Regulator’s “moral hazard” powers to be extended

The Government yesterday announced that it intends to extend the Pensions Regulator’s powers under the “moral hazard” legislation. The proposed changes will be the subject of consultation over the next eight weeks, but the plan is for them to apply as from the date of the announcement, 14 April 2008.

The announcement outlines various changes which will make it easier for the Regulator to impose a contribution notice or financial support direction. The main changes are as follows:

- The Regulator will be able to issue a contribution notice where the effect of an act is materially detrimental to a scheme's ability to pay benefits. The Regulator will no longer have to consider whether an act was motivated by an intention to avoid a s75 debt.
- There will no longer be a “good faith” defence where an employer has taken action to prevent a debt from arising. The Regulator will potentially be able to impose a contribution notice even if the employer’s intentions were fair and honourable.

The changes are likely to push employers into seeking clearance in cases where clearance would not have been sought in the past. That in turn will mean a bigger role in corporate transactions for the Regulator – and for trustees.

The changes require primary legislation. The Government acknowledges that the Regulator's new powers "must be defined carefully", and will issue a consultation document shortly. We will issue a client update once the legislation has been published.