

## A new Pensions Act is born!

### 1 HOW DID WE GET HERE?

Following intense scrutiny by both Houses of Parliament (and a number of twists and turns along the parliamentary way), the Pensions Bill 2004 finally received Royal Assent on 18 November 2004. The Bill, which was first published in February this year, can be seen as the culmination of a series of reviews, primarily the Pickering Report<sup>1</sup> but also to a certain degree the Sandler review<sup>2</sup> and the Myners Report<sup>3</sup>.

The last major Pensions Act in Britain was that of 1995, which focused on member protection in a way not seen before. The Pensions Act 2004 builds on that platform by introducing further member protections such as the Pension Protection Fund (PPF). For employers and trustees the Act presents new challenges across a spectrum of issues, ranging from scheme funding to the composition and standard of knowledge of trustee boards.

### 2 IN BRIEF

To recap, the Act contains (amongst other things):

- new powers for the new Pensions Regulator;
- provisions relating to the PPF;
- anti-avoidance or "moral hazard" provisions;
- new scheme-specific funding requirements;
- revised conditions affecting scheme amendments (a significantly revamped "section 67");
- provisions on informing and consulting employees;
- important changes to member-nominated trustee/director (MNT) requirements;

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<sup>1</sup> "A simpler way to better pensions" published July 2002

<sup>2</sup> The Sandler review of medium and long-term retail savings published July 2002

<sup>3</sup> Myners Review of Institutional Investment in the UK published March 2001

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- sections outlining standards for trustee knowledge and understanding; and
- enabling provisions for the establishment of a Financial Assistance Scheme (FAS).

Some of these sections have been headline news from the start, such as the Pensions Regulator and the PPF. Others, such as the new section 67, were omitted from the original draft Bill but always formed part of the Government's plans. Some though, like the FAS, have seemingly been inserted following pressure exerted on the Government during the parliamentary process.

### **3 SOME RECENT CHANGES**

In its final stages, a number of key changes were made to the Act.

- **"Moral hazard"** – Following consultation, a number of changes were made to meet corporate concerns, including:
  - excluding Insolvency Practitioners (and other "prescribed persons") from the ambit of Contribution Notices (CNs);
  - imposing a 6-year time limit on the Regulator for issuing a CN;
  - possibly bringing factors such as saving jobs into the equation when deciding whether to impose a CN;
  - introducing a clearance procedure to allow the Pensions Regulator to bless acts etc. which might otherwise come under scrutiny under the moral hazard provisions;
  - changing the potential degree of retrospection of CNs and restoration orders (where there has been a transaction at an undervalue) from the original 11 June 2003 date to 27 April 2004 (the date the moral hazard provisions were announced).

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- **Eligibility for the PPF** – The Government has announced that schemes may still be eligible for the PPF even where the employer has had a “pre-PPF” insolvency event (such as the appointment of an administrator) – provided that the scheme does not go into winding-up prior to the PPF commencement date.
- **Changes to the PPF Levy** – A couple of key changes to the risk based element of the PPF levy have been made:
  - the risk-based levy will be introduced no more than 12 months after the introduction of the PPF levy; and
  - the risk based element will account for at least 80% of the total levy (replacing the previously stipulated 50%).
- **MNTs** – Both active and pensioner members (or “an organisation which adequately represents” them) are to be involved in the nomination, but not necessarily the selection process. The Act also now allows the Secretary of State for Work and Pensions, by order, to increase the required number of MNTs from one-third to 50%. We expect this will be brought into force at some later (currently unspecified) date.

#### **4 REGULATIONS**

Much of the Pensions Act 2004 is big on principle and thin on detail. A combination of Regulations and codes of practice (to be issued by the Regulator) will flesh out the detail of how the new provisions will work in practice. Rather alarmingly, commenting in the House of Lords on 14 September, Baroness Hollis said that “the latest check has shown more than 100 different sets of regulations” will be required.

With the anticipated implementation date for some of the Pensions Act sections being April 2005, we expect to start seeing Regulations soon.

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**5 TIMETABLE FOR IMPLEMENTATION**

The Government has already announced that the provisions relating to the Regulator and the PPF will come into force on 6 April 2005. Similarly, we expect that provisions designed to protect the PPF (like the moral hazard sections) will be effective from the same date.

The sections relating to scheme-specific funding look likely to become effective some time after September 2005. But other provisions, like the revised MNT requirements and the need for trustee knowledge and understanding, look set to be deferred until April 2006.

**6 FURTHER INFORMATION**

We have been tracking the Pensions Act since it was first published and have already issued a number of Sackers Extra Alerts and Newsletters. If you would like back copies, please get in touch with your usual Sackers contact or email [publications@sacker-partners.co.uk](mailto:publications@sacker-partners.co.uk).

Going forward, we will be covering key Regulations as and when they are made available and will continue our on-going programme of Pensions Reform Newsletters, focusing on specific areas of interest arising from the Act.