Sackers

The Pension Schemes Bill returns

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Introduction

Originally published in October (see our Alert), the Pension Schemes Bill ("the Bill") has been reintroduced to Parliament. The Bill is in substantially the same form as the October version (which fell as a result of the general election being called), with key points being the introduction of new powers for TPR, designed to enable it to fulfil its mantra of being "clearer, quicker, and tougher", and provisions laying the groundwork for "collective money purchase benefits" and pensions dashboards.

Key points

The revised Bill is in substantially the same form as the version before Parliament back in October 2019.

The Bill will introduce:

- a framework for "collective money purchase schemes" (otherwise known as collective DC, or "CDC")
- provisions to enable pensions dashboards
- new criminal offences for failure to comply with a contribution notice, avoidance of an employer debt, and conduct risking accrued scheme benefits
- a new requirement for trustees of occupational DB schemes to determine (with the agreement of the employer) a strategy for ensuring that pensions and other benefits under the scheme can be provided over the long term ("funding and investment strategy"), and
- restrictions on the right to a statutory transfer, unless prescribed conditions are met.

Collective money purchase schemes

As promised in its consultation response (see our Alert), the DWP has legislated for a model of collective money purchase scheme ("CMPS") involving single or associated employers.

What is a CMPS?

In a CMPS, financial contributions are invested in a collective fund, with members receiving a regular pension from the fund at retirement. A key principle underpinning a CMPS is that "the benefit level offered can only ever be an estimate based on current facts".

The collective nature of the scheme, and the way it adjusts the level of pensions and prospective pensions, should mean that the overall membership will enjoy an element of cushioning from volatility, as investment risk is adjusted for over time and longevity risk is pooled across the membership. And, because the fund is administered and managed on a collective basis, there is also no need for members to make choices about investments or the options for converting funds into an income stream in retirement.

Proposed framework

The framework set out in the Bill for CMPSs closely resembles the one put in place for master trusts (see our Alert).

"Qualifying schemes" (broadly, those providing collective money purchase benefits) will have to apply to TPR for authorisation in order to operate. To be authorised, a scheme must meet certain criteria. For example, the persons involved in the scheme must be "fit and proper persons" and the scheme must be financially sustainable. Once authorised, the scheme will be added to TPR's list of authorised CMPSs and become subject to TPR's ongoing supervision.

Finally, certain "triggering events" (such as an insolvency event occurring in relation to an employer) are built into the legislation, prompting the involvement of TPR and requiring specific steps to be taken to protect members' benefits.

Pensions dashboards

The Bill sets out a structure for the provision of a "qualifying pensions dashboard service", which is "an electronic communications service by means of which information about pensions may be requested by, and provided to, an individual or a person authorised by the individual", and in relation to which prescribed requirements are satisfied.

Most of the detail will be set out in regulations. This will include a new requirement to be imposed on both occupational pension scheme trustees and providers of workplace arrangements to provide "pensions information" to a qualifying pensions dashboard service, or any such service provided by the Money and Pensions Service.

A stronger TPR

The promise of a "stronger TPR" (see our Alert) is set to be fulfilled by the introduction of the following new criminal offences:

- failure to comply with a contribution notice (under which TPR can require payment to be made into a scheme) – punishable by an unlimited fine
- avoidance of an employer debt (ie under section 75 of the Pensions Act 1995) – punishable by an unlimited fine and/or up to seven years in prison
- conduct risking accrued scheme benefits – punishable by an unlimited fine and/or up to seven years in prison.

Alternatively, TPR will have power to impose a civil penalty of up to £1 million in any of the above circumstances, and also where a person knowingly or recklessly provides it, or the trustees in certain circumstances, "with information which is false or misleading in a material particular".

In addition, the Bill lays the groundwork for changes to the notifiable events regime and extends TPR's information gathering powers. The Bill will also introduce two new tests for imposing a contribution notice:

- the "employer insolvency test" – broadly, this will be met if TPR considers that at the time of an act or failure to act a scheme was in deficit and, had a statutory employer debt fallen due (under section 75 of the Pensions Act 1995), this act or failure to act "would have materially reduced the amount of the debt likely to be recovered", and

- the "employer resources test" – broadly, this will be met if TPR considers an act or failure to act "reduced the value of the resources of the employer" and that reduction was material relative to the estimated section 75 debt in relation to the scheme.

Whether TPR's powers as currently drafted will make the final cut when the Bill becomes an Act remains to be seen. But there is concern, which has not been addressed in the new version of the Bill, that the proposed criminal sanctions could potentially capture ordinary business activity and not just the "reckless bosses who plunder people's pension pots" referred to in the background notes to the Queen's speech introducing the Bill.

New funding and investment strategy

As trailed by TPR in its annual funding statement in March 2019, trustees of DB schemes will be required to produce a funding and investment strategy. In particular, this strategy must specify the funding level which the trustees "intend the scheme to have achieved", and the investments the trustees intend to hold, as at a date to be determined in accordance with regulations. The scheme's "technical provisions" under the statutory funding regime will also need to be calculated "in a way that is consistent with" this strategy.

As soon as reasonably practicable after determining or revising the scheme's funding and investment strategy, the trustees will then have to prepare a "statement of strategy", capturing the detail in writing. This statement must be signed by the chair of trustees, provided he or she "meets such other conditions as may be prescribed". Where there is no chair of trustees, one must be appointed.

Employer agreement to "the scheme's funding and investment strategy, as set out in the scheme's statement of strategy" must be obtained, and trustees will also have to consult the employer on the following supplementary matters to be addressed in "Part 2" of that statement:

- the extent to which, in the trustees' opinion, the strategy "is being successfully implemented" and, where it is not, the steps proposed "to remedy the position", including details about timing

- "the main risks faced by the scheme in implementing" the strategy, and how the trustees intend to mitigate or manage them, and

- the trustees' reflections on "any significant decisions taken by them in the past" that are relevant to the strategy, including "any lessons learned that have affected other decisions or may do so in the future".

Regulations may be made under the Bill requiring trustees "to take into account prescribed matters and follow prescribed principles" in relation to both the funding and investment strategy and Part 2 of the statement, and as to the level of detail required.

Finally, bolstering its information gathering powers further, trustees will be required to send TPR a copy of an actuarial valuation as soon as reasonably practicable after receipt, "together with such other information as may be prescribed" (this is likely to include the statement of strategy).

Statutory transfers

The Government has long been considering making changes to an individual's statutory transfer rights to provide trustees with additional powers where they suspect a scam.

Under changes proposed by the Bill, trustees will not be able to transfer a member's benefits unless prescribed conditions are satisfied. These conditions will be set out in regulations, but the Bill makes clear that they will include providing the trustees "with information or evidence about the member's employment or place of residence".

What's missing?

As with the 2019 version, the Bill does not include a new regulatory regime for DB consolidation vehicles, which had previously been expected (see our Alert).

More significantly, the new Bill still does not appear to mention easements to the existing statutory process for converting GMPs into ordinary scheme benefits. Potential easements have been on the Government's radar for several years now, as the legislation is not as clear or as easy to use as it might be. Back in April 2019, the DWP published guidance on using GMP conversion as a means of addressing the need to equalise for the effect of GMPs, following last year's Lloyds case. With further developments on GMP equalisation expected this year (including more industry guidance and a new court hearing on the impact of transfers-out), perhaps this will be picked up during the Parliamentary process?

Next steps

The Bill does not yet have a date scheduled for its second reading, but its reintroduction so quickly after the re-opening of Parliament suggests there is the necessary impetus to get the legislation through swiftly.

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