the standard methodology (such as contingent assets, deficit-reduction contributions and transfers), the PPF's starting position is that it does not intend to recognise those arrangements for these schemes for 2017/18.

11. Affected schemes will need to submit certain pieces of information to the PPF, the effective date and submission date of which is to be set on a scheme-specific basis.

Comment: The levy determination for 2017/18 published on 15th December, 2016 was described by the PPF as "not absolutely final", pending the introduction of the levy rule to which the above consultation relates (please see Pensions Bulletin 17/01).

III. Reminder: 5th April, 2017 deadline for former COSRS to prevent revaluation underpin

1. Our Pensions Bulletin 16/03 identified the risk faced by certain schemes of the inadvertent application of a revaluation underpin for GMPs.

2. To avoid such an underpin, trustees would need to make use of a statutory power[2] to modify the scheme.

3. This would need to be done by 5th April, 2017, with retroactive effect to 6th April, 2016.

4. A revaluation underpin for GMPs may apply to schemes:

   4.1 which had active members who were in contracted-out employment until contracting-out ended on 6th April, 2016;

   4.2 those active members continued in pensionable service on and after 6th April, 2016; and

   4.3 the scheme rules provide for revaluation in line with Section 148 Orders until the member leaves contracted-out employment and then fixed rate revaluation until the member reaches GMP pension age (“**Pre 6th April, 2016 fixed rate revaluation**”).

5. The underpin would result in the GMPs of affected members receiving the better of:

   5.1 Pre 6th April, 2016 fixed rate revaluation, applied from 6th April, 2016; and

   5.2 Section 148 revaluation when the benefit emerges at GMP age (this is the default position under GMP revaluation legislation).

6. Making the necessary amendment to avoid the underpin would enable the scheme to continue adopting fixed rate revaluation, but at the end of the member’s pensionable service, instead of on his leaving contracted-out employment (which happened automatically, when contracting out was abolished on 6th April, 2016).

IV. Corporate Governance Code - WPC report and FRC review

1. The Work and Pensions Committee has published its response of 9th February, 2017 to the Government’s Green Paper on corporate governance reform, dated 29th November, 2016.

2. The Committee recommends that private companies that are large, “as defined by Government”, or have over 5,000 defined benefit pension scheme members be made subject to the FRC Corporate Governance Code on a comply or explain basis.

3. The response includes a table (at Annex 1) of the top 30 largest private companies in the UK that would fall within the parameters of this recommendation. The response notes that BHS was a private company.

4. The Committee also recommends that pension scheme trustees be added to the list of stakeholders to whom company directors must have regard under section 172(1) of the Companies Act 2006.

5. The Committee considers that making such a change may increase the chances that:

   5.1 directors would take into account the interests of current and future pensioners in carrying out their duties, and

   5.2 those who have failed to do so will be held accountable in the courts.

6. On 16th February, 2017, the FRC announced a “fundamental review” of the Corporate Governance Code. The review will take account of, amongst

[2] Occupational and Personal Pension Schemes (Modification of Schemes - Miscellaneous Amendments) Regulations 2016

other things, issues raised in the Green Paper on corporate governance reform.

7. The FRC plans to consult on its proposals "later in 2017". The consultation is to be based on the outcome of the review and the Government's response to its Green Paper.

Comment (1): The UK Corporate Governance Code requires the remuneration committee to consider the pension consequences, and associated costs to the company, of pensionable remuneration increases, especially for directors close to retirement.

Comment (2): The Code also states that the company's compensation commitments, including pension contributions, in the event of a director's appointment being terminated early should be considered by the remuneration committee.

V. Auto-enrolment consultation about new employers

1. The DWP is consulting on making changes to the auto-enrolment ("**AE**") legislation in respect of employers due to become subject to AE duties in 2017 who do not fall within the AE staging framework.

2. The consultation opened on 10th February, 2017 and closed on 3rd March, 2017.

3. The staging framework has given smaller employers more time to prepare for AE. The last tranche of staging will apply to new employers set up before 30th September, 2017.

4. The consultation paper proposes that AE duties for in scope employers should be triggered on the date on which the first worker starts employment with the employer.

   Comment: Without this change, the new employer's AE duties would not be triggered until the day on which PAYE income is first payable in respect of any worker.

5. The paper also proposes the option of allowing these employers to defer by 3 months the date on which they become subject to AE duties. In that event, the employer must give its workers notice of its intention to defer.

6. Draft regulations, entitled the Employers' Duties (Implementation) (Amendment) Regulations 2017, are appended to the consultation document and are expected to come into force on 1st April, 2017.

Tax

VI. Overseas transfer charge

1. A new tax charge of 25% on certain transfers to qualifying recognised overseas pension schemes ("**QROPS**") was announced in the Spring Budget on 8th March, 2017.

2. The trustee (as scheme administrator for tax purposes) of the registered scheme making the transfer will be jointly and severally liable with the member for the new tax charge.

3. There is an exclusion from the tax charge where a transfer is made to a QROPS in execution of a request made before 9th March, 2017.

4. In the draft guidance issued on 8th March, 2017, HMRC state (at paragraph 2.13) that:

   "*A transfer request is made when a member has made a substantive request to the scheme administrator of their pension scheme on which the scheme administrator is required to take action in relation to the transfer. This means an instruction from the member to transfer £X or X% of their pension funds to a* named overseas pension scheme. A *casual enquiry is not a transfer request.*"

5. All QROPS scheme managers have to decide whether they want their scheme to continue to be a QROPS and so to operate the overseas transfer charge. In order to continue with QROPS status, a revised undertaking to HMRC must be delivered by 13th April, 2017, and if this is not received, the scheme will cease to be a QROPS from 14th April, 2017.

6. For existing transfer requests, trustees (as scheme administrators for tax purposes) should:

    6.1 check whether the request meets the description given in the guidance, and therefore can be treated as a pre-9th March, 2017 request.

    6.2 if the request meets this description, but the transfer to the overseas scheme is to be made after 13th April, 2017, before making the transfer, check that the overseas scheme manager has made the required undertaking, and that the scheme continues to be a QROPS after that date.

    6.3 use the updated forms issued on 8th March, 2017 to make the required reports to HMRC.

    Note 1: If the undertaking has not been given by the manager of the overseas scheme, any transfer made after 13th April, 2017 will be an unauthorised payment with attendant penal tax charges, including a scheme sanction charge.

    Note 2: In order to fit within the exclusion for pre-9th March, 2017 requests, the transfer must be made to the scheme named in the original transfer request.

7. Where transfer requests are received on or after 9th March, 2017, the new rules will apply.

8. There are a number of exclusions to the new tax charge for transfer requests received on or after 9th March, 2017. These include:

    8.1 the member being tax resident in the same country as the receiving QROPS.

    8.2 the member being resident in any EEA country and the QROPS being established in any EEA country.

    8.3 circumstances where the QROPS is an occupational pension scheme and, when the transfer is made, the member is an employee of a sponsoring employer of the QROPS. HMRC state that this is aimed at pension schemes set up by multi-national employers for employees working for a branch, or for a subsidiary, or other group company, in another country.

9. Any existing procedures for QROPS transfers will need to be reviewed to take into account the new tax charge and the accompanying draft guidance.

Cases

VII. Scottish equalisation case uses presumption of regularity

On 10th February 2017, the Scottish Court of Session (Outer House) handed down its judgment in *Knight v Sedgwick Noble Lowndes and Mercer*, which concerns the application of the presumption of regularity to the closure of the Barber window.

A. Facts

1. The assets and liabilities of 4 schemes[3] ("**4 schemes**") were transferred into the Johnston Press Pension Plan ("**the Plan**").

2. The trustees and principal employer of the Plan and the former principal employers of each of the 4 schemes brought a claim against Sedgwick Noble Lowndes and its parent company, Mercer Limited.

3. The claim alleged that Sedgwick Noble Lowndes was in breach of contract and was negligent in failing to provide adequate advice, including relevant documentation, in order to close the Barber window prior to the

[3] The Yorkshire Weekly Newspaper Group Limited Pension Fund, Beckett Retirement Benefits Scheme, West Sussex County Times Limited Pension and Life Assurance Scheme and the Wilfred Edmunds Limited Pension and Assurance Scheme

execution of formal deeds of amendment for each of the 4 schemes.

4. Certain documents indicated an intention to change the retirement age to age 65 for men and women. These documents included announcements to members stating that the change would apply from 1st December 1993 and Board minutes of the Plan's principal employer stating that the change "should be adopted as soon as possible".

B. Decision

1. Based on the evidence available, the court decided to apply the maxim known as the presumption of regularity, finding that the Barber window had been closed for the 4 schemes on 1st December, 1993.

2. A number of other cases have applied this maxim, including the 2015 case of *Scottish Solicitors Staff Pension Fund v Pattison*.

3. That case identified 4 main reasons for applying the maxim:

   3.1 defects in procedure tend to be a matter of form rather than substance;

   3.2 defects in procedure that are serious and material are likely to be addressed at the relevant time;

   3.3 evidence is frequently lost after considerable time has passed and the practical difficulties of proving that the transaction followed the proper form "*might be enormous*"; and

   3.4 transactions do not stand alone - all subsequent dealings based on the transaction in question would also, potentially, be open to challenge.

4. The court noted that the maxim is also recognised in English law.

Knight v Sedgwick Noble Lowndes and Mercer

Comment (1): The amount of evidence available for each of the 4 schemes varied. One scheme in particular generated less evidence than the others but the court decided that the maxim applied, noting that the principal employers of the schemes were under common control and going through the same equalisation exercise.

Comment (2): We usually see cases emphasising the need to follow the strict requirements of the amendment rule in order to effect equalisation.

Comment (3): For example, the English case of Safeway v Newton (heard in February 2016) ruled that announcements to members had not, of themselves, brought about a change in normal pension age for women. This was despite the fact that the trustees had run the scheme as if the announcements had equalised benefits.

VIII. Firefighters' transitional provisions objectively justified

1. An employment tribunal has found that transitional provisions in the Firefighters Pension Scheme were objectively justified.

2. The transitional provisions were designed to protect those closest to retirement from the adverse effects of reforms.

3. The firefighters' claim alleging age discrimination failed.

Sargeant v London Fire and Emergency Planning Authority - 14th February 2017

Comment (1): The decision is in contrast to that of *McCloud v Lord Chancellor* (please see Pensions Bulletin 17/03). In *McCloud*, an employment tribunal found that similar transitional provisions attached to reforms of the judicial pension scheme could not be objectively justified.

Comment (2): It is expected (although not yet confirmed) that both this decision and that in *McCloud* will be appealed.

Comment (3): In *Sargeant* the Government sought to distinguish *McCloud* on the basis that the difference in treatment between the protected and unprotected judges was more

acute than for other public sector workers, because of the impact of tax changes.

Comment (4): It is notable that the Tribunal in *Sargeant* accepted that the legitimate expectations of older workers may form the basis of a legitimate aim (this was not argued in *McCloud*).

IX. Plumber was worker, not self-employed

1. The Court of Appeal has ruled that a plumber working on behalf of a plumbing company, was:

   1.1 a "worker" within the meaning of the Employment Rights Act 1996 and the Working Time Regulations 1998, and

   1.2 in "employment" under the Equality Act 2010.

2. He was not, as his contract suggested, a self-employed contractor.

3. Please see our Employment Bulletin 17/04 for a fuller summary of the facts and the ruling.

Pimlico Plumbers Ltd v Smith - 10th February 2017

Comment (1): The pensions implications of this case mean that the auto-enrolment legislation could apply to those individuals now categorised as workers.

Comment (2): The Pensions Act 2008 requires employers to auto-enrol eligible jobholders. To be an eligible jobholder, the individual in question must meet several criteria, one of which is that the person is a 'worker'.

Comment (3): The definition of 'worker' in Section 230 of the Employment Rights Act 1996 effectively mirrors the definition of 'worker' in the Pensions Act 2008.

Comment (4): Unlike the *Uber* Employment Tribunal ruling, which decided that Uber drivers were 'workers' (Pensions Bulletin 16/17), the *Pimlico Plumbers* Court of Appeal ruling is binding on other courts and tribunals. Uber has confirmed that it will appeal the Tribunal's decision.

Points in practice

X. Variation margin implementation date

1. The European Supervisory Authorities ("**ESAs**") have issued a Statement, on 23rd February, 2017, about the timescale for compliance with the requirement to exchange variation margin in relation to risk-mitigation techniques for over-the-counter derivatives.

2. The statement is in response to industry requests for the deadline of 1st March, 2017 to be delayed.

3. The ESAs confirm that the 1st March, 2017 deadline will remain, noting that a delay would not possible due to the lengthy process for adopting EU legislation.

4. However, the ESAs expect competent authorities "*to generally apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation. This approach entails that CAs can take into account the size of the exposure to the counterparty plus its default risk*".

5. The FCA announced, in a Statement dated 23rd February, 2017, that it acknowledges that some firms may not be in a position to comply with the deadline. The FCA therefore intends to "*take a risk-based approach and use judgement as to the adequacy of progress*".

6. It plans to take into account the position of each firm and the credibility of the plans they have made, expecting detailed and realistic plans to be in place, which it may request to see at any time.

7. Where a firm has not been able to comply fully, the FCA will expect it to be able to demonstrate that it has made best efforts to achieve full compliance, and be ready to explain how it will achieve compliance in as short a time as practicable.

8. Firms are expected to comply "*within the coming few months*".

Comment (1): The FCA's Statement is in line with the approach suggested by the ESAs.

Comment (2): Please click here to see our briefing note on the new requirement.

If you would like to find out more about our Pensions and Employment Group or require advice on a pensions, employment or employee benefits matters, please contact Jonathan Fenn or your usual Slaughter and May adviser.

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