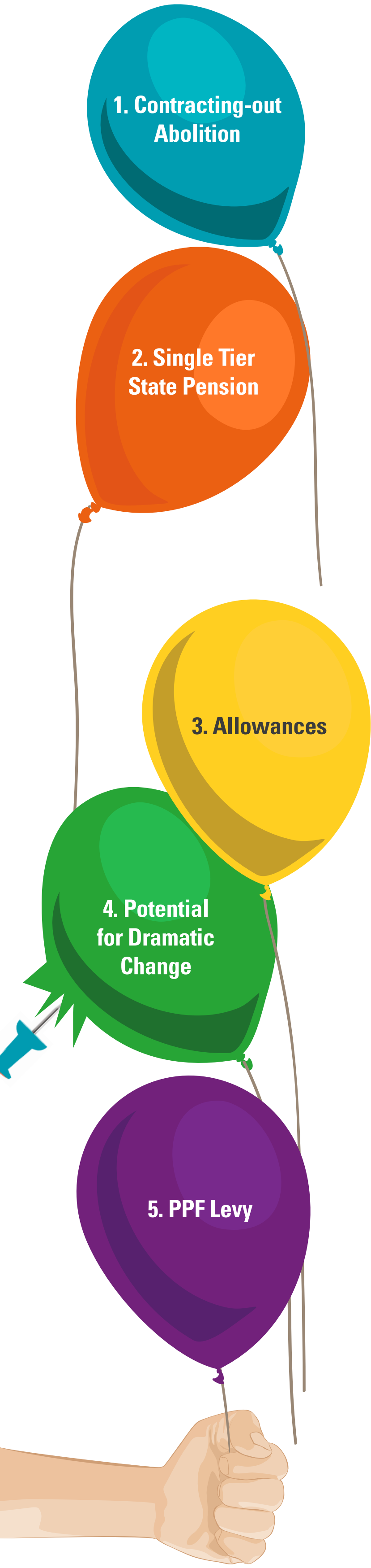
SQUIRE PATTON BOGGS

Hot Topics in Pensions
Spring 2016



State Pension Reform

Draft legislation applying from 6 April 2016 will prevent bulk transfers of contracted-out rights without member consent unless this is to a pension plan that was formerly contracted-out (i.e. unless the legislation is amended, it will not be possible to establish a new plan to receive transfers). This may cause problems for employers/trustees planning a merger of pension arrangements. Trustees of pension plans ceasing to contract out on 6 April 2016 should understand how GMP revaluation will apply to members still in pensionable service and may need to consider a rule amendment/statutory modification before 6 April 2017.

Trustees wishing to benefit from HMRC's Scheme Reconciliation Service must register by 5 April 2016.

The single tier state pension has been confirmed as £155.65 for 2016/17. Trustees of pension plans where benefits integrate with the state pension scheme (including bridging pensions) should ensure that they have assessed the impact of the reform. The DWP now provides a "Contracted Out Pension Equivalent" figure on state pension statements, which reflects the amount that an individual would have received if he had not been contracted-out; this may result in additional questions for trustees/administrators.

The DWP's state pension toolkit contains explanatory material.

Tax Matters

The Lifetime Allowance will reduce from £1.25 million to £1 million from 6 April 2016. Individuals can apply for Fixed Protection 2016 and Individual Protection 2016 on an interim basis from 6 April 2016; the online application process will not be available until July 2016. A tapered reduction in the Annual Allowance for individuals earning over £150,000 will also apply from 6 April 2016. The taper will make it difficult for any pension plan to operate an AA cap on benefits. New draft legislation sets out the requirements for issuing pension saving statements to members to assess their savings against the AA.

See HMRC Newsletters 75 and 76 for more details.

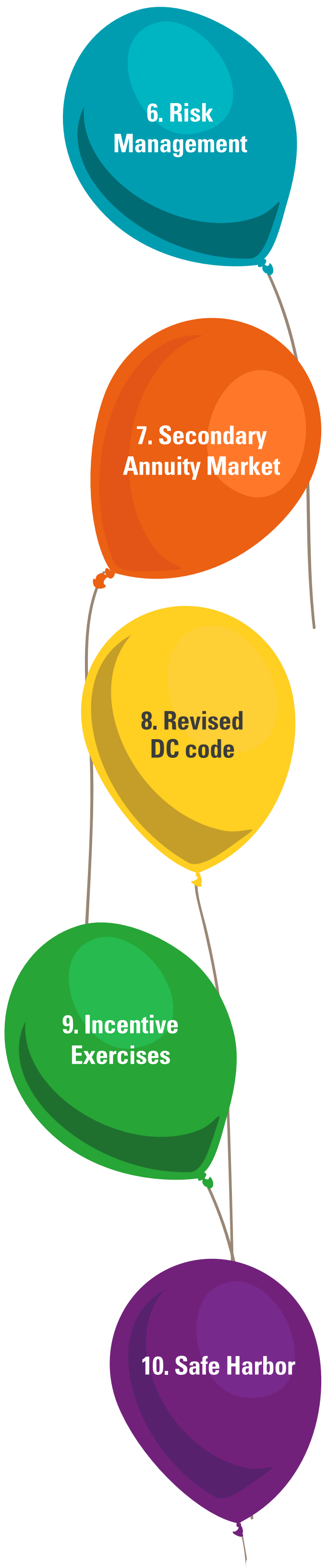
As part of the Budget on 16 March, the Chancellor will announce the outcome of its 2015 consultation on pensions tax relief. This could be the biggest ever reform of the pensions tax system if the Chancellor were to signal a move to a "pensions ISA" system. Speculation is rife that a system of flat rate tax relief will be introduced and there are question marks about whether salary sacrifice arrangements will be curtailed. A further option could see an end to the 25% tax-free cash lump sum. We await the Budget announcement with interest!

The pensions industry is still hoping for a "no change" option…

DB Management

The Pension Protection Fund has confirmed its risk-based levy rules for 2016/17. There are minor changes to levy reduction processes, including the recertification of Asset Backed Contributions and mortgage certifications. Trustees and employers should check requirements and obtain advice at an early stage. The deadline for submitting scheme returns, and documentation relating to contingent assets, Asset Backed Contributions and mortgages, is midnight (changed from 5pm) on 31 March 2016. Trustees intending to certify a "Last Man Standing" status on the scheme return should ensure that legal advice has been obtained.

The PPF 2016/17 levy page contains more information.



The Pensions Regulator has produced guidance for trustees of DB schemes on how to develop and implement an "integrated framework" for managing risk. This guidance aims to help trustees to assess, prioritise and manage employer covenant, investment and funding risk, and to maintain a balance of risk that is appropriate and proportionate for the pension plan and the employer. Central to all of this is the assessment of the employer covenant which should consider the financial support available and the legal obligations of employers supporting the pension plan.

This is the latest in a series of publications expanding upon the themes of the July 2014 DB Funding Code.

DC Update

The Government will remove the tax restrictions on selling annuities from 6 April 2017. This will open up a new option for an estimated 5 million pensioners with annuity contracts. Subject to the agreement of the annuity provider, annuitants will be able to assign future income streams to a third-party buyer, in return for a taxable lump sum, a flexi-access drawdown fund or a flexible annuity. The reform will apply to annuities owned by an individual and held in his own name. Annuities in the name of the trustees held as general scheme assets will not be in scope.

Some trustees are in the process of assigning annuities into members' names to avoid valuing them in scheme accounts under the new SORP.

The Pensions Regulator has consulted on a revised draft code of practice on the Governance and Administration of occupational DC trust-based schemes which will replace the existing code from July 2016. The new code includes the Regulator's expectations on how trustees should comply with the governance and charge capping legislation which has applied to DC provision from April 2015, and also contains extra detail on areas such as value for members and monitoring performance of advisers. The new code no longer contains the 31 quality features. Draft guidance material is expected in the spring.

The Pensions and Lifetime Savings Association has issued a Good Practice Guide on Assessing Value for Members.

More Legal Developments

The revised voluntary code of good practice on "Incentive Exercises for Pensions" applies to new exercises from 1 February 2016. The core principles remain but there are some changes and clarifications. For example, the code now: requires financial advisers to consider other beneficiaries; contains a new £10,000 threshold, beneath which requirements are relaxed; confirms that full commutation of benefits and also conversions of safeguarded DB benefits to flexible DC benefits are in scope, but winding-up exercises are not in scope. Trustees and employers should take advice before undertaking an incentive exercise.

There is a clear focus on following "the spirit" of the code.

Transfers of personal data from the EU to outside of the EEA are only permitted if "adequate protection" is ensured for the data in the country to which it is transferred. The "safe harbor" framework has been relied on to satisfy the requirement for data transfers to the U.S. but the European Court of Justice recently ruled that "safe harbor" is invalid. Work is ongoing to agree on an alternative framework, but in the meantime, where pension plan data is held in the US, data controllers should seek legal advice to assess whether action should be taken to ensure full compliance.

New regulations expected in 2018 will include potential sanctions of up to 4% of global revenue (or, if greater, €20 million) for certain breaches.

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