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Current issues

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Articles this month:

The Pension Schemes Bill (reprised)

The UK's new Government has revived the *Pension Schemes Bill 2019/20* that expired when Parliament was dissolved for the general election.[1] The revitalized Bill does not appear to be substantively different: it still provides 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.

In this article we give a broad overview of the contents of the Bill. For a more-detailed synopsis of its provisions, please read our October 2019 Sixty Second Summary.[2]

Collective money purchase

The Bill recognizes a new category of occupational pensions arrangement: the *'collective money purchase scheme*'. The hope is that, by pooling investments and risks, collective schemes will be able to provide benefits that exceed those that are typically obtained through standard money purchase schemes. However, the targeted benefits will be adjusted periodically so that the expected (actuarial) cost of paying them is no greater than the available assets.

Collective money purchase (CMP) schemes will be confined initially to the private sector, and will have to be established under trust by single employers or corporate groups for the benefit of their own employees; that said, the Bill caters for their extension in future to unconnected employers and master trusts. Schemes will need the Regulator's authorization to operate, based on criteria adapted from the existing master-trust supervision regime. Annual actuarial valuations will have to be carried out to determine whether benefit adjustments are necessary: if they are not made when required by a scheme's rules it will be necessary to inform the Regulator.

The Regulator's powers

The Bill will strengthen the Pensions Regulator's hand by enhancing its investigatory powers, by requiring those involved in certain corporate transactions to notify it and make related statements, by amending the contribution-notice rules in its favour, and by introducing new criminal offences and civil penalties for misbehaviour in connection with DB schemes.

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[1] <services.parliament.uk/Bills/2019-20/pensionschemes.html>
[2] <www.hymans.co.uk/media/uploads/1910_pension_schemes_bill_60SNS.pdf>

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 targeted funding level and the investments that they intend to hold by the time they reach it. The amount required, on the scheme-specific funding basis, to meet a scheme's liabilities will have to be calculated consistently with the FIS. Having consulted the employer, trustees 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 Government will also gain power to prescribe 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 is based (or both). The goal is to make it harder for bogus occupational schemes to be used in connection with scams.

Impact assessments & other information

The Department for Work and Pensions has (re)published assessments of the estimated impacts of the measures contained in the Pension Schemes Bill 2019/20.[3] The House of Lords Library has prepared a briefing on the Bill in preparation for its Second Reading, which is scheduled to take place on 28 January 2020.[4]

Despite what you might have read elsewhere, the Bill is not quite identical to last year's (for a start, it is two pages longer). Most of the differences are unremarkable, but there are a small number of substantive (if somewhat esoteric) changes, for example involving the new employer-resources-based ground for contribution notices. Nevertheless, we suspect that when the Pensions Minister said that the Bill had been '*refined*' many people might have been led to expect more.[5] Calls have been made for the Government to narrow the circumstances in which the new criminal offences (in particular the one targeting conduct detrimental to the likelihood of scheme members receiving their accrued benefits) will apply. They will now have to be answered during the Bill's progress toward Royal Assent.

The impact assessments appear to be the same as the ones published last year for the Bill's original incarnation. The cost estimates should be taken with a pinch of salt. For example, the costs associated with trustees familiarizing themselves with the measures are based on an assumed average remuneration of £28.50 per hour (extrapolated from data on corporate managers and directors: the Government holds no trustee-specific figures), and how long it is thought it might take someone to read and comprehend the changes. They do not allow for the costs of advice and training.

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[3] <services.parliament.uk/Bills/2019-20/pensionschemes/documents.html>

[4] <researchbriefings.files.parliament.uk/documents/LLN-2020-0018/LLN-2020-0018.pdf>

[5] <twitter.com/dwppressoffice/status/1207632985778016256>

RPI consultation delay

A letter from the Chancellor of the Exchequer to the Chair of the House of Lords Economic Affairs Committee announces that consultation on a proposed change to the Retail Prices Index (RPI) will now begin on 11 March 2020, the date of the next Budget.[6] The exercise was originally planned to commence in January 2020.

For more details of the background to this announcement, please see *Current Issues* October 2019.[7] In summary, the UK Statistics Authority (UKSA) intends to amend the RPI calculation so that it becomes, in effect, a clone of the Consumer Prices Index variant that incorporates owner-occupiers' housing costs (the CPIH). The consultation is to be about whether the Government ought to allow the UKSA to make the change before 2030 and, if so, when between 2025 and 2030 it should occur.

The consultation period will last for six weeks. The outcome will be announced before Parliament rises for its summer recess, on 21 July 2020.

Regulator trumpets BHS contribution notices

The Pensions Regulator has published the Determination Notice that led to it issuing contribution notices to Dominic Chappell for his role in Retail Acquisitions Limited's ill-fated purchase of the BHS (British Homes Stores) group of companies, in March 2015.[8]

The Regulator's Determinations Panel concluded that Chappell ought to be issued with two contribution notices: one for BHS's main pension scheme, for an amount just shy of £9.5m, and one for slightly more than £95,000 in connection with its executive scheme. The Determination Notice dates from January 2018; however, appeals and other legal proceedings have meant that the contribution notices were not actually issued until August 2019.

The Panel found evidence of '*reckless disregard*' in the inadequate due diligence that was conducted prior to the sale. It said that Chappell '*did nothing seriously to investigate the position, ignored the advice of his professional advisers, and appeared not to care about resolving the issues presented by the Schemes.*'

The contribution-notice amounts were determined by reference to the payments considered to have been '*extracted*' from the business (although the Panel notes that those payments '*fall far short of the actual detriment*' caused to the pension schemes, which it estimated at between £36m and £56m). They comprised payments made to Chappell, his family, and the directors of the various companies involved, and the professional fees incurred in connection with the sale. Regarding the professional fees, the Panel observed that it was fairly standard for such acquisition costs to be loaded onto an acquired business as debt, but said that in BHS's case there was no realistic prospect that the business would ever be profitable enough to meet them.

On the question of the 'reasonableness' of issuing the contribution notices, the Panel quoted and endorsed the comments of the QC who represented the Regulator's case team at the hearing:

> '*this is not just a commercial transaction that went wrong; this is a commercial transaction that was wrong. It was the sort of attitude to pension liabilities that must not be encouraged or allowed. This is exactly the sort of situation that moral hazard provisions were designed by and instigated by Parliament to meet.*'

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6 <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857518/190113_CX_to_Lord_Forsyth_-_RPI_consultation_timing.pdf>

7 <www.hymans.co.uk/media/uploads/Current_Issues_-_October_2019.pdf>

8 <www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/bhs-pension-schemes-determination-notice.ashx>

New duties for IGCs

The Financial Conduct Authority (FCA) has published a policy statement confirming that it will go ahead with proposals to extend the duties of independent governance committees (IGCs) and governance advisory arrangements (GAAs).[9] From April 2020, IGCs and GAAs will be required to consider and report on their firm's environmental, social and governance (ESG) policies and oversee the value for money of any 'investment pathway solutions' for pensions drawdown.

Since April 2015, providers that operate workplace personal pensions have been required to have IGCs to perform a role similar to that of trustee boards of occupational pension schemes. Smaller and less complex schemes may establish a GAA with a third party as an alternative to an IGC.

From August 2020, providers offering pensions drawdown to those who have not taken financial advice will be required to provide 'investment pathway solutions'.[10] These will give individuals several options for how they plan to use their money and then invest it in the corresponding solution designed for meeting these objectives. The FCA's new requirements mean that any firm intending to provide investment pathway solutions will be required to have an IGC or GAA in place by 6 April 2020.

The FCA is also to produce guidance for providers of pension products and providers of investment-based life insurance products on how firms should think about ESG risks and concerns when making investment decisions on behalf of consumers.

Regulator leverage & liquidity research

The Pensions Regulator has published the results of a survey into the investments of the UK's largest defined benefit (DB) schemes. [11] The research was carried out to give the Regulator a better understanding of the risks faced by DB pension schemes and to help inform the Bank of England's Financial Stability report.

Pension funds can use leverage to manage their risk, such as their exposure to interest rate risk. There are various forms of leverage: for example, borrowing to gain, or increase, exposure to an asset class. It can also be used to hedge risks to the investment portfolio or scheme liabilities.

The Regulator's initial analysis of the survey has found that, although '*many schemes are well-diversified and are actively monitoring the risks in their portfolios that may arise in relation to leverage and liquidity*', some schemes are pursuing more risky investment strategies in exchange for higher returns.

The Regulator will analyse the survey responses in more detail and '*consider how it can use the results to help trustees improve their risk management practices'*.

[9] Policy Statement PS19/30, *Independent Governance Committees: extension of remit* <www.fca.org.uk/publication/policy/ps19-30.pdf>.
[10] Policy Statement PS19/21, *Retirement Outcomes Review: feedback on CP19/5 and our final rules and guidance* <www.fca.org.uk/publication/policy/ps19-21.pdf>.
[11] <www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/db-pension-scheme-leverage-and-liquidity-survey.ashx?la=en&hash=1DDBD287D5C70959DE58F3F36FA632095A21D0B7>.

Purple Book 2019 & DB landscape

The Pension Protection Fund (PPF) has published the *Purple Book 2019*, which looks at the risks faced by defined benefit (DB) schemes in the year ending March 2019.[12] This edition provides data on 5,422 DB schemes, representing 99.7 per cent of the estimated 5,436 schemes eligible for PPF compensation.

The document contains information on scheme demographics, funding, asset allocation, risk reduction and data on PPF claims and compensation. Some headlines include the following:

- the number of schemes open to new members is down one per cent to 11 per cent;
- the number of schemes closed to future accrual has increased to 44 per cent (from 41 per cent);
- the net funding position of DB schemes on a section 179 valuation basis has improved, with the deficit as at 31 March 2018 falling from £70.5 billion to £12.7 billion as at the end of March 2019;
- the proportion of scheme assets invested in equities fell from 27 per cent to 24 per cent, while the proportion invested in bonds increased from 59 per cent to 62.8 per cent; and
- there were £37 billion worth of risk transfer deals (buy-ins, buy-outs and longevity swaps) in the year to 30 June 2019, up from £22 billion worth in the previous year—the PPF notes that this is still a relatively small amount in the context of the whole universe of schemes.

The PPF also identifies issues that could pose risks to it in the future, including Brexit, the phasing out of the RPI as a measure of inflation and slowing economic growth.

The Pensions Regulator has, separately, published the fourth edition of its *DB Landscape* publication, an annual report on the DB schemes that it regulates.[13] It contains statistics on scheme demographics, funding, indexation and public sector schemes. Although it covers some of the same ground as the Purple Book, its data set includes all DB and hybrid schemes having at least one member that are required to register with the Regulator, not just those eligible for the PPF.

HMRC newsletters

Her Majesty's Revenue and Customs (HMRC) has published new editions of its *Pension Schemes Newsletter*, *Countdown Bulletin* and *Managing Pension Schemes Service Newsletter*.

In *Pension Schemes Newsletter 116*, HMRC provides some fresh 'pensions flexibilities' statistics; mentions (and apologies for) some problems currently being experienced with Pension Schemes Online; and encourages responses to the Treasury's consultation on the future of the Trust Registration Service (which is slightly odd, because the intention is to exempt registered pensions schemes, and the Treasury does not ask for views on that aspect of its plans).[14]

Countdown Bulletin 50 contains revised proposals for automatically attributing to individual members any part-payments made by schemes.[15] It notes that this will affect the original timeline HMRC published for the issue of final GMP data cuts. *Countdown Bulletin 51* gives further information about the proposed solution for allocating payments received from pension schemes for individual members of their scheme where their bill was part-paid.[16]

Managing Pension Schemes Service Newsletter—January 2020 provides information about Phase 2 in the development of HMRC's Managing Pension Schemes service.[17] Phase 2 covers functions like practitioner

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[12] <www.ppf.co.uk/purple-book>. It may be necessary to provide an email address before downloading the Purple Book, as the PPF intends to survey readers about the publication.
[13] <www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/db-pensions-landscape-2019.ashx>
[14] <www.gov.uk/government/publications/pension-schemes-newsletter-116-january-20/pension-schemes-newsletter-116-january-2020>
[15] <www.gov.uk/government/publications/countdown-bulletin-50-december-2019/countdown-bulletin-50-december-2019>
[16] <www.gov.uk/government/publications/countdown-bulletin-51-january-2020/countdown-bulletin-51-january-2020>
[17] <www.gov.uk/government/publications/managing-pension-schemes-service-newsletter-january-2020/managing-pension-schemes-service-newsletter-january-2020>

registration and the ability to file returns. The *Newsletter* also has an update about the migration of schemes from the old Pension Schemes Online service.

It is disappointing that neither of the Countdown Bulletins provides a timescale for the relase of the final data cuts. HMRC had said (back in May 2019) that it expected to issue the final data cut on the GMP information it holds on members in November 2019. The delay in receiving the data will mean that many GMP equalization exercises will also be held up.

And Finally…

We spotted this aside concerning filial confidences and conflicts of interest, delivered by Lib-Dem peer Lord Sharkey on the occasion of the Second Reading of the *Pension Schemes Bill*:

> '*My Lords, for the sake of transparency, I should record that one of my children works for the Money and Pensions Service and that I have not had, nor will I have, any discussions about any of the matters covered by the Bill with her—or, probably, about anything else.*'[18]

We would like to assure the noble Lord that we would not consider him to be gravely compromised as a politician should he happen to discuss pensions law with his daughter (although we totally understand if they'd really rather not).

We assume that the concluding remark was a quip. as it was delivered wryly and drew laughs from the gathered peers. However, as someone whose conversations with his offspring are increasing couched in terms of baffling modern cultural touchstones like *Gacha Life*, kawaii and *Tik-Tok*, *AF* confesses to a modicum of envy…

[18] <hansard.parliament.uk/lords/2020-01-28/debates/C449A099-0CAD-432A-8B88-61EE0D1E3FB3/PensionSchemesBill(HL)>