PENSIONS ROUND-UP

DECEMBER 2016

IN THIS ISSUE

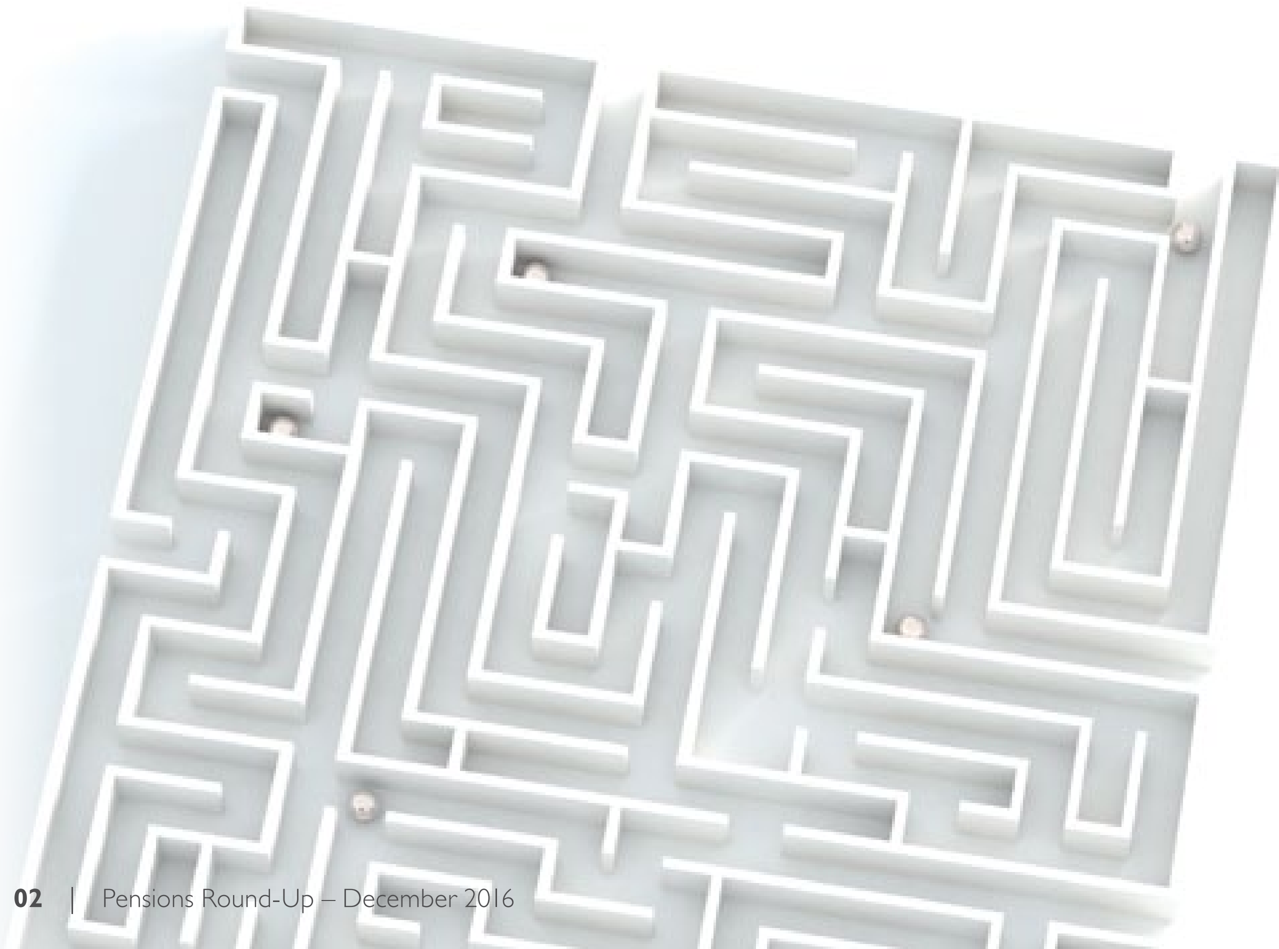
INTRODUCTION

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

In this edition we look at key developments from December 2016 including the following.

- **The Pensions Regulator:** the Regulator's response to its Discussion Paper on 21st century trusteeship and governance; and the publication of a quick guide to integrated risk management.
- **Pension Protection Fund:** the publication of the Provisional Determination for the 2017/18 levy and the Purple Book 2016.
- **Department for Work and Pensions:** a consultation on a package of measures aimed at tackling three different areas of pension scams; a consultation on proposals to create a single public financial guidance body; announcements about the automatic enrolment earnings thresholds for 2017/18 and a review of automatic enrolment; and a call for evidence about how the provisions on the bulk transfer of DC pensions without member consent could be improved.
- **Legislation:** the publication of draft clauses for the Finance Bill and a consultation about regulations to change the conditions to be an overseas pension scheme and a recognised overseas pension scheme; and the publication of the final version of the IORP II Directive.
- **Work and Pensions Committee:** the publication of a report about the Committee's inquiry on DB pension schemes.
- **Other news:** HMRC's latest Countdown Bulletin in relation to the end of contracting-out and its latest pension schemes newsletter; and a consultation on proposed amendments to the NHS Pension Scheme rules.
- **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.



THE PENSIONS REGULATOR

21ST CENTURY TRUSTEESHIP AND GOVERNANCE

On 16 December the Regulator published the response to its July 2016 Discussion Paper on 21st century trusteeship and governance. The response document provides a high level summary of the responses received and explains what the Regulator intends to do next. The Regulator states that it is clear from its research and case experience that the quality of governance and administration is "*patchy*" and that not all schemes are meeting the standards it expects. The Regulator is "*not prepared to stand by as a compromised, second class membership emerges*" and is determined to drive up standards of governance and administration and the competence of those managing private sector trust-based occupational schemes and public service schemes. It will do this in three ways: (i) more targeted education and tools to raise the standards of poor trustees; (ii) setting out clearly what the Regulator means in practice by the higher standards it already expects of professional trustees and the specific qualities and skills it expects chairs to bring to trustee boards; and (iii) tougher enforcement against trustees who fail to meet the required standards.

The Regulator will focus on fundamentals of good governance and the building blocks to ensure effective management of the scheme such as: board competence; clear roles, responsibilities and accountabilities of key scheme participants; effective governance structures and decision-making processes; and effective business planning. The Regulator also intends to focus on key areas it regards as vital for good member outcomes and which its research indicates trustees are finding challenging or not sufficiently engaging with, including investment governance, conflicts of interest, administration and record-keeping. The education campaign is expected to start in the spring. In 2017 the Regulator will also start to make changes to streamline its guidance and improve the functionality of its website and, in particular, intends to consolidate some of its guidance into key overarching pieces of guidance.

In the longer term, the Regulator will consider the evidence from its drive to improve standards of competence and governance as to whether a 'fit and proper' regime, including barriers to entry, may help. It will also consider with the DWP how best to encourage DB schemes to deliver good governance and value for money for the sponsoring employer and explore what framework for reporting governance may work best for DB schemes.

It is important to note that the Regulator states that it is not seeking to impose new standards of governance and administration but that it expects trustees who are not meeting the standards to start doing so. The Discussion Paper and response provide a useful reminder for trustees to consider their governance and administration processes and whether any improvements are needed. It will also be useful for trustees to consider their scheme in light of any new guidance that is issued as part of the Regulator's upcoming education campaign.

INTEGRATED RISK MANAGEMENT

One of the key principles in the Regulator's Code of Practice on Funding Defined Benefits which came into force in July 2014 is that trustees should implement an approach which integrates the management of employer covenant, investment and funding risks. In December 2015 (reported in that month's edition of Pensions Round-Up), the Regulator published regulatory guidance on integrated risk management (IRM) which provides practical help on what a proportionate and integrated approach to risk management might look like and how trustees can use it as part of their plans for meeting their scheme's funding objectives.

On 2 December 2016 the Regulator published a quick guide to IRM for smaller schemes that may have limited resources detailing how they could benefit from IRM and how to get started. It is designed to be used alongside the full guidance and the Regulator states that it may be helpful to use the quick guide as a starting point for discussions at board or trustee/employer meetings.

PENSION PROTECTION FUND

PPF LEVY

Levy Rules 2017/18

On 15 December the PPF published a Policy Statement about the outcome of its September consultation on the draft Levy Determination for 2017/18 alongside the Provisional Determination and accompanying guidance documents.

The reason that the Determination is provisional at this stage is that rules may still be added in relation to eligible schemes which cease to have a substantive employer after a restructuring of the pension arrangements. Work is still progressing on this issue and a consultation would be required before finalising any such rules. However, it is important for schemes to note that the PPF states that it does not intend to make changes to the levy rules other than possibly to add rules to deal with such schemes and accordingly the PPF encourages schemes to act on the levy rules now. The final levy rules will be confirmed once it is known whether rules are needed in relation to schemes with no substantive employer, and will be published by 31 March 2017 at the latest.

The PPF confirms the scaling factors announced in the September consultation document and the Levy Estimate of £615 million. The PPF also confirms that the levy rules for 2017/18 remain largely unchanged for the third year of the triennium. The changes made for 2017/18 include a mechanism for stakeholders to notify Experian where the move to new UK accounting standard FRS102 would otherwise cause an artificial movement in their rating. In the September consultation the PPF proposed to allow those impacted by changes to data for trend variables on the Large and Complex and Not For Profit scorecards to certify the impact of the accounting standards change. However, it has now decided to extend this certification to the calculation of all trend variables.

The main deadline for the submission of data (including contingent asset documentation) is midnight on 31 March 2017.

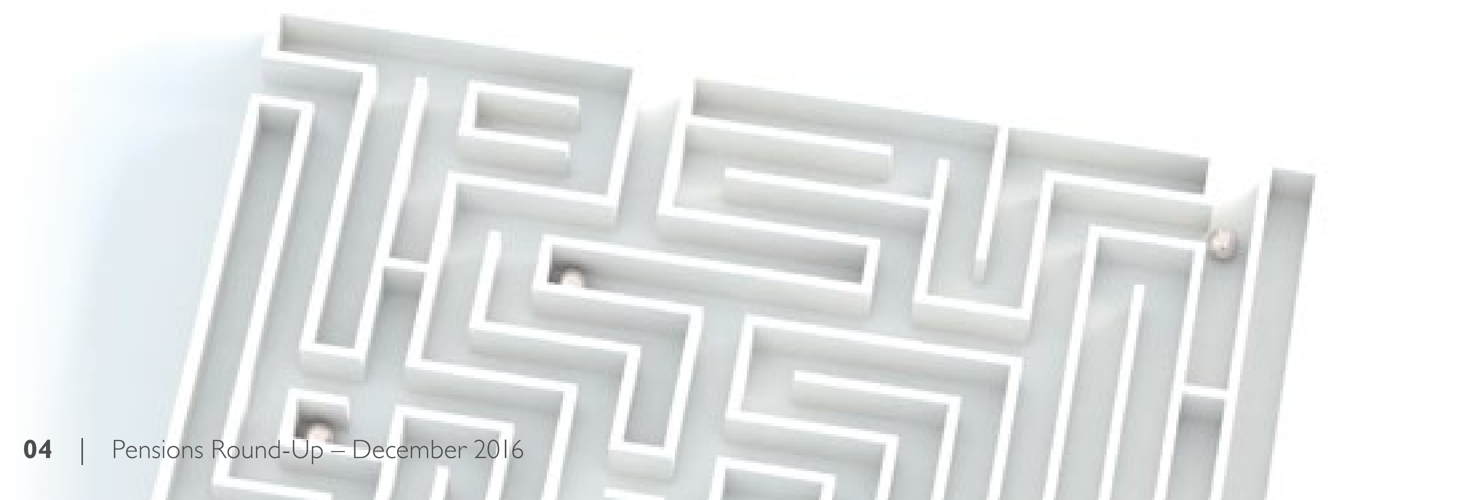
Third triennium

Looking ahead, the PPF states that it plans to consult on the framework for the third triennium (2018 to 2021) in spring 2017 and believes that this is the appropriate point to make any wider changes to the model. The PPF reports that, based on work done to date, it expects its proposals to include changes to some of the existing scorecards and the variables used on them.

PURPLE BOOK

On 8 December the PPF published the eleventh edition of the Pensions Universe Risk Profile (The Purple Book) which focuses on the risks faced by the PPF's universe of DB pension schemes, predominantly in the private sector. The main focus is on the position as at the end of March 2016. Much of the analysis of the Purple Book 2016 is based on new information from 5,794 scheme returns issued in December 2015 and January 2016 and returned to the Regulator by the end of March 2016. The Purple Book looks at scheme demographics, scheme funding, funding sensitivities, insolvency risk, asset allocation, PPF risk developments, PPF levy payments 2015/16, schemes in assessment, PPF compensation 2015/16, and risk reduction.

The PPF states that the Purple Book 2016 shows that trends are stabilising after a decade of major changes in the DB universe. Findings include that: scheme funding is little changed in the 12 months to March 2016; there has been a very small increase in the number of schemes closed to future accrual (from 34% to 35%); and the percentage of schemes that are open remained at 13% in 2016 and has seen little change over the last four years.



DEPARTMENT FOR WORK AND PENSIONS

PENSION SCAMS

Following an announcement made in the Autumn Statement, on 5 December the DWP and HM Treasury published a consultation on a package of measures aimed at tackling three different areas of pension scams. The measures are: (i) a ban on cold calling in relation to pensions; (ii) limiting the statutory right to transfer to some occupational pension schemes; and (iii) making it harder to open fraudulent schemes by requiring all new pension scheme registrations to be made through an active company.

It is the second of these measures – limiting the statutory right to transfer – which is particularly notable for trustees of pension schemes because the question of how to deal with transfers where due diligence has revealed suspicions about the proposed receiving scheme has been a difficult issue for schemes for some time. The strict legal position is that if the member has a statutory right to transfer and wants to proceed, the trustees have to make the transfer but they may feel uncomfortable doing so if they believe that this may put the member's pension savings at risk. Under the proposal in the consultation a statutory right to transfer would exist only where:

- the receiving scheme is a personal pension scheme operated by an FCA authorised firm or entity;
- a genuine employment link to the receiving occupational pension scheme could be demonstrated, with evidence of regular earnings from that employment and confirmation that the employer has agreed to participate in the receiving scheme; or
- the receiving occupational pension scheme is an authorised master trust.

The requirement for a genuine employment link addresses an issue with the legislation which was highlighted by a February 2016 High Court judgment which looked at one of the criteria for a statutory transfer right to exist – that the person is an "earner". As reported in our Pensions Alert about the case, the High Court concluded that earnings for these purposes are currently not restricted to those paid by a sponsoring employer of the receiving scheme but rather earnings from another source will suffice which makes it more likely that members will be able to demonstrate that they are earners and therefore harder for trustees to block suspicious transfers.

The consultation recognises that greater scope to block transfers is "*a challenging proposition*" and states that an alternative could be to require members who wish to continue with the transfer despite being warned of the risks to sign a declaration similar to the example "discharge letter" in the industry code of practice on combating pension scams. The consultation also states that such an approach could be coupled with a statutory cooling off period to allow the member to reconsider their decision.

The consultation closes on 13 February 2017 and next steps are expected to be announced at Budget 2017.

> If changes are made to the statutory transfer requirements, trustees will need to review their transfer processes and update them as necessary. In the meantime, the question arises of how trustees should deal with transfer requests where a statutory transfer right exists under the current law but would not exist if the changes set out above are made. We would suggest that trustees consider seeking legal advice in relation to any such requests where there are doubts about the receiving scheme.

FINANCIAL GUIDANCE BODY

Following the October announcement that the Treasury and DWP have agreed to take forward plans to develop a single public financial guidance body which is responsible for delivering debt advice, money and pensions guidance to the public, a consultation was published on 19 December seeking views on the proposals to create this new body. The consultation closes on 13 February. The government anticipates that the new body will be launched no earlier than Autumn 2018 and in the meantime the Money Advice Service, The Pensions Advisory Service and Pension Wise will continue to deliver their statutory functions.

DEPARTMENT FOR WORK AND PENSIONS

AUTOMATIC ENROLMENT – EARNINGS THRESHOLDS

On 12 December the DWP announced the following automatic enrolment thresholds for 2017/18.

- 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 it will increase to £5,876. (The current figure is £5,824.) 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 to £45,000. (The current figure is £43,000.)

It is intended that an Order making the changes will be laid before Parliament in the New Year.

AUTOMATIC ENROLMENT – REVIEW

Also on 12 December the government announced a review of automatic enrolment, the main focus of which will be to ensure that automatic enrolment continues to meet the needs of individual savers. Issues which the review will consider include: (i) the existing coverage of the policy and the needs of those not currently benefiting from automatic enrolment, for example, employees with multiple jobs who do not meet the criteria in any of their jobs; (ii) the automatic enrolment thresholds – the earnings trigger, the qualifying earnings band and the age criteria; (iii) whether the technical operation of the policy is working as intended; and (iv) the requirements relating to the statutory review of the alternative quality requirements for DB schemes and the certification requirements for DC schemes. An examination of the level of the charge cap and whether some or all transaction costs should be covered by it will also be incorporated within this review. The DWP will engage with stakeholders in the early part of 2017 and towards the end of 2017 will publish a report setting out policy recommendations. It is also noted that the review will be an opportunity to strengthen the evidence around appropriate future contributions, although the government does not expect to make policy decisions on this area during 2017.

DC TRANSFERS WITHOUT CONSENT

On 20 December the DWP published a call for evidence seeking views on how the current provisions on the bulk transfer of DC pensions, in particular from occupational and stakeholder pension schemes, without member consent could be improved. The information gathered will inform a consultation during 2017 and, should secondary legislation be required, the DWP's current aim is for it to be in place by April 2018.

The call for evidence looks at the two conditions that must be met for occupational DC to DC transfers: (i) it acknowledges that the requirement for an actuary to certify that transfer credits in the receiving scheme are "broadly no less favourable" may not be suitable for DC schemes and seeks views on whether such a check still has a role, and if so, who should carry it out and what factors should be considered, or if not, how members would continue to be protected; and (ii) it seeks views on whether the requirement concerning the relationship between the transferring and receiving schemes could act as a barrier to efficient consolidation of small pots and its impact for 'orphaned DC schemes'. In relation to stakeholder pensions, the call for evidence looks at the current requirements that transfers can only be made to other stakeholder schemes and that the transferring scheme must have begun winding up.

LEGISLATION

FINANCE BILL

On 5 December HMRC published draft clauses for the Finance Bill 2017 for technical consultation. Draft clauses in relation to pensions cover: (i) a new tax exemption which, provided certain conditions are met, will cover the first £500 worth of pensions advice provided to an employee in a tax year and will allow advice not only on pensions but also on the general financial and tax issues relating to pensions; and (ii) a number of amendments intended to limit the inconsistencies in the tax treatment of UK and foreign pension savings. The consultation closes on 1 February and the final contents of the Bill will be subject to confirmation at Budget 2017 (due to take place on 8 March).

OVERSEAS PENSION SCHEMES – DRAFT REGULATIONS

On 5 December HMRC also published draft regulations for consultation which set out changes to the conditions to be an 'overseas pension scheme' and a 'recognised overseas pension scheme'.

Overseas pension schemes

In order to meet the definition of an 'overseas pension scheme', one of the conditions that must be met is the "regulatory requirements test". Currently, this test requires that if there is a regulator of the type of pension scheme in the country in which the scheme is established, the scheme must be regulated by that body. However, if there is no such body, there are other ways the test can be met, one of which is that the scheme rules require that at least 70% of the member's UK tax-relieved funds will be used to provide them with an income for life. Under the draft regulations, from 6 April 2017, the 70% criterion will be removed and how a scheme can satisfy the regulatory requirements test will depend on whether the scheme is an occupational or non-occupational pension scheme.

Recognised overseas pension schemes (ROPS)

Currently a 70% criterion in relation to transferred benefits is also one of the ways that a scheme can meet one of the conditions to be a ROPS, but again the draft regulations remove this.

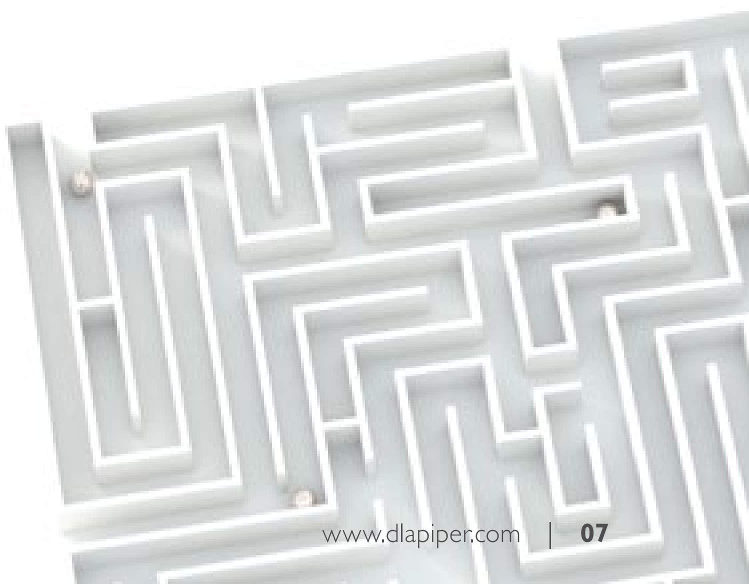
Another condition to be a ROPS is that schemes must meet the "pension age test" which currently provides that payments cannot be made to members if they are under the normal minimum pension age unless they are retiring due to ill health. It is proposed that the pension age test will be amended from 6 April 2017 to allow schemes to make payments to members aged under 55 if the payment would be an authorised payment if it was made from a registered pension scheme (for example, a serious ill health lump sum or a short service refund lump sum).

These changes are relevant to the question of whether an overseas scheme meets the criteria to be a QROPS such that a transfer to it will be an authorised payment. In particular it is important to note that the removal of the 70% criterion may mean that some schemes cease to be QROPS from 6 April 2017 and it is important for UK schemes to be aware of this in order to avoid making unauthorised payments. We would therefore suggest that, in advance of any changes coming into force, schemes review their processes for overseas transfers and any outstanding transfer requests.

IORP II DIRECTIVE

On 23 December a recast Directive on the activities and supervision of institutions for occupational retirement provision (IORP II) was published in the Official Journal of the European Union. Article 64 provides that Member States must transpose the Directive into national law by 13 January 2019. Issues covered by the Directive include governance and disclosure.

In terms of next steps on this issue, the key question is what action the government will now take in terms of making any changes to UK pensions law and whether it concludes that Brexit will have any impact on transposition.



WORK AND PENSIONS COMMITTEE

REPORT ON DB PENSION SCHEMES

On 21 December the Work and Pensions Committee published a report in respect of its inquiry about DB pension schemes. The Committee states that in its recommendations it has aimed to put incentive structures in place to make it more likely that DB pension schemes will be sustainable and that employers will honour their responsibilities which in turn will make it less likely that the PPF will be called upon. In this summary we set out some of the recommendations made by the Committee.

Promoting well-run schemes

The Committee recommends that the Government's forthcoming Green Paper on DB pensions consults on: (i) proposals to give trustees powers to demand timely information from sponsors; (ii) proposals to create a statutory aggregator fund for DB schemes to be managed by the PPF; and (iii) relaxing the rules for taking small DB pension entitlements as lump sums. It also recommends that as part of the review of the PPF levy rules for the third triennium, the PPF re-examines how the levy framework could incentivise schemes to improve governance.

Identifying and intervening in potential problem schemes

In this area, the Committee's recommendations include that: (i) the Pensions Regulator should adopt a risk-based approach to scheme valuations, with riskier schemes providing them more frequently and low risk schemes not required to report as regularly; (ii) the statutory timescale for the submission of valuations and recovery plans be reduced to nine months; and (iii) recovery plans of more than 10 years should be exceptional, and particular attention should also be paid to any plan which concentrates employer contributions in the distant future.

Stressed schemes

The Committee recommends that the Green Paper consults on proposals to enable trustees, subject to the Regulator's approval, to agree changes to the indexation of pension benefits in instances where such changes are needed to make a scheme sustainable, including "*conditional arrangements that will revert to original uprating when good times return*".

It is also recommended that the Green Paper consults on streamlining the Regulated Apportionment Arrangement process and amending the barrier of imminent and inevitable insolvency.

Anti-avoidance

The Committee's recommendations in this area include that the Green Paper consults on: (i) proposals to require advance clearance from the Regulator for certain corporate transactions that could be materially detrimental to the funding position of a DB scheme (the Committee notes that the circumstances for compulsory clearance would have to be narrow to prevent a disproportionate effect on normal economic activity); and (ii) giving the Regulator powers to add punitive fines to Contribution Notices and Financial Support Directions, with the Committee recommending that fines that could treble the original demand be considered, the intention being to deter avoidance.

Whilst some of the recommendations relate to specific scenarios of stressed schemes, corporate activity and anti-avoidance, the recommendations relating to the ability to demand information, relaxing the rules for DB lump sums and changing the valuation timetable are likely to be of more general interest to trustees and employers. At this stage the points made in the Report are recommendations only and therefore it will be interesting to see how the Government responds to them, in particular, in terms of the issues covered by the Green Paper on DB pensions which is expected to be published in early 2017.

OTHER NEWS

END OF CONTRACTING-OUT

On 6 December HMRC published its latest Countdown Bulletin in relation to the end of contracting-out which reports on the December 2016 closure scan which will automatically close open periods of contracted-out employment held on HMRC records. Details of all the active members identified by the scan will be shared with schemes to enable them to reconcile their records. HMRC asks that, in order to obtain the data and to help it plan the support required to provide the data, closure scan request forms are completed and returned to it as soon as possible. HMRC will use the Shared Workspace to provide the closure scan data and the Bulletin provides some further information about the information to be provided and what to do in relation to certain cases where the scheme disagrees with HMRC records.

PENSION SCHEMES NEWSLETTER

On 12 December HMRC published its latest Pension Schemes newsletter. A section of the newsletter about the lifetime allowance: (i) states that a function has been added to the Lifetime Allowance Online Service for members to amend the details of their protection online; and (ii) explains what information members need to provide to HMRC if they have lost their protection. Other articles in the newsletter include: an overview of the pensions announcements in the Autumn Statement; and an update about reporting serious ill-health lump sums through Real Time Information.

MASTER TRUST ASSURANCE

Following a consultation published in September, on 8 December the Institute of Chartered Accountants in England and Wales published an updated version of the voluntary assurance framework for master trusts. It also published the response to the consultation. The amendments made to the framework bring it up to date with current legislation and the recent changes to the Regulator's DC code of practice. The updated version is effective for Type 2 reports (which consider a period of time) for reporting periods commencing after 31 December 2016 and Type 1 reports (which consider the position at a specified point in time) that fall after 31 December 2016. There are transitional arrangements for master trusts that are in the process of or have already reported under the previous version of the guidance. Where possible, early adoption is encouraged.

NHS PENSION SCHEME

On 1 December the Department of Health published a consultation on proposed amendments to the regulations that provide the rules for the NHS Pension Schemes in England and Wales. The draft regulations which are the subject of the consultation include: (i) amendments to support the development of NHS England's new models of care by recognising new forms of contract which will be in use from April 2017; and (ii) a set of technical corrections and clarifications to further improve the operation of the scheme rules. The consultation closes on 26 January 2017.

FINANCIAL REPORTING COUNCIL

On 15 December the Financial Reporting Council (FRC) announced that in 2017 it will undertake thematic reviews of certain aspects of companies' corporate reports and audits, where it believes there is scope for improvement and particular shareholder interest. In relation to corporate reporting, one of the areas that will be the subject of a thematic review is companies' pension disclosures to encourage more transparent reporting of the relationship between a company and its pension plans.

Also on 15 December the FRC published its Draft Plan & Budget and Levy Proposals for 2017/18. In relation to the pension levy, the FRC is proposing: to exempt schemes with fewer than 5,000 members; and, taking into account the smaller levy population, to increase the pension levy rate to £3.12 per 100 members.

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 the other reforms underway.
	A November 2016 consultation on a proposed methodology for **equalising pensions for the effect of GMPs** closes on 15 January 2017 but the date that the response and any final form documents will be published is not known.
	In February 2016 it was stated that a new requirement would be introduced in the summer for trust-based schemes to **report regularly on their performance in processing transfers** but no further detail has yet been published in relation to this.
2017	The Government intends to publish a **Green Paper on DB schemes**.
	The **Pension Schemes Bill 2016-17** is progressing through Parliament. It contains provisions in relation to the regulation of **master trusts** and a regulation-making power to support the plans to introduce a **cap on early exit charges** and extend the ban on **member-borne commission payments**. Consultation on the charges provisions is expected in early 2017.
	A review of **automatic enrolment** will take place in 2017. A report setting out policy recommendations is expected towards the end of 2017.
	Following a December 2016 call for evidence, a consultation is expected on **bulk transfers of DC pensions without member consent**.
Spring 2017	Following its Discussion Paper on **21st century trusteeship and governance**, an education campaign by the Regulator is expected to start.
	A consultation is expected in relation to the **PPF levy rules** for the third triennium.
8 March 2017	The Spring **Budget** will take place. The final contents of the **Finance Bill** and next steps on the consultation on **pension scams** are expected to be announced.
April 2017	It is expected that a **pensions advice allowance** will be introduced allowing members to make specified withdrawals from their DC pension pot to redeem against the cost of financial advice.
	The **money purchase annual allowance** is expected to be reduced to £4,000.
	Regulations making amendments to the legislation on **administering accrued contracted-out rights** are expected to come into force. (There are some issues still to be addressed but changes on these issues is not expected before autumn 2017.)
	Changes to the legislation on **overseas pensions** are expected to come into force.
Second quarter of 2017	Following a consultation published in October 2016, the FCA is expected to publish rules aimed at standardising the disclosure of **transaction costs** incurred by pension investments in a Policy Statement.
October 2017	The **cap on early exit charges** for occupational pension schemes is expected to come into force. (For contract-based schemes the relevant date is 31 March 2017.)
End of 2017	The transitional period in which employers and schemes may continue to use the **VAT** treatment in VAT Notice 700/17 ends on 31 December 2017.
6 April 2018	The **lifetime allowance** is due to be indexed annually in line with CPI.
May 2018	The new EU General **Data Protection** Regulation will apply.
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. A prototype is expected by March 2017.

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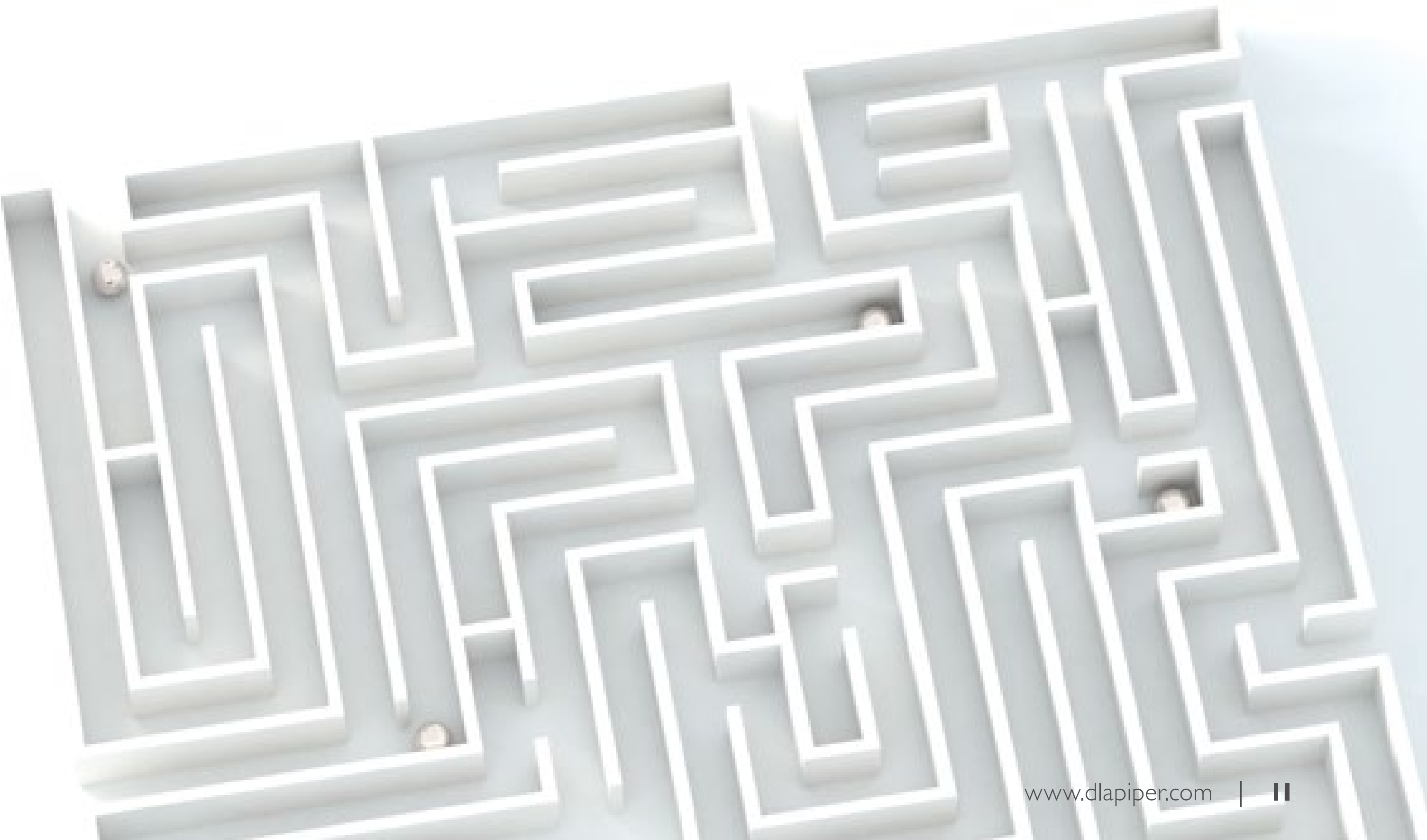

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