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THE TWO REVIEWS - DOUBLE TROUBLE FROM THE DWP?

1 INTRODUCTION

Two reviews announced in the Pensions White Paper of May last year ("the White Paper") are finally set to make progress this Spring¹. Consultation papers were published recently by the Department for Work and Pensions (DWP) relating to the "Deregulatory Review of Private Pensions" and the "Review of Pensions Institutions". So with the articulated lorry of pensions reform set to hurtle along once again, in this Alert we take a quick tour around the two reviews to see what we can expect from both.

2 KEY POINTS

- The deregulatory review stems from the realisation that many layers of pensions legislation could be removed, merged or simplified².
- Several areas of pensions legislation where change could be considered have now been identified.
- As part of the Institutional Review thought is being given to merging the Pensions Regulator (TPR) and the Pension Protection Fund (PPF) into a single organisation.
- The DWP is encouraging all interested parties to comment on the issues raised by the two reviews so that it can build consensus on the best way forward.

¹ See our Sackers Extra Alert: "The Pensions White Paper" dated 25 May 2006

² See our Sackers Extra Alert: "The White Paper – A Question of More Pensions Reform" dated 21 August 2006

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3 DEREGULATORY REVIEW OF PRIVATE PENSIONS

Following the publication of the White Paper, an advisory group was established to help the Government carry out an ongoing examination of legislation governing private pension provision. On 13 December 2006, two external reviewers, Chris Lewin and Ed Sweeney, were appointed to work with this group.

The aim of the review is to explore the scope for possible deregulation and simplification so that:

- pension rights for scheme members' future service should be regulated with a light touch (the rationale being that the regulatory requirements should not discourage employers from having their own pension scheme);
- schemes continue to be well governed, but with greater flexibility as to how this objective is achieved;
- there should be an appropriate degree of protection for existing accrued pension rights; and
- the regulations should become easier to understand.

Feedback from the pensions industry so far has identified a number of areas which are ripe for change. Currently the main proposals under consideration are whether:

- at least part of the regulatory framework could be shifted to a more light touch principle-based approach. The disclosure regime has been identified as a possible candidate for this;
- arrangements on surplus, employer debt and section 67 could be reconsidered to make them more sensitive to the wide range of circumstances that can exist in occupational pension schemes;
- requirements upon trustees should be eased;

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- the regulatory framework should be changed to facilitate the creation of risk-sharing schemes to stop the shift into pure defined contribution arrangements (leaving all risks with the employee); and
- to encourage employers to persevere with their defined benefit schemes, they should be offered the opportunity for more flexibility over managing their liabilities going forward. For example, the consultation paper envisages that restrictions on changing normal pension age, limited price indexation and revaluation could all be relaxed, not only for new entrants but also for future accruals of existing members (with safeguards, where appropriate).

Discussions with stakeholders have also identified a variety of specific legislative issues which the paper does not address in detail, but which will be raised with the DWP. Examples of legislative areas in need of an overhaul include:

The Pension Schemes Act 1993:

- Cash equivalent transfer values from defined contribution schemes should not need to be guaranteed for a period of time;
- Trustees should be required to arrange for members of defined contribution schemes to receive financial advice upon entry to the scheme, retirement, and at regular intervals in between.

The Pensions Act 1995:

- Requirements for reporting late payments of contributions should be removed;
- The circumstances in which it is permissible for a member to waive or forfeit rights to benefit need clarifying.

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The Finance Act 2004:

- The burdens placed on schemes before small amounts of pension can be trivially commuted should be relaxed.

The consultation paper stresses that the review is still in its early stages and that it should not be assumed that the advisory group will be recommending any specific course of action simply because a particular issue is discussed in the document. But the group wishes to identify the extent to which there is agreement on their aims and on the specific possible changes outlined before submitting its recommendations to James Purnell, Minister for Pensions Reform. Comments are therefore invited and should be submitted by 6 April 2007.

A copy of the consultation paper can be found at:

http://www.dwp.gov.uk/pensionsreform/pdfs/consultation_paper.pdf

4 REVIEW OF PENSIONS INSTITUTIONS

On 16 January 2007, Paul Thornton was appointed to conduct a review of organisations involved in the regulation and protection of workplace pensions.

He was asked to look at how the responsibilities of the various pensions institutions, including TPR and the PPF, are arranged to ensure that they support existing Government policy. The review will also consider whether these institutions fit in with current pension reform proposals (particularly the new scheme of personal accounts) and developments in the pensions market.

In undertaking the review, Mr Thornton states that his aim "is to consider the best distribution of functions for the foreseeable future, to provide clarity, efficiency and effectiveness and to avoid undesirable conflicts of interest, gaps or unhelpful overlaps in functions".

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Following meetings with interested parties, three key questions have emerged so far which focus on whether there is a good case for bringing the following closer together:

- TPR and the PPF?
- The Financial Services Authority and TPR?
- The Pensions Ombudsman and the Financial Services Ombudsman?

The consultation paper seeks comments on these questions but also encourages respondents to outline further topics for consideration. Contributions are requested by 31 March 2007.

A copy of the consultation paper can be found at:

<http://www.dwp.gov.uk/pensionsreform/pdfs/ConsultationPaper050307.pdf>

5 CONCLUSION

The two reviews are currently running in parallel and both are due to report to Ministers in Spring of this year. Hopefully that momentum will not be lost, but no timescale has been prescribed for decisions being reached or any changes being made. It therefore seems likely that occupational pension schemes will remain open to the possibility of further reform on two fronts for some time to come.