

Pensions and Employment: Pensions Bulletin

14 July 2017 / Issue 12

Legal and regulatory developments in pensions

In this issue

The Watch List

New Law

Charges and member-borne commission - DWP response [...more](#)

Valuing pensions for advice requirement and risk warnings - Government response [...more](#)

Law Commission report on social investment [...more](#)

Tax

Pension Schemes Newsletter 88 [...more](#)

Cases

Application of European Directives to pension entitlement [...more](#)

Points in Practice

FCA report on asset management and 2 consultations [...more](#)

BHS - Regulator publishes regulatory intervention report [...more](#)

Regulator's settlement re 3rd Coats scheme [...more](#)

Compliance and enforcement bulletins published [...more](#)

FCA consultation on pension transfer advice [...more](#)

PPF Technical News [...more](#)

Pan European Personal Pension - proposal [...more](#)

To access our Employment/Employee Benefits Bulletin visit the [Slaughter and May website](#).

Contents include:

- ****STOP PRESS****: European Union (Withdrawal) Bill published
- Good work: the Taylor review of modern working practices
- Discrimination and backdating pension rights
- Whistleblowing: what is in the “public interest”?
- Age discrimination: Justifying caps in enhanced redundancy schemes for those with pension rights
- Supreme Court: Rangers EBT payments were “earnings”
- Government policy paper on EU nationals living in the UK

[Back issues](#)

[More about our pensions and employment practice](#)

[Details of our work in the pensions and employment field](#)

For more information, or if you have a query in relation to any of the above items, please contact the person with whom you 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 6 th April, 2016	<p>Pensions Bulletin 16/06</p> <p>1.1 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.</p> <p>1.2 For the taper to apply, the individual must have UK taxable income in 2016/17 of:</p> <ul style="list-style-type: none"> ◆ £110,000 “threshold” income, and ◆ £150,000 “adjusted” income. <p>1.3 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</p>

No.	Topic	Deadline	Further information/action
			<p>member on pension provision already made.</p> <p>1.4 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.</p>
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	6 th April, 2016	<p>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</p> <p>Note: Statutory power to amend, retrospective to 6th April, 2016,</p>

No.	Topic	Deadline	Further information/action
			<p>expires on 5th April, 2017</p> <p>accrued GMPs of those active members. See further Pensions Bulletin 16/03.</p>
4.	Put in place register of persons with significant control (“PSC”) for trustee company where trustee is a corporate	6 th April, 2016 and ongoing requirement	Pensions Bulletin 16/03
5.	Ban on member-borne commissions in DC schemes used for auto-enrolment	5 th July, 2016 at the latest and ongoing requirement	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	<p>For example employers with a 2014 staging date must complete cyclical re-enrolment process between December 2016 and June 2017.</p> <p>Publication available to clients on request from usual pensions contact.</p>
7.	Chair’s annual governance statement	Within 7 months of end of scheme year	<p>For example, schemes with a 31st March year end must submit statement by 31st October, 2017.</p> <p>Client note dated June, 2015 available from Dawn Holmes.</p>

No.	Topic	Deadline	Further information/action
8.	“Brexit”	Referendum held on 23 rd June, 2016	<p>8.1 Supreme Court ruled¹ 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.</p> <p>8.2 Consider potential impact on pension schemes. Client publications available on Slaughter and May website.</p> <p>8.3 Article 50 notice given on 29th March, 2017.</p>
9.	DC Code of Practice 13 on governance and administration takes effect	28 th 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	Part 8 action brought by female staff, trustee and Lloyds Trade Union	15 th May, 2017	We will continue to monitor developments in this litigation, which has implications for all schemes with GMPs accrued in the period 17th May, 1990 to 5th April, 1997.
		Trial window	Between 1st June, 2018 and 31st October, 2018
10.2	DWP publishes consultation proposing methodology	28th November, 2016	Pensions Bulletin 16/19

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

No.	Topic	Deadline	Further information/action
	for equalising GMPs	13 th March, 2017	Pensions Bulletin 17/7
	Government response published		
11.	Civil partner/same sex spouse pensions: retroactivity pre-5th December, 2005		
11.1	CJEU decision in <i>Parris v. Trinity College, Dublin</i>	Decided on 24 th November, 2016	A ‘death bed marriage’ scheme rule did not indirectly discriminate on sexual orientation grounds. Pensions Bulletin 16/18
11.2	Supreme Court hearing dates in appeal in <i>Walker v. Innospec</i>	8 th and 9 th March, 2017 12 th July, 2017	To establish whether survivor benefits for civil partners will be retroactive to a date before the Civil Partnership Act 2004 came into force. Judgements issued (please see item V below)
12.	EMIR - Derivatives: New requirements to exchange variation margin	1 st March, 2017	If investment manager uses over-the-counter derivatives, check investment manager has arranged for trustee to comply. Pensions Bulletin 17/01 Pensions Bulletin 17/05 Trustees entering into OTC derivatives must perform an independent legal review of the enforceability of their netting and collateral arrangements. Briefing note ; FCA statement on timing

No.	Topic	Deadline	Further information/action
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. QROPS managers must give HMRC undertaking by 13 th April, 2017 to preserve QROPS status. Pensions Bulletin 17/05
14.	Pensions Advice Allowance introduction date	6 th April, 2017 3 rd January, 2018	Pensions Bulletin 17/04 New financial advice definition. Pensions Bulletin 17/06
15.	Gender pay gap information regulations in force	6 th April, 2017 4 th April, 2018	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 . Deadline for reporting above information.
16.	Pension Schemes Bill 2017 receives Royal Assent	27 th April, 2017	Existing master trusts have notification duty for triggering events on or after 20 th October 2016 Pensions Bulletin 17/09
17.	Money laundering, terrorist financing and transfer of funds regulations to come into force	26th June, 2017	Pensions Bulletin 17/11

No.	Topic	Deadline	Further information/action
18.	HMRC's existing practice on VAT and pension schemes ends (please see our item on this in Pensions Bulletin 16/13)	31 st December, 2017	Employers should consider taking steps to preserve, or even enhance, their pensions-related VAT cover.
19.	Data protection: New Regulation	25 th 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.
20.	Further EMIR exemption extension for pension scheme arrangements Additional 3 year clearing extension proposed	16 th August, 2018	Pensions Bulletin 17/01 Pensions Bulletin 17/10
21.	IORP II transposition deadline	12 th January, 2019	Pensions Bulletin 16/11
22.	Brexit	By 29 th March, 2019, unless extended	UK leaves EU from effective date of withdrawal agreement or, failing that, 2 years after giving Article 50 notice unless European Council and UK unanimously decide to extend period.

New law

I. Charges and member-borne commission - DWP response

1. The DWP has [published](#), on 3rd July, 2017, its response to the consultation on the draft Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2017.
2. To read about the consultation, please see [Pensions Bulletin 17/08](#).
3. A final version of the regulations has not been published yet.
4. The [response](#) confirms that the regulations will be laid 'in due course' and will come into force on 1st October, 2017.

A. Early exit charges

1. The response refers to the Government's intention to ban early exit charges for occupational pension scheme members who join on or after 1st October, 2017.
2. A 1% cap on such charges will apply where the member joined before that date.
3. The draft regulations contained a provision under which the 1% cap would apply to the combined level of multiple charges. The response states that that

provision has been removed as responses to the consultation could not identify situations where multiple charges could apply.

4. The Government plans to issue guidance on the early charges cap 'at the time the regulations are laid'.

B. Member-borne commission ban

1. Member-borne commission has been banned since 6th April, 2016 in relation to new contracts set up by occupational pension schemes whose benefits include money purchase benefits and which are 'qualifying schemes' for auto-enrolment purposes.
2. From 1st April, 2018, service providers will be required to comply with the ban on member-borne commission for contracts entered into before 6th April, 2016 where the payment was made on or after 1st October, 2017.
3. The response states that service providers must confirm in writing to the trustees that they are complying with the member-borne commission ban. They will be required to do this within 1 month, beginning on 1st April, 2018.

II. Valuing pensions for advice requirement and risk warnings - Government response

1. The Government has [published](#), on 6th July, 2017, its [response](#) to the consultation on valuing pensions for the advice requirement and risk warnings.
2. To read about the consultation, please see [Pensions Bulletin 16/15](#).
3. The consultation included proposals for ‘safeguarded-flexible benefits’ on:
 - ◆ the valuation method applied to establish whether the member’s benefits exceed £30,000²; and
 - ◆ the introduction of risk warnings.
4. The consultation describes “safeguarded-flexible benefits” as benefits calculated by reference to an amount available for their provision but which offer some sort of guarantee regarding the pension income that they will, or may, provide.

Comment (1): Our response to the consultation made the point that the only guarantees most occupational DC schemes come across are in insurance

² the threshold triggering a requirement to take independent financial advice before the transfer or conversion of safeguarded benefits

policies where the scheme only promises what the policy provides.

Comment (2): In that situation the benefits are money purchase benefits, not safeguarded-flexible benefits. As a result, neither the independent advice requirement nor the risk warnings proposed in the consultation would apply.

5. The Government plans to press ahead with its proposals, to be split between 2 sets of regulations³ which will each come into force on 6th April, 2018. Neither set of regulations is currently available in final form.
6. The Government considers that the new valuation method will mean that fewer members will be required to take financial advice.
7. The response states that schemes will be required to inform members who are no longer required to take financial advice. That requirement will apply where the member has been told about the requirement to take advice on or after 1st October, 2017.

³ Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 2) Regulations 2017; and the Pension Schemes Act 2015

III. Law Commission report on social investment

1. The Law Commission has, on 23rd June, 2017, [published](#) its [report](#) entitled ‘Pension Funds and Social Investment’ (Law Com No 374).
2. The report concludes that there are no legal or regulatory barriers to pension schemes making social investments.
3. In acknowledgement of the increased use of DC pension provision the report focuses on such schemes.
4. The Law Commission could not find any examples of infrastructure investment by DC schemes.
5. The report recommendations include the following:
 - ◆ pension funds should be required to set out, in their statement of investment principles, their policies on evaluating social impact, considering members’ ethical concerns and exercising stewardship powers;
 - ◆ the Pensions Regulator and FCA should consider providing further guidance on how pension schemes

(Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations 2017

can manage illiquid investments in their funds, such as investment in infrastructure;

- ◆ the Government should consider taking steps to address barriers to consolidation of DC schemes so they are more able to invest in illiquid assets; and
- ◆ the Government should consider whether trustees should be required to determine, annually, whether their members are disadvantaged in comparison to other funds' members, due to insufficient numbers of members or pooled assets.

Comment (1): The report recognises that when taking investment decisions, trustees need to secure the best return over the long term, while taking account of risk.

Comment (2): This involves trustees engaging with a process that reflects their duty in case law to act in the way in which an ordinary prudent man of business would in managing similar affairs of his own.

Comment (3): The report goes into some detail on how trustees need to approach their investment decisions, noting that the decision should not risk significant financial detriment, while also stating that trustees cannot ignore

non-financial factors in all circumstances.

Comment (4): To read about the Law Commission's call for evidence on pension funds and social investment, dated 7th November, 2016, please see [Pensions Bulletin 16/18](#).

Tax

IV. Pension Schemes Newsletter 88

1. HMRC has published, on 30th June, 2017, [Pension Schemes Newsletter 88](#).
2. The newsletter reminds readers that a residency tax status look-up service will be made available from January, 2018 for pension administrators to use via the Secure Data Exchange Service (for an explanation of which, please see Appendix 2 to the newsletter).
3. The look-up service is being introduced so that scheme administrators will be able to apply the correct rate of relief at source in respect of members affected by the introduction of Scottish income tax.
4. The newsletter confirms that the relief rate applies for the whole year, regardless of whether the administrator later discovers during the year that the member's residency status has changed. HMRC then collect or repay any shortfall or excess directly to the member through the end of year tax reconciliation.

5. The newsletter reminds schemes that HMRC does not approve transfer requests and that further checks should be carried out by the transferring scheme administrator to establish whether or not a transfer should be made.
6. The newsletter confirms that HMRC expects its lifetime allowance look-up service for administrators to become available 'in early summer'.
7. For members who have lost their lifetime allowance protection, HMRC still requires notification from members to be made in writing. HMRC is working on changes to the lifetime allowance online service, however, so that members will be able to inform HMRC online.

Cases

V. Application of European Directives to pension entitlement

1. The Supreme Court rulings for [Walker v Innospec Limited](#) and [O'Brien v Ministry of Justice](#) were issued on 12th July, 2017.
2. Both cases examine the point at which rights under a European Directive attach to an individual's pension entitlement.
3. In particular, is the effect of the Directive only engaged in so far as it was in force during the period of accrual, or does it engage all past accrual if the

pension comes into payment on or after the Directive is in force?

Walker v Innospec Limited

A. Facts

1. Mr Walker retired from his employment with Innospec Limited in 2003. He entered into a civil partnership in 2006 and subsequently married his civil partner.
2. Paragraph 18 of Schedule 9 to the Equality Act 2010 provides an exception to the general non-discrimination rule implied into occupational pension schemes. Under this exception (the “Equality Act exception”), it is lawful to prevent or restrict access to a benefit, facility or service to a person:
 - (a) where the right to that benefit etc accrued before 5 December 2005, or
 - (b) which is payable in respect of periods of service before that date.
3. As Mr Walker’s retirement took place before that date, his husband was not considered eligible for a spouse’s pension in the event of Mr Walker’s death.
4. Mr Walker brought proceedings which ultimately reached the Supreme Court. He wanted to establish whether the Equality Act exception was compatible with the Framework Directive

(2000/78/EC) or with Article 14 of the European Convention on Human Rights (“ECHR”).

B. Decision

1. Mr Walker’s appeal was allowed, meaning that his husband would be entitled to a spouse’s pension based on all the years of Mr Walker’s pensionable service with Innospec.
2. The Supreme Court (in a judgment given by Lord Kerr) recognised the difficulties in applying the ‘no retroactivity’ principle and the ‘future effects’ principle, which both apply to all EU legislation, unless a contrary intention can be found.
3. Under the ‘future effects’ principle the law is applied with immediate prospective application to ongoing legal relationships.
4. The court acknowledged that it is not immediately easy to identify the point at which entitlement to a pension becomes “permanently fixed”, whether for example at the date of retirement or when the pension is paid.
5. Mr Walker argued that the *Barber* line of cases on which the Court of Appeal relied were concerned with temporal limitations imposed on claims for equal pay for men and women, not for claims for equal treatment in relation to

pension entitlement for heterosexual and gay men and women.

6. The *Barber* limitation was introduced as an exceptional measure to deal with the financially catastrophic impact that retrospective entitlement to equality of pay would have had on the economies of many Member States.
7. The Supreme Court agreed. How the CJEU applies a temporal limitation to one of its rulings (*Barber*) has no inevitable bearing on the temporal limitation of legislation as a matter of principle.
8. Citing the *Maruko* and *Romer* CJEU decisions, the Supreme Court concluded that Mr Walker should not be subjected to unequal treatment in the payment of a survivor’s pension for his husband, unless evidence establishes that there would be unacceptable economic or social consequences in giving effect to that pension.
9. The EAT and Court of Appeal should not have equated the time at which a right to a pension accrues with the time at which discrimination in the provision of benefits is to be judged.
10. The salary paid to Mr Walker was precisely the same as that which would have been paid to a heterosexual man. There was no reason for the company to anticipate that it would not become liable to pay a survivor’s pension to his lawful spouse.

11. The Equality Act exception was incompatible with the Framework Directive and must be disapplied. In view of this, it was not necessary for the court to rule on the ECHR issue raised by Mr Walker.
12. The Supreme Court's decision was unanimous.
13. In so far as Lord Kerr's reasoning turns on his interpretation of the *Barber* line of cases, Lord Carnwath and Lord Hughes prefer to await the CJEU ruling in the *O'Brien* case (please see below).

Comment (1): A majority of the Supreme Court decided that it would not be necessary to refer the matter to the CJEU, albeit that 2 of the judges have indicated a preference for awaiting a CJEU ruling in *O'Brien*.

Comment (2): At least in theory, it would follow that if the CJEU ruling for *O'Brien* decides that the future effects principle should be restricted, such a ruling may cast doubt on the Supreme Court decision in *Walker*.

O'Brien v Ministry of Justice

A. Facts

1. Mr O'Brien was a part-time judge from 1978 until 2005, when he retired at the age of 65.

2. The Supreme Court is being asked to address whether Mr O'Brien's part-time work prior to 7th April, 2000 (the transposition deadline for the Part Time Workers Directive - 97/81/EC) should be taken into account when calculating his pension.
3. The Ministry of Justice considers this to be a legal situation which arose and became definitive under the law then in force. It argues that the entitlement is permanently fixed at the time when the right accrues, rather than being determined when the person retires and the pension becomes payable.
4. Mr O'Brien considers that periods of employment before the Directive entered into force should be taken into account when applying the Directive to situations arising after it should have been transposed. He argues that these periods are relevant to the calculation of a pension where the amount is based on the employee's length of service.

B. Decision

1. The Supreme Court decided to ask the CJEU to examine whether periods of service prior to the deadline for transposing the Directive should be taken into account when calculating the amount of pension for a part-time worker.
2. The court is inclined to think that the Directive applies where the pension falls

due for payment after the Directive has entered into force.

3. In so far as part of the period of service took place prior to the Directive's entry into force, the Directive applies to the future effects of that situation.
4. The *Ten Oever* decision, which decided that the worker's entitlement is fixed at the time of the work during which the pension accrued, was concerned with the *Barber* limitation. The *Barber* limitation does not apply in the context of this case.
5. However, the correct approach is not clear to the Supreme Court, hence the referral to the CJEU.

Points in practice

VI. FCA report on asset management and 2 consultations

1. The FCA has [published](#), on 28th June, 2017, its final [report](#) entitled 'Asset Management Market Study' (MS15/2.3).
2. The FCA has concluded that a number of measures should be implemented, to be introduced in stages.
3. The FCA plans to:
 - ◆ strengthen the duty on fund managers to act in the best interests of investors;

- ◆ require fund managers to appoint at least 2 independent directors;
 - ◆ improve fairness regarding the management of share classes and the way in which fund managers profit from investors;
 - ◆ support the disclosure of a single, all-in-fee to investors;
 - ◆ support the consistent and standardised disclosure of costs and charges to institutional investors;
 - ◆ recommend that the DWP remove barriers to pension scheme consolidation and pooling;
 - ◆ launch a market study into investment platforms; and
 - ◆ recommend that HM Treasury considers bringing investment consultants into the FCA's regulatory perimeter.
4. The report notes (at paragraph 2.23):
- “Section 44 of the Pensions Act 2014 will place a duty on us and the DWP to require the disclosure and publication of information about transaction costs in defined contribution workplace pensions. We will, in due course, consider the legal measures needed to meet the duties.”*

5. The FCA's report also identifies concerns about competition in investment consultancy services.
6. It has therefore [announced](#), on 28th June, 2017, a consultation on its provisional decision to reject undertakings in lieu, put forward by Aon Hewitt, Mercer and Willis Towers Watson. The consultation closes on 26th July, 2017.
7. The aim of those undertakings would have been to avoid a market investigation reference by the FCA to the Competition and Markets Authority. One proposed undertaking, for example, would involve encouraging regular tendering of investment services contracts.
8. In addition, the FCA issued a [consultation](#) (CP17/18) on 28th June, 2017 regarding:
- ◆ proposals to strengthen its rules requiring asset fund managers to act in the best interests of investors; and
 - ◆ governance reforms to hold those managers to greater account.
9. That consultation closes on 28th September, 2017.

VII. BHS - Regulator publishes regulatory intervention report

1. The Pensions Regulator's BHS regulatory intervention report was [published](#) on 27th June, 2017.

2. The report sets out the background to its intervention, and subsequent settlement, in connection with the BHS pension schemes (please see [Pensions Bulletin 17/06](#)).
3. The report does not cover details which could prejudice the ongoing investigation being carried out by the Regulator in relation to Dominic Chappell and Retail Acquisitions Limited.
4. The Regulator's [press release](#) states that it is recruiting staff *“to increase proactive casework, ensure early engagement with schemes and progress investigations more efficiently”*.
5. The Regulator recognises that key areas where it could have performed better were the timeliness of its engagement and the clarity of its communications.
6. Of its approach to settlement offers in moral hazard cases, the Regulator states:
- ◆ *“Our door is always open to reasonable offers that represent a genuine alternative to the use of our anti-avoidance powers, but we expect offers to include fully worked out proposals.*
 - ◆ *We will not suspend or cease our investigations while considering settlement offers.*
 - ◆ *Our principal consideration is not simply the financial sum involved but*

whether the proposal overall would secure good outcomes for members of pension schemes and the PPF, and mean it would be inappropriate for us to continue our investigation and use of our powers.”

VIII. Regulator’s settlement re 3rd Coats scheme

1. The Pensions Regulator has [announced](#), on 26th June, 2017, its settlement concerning the Staveley Industries Retirement Benefits Scheme (‘SIRBS’) and the publication of a [regulatory intervention report](#) on the matter.
2. This follows the settlement announced by the Regulator on 16th December, 2016 in relation to 2 other Coats DB schemes⁴ (please see [Pensions Bulletin 17/01](#)).
3. SIRBS has an estimated deficit of just under £85 million on a scheme specific funding basis.
4. Coats Group plc (previously known as Guinness Peat Group plc) had sold certain investment shareholdings between 2011 and 2013.
5. The proceeds of those sales were intended to resource significant returns to shareholders.

⁴ The Coats Pension Plan and the Brunel Holdings Pension Scheme

6. The Regulator launched investigations into the possible impact of Coats Group plc’s disposal programme on the employer covenant of the 3 underfunded DB schemes.
7. Warning notices were issued in 2013 and 2014 concerning the possible imposition of financial support directions in relation to the 3 DB schemes concerned.
8. Pending the outcome of the Regulator’s investigations, Coats Group plc agreed to suspend its intended payments to shareholders.
9. The main features of the settlement are:
 - ◆ an upfront payment of £74m into the scheme (inclusive of certain contributions already paid to SIRBS since 1st January, 2016); and
 - ◆ in common with the other 2 Coats DB schemes:
 - a change in the statutory employer to Coats Limited; and
 - a guarantee from Coats Group plc of the full buy-out liabilities of the scheme.

IX. Compliance and enforcement bulletins published

1. The Pensions Regulator [announced](#), on 5th July, 2017, the publication of compliance and enforcement bulletins regarding the requirements to:
 - ◆ submit a scheme return (under Section 64 of the Pensions Act 2004); and
 - ◆ produce a chair’s statement each year (under the Occupational Pension Schemes (Scheme Administration) Regulations 1996).
2. The bulletin focusing on [scheme returns](#) states that the Regulator considers a failure to complete a scheme return to be “*a symptom of wider governance failings and [we] are looking to take greater enforcement action against these in the future*”.
3. The bulletin focusing on the requirement for a [chair’s statement](#) includes a case study where a DC scheme had transferred out all active members and had intended to wind up the scheme within 7 months of the scheme year end. The wind-up did not in fact take place by then, due to internal resource constraints, and the

Regulator imposed a civil penalty on the scheme.

Comment (1): We have observed that the Regulator is taking a tougher stance where valuations are submitted later than the deadline of 15 months after the valuation's effective date.

Comment (2): Trustees and employers heading towards a scheme valuation deadline should therefore make every effort to finalise and submit their valuation on time if they are to avoid engagement from the Regulator.

X. FCA consultation on pension transfer advice

1. The FCA [announced](#), on 21st June, 2017, the publication of its [consultation paper](#) (CP17/16) entitled 'Advising on Pension Transfers'. The consultation closes on 21st September, 2017.
2. The FCA intends to publish a Policy Statement 'by early 2018'.
3. The consultation is aimed at advice provided to consumers seeking to transfer or convert safeguarded benefits.
4. The proposals include the following:

- ◆ a rule to require all advice to result in a personal recommendation, given the complexity involved;
- ◆ replacing the current transfer value analysis calculation with a requirement to analyse the client's options, using a prescribed comparator to indicate the value of the benefits being given up; and
- ◆ assessing suitability by starting from a neutral position, instead of the current guidance that the adviser should start from the assumption that the transfer will be unsuitable.

Comment (1): The introduction of pension freedoms in April, 2015, combined with the financial environment, has led to increased demand for pension transfer advice.

Comment (2): The consultation acknowledges, however, that its proposals may result in some firms deciding that they no longer wish to give advice in this area. This would add to existing concerns about the availability of advice.

Comment (3): HM Treasury published (on 27th February, 2017) its response to consultation on changing the definition of

'financial advice' (please see [Pensions Bulletin 17/6](#)). The revised definition will mean that regulated firms will be exempt from the requirement for authorisation⁵ unless they are making a personal recommendation.

XI. PPF Technical News

1. The PPF has published, on 5th July, 2017, [Issue 9 of PPF Technical News](#).
2. The newsletter notes that members with a right to a stand-alone lump sum under the pre-2006 pensions tax regime retain their right to that if certain conditions are met⁶. The PPF stresses that it is important that members entitled to such lump sums are identified during the assessment period, to ensure that the conditions continue to be met.
3. Where the PPF pays a lifetime allowance charge on behalf of a member, a 'lifetime deduction' is made from the member's compensation. The newsletter conveys the PPF's willingness to supply a lifetime deduction factor for use in specific cases where a member retires in the assessment period.
4. The newsletter also discusses the situation where a member retires early during an assessment period and the

⁵ Authorisation to carry out activities under Article 53 of the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001

⁶ Taxation of Pension Schemes (Transitional Provisions) Order 2006 (SI 2006/572), Article 25

pension will not cover the GMP. Certain adjustments have to be made, once the scheme transfers to the PPF, if the member's pension has been reduced in order to allow for a step up at GMP payment age.

5. The PPF is therefore asking trustees to not offer early retirement in these circumstances during the assessment period. The PPF recognises that the decision ultimately lies with the trustees, however.
6. The PPF notes that some pension schemes offer a separate scheme lump sum, in addition to the possibility of pension being commuted, on the condition that the total lump sum amount does not exceed the maximum allowed for a pension commencement lump sum.
7. The newsletter tells trustees that, in most instances, under the PPF the separate scheme lump sum must be the only lump sum available so commutation

of the pension should not be offered during the assessment period.

XII. Pan European Personal Pension - proposal

1. The European Commission [announced](#) the publication, on 29th June, 2017, of a [proposal](#) (COM(2017) 343) for a Regulation on a pan-European personal pension product ("PEPP").
2. The Commission expects a more developed market for EU personal pensions to channel more savings into long-term investments, promoting growth and new jobs and contributing to the EU's plans for a Capital Markets Union.
3. The proposal states: "*This framework will not replace or harmonise existing national personal pension schemes. It will offer individuals a new voluntary framework for saving by ensuring sufficient consumer protection with regard to the essential features of the product ... the framework will be flexible enough to enable different providers to*

tailor products to suit their business model."

4. A [factsheet](#) and extensive [FAQs](#) have also been published.
5. The European Commission has also issued a [recommendation](#) (C(2017) 4393) on the tax treatment of personal pension products, including the PEPP.
6. The recommendation states that Member States will be encouraged to grant PEPPs the same tax relief as that granted to national personal pensions, or the most favourable tax treatment where more than one type of personal pension is available nationally.

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.

© Slaughter and May 2017

This material is for general information only and is not intended to provide legal advice.

545905608