

## Protecting DB pension schemes – new Pensions Regulator powers confirmed

The government has confirmed that the Pensions Regulator will be given new powers to better protect members of DB pension schemes. Changes will also be made to the anti-avoidance, notifiable events, and voluntary clearance regimes to further strengthen the DB regulatory framework.

The announcement follows the government's March 2018 white paper which set out proposals in three areas to strengthen the DB pensions system in the UK – Regulator powers, scheme funding, and consolidation (see our legal update for more information).

### Regulator powers – new offences and sanctions

In an effort to deter and punish reckless behaviour towards DB pension schemes, a range of new offences and sanctions will be created:

Offence	Penalty	Target
Wilful or reckless behaviour in relation to a pension scheme	Criminal offence – up to seven years' imprisonment and/or unlimited fines and/or Civil penalty – up to £1 million	Sponsoring employers and others associated or connected with a sponsoring employer
Knowingly or recklessly providing false information to trustees	Civil penalty – up to £1 million	Any person who is required to provide information to trustees
Knowingly or recklessly providing false information to the Regulator	Civil penalty – up to £1 million	Any person who is required to provide information to the Regulator

### Regulator powers – scheme funding

The white paper announced that the Regulator will issue a revised code of practice on DB scheme funding. Some or all of the funding standards contained in this revised code will be given statutory force, and 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 government has now announced that the Regulator will have the following powers to enforce these new standards and requirements:

- Failure to comply with the clearer funding standards – strengthened scheme funding and other existing powers such as improvement notices.
- Failure to provide a chair's statement or to provide it on time or provision of a poor quality statement – a civil penalty of up to £5,000 for individuals and £50,000 for corporate bodies.

### Regulator powers – information-gathering

Lastly, the government has confirmed that the Regulator's information-gathering powers will be enhanced by:

- a new stand-alone interview power;
- a broader power to inspect premises; and
- a power to issue fixed and escalating civil penalties for non-compliance with an information notice (including an interview notice and an inspection notice).

## Anti-avoidance regime

The government will strengthen, clarify and improve the Regulator's anti-avoidance regime by making a number of changes to the legislative framework for contribution notices, including:

- Introducing uprating of the value of a contribution notice to reflect the period between the date of the act (or failure to act) giving rise to the contribution notice and the date on which the contribution notice is issued.
- Changing the date on which the cap on the level of a contribution notice is calculated so that it is closer to the date on which the final determination issuing the contribution notice is made.

The government will also introduce a streamlined, single step financial support direction regime which will impose a particular form or amount of enforceable financial support on the target. Financial support directions will be renamed financial support notices. The financial support will be limited to cash and/or imposition of joint and several liability on the target(s) for the sponsoring employer's liabilities to the scheme. However, the Regulator will be able to agree alternative support at its discretion. In addition, individuals who are controlling shareholders of a sponsoring employer will be brought within the scope of the financial support notice regime.

New sanctions will be introduced for failure to comply with a contribution notice or financial support notice as follows:

- Failure to comply with a contribution notice:
  - criminal offence – unlimited fines; and/or
  - civil penalty – up to £1 million.
- Failure to comply with a financial support notice:
  - civil penalty of up to £1 million.

## Notifiable events regime

The following events will be added to the list of employer-related notifiable events:

- Sale of a material proportion of the business or assets of a scheme employer which has funding responsibility for at least 20% of the scheme's liabilities.
- Granting of security on a debt to give it priority over debt to the scheme.

The existing notifiable event of wrongful trading by a sponsoring employer will be removed. The government will also consider whether earlier notification of employer-related events would be beneficial. Failure to comply with the notifiable events framework (whether by a sponsoring employer or by trustees) will be punishable by a civil penalty of up to £1 million.

## Declarations of intent and voluntary clearance

A party planning any of the following corporate transactions in respect of a sponsoring employer will be required to issue a "declaration of intent" to the scheme's trustees and the Regulator:

- Sale of a controlling interest in a sponsoring employer.
- Sale of a material proportion of the business or assets of a sponsoring employer which has funding responsibility for at least 20% of the scheme's liabilities.
- Granting of security on a debt to give it priority over debt to the scheme.

The declaration of intent must include an explanation of the transaction, confirmation that the trustees have been consulted, and an explanation of how any detriment to the scheme is to be mitigated. The government does not plan to impose a statutory deadline for provision of the declaration of intent, but the Regulator will set out its expectations on timing in guidance. Failure to comply with the requirement to issue a declaration of intent will be punishable by a civil penalty of up to £1 million.

The declaration of intent will not replace the existing voluntary clearance process. However, the Regulator will review the clearance process, particularly in light of the proposed changes to the anti-avoidance regime.

## Timing for the changes

Some of the changes will be made by secondary legislation, and the government plans to consult on draft legislation in due course. However, certain changes will require primary legislation which the government says it will bring forward “as soon as Parliamentary time allows”.

If you have any questions about the issues raised in this legal update, please get in touch with your usual Mayer Brown contact or:

### ***Ian Wright***

Partner, London

E: [iwright@mayerbrown.com](mailto:iwright@mayerbrown.com)

T: +44 20 3130 3417

### ***Jay Doraisamy***

Partner, London

E: [jdoraisamy@mayerbrown.com](mailto:jdoraisamy@mayerbrown.com)

T: +44 20 3130 3031

### ***Katherine Carter***

Professional Support Lawyer

E: [kcarter@mayerbrown.com](mailto:kcarter@mayerbrown.com)

T: +44 20 3130 3901

Americas | Asia | Europe | Middle East | [www.mayerbrown.com](http://www.mayerbrown.com)

**MAYER • BROWN**

Mayer Brown is a distinctively global law firm, uniquely positioned to advise the world’s leading companies and financial institutions on their most complex deals and disputes. With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world’s three largest financial centers—New York, London and Hong Kong—the backbone of the global economy. We have deep experience in high-stakes litigation and complex transactions across industry sectors, including our signature strength, the global financial services industry. Our diverse teams of lawyers are recognized by our clients as strategic partners with deep commercial instincts and a commitment to creatively anticipating their needs and delivering excellence in everything we do. Our “one-firm” culture—seamless and integrated across all practices and regions—ensures that our clients receive the best of our knowledge and experience.

Please visit [www.mayerbrown.com](http://www.mayerbrown.com) for comprehensive contact information for all Mayer Brown offices.

Mayer Brown is a global services provider comprising associated legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England), Mayer Brown (a Hong Kong partnership) and Tauli & Chequer Advogados (a Brazilian law partnership) (collectively the “Mayer Brown Practices”) and non-legal service providers, which provide consultancy services (the “Mayer Brown Consultancies”). The Mayer Brown Practices and Mayer Brown Consultancies are established in various jurisdictions and may be a legal person or a partnership. Details of the individual Mayer Brown Practices and Mayer Brown Consultancies can be found in the Legal Notices section of our website.

“Mayer Brown” and the Mayer Brown logo are the trademarks of Mayer Brown.

© 2019 Mayer Brown. All rights reserved.

Attorney advertising. Prior results do not guarantee a similar outcome.