In Touch technical update

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Protecting Defined Benefit Pension Schemes – White Paper

- More powers to punish employers who put their schemes at risk
- Increased powers to gather information
- Potential for strengthened funding standards through a revised and ‘enforceable’ Code of Practice
- Requirement for DB trustee chairs to produce a Chair Statement
- Consultation on encouraging consolidation

Following its February 2017 Green Paper on security and sustainability in defined benefit (DB) pension schemes, the Government has issued its long-awaited White Paper – ‘Protecting Defined Benefit Pension Schemes’. This sets out the Government's approach for the future of the DB system, and supports the Pensions Regulator’s ambition to be clearer, quicker and tougher. The Government aims to maintain confidence in DB pensions by increasing the protection of members’ benefits. It states that it is clarifying the rules and expectations but otherwise not making fundamental changes to the existing system. However, it proposes tougher, more proactive powers to allow the Regulator to intervene more effectively to prevent employers from evading their pension obligations. The Government will also consult on a framework for consolidation in the DB sector.

A stronger Pensions Regulator

As set out in its manifesto, the Government proposes to strengthen the regulatory framework and the Regulator’s powers by:

- allowing the Regulator to impose punitive fines on those who deliberately put their pension scheme at risk;
- introducing a criminal offence for those found to have committed wilful or grossly reckless behaviour in relation to a pension scheme, and building on the existing process of disqualification of company directors;
- strengthening the existing 'notifiable events' framework and voluntary clearance regime so that employers have appropriate regard to pensions in corporate transactions. This includes improving the effectiveness of the existing anti-avoidance powers. However, the Government will work to ensure that these measures do not have an adverse effect on legitimate business activity and the wider economy;
- giving the Regulator increased powers to gather information from DB and Defined Contribution schemes, including an inspection power and the power to issue civil sanctions for non-compliance.

Scheme funding proposals

The Government believes that the scheme funding regime works well, allowing individual scheme circumstances to be taken into account. However, to improve decision-making and governance across the sector, it proposes to:

- strengthen the Regulator’s ability to enforce DB scheme funding standards, through a revised and ‘enforceable’ Code of Practice, which will focus on how prudence is demonstrated when assessing scheme liabilities, appropriate factors when considering recovery plans and ensuring a long-term view is considered when setting the statutory funding objective;
- require the trustees of DB pension schemes to appoint a Chair and for that Chair to report to the Regulator in the form of a Chair’s Statement, submitted with the scheme’s triennial valuation.

Encouraging consolidation

The Government will consult this year on:

- a legislative framework and authorisation regime within which new forms of consolidation vehicles could operate;
- an accreditation regime to help build confidence and encourage existing forms of consolidation.

It will also work with the Regulator to raise awareness of the benefits of consolidation with trustees and sponsoring employers, and consider some minor changes to GMP conversion legislation to support benefit simplification.

Stressed schemes and employer debts

The Green Paper set out options for dealing with schemes of 'stressed' employers and on whether there are circumstances in which it would be appropriate for benefits to be reduced.

In May 2016, the Government had launched a consultation to explore options to help the British Steel Pension Scheme in the wider context of efforts to protect the UK steel industry.

Options included allowing the scheme to reduce its liabilities by reducing indexation and revaluation, and permitting a bulk transfer without member consent to a new scheme paying lower benefits. Following the consultation and negotiations, a Regulated Apportionment Arrangement (RAA) was agreed under the existing legislation. As a result, the Government has concluded that it is not necessary or appropriate to bring forward new legislation to permit either of those options.

However, it is committing to working closely with the Regulator and PPF to look at whether it is possible to make improvements to the RAA process.

The Green Paper also considered whether there should be any changes to the employer debt regime. However, the Government concluded that the existing arrangements provide sufficient flexibility for employers to manage their section 75 debts.

Indexation

The Green Paper also raised the possibility of 'rationalising indexation'. However, the White Paper rules out provision of a power for employers or trustees to change scheme rules so that schemes can apply inflation increases using CPI instead of RPI.

Next steps

The White Paper proposes a phased approach to implementation, enabling the Government to take earlier decisive action in some areas and undertake further, considered work on other proposals. It notes that the Regulator is already taking action through the TPR Future and 21st Century Trusteeship programmes.

There are some measures where there is agreement about what needs to be done but not on the best way to deliver the proposals. The Government will consult on these areas. In addition, some changes will require primary legislation which is unlikely to be before the 2019–20 parliamentary session.

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