

Pensions and Employment: Pensions Bulletin

10th December, 2015 / Issue 20

Legal and regulatory developments in pensions

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I. Watch list

The Watch List is a summary of some potentially important issues for pension schemes which we have identified and where time is running out, with links to more detailed information. New or changed items are in **bold**.

No.	Topic	Deadline	Further information/action
1.	Information to retiring DC members about the guidance guarantee	6 th April, 2015	Template information available on request
2.	Information to transferring DB members about the requirement for independent financial advice	6 th April, 2015	Pensions Bulletin 15/09
3.	Requirement to check that independent financial advice received before effecting DB transfers	6 th April, 2015	Pensions Bulletin 15/11 Action point: Check transfer-out provisions in scheme rules. They will require amendment if they give members the right to transfer without taking independent financial advice

4.	New governance requirements for occupational schemes which have money purchase benefits in them (unless limited to AVCs)	6 th April, 2015	Client note dated 24 th February, 2015 (updated 2 nd April, 2015) available from Lynsey Richards Note additional requirements for “relevant multi-employer schemes” - see Pensions Bulletin 15/08 . See also draft Code of Practice published by Regulator on 24 th November, 2015
5.	Cap on charges in default fund for auto-enrolment qualifying schemes	6 th April, 2015	Client note dated 24 th February, 2015 (updated 2 nd April, 2015 to reflect exemption from charge cap for AVCs) - Pensions Bulletin 15/06 available from Lynsey Richards
6.	Abolition of refund of contributions for members of occupational schemes with at least 30 days’ pensionable service who are just provided with money purchase benefits and who start pensionable service after 30 th September, 2015	1 st October, 2015	Pensions Bulletin 15/09 Action point: Scheme rules should have been amended where necessary to remove right to refund of contributions where member has at least 30 days’ qualifying service but less than 2 years’ qualifying service

7.	Reduction in annual allowance for high income individuals Note: Up to £80,000 annual allowance for tax year ending 6 th April, 2016	6 th April, 2016	Summer Budget 2015 Supplement
8.	Reduction in Lifetime Allowance from £1.25 million to £1 million	6 th April, 2016	Pensions Bulletin 15/19
9.	Members who intend to apply for Fixed Protection 2016 (“FP 2016”) must stop accruing benefits	6 th April, 2016	Pensions Bulletin 15/16 Think about communicating 6 th April, 2016 reduction in LTA and possible protections highlighting necessity of ceasing accrual for FP 2016. This Pensions Bulletin As with FP 2012 and FP 2014, schemes may wish to add protective provisions to their trust deed and rules to prevent inadvertent loss of FP 2016. Please contact the person you usually deal with at Slaughter and May if you would like to add a protective provision to your scheme. The Deed of Amendment would need to be in place before 6 th April, 2016.

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10.	Abolition of DB contracting-out: managing additional costs	6 th April, 2016	Pensions Bulletin 15/16 Checklist available to clients on request. Planning for this should be well developed by now.
11.	Abolition of DB contracting-out: practicalities	6 th April, 2016	Pensions Bulletin 15/16 Checklist available to clients on request. Planning for this should be well developed by now. Employers to notify affected employees of change in contracting-out status by 6 th May, 2016. Schemes to notify affected members by 6 th July, 2016. Change template contracts of employment for new joiners to remove references to contracted-out employment.
12.	Prohibition on Active Member Discounts in auto-enrolment qualifying schemes	6 th April, 2016	Pensions Bulletin 14/16
13.	Ban on member-borne commissions	6 th April, 2016	Pensions Bulletin 15/18

14.	Proposed ban on corporate directors	1 st October, 2016	Pensions Bulletin 15/07 Note: Unclear whether exemption will be available for independent corporate directors of trustee companies
15.	VAT recovery changes	31st December, 2016	Pensions Bulletin 15/17 . Client briefing available on request.
16.	Registration for Individual Protection 2014	Before 6th April, 2017	Pensions Bulletin 14/12
17.	Increases in auto-enrolment minimum contributions to DC schemes	First increase now 5th April, 2018. Second increase now 5th April, 2019	This Pensions Bulletin .
	Automatic transfers of DC pots of £10,000 or less	Postponed indefinitely	Pensions Bulletin 15/17

New Law

II. Legislative changes flowing from DC flexibility and other tidying up changes

A. Overview

1. On 23rd November, 2015, the DWP published a consultation proposing a number of consequential changes to existing DWP legislation. The changes are expected to take effect on 6th April, 2016.
2. The areas covered are:
 - 2.1 pension sharing on divorce, including a requirement that, where an attachment order exists, schemes will have to write to the former spouse at the point the member applies to take benefits flexibly,
 - 2.2 scheme wind-up, forfeiture and preservation of benefits,
 - 2.3 the PPF, including amendments to the PPF entry rules to deal with schemes whose sponsoring employer cannot have an insolvency event, and
 - 2.4 retirement risk warnings (the “second line of defence”), including requiring

trustees of occupational DC schemes to send generic risk warnings out before members take their benefits flexibly.

3. The paper also calls for evidence on a possible simplification to the valuation of money purchase benefits with a guaranteed annuity rate (“GAR”) for the purposes of the “appropriate independent advice” requirement.

B. Pension sharing

1. *Appropriate independent advice requirement:* The requirement to take appropriate independent advice on a transfer of safeguarded benefits valued at £30,000 or more is to be extended to pension credit members (i.e. those with pension rights acquired as a result of pension sharing). The DWP confirms that the requirement should apply only to pension credit rights created following an “internal transfer” which are safeguarded benefits and which are being transferred or converted to flexible benefits. It is not intended to apply at the point at which the trustee’s liability in relation to a pension credit is being discharged as part of the implementation of a pension sharing order.

2. Attachment orders:

- 2.1 The introduction of 6th April, 2015 flexibility gives members who have reached age 55 the option to take money purchase benefits at a time and in a form which may not have been anticipated when an attachment order was granted.
- 2.2 There is currently no obligation for a scheme to notify a former spouse that a member in relation to whom an attachment order is in place has applied to take benefits. It is now proposed that schemes be required to notify former spouses when a member’s application to access benefits flexibly is received, including information about the form in which the member will be taking benefits.
- 2.3 The aim is to ensure that the former spouse gets as much warning as possible of the payments and has time to apply to court to vary the order. The DWP suggests that the letter should advise the former spouse to take legal advice if it is felt that the member is breaching the attachment order by taking benefits in a particular way.

3. *Reduction of cash equivalent where the scheme is underfunded:* The pension sharing legislation can currently be read as requiring any deduction for underfunding to be made twice: once when the pension rights are valued for sharing purposes and again if the pension credit rights are transferred out to another pension arrangement. This is not the policy intention; the Government proposes to amend the legislation to remove the requirement for the initial cash equivalent to be reduced for underfunding except in cases where the scheme is winding-up.

C. Scheme wind-up, inalienability and preservation of benefits

1. *Winding-up:* The Government intends to amend the Winding-up Regulations¹ to allow a pension scheme to discharge its liabilities in wind-up by the payment of an Uncrystallised Funds Pension Lump Sum (“UFPLS”) where:
 - the member consents to this method of discharge, and

¹ The Occupational Pension schemes (Winding-up) Regulations 1996

- the payment would be permitted under the Finance Act 2004.

2. *Commutation - Removal of condition that member remains in employment:* The legislation² permitting commutation of pension commencement lump sum (“PCLS”) requires that, in addition to reaching age 55, the member “has not retired from the employment of the employer in relation to the scheme”. The Government believes there is no reason for this additional requirement of employment and intends to remove it.

Comment: In our view, this change is misconceived. Payment of a PLCS from a defined benefit scheme **on or after retirement from employment** is dealt with in primary legislation³. The regulations the Government is proposing to amend deal with commutation **while in employment prior to retirement**. The scheme of the legislation is currently logically correct. Removing the restriction as the Government proposes will distort it.

² In Regulation 2(1B)(b) of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc) Regulations 1997

³ By Section 91(5)(c)(i) of the Pensions Act 1995

The restrictions are not applicable to payments of a PLCS from a money purchase scheme as a PLCS is just a way of paying “pension”; no commutation is involved.

D. PPF

1. *Pension flexibility:* The Government is proposing to reduce the age at which members can trivially commute PPF compensation to 55 from 60, and to remove the upper age limit of 75.
2. *Eligibility - Where a sponsoring employer cannot have an “insolvency event”:* Some schemes that are eligible for the PPF have sponsoring employers who are unable to have a qualifying insolvency event in order to trigger access to the PPF. In this situation, the legislation provides an alternative route for such schemes to enter the PPF. The Government now proposes to amend this legislation to provide a more principles-based approach rather than listing the types of schemes or employers that can use this alternative route.
3. A particular issue arises for schemes whose sponsoring employer has its “centre of its main interests”, for the purposes of EU legislation, within the EU but outside the UK

and so cannot be the subject of a winding-up order under the Insolvency Act. This was the case in **Olympic Airlines** ([Pensions Bulletin 15/09](#)). The Government proposes to provide that such a scheme will in future be able to use the “alternative route” into the PPF.

E. Retirement risk warnings for members of occupational pension schemes

1. Contract-based schemes are subject to the FCA’s Conduct of Business rules, that took effect from 6th April, 2015 and that require providers to give personalised risk warnings to clients accessing their pension (the “**second line of defence**”).
2. For occupational DC pension schemes, the Pensions Regulator has published good practice guidance which encourages schemes to provide generic risk warnings ([Pensions Bulletin 15/09](#)).
3. The Government now intends to legislate to **require** trust-based DC schemes to ensure members receive this “second line of defence” protection.
4. Some schemes permit members with DC funds (for example from AVCs) to commute these as part of the pensions commencement

lump sum. Some may also offer an UFPLS. But in many cases, after 5th April, 2015, where the DC scheme does not offer an income drawdown option and the member has to buy an annuity, the member is likely to transfer out to a personal pension scheme to have the income drawdown option. Because of this, the Government has decided that generic risk warnings, rather than personalised warnings, are the most appropriate way of protecting members.

5. It proposes to add a new regulation to the Disclosure Regulations placing an obligation on trustees to provide members with additional information in writing at a point **after** receipt of the retirement “wake-up”, pack when members have considered their options and may have decided what to do, but before they actually take their money purchase benefits in a particular form within their own scheme or transfer benefits to another scheme. This generic information should illustrate how poor decisions made at this point could adversely affect income in retirement.
6. The DWP says that each risk warning should include those attributes, characteristics, external factors or other variables that increase the risk associated with how the

member could access their pension savings and should fit with the examples already provided by the Pensions Regulator. The Government says it does not wish to be prescriptive around the wording trustees use to communicate the risk warning.

7. The Government expects that the risk warnings will be provided alongside current communications, meaning that DC schemes will not face an extra regulatory burden. The Government does not intend to require trustees to resend risk warnings if the member has received such a warning within the last 12 months.
8. The current draft of the Regulations requires the information to be sent “*as soon as reasonably practicable, and in any event within 7 days of the date*” the trustees have become aware that the member is considering taking his benefits flexibly.
9. The draft Regulations also require DC schemes to send a further statement to members, alongside the risk warnings, setting out the options available to the member under the scheme, and informing them “in a clear and prominent manner” that they should have received either advice or guidance and should have read the risk warnings.

Comment: The draft legislation is not clear on the precise timing of this new requirement.

10. References to DC schemes include money purchase benefits in defined benefit schemes (for example derived from AVCs or bonus sacrifices).

F. Clarifying disclosure requirements

1. Regulations 18A and 18B of the Disclosure Regulations set out the information to be sent out by schemes when they are contacted by the member prior to retirement. Concerns have been raised that the difference between the 2 regulations is ambiguous and that, as they require different information to be communicated, clarification would be useful.
2. The DWP says its policy intention is that Regulation 18A applies where a member is being proactive and specifically asks the scheme for information on the member’s retirement options, as the member is either considering what to do, or has already decided what to do, but requires further information before proceeding.
3. Regulation 18B is intended as a more general requirement that, where either the member

or the scheme contacts the other on a retirement-related point, the scheme only has to provide the member with limited information to prompt them to use Pension Wise. The Government says it may clarify the distinction in guidance.

G. Valuation of pensions with a GAR: Call for evidence

1. Personal pension providers are apparently finding it difficult to calculate the value of pensions which offer a GAR⁴ where the GAR is provided by the personal pension scheme provider; GAR policies by such personal pension scheme providers tend to be legacy policies; the requirement to value the income promise element is proving to be a potentially significant practical and financial burden on providers.
2. “Safeguarded benefits”, to which the requirement to obtain appropriate independent advice applies, comprise all benefits that are not money purchase or cash balance. In principle, these are traditional

⁴ a guaranteed annuity rate into which the policy value may be used to buy an annuity from the personal pension scheme provider.

defined benefits but they include pension arrangements that include a GAR.

Comment: In general, occupational pension schemes where the member’s investment account has been invested in an insurance policy which has a GAR are unaffected; the only promise made by the scheme is that the member’s benefits will be the realised value of investments (for example the policy) credited to the member’s retirement account. As a consequence the scheme is providing a “money purchase benefit” not a “safeguarded benefit”. There will be no requirement for the member to take “appropriate independent advice” on a transfer of the money purchase benefits from the occupational pension scheme, and so there are no issues on valuing the GAR for the trustees.

3. The Government is seeking views on whether to provide a different, simpler, valuation method for the purpose of determining whether the advice requirement threshold of £30,000 is met in relation to GAR benefits provided by personal pension schemes.

The Consultation Paper, on which comments are invited by 15th January, 2016, is on the [gov.uk website](#).

III. DC flexibility: Draft Regulator’s Code of Practice published for consultation

On 24th November, 2015, the Pensions Regulator published for consultation an updated version of its Code of Practice 13, “Governance and administration of occupational defined contribution trust based schemes”.

Code of Practice 13 (the “Old Code”) took effect on 21st November, 2013, along with guidance and the Regulator’s compliance and enforcement policy (together the “DC framework”). Since November 2013 there have been significant developments in the legislation governing occupational DC schemes. In particular, the DC framework does not reflect the following changes that took effect on 6th April, 2015:

- the new quality standards and associated governance measures,
- the restrictions on charges that may be levied on members in a default arrangement used for auto-enrolment, and
- the new flexible access options available when a member has reached age 55.

As with the Old Code, the draft new code will apply to all occupational trust-based schemes with

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2 or more members which offer money purchase benefits. This includes:

- money purchase AVCs within occupational DB schemes, and
- money purchase benefits with a DB underpin.

Once finalised, the draft new code will be supported by guidance that the Regulator intends to publish in draft in “Spring 2016”. It is not clear whether the Regulator will publish a new compliance and enforcement policy.

The **Focus** accompanying this Pensions Bulletin looks at the draft new code in more detail.

IV. Consultation on draft LGPS Investment Regulations

Alongside the Autumn Statement on 25th November, 2015, the Department for Communities and Local Government published draft regulations proposing a “radical reform” of the existing Local Government Pension Scheme (“LGPS”):

- to enable LGPS funds to pool their investments, and

- moving towards the “prudent person” approach to investment that currently applies to trust-based pension schemes.

The draft Regulations propose removal of the existing limitations on investments. Instead authorities will be required to prepare (having taken proper advice) and publish an Investment Strategy Statement. This will be required no later than 6 months after the Regulations come into force (expected to be 1st April, 2016).

The revised draft Regulations make it clear that certain investments such as derivatives may now be used where appropriate. But the Consultation Paper says “*the Government expects that, having considered the appropriateness of an investment in their Investment Strategy Statement, authorities would only use derivatives as a means of managing risk*”.

Note: This corresponds to one of the permitted uses in trust-based occupational pension schemes⁵ that investments in derivatives are permitted only insofar as they contribute to a reduction of risks. Note the other permitted use is to facilitate efficient portfolio management.

⁵ In Regulation 4 of the Occupational Pension Schemes (Investment) Regulations 2005.

The consultation addresses the Law Commission’s guidance on taking account of non-financial factors (**Pensions Bulletin 15/19**). The draft regulations include provision for administering authorities to publish their policies on the extent to which environmental, social and corporate governance matters are taken into account in the selection, retention and realisation of investments.

Guidance for administering authorities on these policies will be published ahead of the new Regulations coming into force. The Government says that this will make it clear that administering authorities should not pursue “*boycotts, divestments and sanctions against foreign nations and the UK defence industry, other than where formal legal sanctions, embargoes and restrictions have been put in place by the UK Government*”. This statement, interpreted as preventing authorities boycotting Israel, has angered administering authorities. “*The Government talks about freeing [the LGPS] to be more autonomous and then they slap handcuffs on us*”.

The Consultation Paper says the guidance will also “*make clear to authorities that in formulating [investment] policies their predominant concern should be the pursuit of a financial return on their investments, including over the longer term*”.

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The Consultation Paper and draft Regulations, on which responses are invited by 19th February, 2016, are on the [gov.uk website](#).

V. Autumn Statement (1): Postponement of increases in auto-enrolment contributions

As noted in the “Stop Press” in [Pensions Bulletin 15/19](#), the dates from which the next 2 increases in minimum contribution levels to DC schemes for auto-enrolment purposes take effect are to be put back by 6 months (*Autumn Statement 2015: paragraph 1.37*).

The new deadlines will be follows:

Year	Employer contribution	Total contribution (inc. tax relief)
First transitional period: from employer’s staging date to 5 April 2018 (previously 30th September, 2017)	1%	2%
Second transitional period: from 6 April 2018 to 5 April 2019 (previously 1st October, 2017 to 30th September, 2018)	2%	5%
Steady state: from 6 April 2019 (previously 1st October, 2018)	3%	8%

The Government has said that the delay will provide a saving of £840 million to the Exchequer

due to tax relief not being applied to the contributions.

VI. Autumn Statement (2): Rate of State Pension

The Government has confirmed its commitment to the “triple-lock” on increases to Basic State Pension, under which Basic State Pension increases by the highest of the rise in average UK earnings, the rise in the CPI, and 2.5% (*Autumn Statement 2015: paragraph 1.133*).

As a consequence, Basic State Pension increases by £3.35 to £119.30 per week from 6th April, 2016.

The new single-tier State Pension, which comes into effect from 6th April, 2016, is set at £155.65.

Comment 1: This is the illustrative amount used in the DWP’s January, 2013 White Paper as increased by the “triple lock”.

Comment 2: But bear in mind that the first people to receive the full amount will be those who reach state pension age on or after 6th April, 2051 (who will have completed the requisite 35 qualifying years of National Insurance contributions under the new regime!).

Tax

VII. Protection against reduced annual allowance from 6th April, 2016

The Lifetime Allowance (“LTA”) for pension savings will be reduced from £1.25 million to £1 million from 6th April, 2016.

HMRC has confirmed ([Pensions Bulletin 15/17](#)) that there will be two regimes available to protect against the decrease, Individual Protection 2016 (“IP2016”) and Fixed Protection 2016 (“FP 2016”).

HMRC has asked the Association of Pension Lawyers, among others, to help publicise the reduction and availability of the protections. HMRC has published draft communications that can be used when contacting members about the reduction.

There are separate communications for scheme members, scheme administrators and independent financial advisers.

HMRC says it is happy for the wording in the communications to be used in scheme literature or on websites as appropriate. It says it will be reproducing the messages in Pension Schemes Newsletter 74 “shortly”.

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Please contact [Lynsey Richards](#) here if you would like copies of the communications ahead of publication of Newsletter 74.

Action point (1): Schemes need to start thinking now about how to communicate to members the reduction in the LTA, and the protections available, highlighting in particular that, for FP 2016, benefit accrual must cease on or before 5th April, 2016.

Action point (2): As with Fixed Protection 2012 and Fixed Protection 2014, schemes may wish to add protective provisions to their trust deed and rules to prevent inadvertent accrual post-5th April, 2016 (and hence loss of FP 2016). Please contact the person you usually deal with at Slaughter and May if you would like to add a protective provision to your scheme. The amendment would need to be in place before 6th April, 2016.

VIII. Autumn Statement (3): Tax points

Consultation on pensions tax relief: The Government has confirmed it will publish its response to its July 2015 consultation on the system of pensions tax relief in the 2016 Budget (*Autumn Statement 2015: para 3.26*).

Salary sacrifice: In the July 2015 Summer Budget, the Government said it would “actively monitor

the growth of salary sacrifice schemes that reduce employment taxes and their effect on tax receipts”.

Paragraph 3.25 of the Autumn Statement says “*the Government remains concerned about the growth of salary sacrifice arrangements and is considering what action, if any, is necessary. The Government will gather further evidence, including from employers, on salary sacrifice arrangements to inform its approach*”.

Bridging pensions: Following the introduction of the single-tier State Pension from 6th April, 2016, the Government says legislation will be introduced “to enable the pension tax rules on bridging pensions to be aligned with DWP legislation” in the Finance Bill 2016 (paragraph 3.28). No further information is available, although draft clauses for the Finance Bill 2016 are to be published on 9th December, 2015.

Comment: We expect the Finance Act 2004 legislation that allows for adjustments to be made to reflect integration with state pension to be revised to reflect the further increases in the state pension age. The exception currently refers expressly to adjustments that take place between ages 60 and 65. State pension age starts to shift above age 65 from 6th March, 2019. The exception needs to be amended so the maximum age at

which adjustments can be made ties in with state pension age as it increases.

Dependant scheme pensions: Currently, a dependant’s scheme pension cannot exceed the amount of the member’s scheme pension if it is to be an authorised member payment. According to the Autumn Statement (*paragraph 3.27*), legislation is to be introduced in the Finance Bill 2016 to simplify the dependant scheme pension test.

Secondary market for annuities: The Government has confirmed that it will publish a formal response to its March 2015 consultation on allowing individuals to assign annuity income to a third party buyer in December, 2015, with legislation expected in the Finance Bill 2017.

IHT and unused drawdown funds: In June 2015, HMRC confirmed that, following concerns about a possible IHT charge on unused drawdown funds, it would issue guidance about the application of IHT to drawdown pensions.

In fact *Paragraph 3.36* of the Autumn Statement confirms that the Government is to legislate to prevent such a charge arising and that this will be backdated to deaths on or after 6th April, 2011. The legislation is expected to be in the Finance Bill 2016.

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IX. Budget 2016

The Government has announced that the Budget 2016 will take place on 16th March, 2015.

X. Notional earnings cap for 2016/2017

Many schemes (including those that executed our tax simplification amending deed) continue to restrict benefits by reference to the pre-6th April, 2006 earnings cap. Although HMRC no longer publishes a “notional earnings cap”, it is straightforward to calculate the cap by reference to the definition in Section 590C of ICTA 1988.

Following publication of the September, 2015 RPI increase, the figure for 2016/17 is £150,600.

If the scheme retains the reference to the earnings cap but uses CPI instead, the figure is £144,000, the same as last year, due to CPI being -0.1%.

Points in Practice

XI. FCA market study into asset management: terms of reference published

On 18th November, 2015, the FCA formally launched its market study into asset management and published the terms of reference for the market study.

The aim of the market study is to examine whether competition is working effectively in the asset management sector to enable both retail and institutional investors to obtain value for money.

The FCA has identified 3 main topics for further investigation, including how investment consultants affect competition for institutional asset management. Here the FCA intends to explore:

- how advice given by investment consultants affects competition for asset management,
- how investment consultants ensure that their advice meets the needs of their clients (in particular whether investment consultants are incentivised to suggest or promote investment strategies which may increase their business, but which may not be in the best interests of the investor, and conflicts of interest), and

- whether clients monitor the services provided by investment consultants.

Comments on the terms of reference are invited by 18th December, 2015. The FCA then intends to host a number of roundtables and bilateral meetings. It will also shortly be approaching market participants for information and data to assess the issues identified in the terms of reference.

The aim is to publish an interim report in Summer 2016.

The terms of reference are on the [FCA website](#)

XII. FCA update on pensions and retirement activities

On 25th November, 2015, the FCA published on its website an update on its recent activities relating to pensions and retirement income.

Points to note are:

- the FCA will continue to collect **data** quarterly from retirement income providers in order to track the choices made by individuals, and will publish the results,

- **request for information on decumulation charges:** the FCA is keen to explore the level of charges faced by different consumers in decumulation pension products and the circumstances in which consumers are required by firms to take advice for those products. The FCA has sent out a request for information to a range of firms offering access to pension products that allow customers to take flexible incomes.

The FCA intends to publish a summary of its findings in Summer 2016 and feed the results of the exercise into its “Retirement Outcomes Review”.

The data request, dated 23rd November, 2015, seeks information about the products offered to consumers accessing their pensions flexibly over time, the mix of investments held within these products, the level of charges over time and how these vary by the size of investment made, and the approach to accessing retirement savings.

Responses are required by 15th February, 2016, and

- **Retirement Outcomes Review:** The FCA has put back the launch of its Retirement Outcomes Review, intended as a follow-up to its Retirement Income Market Study. It now anticipates that the review will be launched in the second quarter of 2016.

The FCA update is on the [FCA website](#)

XIII. State Pension guidance updated

The DWP has published revised versions of:

- the factsheets “Introduction to the new State Pension” and “National Insurance and your State Pension”, and
- its detailed guidance “Your new State Pension explained”

to reflect the announcement of the final amount for the new State Pension from April 2016.

The revised guidance is on the [gov.uk website](#)

XIV. Auto-enrolment (1): “Net pay” arrangements

The Pensions Minister has criticised the Pensions Regulator for not making it clear in its auto-enrolment guidance for employers the tax implications for low earners of joining a scheme that operates “net pay” arrangements for providing tax relief, in general all occupational pension schemes, including NEST and NOW: Pensions.

Comment: The Baroness is concerned about those earning under £10,000 a year (i.e. who are under the income tax threshold). They are likely to be part-timers (the national minimum wage (“**NMW**”) for those who are age 21 or over is £6.70 an hour. To earn sufficient to take them over the tax threshold, a person on the NMW would need to work approximately 30 hours per week)⁶.

In response, the Regulator has said that it plans to revise its online material shortly, including changing its employer template letters to make clear that the Government “may”, rather than “will” pay into an employee’s pension.

⁶ Taking account of the 1% Government contribution an employee would need to earn slightly over £10,000 per annum.

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Comment: Employers with low-paid employees who have been auto-enrolled into an occupational pension scheme, causing them to lose the Government's 1% contribution, may wish to consider offering a personal pension scheme alternative. Employers who choose not to do so (where for example there are few affected employees) should be careful in their communications not to represent to low paid employees that they will get the Government contribution.

XVI Auto-enrolment (2): NOW: Pensions introduces employer charge

NOW: Pensions has announced that it is introducing an employer charge from 1st January, 2016. The charge will be a flat rate of £36 plus VAT a month, with discounts for those using a payroll bureau or with 4 or fewer employees. Along with the charge, NOW: Pensions says it is introducing enhanced service features.

NEST has said that it will not follow suit as imposing an employer charge *“doesn't fit with our public service obligation, particularly as it would negatively impact smaller employers most”*.

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If you would like to find out more about our Pensions and Employment Group or require advice on a pensions, employment or employee benefits matters, please contact Jonathan Fenn jonathan.fenn@slaughterandmay.com or your usual Slaughter and May adviser.

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