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Sixty second summary

The Pension Schemes Bill

The *Pension Schemes Bill 2019/20*, as prefigured in the Queen's Speech, had its First Reading in the House of Lords on 15 October 2019. Among other things, it makes provision for the establishment of collective money purchase schemes, bolsters and boosts the Pensions Regulator's powers, lays the foundations for 'pensions dashboards', makes changes to the defined benefit (DB) funding regime, and allows for restriction of statutory transfer rights.

Collective money purchase

In March 2019 the Government confirmed that it would facilitate the establishment of 'collective defined contribution' (CDC) schemes by Royal Mail and other early adopters. It is hoped that pooling of investments and risks will enable collective schemes to provide targeted benefits exceeding those that could be obtained through a standard money purchase scheme. However, benefits will be adjusted, periodically, so that the expected (actuarial) cost of paying them is no greater than the available assets.

The Bill recognizes a new category of scheme, the *'collective money purchase scheme*' (the terminology is in keeping with existing statutory definitions). It will have to be a private-sector, trust-based occupational scheme established by an employer or corporate group (and by no other), for the benefit of its employees only; there is, however, power for the Government to loosen the restraints. Ring-fencing of assets and contributions will be required if a scheme is also to provide non-CMP, or a combination of *different* CMP, benefits.

A CMP scheme will need the Regulator's authorization to operate. The criteria, adapted from the master-trust regime, are that those running the scheme are '*fit and proper persons*', that it is of sound design and financially sustainable, that it has adequate processes for its operation and communications, and that it has an adequate strategy for the protection of members if certain events should occur (e.g. loss of authorization resulting in compulsory winding up).

Actuarial valuations will be required annually to determine whether benefit adjustments are required, and the scheme actuary's advice will have to be sought prior to decisions about the way in which benefits are to be calculated. If benefit adjustments are not made in accordance with the actuarial valuation results and the scheme rules, it will be necessary to inform the Regulator.

The Regulator's powers

The Government confirmed in February 2019 that it would strengthen the Regulator's powers and introduce new penalties for misbehaviour in connection with DB schemes. The Bill duly provides for changes to the contribution notice (CN) rules, introduces new offences and penalties for pensions misbehaviour, requires those involved in certain corporate transactions to notify the Regulator and issue related statements, and enhances the Regulator's investigatory powers.

There will be two new circumstances in which the Regulator can impose a CN upon an employer, or a connected person: where an act or omission by the target results in a material reduction to the recoverable section 75 debt, or where it materially reduces the employer's resources relative to its estimated section 75 debt. The Bill also contains two additional considerations relevant to the question of whether a CN is '*reasonable*': the target's failure to comply with new notifiable-event obligations (see below); and the effect of the act or omission in question on a scheme's assets or liabilities. The effective date for calculation of the CN amount will become the scheme year-end prior to the Regulator's decision to issue a warning notice (currently, the calculation is based on the buy-out shortfall at the time of the target's act or omission, which

can be as much as six years before a warning notice is given). Contribution notices will specify the date by which they must be paid.

The Bill contains a new duty to notify the Regulator of certain events and their effects. The triggering events are to be specified in regulations; they are expected to relate to the sale of a material part of the business of any employer with responsibility for at least twenty per cent of a scheme's liabilities, and the granting of security on a debt that gives it priority over scheme debt.

New criminal offences and civil penalties will be available to deter misconduct. In certain cases, a criminal conviction could result in up to seven years' imprisonment and an unlimited fine, or a civil penalty of up to £1 million. That will apply to conduct which (without reasonable excuse) was intended to avoid an employer's section 75 debt or was known (or ought to have been known) to be materially detrimental to the likelihood of scheme members receiving their accrued benefits. Failure to pay a CN by the deadline will open the target up to the risk of a criminal conviction with a fine of unlimited amount, or the new £1m civil penalty. The £1m penalty will also be available to punish those who (for example) knowingly or recklessly provide false or misleading information to the Regulator or scheme trustees, and will be able to 'lift the corporate veil' to reach any directors and other office holders (as well as shareholders, where they manage a company's affairs) with whose connivance an act is done.

Dashboards

The Bill contains legislation to support the creation of pensions dashboards, including powers to compel trustees and other pension providers to cooperate.

Scheme funding

Trustees of DB schemes will be required to formulate and agree with the employer a '*funding and investment strategy*' (FIS) describing the funding level for which they are aiming, and the investments that they intend to hold by the time they hit it. Having consulted the employer, they will have to produce a 'statement of strategy' describing their FIS, as well as the extent to which it is being implemented, the main risks to its successful implementation, and their reflections on any important decisions taken. The statement will be signed on the trustees' behalf by their chairperson and sent to the Regulator. Providing false or misleading information in a statement of strategy will be a criminal offence, punishable by imprisonment for up to two years' or a fine of unlimited amount (or by both).

The amount required on the scheme-specific funding basis to meet the scheme's liabilities will have to be calculated consistently with its FIS. All schemes (not just those with a funding deficit) will have to submit their actuarial valuations to the Regulator. The Government will gain power to set out the factors that are relevant when determining whether a recovery plan is '*appropriate*' to a scheme's circumstances.

Statutory right to transfer

The Government will have power to make the statutory right to transfer subject to conditions about the member's employment or place of residence. It is expected to be used to oblige members who wish to transfer to occupational schemes to produce evidence of earnings from a sponsor of the receiving scheme, or of residence in the place where that scheme in based (or both). The goal is to make it harder for bogus occupational schemes to be used in connection with scams.

There are no surprises here: each of the provisions can be traced back to a recent (not-so-recent in the case of the statutory transfers clause) consultation exercise. One conspicuous omission is a regulatory framework for the new breed of DB 'superfunds'. Rumours that it might not make the cut began circulating during the summer. All is not lost, though: there would be ample opportunity to add clauses to the Bill during its passage through Parliament. Except…

The Bill is scheduled to have its Second Reading on 30 October—the day before '[Br]exit day'. It remains to be seen whether the consensus exists, or indeed whether this session of Parliament will last long enough, for it to become law.

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