



Punter Southall

# pensionsbulletin

Quarterly update · July 2011



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## Policy focus: one year on from the Coalition's first Budget

**There is no doubt that the first year of the Coalition government has kept pension schemes on their toes, with consultations flying thick and fast (with nearly 20 Government consultations closing in the last six months alone).**

However, the pace of consultation is finally slowing down. Some of the issues on which the Government first consulted when it came into power are now being debated in Parliament in the form of the Pensions and Finance Bills, both of which are well advanced on their journey to Royal Assent. In many other areas, the Government has now responded to its earlier consultations, providing details of its finalised policy intentions. So now seems an appropriate moment at which to take stock of where pensions policy stands one year after the Government's first Budget.

### Switch to CPI

The Department for Work and Pensions (DWP) has responded to its consultation on the impact of the switch from RPI to CPI on occupational pension schemes. The response confirmed a number of points, in particular:

- There will be no modification power to help schemes switch to CPI if their rules specify RPI. The DWP believes that members' trust in pension schemes would be damaged if such a power were to be introduced. This effectively means that schemes with RPI in their rules will almost certainly not be able to adopt CPI for past accrual.
- Where a switch is made from RPI to CPI for future accrual, employers will be required to follow the statutory consultation process.
- The Pensions Bill currently going through Parliament already contains measures to prevent a CPI underpin applying to pension increases in payment where scheme rules prescribe RPI increases. Following the consultation, the Government is now considering amending the Pensions Bill to extend a similar protection against a CPI underpin applying in respect of revaluation in deferment.



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## Speed read

- **No modification power to allow schemes with RPI in their rules to switch to CPI**

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- **Possible removal of CPI underpin for revaluation in deferment as well as for increases in payment**

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- **Regulations issued on abolition of DC contracting out confirm contracting-out certificates will automatically cease to have effect without need for surrender**

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- **Transfers from contracted-out DB schemes to DC schemes still to be permitted after abolition of DC contracting out, provided certain requirements are met**

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- **Pensions Regulator publishes detailed guidance for employers on automatic enrolment**

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- **Pensions Bill amended to provide additional safeguards in relation to alternative certification tests for DC schemes**

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- **Informal consultation on draft automatic enrolment regulations closed recently with formal consultation expected shortly**

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- **Government to review short service refunds further in the autumn**

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For most schemes, this means the end of the line on inflation – they should now know (assuming that their scheme rules do not require legal interpretation) whether they will be paying CPI or RPI.

The DWP has also recently published the results of a survey it carried out this year on RPI and CPI. The key findings are as follows:

- 72% of schemes had indexation in payment rules that directly referred to RPI, of whom around half believed they were able to switch to CPI. Of schemes unable to switch to CPI, only a minority of schemes actually wished to do so (9% of all schemes).
- 30% of schemes had revaluation in deferment rules that directly referred to RPI. Only 5% of all schemes wished to switch to CPI but were unable to do so because of their rules.

These findings are, to say, the least, a little surprising. Our own experience is that a much greater percentage of schemes with rules referring to RPI have found themselves unable to switch to CPI.

Separately, a number of trade unions are bringing a case for judicial review against the Secretary of State's decision to switch public sector schemes to CPI. We understand that one of the applications for judicial review has been granted by the High Court, but it appears unlikely that the case will be heard before September or October. Even if the review were to be successful, it is not clear what the implications might be for private sector schemes.

### Contracting out

The DWP has recently finished consulting on its green paper on state pension reform, which proposed changes to the structure of the state pension, and the consequent possible abolition of contracting out on a defined benefit (DB) basis. This issue is covered in more detail in our briefing note on the green paper.

However, more immediately, the focus is on the abolition of contracting out on a defined contribution (DC) basis, with effect from 6 April 2012. HM Revenue and Customs have now produced the third in their series of Countdown bulletins covering some of the issues that pension schemes need to address in the run-up to April 2012 and the Pensions Regulator has written to all trustees of pension schemes contracted out on a DC basis to remind them of the forthcoming change.

Regulations have been issued which set out how the abolition will work in practice:

- Contracting-out certificates for DC schemes will simply cease to have effect from 6 April 2012. There will therefore be no requirement for the certificates to be formally surrendered.
- Trustees must inform members that the scheme is no longer contracted out with effect from 6 April 2012 within one month of abolition unless they have already provided this information within the year leading up to the abolition date.

- There had previously been concerns that transfers from contracted-out DB schemes would become impossible once DC contracting out was abolished. These regulations now permit transfers from contracted-out DB schemes to other types of schemes (including DC schemes) provided that the member has consented in writing and indicated that they are aware that the benefits they receive from the receiving scheme may be different from those being given up in the transferring scheme.

Although protected rights will cease to exist from a legislative perspective with effect from 6 April 2012, trustees may still need to amend their scheme rules in order to remove the restrictions relating to protected rights. Otherwise, they might not be able to benefit from the simplifications arising from the fact that protected rights no longer require separate treatment.

### Automatic enrolment

As DC pension schemes start to plan their campaign for dealing with the abolition of contracting out, they will also need to keep their eyes on the next major development on the pensions horizon: automatic enrolment, which is being phased in from October 2012 and which will hit most existing pension schemes at some point in 2013. The Pensions Regulator has recently produced detailed guidance for large employers on the new regime, as well as a five-point checklist for trustees.

The Pensions Bill currently before Parliament contains some of the modifications suggested by the independent review of automatic enrolment, and in particular lays the groundwork for the alternative certification tests under which DC schemes with earnings definitions based on basic or pensionable pay can be treated as qualifying schemes for the purposes of automatic enrolment. The Bill was amended on its journey through Parliament so that the Secretary of State now has to be satisfied that the alternative test will give benefits at least as good as the standard test for 90% of jobholders (rather than just for a simple majority of jobholders as the legislation originally said).

The DWP has also recently consulted informally with industry bodies on draft regulations implementing the rest of the recommendations of the independent review, in particular in relation to allowing a three-month waiting period before new employees have to be automatically enrolled and in setting out the detailed legislation and guidance on the alternative DC certification tests. A formal public consultation on a revised version of the regulations is expected in July.

Meanwhile, the DWP has indicated that it will look further in the autumn at whether to allow trust-based DC schemes to continue to pay short service refunds. In the interim, it has warned that employers should not make decisions about scheme type on the assumption that short service rules will continue to exist in their current form in the future.



## Behind the scenes

William is a recent full-time addition to our central technical team having been involved on a part-time basis for several years.

He is mainly involved in monitoring new developments in pensions and ensuring they are clearly communicated to both staff and clients. In addition, William is also a member of several of our specialist groups including those covering the switch from RPI to CPI, pensions taxation and the forthcoming employer duties regime and auto-enrolment.

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*“The number of new developments in pensions over just the last year is eye-watering and increasingly it feels that you can’t even blink without a new set of proposals popping out of the ether.”*

*“The challenge for the central technical team is to analyse this constant stream of information and communicate it clearly and appropriately to clients.”*

*William Fitchew*



## Other recent developments

### Flexible leave for new parents

The right to additional paternity leave (APL) and pay has been introduced for parents of babies due (or matched for adoption) on or after 3 April 2011. These new provisions allow families to transfer up to 26 weeks' maternity leave to the father if the mother returns to work before the end of her maternity leave period. The right to APL is in addition to the current 2 weeks' paid paternity leave period available around the time of the birth, and is payable at the same rate.

In May, the Government began consulting on plans to introduce more flexible and family-friendly working practices. The latest proposals would see the existing maternity and paternity leave rules replaced by a new 'flexible parental leave' regime from April 2015. The key proposal is that paid maternity leave would be reduced from 39 to 18 weeks. The remaining 30 weeks of existing maternity leave (paid and unpaid) would be reclassified as 'flexible parental leave' and available to either/both parents. 17 weeks of this leave would be paid and 13 weeks unpaid. In addition, 4 weeks' paid flexible parental leave would be reserved exclusively for each parent.

Whilst the current requirements in relation to pension contributions and accrual under occupational schemes during periods of paid and unpaid leave are not expected to change as a result of the proposed changes, the latest proposals are likely to have financial and administrative consequences for employers.

### Equitable Life

The Treasury has now laid out its plans for the Equitable Life Payments Scheme. The Payments Scheme will aim to contact all eligible individual policyholders before June 2012, with payments being made within three years. Group policyholders such as pension scheme trustees who are to receive payment will be treated in broadly the same way as individual policyholders.

### Guidance on DC default options

Following a consultation earlier in the year, the DWP has now issued guidance for both personal pensions and occupational pension schemes when governing, designing, reviewing and communicating default investment options. The guidance is intended as a statement of good practice to support existing legislation.

### Window on the world: news from our international team

During May 2011, the Irish Government announced the Jobs Initiative, which set out various tax reduction and additional expenditure measures to help boost the Irish economy.

To prevent any increase in the indebtedness of the Irish state, the cost of the Jobs Initiative will be funded by reallocations from within the Government's existing resources, and by imposing a levy of 0.6% on the capital value of all pension assets (DB and DC) for private sector schemes approved under Irish tax legislation. The levy is a temporary measure, expected to last for 4 years and is expected to raise €470m in each of those years. How the pension fund levy will affect individual pensions will be a matter for pension scheme trustees and administrators, although many benefits (including DB pensions) are likely to see a reduction to offset the impact of the levy.

Ireland is not the only country where there has been a raid on pension assets and other EU states e.g. France and Hungary have also 'raided' pensions in other ways. Pensions in the UK have also been used in recent history to help achieve the Government's financial aims (remember the abolition of the Advance Corporation Tax credit?). As yet, however, there are no signs that the UK Government is considering a similar levy on UK pensions.

### Fraud Compensation levy

The Pension Protection Fund (PPF) has confirmed that the Fraud Compensation Levy for the 2011/12 levy year will be 25p per member. This is an increase from the 23p per member charged in 2010/11.

### Bribery Act 2010

The Bribery Act 2010, which came into force on 1 July, introduces new offences relating to bribery. In practice, this should not have much impact on pension scheme trustees as most trustees already have policies on conflicts of interest, reflecting their existing obligations under trust law. However, they may now wish to consider amending their conflicts policies to reflect the Bribery Act or adopting a new policy specifically on bribery.



# Publications round-up

If you have missed any of our publications over the last quarter, they can be found on our website:

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

## Briefing notes:

### The abolition of the default retirement age and the implications for pensions

An analysis of what the removal of the default retirement age of 65 means for occupational pension schemes, especially for the provision of benefits for members over age 65.

### EC calls for advice on review of IORP directive

An overview of the European Commission's recent call for advice from EIOPA, looking in particular at the proposals in respect of DB scheme funding.

### The pension protection levy: policy statement on a new framework

A summary of the PPF's recent policy statement setting out their proposed structure for the levy from 2012/13, including a reduction in the number of insolvency risk bands and the inclusion of an allowance for investment risk.

### Test-Achats: are the days now numbered for sex-specific factors?

An analysis of what the Test-Achats judgment could mean for occupational pension schemes.

### DWP green paper: a state pension for the 21st century

A review of the DWP's green paper on state pension reform, one of the options in which is for the introduction of a single tier state pension and the consequent removal of contracting out on a DB basis.

## High earners & contributors survival guide:

### 7: Update on the latest annual and lifetime allowance developments

A review of recent developments, including revised provisions on pension input periods in the Finance Bill and the publication of draft regulations on the annual allowance information requirements, 'scheme pays' and fixed protection

## Derisking Solutions Pensions Update:

### Update 3: April 2011

An update on activity in the bulk annuity market and the 'DIY' de-risking solution market including interest rate swaps, inflation swaps, and longevity swaps.

## News alert:

### Government confirms no modification powers will be offered to enable schemes to switch to CPI

An alert on the Government's response to consultation on the implications for occupational pension schemes of the switch to CPI.

## Punter Southall Transaction Services news alerts:

### Insight: Employer covenant and refinancing

A detailed analysis of the implications for pension scheme trustees when a company undertakes refinancing.

### Bonus for Bonas

An update on the Pensions Regulator's final decision to impose a £60,000 contribution notice in respect of the Bonas Group Pension Scheme (rather than the £5.1 million originally imposed).

### Silentnight puts pension scheme to bed

An analysis of the sequence of events which led to Silentnight being forced into insolvency and its pension scheme heading into the PPF.

## Where can I get further information?

To discuss any of the issues covered in this edition, please get in touch with Jane Beverley on 020 7839 8600 or by email to [jane.beverley@puntersouthall.com](mailto:jane.beverley@puntersouthall.com) or your usual Punter Southall contact.

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# Dates for your diary

## Key dates (July – Autumn 2011):

- 1 July** Bribery Act in force
- July** Consultation expected on further automatic enrolment regulations
- July** Finance Bill expected to receive Royal Assent
- July** Pensions Bill expected to receive Royal Assent (unless delayed until after summer recess)
- July/August** Annual and lifetime allowance regulations in force 21 days after Royal Assent of Finance Bill
- 10 August** Consultation on employer debt amendments closes
- 16 August** Consultation on employer asset-backed contributions closes
- 1 September** Consultation on Financial Assistance Scheme regulations closes
- 1 October** End of transitional window for phasing out default retirement age
- 1 October** Technical Actuarial Standard on Transformations in force
- Autumn** DWP paper on short service refunds expected
- Autumn** European Pensions White Paper expected
- Autumn** HM Treasury consultation on trivial commutation rules for small personal pension pots expected
- Autumn** The Pensions Regulator consultation on strategy for regulating scheme funding expected

## Events:

### Employer masterclass

*Getting ready for your next pension scheme valuation*

- 20 September, London
- 22 September, Birmingham

### London Pensions Conference

*De-risking, decommissioning, regeneration – An end of an era for pension schemes or a new dawn?*

- 6 October, London

The 2011 Pensions Bill will have a dramatic impact on trustees and employers and heralds the most important changes to pension provision for a generation. Find out about our latest thinking around the new employer duties and what they mean for trustees, managing scheme liabilities and investment strategies going forward.

## Trustee training:

A full range of courses available throughout the year for trustees, ranging from courses for newly appointed trustees to courses for experienced chairmen of trustees.

### Event booking

To find out the latest dates for all our events or to enquire about other locations throughout the UK, please contact Sarah Tolson:

Tel: 020 7839 8600

Email: [events@puntersouthall.com](mailto:events@puntersouthall.com)

Find out more at [www.puntersouthall.com](http://www.puntersouthall.com)

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