

What's happening in Pensions



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Transfer value legislation to be rewritten

Government amendments to the Pension Schemes Bill will rewrite the Pension Schemes Act 1993 transfer value legislation. This is being done in the context of the DC decumulation flexibility changes taking effect from 6 April 2015. The intention is to give members a statutory transfer right in respect of their DC benefits (even if they also have DB benefits in the same scheme). This right will apply beyond the current "last option date" of a year before normal pension age. Unfortunately, there are some issues with the drafting and some apparently unintended changes would be made if the Bill were to become law in its current form.

The amendments also include provisions about the conversion of non-money purchase benefits into money purchase benefits within a scheme.

We will be issuing a briefing note on the transfer legislation changes and conversion issues in the new year, when hopefully the drafting issues will have been ironed out and more of the detail will be settled.

Pension Schemes Bill:
<http://services.parliament.uk/bills/2014-15/pensionschemes.html>

VAT

HMRC has issued two Briefs on VAT and pension schemes. One concerns the ability of employers to recover VAT on fees paid for pension scheme administration and asset management services. The other concerns the VAT treatment of DC pension fund management services.

VAT on pension fund management costs

The HMRC Brief on this subject will have the greatest impact: we are carefully considering the implications and ways of optimising VAT recoveries and will shortly be issuing a briefing note.

VAT treatment of DC pension fund management services

Following the March 2014 European Court decision in *ATP Pension Services* (see **WHIP Issue 45**), HMRC has accepted that UK DC pension schemes that have certain common characteristics are "special investment funds" for the purposes of the EU VAT Directive fund management exemption. This means that the services of managing and administering the funds should be (and always should have been) exempt from VAT. UK legislation will be amended in due course. In the meantime, HMRC accepts that trustees may rely directly on the EU law.

HMRC Brief:
<https://www.gov.uk/government/publications/revenue-and-customs-brief-43-2014-vat-on-pension-fund-management-costs>

HMRC Brief:
<https://www.gov.uk/government/publications/revenue-and-customs-brief-44-2014-vat-treatment-of-pension-fund-management-services>

In practice, for many DC schemes, VAT has not been charged on supplies to the trustees for other reasons. If that does not apply to your scheme, we can advise on whether and, if so, how you might be able to benefit from this revised HMRC stance. There are time limitations on backdated claims for overpaid tax, so the sooner this is done, the better.

In the *Wheels (Ford CIF)* case, the European Court ruled that DB schemes could not benefit from this VAT exemption in respect of investment management fees (see **WHIP Issue 38**).

30 day vesting period for DC and cash balance benefits

The Government has announced that 1 October 2015 will be the implementation date for reducing the maximum vesting period required by preservation legislation from two years' to 30 days' qualifying service (see **WHIP Issue 46**). From then, short service refunds will be permitted only for members with less than 30 days' qualifying service. After that, they will have the right to a cash equivalent transfer value. This affects only "non-salary related" benefits (normally DC or cash balance) under occupational pension schemes and only individuals who become members on or after 1 October 2015. It is also subject to the automatic enrolment legislation on refunds after opt-outs.

Preservation legislation is not overriding. Unless that changes before October, affected schemes will need to amend their rules to comply with the new law.

It is not yet clear whether the Government's plans for automatic DC transfers (see **WHIP Issue 39**) will also be ready for implementation in October 2015. This is still possible but there seems a good chance that they will take effect later.

Government announcement:
<https://www.gov.uk/government/news/further-boost-to-workplace-pension-saving-with-abolition-of-short-service-refunds-from-next-year>

DC governance and charges

The Government has published a new command paper including more details of its proposals for DC governance requirements and caps on DC charges. This follows a consultation earlier this year (see **WHIP Issue 45**). The new command paper includes draft regulations under the Pensions Act 2014 (see **WHIP Issue 46**). The regulations are to be laid in early 2015 and to come into force on 6 April 2015 (except as noted below). The proposals are detailed: what follows is a broad summary of key points.

Charges

Trustees of occupational pension schemes that are used by an employer as a "qualifying scheme" under the automatic enrolment legislation¹ and which provide any money purchase benefits must not impose or permit charges under their DC "default arrangements" which either exceed specified limits or are of a prohibited type. There are limited exemptions, eg, for some very small schemes. Both DC qualifying schemes and DB qualifying schemes that also provide DC benefits are affected. This will include, for example, DB schemes where the only DC benefits are AVCs or in respect of transfers in or special contributions (but there might not be a "default arrangement" for such benefits).

"Default arrangements" include not just (a) default investment funds for new contributions but also (b) any arrangement to which 80% or more of members are already choosing to contribute, or (c) any other arrangement to which 80% of newly contributing members choose to contribute. Arrangements under (b) require a one-off check in April 2015 but (c) will require ongoing checks. There is an exception to (b) where a member expressly chooses, within three months before April 2015, to remain in an arrangement and acknowledges in writing that charges may be higher than they are under a new default arrangement.

The restrictions are intended to apply to member-borne charges and apply on a "per member" basis. The draft regulations define "charges" as administration charges, which term includes investment charges other than "transaction costs". It also excludes the costs of complying with pension sharing orders or other court orders, and winding-up costs. The investment charges covered include annual management charges and entry and exit charges. "Transaction costs" are "the costs incurred as a result of the buying, selling, lending or borrowing of investments". For more details, see Annex B of the command paper, which lists various types of charges that will and will not be caught.

Charge structures other than "single charge structures" or "combination charge structures" are prohibited. A combination charge structure calculates charges by reference to both the value of funds under management and either (a) a percentage of the value of contributions or (b) a flat fee.

Command Paper and draft regulations:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364567/better-workplace-pensions-putting-savers-interests-first.pdf

¹ A "qualifying scheme" is one that is of sufficient quality to be used for new members and also for existing members, such that they do not need to be automatically enrolled in another scheme.

The charges cap for a default arrangement depends on whether there is a single charge structure or a combination charge structure. The single charge cap will be 0.75% pa of funds under management. See draft regulation 6 in the command paper for details of the caps applicable under a combination charge structure (which are meant to be equivalent).

Active member discounts will be prohibited under qualifying schemes, but not until 6 April 2016. There will not be any prohibition on employers achieving the same result by paying some or all of the charges applicable to active members for them.

Draft regulations will be published in 2015 to prohibit member-borne commission payments from occupational pension schemes that are qualifying schemes from 6 April 2016.

Member-borne consultancy charges are not considered an issue for occupational pension schemes but will also be covered by these later regulations anyway.

Governance

The proposed new governance requirements will apply differently from the charges legislation. They will apply to any occupational pension scheme (not just a "qualifying scheme") that provides money purchase benefits, but not if its only money purchase benefits are in respect of AVCs. Unless otherwise noted below, they only apply to the provision of those money purchase benefits. There are some limited exceptions, eg, for very small schemes and some public service schemes. The requirements include:

- a provision overriding any scheme rule that requires a particular service provider (including an administrator, investment manager or insurer) to be used, or that restrict the trustees' choice (eg, by requiring employer approval);
- a requirement for all trustee boards to appoint a chair (for all purposes of the scheme), with a three month grace period where there is not one already;
- a requirement for a governance statement, signed by the chair, in the scheme's annual report (see below for more detail);
- a requirement to process core financial transactions (including investments, transfers and benefit payments) promptly and accurately;
- a requirement to assess charges and transaction costs (see below for more detail);
- a requirement to produce a statement of investment principles specific to default investment funds, with requirements for regular reviews of various aspects; and
- a duty to invest default fund assets in the best interests of members and other beneficiaries, where the general duty to do so does not already apply (ie, for schemes with fewer than 100 members).

The governance statement will have to include information about default investment options, the processing of financial transactions, charges and transaction costs (and the trustees' assessment of their value), and (for all purposes of the scheme) compliance with requirements for trustee knowledge and understanding (TKU). The Government's original plans to require trustees to have, or have access to, the necessary "resources, knowledge and competencies" to properly run the scheme are not to be taken forward: the existing TKU requirements will remain in place.

Trustees must, at least annually, calculate DC charges and (so far as possible) transaction costs borne by members, according to the funds their assets are invested in, and assess the extent to which they represent good value for members.

There are separate additional requirements for master trusts, not covered here.

The Pensions Regulator intends to update its governance code of practice in due course.

Compliance and enforcement

Trustees will have to inform the Pensions Regulator, via scheme returns, of the identity of their chair. They must also say whether or not the annual governance statement has been prepared and whether or not they are in compliance with the charges restrictions (and, from April 2016, the bans on active member discounts and consultancy or commission deductions).

The Regulator will be required to issue compliance notices and penalty notices, requiring payment of a fine, if it is of the opinion that a trustee or third party has not complied with any of the above requirements. Note that, as the regulations are currently drafted, the Regulator has no discretion in these matters.

The FCA will enforce compliance by workplace personal pension providers.

April 2015 tax changes

Abolition of 55% tax on drawdown funds left over at death

The Government has announced that the current 55% tax charge on certain payments from pension schemes following a member's death will be abolished from 6 April 2015. This will mainly affect DC drawdown funds remaining when a member dies. The proposals will also allow drawdown funds to be passed on tax free to nominees (and to their nominated successors).

The changes mean that sums remaining in a drawdown fund can be inherited tax free if the member died under age 75, and subject to a reduced tax rate if the member died aged 75 or above. This will be further encouragement for DC members to request drawdown. It can also be expected to lead to more DB members wanting to take transfers to DC arrangements, for example those with no spouse or other dependant, and those in serious ill health.

For payments made (NB not the date of death) from 6 April 2015, the following tax rules will apply. Note that schemes do not, and will not, have to offer drawdown. If they do offer it to members, they do not then have to offer it to their dependants or other beneficiaries after their death.

Defined contribution

	Existing tax rule	Tax rule from 6 April 2015	Change
Member dies under age 75: uncrystallised benefits	Lump sum payable tax free to any beneficiary (subject to the lifetime allowance)	Lump sum payable tax free to any beneficiary (subject to the lifetime allowance)	No change
Member dies under age 75: crystallised benefits (eg, in a drawdown fund)	55% tax charge if paid as a lump sum Dependant can take drawdown and pay tax at his/her marginal rate	Lump sum can be paid tax free to any beneficiary Beneficiary can take drawdown tax free	Both taxes removed. Anyone can benefit, not just a dependant
Member dies age 75 or over: uncrystallised or crystallised benefits	55% tax charge if paid as a lump sum Dependant can draw down and pay tax at his/her marginal rate	45% tax charge if paid as a lump sum (to be changed to marginal rate from 6 April 2016) Beneficiary can draw down and pay tax at his/her marginal rate	Tax rate reduced Same tax treatment but anyone can benefit, not just a dependant

Designation of funds for drawdown is a benefit crystallisation event for tax purposes. References to drawdown from 6 April 2015 are to "flexi-access drawdown" (see **WHiP Issue 48**).

If benefits are paid to the beneficiary in the form of an annuity or scheme pension, then he/she will be taxed at his/her marginal rate.

Defined benefit

For defined benefit schemes, the only change is a reduction of the tax rate on any lump sum paid where the member dies age 75 or older (which is an unusual benefit). The following table is therefore mainly for the purposes of comparison with DC.

Original announcement:

<https://www.gov.uk/government/news/c-hancellor-abolishes-55-tax-on-pension-funds-at-death>

HM Treasury note:

http://www.aca.org.uk/files/A_note_from_the_Treasury_setting_out_further_information-3_October_2014-20141003165647.pdf

	Existing tax rule	Tax rule from 6 April 2015	Change
Member dies under age 75: pension not in payment	Lump sum can be paid tax free to any beneficiary (subject to the lifetime allowance)	Lump sum can be paid tax free to any beneficiary (subject to the lifetime allowance)	No change
	Dependants can be paid pensions, taxable at their marginal rate	Dependants can be paid pensions, taxable at their marginal rate*	No change
Member dies under age 75: pension in payment	Pension protection lump sum death benefit (eg, 5 year guarantee) can be paid to any beneficiary, tax free	Pension protection lump sum death benefit (eg, 5 year guarantee) can be paid to any beneficiary, tax free	No change
	Dependants can be paid pensions, taxable at their marginal rate	Dependants can be paid pensions, taxable at their marginal rate*	No change
Member dies age 75 or over: whether or not pension is in payment	55% tax charge on any lump sum death benefit	45% tax charge on any lump sum death benefit (to be changed to marginal rate from 6 April 2016)	Tax rate reduced
	Dependants can be paid pensions, taxable at their marginal rate	Dependants can be paid pensions, taxable at their marginal rate	No change

* Contrast this with DC, where tax will be avoidable by using drawdown (if the scheme allows it).

General

The lifetime allowance still applies (but will not be relevant here if benefits have already crystallised, eg, if they have been designated for drawdown). Inherited pensions will not count towards the beneficiary's lifetime allowance.

The Government announcements are unclear about whether members' nominations of beneficiaries will be binding and whether the inheritance tax treatment of payments to the member's estate will change. Under current law, there is an exemption from inheritance tax where the benefit is paid under a discretionary trust or to a beneficiary other than the member's estate.

Amendments to the Taxation of Pensions Bill

The Government has published the Taxation of Pensions Bill, explanatory notes, an updated tax information note, and draft guidance on amendments. The Bill mostly reproduces the draft published in August 2014 (see **WHIP Issue 48**) but with the changes noted below.

The Bill is to (a) introduce the DC pension flexibilities and related provisions applicable from 6 April 2015 that were first announced in the 2014 Budget (see **WHIP Issue 48** for details) and (b) provide for the abolition or reduction of the 55% tax charge for certain lump sum death benefits (see above) and serious ill health lump sums, from the same date.

- A new clause makes provision for the death benefit tax changes described above. It also reduces to 45% the tax charge on serious ill health lump sums paid after age 75 (this aspect was not mentioned in the Government's original announcement).
- DB trivial commutation (up to £30,000) now need only extinguish all the member's DB rights under the scheme, not all his/her rights (including DC) under the scheme. Without this change, DC rights would have had to be extinguished first, using one of the new flexible options, before DB trivial commutation could be achieved.

Taxation of Pensions Bill:
<http://services.parliament.uk/bills/2014-15/taxationofpensions/documents.html>

Tax information note (updated):
<https://www.gov.uk/government/publications/pension-flexibility-2015>

Draft guidance:
<https://www.gov.uk/government/publications/draft-legislation-the-taxation-of-pensions-bill>

- There are new information requirements, including requirements for trustees to give certain information to members when they first access their benefits flexibly (if the scheme so permits). This includes information about the money purchase annual allowance now being applicable to the member. There are also obligations on members to give certain information to their other schemes in these and other circumstances.

Guidance for members on their DC options

Amendments to the Pension Schemes Bill have been laid before Parliament, to introduce a framework for providing guidance to individuals about how they might access their DC pension savings after April 2015. Some more detail has also been announced but there is much more still to come.

The guidance will be provided, at least initially, by The Pensions Advisory Service (by telephone) and the Citizens' Advice Bureau (face to face). HM Treasury will be able to assist them with grants or loans. It will be a criminal offence for anyone else to claim to be giving this guidance. The Treasury is also developing an online guidance option.

The Financial Conduct Authority is required to set standards for the giving of the guidance and to monitor and enforce compliance. The Treasury may also enforce compliance.

The details of what the guidance should cover are still not known and many are commenting that it will not be possible to have the guidance regime properly up and running by April 2015.

Autumn statement

The Chancellor of the Exchequer gave his Autumn Statement on 3 December 2014. The pensions announcements were as follows.

- From 6 April 2015, beneficiaries (who need not be dependants) of individuals who die under age 75 with a joint life or guaranteed term annuity will receive payments tax free. Joint life annuities will also be able to be "passed on" to any beneficiary. For deaths age 75 and over, the beneficiary will pay his or her marginal rate of income tax, or 45% on sums taken as a lump sum. Lump sums will be taxed at the beneficiary's marginal rate from 2016-17 onward. This was an expected announcement, which will bring the tax treatment of annuities into line with drawdown pensions. (See paras 1.220 to 1.222 and 2.65.)
- The Government has decided to keep in place the age 75 age limit for claiming tax relief on pension contributions. (See para 2.71.)

Pension Protection Levy 2015/16

The Pension Protection Fund has published a combined policy statement and 2015/16 pension protection levy consultation, along with various draft documents including those on contingent assets and asset-backed contribution arrangements.

Every three years, the PPF looks in detail at the operation of the pension protection levy rules and makes the changes it considers appropriate. The new arrangements should apply in more or less the same form for the next three years, unless an urgent need for change arises.

Most, but not all, of the PPF's May 2014 proposals (see **WHIP Issue 47**) have been adopted. These are described below, with changes noted. There is still some scope for further changes: the final levy rules and other documents will be published in December.

Most of the impact is in the area of insolvency scores, connected to the replacement of Dun & Bradstreet (D&B) with Experian. There are also, however, important changes affecting "last man standing" schemes, schemes with parent company guarantees, and schemes with asset-backed contribution arrangements.

The PPF intends to collect about £635 million for 2015/16, about 10% less than for 2014/15.

Insolvency scores

Experian has developed a PPF-specific model of eight "scorecards" for determining employer insolvency risk scores (based on, for example, availability of financial information and group size, structure and accounting arrangements). There will be ten bands. For 2015/16, scores will be collected and averaged over the six month period from 31 October 2014 to 31 March 2015 (the short period was to allow schemes to check information and scores before they started to count). Thereafter, scores will be collected and averaged annually.

Since 30 May 2014, an online portal has allowed trustees (and, since 8 September 2014, employers) to check insolvency scores and the data held. It also allows the impact of future changes (eg, new company accounts) to be modelled in advance and trustees are

Pension Schemes Bill:

<http://services.parliament.uk/bills/2014-15/pensionschemes.html>

Government announcements:

<https://www.gov.uk/government/publications/introducing-the-guidance-guarantee/introducing-the-guidance-guarantee>

<https://www.gov.uk/government/news/pensions-guidance-providers-unveiled>

Autumn statement:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/382327/44695_Accessible.pdf

PPF levy web page:

<http://www.pensionprotectionfund.org.uk/News/Pages/details.aspx?itemID=379>

able to register to receive emails when an employer's insolvency score changes. Some changes were made on 7 October 2014, so trustees and employers are urged to check the portal again to see if their scores have been affected and to check that errors have been corrected.

One factor that can affect a company's banding is the age of secured charges (mortgage ages), with employers that have recent charges more likely to fail than those with older charges or none at all. In response to consultation responses, the PPF has agreed that some immaterial or irrelevant charges can be ignored, ie, new mortgages replacing old mortgages on equivalent or better terms, rental deposits, and charges in favour of the scheme.

The PPF has decided to use the Experian score even for companies that have a credit rating. Not-for-profit organisations will have a separate scorecard and insolvency risk data will be drawn from a wider range of sources, to try to ensure that they are not disadvantaged by the standard Experian model.

The PPF had previously estimated that about 50% more schemes will see a levy reduction than will see an increase, and increases will generally be larger than decreases. About 600 (or 10%) of schemes were expected to pay £50,000 or more extra; 200 would pay more than £200,000 extra. About 20% of schemes would see their employer insolvency risk treble. The PPF's original suggestion of transitional capping of increases will not be implemented.

Associated "last man standing" schemes

At present, "last man standing" schemes (ie, very broadly, schemes where there is no segregating of assets when an employer ceases participation) all qualify for a 10% discount on the risk-based element of the levy. The PPF has confirmed that this discount will be replaced by a scheme structure factor discount of between 0% and 10%, based on the spread of members between participating employers. The effect will be that schemes where most of the members are with one employer will receive a smaller discount than those where there is a more even spread.

The PPF is concerned about schemes being classified incorrectly as "last man standing". It will therefore require trustees to confirm that they have reached their conclusion based on legal advice. The Pensions Regulator will write to all schemes that have identified themselves as "last man standing" on Exchange and ask them to confirm that they have taken legal advice that supports that conclusion. This must be done by 31 May 2015.

Contingent assets

- Type A contingent assets (guarantees)

The Experian model is expected to reduce the effect of parent company guarantees because it takes more account of group finances than D&B's model did. The guarantor's insolvency will be calculated taking account of the fact that it has given the guarantee. Trustees will have to certify a "Realisable Recovery" amount, a fixed cash sum which they are reasonably satisfied could be recovered if all (other) employers became insolvent. The trustee certification wording will be as follows (changes to the consultation proposal are marked):

"The trustees, having made reasonable enquiry into the financial position of each certified guarantor, are reasonably satisfied that each certified guarantor, as at the date of the certificate, could meet in full the Realisable Recovery certified, having taken account of the likely impact of the immediate insolvency of all of the ~~relevant~~ employers (other than the certified guarantor, where that certified guarantor is also an employer)."

- Surety bonds

The PPF will now allow on-demand surety bonds to be recognised as type C(ii) contingent assets. (Type C(ii) previously covered only bank letters of credit and bank guarantees to support deficit reduction contributions.)

Asset-backed contributions

The PPF is concerned that asset-backed contribution arrangements (ABCs) can currently allow a levy reduction that is disproportionate to the risk reduction. In future, ABCs will be treated more like Type B contingent assets (security over assets).

Trustees will have to certify the ABC value on a specified basis by 31 March. Broadly, this value must be the lower of (a) the "fair value" of the investment as reflected in the latest scheme accounts and as at the PPF valuation date (not, as originally proposed, the net present value of the expected contributions) and (b) the asset's reasonable value in the event of insolvency (having applied investment risk stressing to the underlying asset). Annual certification will be required. Deficit reduction certificates must now exclude ABC contributions.

The controversial proposal only to give credit for UK real property ABCs has been dropped but the PPF will require professional valuations and legal opinions for all ABCs and may ask for evidence to check that the insolvency scenario valuation is reasonable. The PPF (as well as the trustees) must be able to rely on the valuation and legal opinion.

EIOPA consultation on solvency rules for EU pension schemes

EIOPA is consulting until 13 January 2015 on proposed models for the proposed controversial "holistic balance sheet" approach to pension scheme solvency requirements. It will use consultation responses to prepare a quantitative impact assessment, which will inform its advice to the European Commission. Although EU solvency requirements were dropped from the revised IORP directive (see **WHiP Issue 45**), they are still a possible future requirement, depending on how this project proceeds.

Consultation:

https://eiopa.europa.eu/consultations/consultation-papers/index.html?no_cache=1&cid=6717&did=45335&sechash=19f36de0

Shared parental leave

The Shared Parental Leave Regulations 2014 set out the detail of how shared parental leave will work. The new regime operates where the child's expected birth date (or the adoption date) is on or after 5 April 2015.

Broadly, additional paternity leave will no longer be available but instead maternity leave can be given up early and that part can be shared with a qualifying partner. The shared leave can be taken at the same time as the maternity leave or at a different time. It does not all have to be taken in one go. Maternity leave is for a minimum of two weeks (four weeks for factory workers) and a maximum of 52 weeks, so up to 50 weeks can be shared. There may be an entitlement to statutory shared parental pay for part of this period.

As usual with family leave, for pensions purposes:

- the periods before and after the absence must be treated as continuous; and
- the treatment of the period of absence depends on whether or not the member is paid (either contractual pay or statutory shared parental pay) and whether he/she accrues on a DC or DB basis.

Scheme rules should be reviewed but it is not necessary to make any amendments required before 5 April.

Regulations:

<http://www.legislation.gov.uk/ukxi/2014/3050/contents/made>

Overtime must be included in holiday pay

In *Bear Scotland Ltd v Fulton*, the Employment Appeal Tribunal ruled that payments for overtime which a worker is required to work but which an employer is not required to offer should be taken into account when calculating holiday pay for the purposes of the minimum four weeks' statutory annual leave required by EU law. However, it effectively limited claims for back pay for underpaid holiday by saying that, where there has been a gap of three months or more between underpayments, the claim can only go as far back as that gap. Leave to appeal to the Court of Appeal was granted.

This decision follows a European Court decision (*Lock v British Gas Trading*) earlier this year to the effect that EU law requires national legislation to provide that commission payments are included in holiday pay: see **WHiP Issue 47**. That case is returning to the Employment Tribunal for determination of whether UK law, interpreted in the light of EU law, does this.

Overtime and commission payments are not usually included in pensionable pay, so most schemes will not be affected. Where they are, and employers adjust members' pay to reflect these decisions, schemes will (subject to any appeal) need to consider whether they have been calculating pensionable pay correctly for periods of leave.

Employers may need to consider whether any additional payments due to workers take them above the earnings trigger for automatic enrolment purposes.

For more details about the implications for employers, please see our Employment department's briefing note **"Holidays: Where do we go now?"**.

Case report:

http://www.bailii.org/uk/cases/UKEAT/2014/0047_13_0411.html

Automatic enrolment

Simplification and exceptions

Following its February 2014 consultation response (see **WHiP Issue 44**), the Government is consulting on draft amending regulations to reduce the automatic enrolment burden on employers, especially smaller employers who are yet to start the enrolment process. A response will be published in January and regulations should be laid in February, to take

Consultation:

<https://www.gov.uk/government/consultations/workplace-pensions-automatic-enrolment-simplifying-the-process-and-reducing-burdens-on-employers>

effect in April 2015. We will report in more detail when the regulations are finalised.

Excepted workers

The Government proposes to make exceptions to the Pensions Act 2008 employer duties for the following categories of jobholder.

- anyone in a notice period following resignation or dismissal, or who has given notice of retirement;
- anyone who has, by his or her own act or omission, left a qualifying scheme within 12 months before his or her automatic enrolment date;
- anyone whom the employer has reasonable grounds to believe benefits from primary protection, enhanced protection, fixed protection 2012, fixed protection 2014 or individual protection; and
- anyone who has been paid a winding-up lump sum, leaves employment and is re-employed by the same employer within 12 months.

In all cases, the employer's duty to enrol will become a discretion (until the next automatic re-enrolment date). This will enable employers to enrol these individuals under the statutory framework if they wish, for example if they find it easier to enrol all their jobholders in the same way.

Information requirements

The requirements for employers to give information to jobholders will be simplified. The intention is that jobholders can be given fewer, less complicated communications. It will also no longer be necessary to provide information to jobholders who have already been contractually enrolled in a qualifying scheme.

The Consultation says:

"By having these minimum requirements we think we could reduce communications to 3 pieces of information:

(i) one to all employees at staging date or individually when a new employee joins;

(ii) one to all employees if the employer decides to postpone; and

(iii) one to each employee when they are automatically enrolled, re-enrolled or enrolled following opting in or joining.

Furthermore, there is nothing that prevents an employer combining these communications into one or two communications, if they consider it appropriate."

Employers will still be able to choose to comply with the existing requirements, if they wish.

Alternative quality requirements for DB schemes

The Government proposes to allow schemes to satisfy the quality test for a DB qualifying scheme where one of three criteria is met, relating to the contributions required to fund future accruals. The percentages range between 9% and 11%, depending on what is included in pensionable earnings. These percentage figures can be reduced by 1 if the scheme does not provide survivor pensions. The tests can be carried out by reference to the scheme's most recent actuarial valuation. Actuarial certification will not be required.

Consultation on earnings thresholds

The Government is consulting on proposed automatic enrolment thresholds for 2015/16 and on the factors that should inform the review.

There are four options under consideration for the earnings trigger (ie, the earnings level that triggers the requirement to enrol):

- freeze it at its current level (which is £10,000);
- keep it the same as the income tax personal allowance (£10,500);
- raise it in line with either the CPI or NAE measures of inflation (to £10,183 or £10,045 respectively); or
- use the Pension Commission benchmark "replacement rate" to determine it (£9,876 or perhaps a little higher).

For the qualifying earnings band (ie, the band of earnings on which contributions or benefits must normally be based as a minimum), the Government is minded to continue to use the National Insurance lower and upper earnings limits. These are currently (respectively) £5,772 and £41,865; for 2015/16 they will be £5,824 and £42,285.

Consultation:

<https://www.gov.uk/government/consultations/workplace-pensions-automatic-enrolment-review-of-earnings-threshold>

Enforcement

The Pensions Regulator's latest quarterly compliance and enforcement bulletin shows a step up in enforcement activity, including 163 new compliance notices and the first three £400 fixed penalty notices levied on employers.

NEST: removal of contribution limit and transfer restrictions

The Government has consulted on removing the NEST annual contribution limit and transfer restrictions from 1 April 2017, as recently announced (see **WHiP Issue 48**). Nothing is said about the potential earlier removal of individual (as compared to bulk) transfer restrictions (which the Government has previously said could happen from 1 October 2015).

Pensions Ombudsman

No duty to warn member about impact of reduced annual allowance

The Deputy Pensions Ombudsman has dismissed a complaint by Mr M Ramsey against Honeywell Normalair-Garrett Limited and the trustee and administrator of the Honeywell UK Pension Scheme for failing to inform him of the personal tax liability that might arise following the reduction of the annual allowance in 2011.

Mr Ramsey was a member of a DB scheme operated by Honeywell which closed to future accruals in 1998. He then accrued benefits in a DC scheme operated by another group company, but was given the option upon leaving employment of transferring his DC benefits into another DB scheme (the respondent scheme) at the level he would have received had he continued to accrue DB benefits in the original scheme.

On 6 April 2011, the annual allowance was reduced from £255,000 to £50,000. Mr Ramsey elected for the above option on 14 May 2011, which triggered an annual allowance charge of £7,553. He complained that Honeywell, the trustee and the administrator should have informed him that the tax liability would arise if the conversion was made after 5 April 2011 and argued that if he had been informed then he would have elected to take his benefits earlier.

The Deputy Ombudsman dismissed the complaint, determining that there was no legal duty to inform Mr Ramsey about the change in the law that led to the annual allowance charge.

- The trustee had no duty to Mr Ramsey as he was not a member of its scheme at the relevant time. The determination suggests that a failure to inform Mr Ramsey might otherwise have constituted a breach of the trustee's duty to act in the best interests of members, but this was not relevant on the facts and is questionable as a matter of law.
- On the balance of probabilities, Mr Ramsey would have done the same thing even if he had been fully informed about the tax consequences. This seems to have been because he could not have achieved the transfer in time and it was still worth transferring even with the tax charge.
- Case law did not impose any duty on Honeywell to keep Mr Ramsey informed about changes in the law or on personal tax implications. The obligations of Honeywell and the administrator in this context extended only to supplying information about pension input, which they had done well before the statutory deadline.
- Honeywell and the trustee had been in discussion with HMRC regarding the tax consequences of this arrangement prior to Mr Ramsey's retirement but these discussions only concluded in late 2012. Consequently, the respondents could not reasonably have been expected to make the tax consequences known to Mr Ramsey before 6 April 2011.

New Ombudsman and Deputy sought

The Pensions Ombudsman, Tony King, will step down in late spring 2015 (more than two years before the end of his term) and the Deputy Pensions Ombudsman, Jane Irvine, will not seek a new term when her current one expires in November 2015. The Government is therefore about to begin recruiting for both posts.

TPR bulletin:

<http://www.thepensionsregulator.gov.uk/docs/automatic-enrolment-use-of-powers-september-2014.pdf>

Consultation:

<https://www.gov.uk/government/news/helping-everyone-build-a-worthwhile-pension-pot-dwp-consults-on-draft-laws-to-remove-restrictions-on-nest>

Determination:

<http://www.pensions-ombudsman.org.uk/determinations/2014/po-3290/honeywell-uk-pension-scheme/>

Press release:

<https://www.pensions-ombudsman.org.uk/2014/10/tony-king-to-stand-down-in-2015/>

This and previous issues of WHiP can be found on our website **here**.

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If you wish to discuss any points arising from this note, please speak to your usual contact in the Travers Smith Pensions team or to one of the Pensions partners: Paul Stannard, Peter Esam, Philip Stear, Susie Daykin and Daniel Gerring.

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