

# PeriodiC




The elements that you  
need to know

RISK | PENSIONS | INVESTMENT | INSURANCE



Whether you are a trustee running an occupational scheme, or you are a company offering a master trust or contract-based scheme (such as a Group Personal Pension), these newsletters help keep you up-to-date with elements relevant to your defined contribution (DC) arrangement.

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## Trustee Elements

### Investment governance

The Department for Work & Pensions (DWP) has announced a delay to its response to the [consultation](#) on trustee oversight of investment consultants and fiduciary managers and the final regulations. The DWP now expects to publish its response by June 2022.

The regulations are intended to integrate the Competition and Markets Authority Order 2019 into pension law and to transfer responsibility for enforcement from the Competition and Markets Authority to The Pensions Regulator (TPR). The DWP reminds trustees that until the new regulations are in force, trustees must continue to comply with the order.

### Combined code of practice

In March, TPR published its long-awaited consultation on a [combined code of practice](#) for trustees of both defined benefit (DB) and DC schemes.

Barnett Waddingham has published a [briefing note](#) setting out what this might mean for trustees and the actions they will need to take.

The new code will replace 10 existing codes of practice (including code 13, the 'DC code'), and consists of 51 shorter, topic-based modules. This represents the first phase of consolidating existing codes of practice, with TPR expecting that the remaining codes of practice will be brought into the new code in due course.

The new code highlights the need to establish an effective system of governance that is proportionate to the size, nature, scale and complexity of the activities of the scheme. It is largely a consolidation and re-presentation of the existing codes it replaces but there is some new content, including:

- The requirement to assess all risks faced by the scheme and produce an Own-Risk Assessment. This will be a requirement for schemes with 100 or more members. Schemes will have 12 months from the date the new code is published to put this in place.
- An increased focus on Environmental, Social & Governance (ESG) factors within a scheme's investment strategy (an extension of the current requirement to produce an Implementation Statement as part of the Statement of Investment Principles).

## Company elements

### The Uber Judgement

In February, the Supreme Court dismissed an appeal by Uber that its drivers are not self-employed contractors but are 'workers'. In employment law, 'workers' are not full-blown 'employees' but are given more rights than the 'self-employed', e.g. the National Minimum and Living Wage and paid holidays.

The case will now be referred back to the Employment Tribunal to determine the merits of the claim and how to compensate the drivers. Although the Supreme Court Judgment initially affects only the drivers who brought the case, it may set a precedent for Uber drivers across the UK.

The Judgment did not mention pension rights. However, the definitions of 'worker' and 'contract of employment' under employment law are broadly the same as under auto-enrolment legislation. This would require Uber to auto-enrol drivers into a workplace pension scheme if they meet the 'eligible jobholder' criteria. Otherwise, they may still qualify for employer pension contributions if they meet the 'non-eligible jobholder' criteria and opt in to a workplace pension scheme.

The Supreme Court also ruled that the Employment Tribunal was entitled to find that time working for Uber was not limited to periods when driving passengers, but included

any period when logged into the Uber app within the area in which the driver was licensed to operate and was ready and willing to accept trips.

The judgement is unique to England and Wales and is significant in terms of how courts should determine employment status. The employment status of other UK 'gig-economy' workers will depend on their own circumstances.

Although Uber initially announced it would be appealing the decision, in a development on 16 March it announced it will give all of its circa 70,000 UK drivers at least the minimum wage, holiday pay and pension rights. It committed to these changes from 17 March 2021 based on drivers' time after accepting a trip request.

This appears to leave open the issue of the Supreme Court ruling time working for Uber was not limited to periods when driving passengers and the issue of any compensation for past entitlements.

### Review of auto-enrolment thresholds

In January, the DWP published its [review](#) of the auto-enrolment thresholds for the 2021/22 tax year. Once confirmed, the thresholds will come into force on 6 April 2021:

- The 'earnings trigger', the earnings criteria for determining eligibility, will remain at £10,000; and
- the lower threshold for qualifying earnings will remain at £6,240 and the upper threshold will increase to £50,270, maintaining alignment with the National Insurance contributions' lower and upper earnings limits

The DWP will keep under review the proposal to remove the lower threshold for qualifying earnings in the mid-2020s.

## Other elements

### Budget 2021

Budget Day, on 3 March, included little in relation to DC pensions. However, the following points should be noted:

- The Chancellor announced that the Lifetime Allowance will be frozen at its current level of £1,073,100 until April 2026. The allowance had been expected to increase each year with price inflation and the freeze will particularly affect higher earners; and
- the Government is looking to encourage pension funds to direct more of their capital towards the UK's economic recovery, with the establishment of the Long-Term Asset Fund in 2021. The new fund structure will allow wider access to assets such as infrastructure and private companies that are not regularly traded.

Despite MPs' pre-Budget call on the Government to overhaul the "entire approach" to pension tax relief, the Budget was silent in this area.

### Report from 'small pots' working group

In December, the DWP published a [report](#) by the working group on ways to tackle the growth of small, deferred pension pots in the automatic enrolment workplace pensions market.

In the working group's view, the strategic goal should be to make the consolidation of small, deferred pots the norm. This would necessitate automatic and automated solutions to complement member-initiated consolidation. The report suggests a framework to support progress and recommends that further work between the DWP and pensions industry is undertaken during 2021 to assess potential solutions.

### Charge cap review

In January, the DWP published the [charge cap review](#). The charge cap will remain at 0.75% and transaction costs will not be brought into its scope.

The government will undertake an impact assessment on a proposal to combat 'pot erosion', banning flat fees for investment funds that are subject to the charge cap where the pot size is below a de minimis limit (initially proposed at £100).

The DWP also published its [pension charges survey](#), giving a breakdown of average charges by membership size (within broad bands), scheme type and qualifying status. Whilst of interest, this provides a very crude basis only for benchmarking a scheme's charges, as providers use many further factors to price pension services.

### Normal minimum pension age

In February, HM Treasury published a [consultation](#) on increasing normal minimum pension age from 55 to 57 with effect from 6 April 2028. The consultation seeks views on a proposed protection regime where pension scheme rules convey rights to take benefits before age 57. The Government plans to publish draft legislation in summer 2021.

## Provider news

Following the Financial Conduct Authority's Retirement Outcomes Review, group personal pension scheme providers that offer a drawdown retirement option were required to implement 'investment pathway' solutions by 1 February 2021. Members entering drawdown will normally be given the three options:

- choose investment pathways
- choose their own investments
- stick with their existing investments



Members choosing investment pathways must be offered four investment pathway options, designed around four very broad retirement income objectives:

1. I have no plans to touch my money in the next five years
2. I plan to use my money to set up a guaranteed income (annuity) within the next five years
3. I plan to start taking my money as a long-term income within the next five years
4. I plan to take out all my money within the next five years

Master trust schemes are not required to offer investment pathways but a number have chosen to do so.

Please contact your Barnett Waddingham consultant if you would like to discuss any of the above topics in more detail. Alternatively contact Mark Futcher, Partner and Head of DC via the following:

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