

# alert

## THE WHITE PAPER – A QUESTION OF MORE PENSIONS REFORM?

### 1 INTRODUCTION

2006 (like 2005 before it) has been another hectic year for pensions reform. But, despite the raft of changes already made in the name of pensions reform (see the “Table” at the end of this Alert), Chapter 2 of the recently published Pensions White Paper<sup>1</sup> makes it clear that the Government's pensions reform juggernaut is set to rumble on. And just where might it come to a halt?

Here we highlight some of the further avenues of pensions reform still being explored.

### 2 KEY POINTS

- Pensions simplification is still very much on the Government's agenda. **(See section 3)**
- A pilot scheme to conduct a pensions law rewrite is contemplated. **(See section 4)**
- The White Paper seeks proposals on which of “the rules governing pensions” should be regarded as “priority areas” for deregulatory review. **(See section 5)**
- Should you wish to have your say, the deadline is 11 September 2006. **(See section 6)**

### 3 THE WHITE PAPER AGENDA

The Department for Work and Pensions (DWP) is scheduled to publish a “simplification plan” later this year. The motivation behind this continuing

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<sup>1</sup> See our Sackers Extra Alert: “The Pensions White Paper” dated 25 May 2006

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programme of simplification seems to be two-fold: lightening the regulatory burden on business; and the inescapable concern that individuals are not saving enough for retirement.

As part of this process, both the Pensions Regulator (TPR) and the Board of the Pension Protection Fund (PPF) are charged with “considering how they might contribute to the simplification process”. (The White Paper also anticipates an autumn review of these organisations “to ensure they are configured in the most effective way to achieve [the Government’s] long-term objectives”.)

Specifically, TPR is:

- “reviewing its information and data requirements in the widest sense and looking at where it can use information already gathered by other organisations”;
- “considering whether there are parts of the legislative framework which have proved to be unnecessary or less effective in practice than anticipated, and which could be removed” (the example given here relates to some types of “notifiable event”<sup>2</sup>);
- continuing to monitor “its effectiveness in fulfilling its statutory objectives, particularly in the context of proportionate and risk-based regulation”.

TPR’s overall regulatory goal is to focus on “those areas where concerns are greatest” with a view to delivering “better and more effective risk-based regulation”. Whether this self-examination will lead to further reform remains to be seen, but the White Paper envisages TPR making recommendations to the DWP, especially in relation to legislative requirements which appear “ineffective or disproportionate”.

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<sup>2</sup> See our Sackers Extra Alert “Protecting the PPF – reporting notifiable events” dated 13 April 2005.

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### 4 PENSIONS LAW REWRITE

The Government is also pondering the possibility of piloting a “Pensions Law Rewrite Project”. The aim would be to make pensions legislation simpler and easier to understand, “thus removing some of the burden of compliance”. This would therefore entail “taking a hard look at the complexity of pensions law” to ascertain whether it could be written more clearly.

The acid test of the pilot scheme will come down to whether a wholesale rewrite of pensions law is “likely to produce worthwhile dividends in terms of simplicity and, ultimately, savings for schemes and employers”. (It is also worth noting that the Government’s intention is for the substance of the underlying regulatory policy to remain very much intact.)

### 5 DEREGULATORY REVIEW

In addition to the above, the Government is “launching a rolling deregulatory review of pensions regulation” which will feed into the DWP’s simplification plan to be published later this year. The basis of this review seems to stem from a realisation that many of the layers of pensions legislation (but especially those enacted in and since the Pensions Act 1995) could be removed, merged or simplified. At first, the focus will be directed towards areas where “quick wins” might be achieved, followed by a more comprehensive “mapping out” of a simplification programme.

Areas of pensions law potentially up for grabs include:

- mandatory increases on pensions in payment;
- member nominated trustees / directors;
- administrative and internal control requirements;

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- restrictions on changing members' accrued or subsisting rights (now governed by the new sections 67 to 67I of the Pensions Act 1995);
- internal dispute resolution (originally scheduled for implementation from 6 April 2006, the DWP announced on 17 January of this year that it would no longer be going ahead with "IDRP" changes put forward in the Pensions Act 2004<sup>3</sup>);
- repayments of surplus to employers; and
- deemed buy-back (of contracted-out benefits into the state system).

## 6 YOUR GOVERNMENT NEEDS YOU!

Anyone wishing to try to influence the Government's ultimate destination along the pensions reform highway should be aware that the closing date for comments is Monday 11 September 2006. The Government is intending to publish a summary of the comments it receives, together with a response on how it intends to proceed, within three months of that date.

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<sup>3</sup> See our Sackers Extra News: "Pensions Act 2004 – What's on the 2006 menu?" dated January 2006

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**THE WHITE PAPER – A QUESTION OF MORE PENSIONS REFORM?****TABLE OF KEY PENSIONS REFORM CHANGES****2005**

6 April 2005	TPR was born and took over the functions of the dissolved OPRA (Occupational Pensions Regulatory Authority).
6 April 2005	The PPF opened for business.
6 April 2005	The statutory cap on increases on pensions in payment for defined benefit schemes reduced from 5% to 2.5% for future pensionable service. For defined contribution benefits, the need to index-link removed altogether.
6 April 2005	“Moral Hazard” provisions introduced to prevent employers walking away from scheme debts.
6 April 2005	As part and parcel of TPR’s responsibilities towards protecting against unnecessary calls on the PPF, new duties imposed on scheme trustees and employers respectively to report certain “notifiable events”.
6 April 2005	The “whistle-blowing” duties placed on professional advisers and trustees to report breaches of the law relating to occupational and personal pension schemes expanded and revamped.
6 April 2005	New scheme priority order on wind-up with PPF liabilities high up on the list.

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6 April 2005	Consolidated regulations dealing with the debt due from employers where schemes are winding-up introduced.
6 April 2005	New protections on transfer of employment under TUPE. ( <i>The Transfer of Undertakings (Protection of Employment) Regulations 1981 have now been replaced by 2006 Regulations</i> )
6 April 2005	TPR given new powers to deal with “pensions liberation” (bogus pension transfers).
2 September 2005	Debt provisions where an employer withdraws from an ongoing multi-employer scheme raised to full buy-out cost unless an “approved withdrawal arrangement” applies.
22 September 2005	In the first of many changes driven through by the European Pensions Directive (see following four sets of legislative amendments made with effect from 30 December 2005), new requirements introduced restricting the “retirement benefit activities” which an occupational pension scheme can carry out (casting doubt, in turn, on whether such schemes can have life cover only members).
30 December 2005	The statutory funding objective (SFO) launched, coupled with the requirement for Statements of Funding Principles (transitional provisions are relevant).
30 December 2005	New scheme investment requirements governing the way in which trustee investment powers must be exercised.

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30 December 2005	Cross-border pension provision made possible (and with it a whole host of tricky issues for employers with employees based in other EU Member States).
30 December 2005	Legislation imposes specific obligations on trustees to have sound administrative procedures and effective “internal control” mechanisms in place.
<b>2006</b>	
6 April 2006	Bar some limited exceptions, trustees of all occupational pension schemes must ensure that at least one-third of their number are member-nominated trustees / directors (MNTs / MNDs).
6 April 2006	Statutory requirement for trustees to have “knowledge and understanding” of the law relating to pensions and to be conversant with scheme documentation.
6 April 2006	Members leaving their occupational pension scheme early (but with at least 3 months’ pensionable service) have a choice between a contribution refund and a cash transfer sum.
6 April 2006	The start of the PPF risk-based levy.
6 April 2006	Employer consultation required for certain “listed changes” to future service benefits.