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White Paper published

The Government has published its much anticipated White Paper on protecting defined benefit (DB) schemes.

The Government has repeated the view which it expressed in last year's Green Paper that overall the system governing DB schemes is working well. It has, however, confirmed that it will be taking forward a number of proposals which will make some significant changes to key aspects of the current DB landscape, including the powers of the Pensions Regulator, the scheme funding regime, scheme governance and scheme consolidation. The Government has dropped some of the more controversial options which were being considered, including the introduction of a mandatory clearance regime and a statutory override to facilitate RPI/CPI switches.

Many of the proposals which will be progressed will require further consultation and primary legislation and we are unlikely to see the majority of the changes implemented before 2020. It should be noted, though, that the Government has indicated that one of its key proposals - the introduction of a punitive fine regime to bolster the Pensions Regulator's current anti-avoidance powers - is to be introduced retrospectively from the date of the White Paper.

In the short term, scheme sponsors and trustees should take note of the proposals and should maintain a watching brief as the proposals develop further. The retrospective introduction of punitive fines will cause unwelcome uncertainty for corporates who currently sponsor, or who are considering acquiring a business with, a DB scheme.

Some key points from the paper are covered further below:

1. Tougher regulation

The Government has said that it will legislate to ensure that the Pensions Regulator can take tougher action against those who put DB pension schemes at risk and to support the Pensions Regulator in its TPR Future programme. Key proposals include:

- the introduction of "highly" punitive fines to sit alongside the current anti-avoidance regime

- details are still to be developed but the objective is for the level of fine to act as a deterrent to any activities which may put DB schemes at risk
- a new criminal offence targeting company directors who have committed "*wilful or grossly reckless*" behaviour in relation to a DB scheme
- new information gathering powers for the Pensions Regulator, including the power to inspect records, electronic devices and documents at premises and the power to compel individuals to attend interview
- the Government will not pursue the introduction of a mandatory clearance regime but will take steps to strengthen the current voluntary regime, as part of which it will review the current notifiable events regime and clearance guidance as well as introducing a new requirement for sponsors to make a statement of intent, in consultation with trustees, prior to any "*relevant business transaction*"

2. Changes to scheme funding and governance

The Pensions Regulator will consult on clarified funding standards through a revised DB Funding Code of Practice. Once funding standards have been clarified, legislation will be introduced to require trustees and sponsoring employers to comply with some or all of the clearer funding standards.

A new requirement for DB schemes to appoint a chair of trustees and submit a chair's statement (to be submitted together with the triennial valuation) will be introduced.

3. Further encouragement for scheme consolidation

The Government will pursue a number of proposals designed to encourage and promote scheme consolidation. This is to be done both within the existing legal framework as well as within a new legal framework, which is to be developed in order to allow new forms of commercial consolidation vehicles to operate.

4. Other nettles which have not been grasped

Options for reform which were considered in the Green Paper which the Government has confirmed will not be pursued for the moment include:

- a statutory override to facilitate RPI/CPI switches - the Government has said that it will "*continue to monitor developments in the use of inflation indices across Government, in pensions, and more widely*"
- changes to the regulated apportionment process - the Government has said that it will look at whether it is possible, without increasing risk to scheme members, to make improvements to the process allowing the apportionment of section 75 debts
- changes to the measure of calculation for section 75 debts
- greater scrutiny of dividend payments (note though that this is being reviewed as part of wider governance reforms).

The full paper can be viewed [here](#).

We will be discussing the White Paper at our Breakfast Briefing on 19 April.

Automatic enrolment changes coming into force in April

A number of changes in relation to automatic enrolment will come into effect in April. Key changes for employers to be aware of are:

- minimum employer contributions to DC arrangements will increase to 2% (from the current 1%) and total minimum contributions will increase to 5% (from the current 3%). Different percentages apply where a scheme has self-certified under one of the three "sets" of alternative DC requirements. ***If they have not already done so, employers should check that their contribution structure will be compliant after the change.*** Further detail can be found in our [2018 Pensions Legal Planner](#)
- the upper end of the qualifying earnings band will increase to £46,350 and the lower end of the band will increase to £6,032 for the 2018/2019 tax year, meaning that qualifying earnings will continue to be aligned with the NIC lower and upper earnings limits
- ***employers will be allowed to contractually enrol employees into NEST*** and NEST will also accept individuals who have been transferred from other pension arrangements as

part of a bulk transfer without consent.

Lifetime Allowance increase

The standard lifetime allowance is increasing from £1 million to £1,030,000 for the 2018/2019 tax year.

Finance Bill 2018 receives Royal Assent

The Finance Bill received Royal Assent on 15th March, becoming the Finance Act 2018. The main pension provisions of the Act will give HMRC extended powers to register or de-register a pension scheme. Specifically, these powers can be exercised where the sponsoring employer of an occupational pension scheme has been dormant over a particular period or where the scheme is an unauthorised master trust. The key objective of these changes is to prevent scam vehicles being registered.

Further information on the Finance Act, can be accessed [here](#).

Regulator statement on managing service providers

The Pensions Regulator has released a [Statement](#) on its expectations of good practice by trustees and scheme managers on the management of service providers. The Regulator sets out its requirements for the controls to be implemented in respect of third party providers to ensure schemes are well run and that there is sufficient oversight of tasks delegated to such third parties.

The Statement is also concerned as to how schemes plan for events which could have a significant impact on the pension plan concerned. Specific reference is made to ensuring a business continuity plan is in place and that there is an understanding of providers' arrangements for business continuity too.

Anti-money laundering update

As mentioned in our [2018 Pensions Legal Planner](#), if trustees are liable to pay relevant UK taxes such as income tax, capital gains tax and stamp duty reserve tax in any tax year, they must, in principle, now register with HMRC via the new online Trust Registration Service ("TRS") and provide information to HMRC.

HMRC has now announced the administrative penalties for late filing on the TRS. A fixed penalty will be imposed to reflect the period of delay. The penalties are as follows:

- registration made up to three months after the due date – £100 penalty
- registration made three to six months after the due date – £200 penalty
- registration more than six months late – either 5% of the tax liability or £300 penalty, whichever is the greater sum.

HMRC has noted that a penalty will not be imposed automatically and will not be payable if HMRC is satisfied that reasonable steps to comply with the regulations have been taken.

Update on CMA investment consultants market investigation [Last covered in October 2017 Pensions Update - also mentioned in 2018 Pensions Legal Planner]

As mentioned originally in our [October 2017 Pensions Update](#) and the [2018 Pensions Legal Planner](#), the Competition and Markets Authority ("CMA") has been carrying out a market investigation into investment consultants and fiduciary managers following a Market Investigation Reference by the FCA.

A progress update has been published in respect of the CMA's investigation. Specifically, the CMA has noted that it has so far undertaken the following activities:

- published an Issues Statement
- held site visits to large investment consultants
- held initial hearings with a range of providers
- engaged with stakeholders
- gathered a large amount of data and evidence from parties and started analyses; and

- completed a large quantitative survey of pension trustees

The CMA has commented that it will soon be publishing working papers, with a view to issuing a provisional decision report in July 2018.

Comments from our Pensions Disputes Group

Dominic Chappell fined

Dominic Chappell has been fined more than £87,000 for failing to hand over information to the Pension Regulator. ***This is the fifth successful criminal conviction secured by the Regulator in respect of a failure to comply with section 72.***

The Regulator utilised its powers under section 72 of the Pensions Act 2004 to request information from Chappell, the director and majority shareholder of the company that bought BHS for £1, in relation to its investigation into the collapse of BHS. Chappell failed to provide this information and was convicted of three charges of neglecting or refusing to provide information and documents without a reasonable excuse.

Judge Lucie said: "*The court must send a message to those in senior positions that refusal to answer questions under section 72 will not be tolerated. The law is there for a purpose and it must be enforced.*"

To read the Regulator's statement on this case, please click [here](#).

Contact us

If you wish to discuss any of these issues further, please contact your usual Baker McKenzie lawyer.

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