HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

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Workplace pensions 2018: FAQs for MPs

By Djuna Thurley

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Contributing Authors: Djuna Thurley

Summary

This briefing paper looks at some of the FAQs constituents raise with their MPs about workplace pensions. For example:

- When can people draw their pension as a lump sum?
- What can they do if their provider tells them they can't?
- What if someone has been told to take advice but doesn't think they need it?
- Who does auto-enrolment apply to?
- Where can people get help with pension issues?
- If someone is unhappy with a decision on their pension, or how it has been administered, what can they do?

It does not pretend to be comprehensive. The aim is to provide some general information in relation to these FAQs and signpost to more detailed sources of information and advice.

See also CBP 07981 State Pensions 2017: FAQs for MPs (4 April 2018).

The implications of Brexit are covered in CBP-7629 Brexit – implications for private pensions (March 2017) and CBP-7894 Brexit and State Pensions (December 2017).

Please note that nothing in this paper should be considered as constituting legal advice. It is not intended to address the specific circumstances of any particular individual. A suitably qualified professional should be consulted if specific advice or information is required.

1. Introduction

The State Pension is intended to work in partnership with occupational pensions. So, many people will need to save privately if they are to achieve an adequate income in retirement.

There are two main types of private pension:

- Defined benefit (DB) schemes, that promise to pay pension benefits based on fixed factors, typically salary and length of service; and
- Defined contribution (DC) or money purchase schemes, that pay out a sum based on the value of a member's fund on retirement. The level of pension depends on factors including the contributions invested, the returns on that investment (minus any charges applied) and the rate at which the fund is converted to a retirement income.

There is information about the different types of pension on the Pension Wise website and a service to help people work out what type of pension they have.

2. Auto-enrolment

2.1 What is auto-enrolment?

To increase participation in workplace pensions, the Government is introducing duties on employers to automatically enrol workers into a workplace pension scheme. Gov.UK explains:

> By 2018 all employers must provide a workplace pension scheme. This is called 'automatic enrolment'.
>
> Your employer must automatically enrol you into a pension scheme and make contributions to your pension if all of the following apply:
>
> - you're classed as a 'worker'
> - you're aged between 22 and State Pension age
> - you earn at least £10,000 per year
> - you usually ('ordinarily') work in the UK (read the detailed guidance if you're not sure)

For more on the background see

SN-06417 Pensions: Automatic enrolment – 2010 onwards (April 2018)

SN-04847 Pensions: Automatic enrolment - background (Sept 2012)

Workers can choose to opt out. Where they remain in the scheme, they and their employer must make minimum contributions on 'qualifying earnings.' Minimum contribution rates are being phased-in to help employers and individuals adjust. Full contributions will have to be paid from April 2019:[1]

Phasing period	Minimum employer contribution % of qualifying earnings	Worker contribution % of qualifying earnings (incl. employee tax relief)	Total contribution % of qualifying earnings
October 2012 to March 2018	1	1	2
April 2018 to March 2019	2	3	5
April 2019 onwards	3	5	8

2.2 Why was it introduced?

The Pensions Commission, set up by the last Labour Government to review the regime for private pensions, concluded that it would increasingly deliver unequal and inadequate results. It recommended:

- **Auto-enrolment** because the "overwhelming evidence is that many people do not make rational long-term decisions in their own self-interest without encouragement and advice."
- Requiring employers to make a **minimum employer contribution** on the grounds that, even if relatively small, it would help produce a "major increase in employee participation

[1] Pensions Act 2008, s20

rates", would help to ensure that "all members of the scheme can achieve a reasonable return on investment, even if subject to some means-testing" and would help create a more level playing field between those who already made pension contributions and those who do not.

- The creation of a low cost national pension savings scheme (now NEST) available to any employer who wanted to use it. This was needed because there was a segment of the market - employees of average and lower earnings working in small and medium companies, plus many self-employed – that the financial services industry could not serve profitably except at charge levels that were a disincentive to save and would substantially reduce pensions in retirement.[2]

The Labour Government legislated for this in the *Pensions Act 2008*.

Following the general election in 2010, the Coalition Government set up a review to look at whether the policy was still appropriate. The Making Automatic Enrolment Work Review (MAEWR) recommended some amendments to the policy that would act as easements to employers, including:

- Aligning the auto-enrolment thresholds with those for tax and NI;
- Introducing an optional "waiting period" of up to three months before a worker needs to be auto-enrolled (although workers may opt in during this period);
- A simple system for employers to certify that their scheme meets the required contribution levels.

The Government decided to proceed with implementation of the reforms on that basis.[3]

What has it achieved so far?

The report of the Automatic enrolment review published in December 2017, summarised the impact of the policy:

> Workplace pension saving is now becoming the norm for a new generation of workers. 9 million individuals have now been automatically enrolled into a workplace scheme by their employer, with nine out of every ten of them continuing to save. Many of those benefitting were once poorly served or excluded from workplace pensions, but thanks to automatic enrolment, many more women, low earners and younger people are now building an asset for their future. By 2019/20, it is estimated an extra £20 billion a year will be saved into workplace pensions as a direct result of automatic enrolment.[4]

It made recommendations to "maintain the momentum achieved so far and to build a stronger, more inclusive savings culture for future generations." These included:

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[2] Pensions Commission, Second Report, November 2005, Executive Summary and p154-160
[3] HC Deb 27 October 2010 c11WS; *Pensions Act 2011*
[4] DWP, Automatic enrolment review 2017: Maintaining the momentum, Cm 9546m, December 2017

- Lowering the age threshold for auto-enrolment from 22 to 18; and
- Removing the lower earnings limit so that contributions are calculated from the first pound earned;
- Testing approaches aimed at increasing the savings of self-employed people from 2018, with a focus on those with low to moderate incomes.[5]

Further work would be conducted on contribution rates once the scheduled increase in minimum contribution rates had been phased-in.

The policy has reversed the decade-long decline in participation in workplace pensions:

> Between 2006 and 2012 there was a general downward trend in workplace pension participation, from 62 per cent (12.0 million eligible employees) to a low of 55 per cent (10.7 million). Since 2012 there has been a significant increase of 5.4 million to 16.2 million eligible employees participating in a workplace pension (78 per cent) in 2016, showing the positive impact of the workplace pension reforms to date.[6]

However, the amount saved per eligible saver in the private sector has declined, although this is expected to change. DWP commented that:

> Within the public sector the amount saved per eligible saver (i.e. those who are saving into a workplace pension) continued to increase in 2016. In the private sector there was further decline between 2015 and 2016. This is likely to be a result of the increased number of savers in the private sector many of whom will be making contributions at the minimum level and therefore lowering the average overall. This is expected to change as a result of the planned increases to the minimum contribution levels legislated for from 2018.[7]

2.3 Does auto-enrolment apply to all employers?

TPR guidance for employers says that if you "employ at least one person you are an employer and you have certain legal duties."[8]

The question of whether to exempt very small employers was considered – and rejected – both by the Labour Government, which legislated for the reforms, and the Coalition Government, which implemented them. The 2010 Making Automatic Enrolment Work Review found that exempting them would "exclude 1.2 million employees from auto-enrolment"; there would be substantial practical problems in enforcing the boundaries; and a "significant disincentive to business growth would be created." However, it did recommend changes that it thought would ease the burden for employers, including

For more information see

Library Briefing Paper SN-06417 Automatic enrolment 2010 onwards (Jan 2018), sections 2.3 and 2.3

SN-06415 National Employment Savings Trust (NEST) – 2012 onwards (Oct 2013)

Pensions Regulator guidance:

Duties checker

FAQs

Detailed guidance

The essential guide to automatic enrolment (Nov 2016)

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5 DWP, Automatic Enrolment Review 2017: Maintaining the Momentum, Cm 9546, December 2017

6 DWP, Workplace participation and savings trends 2006 to 2016, June 2016; Cm 9546, p19

7 Ibid

8 TPR, automatic enrolment – get to know your duties

allowing employers to postpone auto-enrolment for up to three months – see the section on seasonal workers below.[9]

Responding to the review, the Federation of Small Businesses was "severely disappointed" that small firms were not to be excluded from the reforms.[10] However, the decision was welcomed by organisations representing savers and by the CBI which said the Government had "has rightly chosen to simplify the rules for all employers, rather than carve some out and leave others to cope with a high regulatory burden."[11]

The optional three month waiting period was legislated for in the *Pensions Act 2011* (s6).

The 2017 review of auto-enrolment looked at whether "in the light of the continuing evolution of the labour market", there was a "case for exempting any group or groups of employers from automatic enrolment duties." It said that there was a group of around 1 million individuals working in flexible or "atypical" ways, many of whom would already come within the existing auto-enrolment framework:

> There is a group of around 1 million individuals according to some estimates – including agency workers and those on zero hours contracts – who are working in increasingly flexible or "atypical" ways in less standard forms of employment. In our view, a large number of these most likely come within the existing automatic enrolment framework. We will work with the Pensions Regulator to ensure there is sufficient clarity for them and those who engage them so that the system and its enforcement continues to operate effectively.[12]

It concluded that the current arrangements struck the right balance:

> The vast majority of respondents to the initial review questions agreed that no groups of either workers or employers should be excluded from automatic enrolment. Responses cited concerns around such action undermining the policy intent and being discriminatory, as well as disadvantaging workers who were excluded from the opportunity to build retirement savings for their later life. The government agrees that there is no legitimate aim in treating certain sectors of the workforce differently from others and that therefore there is no legal basis to do so.
>
> We also considered the case for extending the postponement period but have concluded that the current three-month period strikes the right balance between avoiding longer-term detriment to an individual's saving ability, and the need to exempt workers employed for very short temporary periods.[13]

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9 Johnson et al, Making auto-enrolment work review, 2010, p5
10 See, for example, Personell Today, 'FSB severely disappointed small firms not excluded from auto-enrolment.'
11 CBI press release, 'CBI responds to Government review of 2012 reforms', 27 October 2010; See also, Age UK Press Release 27 October 2010; NAPF press release, 27 October 2010, Green light for pensions auto-enrolment welcomed by NAPF;BCC Press Release, 27 October 2010, 'BCC welcomes simplification of 2012 private pension reforms'
12 DWP, Automatic Enrolment Review 2017: Maintaining the Momentum, Cm 9546, December 2017
13 Ibid, p51

What about people employing carers?

The Pensions Regulator (TPR) explains:

> If you directly employ one or more people to provide you with care and support, often called a personal assistant or a personal care assistant, you're an employer and automatic enrolment duties will apply to you. This will be the case whether you use the money provided by your local authority or the NHS in the form of direct payments or a personal budget to pay your personal care assistant, or you use your own money.[14]

The Disability Rights UK runs a personal budgets helpline. The Disability Law Service provides provide information, advice and assistance to those with disabilities and their carers.

The 2017 review received representations that carers providing informal care should be brought into auto-enrolment, with the government paying their contributions. However, it concluded that "bringing in individuals who are not subject to a contract of employment would be a fundamental change to the framework of automatic enrolment which works through the employer/worker relationship."[15]

For more information see

TPR Duties checker/employing seasonal or temporary staff)

What about seasonal workers?

In July 2016, the Government explained that all workers that fulfil the criteria must be auto-enrolled, including seasonal workers, but that employers can choose to postpone for up to three months:

> All workers that fulfil the automatic enrolment eligibility criteria, including seasonal workers, must be enrolled into a workplace pension scheme. To help minimise burden on employers and help manage their business processes, they can choose to postpone automatic enrolment for up to three months for some or all of their staff.
>
> Furthermore, although employers must automatically enrol their eligible workers into a qualifying workplace pension scheme, there is no requirement for workers to save into a pension scheme, unless they wish to do so. Those who genuinely believe it's not in their best interest to save are free to opt out.
>
> The Department has legislative commitments to review some of the specifics of automatic enrolment in 2017. In addition to these areas, we intend to use the opportunity of the Review to cover a broader range of automatic enrolment policy issues and consider how best to build on the success of the programme, which may include the impact on different groups of workers.[16]

The option to postpone was introduced by the Coalition Government in the *Pensions Act 2011* with the aim of reducing the burden on employers.[17] It was a change to the approach taken by the Labour Government which had been for immediate auto-enrolment, so that "people who change job frequently, together with casual and seasonal

[14] TPR, FAQs employing carers; See also DoH Care and Support Statutory Guidance, Feb 2017, foortnote 51

[15] DWP, Automatic Enrolment Review 2017: Maintaining the Momentum, Cm 9546, December 2017, p52

[16] PQ 41855, 11 July 2016

[17] Section 6; Johnson et al, Making auto-enrolment work review, October 2010

workers, have the best possible access to pension saving and the prospect of building a sufficient pension pot."[18]

What about people on zero hours contracts?

An individual falls within the scope of auto-enrolment if they are a 'jobholder', aged between 22 and State Pension age, and earn more than a set amount - £10,000 in 2017/18.[19] A Jobholder is a worker:

> (a) who is working or ordinarily works in Great Britain under the worker's contract,
> (b) who is aged at least 16 and under 75, and
> (c) to whom qualifying earnings are payable by the employer in the relevant pay reference period (see sections 13 and 15).[20]

The Pensions Regulator's guidance for employers explains that the first step in deciding whether a person should be auto-enrolled - is to identify they are a 'worker'. This depends on their contractual relationship:

> 9. A worker is defined as any individual who:
>
> • works under a contract of employment (an employee), or
>
> • has a contract to perform work or services personally and is not undertaking the work as part of their own business.
>
> 10. Anyone who has entered into a contract of this type with an individual is an employer and is required to comply with the new employer duties.
>
> 11. This may include agency workers if they have such a contract with either the agent or the principal (the third party to whom the individual is being supplied by the agent) […][21]

An assessment has to be made as to whether an individual's earnings have exceeded the 'earnings trigger', which is more complex when earnings fluctuate.[22] Former Pensions Minister Steve Webb explained the position as follows:

> Most people on zero-hours contracts work 20-odd hours a week, and as long as, at some point, they trigger auto-enrolment—as long as they earn above the threshold, ever—they will be put in. If I am on a zero-hours contract and work zero, zero, zero, zero, and then 20 hours over a pay period and go above the trigger, my employer has a legal duty to put me in. There are complexities about waiting periods and the rest, but the basic principle is that I must be put in once I am over the trigger. Once I am in, if there is a week when I have no earnings, of course no money goes in; but if there is a week when I do have earnings, money goes in. I do not fall out of the pension. Once I am in, I am in. Auto-enrolment happens once. It is triggered by earning above the threshold once in a pay period.[23]

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18 HL Deb 17 June 2008 c965 [Lord McKenzie]
19 *Pensions Act 2008*, s3
20 Ibid s1
21 TPR, Auto-enrolment detailed guidance, April 2017, chapter 1
22 TPR, Auto-enrolment detailed guidance, April 2017, chapter 3, para 54-55
23 HC Deb 8 April 2014, c51WH

2.4 What help is available to employers?

The Labour Government recognised that small employers had limited capacity to respond to regulatory change and that fixed administrative costs affected them disproportionately. It focused on ensuring the design of the scheme was appropriate for them and legislated for the introduction of National Employment Savings Trust (NEST) – a low-cost national pension savings scheme available to any employer who wants to use it.[24]

The Coalition Government's Making Automatic Enrolment Work Review said the existence of NEST – a pension scheme appropriate to most small employers and very easy for them to use – was a critical factor in its decision not to exempt small employers from auto-enrolment. To ease administrative burdens, it proposed aligning the auto-enrolment thresholds with those for National Insurance or tax, introducing an optional waiting period and a simplified certification process for employers wanting to use existing schemes.

In a report on auto-enrolment in May 2016, the Work and Pensions Select Committee, said "the priority now must be for small and micro businesses to understand their AE duties and the consequences of non-compliance."[25] The Government responded that the Pensions Regulator (TPR) was working to improve information and awareness for small employers and to simplify the process.[26] TPR guidance for employers includes:

- The essential guide to automatic enrolment (November 2016)
- Duties checker
- FAQs
- Detailed guidance

Are employers liable for their choice of scheme?

In its report on auto-enrolment in May 2016, the Work and Pensions Committee called on the Government to make a clear and comprehensive statement regarding an employers' liability for their choice of scheme:

> 36. The Department have stated unambiguously that employers are not liable for their choice of AE pension scheme. Legal experts, however, have told us there could be grounds for legal action if employers cannot demonstrate due diligence. We recommend DWP use their response to this report to make a clear and comprehensive statement about an employer's potential liability. DWP should also confirm where liability will fall if a scheme performs badly or fails. This would provide reassurance to small and micro-employers choosing a scheme.
>
> (HC 579, May 2016).

[24] HL Deb, 23 June 2008, c1325

[25] Automatic enrolment, Work and Pensions Committee, May 2016 para 30

[26] Government response to Work and Pensions Committee report, 20 July 2015

In its response, the Government said that although there was nothing specific to prevent a member taking legal action against an employer as respects the performance of a scheme, it was difficult to envisage them having a strong case if an employer had had due regard and acted in good faith in its selection:

> 15. The Government recognises the concerns felt by employers regarding their liability in terms of scheme choice and welcomes the opportunity to provide reassurance in response to this report.
>
> 16. An automatic enrolment workplace pension scheme must already be a qualifying occupational pension scheme or qualifying personal pension scheme, and in doing so meet minimum standards and quality requirements. They must also enable automatic enrolment to take place to satisfy statutory requirements. An employer must ensure that any pension scheme they choose meets these requirements if they want to use it for automatic enrolment.
>
> 17. Provided an employer has automatically enrolled their eligible staff into a qualifying scheme and declared their compliance with TPR, their legal duties under automatic enrolment legislation in relation to scheme choice are met.
>
> 18. Risks are inherent in any form of investment and performance will vary due to a range of factors, including, but not to limited to, the external financial environment and individual scheme management. Automatic enrolment legislation does not impose any obligation on the employer to ensure a certain level of investment returns for their employees.
>
> 19. While there is no specific provision in automatic enrolment, or wider pensions legislation to prevent a member bringing legal action against an employer as respects performance of the pension scheme, provided an employer can evidence that they have had due regard to their choice of qualifying scheme and have acted in good faith in its selection, it is difficult to envisage that someone would have a strong claim against an employer in regards to this.
>
> 20. Having a landscape of quality scheme provision that employers and members can be confident in using is a key priority for the Government. TPR has already published a list of independently reviewed 'Master Trust' pension schemes on its automatic enrolment guidance pages for employers. The Regulator also provides links to other lists of schemes held, for example, by the Association of British Insurers – including schemes offered by insurance providers who are regulated by the Financial Conduct Authority. TPR is planning to add Group Personal Pensions that are open to all employers to the list held on its website following engagement with the industry.
>
> 21 .Furthermore, the Government intends to strengthen the provision of essential protections for people in Master Trusts in its Pensions Bill this session.[27]

The Government set up the National Employment Savings Trust (NEST) for employers that wish to use it for automatic enrolment and the

[27] Government response to Work and Pensions Select Committee, July 2016

Pensions Regulator has produced guidance for employers on choosing a pension scheme.[28]

2.5 What about the self-employed?

For more information see

Library Briefing Paper SN-06417 (April 2018), section 3.1 (coverage)

NEST – self-employed

The *Pensions Act 2008* placed a duty on employers to automatically enrol certain 'jobholders' into a workplace pension scheme. A jobholder is defined in section 1 of the Act as a worker:

> (a) who is working or ordinarily works in Great Britain under the worker's contract,
>
> (b) who is aged at least 16 and under 75, and
>
> (c) to whom qualifying earnings are payable by the employer in the relevant pay reference period (see sections 13 and 15

In other words, it does not apply to self-employed people.

The question of whether self-employed people could be included in the workplace pension reforms was considered by the Pensions Commission. It recommended the option of allowing the self-employed to make payments to its proposed National Pension Savings Scheme alongside their National Insurance Contributions (NICs).[29]

However, the Labour Government said the self-employed remained "best placed to make their own decisions about whether they can afford to save towards a pension, and if so how much." [30]

In its May 2017 report, the Work and Pensions Select Committee said:

> 38. **Low levels of retirement saving amongst the self-employed risk storing up grave problems of potential hardship and reliance on the welfare state in later life. While auto-enrolment for employees has been a great success, current structures are not encouraging sufficient pension saving by the self-employed. The idea of using an opt-out system on tax returns to encourage greater contribution to pensions is an interesting one that merits further consideration.**[31]

A report by Royal London published in July 2017 proposed using the annual self-assessment process:

> As part of completing an annual tax return, self-employed people could nominate a pension provider or scheme to receive any contributions and would have a sum automatically added to their total tax bill, perhaps equal to 4% of their taxable profits. With standard rate tax relief this would mean 5% of profits would go into a pension unless the self-employed person actively opted out. The fact that the contribution would go up and down in line with the ups and downs of the self-employed person's business would

[28] Pensions Act 2008, Part 1, chapter 5; TPR, The essential guide for automatic enrolment, November 2016

[29] Pensions Commission, 2nd report, December 2005, p370

[30] Government response to the Fifth Report of the Work and Pensions Select Committee, 2006-07, HC 220-1, para 29-36

[31] Work and Pensions Committee, Self-employment and the gig economy, HC 847 May 2017

> provide a flexibility which would be welcomed by many self-employed people.[32]

As did the Taylor Review of Modern Working Practices:

> One approach would be to effectively auto-enrol self-employed people into a pension and administer this through the self-assessment process […] For instance, when the individual provided HMRC with their self-assessment, as well as providing funds to cover income tax and NICs liability, they could also be expected to provide 4% of income towards a pension unless they choose to opt out.[33]

It suggested that - because the self-employed would not have the incentive of the employer contribution – the Government could "look to establish a similar principle for the self-employed to save for their retirement."[34]

The 2017 auto-enrolment review said that a large proportion of the self-employed experienced significant gaps in pension coverage but could not be covered by the current design of automatic enrolment. Self-employment was now 4.8m (15 per cent of the workforce). Pension coverage varied significantly. Around 2 million traditional self-employed individuals (including contractors in the construction sector and others) who would meet auto-enrolment age and income criteria if they were workers, but were at risk of under-saving for retirement. The Government would test targeted interventions from 2018, followed by consultation and any legislative changes. [35]

In response to a Westminster Hall debate in 2018, Pensions Minister Guy Opperman said that pilot projects were underway, including a "sidecar product" being trialled by NEST.[36] Together with the ABI, the Government held a two day event looking at how technology could be used to make it easier for the self-employed to build up long-term savings.[37]

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32 Aviva and Royal London, A blueprint for getting the self-employed into pensions, 5 July 2015
33 Good work: the Taylor review of modern working practices, 11 July 2017, p78
34 Ibid
35 DWP, Automatic Enrolment Review 2017: Maintaining the Momentum, Cm 9546, December 2017, p7; HM Government, A response to the Taylor Review of Modern Working Practices, Feb 2018
36 HC Deb 28 February 2018 c417WH; This is a hybrid savings product, combining and emergency savings account with a traditional DC pension (NEST insight 2017)
37 Creating savings prompts for the self-employed: Two day ~SavingsTechSprint draws to a close

2.6 Issues for employees

Do they have a choice of scheme?

The choice of scheme an individual is automatically enrolled into is down to the employer, provided it meets certain criteria.[38] TPR has produced information to help – see step 2 – choosing a pension scheme and automatic enrolment detailed guidance - chapter 4, pension schemes.

The reason for designing the policy in this way was that faced with choices about complex financial products, people tended to put off making a decision. Auto-enrolment was intended to harness the power of inertia – individuals would be put in a pension scheme by an employer, who would make minimum contributions for them.[39]

However, one downside is that it gives rise to the 'principal-agent problem' – whereby the employer makes the choice of scheme but does not have the same incentive as the saver to ensure good outcomes. A recognition of this led to measures to improve value for money – in particular, increasing governance requirements and place restrictions on the charges that can apply.[40]

For more information see

Gov.UK Workplace pensions

Library Briefing Paper SN-06956 Improving outcomes for DC pension savers (September 2014)

Are minimum contributions enough?

Minimum contribution rates are payable on a band of qualifying earnings (between £6,032 and £46,350 in 2018/19). They are being phased-in, with full contributions paid from April 2019:[41]

Phasing period	Minimum employer contribution % of qualifying earnings	Worker contribution % of qualifying earnings (incl. employee tax relief)	Total contribution % of qualifying earnings
October 2012 to March 2018	1	1	2
April 2018 to March 2019	2	3	5
April 2019 onwards	3	5	8

There are concerns that some people will assume (wrongly) that contributing at the statutory minimum is enough for an adequate income in retirement.

38 *Pensions Act 2008* , s17; TPR auto-enrolment guidance, Pension Schemes
39 Pensions Commission, Second Report, December 2005, Chapter 1, p67
40 FCA, CP 14/24, October 2014; DWP, Better workplace pensions: further outcomes for savers, March 2014
41 The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2018 (SI 2018/367); *Pensions Act 2008*, s20; The Occupational and Personal Pension Schemes (Automatic Enrolment) 2010 (SI 2010/772), reg 32E

What is an adequate income in retirement?

As there is no standard definition of what is meant by an adequate income in retirement, the Pensions Commission looked at 'replacement rates' (retirement income as a ratio of earnings in working life) to assess whether pensioners would be able to replicate their living standards. It suggested a replacement of around 80% for low earners, 67% for median earners and 50% for higher earners. It also concluded that it was a "reasonable aim of public policy to seek to ensure that the median earner achieves an income replacement rate of at least 45%" and had set the minimum contribution rate at 8% with this in mind. Beyond this, it thought the state should 'enable' additional low cost saving of 15-18%. (The First Report of the Pensions Commission, December 2004, p142)t

In 2014, the Government published its analysis showing that most (92%) of undersavers were on the right track to secure an adequate income in retirement, being either "mild" or "moderate" undersavers – some of whom need only a few extra pounds per week in retirement to achieve adequacy. However, there were still many who needed to take positive action to ensure that they have adequate pensions in retirement. This is particularly the case for moderate and high earners.[42] Regarding pension contribution rates, it said:

> Those in the middle incomes groups can see huge improvements to their pension adequacy by increasing contribution rates. For those at the very top of the earnings distribution before retirement, private pensions saving at a rate higher than 15 per cent would be needed to achieve an adequate retirement income.[43]

In its May 2016 report on auto-enrolment, the Work and Pensions Committee recommended that the Government consider "mandatory increases in employee and employer contribution rates and means of encouraging greater voluntary contributions."[44]

The Government its 2017 review would be an opportunity to "strengthen the evidence" around appropriate future contributions into workplace pensions but that it dif not expect to make policy decisions at that time.[45] Chair of the Work and Pension Committee Frank Field described it as a "missed opportunity to help millions of workers save properly for their retirement."[46]

The 2017 review said there were still around 12 million individuals under-saving for retirement:

> Despite the success of automatic enrolment, using the savings adequacy measure introduced by the Pensions Commission, there are still around 12 million individuals under-saving for their retirement (i.e. not projected to be saving enough for an adequate retirement income) who make up 38 per cent of the working age population.

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42 DWP, Review of automatic enrolment – initial questions, Feb 2017
43 Work and Pensions Committee press release, Feb 2017
44 Work and Pensions Committee, Automatic enrolment, HC 579, May 2016, para 81
45 Ibid
46 Work and Pensions Committee, Pensions automatic enrolment review: Government incorporates Committee's work, 8 February 2017

> Of these 12 million, taking account of the planned increases in automatic enrolment contribution rates, some 5.7 million are 'mild under-savers'. If automatic enrolment had not been introduced, an additional 2 million individuals would now be under-saving.
>
> Looking at under-saving by income level, the vast majority of those individuals who are under-saving - approaching 10.4 million (87 per cent) - earn more than £25,000 a year. Around 1.6 million (13 per cent) earn below £25,000 a year. The government intends to explore adequacy measures, but in this Review we have focused on how best to build on statutory savings rates through automatic enrolment to continue to address under-saving. In doing this, we recognise that it remains important to continue to consider at what level of earnings it will 'pay to save' for most individuals.[47]

Proposals to address this included reducing the lower age limit for auto-enrolment to 18 and removing the lower earnings limit for contributions, so that contributions are paid from the first point of earnings. The Government estimated that together, these proposals would "bring an extra £3.8 billion into pension saving annually, increasing the pension pot of the lowest earners by over 80 per cent and that of the median earner by over 40 per cent." It would monitor closely the impact of the legislated contribution rate increases in April 2018 and April 2019 and carry out further work on the adequacy of retirement income.[48]

Can non-taxpayers receive relief on contributions?

Non-taxpayers can be eligible for tax relief on their contributions even if they did not pay income tax. Gov.UK explains:

> You still automatically get tax relief at 20% on the first £2,880 you pay into a pension each tax year (6 April to 5 April) if both of the following apply to you:
>
> - you don't pay Income Tax, for example because you're on a low income
> - your pension provider claims tax relief for you at a rate of 20% (relief at source) [49]

However, their pension scheme has to use the relief at source arrangement. HMRC guidance explains:

> A member making a contribution to their pension scheme will automatically get tax relief at the basic rate of 20%. The amount paid to the scheme is treated as having had an amount equivalent to basic rate tax deducted.
>
> The scheme administrator claims the basic rate tax relief from HM Revenue and Customs (HMRC) and adds it to the pension pot. This applies whether or not the member pays tax.
>
> For example if a member wants to make a £100 contribution they'll only need to pay £80 into their pension scheme. The

[47] DWP, Automatic Enrolment Review 2017, Cm 9546, December 2017, p9
[48] Ibid, p10
[49] Gov.UK Tax on your private pension contributionsMcCauley and Sandbrook; Financial incentives to save for retirement, DWP Research Report No 403, 2006;

> scheme administrator reclaims £20 from HMRC and puts this into the scheme making up the pension contribution to £100.[50]

TPR guidance for employers covers the choice between net pay and relief at source schemes, and the implications of net pay schemes for employees who do not pay tax.[51]

If they have opted out, why do they have to be auto-re-enrolled?

Under *Pensions Act 2008* (s5) employers are required to periodically automatically re-enol workers who stop saving and still meet the criteria. In a 2007 White Paper, the Labour Government explained that this was necessary because circumstances change:

> 1.22 People's circumstances do not stay the same. Individuals may choose to opt out of personal accounts at the outset, perhaps because they do not believe they can afford to save. A year or two later, their circumstances could be completely different but inertia may prevent them from doing anything about it. The Pensions Commission recommended that employees who opt out should be automatically re-enrolled every three to five years. The treatment for exempt schemes is dealt with in Chapter 6, but we agree that employees who have opted out of personal accounts should be automatically enrolled again periodically.
>
> 1.23 The May 2006 White Paper stated that employees would be automatically enrolled when they change employers and every three years if they continued to work with the same employer. Research shows individuals recognise how quickly people's circumstances can change. Therefore, three years seems the right period.[52]

The issue was reconsidered again by *Making Automatic Enrolment Work Review* established by the Coalition Government in 2010. It concluded that some form of re-enrolment was necessary to the overall success of the reforms and that removing it would reduce the numbers enrolled into pension saving.[53] It recommended that employers should be given more flexibility about the timing of this, which the Government legislated for in the *Pensions Act 2011* (s7).

50 HMRC, Pension administrators: reclaim tax relief using relief at source, April 2017
51 HL 6199, 3 April 2017
52 DWP, Personal accounts: a new way to save, Cmnd 6975, December 2006
53 Johnson et al, Making Automatic Enrolment Work Review, October 2010, section 6.4

2.7 What has been done to improve protection for savers in Master Trusts?

For more detail, see

Library Briefing Paper CBP-7758 Master Trust regulation (March 2018)

Many employers have chosen to auto-enrol people into Master Trusts – with the number of members in such schemes increasing from 0.2 million in 2010 to 4 million in 2016.[54]

Master Trusts are trust-based occupational pension schemes, often serving multiple, unrelated employers. The advantage, for employers is that they provide "ongoing oversight of investments provided by a trustee board at lower operating costs than single employer schemes, through economies of scale from pooling administrative functions."[55]

However, there was widespread agreement that the growth in such schemes gave rise to the need for stronger regulation, because:

- The existing framework developed with single-employer schemes in mind and assumes an employer having an ongoing interest in the running of the scheme.
- Many Master Trusts were set up to make a profit, giving rise to the need for a different type of regulation to ensure member benefits are protected.
- Master Trusts operate on a scale unprecedented in occupational pensions and the collapse of a large scheme has potential to create a greater shock than would be the case with a single employer scheme.[56]

To improve protection for members of Master Trusts, the *Pension Schemes Act 2017* provided for:

- An authorisation and supervision regime, requiring Master Trusts to demonstrate to the Pensions Regulator that they met certain key criteria;
- Trustees to be required to take certain actions to protect scheme members in the event of scheme wind-up;
- The Pensions Regulator (TPR) to have greater powers to take action where key criteria were not met.

Authorisation is expected to start from October 2018.[57] However, to protect members of existing schemes, some provisions would take effect from October 2016. These related to requirements to notify TPR of key events and constraints on charges to be levied on members in the event of scheme failure.[58] Much of the detail was left to regulations.[59] Consultation on draft regulations ran to 12 January.[60] On 27 March, TPR launched its consultation on a Master Trust Code of Practice.

54 DWP, Impact Assessment, September 2016
55 Automatic enrolment, Work and Pensions Select Committee, HC 579, May 2016, para 14
56 DWP, Impact Assessment, para 15-19
57 HL Deb 19 December 2016, c1489
58 HC Deb 30 January 2017 c756
59 HL Deb 19 December 2016 c1489; HL Deb 1 November 2016 c561).
60 *Draft Occupational Pension Schemes (Master Trusts) Regulations 2018*

3. Pension flexibilities – 'freedom and choice'

For more information see

Library Briefing Paper SN-06891 Pension flexibilities: the freedom and choice reforms (Oct 2017)

Before the March 2014 Budget, most people (three quarters) with DC pensions used them to buy an annuity.[61] This was strongly encouraged by pension tax legislation, which imposed significant tax charges where a payment was made outside the rules. The rationale for this policy was that: tax relief provided an incentive to save for an income in retirement, not for other purposes; by pooling risk annuities were the most financially efficient way of turning capital into an income stream; and it ensured people had an income throughout retirement.[62]

However, the Coalition Government announced that from 6 April 2015, people would have more flexibility about when and how to draw their pension savings. The then Chancellor, George Osborne said:

> The tax rules around these pensions are a manifestation of a patronising view that pensioners cannot be trusted with their own pension pots. I reject that. People who have worked hard and saved hard all their lives, and done the right thing, should be trusted with their own finances.[63]

This was legislated for in the *Taxation of Pensions Act 2014*.

Although the increased flexibility was welcomed by some. There were also concerns that increase choice would bring with it a significant burden of responsibility for individuals to understand the choices they are making and that they might exhaust their savings prematurely.[64]

For more information see

Pension Wise, what you can do with your pot

The Pensions Advisory Service, What are my options after April 2015?

HMRC, Pension Tax Manual – member benefits

3.1 What are the options post-April 2015?

Pension Wise explains:

> There are 6 ways you can take your defined contribution pension pot.
>
> You can usually take 25% of your pot tax free.
>
> **Leave your whole pot untouched**
>
> You don't have to start taking money from your pension pot when you reach your 'selected retirement age'. You can leave your money invested in your pot until you need it.
>
> More on leaving your whole pot untouched
>
> **Guaranteed income (annuity)**
>
> You use your pot to buy an insurance policy that guarantees you an income for the rest of your life – no matter how long you live.
>
> More on getting a guaranteed income (annuity)

[61] HM Treasury, Freedom and choice in pensions, March 2014, p21
[62] DWP and Inland Revenue, Modernising annuities. A consultation document. February 2002; See also HM Treasury, 'Simplifying the taxation of pensions: increasing choice and flexibility for all', December 2002, para 5.45
[63] HC Deb 19 March 2014 c793
[64] NAPF comments on 2014 budget, 19 March 2014;TUC Pension changes go in wrong direction 20 March 2014; This pension reform is no liberation – and Labour must explain why', Comment is free, *The Guardian*, 24 March 2014

Adjustable income

Your pot is invested to give you a regular income. You decide how much to take out and when, and how long you want it to last.

More on adjustable income

Take cash in chunks

You can take smaller sums of money from your pot until you run out. Your 25% tax-free amount isn't paid in one lump sum – you get it over time.

More on taking cash in chunks

Take your whole pot in one go

You can cash in your entire pot – 25% is tax free, the rest is taxable.

More on taking your whole pot in one go

Mix your options

You can mix different options. Usually, you would need a bigger pot to do this.

More on mixing your options

3.2 What do people need to think about?

To help people navigate the expanded range of options, the Government set up a guidance service – Pension Wise under the *Pension Schemes Act 2015* .

A number of stakeholders stressed the importance of this in ensuring the success of the reforms. The Work and Pensions Committee said:

> 93. We welcome the concept of greater flexibility at retirement which is likely to have a positive effect on attitudes to pension saving, and ensures that no saver will now be obliged to purchase an annuity, the market for which, as we and many others have commented previously, has not been operating in the interests of savers. However, there will inevitably be an accompanying risk of savers making poor decisions or being exposed to potential fraud and scams. […] The freedoms will involve an increase in the number of decumulation options. This is a positive development but it places an even greater burden on savers to make the right decisions when they are often ill-equipped to do so. The guidance service, Pension Wise, is a welcome step, but will not be sufficient in itself to provide adequate protection for savers, particularly as the level of take-up is uncertain, and there is also some uncertainty about whether it will be fully operational from April 2015.[65]

For more information see

For more detail, see Library Briefing Paper SN-07042 Pension Wise, the guidance guarantee (Sept 2017).

The Pension Wise service is available to people who:

- are aged 50 or over
- have a personal or DC workplace pension

[65] Work and Pensions Committee, Progress with automatic enrolment and pension reforms, HC 668 4 March 2015; 'Age UK, welcome help for savers but no gains for the poorest pensioners', 19 March 2014; ABI, 'Budget 2014: 11 thoughts on George Osborne's pension plan', 20 March 2014

- want to make sense of their options

It consist of a telephone or face-to-face appointment lasting between 45 minutes and an hour.

There is online guidance on key issues to consider. For example:

- Work out what you'll have in retirement
- Make your money last
- Shop around and compare providers
- How to avoid a pension scam
- Tax you pay on your pension
- Benefits
- Debt
- Care costs
- Your pension when you die
- Pension recycling

3.3 Who are the pension freedoms for?

The freedom and choice reforms were aimed at people with DC pensions. The reason was that:

- Annuity rates had reduced to the point that it was not clear they remain the correct product for everyone at the point of retirement;
- As auto-enrolment increased the number of people with DC pensions, there was a risk that the lack of choice available at the point of retirement would undermine confidence in longer term saving; and
- The introduction of the nSP would provide more certainty about what people could expect from the State.[66]

They were not primarily aimed at members of defined benefit (DB) pension schemes (such as final salary schemes) because, for the majority of members of such schemes, it was likely to be in their best financial interests to remain in their DB scheme.[67] Members of private sector DB schemes (and funded public sector schemes) can request a Cash Equivalent Transfer Value (CETV) allowing them to transfer to a DC pension scheme.[68] However, if their DB rights in the scheme are worth more than £30,000 they will be required to take advice (see below).

The Pension Wise website has information to help people understand what sort of pension:

Find out your pension type

---

66 HM Treasury, Freedom and choice in pensions, Cm 8835, March 2014, para 2.27-30
67 Cm 8901, July 2014, chapter 4; TPR, DB to DC transfers and conversions, April 2015, para 30
68 *Pension Schemes Act 1993*, ss93-101

[Pension types]

[Check how much is in your pension pot]

[Understand your pension statement]

What about annuity-holders?

People who had already purchased a life-time annuity do not have flexibility about when and how they access its value. This is because buying an annuity is generally one-off and irreversible decision.[69]

In its last Budget before the 2015 general election, the Coalition Government said that it wanted to allow annuity holders flexibility and proposed allowing them to sell the income stream from their annuity to a third party. The proceeds could then be taken as a lump sum or drawn down over a number of years, taxed at their marginal rate as for those taking DC pensions after April 2015.[70]

In July 2015, the new Government said implementation would be delayed until 2017 to ensure there is an in-depth package to support consumers in making their decision and understanding the value of their annuities.[71]

On 18 October 2016 it announced that it had cancelled plans for a secondary annuities market because it had become increasingly clear that "creating the conditions to allow a competitive market to emerge could not be balanced with sufficient consumer protections."[72]

Some stakeholders expressed disappointment that this would mean people who wanted to take advantage of the pension freedoms remaining "trapped in poor value annuities."[73]

For more information see

Library Briefing Paper CBP-07707 Secondary annuities market (Nov 2016).

…members of public service schemes?

Apart from the Local Government Pension Scheme, the main public service schemes are unfunded: they operate on a pay-as-you-go (PAYG) basis, which means that contributions from employees and employers are paid to the sponsoring government department who meets the cost of pensions in payment, netting off the contributions received.

Following consultation, the Coalition Government decided to legislate to prevent members of unfunded DB public service schemes transferring their pension rights to a DC scheme, except in very limited circumstances. This was because it was because of concern that costs to the Exchequer would be brought forward if more public servants requested the transfer value of their pension rights.[74] However, public service pension scheme members with AVCs (additional voluntary contributions) in money purchase schemes can draw these flexibly.[75]

69 *Finance Act 2004*, s164 and Sch 28; Cm 9046, March 2015, para 3.1
70 HM Treasury, Budget 2015, HC 1093, 18 March 2015, paras 1.229-31; Creating a secondary annuity market: call for evidence, March 2015
71 HM Treasury, Summer Budget 2015, HC 264, July 2015; Creating a secondary annuity market: response to the call for evidence, December 2015, para 4.2
72 PQ 49517, 26 October 2016
73 See for example, HC Deb 19 October 2016 c809 [Greg Mulholland]
74 Cm 8835, para 5.6; *Pension Schemes Act 2015*, s68
75 PQ HL2099 14 October 2014

The Government decided that the prohibition on transfers would not apply to funded public service schemes (such as the LGPS) because they held assets, so the implications for the Exchequer were less direct.[76] However, to protect scheme members, the advice requirement would apply (see below) and, to protect schemes, there would be provision to reduce transfer values where a transfer increased the risk of taxpayer intervention in the scheme.[77] There is guidance for scheme members – LGPS: freedom and choice.

…people with buy-out policies?

For some types of pensions – such as 'section 32 buy-out policies' – there may be restrictions on transferring out.

A buy-out policy is a deferred annuity contract used to secure an early leavers' benefits from an insurance company of the individual's choice. One of the conditions applying to such policies is that they had to guarantee to provide a certain level of benefits at the old State Pension age of 60 for women and 65 for men (at least equal to the GMP rights the individual had built up in their occupational pension scheme). Furthermore, they cannot be assigned or surrendered except in limited circumstances - for example, to another buy-out policy meeting the same conditions.[78]

3.4 What if a provider doesn't offer flexibility?

The *Taxation of Pensions Act 2014* allowed DC pension providers to offer flexible retirement options. It did not oblige them to. The options actually available in a particular case will depend on scheme rules.[79]

If a provider does not offer an individual's preferred option, they may be able to transfer to a scheme that does.[80] Whether this is a good idea will depend on an individual circumstances. Pension Wise sets out some of the questions they should ask:

Questions to ask your current provider:

1. Can I transfer? There can be restrictions on which pensions you can transfer.
2. What is the 'transfer value' of my pension? If it's the same as your pot value, it's unlikely you'll be charged a fee when you transfer.
3. What fees will I have to pay?
4. Will I lose the right to take out my money at a certain age? This is called a 'protected pension age'.

For more information see

Gov.UK Transferring your pension

Financial Conduct Authority - Pension transfer - looks at the potential risks and benefits of transferring from DB ad DC schemes

Money Advice Service Transferring DC pensions; and Transferring out of a DB scheme.

The Pensions Advisory Service Transferring your pension

76 Cm 8835, para 5.6
77 HC Deb 25 November 2014 c814; *Pension Schemes Act 2015*, s69 and 72
78 *Pension Schemes Act 1993* and the *Occupational Pension Schemes (Discharge of Liability) Regulations 1997 (SI 1997/784)* reg 3 and 5; Tolley's looseleaf Pensions Law, Section D, para 5.31-2).
79 HMRC, Pension Tax Manual: PTM 061100 - member's choice of benefits
80 *Pension Schemes Act 1993* (part 4, chapter 4; HM Treasury, Pension transfers and early exit charges: a consultation, July 2015, Annex B: the transfer process

5. Will I lose any special features, eg a guaranteed annuity rate?
6. Will I lose the right to take a tax-free lump sum of more than 25% of my pension? This is called a 'protected tax-free sum'.

You then need to shop around for a new provider to transfer your pension to.

Questions to ask your new provider:

1. Do I apply to transfer through you or my current provider?
2. Are there any fees for transferring in, eg set-up fees?
3. Do I have to make regular payments into the new pension?
4. What investment funds and levels of risk do you offer? You may need help from a financial adviser with this.
5. What options do you have for when I want to take my money out?
6. You'll need to complete an application form to request the transfer. If you're transferring more than one pension you may have to complete more than one application.

Transferring your pension to a non-registered UK pension scheme or an 'unrecognised' overseas scheme will mean you'll pay tax on the transfer.[81]

Can people be required to take advice?

The legislation requires providers to check whether an individual has received 'independent appropriate advice' before transferring or converting benefits worth £30,000 or more into 'flexible benefits'.[82]

What are safeguarded benefits?

Safeguarded benefits are primarily benefits in DB schemes but may also be benefits such as guarantees or other promises in other types of scheme. The term is defined in the negative, and referred to as any benefits other than money purchase benefits or cash balance benefits. It includes policies with a Guaranteed Annuity Rate (GAR) (*Pension Schemes Act 2015* s48 (8); FCA, CP 15/07 March 2015, para 2.3 and 2.28).

For more information see

Pension Wise - see a financial adviser

MAS, Financial advice

The rationale is to ensure that:

> all pension fund members are fully informed before taking any decision, and counteract the risk that a significant number of pension scheme members act against their own best interests or are coerced out of their scheme.[83]

The Money Advice Service recommends taking advice in any case, unless you are absolutely sure it is what you want to do and that you understand the consequences:

81 Pension Wise – transfer your pension
82 *Pension Schemes Act 2015* s48; TPR, DB to DC transfers and conversions, April 2015
83 Cm 8901, July 2014, para 4.26

> If you do take regulated advice and things go wrong, or it ends up being the wrong choice for you, you'll be able to use the complaints and compensation schemes available.[84]

The requirement does not apply to safeguarded benefits worth less than £30,000 (which could be taken as a lump sum in any case, under rules in force before April 2015).[85]

In March 2018, the Financial Conduct Authority (FCA) published new rules on transfer advice. It said it had decided to maintain its position that advisers should "start from the assumption that a DB pension transfer will be unsuitable." However, this did not prevent an adviser from recommending a transfer where this was considered suitable for the consumer.[86]

Who else may be asked to take advice?

Some providers require people to take advice in circumstances going beyond the statutory requirements described above.

Following concerns in the press in the early days of the reforms, the Government issued a consultation on barriers to people accessing their savings flexibly, including requirements to take independent advice where this was not necessary.[87]

A data collection exercise by the Financial Conduct Authority (FCA) found that there were other circumstances in which firms required to take people advice – for example, in relation to certain products, such as SIPPS, which had been designed with a view to being accessed through a financial adviser.[88] In December 2016, it said that while it was important that consumers could utilise the new options available, it was also important that they had the appropriate level of protection when deciding what to do. It expected the market to evolve over time.[89]

Does the individual have to follow the advice?

No – the provider just has to check they have received it. FCA guidance to advisers with 'insistent clients' (who want to take a different course of action to that recommended) is that:

> 1. You must provide advice that is suitable for the individual client, and this advice must be clear to the client. This is the normal advice process.
>
> 2. You should be clear with the client what the risks of the alternative course of action are. Where the advice includes a pension transfer, conversion or opt-out, there may be additional requirements such as ensuring the advice is provided by or checked by a pension transfer specialist, comparing the defined benefit (DB) scheme with the

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84 Money Advice Service, transferring out of a defined benefit pension
85 SI 2015/742, reg 5; Cm 8901, July 2014, para 4.26
86 FCA announces changes to advice on pension transfers, 26 March 2018
87 'Pension freedoms scandal: savers blocked from using new rules', *The Telegraph*, 5 June 2015; HM Treasury, Pension transfers and early exit fees, July 2015, para 4.10
88 FCA Pension freedoms data collection exercise: analysis and findings, Sept 2015, para 4.6)
89 The new pension flexibilities: update from the FCA, Dec 2016

defined contribution (DC) scheme and starting by assuming the transfer is not suitable (see COBS 19.1).

3. It should be clear to the client that their actions are against your advice.[90]

3.5 How are people using the new options?

On 12 July 2017, the Financial Conduct Authority (FCA) published the interim findings of its Retirement Income Market Study into how the market was changing since the introduction of the pension freedoms in April 2015. It found that:

- Accessing pension pots early has become 'the new norm'**.** Almost three quarters (72%) of pots that have been accessed are by consumers under 65. Most are choosing to take lump sums rather than a regular income.
- Over half (53%) of pots accessed have been fully withdrawn. However the fully withdrawn pots are mostly small with 90% below £30,000, and 94% of consumers making full withdrawals had other sources of retirement income in addition to the state pension.
- Drawdown has become much more popular. Twice as many pots are moving into drawdown than annuities.

Although it is still early days for the market, the review identified five issues:

- Over half (52%) of fully withdrawn pots were not spent but were moved into other savings or investments. Some of this is due to a lack of public trust in pensions. This can result in consumers paying too much tax, missing out on investment growth or losing out on other benefits.
- Consumers who access their pots early without taking advice typically follow the 'path of least resistance', accepting drawdown from their current pension provider without shopping around.
- Consumers are increasingly accessing drawdown without taking advice. Before the freedoms, 5% of drawdown was bought without advice compared to 30% now. Drawdown is complex and these consumers may need more support and protection.
- Providers are continuing to withdraw from the open annuity market which could bring a risk of weakened competition over time.
- Product innovation has been limited to date, particularly for the mass market.[91]

Other sources of statistics on the pension freedoms include: **HMRC -** Flexible payments from pensions; **Association of British Insurers -** The new retirement market: the evolution continues (April 2017).

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90 FCA, Pension reforms and insistent clients, June 2016

91 FCA publishes interim findings of study into retirement income market, FCA,12 July 2017

4. Defined benefit schemes

A defined benefit (DB) pension scheme is one that provides pension benefits based on fixed factors – salary and length of service.

4.1 What is the Government doing to support them?

For more detail see,

Library Briefing Paper CBP-08219 Defined Benefit Pension Schemes (March 2018); SN-04368 the Pensions Regulator: Powers to protect pension benefits (March 2018); and SN-04877 Defined benefit pension scheme funding (October 2017)

In February 2017, DWP published a Green Paper setting out the key challenges facing DB pension schemes and options to improve confidence in the system. It said the available evidence did not support the view that DB pensions were generally "unaffordable" for employers, although some were finding that their pension scheme deficit was having a significant impact:

> The available evidence does not appear to support the view that these pensions are generally 'unaffordable' for employers. While DB pensions are more expensive than they were when they were originally set up, many employers could clear their pension deficit if required. There is also little evidence that scheme funding deficits are driving companies to insolvency, and it seems clear that the majority of employers should be able to continue to fund their schemes and manage the risk their schemes are running. The single biggest risk to the members of these schemes is the collapse of the sponsoring employer.
>
> However, there are some employers who are finding that their pension scheme deficit is having a significant impact and where the level of Deficit Repair Contributions may become unsustainable.[92]

Key questions addressed by the Green Paper are:

- What can be done to support stressed schemes?
- What can be done to ensure employers meet their liabilities?

In its March 2018 White Paper, the Government set out the approach it intended to take:

> For all schemes and businesses we are clarifying the rules and expectations, for example, through a clearer, enforceable Defined Benefit Funding Code, but otherwise not making fundamental changes to the existing system. For the small number of employers evading their obligations, we will put in place tougher, more proactive powers so that the Pensions Regulator can intervene more effectively to protect individuals. Finally, we will be consulting over the coming months on a framework for consolidation, offering industry the opportunity to innovate but ensuring there are robust safeguards in place so members' benefits are well protected.[93]

[92] DWP, Defined Benefit pension schemes: security and sustainability, Cm 9412, Feb 2017

[93] DWP, Protecting defined benefit pension schemes, Cm 9591, March 2018, Foreword

4.2 Why don't some people get indexation on pre-1997 rights?

There are statutory minimum requirements on DB schemes to index pensions in payment in line with inflation, capped at 5% for benefits accruing from service between April 1997 and April 2005, and at 2.5% for benefits accruing from April 2005 - known as Limited Price Indexation (LPI).[94] Before April 1997 there was no general obligation on Defined Benefit schemes to increase pensions in payment (although there was a requirement on schemes that were contracted out of SERPS to provide indexation capped at 3% on rights accrued from 1988).[95] Importantly, these are statutory minimum requirements - there is nothing to prevent schemes from making more generous arrangements through their scheme rules.[96]

For more information see

Library Briefing Paper CBP-05656 Occupational pension increases (March 2017)

Has the Government considered making these requirements retrospective?

The Pension Law Review Committee – which looked at the issue in 1993 before the indexation requirements came into force – recognised the importance of indexation from the pensioner's point of view but did not recommend making LPI retrospective on grounds that this would "place a considerable burden of costs" on schemes.[97]

In 2002, Alan Pickering – who had been asked by the Labour Government to look at simplifying pension legislation and reducing costs - recommended that LPI should be abolished on the grounds that it was "disproportionately expensive."[98] However, the Labour Government was unwilling to make changes to the LPI unless it "had good reason to believe that the coverage of and contributions to occupational pensions would be higher than would otherwise be the case."[99] In a June 2003 White Paper, it announced that it had decided to reduce the LPI cap to 2.5%, reflecting the reality of an economic climate in which inflation had averaged 2.4% over the years since 1997.[100] This was implemented for DB schemes by the *Pensions Act 2004*, with effect from April 2005.[101]

In March 2007, a 'deregulatory review' of private pensions looked at whether the indexation requirements should be removed but the two individuals leading the review unable to agree.[102] The Government decided not to, on the grounds that it was an important protection for members and there was no clear evidence that removing it would have a direct and significant effect on employer provision:

94 *Pensions Act 1995*, s51
95 SN-04956 Guaranteed Minimum Pension – annual increases (2015)
96 HC Deb, 19 July 2010, c4
97 Pension Law Review Committee, 1993, para 3.1.10
98 Alan Pickering, *A simpler way to better pensions*, July 2002, para 2.10-11
99 DWP, Simplicity, security and choice: Working and saving for retirement, December 2002, Cm 5677, chapter 4, para 45
100 DWP, Simplicity, security and choice: Working and saving for retirement. Action on occupational pensions, June 2003, Cm 5835
101 *Pensions Act 2004,* sections 278 and 279
102 Lewin and Sweeney, Deregulatory Review of Private Pensions. A Consultation Paper, March 2007, Executive Summary

> Removing the requirement to increase pensions in payment has the potential to deliver significant savings for employers, but at the expense of future pensioners. In the absence of clear evidence that removing the LPI requirement would have a direct and significant effect on employer provision, the Government does not believe that the removal of such an important protection for members would strike the right balance between employer concerns and member protection and has therefore decided not to make any changes to the current requirements.[103]

A Westminster Hall debate in January 2017, discussed the concerns of a group of pensioners who had not received regular increases on pre-1997 rights and had therefore seen the buying power of the pension continue to "shrink year on year." In response, the then Pensions Minister Richard Harrington said the Government had no plans "specifically to impose retrospective changes on pension schemes" but acknowledged it was a complex issue:

> There are a lot of different factors, some of which are genuine complaints and difficulties on behalf of employers, and some of which are fundamental things about protecting pensioners and prospective pensioners.[104]

Is the Government considering reducing indexation requirements?

In June 2010, the Coalition Government announced that it was moving from the Retail Prices Index (RPI) to the Consumer Prices Index (CPI) as the measure of prices for setting the statutory minimum increase.[105] However, this not affect all schemes, for example, because some had RPI written into their scheme rules. As a result, many schemes were unable to switch to the CPI.[106]

In its February 2017 Green Paper on defined benefit pension schemes, the Government asked for views on a number of changes, including whether it should introduce a statutory over-ride to allow schemes to move to a different index provided inflation protection was maintained:

> 284. There is an argument that if the fundamental nature of the promise that was made to members was to protect them against inflation, then the specification in scheme rules of a particular rate of increase, or a specific index, may have made sense at the time, but may now be anachronistic, and has little to do with the fundamental nature of the promise to protect against inflation.
>
> 285. The PLSA DB Task Force research found that "increasing pensions by a lower level of inflation was seen to be the most palatable benefit adjustment if one had to be made". Introducing a statutory over-ride to allow schemes to switch from RPI to CPI could amount to a saving to sponsors and lower future pension increases for members amounting to £90 billion as discussed previously. However, the changes would impact schemes differently, where the largest schemes would experience the largest monetary savings, and not all schemes would see a benefit

103 DWP, Deregulatory review – Government response, October 2007, p5-6
104 HC Deb 17 January 2017 c270-84WH; For more detail see Library debate pack 2017-0016
105 HC Deb, 8 July 2010, c14-16 WS
106 DWP, Security and Sustainability in Defined Benefit Pension Schemes, Cm 9412, February 2017, para 272

> from such an easement, but some members' pensions would be significantly lower.[107]

In its March 2018 White Paper, the Government ruled out measures to override provisions in scheme rules to allow changes to the indexation measure used to calculate annual increases. This was because it had decided that it could not "accept any reduction in the value of member benefits":

> 218. Any across-the-board change would allow sponsoring employers to reduce their liabilities at members' expense even if the employer had no difficulties in meeting their existing liabilities. Some people have argued that reducing the liabilities in this way would save employers money they could then use to invest or to increase the pay and/or pensions of existing employees. However, it is not practicable to ensure the benefits of any reduction in liabilities are shared in this way and the Government is not prepared to countenance a reduction in employer liabilities which might simply facilitate a transfer to shareholders of cash members are relying on to support them in retirement.
>
> 219. We are therefore not persuaded by the view that employers or trustees should be able to override scheme rules on grounds of rationality and fairness, given the lack of consensus on what constitutes fairness in this circumstance. We are of course aware that RPI is no longer endorsed by the Office for National Statistics (ONS) and that ONS now counts CPI(H), which includes housing costs, as its preferred measure of inflation. We are also aware that moving from RPI to CPI can in some rare cases be the least worst option for scheme members – for example, if the alternative is scheme failure. Therefore, while we will not be providing an override of scheme rules at this time, we will continue to monitor developments in the use of inflation indices across Government, in pensions, and more widely.[108]

4.3 What about s75 employer debt for plumbing firms?

For more information see

Library Briefing Paper CBP-07684 Section 75 employer debt and multi-employer pension schemes (March 2018)

The employer debt provisions in section 75 of the *Pensions Act 1995* provide protection for DB scheme members. Key elements are:

- If a 'relevant event' occurs, the employer concerned is required to pay their share of the debt;
- The employer debt is calculated on a 'buy-out basis' (i.e; with reference to the cost of buying out the liabilities through an annuity purchased from an insurance company).
- For non-associated multi-employer schemes, the employer debt can be triggered in a number of circumstances, including where an employer ceases to employ any active members in the scheme.

Some smaller employers say they find the employer debt regime overly onerous, and that it risks driving some employers out of business unnecessarily. In particular, some owners of unincorporated businesses (such as plumbers) who could be personally liable for the debt – felt the

[107] Ibid, p64
[108] DWP, Protecting Defined Benefit Pension Schemes, Cm 9591, March 2018

consequences could be catastrophic.[109] In view of this, DWP launched a consultation in 2015 asking for views on options including: amending the provisions so that ceasing to employ active members did not trigger the debt; and changing the way the employer debt is calculated.[110] In April 2017, it consulted on draft regulations which would allow employers to defer the requirement payment of an employer debt, subject to the condition that the employer retained all their previous responsibilities to the scheme. As a safeguard, scheme trustees would need to be satisfied that the proposed arrangement would not be detrimental to the scheme or its members. Regulations to introduce a deferred debt arrangement came into force on 6 April 2018 (SI 2018/237).

The Plumbing Pension Scheme is currently consulting on the methodology it should adopt for calculating the s75 employer debt. Once it has done this, it will begin issuing s75 employer debt notices to businesses that have had a trigger event. It has produced some Employer Consultation 2018 – FAQs.

[109] DWP, Employer debt in non-associated multi-employer defined benefit pension schemes, March 2015
[110] Ibid

5. Survivors' pensions

Schemes used to contract out of the additional State Pension are subject to certain legal requirement to provide survivors' benefits for widow(ers) and civil partners.[111]

Beyond this, pension tax legislation enables survivors' pension benefits to be paid to a 'dependant', i.e:

- a person married to or a civil partner of the member;
- a child of the member who has not reached the age of 23 or was dependant on the member at the time of death because of physical or mental impairment; or
- an unmarried partner who was financially (inter)dependent on the member.[112]

Within this framework, what payments will actually be made will depend on scheme rules.

5.1 Why don't some schemes provide survivors' pensions for cohabitees?

Until reforms introduced in the first decade of the 21st century, public service pension scheme did not provide survivor pensions for unmarried partners. This was in contrast to private sector schemes, where the trustees were able to exercise discretion to provide such benefits. However, changes in lifestyles had led to pressure for schemes to be modernised.[113]

For more information see

Library Briefing Paper SN-06348 Occupational pensions: survivors' benefits for cohabitants (March 2017).

In its 1998 Pensions Green Paper, *A new contract for welfare: partnership in pensions*, the Labour Government conceded that the public sector lagged behind the private in terms of provision of survivors' benefits for unmarried partners. It would be prepared to consider change if the membership were prepared to meet the additional costs.[114]

The way in which the reforms were introduced varied by scheme. However, the scheme member generally either had to have service after the date of the reform (as in the Teachers' and NHS schemes) or to opt to transfer to the new, post-reform scheme (as in the schemes for the uniformed services). This is in line with the long-standing principle that improvements to public service pension schemes are not applied retrospectively, largely on grounds of cost.[115] For details of how the reforms were introduced in individual schemes, see SN-06348.

[111] State Earnings Related Pension Scheme from 1978 to April 2002; and the State Second Pension from April 2002 onwards; For more detail, see SN 4822 Contracting out of the State Second Pension

[112] *FA 2004,* Sch 28 (15); Pension Tax Manual - glossary

[113] NAO, The impact of the 2007-08 changes to public sector pensions, HC 662, 8 December 2010

[114] DSS, A new contract for welfare: partnership in pensions, December 1998, Cm 4179, chapter 8

[115] HC Deb 23 May 1991 1124-6

Can a nomination be required?

When pensions for unmarried partners were introduced, most public service schemes required a nomination to have been made. Over time, these rules were removed from some schemes but remain in the schemes for civil servants, police, NHS staff and teachers.

In February 2017, on an application by Denise Brewster for judicial review relating to the local government scheme in Northern Ireland, the Supreme Court held that the nomination requirement should be disapplied and that she should be entitled to a survivor's pension under the scheme.[116] Ms Brewster' lawyers expected there to be a knock-on effect on public service schemes with similar provisions:

> The rule which the Supreme Court has declared was unlawful is found in most of the UK's public sector pension schemes of which there are around 12 million members. This includes the NHS, teachers and civil service schemes. It is also found in many defined benefit pension schemes in the private sector.
>
> Although the Supreme Court has only declared the Northern Ireland local government scheme to be unlawful, the reasoning behind the Court's decision means that the identical provisions found in many other public sector schemes are likely to be unenforceable.[117]

In October 2017, the Government said HM Treasury had written to public sector schemes in April 2017 to make it clear that: "cases like that of Ms Brewster should be dealt with in line with the UK Supreme Court's decision. Cases previously refused solely because of a lack of nomination form should be reconsidered and schemes should pay survivor benefits from the date of the member's death in eligible cases, regardless of when a claim is made."[118]

5.2 Why are survivors' pensions sometimes withdrawn on remarriage?

Until the mid-2000s, most public service pension schemes provided for a surviving partner's pension to be lost on remarriage. The rationale was that widow(er)'s pensions were intended to provide a measure of compensation for the loss of financial support the beneficiary had received from their late husband or wife. So, if the beneficiary remarried or cohabited, the expectation was that they would look to their new spouse or partner for financial support.[119]

Reforms to public service pensions in the mid-2000s included changes to survivors' partners to reflect changes in social patterns of behaviour. They included the introduction of pensions for civil partners and nominated unmarried partners and the removal of rules ending

For more information see

Library Briefing Paper SN-07109 Lifetime survivors pensions from public service pension schemes (March 2017)

And SN-0568 War widows' pensions (November 2016).

[116] Case ref: [2017] UKSC 8
[117] Supreme Court gives woman right to late partners' LGPS pension, 8 February 2017; Supreme Court press release 8 February 2017
[118] PQ 105675, 16 October 2017
[119] HC Deb 27 February 2006 cc 100-101

pensions on remarriage.[120] However, the new rules were not generally changed with retrospective effect. This reflected a long-standing policy applied by successive governments that improvements to public service schemes should be implemented from a current date for future service only because to do otherwise would make any worthwhile improvements unaffordable.[121]

The Coalition Government made an exception for two groups, in recognition of their particular circumstances:

- All survivors of members of the armed forces in receipt of a pension on 1 April 2015 would be entitled to keep it for life if they decided to remarry, cohabit or form a civil partnership after that date. This was in recognition of the particular challenges they face building up an occupational pension in their own right.[122] However, this change did not extend to those who had already surrendered a pension on remarriage or cohabitation.[123]
- Survivors of police officers and firefighters who died on duty.[124] For the police scheme, this meant that surviving widow(er)s, and civil partners, who remarried, formed a civil partnership or cohabitation on or after 1 April 2015 (provided they were in receipt of their survivor benefits immediately before that date, or those benefits were reinstated after that date and prior to their remarriage etc. those benefits included a special or augmented award).[125]

There are ongoing campaigns for widows not covered by these announcements. The War Widow's Association is campaigning for pensions to be re-instated to war widows who remarried between 1973 and 2005.[126]

The National Association of Retired Police Officers (NARPO) is calling for survivors of police officers to be treated equally across the UK, pointing to wider coverage of lifetime survivors' pensions elsewhere:[127]

- The Northern Ireland Executive provided for all survivors of members of the RUC pension scheme to retain their pensions for life from July 2014. It has also provided for reinstatement of pensions already withdrawn;[128]

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120 For more detail, see Library Note SN 6348 Occupational pensions: survivors benefits for cohabitants (June 2012) and SN 3035 Pensions: civil partnerships and same sex marriages (July 2014)
121 HC Deb, 1 February 2008, c629-30; HL Deb 21 January 2014 c572-4; See also DEP2014-0078
122 MoD, Pensions for life for surviving spouses and civil partners of personnel, 8 November 2014; SI 2015/208
123 MoD, Pensions for life for surviving spouses and civil partners of personnel, 8 November 2014; PQ 212562, 18 November 2014
124 HC Deb 18 March 2015 c774;
125 SI 2015/2057 – Explanatory memorandum, para 2.2
126 Reinstatement of the War Widows' Pension (10 June 2016); For more detail, see SN-00568 War widows' pensions (November 2016)
127 NARPO, Widows' pensions for life petition
128 Northern Ireland Executive press release, 21 March 2014; *Public Service Pension Act (NI) 2014* (ss30-1); *Police Pensions Regulations Northern Ireland (SI 2015/113)*, Sch 5

- The Scottish Government provided for all police survivors' pensions to be payable for life from October 2015, including reinstating pensions already withdrawn.[129]

5.3 What happened to the review of survivors' benefits?

For more information see

Library briefing paper SN-03035 Pensions: civil partnerships and same sex marriages (Feb 2017).

The *Marriage (Same Sex Couples) Act 2013* enabled same-sex couples to marry. For the purposes of State Pension and occupational pension rights, the Act provided for same-sex married couples to be treated in the same way as civil partners.[130]

When the legislation was before Parliament, a particular issue of debate was what this meant in terms of rights to survivors' benefits, particularly those in occupational pension schemes that were not contracted-out of the State Second Pension. This was because an exception in the *Equality Act 2010* meant that such schemes are only required to provide survivors' benefits in respect of service from 5 December 2005.[131]

When the legislation was before Parliament, Opposition MPs and Peers tabled amendments proposing that the exception in the *Equality Act* should be lifted. The Government amended the Bill at Third Reading to require a review of survivor benefits for different groups in occupational pension schemes and the costs and other effects of eliminating differences.[132]

The review of survivor benefits in occupational pension schemes was published in June 2014. In November 2016, the Government said it would respond in due course.[133]

On 6 October 2015, the Court of Appeal rejected a legal challenge by John Walker to secure equal survivors benefits for his husband from his contracted-in occupational scheme.[134] However, on 12 July 2017, the Supreme Court found in his favour and made a declaration that:

> i) paragraph 18 of Schedule 9 of the Equality Act 2010 is incompatible with EU law and must be disapplied, and
>
> ii) Mr Walker's husband is entitled on his death to a spouse's pension, provided that they remain married. (Press summary, Walker v Innospec, 12 July 2017).

Following the Supreme Court judgment, the NASUWT called on the Government to end this different in treatment and:

> 1. Urgently revise the TPS regulations so all survivor benefits are based on the deceased's pensionable service since 1972, regardless of their sexuality.

[129] SPPA, Police and firefighters' survivors' pensions, 15 October 2015
[130] Equal marriage: the Government's response, December 2012, para 9.16-22
[131] DWP, Review of Survivor Benefits in Occupational Pension Schemes, June 2015, para 2.18
[132] Section 16
[133] PQ 50428, 3 November 2016; PQ 16179, 23 November 2015
[134] [2015] EWCA Civ 1000, 6 October 2015

> 2. Establish and proactively publicise procedures by which those potentially discriminated against, can have their entitlement recalculated and retrospectively claim what they are owed.[135]

In January 2018 the Government said HM Treasury would provide instructions for departments on the implication of the Walker case:

> Nick Gibb: Pensions for widows were introduced in 1972 to most public sector pension schemes, including the Teachers' Pension Scheme (TPS). Surviving partner pensions were extended in 1988 to cover widowers, in 2005 for civil partners and in 2014 for same sex marriage spouses. The Government has made it clear that it believes that it is right that married same sex couples and civil partners should be treated equally to married opposite sex couples. That is why TPS legislation ensures that survivor benefits, accrued since 1988, are built up equally for all legal relationships.
>
> The Supreme Court Case of Walker v Innospec, has confirmed that the surviving partner of a pension scheme member must not be treated differently based on their sexual orientation. HM Treasury is responsible for policy in this area and will soon provide instructions to departments on the implication of the Walker case. When the full extent of this ruling is understood, we will take all steps necessary to ensure the TPS complies.[136]

[135] NASUWT, Discriminatory Teachers' Pension Scheme needs urgent review
[136] PQ 121317 15 January 2018

6. Problems with pensions

6.1 How are disputes dealt with?

The process for challenging decisions on occupational pensions is first through the scheme's internal resolution procedure and then to the Pensions Ombudsman.

Occupational pension schemes and trust-based stakeholder pension schemes are required to a disputes resolution procedures in place. This means they must have arrangements to enable a person with an interest in the scheme to make an application to them for a decision on a matter in dispute. Disputes can be about administration or matters of fact or law.[137]

Disputes procedures can have one or two stages. Pension scheme trustees can decide the detail of how their procedure should work, within the legal framework. The Pensions Regulator has produced two Codes of Practice to explain their responsibilities.[138]

For more information see

Pensions Ombudsman, Complain about a pension? How we can help.

Pensions Advisory Service – Pension problems

6.2 What is the role of the Pensions Ombudsman?

If an individual is still unhappy, they can then complain to the Pensions Ombudsman (PO).

The PO can deal with complaints of maladministration and disputes of fact or law concerning personal and occupational pensions.[139]

Its website explains the legal framework and how its process works. For example, it cannot consider a complaint if:

- you have not given the people you think are at fault a proper chance to put things right
- your complaint is about something the law says we can't look at
- your complaint has been (or is being) considered by a tribunal, court or another Ombudsman (our process/deciding if we can investigate/step 2).

Decisions of the PO are final and binding, subject to their being successfully appealed on a point of law to a court.[140] Unless successfully appealed against, a determination can be enforced through the courts.

Previous determinations can be searched on the PO website.

[137] *Pensions Act 1995*, s50, 50A and 50B; Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008 (SI 2008/349))
[138] TPR, Internal dispute resolution in CoP 14 (April 2015); CoP 11 Dispute resolution – reasonable periods (July 2008)
[139] *Pension Schemes Act 1993*, Part X 1993, s146 (1) (a) and (c)); SI 1996/2475, regs 2-4
[140] Pension Schemes Act 1993, s151; appealing a determination on its website

6.3 What help is available?

The Pensions Advisory Service is available to help people with disputes. It is funded by DWP and its service is provided by volunteers, typically drawn from the pensions industry with many years' experience. The number for its telephone helpline is: 0300 123 1047

TPAS does not have any statutory powers but can help bring about a resolution through persuasion and reconciliation: -see TPAS website making a complaint. It will advise on whether an individual has a sustainable case for a complaint to the Pensions Ombudsman and, if so, help them with that - see TPAS and the Pensions Ombudsman.

The Government is currently legislating in the *Financial Guidance and Claims Bill 2017-19* to combine TPAS, Pension Wise and the Money Advice Service into a single financial guidance body. The new body is not expected to be operational before autumn 2018. For more detail, see Library Briefing Paper CBP-8033 Financial Guidance and Claims Bill (April 2018).

6.4 How can people find a lost pension?

There is a Pension Tracing Service to help people find lost pensions. Gov.UK explains:

> Use this service to find contact details for:
>
> - your own workplace or personal pension scheme
> - someone else's scheme if you have their permission
>
> This service can help you find a lost pension.
>
> The online service is also available in Welsh (Cymraeg).
>
> You need the name of an employer or a pension provider to use the service. The service won't tell you whether you have a pension, or what its value is.
>
> Start now
>
> Before you start
>
> You can also request contact details from the Pension Tracing Service by phone or by post.
>
> **Pension Tracing Service**
> Telephone: 0345 6002 537
> From outside the UK: +44 (0)191 215 4491
> Textphone: 0345 3000 169
> Monday to Friday, 8am to 6pm
> Find out about call charges
>
> The Pension Service 9
> Mail Handling Site A
> Wolverhampton
> WV98 1LU

6.5 What about scams?

In a 2015 report, the Work and Pensions Committee recommended that the Government redouble its efforts on scams:

> 25. ***We recommend the Government urgently redouble its publicity efforts around pension scams. We further recommend the FCA tighten its scam awareness and reporting requirements for regulated firms. Scams are a tragedy for individual households and undermine trust in the law-abiding and responsible majority in the retirement finance sector. Scammers must be stopped. We will monitor action on pension scamming closely over the course of the Parliament.***[141]

In is response, the Government set out its approach to the issue:

> 2.8 The government takes the issue of pension scams very seriously and works closely with the National Crime Agency (NCA), regulators, industry and others via Project Bloom, the multi-agency task force led by the NCA, to tackle pension scams and understand any emerging threats. Project Bloom ensures a co-ordinated approach to disrupting scams by ensuring that the key departments and agencies that deal with scams are joined up and communicating with one another.
>
> 2.9 The government's anti-scam strategy is also focused on improving consumer awareness, to prevent people falling victim to scams in the first place. Raising awareness of the warning signs and sources of reputable guidance and advice is a useful defence against the lure of scammers who often appear convincing.
>
> 2.10 The regulators, the FCA and The Pensions Regulator (TPR), are both running consumer awareness campaigns to mitigate the risk of pension scams. The FCA run a campaign around investment scams called ScamSmart, and provide an online tool that allows consumers to assess the likely validity of a potential investment. The FCA also signposts consumers to reputable sources of advice. TPR runs the Scorpion campaign, which includes videos, action packs, leaflets and guidance, to help raise awareness amongst trustees, business advisers and individuals of the threats posed by scams. These campaigns, with core messages such as avoiding cold-callers, are ensuring that consumers accessing the freedoms have the information they need to protect themselves from scams.
>
> 2.11 Pension Wise also specifically alerts its users to potential scams during appointments and the Pension Wise website and summary document that users receive following their appointment contain guidance on avoiding scams. Pension Wise also makes it clear through advertising and their website that no cold calls are ever made by its guiders.
>
> 2.12 The government agrees with the committee that scammers must be stopped and will consider what steps it can take to ensure that the wider impact of the pension reforms on scams is fully understood. For example, at present those who fall victim to scams after having accessed their pension under the freedoms are classified as victims of investment fraud, rather than pension fraud. The government will therefore work with Action Fraud and

Information and advice…

FCA website – pensions and retirement income

The Pensions Regulator -Scams

Pension Wise – how to avoid a pension scam

[141] Work and Pensions Committee, Pension freedom guidance and advice, HC 371, October 2015

> the National Fraud Intelligence Bureau, through Project Bloom, to consider how to ensure reported data on pension scams is clearer, and how best to drive forward this agenda, ensuring that there is an ongoing focus on the pension freedoms in 2016.
>
> 2.13 The government, the regulators and the industry are there to help, but people need to be on their guard too against cold callers, offers of unrealistic investment returns, promises of tax loopholes or other dubious advice linked to their pension pot or cash lump sums. As with any important financial decision, people should seek reputable guidance and independent financial advice to support them to make a decision on how to use their pension savings when they come to retire.[142]

In response to a Westminster Hall debate on 8 September 2016, Home Office Minister Sarah Newton outlined the Government's approach to tackling nuisance calls and improving enforcement.[143]

In December 2016, the Government published a consultation, asking for views on a package of measures aimed at tacking three different areas of pension scams:

- a cold calling ban will cut off a key source of pension scams whilst also sending a clear message to consumers that they should hang-up if they are cold called about their pension
- current legislation gives pension schemes limited scope to refuse a transfer to a scheme which looks like a scam, even if they have legitimate concerns as to the safety of a member's savings. We are consulting on clarifying the law so that firms can block pension transfers based on clear objective criteria
- single-member occupation pension schemes currently require no registration with The Pensions Regulator, and can be set up using a dormant company as the sponsoring employer. They are therefore an easy way for fraudsters to register a pension scheme with HMRC. We are consulting on making it a requirement that only active companies can register a pension scheme[144]

Initially, the Government did not propose to include a ban on pension cold-calling in the *Financial Guidance and Claims Bill 2017/18*.[145] However, a successful Opposition amendment having been made to the Bill in the House of Lords, the Government introduced its own amendment providing for regulations to be made banning unsolicited marketing relation to pensions.[146]

142 DWP, Pension freedom guidance and advice: government response to the Work and Pensions Committee's first report of session 2015 to 2016, Cm 9183, 17 December 2015
143 HC Deb 8 September 2016 [Sarah Newton]
144 Gov.UK, Pension scams: consultation
145 HL Deb 5 July 2017 c944
146 See section 3.4 of Library Briefing paper CBP 8033 (April 2018)

7. Pension Protection Fund

The Pension Protection Fund (PPF) was set up under the *Pensions Act 2004* to pay compensation to members of eligible defined benefit pension schemes, when there is a qualifying insolvency event in relation to the employer and where there are insufficient assets in the pension scheme to cover Pension Protection Fund levels of compensation - PPF website.

For more information see

Library Briefing Paper SN-03917 Overview of the Pension Protection Fund (Jan 2018)

PPF leaflet – What is the PPF and what do we do?

Member FAQs

Trustee Good Practice Guide

7.1 What happens on entering the PPF?

The trigger for a scheme entering a PPF assessment period is generally that an insolvency practitioner notifies the PPF that "qualifying insolvency event" has occurred in relation to the employer of an eligible scheme.[147]

The purpose of an assessment period is to determine whether the PPF should accept responsibility for the scheme. The PPF explains:

> During the assessment period, and in order to determine whether it should assume responsibility for an eligible pension scheme, the Pension Protection Fund will look to establish answers to two key questions:
>
> - can the pension scheme be rescued?
> - can the pension scheme afford to secure benefits which are at least equal to the Pension Protection Fund protected liabilities if it assumed responsibility for the pension scheme?
>
> If the answer to either of these questions is 'yes', the Pension Protection Fund will cease to be involved with the pension scheme and the pension scheme will either continue or wind-up outside of the Pension Protection Fund.
>
> However, if the answer to both is 'no', and the relevant processes and procedures have been completed, the Pension Protection Fund will assume responsibility for the pension scheme.[148]

During an assessment period, trustees remain responsible for paying pensions, which must be paid at PPF compensation levels (Ibid).

The PPF website has lists of:

- Schemes in an assessment period
- Schemes that have transferred to the PPF at the end of the assessment period; and
- Schemes that have not transferred (usually because the scheme has been rescued or is sufficiently funded to pay benefits above PPF compensation levels).

[147] *Pensions Act 2004*, s120-1
[148] PPF website – trustee guidance – overview of the assessment period

7.2 What compensation does it provide?

In broad terms, the PPF provides two levels of compensation: 100% for people who have reached pension age or retired on ill-health grounds before their scheme enters the PPF and 90% subject to a cap in other circumstances. The PPF website explains:

If You Have Retired

You will have been receiving a pension from your scheme before your former employer went bust.

If you were beyond the scheme's normal retirement age when your employer went bust, the Pension Protection Fund will generally pay 100 per cent level of compensation, which means we will generally pay you the same amount in compensation when your scheme enters the PPF.

Your payments relating to pensionable service from 5 April 1997 will then rise in line with inflation each year, subject to a maximum of 2.5 per cent a year. Payments relating to service before that date will not increase.

This information may also apply if you retired through ill-health or if you are receiving a pension in relation to someone who has died.

If You Retired Early

If you retired early and had not reached your scheme's normal pension age when your employer went bust, then you will generally receive 90 per cent level of compensation based on what your pension was worth at the time. The annual compensation you will receive is capped at a certain level.

The cap at age 65 is, from 1 April 2018, **£39,006.18** (this equates to **£35,105.56** when the 90 per cent level is applied) per year. This is set by DWP.

From 6 April 2017, the Long Service Cap came into effect for members who have 21 or more years' service in their scheme. For these members the cap is increased by three per cent for each full year of pensionable service above 20 years, up to a maximum of double the standard cap.

The earlier you retired, the lower the annual cap is set, to compensate for the longer time you will be receiving payments.

You can view a full list of the compensation caps for 2018/19 at each age here.

You can view a full list of the **compensation caps for 2017/18 at each age here**.

Once compensation is being paid, then payments relating to pensionable service from 5 April 1997 will rise in line with inflation each year, subject to a maximum of 2.5 per cent. Payments relating to service before that date will not increase.

If You Have Yet to Retire

When you reach your scheme's normal retirement age, we will pay you compensation based on the 90 per cent level subject to a cap, as described above.

Until you reach normal retirement age and your compensation is put in payment, your compensation entitlement will rise in line

For more information see

PPF website - compensation

PPF website – all member FAQs

> with inflation each year, subject to a cap. See our FAQ about revaluation of compensation while you are a deferred member.
>
> From 30 April 2013, you may be able to take your compensation at a later age than your normal retirement age. If you defer taking your compensation, it will receive an actuarial adjustment to reflect the period it is postponed.
>
> Once compensation is being paid, then payments relating to pensionable service from 5 April 1997 will rise in line with inflation each year, subject to a maximum of 2.5 per cent. Payments relating to service before that date will not increase.
>
> **If You Die**
>
> After your death, we will pay compensation to any children you may have who are under 18 years old, or under 23 if they are in full-time education or have a disability.
>
> We will also generally pay compensation to any legal spouse, civil partner or other relevant partner. However, individual circumstances may differ depending on the rules of the former pension scheme.
>
> Please read our leaflet on **Compensation Payments for Survivors** on our PPF members' site**.**
>
> **If You Are Divorced**
>
> A member's compensation can be shared with their ex-spouse or former civil partner if the court makes a pension compensation sharing order. Please read our **Divorce Booklet** on the PPF members' site for more information. The charges for dealing with a Pension Sharing Order may be different, so you should contact the PPF for more details on these.[149]

Why is there a cap on compensation?

As explained above, for people below pension age when the scheme enters a PPF assessment period, the PPF will pay a 90% level of compensation, subject to a cap.

The rationale is to limit PPF expenditure and to provide an incentive for higher earners, who may have influence over the management of the scheme, to ensure it remains out of the PPF if possible.[150]

When the legislation was before Parliament the then Pensions Minister, the late Malcolm Wicks, said:

> The PPF is a unique institution [...] It is a compensation scheme to ensure people that their pension rights will be safeguarded. Exactly what their pension rights are, and whether they are high enough and so on, is something that we are discussing.[...]
>
> Let me explain why we do not favour paying everyone 100 per cent. In an ideal world we would have liked to pay everybody exactly what they were expecting from their scheme, but sadly we cannot do that. In the real world, employers have to bear the cost of the PPF and there are moral hazard issues, which we would be foolish to ignore […]
>
> In terms of the famous cliff edge, I can see the letters coming in now—and I understand why—from people close to retirement

149 PPF website/compensation
150 Explanatory Memorandum to SI 2012/528, para 7.3

> age and to the 100 per cent. I hope that when they write those letters to the then Minister with responsibility for pensions they will reflect that if we had not got the PPF the figure might have been 30 per cent. That is the alternative. I hope that we shall all keep reminding ourselves of that. We might think that 90 per cent. or 100 per cent is right, but both of them are better than 30 per cent. [151]

In January 2014, the then Pensions Minister Steve Webb explained that it would be unaffordable for the PPF to offer full compensation to everyone:

> […] its aim is to pay a meaningful level of compensation without placing an unaffordable financial burden on the continuing pension schemes which are responsible for paying the PPF levy.[152]

Why no annual increase on pre-1997 rights?

The PPF only provides indexation (in line with the Consumer Prices Index capped at 2.5%) on rights accrued from 6 April 1997.[153]

This is intended to reflect the fact that, before April 1997, there was no general obligation on Defined Benefit schemes to increase pensions in payment (although there was a requirement on schemes that were contracted out of SERPS to provide indexation capped at 3% on rights accrued from 1988).[154]

The Labour Government that introduced the PPF said it should not provide more generous benefits than pension schemes themselves:

> The PPF is being set up to provide adequate protection for individuals who face losing some or all of their pension entitlements, not to provide a level of compensation that would attempt to match the level of scheme benefits, or even offer more. Providing indexation increases prior to 1997 could result in some members receiving a level of PPF compensation in excess of the level that would have been provided from their scheme. However, I stress that the PPF seeks to provide a consistent and meaningful level of compensation for all members eligible for fund assistance. Restricting the amount of indexation paid on PPF compensation would ensure that the PPF could do that, by being better able to predict its liabilities and plan ahead financially.[155]

Providing more generous indexation arrangements would also add to the costs of the PPF.[156]

Wasn't the Government going to increase the cap for people with long service?

As stated above, if an individual was below the scheme's normal pension age at the assessment date, PPF compensation is generally paid at 90%, subject to a cap. The cap at age 65 is currently £38,505.61

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151 Pensions Bill Committee Deb, 30 March 2005, c477-87
152 HC Deb 6 January 2014 c42-3W
153 *Pensions Act 2004*, Sch 7, para 28; PPF FAQ answer
154 *Pensions Act 1995*, s51
155 SC Deb, 30 March 2004, c512
156 Ibid c513

(this equates to £34,655.05 when the 90 per cent level is applied) per year – see PPF website - compensation.

On 1 July 2013, the then Pensions Minister Steve Webb, announced that he change the rules to enable those with service of more than 20 years with a firm to get an enhanced level of PPF compensation. He said the cap – which was intended partly as a cost-control measure and partly to prevent moral hazard – had a disproportionate effect on scheme members with long service.[157]

This was legislated for in the *Pensions Act 2014*, s50. Following consultation, regulations came into force on 6 April 2017.[158] The PPF explains:

> From 6 April 2017, the Long Service Cap came into effect for members who have 21 or more years' service in their scheme. For these members the cap is increased by three per cent for each full year of pensionable service above 20 years, up to a maximum of double the standard cap.[159]

7.3 How is the PPF funded?

The PPF is funded by a combination of:

- The assets transferred from schemes for which it has assumed responsibility;
- Recoveries of money, and other assets, from those schemes' insolvent employers;
- An annual levy raised from eligible pension schemes; and
- Investment returns on assets held by the PPF.[160]

The pension protection levy is comprised of a risk-based levy (required by law to be at least 80 per cent of the total) and a scheme-based levy, making up the remainder.[161] The PPF explains that:

> It is payable by all UK defined benefit (final salary) pension schemes whose members would be eligible for PPF compensation if the scheme employer(s) becomes insolvent and there are not enough assets remaining in the scheme to pay benefits at PPF levels of compensation. In some circumstances, though, some schemes may qualify for a levy waiver.
>
> The pension protection levy is divided into two parts:
>
> - The **scheme-based levy (SBL)** is based on a scheme's liabilities to members on a section 179 basis. This cannot make up more than 20 per cent of the total we aim to collect.

157 HC Deb 1 July 2013 c604
158 *Pensions Act 2014 (Pension Protection Fund: Increased Compensation Cap for Long Service) (Pension Compensation Sharing on Divorce) (Transitional Provision) Order 2017 (SI 2017/301)*.
159 PPF website/compensation
160 *Pensions Act 2004*, s177-181
161 *PA 2004*, s175; EM to SI 2016/82, para 7.5).

> - The **risk-based levy** takes account of the risk of a scheme's sponsoring employer becoming insolvent (insolvency risk) and the amount of compensation that might then be payable by the PPF (underfunding risk).
>
> It makes up at least 90 per cent of the total we aim to collect, though some schemes with very low levels of risk may not have to pay the risk-based levy. Schemes can reduce the risk-based levy by certifying contingent assets and deficit reduction contributions. The risk-based levy also reflects asset-backed contributions (ABCs) certified by schemes.[162]

As this explains, there are ways in which schemes can seek to reduce the risk-based levy – which accounts for at least 90 per cent of the total the PPF aims to collect.[163]

There is also a more technical explanation of how the levy works. An FAQ explains that there is a levy waiver for schemes that pose very little risk to the PPF.

There is a process for challenging decisions on the levy. The PPF explains that scheme trustees, Scheme trustees, employers, guarantors and duly authorised representatives are entitled to challenge either the PPF or Experian's actions or decisions in certain circumstances. Details of what can be challenged and how is on the PPF website – Reviews and Appeals.

How well-funded is it?

The PPF has a target to become self-sufficient by 2030. The rationale is that that there will come a time when there will be so few remaining schemes liable to pay it that the PPF levy will no longer be an effective tool for managing its funding position.[164]

The PPF's target for self-sufficiency is set as a percentage margin over liabilities (10 per cent) on the basis that this is sufficient in 90% of modelled scenarios to provide compensation payments in full from 2030 onwards. It thinks this strikes the right balance between member protection and the costs to levy payers. In the event of the risk that assets are insufficient to meet liabilities, the PPF Board has two main levers:

> The first of these is to change the levy collected. The second is to alter its investment strategy. The Board also has the power to restrict inflation-linked increases to compensation or to ask government to reduce the level of compensation payments, however it remains the case that these actions would only be considered in exceptional circumstances. [165]

The PPF conducts a regular assessments of the risk facing it – including insolvency rates in different industries and the state of the economy.[166]

As at 31 March 2017, the had assets of £28.7 billion. Its funding ratio was 121.6 per cent, up from 116.3 per cent the previous year. It said:

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162 PPF website/about the levy
163 PPF confirms levy determination for 2016/17
164 PPF, Long-Term Funding Strategy Update, July 2015
165 Ibid
166 Ibid, p11-13

> Whilst this might seem a comfortable margin, it is important to remember that our reserves in excess of our current liabilities, at £6.1 billion, remain a small fraction of the total deficit of £226 billion at the end of March 2017...for the schemes we protect.[167]

This meant it continued to progress towards its funding objective, which is to be "self-sufficient" by 2030, by which time it expects new claims to be low in relation to its liabilities.[168]

167 PPF Annual Report 2016/17, p12
168 Ibid

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