

## Regulatory update – December 2011

Dec 2011	Action
<p><b>Auto-enrolment</b></p> <p>In December 2011, the DWP published a consultation document reviewing the key automatic enrolment earnings thresholds. The consultation closes on 26 January 2012.</p> <p><a href="http://www.dwp.gov.uk/consultations/2011/auto-enrolment-revaluation.shtml">http://www.dwp.gov.uk/consultations/2011/auto-enrolment-revaluation.shtml</a></p>	<p><i>For monitoring</i></p>
<p><b>New Section 75 Rules take effect</b></p> <p>The final Amending Regulations were laid before Parliament on 15 December 2011, and they will come into force on 27 January 2012.</p> <p>‘Flexible Apportionment Arrangements’ (FAA) are a new option for dealing with ‘section 75’ employer debts in connection with multi-employer defined benefit schemes. The default position when the relationship between a multi-employer scheme and one of its sponsors ends is that the departing employer becomes liable to pay its share of any buy-out basis deficit. However, part-payments of an employer debt will be permitted under a FAA which has its own qualifying conditions.</p> <p>It will be a notifiable event and will require the consent of the scheme’s trustees. Where an employer stops employing active members, the “period of grace” following the employment-cessation event when the employer must employ at least one active member to avoid triggering the debt, is increased from 12 to 24 months. The notification period, during which the employer must inform the trustees that it no longer employs active members, is increased from one month to two months.</p> <p>The legislation is contained in the new Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2011.</p> <p>The Pensions Regulator intends to update its related guidance, “Multi-employer schemes and employer departures” to include material on the new FAA.</p>	<p><i>For information</i></p>
<p><b>State Pension Age (SPA)</b></p> <p>The Government has announced its intention of raising SPA to 67 years over the period April 2026 to April 2028. Those born after 5 April 1960 but before 6 April 1961 will have SPAs between 66 and 67; those born after 5 April 1961 will have an SPA of 67. This is a change that was already scheduled to take place—between May 2034 and March 2036—so the announcement reflects an acceleration of the timescale.</p> <p>The Government will keep further changes to State pension age under review in the light of future demographic evidence.</p>	<p><i>For information</i></p>
<p><b>Asset backed contributions</b></p> <p>Draft legislation for the Finance Bill 2012 was laid before Parliament on 6 December 2011. One of the provisions is to have immediate effect and will change the tax rules for giving relief for employer asset-backed pension contributions. The rules introduced on 29 November 2011 may have a retrospective effect and could have an impact on existing arrangements.</p> <p>These structures have proved popular with companies as they allow the use of group assets (which generate income intra-group) to address deficits in their defined benefit pension schemes. Under a typical structure, such assets are first transferred to a partnership, and then a contribution is made to the defined</p>	<p><i>For information</i></p>

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<p>benefit scheme that is satisfied by providing the pension fund trustees with a partnership interest entitling them to a fixed amount of income over a certain period of time. There have been a number of high profile examples of companies adopting this structure.</p> <p>As far as tax is concerned, employer companies seek a corporation tax deduction for the upfront value of the contribution made to the defined benefit scheme, which may provide timing benefits for the group. In addition, tax relief may be sought for the subsequent income payments made to the partnership. In other words, what HMRC refers to as ‘unintended and excessive tax relief’ can arise.</p> <p>The legislation will affect both new arrangements set up after that date, and any existing structure that has already generated entitlement to tax relief (so that the correct amount of relief is given by the end of the arrangement’s lifetime).</p>	
<p><b>Auto enrolment timetable</b></p> <p>The timetable for the implementation of automatic enrolment into pension schemes is to be delayed so that the ‘staging dates’ for businesses with fewer than 50 employees and 50 to 2,999 employees will not occur until May 2015 at the soonest. There will also be delays to ‘phasing in’ the full minimum contribution requirements for everyone so that the rate of pensions contributions will remain unchanged at 1% until all businesses have started auto-enrolment.</p> <p>The Pensions Regulator (TPR) has confirmed that it will update its guidance on staging and the phasing of contributions as soon as the Government publishes the revised staging schedule.</p>	<p><i>For information</i></p>
<p><b>Consultation on Open Market Option (OMO) Code of Conduct</b></p> <p>Figures from the Association of Business Insurers suggest that about a third of people do not shop around when purchasing an annuity. The OMO should encourage people to shop around but there is general agreement that more needs to be done to improve the way the OMO works. The ABI has issued a draft code of conduct which aims to improve the information customers receive from providers. It has launched a consultation on its draft Code of Conduct.</p> <p><a href="http://www.moneymarketing.co.uk/pensions/abi-launches-new-omo-code-of-conduct/1043542.article">http://www.moneymarketing.co.uk/pensions/abi-launches-new-omo-code-of-conduct/1043542.article</a></p>	<p><i>For monitoring</i></p>
<p><b>Money Purchase refunds to be abolished.</b></p> <p>These refunds are to be abolished, possibly from 2014.</p> <p>The Department for Work and Pensions is also seeking views on how to deal with the increased number of small pension ‘pots’ (those under £2,000) that are expected to arise as a consequence. The options put forward are:</p> <ul style="list-style-type: none"> <li>encourage greater use of the current voluntary transfer regime;</li> <li>automatically transfer small pensions to an ‘aggregator scheme’ when an employee changes job; or</li> <li>automatically transfer the pension fund to the new employer’s scheme.</li> </ul> <p>The Government currently inclines towards the second or third option. The consultation period ends on 23 March 2012; the Government expects to respond in the summer of 2012 and publish more detailed proposals.</p>	<p><i>For monitoring</i></p>
<p><b>Principles for DC Governance</b></p> <p>The Pensions Regulator has laid down six principles for DC schemes to address the current ‘mixed’ standards of these schemes.</p>	<p><i>For information</i></p>

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<p>The principles build on the six main elements identified by the Regulator as being required in order for members to achieve good outcomes in retirement. The new principles will form the basis of the Regulator's regulatory approach as schemes move towards automatic enrolment.</p> <p><a href="http://www.thepensionsregulator.gov.uk/press/pn11-29.aspx">http://www.thepensionsregulator.gov.uk/press/pn11-29.aspx</a></p>	
<p><b>QROPS regime strengthened</b></p> <p>HMRC has announced that it intends to make various changes to the rules for transfers to Qualifying Recognized Overseas Pension Schemes (QROPS). This is to discourage their use as a means of circumventing restrictions on the sorts of payments that registered UK pension schemes can make. The Government has said that it is strengthening the regime because it is concerned that some QROPS are being marketed as pension 'unlocking' arrangements (allowing the whole fund to be taken as a lump sum), whereas the facility to transfer to a QROPS exists to allow those who leave the UK permanently to take their pension savings with them to their new countries of residence.</p> <p>HMRC has published draft Regulations (The draft Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2012) that will, among other things, change the conditions that a scheme has to meet to become a QROPS, and strengthen the reporting and information requirements. Members of registered pension schemes will also be required to acknowledge in writing, before the transfer is made, that they are aware of the potential tax consequences of the transfer.</p> <p>The consultation period ends on 31 January 2012, with the changes planned to have effect from 6 April 2012.</p>	<p><i>For information</i></p>
<p><b>Questions for scheme actuaries</b></p> <p>The Financial Reporting Council (FRC) has compiled 29 sample questions to help users of actuarial information, including a set of questions that pension trustees could ask to improve their understanding of the actuarial advice received in connection with scheme funding.</p> <p>The FRC has published three sets of questions (the other two are for the use of insurance company non-executive directors). The questions for scheme actuaries cover such subjects as discount rate, mortality and other assumptions, scenario and sensitivity analyses, sponsor-covenant assessments and cash flows.</p> <p><a href="http://www.frc.org.uk/documents/pagemanager/frc/Update_for_Users/Update%20for%20users%20-%20Pensions%20Final.pdf">http://www.frc.org.uk/documents/pagemanager/frc/Update_for_Users/Update%20for%20users%20-%20Pensions%20Final.pdf</a></p>	<p><i>For information</i></p>
<p><b>HMRC Countdown Bulletin No 5</b></p> <p>HMRC has also published its fifth Countdown Bulletin in preparation for the abolition of contracting out on the money purchase basis on 6 April 2012.</p> <p><a href="http://www.hmrc.gov.uk/nic/countdown-bulletin5.pdf">http://www.hmrc.gov.uk/nic/countdown-bulletin5.pdf</a></p>	<p><i>Discuss with Administrator or Admin Manager to ensure relevant changes to processes made</i></p>
<p><b>Commutation of small personal pensions</b></p> <p>The Government has announced its intention of allowing people with personal pensions worth up to £2,000 to receive them entirely in lump-sum form.</p> <p>Currently, people aged 60 or over can take all of their pension savings as trivial commutation lump sums (TCLS) if the total value of their entitlements under all registered pension schemes is less than £18,000. In 2009, occupational pension schemes were also given the ability to make small lump sum payments of up to £2,000 regardless of the member's pension rights in any other, unrelated,</p>	<p><i>Discuss with Administrator or Admin Manager to ensure relevant changes to processes made</i></p>

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<p>schemes.</p> <p>The Government has published draft legislation that will introduce similar provisions for those with small personal pension ‘pots’. People age 60 and over will be able to commute up to two small personal pension funds, each with a value of up to £2,000, regardless of entitlements in other schemes (and any TCLS received).</p> <p>HMRC has drafted guidance on the proposed new commutation option. Tax will apply.</p> <p><a href="http://www.hmrc.gov.uk/pensionschemes/small-pots-guidance.pdf">http://www.hmrc.gov.uk/pensionschemes/small-pots-guidance.pdf</a></p>	
<p><b>Nov 2011</b></p>	<p><b>Action</b></p>
<p><b>Statutory employers - update</b></p> <p>From November 2011, the Pensions Regulator’s (TPR) scheme return forms will require trustees to identify their statutory employers. The statutory scheme funding requirement and the requirement to pay employer debts (section 75 debts) apply only to statutory employers.</p> <p><a href="http://www.thepensionsregulator.gov.uk/docs/identifying-your-statutory-employer-statement-july-2011.pdf">http://www.thepensionsregulator.gov.uk/docs/identifying-your-statutory-employer-statement-july-2011.pdf</a></p>	<p><i>Agenda item for Trustees</i></p>
<p><b>Auto-enrolment</b></p> <p>From October 2012, auto-enrolment rules will effect larger employers. TPR has produced a checklist of action points for employers and more detailed guidance.</p> <p><a href="http://www.thepensionsregulator.gov.uk/pensions-reform/detailed-guidance.aspx">http://www.thepensionsregulator.gov.uk/pensions-reform/detailed-guidance.aspx</a></p> <p><a href="http://www.thepensionsregulator.gov.uk/docs/pensions-reform-employer-action-checklist.pdf">http://www.thepensionsregulator.gov.uk/docs/pensions-reform-employer-action-checklist.pdf</a></p>	<p><i>Employer to refer to auto-enrolment guidance and formulate action plan</i></p> <p><i>Agenda item for DC Trustees</i></p>
<p><b>PPF Levy</b></p> <p>The PPF has finalised its new levy framework for 2012/13 to 2014/15 and has also consulted on draft guidance on the calculation of investment risk.</p> <p>Trustees will have to certify each year that any guarantors for their scheme can be expected to meet their commitments under the guarantee.</p> <p>Investment risk will be taken into account in the risk-based levy for the first time based on the assets and liabilities included in the annual return. The largest schemes with assets of more than £1.5 billion will need to provide the PPF with more details about their assets, assigning them to prescribed categories. Smaller schemes can do so as well if they wish.</p> <p><a href="http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/levy_policy_statement_May11.pdf">http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/levy_policy_statement_May11.pdf</a></p> <p><a href="http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/investment_risk_consultation_May11.pdf">http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/investment_risk_consultation_May11.pdf</a></p>	<p><i>Agenda item for Trustees</i></p>
<p><b>Pensions Bill 2011 receives Royal Assent</b></p> <p>The Pensions Bill 2011 received Royal Assent on 3 November 2011 bringing into force changes including:</p> <ul style="list-style-type: none"> <li>• change in the lifetime allowance from £1.8 million to £1.5 million</li> <li>• reduction of the annual allowance to £50,000</li> </ul>	<p><i>For information</i></p>

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<ul style="list-style-type: none"> <li>removal of the requirement to purchase an annuity</li> <li>introduction of the new income drawdown and flexible drawdown rules</li> <li>including the increase in State Pensions Age (SPA)</li> <li>changes following the switch from RPI to CPI for increases to pensions</li> <li>changes to the definition of “money purchase benefits” following the Bridge Trustees decision.</li> </ul> <p><a href="http://www.dwp.gov.uk/docs/pensions-bill-2011-summary-of-impacts.pdf">http://www.dwp.gov.uk/docs/pensions-bill-2011-summary-of-impacts.pdf</a></p>	
<p><b>PPF confirms GMP treatment method and announces pilot project</b></p> <p>On 10 November, the Pension Protection Fund (PPF) published guidance on calculating compensation for men and women being assessed for entry into the PPF - or those who are already members - to ensure equal treatment between the sexes.</p> <p>Differences in compensation or assistance payments for men and women can arise because of differences in the calculation of guaranteed minimum pensions (GMPs), primarily brought about by the former difference in retirement ages.</p> <p><a href="http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/GMP_Statement_November_2011.pdf">http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/GMP_Statement_November_2011.pdf</a></p>	<p><i>Discuss with Administrator or Admin Manager to ensure relevant changes to processes made</i></p>
<p><b>Oct 2011</b></p>	<p><b>Action</b></p>
<p><b>Understanding and managing hybrid schemes</b></p> <p>TPR has issued a statement to help trustees and their advisers understand the structure of their hybrid scheme, i.e. schemes with both a defined benefit (DB) and defined contribution (DC) element, and to take action to address these risks.</p> <p><a href="http://www.thepensionsregulator.gov.uk/docs/understanding-and-managing-your-hybrid-scheme-statement-oct-2011.pdf">http://www.thepensionsregulator.gov.uk/docs/understanding-and-managing-your-hybrid-scheme-statement-oct-2011.pdf</a></p>	<p><i>For information</i></p> <p><i>Agenda item for Hybrid schemes</i></p>
<p><b>Regulator clarifies the role of DC Trustees</b></p> <p>TPR has published a statement - The role of trustees in DC schemes - for trustees to clarify the key differences between DB and DC schemes, and the behaviours that DC trustees should demonstrate.</p> <p><a href="http://www.thepensionsregulator.gov.uk/docs/role-of-trustees-in-dc-schemes-statement-oct-2011.pdf">http://www.thepensionsregulator.gov.uk/docs/role-of-trustees-in-dc-schemes-statement-oct-2011.pdf</a></p>	<p><i>For information</i></p> <p><i>Agenda item for DC Trustees</i></p>
<p><b>Find out your staging date</b></p> <p>TPR has added an interactive tool to its website that allows employers to identify when they will need to automatically enrol staff into a pension scheme for the first time – the “staging date”</p> <p><a href="http://www.thepensionsregulator.gov.uk/employers/tools/staging-date.aspx">http://www.thepensionsregulator.gov.uk/employers/tools/staging-date.aspx</a></p>	<p><i>For information</i></p>
<p><b>Nortel/Lehman Court of Appeal judgement</b></p> <p>The Court of Appeal has upheld the High Court’s decision in the Nortel and Lehman financial support directions cases. This has significant implications for the effect of the moral hazard powers of the Pensions Regulator under the Pensions Act 2004 when imposed on a company that is in administration or insolvent liquidation.</p> <p><a href="http://www.linklaters.com/publications/Publication1405Newsletter/Court-Appeal-confirms-moral-hazard-liabilities-insolvency-expense/Pages/Index.aspx">http://www.linklaters.com/publications/Publication1405Newsletter/Court-Appeal-confirms-moral-hazard-liabilities-insolvency-expense/Pages/Index.aspx</a></p>	<p><i>For information</i></p>