The Trustee toolkit downloadable

Pensions law

Tutorial one: Pensions-related legislation

By the end of this tutorial you will better understand:

- key pensions-related legislation
- the importance of keeping up to date with changes in the law
- the importance of understanding how legislation impacts your own scheme

This tutorial is part of Scenario one.

Glossary

A detailed glossary of technical terms can be downloaded from the Resources tab when you log in at www.trusteetoolkit.com

The Pensions Regulator

Why are pension schemes set up using a trust?

In its simplest form, a trust is a legal arrangement under which one person (a trustee) holds and is responsible for managing money or other assets for the benefit of someone else (a beneficiary). Pension schemes are set up as a trust for two main reasons: security and tax.

Security

The legal structure of a trust makes sure that the assets of a pension scheme are kept separate from the assets of the employer. This means that if an employer becomes insolvent, the pension scheme assets cannot be claimed by the employer's creditors and the assets are protected for the benefit of the people entitled to benefits under the scheme.

Once an employer has paid money into a pension scheme, the money no longer belongs to the employer and legal ownership passes to the trustees.

Tax

In the past, HM Revenue and Customs (HMRC) would only treat a pension scheme as 'exempt approved' if it was set up under a written trust. If a pension scheme was 'exempt approved', it qualified for various tax concessions or reliefs.

The tax regime for pension schemes changed in April 2006 when 'registered schemes' replaced 'exempt approved' pension schemes. However, the tax reliefs available remained broadly unchanged.

Sources of the law

Pensions law has evolved through a combination of UK and EU legislation and case law.

UK legislation: Statute and regulations

UK legislation is made up of primary legislation (Acts of parliament) and secondary legislation (supporting regulations). We will look at key UK legislation affecting pension schemes later in this tutorial.

Examples

Primary legislation

Acts of parliament, including:

- The Pension Schemes Act 1993
- The Pensions Acts 1995, 2004, 2008, 2011 and 2014
- The Finance Act 2004
- Pension Schemes Act 2015
- Pension Schemes Act 2017
- Pension Schemes Act 2021

Secondary legislation

Supporting regulations (or statutory instruments), for example:

- Occupational Pension Schemes (Investment) Regulations 2005
- Occupational Pension Schemes (Scheme Administration Regulations) 1996
- Occupational and Personal Pension Schemes (Disclosure of Information Regulations) 2013

EU legislation

Primary sources of European Union (EU) legislation are treaties which establish the European Union. There are also EU directives and EU regulations (known as EU secondary legislation) which are based on the treaties.

European law affects the law of member states of the EU, including the UK. EU legislation is applied by courts of member states where the law of the member states provides for lesser rights.

Example

Key European legislation includes:

- The Cross Border Directive

UK case law (or common law)

This has developed through decisions made by judges in courts of law. There are a number of key cases affecting pension schemes which are covered later in this tutorial.

EU case law

These are, broadly, decisions made by judges in the European courts and which are binding on the UK courts. There are a number of key European cases which are relevant to pension schemes.

Case law examples

Key case law includes:

- The 'Barber case' and 'Test Achats'
- The 'Bridge vs Yates' case and the Pensions Act 2011

We will cover all of these as you work through this tutorial.

Areas of pensions law

There are many areas of law which are relevant to pension schemes shown in this image. We have also listed them alphabetically for ease.

- advisers
- contracting out
- data protection
- disclosure
- disputes
- divorce
- early leavers
- employer debt
- employment: TUPE, automatic enrolment
- equality
- financial services law – FSMA
- investment
- legislation
- pension increases
- Pension Protection Fund (PPF)
- scheme funding
- tax
- trustee knowledge
- winding up

Pensions law timelines

This tutorial provides a high level summary of these areas and, through timelines, explains how they have developed over time to govern the operation of pension schemes. You are not expected to memorise the timelines, or become a legal historian, but they give a useful summary of how pensions law has developed.

At times, you will be asked to check your scheme rules to see if you understand how the law applies to your individual scheme's circumstances. You should have your scheme rules to hand and be familiar with them. It is important to understand your scheme rules and, where appropriate, to take advice from your legal advisers.

Some topics are covered in more detail in other modules in the Trustee toolkit. We will make these links clear where appropriate.

Pensions timeline 1975-1993

1975 Preservation introduced

The Social Security Act 1973 introduced from 6 April 1975, a requirement for benefits for members leaving schemes before their normal retirement age to be 'preserved' for payment at normal retirement age if the member had completed five years of qualifying service and was over age 26.

1978 SERPS introduced

The Social Security Pensions Act 1975 established the State Earnings Related Pension Scheme (SERPS).

1978 GMP contracting out introduced

The Social Security Pensions Act 1975 introduced the facility for employers and employees to 'contract out' of SERPS when it was established on 6 April 1978.

At that time, a scheme had to provide guaranteed minimum pensions (GMPs) for an employee and his widow which were broadly equal to the pension which would have been provided under SERPS if the employee had not been contracted out.

1986 Statutory revaluation (1 January)

The Social Security Act 1985 introduced:

- revaluation to preserved benefits in excess of a member's GMP earned after 1 January 1985
- rights for early leavers to take a cash equivalent transfer value to use either as a transfer to another occupational pension scheme or as a payment into an insurance policy
- statutory disclosure rights for members to be entitled to certain information and to have access to certain scheme documents

It also removed the age limit on preservation (previously 26).

1988 Preservation qualifying period reduced

The Social Security Act 1986 came into force in 1988 and:

- reduced the qualifying period for preserved benefits from five to two years
- introduced personal pensions
- enabled schemes to contract out of SERPS on a money purchase basis

From 6 April 2012, schemes are no longer allowed to contract out on a 'protected rights' basis – these benefits have reverted to being ordinary money purchase benefits.

1990 Barber judgment (equalisation) (17 May)

The European Court of Justice (ECJ) ruled on 17 May 1990 in the Barber case that pension benefits fall within the Treaty of Rome on equality for men and women.

The Barber case requires pension benefits for men and women to be equal for service on and after 17 May 1990. For the period between 17 May 1990 and the date of equalisation, benefits must be equalised upwards (ie by treating both men and women in the more favourable way).

This became clear following the ECJ decision in the Smith v Avdel case in 1994. In pensions jargon, the period from 17 May 1990 to a scheme's equalisation date is called a 'Barber Window'.

1991 Revaluation introduced for all service (1 January)

The Social Security Act 1990 extended revaluation to cover the whole of the member's pension, in excess of the GMP.

1991 Pensions Ombudsman set up

The Pensions Ombudsman was established with effect from April 1991. The statutory powers and provisions governing the Pensions Ombudsman are in the Pension Schemes Act 1993 (as amended) which is supplemented by regulations. You can find out more about the Pensions Ombudsman at www.pensions-ombudsman.org.uk.

1993 Pension Schemes Act

The Pensions Schemes Act 1993 consolidated most of the other social security legislation described in this section.

Key Acts: Pension Schemes Act 1993

The bulk of the social security legislation relating to occupational pension schemes we have just described was consolidated into the Pension Schemes Act 1993. These include contracting-out laws, transfer laws (in particular a member's right to transfer) and preservation laws, which are shown in more detail below.

Early leavers

When members of defined benefit (DB) schemes have at least two years' qualifying service, they become entitled to a preserved pension in respect of the benefits that have accrued during their membership of the scheme. Their preserved benefit remains in the scheme until the member retires, dies or decides to transfer the benefit elsewhere. These members are typically called 'preserved members', 'deferred members' or 'early leavers'.

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Preserved benefit

In order to prevent the value of a preserved benefit diminishing over time through the effect of inflation, revaluation was introduced to preserved benefits.

Revaluation for early leavers

The benefits earned and the revaluation (or indexation) applied depends on the scheme rules of the pension scheme and the legislation in place at the time.

- For members who left service before 1 January 1986, no statutory revaluation applies.
- For members who left service between 1 January 1986 and 31 December 1990, statutory revaluation applies but only to pension earned from 1 January 1985 onwards.
- For members who left service after 1 January 1991, statutory revaluation applies to their total pension (as opposed to certain parts of their service).
- There is a statutory minimum level of revaluation of Consumer Price Index (CPI – Retail Price Index up to 31 December 2009) capped at 5% on a member's service up to and including 5 April 2009 and a cap of 2.5% per annum thereafter.

Check your scheme rules

Take a look at your scheme rules and check the revaluation provisions for early leavers.Do you understand what level of revaluation applies in respect of your scheme's deferred members? As you can see, revaluation is a complex area and you are likely to want to take advice to understand how it applies specifically to your scheme.

Pensions timeline 1995-1997

Pensions Act 1995

The Pensions Act 1995 was introduced following the 'Maxwell scandal' in 1991. Its aims were to consolidate existing pensions legislation and clarify the rights and obligations of different parties under an occupational pension scheme. It imposed a number of specific duties on trustees. It requires trustees to:

- appoint scheme auditors, scheme actuaries, fund managers and legal advisers
- keep any monies received in a separate scheme bank account
- in the case of a DC scheme, prepare, maintain and revise a payment schedule and report to The Pensions Regulator (TPR) and scheme members if contributions are paid late

- make and implement dispute resolution procedures
- disclose information about the scheme to members and certain other people in certain circumstances (for example, on joining the scheme and on benefits becoming payable)
- obtain and make available audited accounts and an audited statement about scheme contributions

You can learn more about these areas in the Module: ‘The trustee’s role’.

1995 Indexation

The Pensions Act 1995 introduced a requirement for DB pension schemes to provide a minimum level of pension increases in line with the increase in the Retail Prices Index up to 5% each year, referred to as Limited Price Indexation (LPI). The requirement applies to all pension earned after 6 April 1997.

1996 Earmarking on divorce

The Pensions Act 1995 gave the courts the power to split pension rights between husband and wife, by a system known as ‘earmarking’ or ‘deferred maintenance’.

1997 OPRA set up

The Pensions Act 1995 established the Occupational Pensions Regulatory Authority (OPRA), the predecessor to TPR, to regulate occupational pension schemes.

1997 Protection of accrued rights (s67)

The rules of most occupational pension schemes contain a power of amendment which allows the rules to be modified. The ability to amend a scheme’s rules usually belongs to either the trustees or the employer, or requires agreement between them both.

Section 67 of the Pensions Act 1995 applies whenever a power to amend scheme rules is exercised. Section 67 is designed to protect benefits that have already been earned before the date of a change.

1997 Employer debt legislation

Section 75 of the Pensions Act 1995 introduced the ‘employer debt’ legislation. The Act provides for a statutory debt to arise:

- on the insolvency of a participating employer
- when a scheme has started to wind up
- on an ‘employment cessation event’

1997 Minimum funding regime

The Pensions Act 1995 sought to provide greater security of pension scheme assets by introducing a ‘Minimum Funding Requirement’ (MFR).

Pensions timeline 1998-2004

1998 Data Protection Act

The Data Protection Act 1998 introduced statutory requirements around the handling and protection of personal data (including member data). You can learn more about the Data Protection Act at www.gov.uk/data-protection/the-data-protection-act.

1999 Welfare Reform and Pensions Act

It introduced stakeholder pensions, clarified the law on what happens to a bankrupt's pensions pot and the pensions sharing on divorce framework. It also required direct payment arrangements to be put in place for personal pension schemes where an employer contributes to the scheme and for reporting to TPR and scheme members if contributions to the scheme are paid late.

2000 Pension sharing on divorce

As we saw earlier, the Pensions Act 1995 gave the courts the power to split pension rights between husband and wife, by a system known as 'earmarking' or 'deferred maintenance'.

The Welfare Reform and Pensions Act 1999 introduced the ability for couples to conclude a financial settlement on divorce with a 'clean break', so that pension rights (in form of a cash equivalent/transfer value) are transferred from husband to wife or visa versa. This is known as 'pension sharing'.

2002-2008 Employer debt legislation amended

As we saw earlier, Section 75 of the Pensions Act 1995 introduced the 'employer debt' legislation for DB schemes. Under this legislation, a statutory debt, is triggered:

- on the insolvency of a participating employer
- when a scheme has started to wind up
- on an 'employment cessation event'

If a statutory debt is triggered, this generally results in the exiting employer having to make a payment into the scheme based on its share of the deficit.

Over the period between 2002 and 2008, the Government changed the basis for calculating statutory debt on several occasions. Depending on the circumstances, the debt was either based on the 'minimum funding requirement' or the costs of buying out the benefits with an insurer (known as the 'buy-out' basis).

From 6 April 2008, debts triggered after this date are normally calculated on a buy-out basis. The legislation also introduced new options to manage the statutory debt. These included:

- scheme apportionment arrangements
- regulated apportionment arrangements
- withdrawal arrangements
- approved withdrawal arrangements

2004 Civil Partnership Act

Following the Civil Partnership Act 2004, pension schemes must provide the same benefits to members' civil partners as to spouses for pensionable service from 6th December 2005.

Check your scheme rules

- Do they offer the same benefits for civil partners?
- Is this the minimum required by the Pensions Act 2004 or does your scheme provide a benefit which is more generous?

For example, your rules could provide equal benefits for civil partners for all service and not just for service from 6 December 2005. If you are unsure, you should take advice from your legal advisers.

2004 Pensions Act

Although the Pensions Act 1995 went some way to offer protection to scheme members following the Maxwell affair, many felt that the protections it offered were insufficient. In particular, the introduction of the Minimum Funding Regime (MFR) had not prevented some pension schemes winding up with insufficient assets to secure their liabilities.

There was also a political pressure for the government to establish a guarantee fund similar to the American 'Pension Benefit Guaranty Corporation'.

As a result, the Pensions Act 2004 introduced two new regulatory institutions: TPR (which replaced OPRA) and the Pension Protection Fund.

The Pensions Act 2004 also brought in other changes such as the statutory funding regime, trustee knowledge and understanding and changes to LPI which we will cover in more detail next.

More information can be found in the Module: 'How a DB scheme works' in the Tutorial: 'Corporate transactions'.

2004 Finance Act

The Finance Act 2004 introduced a number of key changes from 6 April 2006, commonly known as 'A Day'.

Key Acts: Pension Act 2004

The Pensions Act 2004 introduced a number of important changes in addition to those covered previously in this tutorial.

Statutory funding regime

Part 3 of the Pensions Act 2004 is the primary funding legislation under UK law. Broadly, it requires trustees of DB schemes to carry out a formal actuarial valuation of their pension scheme once every three years. Following each valuation, the sponsoring employer(s) must agree with the trustees: technical provisions, a recovery plan (where required) and a schedule of contributions.

More information can be found in the Modules: 'How a DB scheme works', 'Funding your DB scheme' and 'DB recovery plans, contributions and funding principles'.

Limited price indexation

With effect from 6 April 2005, changes introduced by the Pensions Act 2004 meant that DB pension schemes could (subject to any requirements of their scheme rules) reduce the cap on pension increases to reflect a lower statutory definition of LPI, which was the lower of RPI and 5% to the lower of RPI and 2.5% each year. The lower level could only be applied to pension earned after 6 April 2005.

Schemes have the option to retain the previous, more generous, definition of LPI if they wished to do so. The changes only applied to pensions in payment; deferred pensions in excess of GMP which were subject to statutory increases continued to be increased by the lower of RPI and 5%.

The position on indexation changed again with effect from 6 April 2011.

Check your scheme rules

Find the pension increase rules in your scheme rules and check what they say. Does your scheme apply the current statutory minimum or does it offer a more generous benefit (which may reflect a previous statutory minimum)?

It is important you understand the level of benefits which your scheme offers and their 'history', including benefits such as pension increases. You should take advice from your legal advisers if your scheme rules are not clear.

Key Acts: Pension Act 2004 continued

Reminder of the 1995 requirements

The Pensions Act 1995 introduced a requirement for DB pension schemes to provide a minimum level of pension increases in line with the increase in the Retail Prices Index (RPI) up to 5% each year, referred to as Limited Price Indexation (or 'LPI'). The requirement applied to all pension earned after 6 April 1997.

Knowledge and understanding

The Pensions Act 2004 introduced a duty on trustees to know and understand the key provisions of trust law and pensions legislation. More information can be found in the Module: 'The trustee's role' in the Tutorial: 'Becoming a trustee.'

Member-nominated trustees

The Pensions Act 2004 sets out further requirements for member-nominated trustees and member-nominated trustee directors. More information can be found in the Module: 'Introducing pension schemes' in the Tutorial: 'What is a trustee?'

Changes to dispute resolution procedures

The Pensions Act 1995 introduced a requirement for all schemes to have an internal dispute resolution procedure (IDRP) to resolve member complaints. However, this had to be a two stage process with the second stage being an appeal to the trustees. From 6 April 2005, it was no longer a requirement to have a two stage procedure. More information can be found in the Tutorial: 'Internal dispute resolution procedure' later in this module.

Requirement to consult on benefit changes

The Pensions Act 2004 introduced a requirement for employers to consult with members for a period of 60 days on certain proposed changes to their pension scheme. This includes, for example, changes to contribution levels and to future benefit accrual.

Short service transfer requirement before 6 April 2006, the only statutory requirement for members who left a scheme with less than two years pensionable service was to receive a refund of their own contributions.

From 6 April 2006, once a member has completed three months of pensionable service, in addition to offering the option of a refund of contributions, a pension scheme must also offer a transfer value. A member will still only become statutorily entitled to a deferred pension when they have completed two years of pensionable service.

Key Acts: Pension Act 2004 continued

Additional voluntary contributions (AVCs)

From 6 April 2005, it is no longer a legal requirement to allow members to pay AVCs. However, many pension schemes do continue to offer AVC arrangements to members.

TUPE

Until 6 April 2005, pensions were not covered by the then Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE). From 6 April 2005, an employer acquiring another business is obliged to provide specific pension rights for transferring employees who were or could have been members of the old pension scheme. You can learn more about TUPE at http://bit.ly/TUPEregs.

Key Acts: Finance Act 2004

Prior to ‘A Day’ (6 April 2006), pensions tax was contained in numerous areas of legislation and schemes were subject to Inland Revenue limits on levels of benefits. The Finance Act 2004 introduced key changes.

Changes to the earliest age at which a member can retire

Previously, the earliest age at which a member could retire was age 50, except in the case of ill health retirement, where there is usually no minimum age. The Finance Act 2004 changed this so that for retirements after 6 April 2010, the normal minimum pension age is age 55.

Special arrangements exist for some members who wish to retire at age 50 on or after 6 April 2010, who were members of their scheme on 5 April 2006 and who qualify for a ‘protected pension age’. Your advisers will be able to tell you if there are any qualifying members in your scheme.

Check your scheme rules

- What is your scheme’s minimum pension age?
- Could any of your members qualify for a ’protected pension age’? If so, you should look at this with your advisers.

Key Acts: Finance Act 2004 continued

Allowing members to continue working and draw their pension

Before 6 April 2006, benefits from occupational pension schemes were only generally paid when a member left service.

From 6 April 2006, there is no longer a requirement for members to have ended their employment before they draw their pension. Generally, pension benefits can be paid while a member continues to work for the same employer (although there are some exceptions to this).

Check your scheme rules

Have your scheme rules been amended to allow members to continue working and draw their pension?

Removing the earnings cap

Before 6 April 2006, there were limits to the level of contributions that could be paid into and benefits that members could receive from pension schemes. These were based on an 'earnings cap'. The earnings cap was abolished from 6 April 2006 but schemes could decide as a matter of benefit design to retain the limit in their scheme rules.

Check your scheme rules

Does your scheme still apply a notional earnings cap or has this been removed?

Introduction of the annual and lifetime allowances

Until 6 April 2006, Inland Revenue limits restricted benefits from occupational pension schemes on the basis of a member's remuneration and service. This was abolished on 6 April 2006.

You can pay as much as you like into any number and type of registered pension schemes and get tax relief on contributions of up to 100% of your earnings each year, provided you pay the contributions before age 75. However, the maximum amount that you can save each year towards a pension from which you benefit from tax relief is subject to an 'annual allowance'. There is also a 'lifetime allowance' limit which is the maximum amount of pension saving that you can build up over your life that benefits from tax relief.

Both the annual allowance and lifetime allowance limits are reviewed each year by the HMRC.

Key Acts: Finance Act 2004 continued

New tax free cash lump sum rules

From 6 April 2006, tax free cash lump sums were known as pension commencement lump sums. The maximum pension commencement lump sum a member can now take is broadly 25% of the value of their total pension rights up to the lifetime allowance, including additional voluntary contributions.

Check your scheme rules

- Can you find the rule which sets out the amount a member can take as a tax free lump sum on retirement?
- What is the maximum amount that a member can take?
- Is this the same as the maximum pension commencement lump sum permitted under the Finance Act 2004?

If you are not sure how your rules have been amended to take account of A Day, you should take advice from your legal advisers.

New trivial commutation rules

Since A Day, members have been allowed to exchange 'trivial' pensions for a once only cash lump sum. This is known as 'trivial commutation'. Currently, members are normally allowed to do this where their total pension benefits (across all their pension schemes) are less than £18,000. From 27 March 2014, this limit was increased to £30,000.

A '£2,000' regime was introduced more recently which allows commutation of benefits in a single pension scheme with a capital value of up to £2,000 provided certain technical requirements are met. From 27 March 2014, this limit was increased to £10,000.

On 6 April 2015 the trivial commutation rules fell away for DC benefits. Now, members have the right to take all of their DC benefits as cash if they wish, regardless of how much those benefits are worth. Tax charges will apply to some of cash lump sum.

Death benefits

Before A Day, there were restrictions on the amount that could be paid as a death in service lump sum. From 6 April 2006, the value of any potential payment (subject to scheme rules) is only limited by the lifetime allowance.

See the current annual allowance limit at http://bit.ly/PPannual and the current lifetime allowance limit at http://bit.ly/PPlifetime.

2005 The Pensions Regulator

In 2005 OPRA became TPR. TPR's powers at that time included requiring sponsoring employers to make contributions to ensure that scheme funding objectives are met.

2005 Pension Protection Fund

The Pensions Act 2004 established the PPF from April 2005. The PPF is an independent board, which pays compensation to members of eligible DB schemes when the sponsoring employer is insolvent and there are not enough assets in the scheme to buy benefits at PPF levels of compensation or above.

2005 Cross border regime

Each UK occupational pension scheme must comply with the cross-border provisions of the Pensions Act 2004 which transposed the requirements of the European Pensions Directive into
UK law.

The cross-border provisions were designed to protect members of a pension scheme which is not based in the country in which they work and to facilitate movement of workers throughout the EU.

The principle additional safeguards required are that such a scheme must register with the relevant regulatory body (TPR in the UK) and that the scheme must be fully funded at all times.

Check your scheme

- How familiar are you with the makeup of your membership?
- Do you know where all the members in your scheme work?

The cross border regime is likely to affect your scheme if your members work in the EU. You should liaise with the scheme employers to ensure you understand the issues and take advice where appropriate.

2006 A Day

Before A Day (6 April 2006) pensions tax was contained in numerous areas of legislation. Schemes were also subject to Inland Revenue limits on levels of benefits. These changes are commonly referred to as pensions tax simplification.

2006 Employer Equality (Age) Regulations

The Employment Equality (Age) Regulations 2006 (the 'Age Discrimination Regulations') came into force on 1 October 2006. From this date, trustees and employers are not allowed to discriminate directly or indirectly on grounds of age against a member or prospective member of their pension scheme (except in relation to benefits for service before 1 October 2006). This is subject to specific exemptions set out in the Age Discrimination Regulations, including a general provision that allows discriminatory practices where they are objectively justified.

2008 Pensions Act

The Pensions Act 2008 introduced new automatic enrolment provisions to consolidate the state pension as well as changes to the operation of the Financial Assistance Scheme and the revlaution of deferred benefits.

2009 RPI/CPI Revaluation orders

As we have seen earlier in this tutorial, DB pension schemes must provide a minimum level of pension increases which is the lower of the increase in the Retail Prices Index (RPI) and:

- 5% each year for service from 6 April 1997 to 5 April 2005
- 2.5% each year for service from 6 April 2005

As you will remember, schemes can retain more generous previous definitions if they wish to do so.

The position changed again on 6 April 2011 when the statutory basis for revaluation switched from RPI to CPI. This affected statutory increases for both pensions in payment and deferred pensions (as well as public sector pension schemes and GMP increases).

2010 Equality Act

The Equality Act 2010 became law in October 2010 and replaced previous anti-discrimination laws (such as the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Discrimination Act 1976 and the Disability Discrimination Act 1995) with a single Act.

Key Acts: Pensions Act 2008

The Pensions Act 2008 introduced new automatic enrolment pension duties for employers. These have been phased in from 1 October 2012.

Key employer duties

The key employers' duties (each of which is subject to exceptions and qualifications) relate to the:

- right of a 'jobholder' who is an active member of a 'qualifying scheme' to remain so
- automatic enrolment by employers of jobholders aged at least 22 (and below state pension age) earning over a set amount into an 'automatic enrolment scheme'
- automatic re-enrolment of certain jobholders into such schemes, generally at approximately three-yearly intervals
- right of certain jobholders to opt in to an automatic enrolment scheme
- right of a jobholder to opt out of an automatic enrolment scheme
- right of a worker who is not a jobholder because he or she does not have qualifying earnings to join a registered scheme with (if it is a personal pension scheme) direct payment arrangements

Staging dates

Automatic enrolment duties apply to an employer from their 'staging date'. Staging dates are spread over a period from 1 October 2012 to 1 February 2018.

An existing employer's staging date is generally determined by reference to the number of people in its PAYE scheme (so that those employers which have the most people in their PAYE schemes have their staging dates first).

Check your scheme

Do you know if your scheme is a 'qualifying scheme' for automatic enrolment purposes? If so, when are your employers' staging dates? If you are unsure, you should speak to your employers and, where appropriate, take advice.

An automatic enrolment scheme is a qualifying scheme that meets certain additional requirements (for instance, that the jobholder does not have to make any choices or provide any information in order to remain a member).

Learn more about the role of trustees and automatic enrolment at www.tpr.gov.uk/automatic-enrolment-trustee.

Pensions timeline 2011-2014

2011-2012 Employer debt legislation amended again

From 6 April 2010 new regulations introduced amendments to the statutory debt legislation for DB schemes. They said that, in certain corporate restructuring, situations which would until then have constituted an ‘employer cessation event’ and which would have triggered a Section 75 debt under the employer debt legislation will no longer do so (and therefore trigger no debt). These are commonly called ‘restructuring easements’.

Further changes came into force on 27 January 2012. In particular, the ability to enter into a ‘flexible apportionment arrangement’ (FAA) was introduced. Broadly, this enables employers and trustees to reapportion all or part of the statutory debt that would otherwise have fallen on a given employer when it leaves an ongoing multi-employer DB scheme.

More information can be found in the Module: ‘How a DB scheme works’ in the Tutorial: ‘Corporate transactions’.

Pensions Act 2011

This Act:

- introduced some refinements to the ‘automatic enrolment’ regime you have just learned about
- accelerated the raising of state pension age to age 66, in two stages. The female state pension age will reach age 65 (the same as for men) in November 2018, and over the following two years both sexes’ state pension ages will be raised so as to reach age 66 by 6 October 2020
- amended the statutory definition of money purchase benefits following the case of Bridge Trustees v Houldsworth and another (2011) UKSC 42 (the ‘Bridge case’)

If it is not clear from your scheme rules whether or not your scheme offers money purchase benefits only, for example because all or some of your scheme’s money purchase benefits have a defined benefit underpin, you should seek legal advice on how to treat these benefits.

For further information, TPR released a statement regarding changes to the definition of money purchase benefits in July 2014, which can be read at www.tpr.gov.uk/statements.

2012 Automatic enrolment

The Pensions Act 2008 introduced new automatic enrolment pension duties for employers, to be phased in from 1 October 2012.

2012 Abolition of money purchase contracting out

From 6 April 2012, it is no longer possible for pension schemes to contract out on a 'protected rights' (or money purchase) basis.

Although this is widely referred to as the abolition of money purchase contracting out, it does not currently affect DC schemes which are contracted out on a salary related basis (ie where money purchase benefits are subject to a 'reference test' underpin).

It relates only to those schemes (whether their benefit structure is DB or DC) which contract out through the provision of protected rights. The government has however proposed to abolish contracting out altogether from April 2016.

2012 Test Achats

The Test Achats case is a decision from the European Court of Justice (ECJ) in 2011 where the ECJ said that insurers must stop using factors that differ according to the policy holder's sex even if the differences are 'based on relevant and accurate actuarial and statistical data'.

The Test Achats case does not directly affect occupational pension schemes. The ECJ decision in the case of Neath in 1990 allows trustees of DB schemes to continue using different actuarial factors for men and women if this could be justified on actuarial grounds.

However trustees of DB schemes who use sex-based actuarial factors may wish to consider whether they wish to change their approach in light of the Test Achats decision.

2013 Marriage (Same Sex Couples) Act

The Act came into force in England and Wales on 13 March 2014 and enables same sex couples to marry. It also allows Civil Partners to convert their civil partnerships to marriage. Corresponding Scottish provisions can be found in The Marriage and Civil Partnerships (Scotland) Act 2014 which came into force on 16 December 2014. There is currently no corresponding Northern Irish legislation.

It generally gives same sex couples the same legal rights as opposite sex couples except for occupational pension schemes. Here the Act reflects the Civil Partnership Act 2004, covered earlier in this tutorial.

The Act did however provide for a review of survivor benefits under occupational pension schemes by the Secretary of State to include the differences in survivor benefits between same sex and opposite sex widows and widowers, and the cost of equalising those benefits.

The review outcome was published on 26 June 2014. The government made it clear that it believed that married same sex couples should be treated equally to married opposite sex couples. Many schemes had already equalised benefits despite the cost but many remain unchanged.

The government are now considering whether the law should be changed in light of the review.

Pensions Act 2014

The Pensions Act 2014 received Royal Assent in May 2014.

2014 Taxation of Pensions Act

The Taxation of Pensions Act 2014 received Royal Assent on 17 December 2014. This Act contains key changes to the way in which lump sums are taxed after 6 April 2015 and how taxation applies in light of the pension flexibilities.

Key Acts: Pensions Act 2014

The Pensions Act 2014 will introduce significant changes to the pensions landscape. Here are some examples of changes coming in the next few years.

Changes to the state pension

For those reaching state pension age on or after 6 April 2016, the Act provides for the replacement of the current two-tier system (basic state pension and additional state pension) with a single-tier system. The Act also brings forward the date at which state pension age increases to 67 and lays down the framework for state pension age to be reviewed regularly.

Contracting out

The Act abolishes salary-related contracting out with effect from 6 April 2016.

'Pot follows member'

The Act sets out the framework to consolidate small money-purchase pots. Regulations will set out the detail of how this will apply.

Abolition of refunds from DC schemes

Members of DC schemes with at least 30 days qualifying service will no longer be entitled to a refund of contributions. There is currently no set date for this change and the provisions on refunds of contributions relating to DB benefits remain unchanged.

Pension Protection Fund (PPF)

The Act increases the compensation cap for members with more than 20 years service from 6 April 2016.

Automatic enrolment

The Act changes some certification requirements for DB schemes being used for automatic enrolment.

Pensions timeline 2015 onwards

April 2015 Charges cap

From April 2015 many schemes offering money purchase benefits which are used as qualifying scheme for automatic enrolment must ensure that members of the default arrangements within those schemes are not charged more than 0.75% of their pension fund.

The regulations specify how a default arrangement is defined, and the ways in which charges can be calculated. The regulations also place restrictions on the types of charging structures that can be used.

April 2015 Governance

From April 2015 many schemes offering money purchase benefits are required to meet specific governance standards and report on how they have done so in an annual statement to be signed by the chair of trustees. If this annual statement is not produced trustees will be subject to a fine.

It is also a requirement for these schemes to appoint a chair of trustees. The regulations place additional requirements on relevant multi employer schemes, which include master trusts, relating to the structure of the trustee board.

Pension Schemes Act 2015

The Pension Schemes Act 2015 received Royal Assent on 3 March 2015.

Key Acts: Pension Schemes Act 2015

This Act includes key provisions dealing with the options available to members of DC schemes to access their pension savings from 6 April 2015 (commonly referred to as 'pension flexibilities') and the transfer rights of members of DB schemes wishing to take advantage of these flexibilities.

The Act includes many requirements on trustees in light of these changes, for example, where it is necessary to tell members about the Government's guidance service (known as Pension Wise).

This Act also deals with a number of other areas, for example, new statutory categories of pension schemes and the concept and treatment of 'collective benefits'. Many of these changes will come into force in the future once regulations, which have yet to be drafted, are passed.

In addition to seeking independent legal advice on the impact of this Act on their scheme, trustees may find it useful to review TPR's 'Essential guide to communicating with members about pension flexibilities' at www.tpr.gov.uk/flexibilities and its guidance on DB to DC transfers and conversions at https://www.thepensionsregulator.gov.uk/en/document-library/Regulatory-guidance/DB-to-DC-transfers-and-conversions

Pension Schemes Act 2017

The Pension Schemes Act 2017 builds on recent pension reforms such as automatic enrolment in workplace pensions. It introduced a step change in the way TPR regulates and for the first time (from October 2018), TPR are required to authorise and supervise a certain type of occupation pension scheme known as a master trust scheme.

Key Acts: Pension Schemes Act 2017

Authorisation and supervision of master trusts

Following the roll out of automatic enrolment, approximately ten million people will be newly saving or saving more for their retirement. The vast majority of employers have chosen to use a certain type of workplace pension scheme called a Master Trust to meet their new duties and this has led to a sizeable expansion of the Master Trust market.

The 2017 Act seeks to ensure savers in master trusts are appropriately protected by introducing an authorisation and supervisory regime. From October 2018, Master Trusts will be required to apply for and receive authorisation in order to operate in the market.

The Act provides that:

- Master Trusts must demonstrate to TPR that they meet certain criteria in order to be authorised and that they continue to meet those criteria throughout the course of supervision
- Trustees must act in certain ways in the event of wind up or closure of a Master Trust, to protect members in those circumstances.
- The Pensions Regulator has powers to take action where it is not satisfied that the scheme still meets the criteria, for example - deauthorising a master trust and triggering the wind-up of the scheme.

Administration Charges (cap on early exit charges and ban on member-borne commission charges

Following the coming into force of the pension freedoms in April 2015, many members of pension schemes aged 55 and over were able to access their retirement savings more flexibly.

The government sought to protect these people from excessive exit fees through the Bank of England Act 2016, which gave the Financial Conduct Authority powers in this respect, from April 2017. The 2017 Act seeks to provide members of occupational pension schemes with a level of protection equivalent to that of members of personal pension schemes.

The Act amends existing legislation to allow regulations to be made which override terms of certain contracts which conflict with the regulations. This sought to support the government's intention to introduce a cap on early exit charges in certain occupational pension schemes.

This change will also support the commitment the government made in March 2014 to ban member-borne commission charges arising under existing arrangements in certain occupational pension schemes. Member-borne commission charges under new arrangements were banned from April 2016.

Pension Schemes Act 2021

The Pensions Schemes Act 2021 received Royal Assent in February 2021.

Key Acts: Pension Schemes Act 2021

The act introduces significant changes to regulation of occupational pension schemes that will be phased in over the next few years. These include new duties relating to:

- climate change and investments
- defined benefit scheme funding
- member transfer requests
- pensions dashboard

The act also strengthens TPR's regulatory powers including the option of tough criminal sanctions and financial penalties for non-compliance.

How these changes will affect you as a trustee will depend on your scheme type and size. As new requirements and duties will come into effect at different points over the next few years it is important to keep up to date with emerging requirements and seek advice where necessary to help navigate these changes and what is required of you.

Find out more about what The Pensions Regulator is doing in relation to the Pension Schemes Act at https://www.thepensionsregulator.gov.uk/en/pension-schemes-act-2021

Pensions law and the future

As you will have realised, pensions law is continually evolving and changing. It is important that you keep up to date with the latest legal developments so you understand your trustee duties and can apply the law correctly and effectively to your scheme.

If you are in any doubt about how to apply any aspect of the law to your pension scheme, seek advice from your scheme's advisers.