

Pensions Bulletin

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Legal and regulatory developments in pensions

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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 you normally deal at Slaughter and May or [Bridget Murphy](#)

New law

I. Dashboards - Government response published

1. Schemes will need to get their data in order so that they can provide it to dashboards *'within three to four years'*. The Government also plans to include State Pension information *'at the earliest possible opportunity'*.

Comment: The planned introduction of dashboards has given rise to concern about the data protection implications, such as the likely need to revisit privacy notices already sent to data subjects. Some thought will also need to be given to minimising the significant potential for member confusion. Making the calculation sufficiently transparent (for example, where pension debit adjustments need to be made) should go some way towards achieving that.

2. The DWP's pensions dashboards [response](#) to consultation says that legislation requiring schemes to provide data to dashboards will be passed subject to securing parliamentary time (to read

about the consultation please see [Pensions Bulletin 18/17](#)).

3. **Phased approach** - Schemes will be required to provide information to dashboards on a phased basis, with large DC schemes expected to be among the first in any compulsory staging. The Government also expects some large DC schemes (including Master Trusts) to provide data on a voluntary basis from 2019/20. The way in which dashboards are to operate will also be phased, with the level of detail and complexity of functions increasing over time.
4. **Digital architecture** - There will be multiple commercial dashboards, which will sit alongside a non-commercial pensions dashboard created and run by the Money and Pensions Service. The dashboards will be supported by the same digital architecture so they will all display the same basic information and the same number of schemes.
5. **Dashboard providers** - Initial phase dashboard providers will need to be FCA regulated, but as dashboards evolve the intention is to allow other kinds of dashboard providers too, such as FinTechs.

6. **Dispute resolution** - The Government wants the dashboard delivery group¹ to set up a dispute resolution liability model *'that all parties are signed up to'* and a process for dealing with complaints (for example, complaints about the accuracy of the data, or about the performance of a dashboard).
7. **Funding dashboard project** - Funding for the digital architecture and governance for the non-commercial and commercial dashboards will come from the Financial Services Levy and pension schemes General Levy, as well as from some central Government funding. The State Pensions information is to be delivered and funded by the DWP.

II. CDC consultation - Government response

1. Employers seeking to provide a different pension offering may wish to consider collective defined contribution ('CDC').
2. The Government's consultation [response](#) on collective defined contribution ('CDC') schemes has been published, with legislation planned *'as soon as Parliamentary time allows'*.
3. The legislation will cover the Royal Mail CDC scheme's model, but the Government

¹ to be made up of industry and consumer representatives, regulators, and the Government

intends to examine other CDC models (particularly decumulation-only vehicles and DC master trusts) once the Royal Mail scheme is in operation. For now, CDC arrangements will be available to single-employer schemes.

4. Key points to note from the response are:

- 4.1 **CDC benefits will be a type of money purchase benefit** - The Government plans to amend the statutory 'money purchase benefits' definitions to include CDC benefits. This will take such benefits outside the scope of defined benefit funding and employer debt legislation.
- 4.2 **Benefit adjustments** - Any increase or decrease to benefits resulting from scheme performance or changed assumptions would need to be applied across the entire membership. The approach and mechanism for adjusting benefits would need to be set out clearly in the scheme rules '*rather than trustee discretion*', and communicated clearly to members.
- 4.3 **Capital buffer not required** - If a CDC scheme wishes to have a capital buffer the legislation will not preclude that.
- 4.4 **Authorisation regime** - CDC schemes will be authorised and supervised by the Pensions Regulator, under a regime similar to that used for

master trusts. A consultation on the regime is to be published '*in due course*'.

- 4.5 **Valuations** - CDC schemes will need to obtain annual actuarial valuations and trustees will need to notify the Regulator if any sustainability concerns arise.
- 4.6 **Transfers** - Transfers values for members transferring out of a CDC scheme will be the member's share of the total fund. The Government is holding off from introducing a requirement for CDC members to take financial advice before transferring-out because such advice may be difficult to find before CDC schemes become part of the pensions landscape. In common with other schemes, CDC schemes are to have discretion as to whether they accept a transfer-in.
- 4.7 **Disclosure** - The disclosure requirements and risk warnings for CDC schemes will be more tailored than for other money purchase schemes. Pensioners will have to be provided with annual information in advance of any changes to their expected payments.
- 4.8 **Tax** - CDC schemes will be eligible for tax treatment equivalent to that of other registered schemes. The response does not, however, go into

the details of whether CDC benefits will be treated as 'money purchase' or 'defined benefit' for the purposes of applying the various Finance Act limit tests and conditions. Rather, it states that a consultation on '*necessary tax changes*' is to be published '*in due course*'.

- 4.9 **Auto-enrolment** - The Government plans to use the auto-enrolment cost of accrual quality test for its initial CDC model. However, it intends to make the legislation flexible enough so that a different quality test (such as minimum contributions) could be used for future CDC models. The Government wants an annual charge cap of 0.75% be applied to the whole of the CDC fund.

Points in practice

III. DWP issues GMP conversion guidance

1. Schemes considering their options for GMP equalisation action will already be having conversations with their advisers and sorting out their GMP data. If conversion is a route to be followed then they should read DWP [Guidance](#) on the 10 steps to take.
2. The Guidance says that Government is considering changes to the GMP legislation '*to clarify certain issues*' but does not elaborate further.

Comment: Most schemes are unlikely to be in a position to address unequal GMPs for some time so the timing of those legislative changes may not be viewed as urgent by some. For those schemes that want to get on with conversion, however, this is likely to be frustrating.

3. The Guidance also states that the Government plans to amend the Equality Act 2010 to remove the requirement for a comparator (in the light of *Allonby*) ‘as soon as a suitable opportunity presents itself’.

Comment: This intention has been expressed before by the DWP, although the legal industry has also previously commented that a change to the law was not necessarily required by *Allonby*.

4. In recognition of the complexities involved, the DWP suggests (on 22 occasions) that advice be taken on a range of issues, including:
 - 4.1 the employer consent requirement where the participating employers have changed over the years;
 - 4.2 what to do where the cost of equalising is at least the same as the projected additional benefits;
 - 4.3 how to structure the post-conversion benefits - the DWP suggests trustees may consider giving members options, prompting them to consider whether the

Incentive Exercises Code would be relevant;

- 4.4 the interaction of arrears payments with future payments;
- 4.5 benefits granted following a transfer-in;
- 4.6 what to do about members who have transferred-out, or died; and
- 4.7 what to do when the data is insufficient.

Comment: The High Court is expected to rule on the treatment of past transfers in 2020.

5. Confirming the position under the legislation, the DWP notes that:
 - 5.1 schemes may undertake more than one conversion exercise;
 - 5.2 a conversion exercise need not cover all members or survivors; and
 - 5.3 all of the individual’s GMP will need to be converted.
6. The Guidance goes on to outline the 10 stages via which trustees may implement GMP conversion, those being:
 - 6.1 **Reach agreement with the employer** - this is required under the legislation

- 6.2 **Select the members and benefits to be converted, and decide on the form of post-conversion benefits** (subject to the constraints in the legislation)

- 6.3 **Set the conversion date**

- 6.4 **Consult the affected members** - the Guidance outlines what the consultation should cover, saying that it is ‘likely to be sufficient’ if trustees take the same steps for member tracing as they would do under the Disclosure legislation

- 6.5 **Instruct the actuary to calculate the benefits to be converted** - while the Guidance notes that trustees could use the CETV, or unisex equivalent, as a starting point, thought would need to be given as to whether the CETV would be appropriate since that might have been set having regard to members most likely to transfer (as opposed to, say, pensioners with GMPs). Also noted is the added complexity involved in calculations for active members (eg, would the calculation assume continuation in pensionable service, or would it assume the member left service on the conversion date?), with the DWP suggesting that trustees seek actuarial and legal advice on this point.

- 6.6 **Equalise**
 - 6.7 **Determine the post-conversion benefit**
 - 6.8 Within 3 months of the calculations **obtain a certificate from the actuary**, confirming the post-conversion benefits are at least equivalent to the benefits pre-conversion
 - 6.9 **Modify the scheme to effect conversion** - the legislation offers the option of amendment by resolution
 - 6.10 Take all reasonable steps to **notify affected members and survivors**, before or as soon as reasonably practicable after the conversion - HMRC also needs to be informed
7. On the tax front, the Guidance merely notes that HMRC is considering a number of areas potentially affected by GMP equalisation, promising *‘more information and guidance ... in the coming months’*.
- Comment:** There are numerous, complex, tax aspects of GMP equalisation which will need to be bottomed-out with HMRC. The Guidance anticipates that the data issues likely to be faced by schemes will result in them having to take a *‘sensible approximate approach [which] is unlikely to result in material discrepancy in the vast majority of*

cases’. These approximations (along with other issues referred to in the Guidance, such as arrears) may well have Lifetime Allowance implications, for example, and HMRC’s views on this will need to be established.

IV. PPF publication on contingency planning for employer insolvency

1. Trustees may find the PPF’s [recommendations](#) on insolvency contingency planning helpful. The PPF’s suggestions for trustee action are set out by reference to the strength of the employer and are outlined below.

Comment: The suggestions are consistent with good scheme governance. Some trustees will already have re-focused their attention towards planning for a possible future employer insolvency as part of their Brexit planning and, more broadly, their approach to employer covenant monitoring as part of their arrangements for scheme funding [integrated risk management](#).
2. Where there is a strong employer covenant, the PPF suggests that trustees arrange for:
 - 2.1 contingency plans for payroll and banking to be run independently of the employer - this would include access to member payroll information, and possibly a separate account holding 3 months of payroll for use where insolvency

- appears imminent and payroll is run in-house, and
 - 2.2 a complete set of governing documents listed, collated, and held in more than one place.
3. Where there is a material deficit and a weak employer covenant, trustees may consider:
 - 3.1 reviewing the steps needed to realise charges and assets contingent on the employer’s failure,
 - 3.2 ensuring documents held on company premises are up-to-date, readily available, and backed-up electronically, and
 - 3.3 reviewing which employers remain attached to the scheme and which members are attached to each employer.
 4. If the employer is stressed or distressed, the PPF suggests:
 - 4.1 a contingency planning session to take place with the PPF and a PPF service provider, and
 - 4.2 arrangements be made for payroll and banking to be run independently of the employer.
 5. The PPF also suggests that thought be given to:

- 5.1 the expertise of the trustee board,
- 5.2 member communications, to ensure that they are prompt and clear,
- 5.3 a media strategy,
- 5.4 working with the Pensions Regulator so that members considering a transfer-out are given appropriate support, and
- 5.5 how to manage cashflow, with clear mechanisms for disinvestment.

Contingency planning for employer insolvency - published 16th April, 2019

V. Reminder: disclosure about pooled investment funds

- 1. A reminder that since 6th April 2019² schemes providing money purchase benefits apart from AVCs (unless they fall within a number of other, limited, exemptions) are required to disclose information about any pooled investment funds used by the scheme within 2 months of a request from members or trade unions.

² Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2015 (SI 2013/2734), regulation

- 2. Annual benefit statements will need to explain that this information can be requested.

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.	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
2.	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 .
3.	Money purchase annual allowance, which applies to individuals who have flexibly	Retroactive effect from 6 th April, 2017	Member communications should include a warning note about this, highlighting the retroactive effect.

12A, Schedule 3 (paragraph 35), and Schedule 6 (paragraph 5A)

No.	Topic	Deadline	Further information/action
	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		
4.	GMP equalisation		
4.1	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. Judgment published Clarificatory judgment published
4.2	Government response to consultation on GMP equalisation published	13 th March, 2017	Pensions Bulletin 17/7
5.	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

No.	Topic	Deadline	Further information/action
6.	DC bulk transfers without member consent: introduction of easements	6th April, 2018	Pensions Bulletin 17/18 Pensions Bulletin 18/05 Pensions Bulletin 18/08
7.	Bulk transfers of contracted-out rights without consent: introduction of easements	6th April, 2018	Pensions Bulletin 18/01 Pensions Bulletin 18/05
8.	Deferred debt arrangements became available	6th April, 2018	Pensions Bulletin 18/05
9.	Disclosure of costs, charges and investments - new requirements Chair's statement and website must publish costs and charges information	Mostly in force 6th April, 2018 Within 7 months of scheme year end falling on or after 6th April, 2018	Pensions Bulletin 18/05
10.	Auto-enrolment total minimum DC contributions increase to 5% (of which minimum employer contribution of 2%)	6th April, 2018 to 5th April, 2019	

No.	Topic	Deadline	Further information/action
11.	Data protection: New Regulation: EU General Data Protection Regulation in force	25th May, 2018	Pensions Bulletin 16/05 Employment Bulletin 16/15 As data controllers, trustees need to ensure that compliance with the EU General Data Protection Regulation is achieved. A compliance checklist for trustees is available to clients from their usual Slaughter and May contact.
12.	Existing EMIR exemption extension for pension scheme arrangements ended	16th August, 2018	Pensions Bulletin 17/01 Pensions Bulletin 18/12
	EU Parliament confirms further extension of pensions exemption, with further extensions possible	12th June, 2018	Pensions Bulletin 18/10
13.	CJEU decides PPF compensation must equal at least 50% of each recipient's benefit (<i>Hampshire - Case C-17/17</i>)	6th September, 2018	Pensions Bulletin 18/13
14.	Master trusts new authorisation and supervision regime introduced	1st October, 2018	Pensions Bulletin 18/12 Pensions Bulletin 18/13 (note: SI later re-issued as SI 2018/1030)
15.	IORP II transposition deadline	12th January, 2019	Pensions Bulletin 16/11

No.	Topic	Deadline	Further information/action
16.	Auto-enrolment total minimum DC contributions will increase to 8% (of which minimum employer contribution of 3%)	6th April, 2019 onwards	
17.	Trustees must ensure Statement of Investment Principles meets new requirements on ESG and stewardship	Most requirements to be met by 1st October, 2019	Pensions Bulletin 18/13
18.	Pensions Regulator consultation on draft DB Funding Code of Practice expected	Spring 2020	

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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