



PENSIONS ROUND-UP

DECEMBER 2017

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INTRODUCTION

Welcome to the latest edition of DLA Piper's Pensions Round-Up newsletter in which we provide an overview of developments in pension legislation and regulatory guidance.

In this edition we look at key developments from December 2017 including the following.

- **Department for Work and Pensions:** a consultation on draft regulations to enable, in certain circumstances, bulk transfers without member consent of contracted-out rights to schemes that have never been contracted-out; the government's interim response to the Law Commission's report on pension funds and social investment; a report in relation to the review of automatic enrolment which includes recommendations for changes to the legislation; and the proposed automatic enrolment earnings thresholds for 2018/19.
- **Legislation:** the publication of a Finance Bill which includes provisions to allow HMRC to refuse to register or to de-register occupational pension schemes in relation to which a sponsoring employer is a dormant company; regulations to change the legislation in relation to valuing safeguarded benefits when assessing whether the statutory advice requirement applies; and updates to the Information Commissioner's Office guidance on the GDPR.
- **HMRC:** an update from HMRC about the deadline for registration of information by taxable relevant trusts; updates to the Pensions Tax Manual; and the publication of two newsletters in relation to pensions.
- **Pension Protection Fund:** the publication of the Levy Determination 2018/19 and information about changes expected to be made to contingent asset forms; and the latest edition of the Purple Book.
- **Other news:** a consultation on draft standards for professional trustees; and a report from the Work and Pensions Committee in relation to protecting pensions against scams.
- **On the Horizon:** a timeline of some of the key future developments in pensions to help employers and trustees plan ahead.

If you would like further information about any of the issues raised in this edition of Pensions Round-Up, please get in touch with Cathryn Everest or your usual DLA Piper pensions contact. Contact details are at the end of this newsletter.

DEPARTMENT FOR WORK AND PENSIONS

CONTRACTING-OUT – TRANSFERS

The current legislation on contracting-out permits bulk transfers of contracted-out rights without member consent in circumstances where the transferring and receiving scheme relate to persons who are or have been employed by the same employer or there is a transfer between employers in the same group or in consequence of a financial transaction between the employers. The legislation also currently provides that such a transfer is only possible from a scheme that was a salary-related contracted-out scheme to another scheme that was a salary-related contracted-out scheme. Since the end of contracting-out in April 2016 this has meant that new schemes (or older schemes that had not been contracted-out) could not be the recipient of such bulk transfers because they are not, and cannot become, schemes that were previously contracted-out. This may cause difficulties for employers looking to restructure pension provision.

On 21 December the DWP published a consultation on draft regulations which propose to extend the legislation to enable the bulk transfer of contracted-out rights without member consent so that it will be possible to make such a transfer from a salary-related scheme to a salary-related scheme that has never been contracted-out provided certain conditions are met. In summary, these conditions are that the rights of the member are not adversely affected by the transfer and that the new scheme provides the same protections, for example in relation to revaluation and indexation, that would have applied if the receiving scheme had been a formerly contracted-out scheme. Transfers will be permitted in relation to active, deferred and pensioner members subject to the relevant conditions being met.

The consultation closes on 17 January and it is proposed that the regulations will come into force on 6 April 2018.

PENSION FUNDS AND SOCIAL INVESTMENT

In the [June/July 2017 edition of Pensions Round-Up](#) we reported on a Law Commission report which looked at how far pension funds may or should consider issues of social impact when making investment decisions. The report set out a number of recommendations and options for reform, and on 18 December the Department for Digital, Culture, Media and Sport and the DWP published the government's interim response to the report.

The interim response states that the government is minded to make the recommended changes to the regulations on investment and occupational pension schemes to require: (i) trustees to state their policies in relation to evaluating risks to an investment in the long term including risks relating to sustainability arising from corporate governance or from environmental or social impact, and in relation to considering and responding to members' ethical and other concerns; and (ii) the Statement of Investment Principles to state the trustees' policy (if any) on stewardship. The government will consult on these recommendations. It aims to consult on policy and regulations during 2018 and the interim response states that, subject to the outcome of that consultation, legislation will be brought forward for Parliamentary approval at the earliest reasonable opportunity.

In terms of options for reform, the government states that certain recommendations are addressed by initiatives already underway; for example, in relation to consolidation, the interim response notes the October 2017 consultation on bulk DC transfers without consent. In relation to the option for reform that the Government should consider whether pension schemes should be required to ask their members periodically for their views on social investment and non-financial factors, the interim response states that the government will continue to consider this as part of other work reviewing the effectiveness of regulations.

A full response to the Law Commission report is expected in summer 2018.

DEPARTMENT FOR WORK AND PENSIONS

AUTOMATIC ENROLMENT REVIEW

Background

A review of automatic enrolment took place during 2017 and in December the DWP published "*Automatic Enrolment Review 2017: Maintaining the Momentum*" as well as an analytical report setting out the analysis and findings used to inform the review. The review examined three main areas: the existing coverage of automatic enrolment; the evidence base concerning future contributions and how this can be strengthened; and how engagement can be improved so that individuals have a stronger sense of ownership and are better enabled to maximise pension saving.

Proposals and next steps

The proposals in the review include to: (i) reduce the lower age limit for automatic enrolment from 22 to 18; and (ii) make amendments so that pension contributions are calculated from the first pound earned rather than from the lower limit of the qualifying earnings band. The change in relation to contributions would effectively remove the category of entitled workers (that is, workers whose earnings do not exceed the lower limit of the qualifying earnings band and who can currently opt-in but are not entitled to an employer contribution) as all eligible workers would have access to a workplace pension with an employer contribution. It is also noted that removing the lower earnings band on contributions could have consequential impacts on the alternative DC quality requirements, and this will be considered as the policy is developed. The government aims to implement the changes in relation to the age limit and the lower limit of the earnings band in the mid-2020s, subject to discussions with stakeholders on the implementation approach during 2018/19, finding ways to make the changes affordable and evidence of the impact of the increases in statutory minimum contribution rates in April 2018 and April 2019. There will be a formal consultation on the proposals.

The government will also continue to monitor and evaluate the impact of increasing contributions and will carry out further analysis to inform a longer-term debate on the right balance between statutory contribution rates and voluntary additional retirement savings.

In relation to the issue of engagement, the review sets out some areas where there is scope for pension providers, the advisory community and employers, working with government where necessary, to do more to support individuals' engagement with their savings. For example, the government welcomes the work that has been done to simplify language and calls on industry partners to collaborate, use and build upon this, and the review notes that the government is committed to working with pension providers on pension dashboards.

Statutory reviews

In July 2017 the DWP published a call for evidence seeking views on the provisions introduced in April 2015 setting out the alternative quality requirements for DB pension schemes that are used for automatic enrolment. The review outlines findings from the statutory review of these provisions and states that the evidence suggests that the objective of providing a simplified quality test which caters for the bulk of DB schemes is broadly being met. It is also noted that some respondents raised areas for further simplification and the government will consider issues raised in relation to active members who have chosen to lower their contribution rates. The next statutory review will be in 2020.

The review also reports on the statutory review of the alternative DC quality requirements. The legislation requires a review at least once every three years to ensure that, under the alternative quality requirement, contributions will not be less than the statutory minimum for at least 90% of jobholders. The DWP reports that its assessment has confirmed that this 90% test continues to be met. The next statutory review of these provisions will also be carried out in 2020.

DEPARTMENT FOR WORK AND PENSIONS AND HM TREASURY

AUTOMATIC ENROLMENT – EARNINGS THRESHOLDS

On 18 December the DWP announced the following proposed automatic enrolment thresholds for 2018/19. Legislation will need to be made to reflect the proposed changes.

- The qualifying earnings trigger which jobholders have to exceed in order to qualify for automatic enrolment will remain at £10,000.
- The lower limit of the band of qualifying earnings on which the minimum contribution requirements are measured will continue to be aligned with the National Insurance Contributions Lower Earnings Limit which means that it will increase from £5,876 to £6,032. This is also the earnings threshold which workers who are eligible to opt in rather than be automatically enrolled must exceed if they are to be entitled to an employer contribution.
- The upper limit of the band of qualifying earnings on which the minimum contribution requirements are measured will continue to be aligned with the National Insurance Contributions Upper Earnings Limit which means it will increase from £45,000 to £46,350.

FINANCIAL ASSISTANCE SCHEME

In September the DWP published a consultation on draft regulations to introduce a long service cap for the Financial Assistance Scheme (FAS) whereby FAS members would have their cap increased by 3% for each full year of pensionable service above 20 years when they first become entitled to payments from the FAS, subject to a new maximum of double the standard cap. The consultation sought views on whether the draft regulations achieve the policy intent and have any unintended consequences. On 18 December the DWP published the response to

consultation which reports that some amendments will be made to the regulations including in relation to pension credits, survivor benefits and the date of entitlement for those already in receipt of capped assistance. The updated regulations are now subject to Parliamentary approval and it is intended that they will come into force on 6 April 2018.

BUDGET TIMETABLE

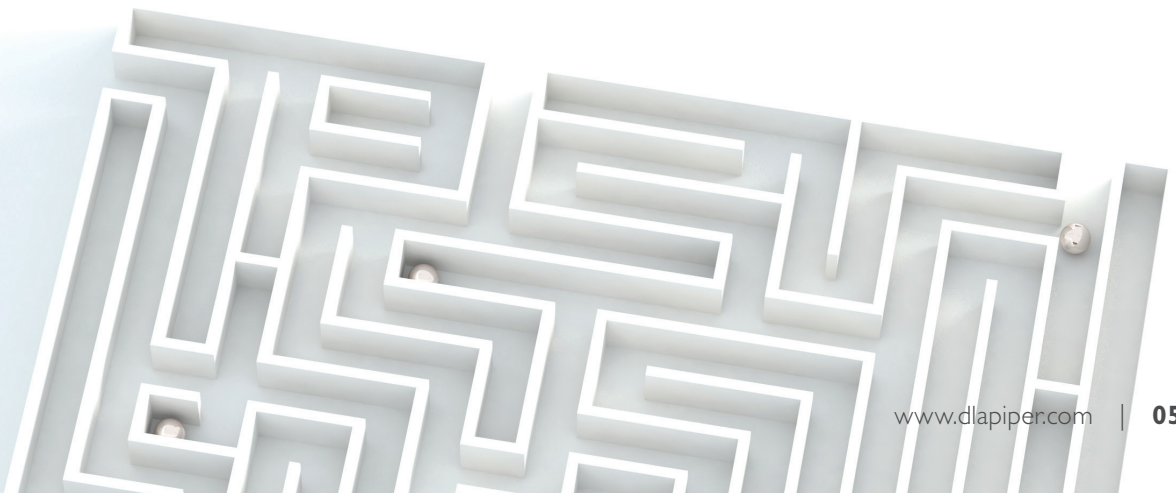
In the Autumn Statement 2016 it was announced that in the future there would be a single fiscal event each year of a Budget in the autumn. Autumn Budget 2017, which was delivered in November 2017, was the first Budget in this new cycle. From Spring 2018, there will be an annual Spring Statement but, unless the economic circumstances require it, the Chancellor will not make significant tax or spending announcements at the Spring Statement.

On 6 December HM Treasury published a document setting out how the move to a single fiscal event cycle impacts on the tax policy making and consultation process.

On 6 December HM Treasury also announced that the Spring Statement 2018 will take place on Tuesday 13 March 2018.

INVESTMENT MANAGEMENT

In December HM Treasury published “*The UK Investment Management Strategy II*” which sets out the government’s long-term approach to enhancing the UK’s position as a centre for asset management. It states that the government is committed to delivering changes to enhance the asset management industry in a number of areas which include enhancing government, regulator and industry dialogue, promoting the UK’s competitiveness and stable tax and regulatory environment, strengthening the domestic investment management skills pipeline and supporting UK asset managers to be global leaders in innovative investment strategies.



LEGISLATION

FINANCE BILL

A new Finance Bill was published on 1 December which, in relation to pensions, includes provisions so that HMRC can refuse to register or can de-register a scheme if it: (i) is an occupational pension scheme and a sponsoring employer in relation to the scheme is a body corporate that has been dormant during a continuous period of one month that falls within the period of one year ending with the day on which the decision is made; or (ii) is an unauthorised master trust scheme.

The provisions in relation to dormant companies are proposed to come into force on 6 April 2018 and form part of the measures the government is taking to tackle pension scams. The provisions in relation to unauthorised master trusts are being introduced in preparation for the introduction of the new authorisation and supervision regime for master trusts and will come into force at the same time as that new regime or, if later, the date that the Bill receives Royal Assent.

ADVICE REQUIREMENT

In April 2015 when the new DC flexibilities were introduced, a statutory requirement was introduced so that members with safeguarded benefits (for example, defined benefits) have to take appropriate independent financial advice from an adviser with the relevant permission under the Financial Services and Markets Act 2000 before transferring or converting their safeguarded benefits to acquire flexible benefits. There is an exception to this requirement where the member's safeguarded benefits under a scheme have a total value of £30,000 or less. Regulations were made in December 2017, which will come into force on 6 April 2018, relating to how to value benefits for the purposes of assessing whether the advice requirement applies.

The regulations were introduced following a September 2016 consultation and the July 2017 response which looked at the way that the advice requirement applies to safeguarded-flexible benefits, that is, benefits which are defined contribution in nature but offer some form of guarantee in

relation to the pension income that will be available to the member. They introduce a simpler process for trustees to value members' safeguarded benefits which are not salary-related occupational benefits when determining whether the advice requirement applies.

However, it is also worth noting that the regulations make a more general change to the provisions on valuing safeguarded benefits for the purposes of the advice requirement so that trustees must disregard a legislative provision that allows schemes to calculate cash equivalents in a manner approved by the trustees which results in a more generous transfer value. This change applies to all types of safeguarded benefits, not just safeguarded-flexible benefits, and therefore schemes which currently take this provision into account when determining whether the advice requirement applies will need to update their processes.

The regulations also contain provisions in relation to informing members who are part way through the process about the change.

GENERAL DATA PROTECTION REGULATION (GDPR)

In December the Information Commissioner's Office (ICO) updated its Guide to the GDPR including to add a new section on legitimate interests and to update the section on consent. It also updated the section on documentation and produced some templates that controllers and processors can use to help them document their processing activities. The ICO states that: (i) European wide guidelines on consent have now been published for comment and the ICO will publish an updated version of its guidance on this topic once the guidelines have been finalised; and (ii) it is planning to publish more detailed guidance on legitimate interests and on documentation shortly. Our recent [Pensions Alert](#) provided a reminder of the key action points that trustees need to take in advance of the GDPR coming into force on 25 May 2018. We will be issuing further Pensions Alerts on the GDPR including once the ICO has published its more detailed guidance.

TRUSTS REGISTRATION SERVICE

In the [October 2017 edition of Pensions Round-Up](#) we reported on new obligations in anti-money laundering legislation requiring trustees of “taxable relevant trusts” to register certain information with HMRC via the Trusts Registration Service on or before 31 January 2018 or 31 January after the tax year in which the trustees were first liable to pay any of the taxes that can make it a taxable relevant trust. In December HMRC published an update to state that, for the first year of the Trusts Registration Service, where the deadline of 31 January 2018 applies, it will not impose a penalty on the failure to register an existing trust by 31 January 2018 if it is registered no later than 5 March 2018. However, it should be noted that the date in the legislation has not been changed.

It is also worth noting that in cases where income tax or capital gains tax are incurred for the first time the deadline would have been 5 October 2017 rather than 31 January 2018. In relation to these cases, HMRC states that no penalty will be imposed if registration is completed after 5 October 2017 but before 5 January 2018.

PENSIONS TAX MANUAL

In early December HMRC made some updates to the Pensions Tax Manual including to:

- reflect the reduction in the money purchase annual allowance from £10,000 to £4,000 with effect from 6 April 2017;
- add content about the overseas transfer charge, for example, in relation to points for scheme administrators to consider before making a transfer. This page also contains more general guidance on the information that scheme administrators should obtain and check and other considerations before making a transfer to an overseas scheme.

PENSION SCHEMES NEWSLETTERS

On 18 December HMRC published a newsletter about relief at source for Scottish Income Tax which provides information about: (i) how HMRC will tell pension scheme administrators the residency tax status of their members for relief at source via the notification of residency status report; (ii) the residency status look up service that will be available early in 2018; (iii) residency tax status changes during a tax year; and (iv) how to submit the annual return of individual information to HMRC. On 28 December HMRC published pension schemes newsletter 94 which also contains information about relief at source for Scottish Income Tax including about the annual return of individual information and applying the residency tax status in cases of transfer.

Both newsletters note that new Scottish Income Tax rates and thresholds were announced in the Scottish Budget on 14 December 2017 and state that the Government and HMRC will be working closely with the Scottish Government and with pension providers on the implications of that change for pension tax relief and to clarify how the mechanisms for providing relief will operate in respect of Scottish pension savers.

Other issues covered by pension schemes newsletter 94 include that:

- HMRC asks administrators to remind members that it is important that those who have exceeded the annual allowance for 2016/17 declare this on their Self-Assessment tax return, and provides links to the annual allowance calculator and further information on paying tax charges; and
- in relation to simplifying pension language, HMRC states that it is looking at the terms it uses in legislation and guidance to get a better understanding of what its customers find hard to understand and how it might make its language more user friendly. HMRC would like to speak to scheme administrators and industry representative bodies about this and provides contact details for use by those who would like to help.

PENSION PROTECTION FUND

LEVY DETERMINATION AND CONTINGENT ASSETS

In September the PPF published a consultation on the draft Levy Rules for 2018/19 and this was followed in October by a consultation specifically looking at contingent assets. On 19 December the PPF published a Policy Statement summarising the responses received, its analysis of the issues and the conclusions reached, together with the Levy Determination and Rules 2018/19 and documents providing guidance for schemes on how to meet the requirements of the Levy Rules and explaining how the PPF expects to make use of the areas where the Levy Rules provide it with flexibility. These include guidance in relation to asset backed contributions and deficit reduction contributions and draft guidance on Type A contingent asset guarantor strength (with full contingent asset guidance to be published in mid-January).

In relation to the consultation on new forms for contingent assets, the Policy Statement reports that the PPF expects to publish final forms in mid-January and the key changes that it expects to make to them are: (i) for the versions of the standard form involving a fixed cap to include wording to confirm that the fixed cap on the guarantor's liability is unaffected by any claim prior to insolvency; (ii) an optional clause for agreements with a fixed post-insolvency cap to limit pre-insolvency liability, though with a requirement that the pre-insolvency limit be substantial (by reference either to the post-insolvency limit or the regular annual payments under the schedule of contributions); and (iii) revised wording in relation to the amendment and replacement requirements. Contingent assets entered into after the revised forms are published will need to be on the new forms. The PPF also states that it anticipates requiring existing Type A and B contingent assets which include a fixed cap to be re-executed in 2019/20 if they are to continue to be recognised in the levy. In the coming months, the PPF plans to provide additional early guidance to schemes well in advance of the usual 2019/20 publication deadlines.

The new requirement (previously confirmed by the PPF in September) for Type A guarantees where the levy saving is £100,000 or more to be backed by a guarantor strength

report should also be noted. The Policy Statement reports on updates to the guidance relating to this requirement following responses to the September consultation.

Other points of note in the Policy Statement include the following: (i) the Levy Estimate of £550 million for 2018/19 is confirmed, which is just over 10% lower than the Levy Estimate of £615 million for 2017/18; (ii) the PPF is retaining the proposed approach of narrowing the levy rates for bands 1 to 4 through increasing the levy rates for the first three bands; and (iii) the PPF is introducing changes to simplify the certification of deficit reduction contributions and, following feedback to the September consultation, it will now be possible to disregard all expenses associated with investment rather than just investment management expenses.

A full list of the relevant deadlines for the 2018/19 levy year has also been published.

PURPLE BOOK 2017

On 5 December the PPF published the twelfth edition of the Pensions Universe Risk Profile (The Purple Book) which provides comprehensive data on the PPF's universe of DB pension schemes, predominantly those in the UK private sector. Most of the analysis in the Purple Book is based on new scheme returns issued in December 2016 and January 2017 and returned by 31 March 2017. The Purple Book looks at scheme demographics, scheme funding, funding sensitivities, insolvency risk, asset allocation, PPF risk developments, PPF levy payments 2016/17, schemes in assessment, PPF compensation 2016/17, and risk reduction. Findings reported in the Purple Book include that: the proportion of open schemes has remained relatively steady in the 12 months to March 2017 with a figure of 12% as at the end of March 2017 compared to 13% the previous year; the number of schemes closed to future accruals has risen from 35% to 39%; and on a section 179 basis, the funding level reached 90.5% at the end of March 2017 rising from 85.8% in 2016.

OTHER NEWS

PROFESSIONAL TRUSTEE STANDARDS

In August 2017 the Pensions Regulator published its "Professional trustee description policy" which sets out a revised description of who it considers to be a professional trustee, and its "Monetary penalties policy". The Regulator expects higher standards from professional trustees and will generally apply higher penalties where those who meet its description of a professional trustee have failed to meet their duties. In its response to the consultation on the policies, the Regulator noted that the Professional Trustee Standards Working Group was established by trustee bodies across the pension industry in May 2017 to lead the way in setting standards that professional trustees are expected to meet. The Regulator stated that it supports the Working Group's work to produce clear, succinct standards and accreditation for professional trustees that will help employers and trustees appoint high quality professionals.

In December the Working Group published a consultation on its draft standards for professional trustees of occupational pension schemes which are intended to apply to anyone falling within the description of a professional trustee in the Regulator's policy. The standards cover fitness and propriety, integrity, expertise and care, impartiality and conflicts of interest, professional behaviour, and systems and controls. There are also additional standards for professional trustees who act as chairs and professional trustees who act as sole trustee. It is proposed that the standards will be applied on a 'comply or explain' basis and that professional trustees should expect to be asked to provide disclosure to employers and/or existing trustees when seeking appointments about how they meet each of the standards or, if one or more of the standards have not been met, why this is the case. The consultation closes on 2 March 2018 and it is expected that the final version of the standards will be published in April or May 2018. The Working Group also states that it is developing an accreditation framework which professional trustees will be expected to achieve, and will publish details in 2018.

WORK AND PENSIONS COMMITTEE – PENSION SCAMS

On 11 December the Work and Pensions Committee published a report entitled "Protecting pensions against scams: priorities for the Financial Guidance and Claims Bill".

The Committee recommends that a new clause should be added to the Bill which would require the Government to introduce a ban on pension cold calling by June 2018 at the latest and would enable the Government to set the details by regulations. In relation to guidance, the Committee notes a clause in the Bill which states that the FCA must require schemes to ask members whether they have taken Pension Wise guidance before granting access to a pension pot, and enables the FCA to require the scheme to provide access to such guidance before proceeding. The Committee recommends that: (i) this clause be strengthened to ensure that, subject to appropriate exceptions, an individual receives or expressly refuses guidance before being granted access to a pension pot; and (ii) the Government should use its existing powers to place equivalent requirements on trust-based DC pension schemes. The Government has not yet published a response to the report.

THE PENSIONS REGULATOR – AUTOMATIC ENROLMENT

On 11 December the Regulator published a press release announcing that it is to prosecute a company and its managing director for trying to avoid providing their staff with a workplace pension and that they are also accused of falsely claiming that they had enrolled 25 staff into a workplace pension scheme.

FINANCIAL ADVICE MARKET REVIEW

Following its August consultation on proposals to support the advice sector in the UK (some of which implement recommendations of the Financial Advice Market Review), on 8 December the Financial Conduct Authority (FCA) published the final version of: (i) amendments to its Handbook arising from a change to the definition of financial advice which applies from 3 January 2018 and will mean that most authorised firms will be exempt from the regulated activity of 'advising on investments' unless the firm is providing a personal recommendation; and (ii) new guidance for firms on the treatment of insistent clients, which is an area in respect of which firms had told the FCA they needed more support particularly in light of the statutory advice requirement for certain DB transfers.

ON THE HORIZON

DATE	DEVELOPMENT
Unknown	The reforms in relation to Defined Ambition, Collective Benefits and automatic transfers of small DC pots will be revisited once the market has had time and space to adjust to other reforms.
	In March 2017 the Government published a response to its consultation on equalisation for the effect of GMPs noting that a number of issues will be considered with the industry working group.
	Following a consultation issued in April 2017, amendments to the employer debt legislation were expected to come into force on 1 October 2017 but the response to consultation and final form regulations have not yet been published.
January 2018	Following its October consultation the PPF is expected to publish updated forms for contingent asset agreements in mid-January.
Early 2018	Following the DB Green Paper published in February 2017, a White Paper setting out options for reform is expected.
6 April 2018	The lifetime allowance is due to increase to £1,030,000.
	Regulations are expected to come into force introducing new requirements in relation to disclosure of information on costs, charges and investments for trustees of occupational pension schemes providing money purchase benefits.
	Regulations are expected to come into force to simplify the requirements on bulk transfers of DC pensions without member consent from one occupational pension scheme to another occupational pension scheme.
	Changes to the legislation on valuing safeguarded benefits for the purpose of the advice requirement and to require risk warnings to be given to members with safeguarded-flexible benefits are due to come into force.
	Changes to the Finance Act 2004 are expected to be made which will allow HMRC to refuse to register or to de-register a scheme if it is an occupational pension scheme and a sponsoring employer is a dormant company.
	Changes to the contracting-out legislation are expected to come into force to allow, in certain circumstances, bulk transfers of contracted-out rights without member consent to schemes that have never been contracted-out.
	Statutory minimum DC contributions for automatic enrolment increase to a total of 5% of qualifying earnings, at least 2% of which must be paid by the employer.
25 May 2018	The new EU General Data Protection Regulation will apply.
1 October 2018	The regulations providing detail of the master trust authorisation regime are expected to come into force on 1 October 2018.
31 October 2018	The deadline for schemes to submit Scheme Reconciliation Service membership queries to HMRC is 31 October 2018.
2018	The government will consult on policy and regulations in relation to certain recommendations of the Law Commission in its report on pension funds and social investment and will publish its full response to the report.
2018/19	In the August 2017 response to the consultation on pension scams, it was stated that the government intends to implement the master trust authorisation regime in late 2018, with the regime fully rolled out in 2019, and that changes to limit the statutory right to transfer in order to tackle pension scams are expected to be coordinated with the roll out of the master trust authorisation regime.
2019	Member States must transpose the IORP II Directive into national law by 13 January 2019.
	The Government will ensure the industry designs, funds and launches a pensions dashboard by 2019.
	On 6 April 2019 statutory minimum DC contributions for automatic enrolment increase to a total of 8% of qualifying earnings, at least 3% of which must be paid by the employer.

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