

## Protecting DB pension schemes – UK government white paper

The government has published a [white paper](#) setting out proposals to strengthen the DB pensions system in the UK. The white paper follows a February 2017 green paper on security and sustainability in DB pension schemes (see our [legal update](#) for details).

The white paper sets out proposals in three areas – Pensions Regulator powers, scheme funding, and consolidation. It also provides an update on various other issues discussed in the green paper.

### Pensions Regulator powers

While the government does not believe that deliberate activity by sponsoring employers to avoid their pension scheme liabilities is widespread, in light of recent high-profile cases, it is proposing to strengthen the regulatory framework for DB pension schemes by:

- Giving the Regulator powers to issue punitive fines to tackle irresponsible activities that may cause a material detriment to a pension scheme and may compromise the scheme's funding position. This would include an express power to penalise the targets of a contribution notice, including company directors. The government will also review the Regulator's current anti-avoidance powers and, if needed, legislate to improve them.
- Introducing a criminal offence to punish wilful or grossly reckless behaviour of company directors (and any connected persons) in relation to a DB pension scheme.
- Working with the Insolvency Service and the Regulator to strengthen the existing company director disqualification process to ensure that scheme members' interests are appropriately reflected in business decisions.

- Reviewing the existing notifiable events framework to ensure that it covers all relevant transactions and that the timing of the notification obligation is clarified so that the Regulator is made aware of transactions at an earlier stage.
- Strengthening the existing voluntary clearance regime to require sponsoring employers or parent companies, prior to business transactions that pose a high potential risk to a DB pension scheme, to issue a statement of intent that they have appropriately considered the impact on the affected scheme(s). The scheme trustees must be consulted on the statement. However, the government does not plan to introduce a requirement for mandatory clearance of certain transactions.

The government also plans to harmonise some of the Regulator's existing information-gathering powers by extending certain of the powers in place for automatic enrolment and master trust supervision to the Regulator's DB and DC functions. These will include the power to compel any person to submit to an interview, the power to issue fixed and escalating civil penalties for non-compliance with an information notice, and a broader inspection power. The government has decided against introducing a "duty to co-operate" with the Regulator at this stage.

The majority of the new Regulator powers will require primary legislation, which is unlikely to be laid before the 2019-20 parliamentary session at the earliest.

## Scheme funding

The government does not believe that there is a general affordability problem across the DB landscape as a whole. However, it does believe that, in a number of cases, schemes are not setting prudent technical provisions or an appropriate recovery plan, and that some trustees may be adopting a short rather than long-term focus in their funding strategy. The government is therefore proposing that the Regulator should issue a revised code of practice on DB scheme funding which will focus on:

- how prudence is demonstrated when assessing scheme liabilities;
- what factors are appropriate when considering recovery plans; and
- ensuring that a long-term view is considered when setting the statutory funding objective (“SFO”).

Some or all of the funding standards contained in this revised code will be given statutory force, and the Regulator will be given powers to enforce those standards in the event of non-compliance through, for example, sanctions or fines and improved funding powers.

In addition, in an effort to drive improved accountability and collaborative decision-making by trustees and employers, the government will introduce a requirement for DB pension schemes to appoint a trustee chair and for the chair to report to the Regulator on key funding decisions by submitting a chair’s statement with the scheme’s triennial valuation. The statement is likely cover matters such as the scheme’s long-term financial objective (e.g. run-on with employer support, self-sufficiency, buy-out), the scheme’s strategic plan for reaching the SFO, how the trustees are meeting the standards in the revised code, and the key risks to meeting the SFO and how the trustees are managing these.

The Regulator will carry out further research, initial testing and informal consultation this year to inform a draft revised code of practice for formal consultation. The proposed legislative changes will largely require primary legislation which again is unlikely to be laid before next year at the earliest.

## Consolidation

The government believes that consolidation can bring significant benefits for DB pension schemes. It therefore intends to consult later this year on proposals for a legislative framework and authorisation regime for new forms of commercial consolidation vehicles. The government will also consult this year on a new accreditation regime to build confidence in existing forms of consolidation, and will work with the Regulator to raise awareness of the benefits of consolidation among trustees and sponsoring employers. Lastly, the government will consider some minor changes to guaranteed minimum pension conversion legislation to support benefit simplification.

## Other issues discussed in the green paper

The green paper discussed the possibility of giving schemes whose rules require them to use the Retail Prices Index to calculate pension increases and revaluation a power to use the Consumer Prices Index instead. However, the government has concluded that it cannot accept the resulting reduction to the value of members’ benefits, and it is therefore ruling out provision of such a power.

In addition, the green paper raised a number of questions regarding the calculation of employer debts in multi-employer DB pension schemes, in particular whether orphan liabilities should be excluded from the calculation. The government has concluded that there is insufficient justification to warrant changing the way in which employer debts are calculated. It also notes that, from April, employers who suffer an employment-cessation event will have the option (subject to trustee consent) to defer payment of the employer debt thereby triggered.

Lastly, the green paper raised the question of whether changes should be made to the process for obtaining a regulated apportionment arrangement (“RAA”) to make an RAA easier to obtain. An RAA is essentially a process whereby an employer that is about to enter insolvency can seek to avoid insolvency by separating itself from its DB pension scheme, usually in return

for paying a capital sum and giving an equity stake in its business to the scheme. The scheme will typically enter the Pension Protection Fund (“PPF”). An RAA requires trustee, Regulator and PPF consent. The government wants to ensure that RAAs are available to the right employers at the right time, but does not wish to increase the risk to members. The government will therefore work with the Regulator, the PPF and other industry stakeholders to see whether it is possible to make improvements to the RAA process to increase the potential for positive outcomes for failing employers without increasing the risk to scheme members.

If you have any questions or comments in relation to this Legal Update, please contact the authors or your usual Mayer Brown contact.

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