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Pension Schemes Bill enters final stages

A significant Pension Schemes Bill, which is in the last stages of Parliamentary scrutiny, will bring changes to many areas of pensions legislation. It is likely to receive Royal Assent by the end of 2020.

What does it contain?

First introduced in October 2019 before being reintroduced in January following the general election, the Bill brings together the Government's proposals from the White Paper, 'Protecting Defined Benefit Pension Schemes' (published in March 2018), the 2018 Budget, and various subsequent consultations.

Its (summarised) contents as follows.

Collective money purchase (CMP) schemes:

- an authorisation and supervision regime for CMP schemes, which retain the certainty of employer cost of traditional defined contribution schemes but aspire to provide (without guaranteeing to provide) higher targeted pensions by pooling investments and sharing risks among members;
- priority given to single-employer or corporate-group schemes (such as Royal Mail), with the ability to consider other models (e.g. master trusts and decumulation-only arrangements) later.

The Pensions Regulator's new powers:

- the addition of two new grounds on which the Regulator can issue contribution notices (where either an '*employer solvency test'* or an '*employer resources test*' are met);
- a new duty on employers to provide information to the Regulator about proposed corporate transactions and how they plan to minimise the harm to their (DB) schemes; and
- boosted information-gathering powers, including requiring attendance for interview (subject to notice) and being able to inspect premises without notice.

New civil and criminal fines in relation to DB schemes:

- far-reaching new criminal offences and sanctions for avoidance of employer debt and conduct risking accrued scheme benefit, carrying the possibility of an unlimited fine and/or up to seven years' imprisonment;
- a new criminal offence of failing to comply with a contribution notice, carrying the possibility of an unlimited fine; and
- civil penalties of up to £1 million for serious breaches such as failure to comply with a contribution notice or the notifiable events rules, or knowingly or recklessly providing false or misleading information to the Regulator or trustees.

Pensions dashboards:

- approval and supervision of '*qualifying pensions dashboard services*' (online services which will allow people to see information about all of their pensions entitlements—State and private—in a single place);
- obliging the Money and Pensions Service to provide one such pensions dashboard service;
- allowing regulations to be made that will require all occupational pension schemes to supply data to dashboard providers, with sanctions from the Regulator for non-compliance; and
- requiring the FCA to set rules requiring personal and stakeholder pension providers to supply data.

DB scheme funding:

- trustees to formulate (with agreement of employer) and set down their long-term funding and investment strategies, and calculate their technical provisions consistently with them;
- trustees required to produce a 'statement of strategy' describing the funding and investment strategy, as well as the extent to which it is being implemented, the main risks to its successful implementation and reflections on any important decisions taken;
- trustees required to appoint a chairperson to sign statement of strategy on their behalf.
- the government gain regulation-making powers to prescribe the matters to be taken into account, or the principles to be followed, when determining whether a recovery plan is 'appropriate' for a scheme; and
- copies of all statutory funding valuations to be sent to the Regulator (not just those in deficit).

Restrictions on transfer rights:

- members of occupational or personal pension schemes will be unable to exercise statutory transfer rights unless additional conditions—regarding for example the provision of evidence of their employment or place of residence, or their having obtained certain information or guidance about transfers—are satisfied.

PPF compensation:

- extending the changes made in relation to fixed pensions granted on inward transfers so that they will be deemed to always have had effect (currently they only affect schemes entering assessment since 2 October 2018).

Climate change risk reporting:

- regulation-making power that can be used to require trustees to take steps with a view to securing effective governance of their schemes with respect to the effects of climate change, and to make information freely available (the DWP intends to use this power to require trustees of larger occupational pension schemes to assess their exposure to climate-change risk, and publish their findings, in line with the recommendations of the Task Force on Climate-related Financial Disclosures).

What's missing?

There are several topics that we expected might be addressed in the Pension Schemes Bill that don't appear:

- amendments to the GMP conversion legislation to clarify the remaining areas of uncertainty;
- changes to the Pension Ombudsman's powers and jurisdiction; and

- primary legislation to create a regime for DB consolidation schemes ('superfunds').

The Bill's journey through the House of Lords and House of Commons also saw various points debated and amendments proposed that haven't made the final cut:

- A defeated amendment would have seen people given a pre-booked Pension Wise appointment ahead of accessing their retirement savings.
- Whilst amendments were introduced to address climate change, the government voted down an amendment that would have required schemes to develop strategies to comply with the Paris agreement on climate change by 2050.
- In the context of the new DB funding regime there were calls for primary legislation to explicitly recognise the differences between open and closed schemes – currently this remains left to the Regulator's guidance and consultation.
- In spite of concerns that the new criminal offences for avoiding employer debt and risking scheme benefits are potentially too far-reaching in applying to 'any person' and in relation to 'any act or failure to act', the wording remains.

What next?

Whilst the Bill establishes a lot of important primary legislation, with much of the underlying mechanics and detail left to regulations there is not yet a complete picture of how the provisions will work in practice and what compliance will look like. Trustees and employers should watch closely for this detail to emerge. The second consultation from TPR on a new DB funding code of practice expected in Spring 2021 will be of particular interest.

And despite the ink not yet being dry on this Bill, at the 2020 PLSA Annual Conference Pensions Minister Guy Opperman indicated that he expects there to be a further pensions bill in this parliament. He noted that "one significant element of that future pensions bill would constitute to superfunds legislation".

With all this change on the horizon, understanding the potential implications and building this into future work plans is a good first step. Please contact your usual Hymans Robertson consultant if you would like to discuss these issues further.

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