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Protecting DB pension schemes

On 19 March 2018, the Department for Work and Pensions (DWP) published its White Paper on "Protecting Defined Benefit Pension Schemes". This follows the consultation on the Green Paper "Security and Sustainability in Defined Benefit Pension Schemes" published in February 2017. This bulletin sets out the government's proposals and plans for future consultation, legislation and regulatory frameworks.

Progress since the 2017 Green Paper

DWP's Green Paper was a wide-ranging review of the current private sector funded Defined Benefit (DB) pensions framework (see GAD Technical Bulletin). It concluded that the existing framework is working broadly as intended and that the vast majority of members can expect to receive their benefits in full. However, it sought to identify areas where the system could be improved and measures to help restore confidence, in the light of issues raised by some high-profile cases. A summary of responses to that consultation has now also been published on the Green Paper website.

The government also pledged in its 2017 General Election manifesto to prevent and punish those whose deliberate actions put pension scheme members' benefits at risk.

The principal aim of the White Paper is "*to maintain confidence in DB pensions by increasing the protection of members' benefits*". Proposals to achieve this are set out in the White Paper, split into three main policy areas with a section of additional points. This bulletin considers each section in turn, concluding with plans for implementation.

Protecting private pensions – a stronger Pensions Regulator

The intention is to strengthen the regulatory framework and the Pension Regulator's (TPR's) powers, in particular to:

- Introduce punitive fines for those whose actions deliberately put pension scheme members' benefits at risk.
- Make "*wilful or grossly reckless behaviour*" in relation to a DB scheme a criminal offence and to build on the existing process to disqualify company directors.
- Strengthen the existing clearance regime so that employers have appropriate regard to DB schemes in any relevant corporate transaction.

These proposals are only intended to be applied to the minority of employers whose actions wilfully put members' benefits at risk. They will act as a deterrent against and punishment for "reckless behaviour", whilst minimising any adverse effect on legitimate business activity.

In addition, information-gathering powers that TPR already holds for Automatic-Enrolment and Defined Contribution (DC) Master Trusts will be harmonised across all of the types of schemes it regulates including DB and DC schemes.

Improving the way the system works – scheme funding

The intention is to give TPR the ability to enforce clearer funding standards, focussing on three main areas:

- how prudence is demonstrated when assessing scheme liabilities
- what factors are appropriate when considering recovery plans
- ensuring a long-term view is considered when setting the funding objectives

TPR will consult on changes to its Code of Practice on 'Funding defined benefits' and the government intends to legislate to allow TPR to take enforcement action, in cases of non-compliance, beyond the powers set out in existing legislation.

Additionally, the trustees of a DB scheme will be required to appoint a Chair who will report to TPR in the form of a Chair's Statement submitted with the scheme's triennial valuation. The Chair's Statement will inform TPR of the trustees' approach to risk management and how the funding objective is being set with a long-term perspective. This is intended to improve scheme governance and trustee decision-making and provide increased accountability to members.

Improving the way the system works – consolidation

The government recognises the arguments supporting greater DB pension scheme consolidation and will aim to raise awareness of the benefits of consolidation with trustees and sponsoring employers (for example, using TPR's Trustee Toolkit online learning programme). The government will consult later in the year on proposals for:

- a legislative framework and authorisation regime within which new forms of consolidation vehicles could operate
- a new accreditation regime which could help build confidence and encourage existing forms of consolidation

The government is keen to encourage industry innovation in this area but, with new forms of 'commercial' consolidation already emerging, it is important that risk transfers are safe, with appropriate reassurance and protection for members. The White Paper sets out an intention to develop a framework that might apply to such vehicles. The government will also consider minor changes to guaranteed minimum pensions (GMP) conversion legislation to support benefit simplification.

British Steel Pension Scheme and other 'live' areas

The final section includes the government's response on its May 2016 consultation in respect of the British Steel Pension Scheme (BSPS). A new scheme, BSPS2, was set up following a Regulated Apportionment Arrangement (RAA) under existing pension legislation. Members were offered the choice to transfer to BSPS2 on lower benefits, to remain in BSPS and enter a Pension Protection Fund (PPF) assessment period or to exercise their right to transfer out to an individual arrangement. The White Paper therefore confirms the government's position not to legislate to permit the BSPS trustees to reduce the scheme's liabilities or to allow transfers to a new scheme providing lower benefits without individual member consent which were other options discussed in the BSPS consultation.

Other 'live' areas considered in this section of the White Paper include:

- **RAAs** – the government will continue to work with TPR, PPF, stakeholders and the pensions industry to assess whether the right employers can access RAAs at the right time, without detriment to members, whilst still benefitting struggling employers and the wider economy.
- **Indexation of pensions** – the government is not minded at this stage to introduce a statutory CPI override; however, it will continue to monitor developments in the way inflation indices are used across government.
- **Employer debt in multi-employer schemes** – the government confirmed it will not make further changes to the way employer debt is calculated, given the flexibilities that currently exist in legislation (including regulations providing for deferred debt arrangements which come into force in April). The government believes the current method of calculating debts based on insurance company buy-out costs provides significant protection to members and remaining employers, and consolidation may provide an alternative solution for those who cannot afford to buy-out.

Implementation

The White Paper recognises that the proposals form a significant programme of work, requiring a phased approach over a number of years:

- "***Taking decisive action***" – TPR is already working on its ambition to be a clearer, quicker and tougher regulator, and measures in the White Paper will further support this, including building on existing procedures for director qualifications. The government and TPR are also improving trustee and sponsor awareness of existing forms of consolidation and supporting members to understand the funding position of their scheme - areas where legislation is not required to make progress.
- "***Involving others and legislating***" – DWP and TPR will consult during 2018 and into 2019 on particular policies before moving to legislation when parliamentary time allows. It may be possible to take forward some measures through secondary legislation but in most cases primary legislation will be required and this is unlikely to be before the 2019-20 parliamentary session.
- "***Reviewing and going further***" – in some areas the government has committed to monitor developments (for example the use of inflation indices across government) or to work with stakeholders to keep matters under review (for example the scope and use of RAAs) and will introduce measures if needed.

If you would like to discuss any of these issues in more detail or have any questions please get in touch with your usual GAD contact.

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