

Pensions and Employment: Pensions Bulletin

16 March 2018 / Issue 05

Legal and regulatory developments in pensions

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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</p>

No.	Topic	Deadline	Further information/action
			<p>charge for the 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)	6 th April, 2016	Pensions Bulletin 15/16
3.	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

No.	Topic	Deadline	Further information/action
4.	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 .
5.	Cyclical re-enrolment	Within 6 month window by reference to third anniversary of employer’s staging date	For example employers with a 1st July, 2015 staging date must complete cyclical re-enrolment process between 1st April, 2018 and 30th September, 2018. Publication available to clients on request from usual pensions contact.
6.	Chair’s annual governance statement	Within 7 months of end of scheme year	For example, schemes with a 31 st March year end must submit statement by 31 st October, 2017. Client note dated June, 2015 available from Dawn Holmes .
7.	Money purchase annual allowance, which applies to individuals who have flexibly accessed their money purchase pot on or after 6 th April, 2015, has dropped from £10,000 to £4,000 under Finance (No.2) Act 2017	Retroactive effect from 6 th April, 2017	Member communications should include a warning note about this, highlighting the retroactive effect.

No.	Topic	Deadline	Further information/action
8.	GMP equalisation		
8.1	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 1 st June, 2018 and 31 st October, 2018
8.2	DWP publishes consultation proposing methodology for equalising GMPs	28th November, 2016	Pensions Bulletin 16/19
	Government response published	13 th March, 2017	Pensions Bulletin 17/7
9.	Civil partner/same sex spouse pensions: retroactivity pre-5th December, 2005		
9.1	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
9.2	Supreme Court ruling in <i>Walker v. Innospec</i>		Survivor benefits for civil partners and same sex spouses must be based on all service, including before the

¹ Much of the Act is not in force yet, such as the prohibition on operating a master trust scheme unless authorised and,

No.	Topic	Deadline	Further information/action
		12 th July, 2017	Civil Partnership Act 2004 came into force. Judgments issued (Pensions Bulletin 17/12) If necessary, affected schemes should correct the position for pensions already in payment, update the trust deed and rules and update member booklets and other member communications as necessary.
10.	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
11.	Pensions Advice Allowance introduction date	6 th April, 2017	Pensions Bulletin 17/04
		3 rd January, 2018	New financial advice definition. Pensions Bulletin 17/06
12.	Gender pay gap information regulations in force	6 th April, 2017	Assess impact of pension provision on requirement to publish information designed to highlight any gender pay gaps. See Pensions Bulletin

consequently, provisions on the authorisation criteria and ongoing supervision.

No.	Topic	Deadline	Further information/action
		4 th April, 2018	17/03 and Employment Bulletin 17/03 . Deadline for reporting above information.
13.	Pension Schemes Act 2017 receives Royal Assent ¹	27 th April, 2017	Existing master trusts have notification duty for triggering events on or after 20 th October 2016 Pensions Bulletin 17/09
14.	Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 came into force	26 th June, 2017	Pensions Bulletin 17/11 Further guidance awaited from HMRC.
	Deadline for registering with HMRC for its Trusts Registration Service	31st January after tax year in which tax paid, starting 31st January, 2018 but no penalty if done by 5 th March, 2018	Pensions Bulletin 17/16 Pensions Bulletin 17/18 Pensions Bulletin 17/20
15.	HMRC's existing practice on VAT and pension schemes to continue indefinitely		Employers should consider taking steps to preserve, or even enhance, their pensions-related VAT cover. Pensions Bulletin 17/18
16.	DC bulk transfers without member consent:	6 th April, 2018	Pensions Bulletin 17/18 See item II below

No.	Topic	Deadline	Further information/action
	introduction of easements		
17.	Bulk transfers of contracted-out rights without consent: introduction of easements	6 th April, 2018	Pensions Bulletin 18/01 See item I below
18.	Deferred debt arrangements become available	6 th April, 2018	See item III below
19.	Disclosure of costs, charges and investments - new requirements	Mostly in force 6 th April, 2018	See item IV below
20.	Auto-enrolment total minimum DC contributions will increase to 5% (of which minimum employer contribution of 2%)	6 th April, 2018 to 5 th April, 2019	
21.	Auto-enrolment total minimum DC contributions will increase to 8% (of which minimum employer contribution of 3%)	6 th April, 2019 onwards	

No.	Topic	Deadline	Further information/action
22.	Deadline for service providers to send trustees written confirmation of compliance with ban on member-borne commission for pre-6 th April, 2016 contracts where payment made on or after 1 st October, 2017. Applies where scheme used as "qualifying scheme" for auto-enrolment purposes and some or all of benefits are money purchase.	1 st May, 2018	If confirmation not received then trustees should chase. Note: This may well be an empty category for many schemes.
23.	Data protection: New Regulation: EU General Data Protection Regulation comes into force	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. A compliance checklist for trustees is available to clients from their usual Slaughter and May contact.
24.	Further EMIR exemption extension for	16th August, 2018	Pensions Bulletin 17/01

No.	Topic	Deadline	Further information/action
	pension scheme arrangements Additional 3 year clearing extension proposed		Pensions Bulletin 17/10
25.	IORP II ² transposition deadline	12 th January, 2019	Pensions Bulletin 16/11
26.	Brexit	By 29th March, 2019, unless extended	UK leaves EU from effective date of withdrawal agreement or, failing that, 2 years after giving Article 50 notice unless: (a) European Council and UK unanimously decide to extend period, or (b) UK withdraws, if able to do so, its Article 50 notice before 29th March, 2019.

New law

I. Bulk transfer of contracted out rights without member consent - Government response and regulations

1. At the moment, members with contracted-out rights can be transferred without their consent only where the receiving scheme was previously contracted-out. From 6th April, 2018,

² Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision

this restriction will not apply in certain circumstances.

Comment: Contracting-out was abolished on 6th April, 2016, meaning that new schemes that had never been contracted-out were no longer able to become contracted-out and could not, therefore, receive contracted-out rights without the member's consent. A consultation³ proposing an easement in respect of this was therefore launched by the DWP.

2. The DWP's [response](#) to its consultation regarding the bulk transfer of contracted-out rights without member consent confirms that the easement will go ahead. The response was issued on 26th February, 2018.
3. Regulations⁴ will enable the transfer of contracted-out rights without member consent to salary-related schemes which have never been contracted-out, if certain conditions are met.
4. For example, a scheme that has never been contracted-out may receive a transfer of Section 9(2B) rights if:

- the transfer is part of a connected employer transfer;
- an actuarial certificate (that the transfer credits are, broadly, no less favourable than the rights to be transferred) is provided; and
- the receiving scheme benefits to be credited in respect of the Section 9(2B) rights comply with the reference scheme test that applied to Section 9(2B) rights immediately before contracting-out was abolished.

Comment: Broadly, a 'connected employer transfer' is one where the transferring and receiving schemes relate to people who are, or have been, in employment with the same employer. Where the transfer relates to people employed by different employers, the transfer is a connected employer transfer where it takes place as a consequence of a financial transaction between those employers, or if the employers' relationship fits the description set out in the legislation.⁵

5. The response rejects the suggestion made by a few respondents that the receiving scheme should not have to be salary-related but goes on to say that the Government will '*consider what further changes might be required to legislation as soon as we are in a position to do so*'.

II. Bulk DC transfers without member consent - Government response and regulations

1. Trustees of DC schemes who are contemplating a bulk transfer without consent will need to be aware of changes to the legal requirements applying to such an exercise. The changes are to be introduced in 2 tranches, the first on 6th April, 2018 and the second on 1st October, **2019**.
2. Schemes using the existing requirements for a without consent DC bulk transfer will need to complete that process by 30th September, **2019**.
3. The Government has published its [response](#) to the DWP consultation⁶ about widening the range of circumstances in which bulk DC transfers without member consent may take place. It plans to issue high-level guidance for trustees by the

³ To read about the consultation paper (of 21st December, 2017) please see Pensions Bulletin 18/01.

⁴ [Contracting-out \(Transfer and Transfer Payment\) \(Amendment\) Regulations 2018 \(SI 2018/234\)](#) - in force on 6th April, 2018.

⁵ Contracting-out (Transfer and Transfer Payment) Regulations 1996.

⁶ To read about the consultation paper (of 26th October, 2017), please see Pensions Bulletin 17/18.

end of April, 2018. The response was issued on 26th February, 2018.

4. However, the existing requirements for without consent transfers will become unavailable from 1st October, 2019 where the transfer relates to DC rights (but will remain for other transfers).

Comment: The Government is keen to encourage the consolidation of DC schemes. However, the scheme Trust Deed still needs to contain an adequate power to allow a without consent transfer to be made and the trustee would still need to exercise its powers properly.

5. New regulations⁷ introduce 3 additional situations in which a without consent transfer of DC benefits may take place, from 6th April, 2018:
 - the receiving scheme is authorised under the master trust regime that will operate under the Pension Schemes Act 2017;
 - the employers of the transferring and receiving schemes are undertakings in the same group and the member is a current or former employee of an undertaking in that group; or

⁷ Occupational Pension Schemes (Preservation of Benefit and Charges and Governance) (Amendment) Regulations 2018 (SI 2018/240).

- within the year ending with the transfer date, the transferring scheme trustees have considered written advice about the transfer given by a person meeting certain independence requirements and who the trustees reasonably believe to be qualified to advise.

6. The existing requirements for without consent transfers, which are to become unavailable in respect of DC transfers from 1st October, 2019, are:

- the need to obtain an actuarial certificate stating that the transfer credits in the receiving scheme for each member are broadly no less favourable than the rights to be transferred; and
- the requirement for there to be a scheme relationship.

Comment: Broadly, the scheme relationship requirement⁸ provides for the transferring and receiving schemes to relate to people who are, or have been, in employment with the same employer. Where the transfer relates to people employed by different employers, the requirement is met if the transfer is a consequence of a financial transaction

⁸ described in Regulations 12(2) and 12(2A) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991.

between those employers, or if the employers' relationship fits one of the descriptions listed in the legislation.

7. The new regulations also provide that any restrictions on member charges⁹ will continue to apply following a without consent transfer between occupational pension schemes, or a subsequent transfer between arrangements within the receiving scheme.
8. Restrictions on charges will not apply, however, where the without consent transfer takes place between non-default arrangements if the member expressed a choice as to where his contributions were to be allocated in the 5 years before the transfer.

III. Deferred debt arrangements - Government response and regulations

1. Employers in multi-employer schemes may wish to consider whether to make use of a deferred debt arrangement ("DDA") following an employment cessation event ("ECE"). Use of a DDA would defer the requirement to pay an employer debt under Section 75 of the Pensions Act 1995 on ceasing to employ an active member.

⁹ contained in the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (SI 2015/879).

2. The DWP has published (on 26th February, 2018) its [response](#) to the consultation on DDAs.
3. New regulations¹⁰ make DDAs available from 6th April, 2018, if certain requirements are met. Those requirements are that:
 - the scheme is not in a PPF assessment period or being wound up;
 - the trustees are satisfied that, in the 12 month period starting on the date the DDA is expected to take place, the scheme is unlikely to enter a PPF assessment period and the employer's covenant is unlikely to weaken materially;
 - the ECE occurred before the above conditions are met or would have occurred if the employer had not entered into a period of grace; and
 - the trustees have consented to the DDA in writing.
4. Employers in respect of whom a DDA is in operation will be known as 'deferred employers'.

5. The Government has decided that employers who have made other arrangements for managing their employer debt, such a period of grace arrangement or a flexible apportionment arrangement, should be able to enter into a DDA if they meet the DDA requirements.
6. Entering into a DDA will be a notifiable event requiring notification to the Pensions Regulator, as will any event which terminates a DDA.
7. During the DDA, the deferred employer will be treated as if it still employed at least one active member and as if the ECE had not occurred. The new regulations expressly state that it will be treated as an employer under the scheme funding legislation and under the Financial Support Direction legislation.¹¹
8. There are a range of circumstances in which a DDA will come to an end, for example where the trustees are reasonably satisfied that the deferred employer has failed to comply materially with its statutory scheme funding duties.
9. If the DDA ends because the deferred employer employs an active member, the scheme freezes or the scheme starts to

wind-up, the deferred employer will be treated as if no ECE occurred.

10. The new regulations also cover a range of other, more minor, amendments to the employer debt regulations.¹² Those amendments include a number of changes to the timescales contained in the period of grace provisions and also seek to clarify:
 - the instances in which an employer debt will not be triggered following a restructuring of an employer which is limited to a change in its status;
 - when a flexible apportionment arrangement takes effect if the scheme is frozen; and
 - the definition of 'segregated scheme'.
 11. To read about the consultation paper (of 21st April, 2017), please see [Pensions Bulletin 17/09](#).
- IV. Disclosure of costs, charges and investments - Government response and regulations**
1. Schemes providing money purchase benefits will need to put systems in place to comply with new disclosure

¹⁰ [Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2018](#) (SI 2018/237).

¹¹ Part 3 of the Pensions Act 2004; Pensions Regulator (Financial Support Directions etc.) Regulations 2005 (SI 2005/2188).

¹² Occupational Pension Schemes (Employer Debt) Regulations 2005 (SI 2005/678).

requirements concerning costs, charges and investments, most of which will come into force on 6th April, 2018.

2. The DWP has published (on 27th February, 2018) its [response](#) to the consultation on the disclosure of costs, charges and investments in occupational DC schemes.
3. The requirements of new regulations¹³ will apply to schemes providing money purchase benefits, with a limited number of exemptions. One exemption relates to schemes that only provide money purchase benefits attributable to AVCs.
4. Trustees will be required to publish charges and transaction cost information and to disclose this to members.
5. Costs and charges information will need to be:
 - published on a website, for public consumption, on a similar annual cycle to the Chair's Statement (i.e. within 7 months of the scheme year end, falling on or after 6th April, 2018); and

¹³ [Occupational Pension Schemes \(Administration and Disclosure\) \(Amendment\) Regulations 2018 \(SI 2018/233\)](#).

- set out in the Chair's Statement.

6. Reference must also be made to the website in members' annual benefit statements, signposting where they can find the costs and charges information.
7. The information would need to set out the costs and charges for each default arrangement and each alternative fund option which the member is able to select. An illustration of the compounding effect of the costs and charges would also need to be provided.

Comment: Some schemes may feel less inclined to offer numerous fund options to their members in the light of this.
8. From 6th April, 2019, information about any pooled investment funds used by the scheme will need to be disclosed within 2 months of any request made by members or trade unions. Annual benefit statements would need to notify recipients that they can request this investment information.
9. Trustees may also wish to read [guidance](#) on cost and charge reporting published by the DWP (on 26th February, 2018).

¹⁴ [Registered Pension Schemes \(Relief at Source\) \(Amendment\) Regulations 2018 \(SI 2018/150\)](#) - in force on 6th April, 2018.

10. To read about the consultation paper (of 26th October, 2017), please see [Pensions Bulletin 17/18](#).

Tax

V. Relief at source - Scottish income tax

1. As a result of the introduction of Scottish income tax, scheme administrators will need to submit an annual return of individual information within 3 months of the end of each tax year, starting with the 2018/19 tax year.¹⁴
2. The annual return enables HMRC to work out the correct tax rate because it includes information about members' residency status and should therefore indicate whether Scottish income tax applies to the individual concerned.
3. Any interim claims for tax months ending on or after 5th April, 2018, will also be subject to the following changes:
 - a new 90-day period within which any excess relief claimed must be reported and repaid, with interest payable if the repayment is late (the 90 days start when the scheme administrator discovers the excessive claim for relief); and

- the deadline for making any interim claims for relief at source will be halved so that such claims must be made within 3 months after the end of the tax month to which the claim relates.
4. Further information about the impact of Scottish income tax on pensions relief at source is set out in HMRC's [February 2018 newsletter](#). The newsletter includes, at Appendix 3, the format to be used by scheme administrators when drawing up their annual returns.
 5. The newsletter also states that for members liable to Scottish income tax at the 19% rate, or who pay no tax, scheme administrators will continue to claim relief at 20% and HMRC will not recover the difference.

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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