Linklaters

Occupational Pension Schemes - 2012 Mid Year Round up

Pensions changes that have already taken place in 2012

Change	Timing	Schemes affected	Action
Extension of the Pensions Regulator's "look back" period when issuing a contribution notice (CN) or financial support direction (FSD). The period now will end with the date when the Regulator issues a warning notice (instead of the later date of his issuing a CN or FSD).	The changes came into force on 3 January 2012.	Defined benefit schemes.	No specific action is required, except to be aware that past actions or events that could lead to an order by the Regulator are now less likely to become time-barred during the course of the CN or FSD process.
Changes to the employer debt regulations. These introduced a new mechanism for reapportioning all or part of the burden that would have otherwise fallen on a given employer when it leaves an ongoing multi-employer defined benefits scheme. The changes also extend the existing "period of grace" deadlines.	The changes came into force on 27 January 2012.	Defined benefit schemes with more than one participating employer.	These changes are mainly relevant for trustees and employers when they consider how best to deal with the employer debt implications of an employer ceasing to have employees in a scheme while other employers continue to do so.
Abolition of contracting-out on a protected rights (or money purchase) basis. Affected schemes had their contracting-out certificate automatically cancelled. Protected rights became ordinary scheme rights.	The abolition took effect from 6 April 2012. The power provided by the Modification Regulations to remove references to protected rights from scheme rules can be exercised between 6 April 2012 and 5 April 2018 and retrospectively applied to 6 April 2012.	Schemes which were contracted-out on a protected rights basis.	Consider how the scheme rules interact with these changes, and any amendments that may be necessary or desirable as a consequence.

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Reduction of the Lifetime Allowance under the Finance Act 2004 to £1.5m (except for members who had registered by then for fixed protection).	The reduction was effective from 6 April 2012.	All registered pension schemes.	Ensure that the scheme's systems will not inadvertently prejudice a member's fixed protection.
New flexibility to transfer contracted-out benefits (including guaranteed minimum pensions) to schemes that are not contracted-out.	This came into force on 6 April 2012.	Schemes with contracted-out rights.	Schemes may wish to ensure that their current systems allow for this new flexibility.
New requirement for employers to consult before making a change to the way that pensions are revalued or increase which is likely to be less generous to members. The consultation period is 60 days.	This requirement came into force on 6 April 2012 and does not apply if this active or prospective members affected had already been notified before that date.	Schemes where there is to be a change to the existing rate of revaluation of pensions in deferment or increases to pensions in payment.	The 60 day consultation will need to be built into the process for making any such change.
NEST (National Employment Savings Trust): Regulations have been enacted which relax tax restrictions on employer-related investments by NEST (the statutory scheme which is available to employers as a means of meeting their automatic enrolment duties). Previously the Finance Act 2004 imposed unauthorised payment charges when a registered pension scheme bought shares in its participating employers beyond statutory limits. HMRC published regulations in 2012 to exempt NEST and its participating employers from these restrictions.	The Regulations came into force on 1 June 2012 but have retrospective effect since 6 April 2012.	Does not apply to occupational pension schemes but does affect all employers who participate in NEST.	No specific ation required.

Forthcoming changes - 2012 and beyond

Change	Timing	Schemes affected	Action
Solvency II: The European Commission may apply the proposed Solvency II framework to the European Pensions Directive. The Solvency II framework aims to establish a revised set of EU-wide capital requirements and risk management standards to the European insurance industry. There are fears in the pensions industry that this could lead to a requirement to substantially increase funding demands on employers. The European Commission has issued a quantitative impact study across Europe to assess the impact of these extra funding demands. The European Insurance and Occupational Pensions Authority ("**EIOPA**") has invited all interested parties to provide feedback on the technical specifications for the study. Solvency II also has the potential to affect the pricing and availability of bulk and individual annuities. Its impact on UK annuity rates also remains uncertain.	EIOPA's consultation on the technical specifications for the EC's quantitative impact study ends on 31 July 2012. It is anticipated that the IORP Directive will be published at the end of 2012 and will come into force sometime around 2015-17.	All UK pension schemes.	No specific action necessary at this stage, although schemes should monitor developments and consider future funding implications. Interested parties may wish to submit responses to the EIOPA consultation by 31 July 2012.
Abolition of contracting-out on a protected rights basis – affected members must be told certain additional information within four months of the abolition date.	The information must be provided by 6 August 2012.	Schemes which, until 5 April 2012, were contracted-out on a protected rights basis.	Issue communications to affected members.

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Auto-enrolment: Introduction of new duties requiring employers to automatically enrol certain workers into a qualifying pension scheme (and associated requirements).	Although automatic enrolment comes in from 1 October 2012, individual employer duties will be introduced gradually over the following years with the largest employers (broadly by reference to PAYE scheme size) generally being caught first. (An employer who would otherwise become subject to the new law on 1 October 2012 or 1 November 2012 may instead elect an earlier date, no sooner than 1 July 2012.)	This is primarily an obligation of employers. The automatic enrolment requirements will only affect those schemes that employers select as the vehicles to meet these requirements.	The first step for employers is to ascertain when the new law will apply to them. Information to help employers can be found on the Pensions Regulator's website. An employer should make an initial assessment of how its workforce is likely to look on its staging date, to work out what duties it is likely to have. An employer can then work back from the staging date and prepare for those duties, including: • deciding on a pension scheme to use to fulfil its duties; • preparing data to send to that scheme; • preparing information to send to its workers; and • setting up its payroll processes. Employers must be ready to comply with the new duties on their allocated staging date.
Disclosure requirements: The DWP has consulted on changes to occupational pension schemes' disclosure regulations to bring them in line with auto-enrolment requirements. The main change proposed is to reduce the current timescale within which a scheme must provide basic information (in automatic enrolment scheme cases) from	Any changes would come into effect alongside auto-enrolment on 1 October 2012.	All occupational pension schemes.	No immediate action required until the outcome of the consultation is known but schemes should be prepared to amend their basic information processes to comply with the proposed changes if the draft Amendment Regulations are enacted in their current form.

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two months to one month from the date when the scheme receives the jobholder information from the employer. The consultation closed on 22 May 2012.			
Sex specific factors: Insurers will no longer be permitted to charge differential premiums as between men and women for annuities or life cover.	The European Court of Justice has decided on 21 December 2012 as the date by which European law requires insurers to implement this change.	No direct impact on occupational pension schemes (except in terms of the costs of insuring death benefits and buying annuities for members).	Although the decision does not prevent occupational pension schemes from using different actuarial factors as between men and women on the basis of their life expectancies, a future decision of the Court could change that. Schemes may therefore wish to consider equalising their factors in anticipation of such a decision.
Change to the statutory definitions of "money purchase benefits".	There is considerable uncertainty here. Although the changes are largely expressed to be retrospective to 1 January 1997 (to ensure that they work for the Financial Assistance Scheme), the amending legislation has not yet been brought into force and there is no clear indication of when it will be. In the meantime there are extensive powers for the Secretary of State to pass transitional regulations, or to make other changes which could limit the scope of these amendments or alter the new definitions further. It is therefore too early to say how far-reaching the new definitions will be or when (and for what purposes) they will take effect.	This will depend on the eventual wording, once the regulations have been finalised. It may potentially affect: • defined contribution schemes with defined benefit underpins (and vice-versa); • schemes providing the better of defined benefit and defined contribution pensions; • schemes where a member's defined contribution account is used on retirement to purchase a specified annuity from the general scheme assets; and	In spite of the current uncertainty, it does seem likely that schemes which provide a pension from their own assets using a member's defined benefit account, or which guarantee the investment return during the build-up phase, will need comply with funding-related legislation as a result of these changes. Benefits of this nature will therefore need to be fed into the triennial valuation process and also become subject to the employer debt legislation (and have to be covered by employer debt calculations). These schemes will also be subject to the PPF levy in respect of those benefits.

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	We expect that the Government will consult on the issues later this year.	• defined contribution schemes which guarantee the investment return during the build-up phase.	
At the end of last year, the Government consulted on its intention to abolish the use of short service refunds for defined contribution schemes. Consultation ended on 25 March 2012 but we are awaiting confirmation that these proposals will go ahead as currently envisaged.	The exact date is to be confirmed but has been announced to be "as early as 2014".	Defined contribution occupational pension schemes.	No immediate action required.
State pension age for women increasing to 65.	Being phased in from 6 May 2010 to 6 November 2018.	Schemes where contributions and/or benefit structures are linked to the commencement of a member's state pension.	Schemes will need to review their rules to see if they are affected by the state pension age changes.
State pension age increasing to 66.	To be phased in from 6 March 2019 to 6 October 2020.	Schemes where contributions and/or benefit structures are linked to the commencement of a member's state pension.	Schemes will need to review their rules to see if they are affected by the state pension age changes.
State pension age increasing to 67.	To be phased in from 6 April 2026 to 6 April 2028 (as per the 2011 Autumn Statement).	Schemes where contributions and/or benefit structures are linked to the commencement of a member's state pension.	Schemes will need to review their rules to see if they are affected by the state pension age changes.
State pension age increasing to 68 and beyond.	Current statutory timescales to be revisited.	Schemes where contributions and/or benefit structures are linked to the commencement of a member's state pension.	Schemes will need to review their rules to see if they are affected by the state pension age changes.