



# PENSIONS ROUND-UP

## FEBRUARY 2018

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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 February 2018 including the following.

- **The Pensions Regulator:** the Regulator's latest quarterly compliance and enforcement bulletin; and the publication of information about skills and experience as part of the Regulator's 21st century trusteeship campaign.
- **Legislation:** new disclosure requirements in relation to costs, charges and investments for schemes providing money purchase benefits; regulations simplifying the bulk transfer of DC pensions without member consent from one occupational pension scheme to another; amendments to the contracting-out legislation to permit bulk transfers of contracted-out rights without member consent to a scheme that has never been contracted-out; amendments to the employer debt legislation; and updates to the DWP's guidance on upcoming changes to the legislation on the advice requirement and safeguarded benefits.
- **Other news:** an update from The Pensions Ombudsman about the transfer of The Pensions Advisory Service's dispute resolution function; and the publication by HMRC of a pension schemes newsletter and a countdown bulletin in relation to the end of contracting-out.
- **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

## COMPLIANCE AND ENFORCEMENT BULLETIN

On 15 February the Regulator published its latest quarterly compliance and enforcement bulletin which covers the period October to December 2017.

### Automatic enrolment

The bulletin reports that in the period October to December 2017 the Regulator used its power to demand information and documents 56 times and its power to inspect premises 235 times. It also issued 17,949 compliance notices, 1,331 unpaid contributions notices, 7,435 fixed penalty notices and 1,440 escalating penalty notices.

The Regulator also reports that in November a company and its managing director pleaded guilty to offences of wilful non-compliance with their automatic enrolment duties, and that in February a judge ordered the company to pay a £27,000 fine, £7,400 costs and a £120 victim surcharge and ordered the managing director to pay a £4,455 fine and a £120 victim surcharge. This is in addition to the civil fines of £14,400 that the employer already owes in relation to its failure to comply.

It is also worth noting that, separately to the bulletin, the Regulator issued two press releases in February reporting that it is carrying out further spot checks to ensure that employers are complying with their automatic enrolment duties.

### Other powers

The bulletin also reports that in the period October to December 2017 the Regulator used its powers to enforce governance and administration rules against schemes 235 times including 130 trustee appointments, 49 mandatory penalty notices in relation to failure to prepare a chair's statement and 43 uses of the Regulator's formal

information gathering powers. Alongside the bulletin, the Regulator published an updated list of those who have received penalties for not completing a chair's statement on time and, for the first time, published the names of schemes whose trustees received a fine because the chair's statement that was prepared did not meet the legal requirements.

The Regulator also reports that it has taken enforcement action for the first time against trustees who failed to get their defined benefit scheme accounts audited within seven months of the end of the scheme year. The Regulator published a separate press release about this case on 7 February in which its Executive Director of Frontline Regulation states that *"This case, and the first use of our section 10 power to enforce against breaches of this nature, is in line with our clearer, quicker and tougher approach. We will make full use of the powers available to us"*.

## PENSIONS STRATEGY

The Pensions Regulator and the Financial Conduct Authority (FCA) have announced that they are working together on a pensions regulatory strategy which will set out how they will *"work together to tackle the key risks facing the pensions sector in the next five to ten years"*.

The Regulator and the FCA will be holding a series of seminars with stakeholders in the spring which will broadly focus on two discussion areas: (i) their collective view of the current landscape of the sector and their respective regulatory remits; and (ii) their likely key areas of focus in the coming years. There will also be a webinar for those unable to attend the seminars. The work on the strategy will also be informed by the FCA's research and the Regulator's 'TPR Future' programme, as well as other factors such as the outcome of the Work and Pensions Committee's inquiry into the pension freedoms and the impact of the DWP's automatic enrolment review.

# THE PENSIONS REGULATOR

## 21ST CENTURY TRUSTEESHIP

Following the launch of its “21st Century Trusteeship - raising the standards of governance” campaign in September 2017, the Regulator has added some further content to the 21st century trusteeship section of its website. The new content is entitled “Skills and experience” and the points noted in this section include that: (i) if a scheme has a well-balanced and diverse board, it should be more effective; (ii) when recruiting and selecting trustees, thought should be given to the needs of the board as a whole; and (iii) the performance and effectiveness of the trustee board should be reviewed annually, referring to the objectives set in the scheme’s business plan.

The Regulator has also published the following guidance documents for trustees.

- “Sample board skills matrix” to help trustees record the skills, knowledge, understanding and experience of the whole trustee board. The sample matrix is not intended to provide an exhaustive list of matters to consider and the Regulator states that trustees should base their skills matrix on the objectives agreed in their business plan and should also consider any upcoming exercises or projects which may require additional skills and experience. The Regulator also states that trustees should assess themselves against the skills in the matrix to identify gaps to be addressed, for example, through training.
- “Sample board evaluation questions” which sets out a non-exhaustive list of sample questions to help trustees assess how effectively their board is structured and how it operates and to consider their skills and decision-making.

Trustees should consider whether they need to update their work plans in order to include reviews of performance and effectiveness and consider making use of the sample documents to help with this assessment.

## MANAGING SERVICE PROVIDERS

The Regulator has issued a Statement entitled “Managing service providers” which summarises its expectations of good practice by trustees and scheme managers on the management of service providers, and planning for events which could have major consequences for their schemes, including the failure of service providers.

The Statement includes that trustees should: (i) put sufficient controls in place around third party providers to make sure the scheme is well run, and keep enough oversight of tasks delegated to others but for which the trustees remain accountable; (ii) be familiar with, and understand the effects of, the terms and conditions of contracts with service providers; (iii) make sure arrangements are in place to manage risks that would have significant consequences for the scheme and members including having a business continuity plan in place; (iv) understand their provider’s business continuity arrangements and be confident that they ease any risks to member data and benefits; and (v) work with service providers to address any areas of concern.

## DISCLOSURE OF COSTS, CHARGES AND INVESTMENTS

Following a consultation issued in October 2017, regulations were made in February which introduce new disclosure requirements for occupational pension schemes providing money purchase benefits subject to some exceptions including schemes in which the only money purchase benefits are attributable to additional voluntary contributions, executive pension schemes, certain small schemes and certain public service schemes.

### Costs and charges

The regulations introduce the following new requirements in relation to costs and charges which will apply in relation to scheme years that end on or after 6 April 2018. The DWP has also published guidance for trustees in relation to the new requirements.

- The information to be included in the chair's annual statement is expanded so that it includes: (i) the level of charges and transaction costs for each default arrangement, in contrast to the current position whereby if there is more than one default arrangement, only the range of the levels has to be provided; (ii) the levels of charges and transaction costs for each fund which members are able to select and in which assets are invested during the scheme year, rather than just the range of levels; and (iii) an illustrative example of the cumulative effect over time of the application of those charges and costs on the value of a member's rights. The DWP guidance sets out the matters to which trustees should have regard when producing an illustration. The guidance includes that trustees should present the costs and charges typically paid by a member as a "pounds and pence figure", and that the illustration should be produced taking into account savings pot size, contributions, real terms investment return gross of costs and charges, adjustment for the effect of costs and charges, and time.
- The information which must be included in the chair's statement about costs and charges and about the default investment strategy must be made publicly available free of charge on a website. The regulations are not prescriptive about where the information is

published but the guidance states that it should be published in a manner which allows for the content to be indexed by search engines and that it should not be necessary to enter a specific username or password or any other personal information to access the information. The regulations also state that the trustees must provide the information in hard copy form on request if they are satisfied that it would be unreasonable for the person to obtain it from the website.

As the chair's statement has to be prepared within seven months of the end of the scheme year, the first schemes to have to provide this information will be those with a scheme year ending on 6 April 2018 and they will have to do so by 6 November 2018.

The regulations also make provision so that, as part of the annual benefit statement, members must be given specified information about the website referred to above on which the information on costs, charges and the default investment strategy can be found.

### Investments

The regulations introduce a duty for trustees to provide members and recognised trade unions with a statement, on request, about the pooled funds in which their pension pot is directly invested, or indirectly invested if via a unit-linked contract. As part of their annual benefit statement, members will have to be told how they can obtain this information on request. Following the consultation, the DWP has made some amendments to this part of the regulations including so that: (i) trustees have a duty to begin to disclose the information from 6 April 2019 and the information must be no more than six months out of date; (ii) disclosure is based on the investment options in which the member is invested at the time of their request; and (iii) trustees only have to provide the information once in a six month period.

Trustees of schemes to which the new requirements apply should start to consider what steps they need to take to ensure compliance within the relevant timescales.

# LEGISLATION

## BULK TRANSFERS OF DC PENSIONS

Following a consultation issued in October 2017, regulations were made in February to simplify the bulk transfer of DC pensions without member consent from one occupational pension scheme to another occupational pension scheme. In order for such a transfer to take place under the current legislation an actuary must certify that transfer credits in the receiving scheme are “broadly no less favourable” than the rights to be transferred and requirements must be met concerning the relationship between the transferring and receiving scheme.

From 6 April 2018 the regulations introduce new requirements so that bulk transfers without member consent of ‘pure’ DC benefits (that is, where there are no potentially valuable guarantees or options) from one occupational pension scheme to another will be permitted where: (i) the receiving scheme is authorised under the new authorisation regime to be introduced for master trusts; (ii) the transfer is made between certain connected schemes; or (iii) the trustees have obtained and considered written advice from a person they reasonably believe to be qualified to give that advice by reason of their ability in, and practical experience and knowledge of, pension scheme management and who they have determined is independent of the receiving scheme. Scenario (ii) was added to the regulations following responses to the consultation. Amendments have also been made to scenario (iii) since the consultation in order to address concerns that the draft criteria in relation to independence were too stringent. In summary, the regulations now state that the adviser must not have provided advisory, administration or investment services (rather than any work) to the receiving scheme, service provider or sponsoring employer (or a connected firm) in the past year (rather than the past five years). The regulations also make provision to remove the option of using the existing process involving actuarial certification and requirements concerning the relationship between the transferring and receiving scheme but this change will only apply from 1 October 2019 so that schemes have around 18 months to complete any transfers underway using the existing process.

The regulations also make provision so that if members are protected by the charge cap in the transferring scheme and are transferred to a scheme where they would not be, the protections under the charge cap will transfer into the new scheme. Since the consultation, provision has been added so that the cap restrictions are not triggered in respect of those who are being transferred from a non-default arrangement and who, in the five years prior to the transfer, expressed a choice as to where their contributions were allocated.

## 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 schemes that have never 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.

Following a December 2017 consultation, regulations were made in February so that from 6 April 2018 it will be possible to make bulk transfers of contracted-out rights without member consent to a salary-related scheme that has never been contracted-out provided certain conditions are met. In summary these conditions require that: (i) where Guaranteed Minimum Pensions (GMPs) are transferred, they will continue to be subject to the legislation in relation to GMPs; and (ii) where post-6 April 1997 contracted-out rights are transferred actuarial certification is obtained in relation to the rights in the receiving scheme, and the benefits provided must be such as would have complied with a specified part of the contracting-out legislation as it had effect immediately before 6 April 2016.

## EMPLOYER DEBT LEGISLATION

Following an April 2017 consultation, regulations were made in February 2018 which amend the legislation on section 75 employer debt with effect from 6 April 2018.

### Deferred debt arrangements

The main change is the introduction of a new arrangement (the deferred debt arrangement) which, provided certain conditions are met, employers in multi-employer schemes can use to defer payment of an employer debt where there has been an employment-cessation event (that is, where the employer ceases to have any employees who are active members at a time when at least one other employer employs at least one active member). The response to consultation states that this will be of particular help to smaller employers of non-associated multi-employer schemes. However, the regulations do not limit the use of the deferred debt arrangement to non-associated schemes.

The regulations set out a number of conditions that must be met to be able to use a deferred debt arrangement. The arrangement will take effect on the date on which the trustees, being satisfied that these conditions are met, consent to the arrangement in writing. In summary, the conditions are that: (i) an employment-cessation event has occurred or would have occurred had the deferred employer not entered a period of grace; (ii) the scheme is not in a PPF assessment period or being wound up; (iii) the trustees are satisfied that a PPF assessment period is unlikely to begin in relation to the scheme within the period of 12 months beginning with the date on which they expect the arrangement to take effect; and (iv) the trustees are satisfied that the deferred employer's covenant with the scheme is not likely to weaken materially within that 12 month period. The consultation draft of the regulations included a condition that the funding test (which applies in the case of some of the other mechanisms for dealing with section 75 debts such as scheme apportionment arrangements) is met but, following responses to the consultation this is not included in the final version and condition (iv) in relation to the deferred employer's covenant is included instead. While a deferred debt arrangement is in place, the

deferred employer will continue to be treated as though it is employing at least one active member and therefore will still be an employer for scheme funding purposes.

The regulations set out the circumstances in which a deferred debt arrangement will come to an end which include where: the employer starts employing an active member of the scheme; an insolvency event occurs in relation to the employer; and the trustees serve a notice stating that the arrangement has come to an end on the grounds that they are reasonably satisfied that the employer has failed to comply materially with its scheme funding obligations, its covenant is likely to weaken materially in the next 12 months, or it has failed to comply materially with statutory duties to disclose information to the trustees. The consequences of the termination of the deferred debt arrangement will depend on the termination event and it will not always be the case that an employment cessation event will be treated as having occurred on termination. One of the circumstances in which termination will occur is where the deferred employer "restructures" (subject to an exception where the restructuring falls within existing provisions of the legislation in relation to restructurings) although this term is not defined in the provisions on deferred debt arrangements and the regulations are not entirely clear as to what the consequences will be if this termination event occurs or if the exception applies.

The regulations also: (i) add a deferred debt arrangement taking effect and an event which terminates an arrangement to the list of notifiable events; and (ii) make provision in relation to deferred debt arrangements following a period of grace.

### Other amendments

The regulations also make a number of other amendments to the employer debt legislation including: (i) to extend from two months to three months the period in which employers must give notice to trustees if they intend to use a period of grace; and (ii) some technical amendments including to clarify the definition of a segregated scheme, the definition of former employer and when a flexible apportionment arrangement takes effect in the case of a frozen scheme.

# LEGISLATION

## LIFETIME ALLOWANCE

Following the announcement made in the Autumn Budget in November 2017, regulations were made in February to provide that the standard lifetime allowance for the tax year 2018/19 is £1,030,000 (an increase from the current £1,000,000). This increase is in line with an announcement made in the March 2015 Budget and amendments subsequently made to the Finance Act 2004 for the lifetime allowance to increase annually in line with CPI from April 2018.

## SAFEGUARDED BENEFITS – ADVICE REQUIREMENT

In the [December 2017 edition of Pensions Round-Up](#) we reported on regulations which will come into force on 6 April 2018 relating to how to value benefits for the purpose of assessing whether the member is subject to the statutory requirement to take advice before transferring or converting safeguarded benefits to acquire flexible benefits. Valuing benefits is relevant because there is an exception to this advice requirement where the member's safeguarded benefits under a scheme have a total value of £30,000 or less. Whilst these regulations were introduced following a consultation about safeguarded-flexible benefits, they make a more general change which applies to all types of safeguarded benefits and will require trustees to 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.

In February the DWP published an updated version of its guidance about these regulations which includes a new section that addresses this change to the valuation of safeguarded benefits. Points in this section of the guidance include that: (i) trustees who believe they may

be using the more generous transfer value should speak to their scheme actuary; and (ii) trustees will still be able to offer transfer values on this higher basis but will also need to determine whether the member needs to take advice using the calculation required by the amended regulations. It also provides information about member communications in cases where trustees continue to use the higher transfer value.

## RELIEF AT SOURCE

Following a technical consultation published in November 2017 regulations were made in February, which will come into force on 6 April 2018, and will make changes in relation to the due date for the annual return of individual information in order to assist the administration of relief at source following the introduction of Scottish income tax. The regulations also: (i) make the annual return of individual information a statutory return which removes the need for HMRC to issue a notice for information; and (ii) introduce a new 90 day timescale for reporting and repayment of excess relief claimed in an interim claim and an interest charge if reporting or repayment is made after that period.

## FINANCIAL ASSISTANCE SCHEME

Following a September 2017 consultation and the December 2017 response, regulations were made on 20 February and came into force on 21 February introducing a long service cap for the Financial Assistance Scheme (FAS) whereby FAS members who have 21 years or more pensionable service within a single pension scheme will have their existing cap increased by 3% for each full year of pensionable service over 20 years subject to a maximum of double the standard cap.



# OTHER NEWS

## THE PENSIONS OMBUDSMAN

On 13 February The Pensions Ombudsman (TPO) added a news item to its website reporting that The Pensions Advisory Service's (TPAS) dispute resolution function is moving to TPO and the transfer will be completed by 1 April 2018. The news item also reports that: (i) currently TPAS tends to focus on complaints before the pension scheme's internal dispute resolution procedure (IDRP) has been completed and TPO typically deals with complaints that have been through IDRP; (ii) the transfer will simplify the customer journey, with customers able to access all pension dispute resolution (whether pre or post IDRP) in one place; (iii) TPO and TPAS will update their signposting to the public and pensions industry to reflect the services provided by each organisation; and (iv) pension schemes and providers will be given information to enable them to make the necessary changes to their signposting.

## PENSION SCHEMES NEWSLETTER

On 21 February HMRC published a pension schemes newsletter about relief at source for Scottish income tax which includes information about completing the annual return of individual information for 2017/18 and the service which schemes will be able to use to look up the residency status of their members for relief at source.

The newsletter also includes a section reporting on the implications for pension tax relief of the December 2017 Scottish Budget which announced new Scottish income tax rates and bands for the 2018/19 tax year. In relation to 2018/19, HMRC explains that where a scheme uses the 'net pay' mechanism, pension tax relief will continue to be given by default at members' marginal rate of tax including the new and newly increased Scottish rates. For schemes using relief at source, HMRC explains that for 2018/19, administrators should continue to claim tax relief at the rate of 20% for members who are Scottish taxpayers and goes on to explain the position for scheme members who are Scottish taxpayers liable to income tax at rates other than 20%. HMRC states that it will continue to engage with stakeholders to help establish an approach for the longer term.

## COUNTDOWN BULLETIN

On 23 February HMRC published its latest Countdown Bulletin in relation to the end of contracting-out which includes: (i) a reminder that termination and transfer notices no longer need to be submitted where the period of contracted-out service ends or transfers after 5 April 2016; (ii) information about a process it is introducing to allow administrators to claim a Contributions Equivalent Premium or Limited Revaluation Premium refund where a post-5 April 2016 transfer has taken place; and (iii) information about certain Scheme Reconciliation Service queries.

## GMP RECTIFICATION

On 15 February the Pensions Administration Standards Association (PASA) launched a GMP checklist, designed to assist trustees and administrators, which identifies the points to be considered and the questions that need to be answered as part of a benefit rectification process. PASA's accompanying press release notes five key steps for a rectification exercise - due diligence, agreeing the proposed approach and methodology for the project, data cleanse, rectification calculations and implementation.

## INVESTMENT CONSULTANTS MARKET

On 21 February the Competition and Markets Authority (CMA) published a progress update and timetable in relation to its investment consultants market investigation. This includes that the CMA will soon begin to publish working papers on some areas of its investigation, the aim of which is to set out some important areas of its analysis and emerging thinking, in particular those that the CMA thinks it would be valuable to give parties an opportunity to comment on before its provisional decision. The CMA expects to publish the working papers from February through to early May and aims to publish its provisional decision report in July.

# ON THE HORIZON

DATE	DEVELOPMENT
Unknown	The reforms in relation to <b>Defined Ambition, Collective Benefits</b> and <b>automatic transfers of small DC pots</b> 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 <b>equalisation for the effect of GMPs</b> noting that a number of issues will be considered with the industry working group.
Spring 2018	Following the <b>DB Green Paper</b> published in February 2017, a White Paper setting out options for reform is expected.
6 April 2018	The <b>lifetime allowance</b> increases to £1,030,000.
	Regulations come into force introducing new requirements in relation to <b>disclosure of information on costs, charges and investments</b> for trustees of occupational pension schemes providing money purchase benefits.
	Regulations come into force simplifying the requirements on <b>bulk transfers of DC pensions without member consent</b> from one occupational pension scheme to another occupational pension scheme.
	Changes to the contracting-out legislation come into force allowing, in certain circumstances, <b>bulk transfers of contracted-out rights without member consent</b> to schemes that have never been contracted-out.
	Regulations come into force amending the <b>employer debt legislation</b> including to introduce provisions for deferred debt arrangements.
	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 <b>safeguarded-flexible benefits</b> come into force.
	Statutory minimum DC contributions for <b>automatic enrolment</b> increase to a total of 5% of qualifying earnings, at least 2% of which must be paid by the employer.
	Changes to the Finance Act 2004 are expected to be made which will allow HMRC to <b>refuse to register or to de-register a scheme</b> if it is an occupational pension scheme and a sponsoring employer is a dormant company.
25 May 2018	The new EU General <b>Data Protection</b> Regulation will apply.
1 October 2018	The regulations providing detail of the <b>master trust authorisation regime</b> are expected to come into force on 1 October 2018.
31 October 2018	The deadline for schemes to submit <b>Scheme Reconciliation Service</b> 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 <b>pension funds and social investment</b> 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 <b>limit the statutory right to transfer in order to tackle pension scams</b> are expected to be coordinated with the roll out of the master trust authorisation regime.
2019	Member States must transpose the <b>IORP II Directive</b> into national law by 13 January 2019.
	The Government will ensure the industry designs, funds and launches a <b>pensions dashboard</b> by 2019.
	On 6 April 2019 statutory minimum DC contributions for <b>automatic enrolment</b> increase to a total of 8% of qualifying earnings, at least 3% of which must be paid by the employer.

# CONTACT DETAILS

## **Cathryn Everest**

Professional Support Lawyer, London

**T** +44 (0)20 7153 7116

[cathryn.everest@dlapiper.com](mailto:cathryn.everest@dlapiper.com)

## **Ben Miller**

Partner, Liverpool

**T** +44 (0)151 237 4749

[ben.miller@dlapiper.com](mailto:ben.miller@dlapiper.com)

## **Jeremy Harris**

Partner, Manchester

**T** +44 (0)161 235 4222

[jeremy.harris@dlapiper.com](mailto:jeremy.harris@dlapiper.com)

## **Claire Bell**

Partner, Manchester

**T** +44 (0)161 235 4551

[claire.bell@dlapiper.com](mailto:claire.bell@dlapiper.com)

## **Andrew McIlhinney**

Partner, Leeds

**T** +44 (0)113 369 2141

[andrew.mcilhinney@dlapiper.com](mailto:andrew.mcilhinney@dlapiper.com)

## **Tamara Calvert**

Partner, London

**T** +44 (0)20 7796 6702

[tamara.calvert@dlapiper.com](mailto:tamara.calvert@dlapiper.com)

## **Matthew Swynnerton**

Partner, London

**T** +44 (0)20 7796 6143

[matthew.swynnerton@dlapiper.com](mailto:matthew.swynnerton@dlapiper.com)



[www.dlapiper.com](http://www.dlapiper.com)

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