

In *The Agenda* we summarise the state of play with the key pensions issues about which employers and trustees should be keeping themselves informed. Where appropriate, we highlight the actions that could or should be taken.

Current issues are subdivided between financial and compliance issues and HR and communication issues, although inevitably there will be a degree of overlap in some cases. We also keep one eye on what is coming over the horizon.

Our aim is to help you make your company or trustee board agendas focused on what is important to you.

We have kept *The Agenda* brief. Please contact your HamishWilson consultant, for further details.

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Financial and compliance issues



Abandonment, Anti-avoidance and Clearance

Abandonment occurs when a sponsoring employer seeks to avoid its pension liabilities by severing its link with a DB scheme (eg as a result of a corporate restructuring) without providing the scheme sufficient funds or assets to compensate for losing its ongoing support. If it occurs, the Pensions Regulator has the power to issue a financial support direction and/or a contribution notice against the relevant parties, depending on the circumstances.

The Regulator issued updated [guidance](#) in December 2008 on how trustees should deal with a proposal that might involve the abandonment of a DB scheme. The only significant change from the previous guidance recognises the fact that contribution notices can now be imposed on a person who has acted in good faith, but by implication did not show sufficient care. (It does not reflect the new material detriment test (see below), because the relevant provisions of the Pensions Act 2008 have not yet commenced.)

The DWP published its [response](#) to a [consultation](#) on how best to beef-up the Regulator's anti-avoidance powers on 20 October 2008. At the same time, the Minister of State for Pensions, Rosie Winterton, announced that the Government had tabled amendments to the Pension Bill (now the Pensions Act 2008) to introduce the Regulator's new powers, but with some modifications. These include a requirement for the Regulator to produce a statutory Code of Practice to guide the application of the new "material detriment" test (whether any actions or failures to act have had a detrimental effect on the likelihood of members receiving their benefits) for contribution notices.

The Regulator issued a [draft Code of Practice](#) for consultation from 15 December 2008 until 6 February 2009. This details the circumstances in which the Regulator would expect to issue a contribution notice under the material detriment test, which include:

- the transfer out of the jurisdictions of the United Kingdom of the scheme
- the transfer out of the jurisdictions of the United Kingdom of the sponsoring employer if by doing so there is a material reduction in the level of employer support or legal and regulatory protection for scheme members
- the severing of employer support for the scheme so that it is removed, substantially reduced or becomes nominal
- the transfer of liabilities of the scheme to another scheme or arrangement which does not have sufficient employer support or is not sufficiently well funded or
- the operation of the scheme in such a way that is designed to create a financial benefit for the employer or some other, where inadequate account has been taken of the interests of the members.

Employers (in particular) should familiarise themselves with the (draft) Code if they are thinking about any of the types of restructuring covered by it.

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Abandonment, Anti-avoidance and Clearance (continued)

The DWP also intends to extend the "look back" period (the period in which the Regulator can exercise the power to issue a financial support direction) from 12 months to 24 months, with this increase being phased in over the period ending on 6 April 2010. It issued [draft regulations](#) for consultation on 15 December 2008.

Seeking clearance from the Pensions Regulator is appropriate where there may be a significant weakening of the employer covenant as a result of a corporate transaction, eg where a highly-leveraged transaction occurs and/or the assets to which the scheme may currently have recourse are being removed from the employer group.

The Regulator published updated [clearance guidance](#) in December 2008 reflecting its new powers.

Employers should consider whether to apply for clearance whenever involved in a corporate deal.

Accounting standards

Between 31 December 2006 and 31 December 2008, the margin between gilt yields and bond yields ("the credit spread") has increased nearly five-fold from about 0.6% pa to about 2.9% pa largely as a result of the global credit crunch. Given the credit crunch is likely to be unwound over time, we question whether it is sensible for companies to increase their discount rates mechanically in line with corporate bond yields. See [News](#) for further explanation.

A number of companies have adjusted their discount rate in recognition that bond yields are abnormally high.

In the context of their wider corporate objectives, Finance Directors should consider not taking credit for all the short-term gain without understanding the potential for the longer-term pain.

In July 2007, the International Accounting Standards Board's International Financial Reporting Interpretations Committee (IFRIC) issued an interpretation, IFRIC 14 "IAS 19 – The Limit on Defined Benefit Asset, Minimum Funding Requirements and their Interaction". It is mandatory for financial periods beginning on or after 1 January 2008. Broadly, surplus can only be recognised if it is either refundable or can be used to reduce future contributions.

Employers who account for pensions under IAS 19 and think they may have an accounting surplus should discuss IFRIC 14 with their auditors to establish the likely effect on their balance sheets.

Cash equivalent transfer values

New regulations came into force on 1 October 2008 and all CETVs quoted now must comply with them. Essentially, trustees have become responsible for determining the assumptions, having sought actuarial advice.

The Pensions Regulator issued guidance on 29 September, just two days before the new regime came into effect. See our [In Focus](#) for a summary of the new regulations and the Regulator's Guidance.

If they have not already done so, trustees should consider the new requirements. Even those who have already done so should reconsider whether (and, if so, the extent to which) they reduce CETVs in the light of the steep falls in asset values seen recently, taking the employer's covenant into account.

Commutation of trivial pensions

[Draft \(DWP\) amending regulations](#) will extend the circumstances in which occupational pensions can be commuted on the grounds of triviality in line with [draft HMRC regulations](#). Both sets of regulations are due to come into effect from 6 April 2009.

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Commutation of trivial pensions (continued)

The new circumstances in which pensions can be commuted into an authorised lump sum payment are:

- the member is between the ages of 60 and 74, inclusive
- he is not (or connected to) a controlling director of a sponsoring employer of that or any related scheme
- every other related scheme (if any) makes a payment to the member
- the total value of the payments made by all related schemes does not exceed £2,000
- all the payments are made within a period that does not exceed one month
- the payments extinguish the member's entitlement to benefits under all the related schemes and
- no transfer payments have been made in respect of the member during the preceding 3 years.

Authorised lumps sums can also be made in certain other new situations.

Trustees may wish to ask their scheme's administrator how many pensions it will be possible to commute on such grounds and what administrative cost savings would be achieved. If they decide to proceed, they should then discuss the commutation terms with their Scheme Actuary.

Conflicts of interest

The Pensions Regulator issued [guidance](#) for trustees and employers on conflicts of interest on 1 October 2008. It contains advice on how to identify different types of conflict of interest (with potentially the most serious being where an individual trustee also holds a senior position within the sponsoring employer and so has a conflict between his duty to scheme beneficiaries and his duty to the employer's shareholders) and suggests ways in which such conflicts can be managed. It also highlights the conflicts of interest that can exist where the trustees and employer (or the trustees of two or more schemes with the same sponsoring employer) do not have separate advisers. Trustees are encouraged to develop a policy for dealing with conflicts.

Trustees should familiarise themselves with the guidance and consider their own and/or their advisers' conflicts or potential conflicts, taking legal advice where appropriate.

The provisions in the Companies Act 2006 regarding conflicts of interest also came into force on 1 October 2008. Section 175 imposes a duty on company directors to avoid situations in which they have, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company. However there are exemptions where the situation cannot reasonably be regarded as likely to give rise to a conflict of interest or where the matter has been authorised by the company's directors.

There are potentially serious implications for:

- individual trustees who are also company directors
- scheme sponsors where their directors are also trustees and
- corporate trustee companies.

If they have not already done so, such persons or bodies should consider taking legal advice and take appropriate action as soon as possible to avoid breaching their statutory duties.

"Debt on employer" regulations

Rosie Winterton, Minister of State for Pensions, announced in November 2008 that the Government is considering making changes to the "debt on employer" regulations under s75 of the Pensions Act 1995. The intention is to relieve some of the constraints on corporate restructuring for companies participating in multi-employer schemes.

New regulations had come into force on 6 April 2008, but these have been heavily criticised. The DWP is aiming to hold a full public consultation in the spring (originally February 2009) and to introduce changes from October 2009.

Any employer who participates in a multi-employer scheme should seek legal and actuarial advice about the consequences of a corporate restructuring or ceasing future benefit accrual before taking action.

Disclosure of directors' pensions

The Department for Business, Enterprise and Regulatory Reform (BERR) had originally indicated that it would be considering the arrangements for the disclosure of directors' pensions in company reports and accounts that apply from October 2008 (when the new regime for cash equivalent transfer values (CETVs) came in – see above), as part of the process of restating the accounting schedules to the Companies Act 1985 as regulations under the Companies Act 2006. However, BERR informed us in February 2009 that it is not considering further regulation until IAS 24 on related-party disclosures has been revised and incorporated into EU law in 2011 or thereabouts.

The implication is employers should continue to base their disclosures of directors' pensions on the CETV bases set by their schemes' trustees for now.

Equalisation issues

The provisions of many schemes had to be amended following the European Court of Justice's "Barber" ruling of 17 May 1990 in order to achieve equality of benefits between men and women. More recently, schemes will have had to remove any age-based discrimination (except where exempt). Various recent Court cases have highlighted the importance of ensuring that any changes that have been made are both lawful and made appropriately in accordance with the requirements of the scheme's trust deed and rules.

Trustees and employers may wish to check the validity of any changes made to their schemes, especially where it was intended to level down benefits in respect of service after the date of change.

The Pension Protection Fund (PPF) issued a [consultation paper](#) on 28 April 2008 setting out how it intends to require schemes that have entered an assessment period to equalise benefits relating to Guaranteed Minimum Pensions (GMPs). The consultation ran until 28 July 2008.

The PPF's approach to GMP equalisation may not be a viable solution for other schemes. Even so, **trustees should monitor developments given the Pensions Act 1995 placed an obligation on them to equalise benefits.**

The DWP published its [response](#) on 5 February 2009 to its September 2008 [consultation paper](#) containing draft regulations specifying how GMPs can be converted into normal scheme benefits using the concept of actuarial equivalence. The regulations are expected to come into force in April or May 2009.

In our opinion, converting GMPs is likely to be a non-starter unless the sex-equality issues surrounding GMPs are clarified. See our [press release](#) for further explanation.

Governance

The Regulator published [guidance on record-keeping](#) on 9 January 2009, following a consultation exercise, which helps those responsible for record-keeping and administration (including trustees) to put in place good practices for measuring the presence of member data. It also gives advice on assessing the risks of incomplete or inaccurate data, with aim of improving the standard of record-keeping across the industry.

Inducements

In January 2007, the Pensions Regulator issued [guidance](#) on what it provocatively calls "inducement offers", ie where an employer offers members a financial incentive to transfer out of their DB pension scheme or to accept a reduction in benefits. In particular, the guidance says trustees and employers must give full and proper information so that members fully understand the implications of transferring out of a DB scheme. See our [In Focus](#) for details.

Trustees should consider carefully and apply a high level of scrutiny to all inducement offers.

Investment advice

The NAPF launched on 14 October 2008 the final version of its [Best Practice Principles](#) on investment advice to pension funds.

The sixteen Principles are a key part of the NAPF's Assessing Investment Consultants Performance toolkit (launched in March 2008), designed to help pension fund trustees evaluate and compare investment consultancies on a more consistent basis. The Principles cover the key client service areas of investment advice, technical competence, communication, team working and dispute resolution, education, training, fees and administration.

Trustees may wish to refer to the principles when reviewing their investment consultants.

Member-nominated trustees (MNTs)

With limited exceptions, all schemes should have established and implemented arrangements under which members can nominate and select at least one-third of their trustees (and this may rise to one-half in future). The arrangements should be reviewed every three to five years. See our [In Focus](#) for further details.

[Draft amending regulations](#), which are due to come into effect on 6 April 2009, will clarify that independent trustee companies performing a professional function are not required to appoint member-nominated directors where they sit as a scheme's trustee alongside a general trustee company (one where the directors perform a similar role to lay trustees).

Trustees should check when they next need to review their MNT arrangements.

Notifiable events

The DWP issued [draft regulations](#) for consultation on 15 December 2008, aimed partly at simplifying the "notifiable events" framework (see our [In Focus](#)) by removing the requirement to notify the Regulator about:

- two or more changes in the holders of any key scheme post within the previous 12 months
- any change in the employer's credit rating, or the employer ceasing to have a credit rating and
- two or more changes in the holders of any key employer posts within the previous 12 months.

Pension sharing on divorce

The Pensions Act 2008 will abolish "safeguarded rights" (ie contracted-out rights created under a pension sharing order on divorce) from 6 April 2009.

The [Pension Sharing \(Pension Credit Benefit\) \(Amendment\) Regulations 2008](#) are also planned to come into force on 6 April 2009. These will enable pension credit benefit members to have the same choices as other occupational pension scheme members on when and how to draw their pension (bringing those choices into line with those currently existing with personal pensions).

Trustees of schemes that grant pension credits should review whether they need to make changes to their scheme's administrative procedures.

PPF (and other) levies

The PPF proposes to raise £700m (£675m indexed with wages) in pension protection levies in 2009/10. It thus proposes to keep levies stable despite a likely increase in claims over the short term (both in terms of the number of employer insolvencies and funding shortfalls) as a result of the effects of the "credit crunch".

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PPF (and other) levies (continued)

The PPF confirmed the risk-based levy scaling factor at 2.22 (and the scheme-based scaling factor at 0.000162) for 2009/10 when it published its [determination for 2009/10](#) on 20 November 2008. (The PPF is able to set the scaling factors in advance this year because the key risk factors are already known; scheme underfunding and insolvency probabilities will be measured as at 31 March 2008 for 2009/10 whereas they were measured as at 31 October 2007 and 31 March 2008, respectively, for 2008/9.)

The economic crisis could result in marked changes in the "Failure Scores" attributed to schemes' sponsoring employers and/or the assumed probability of insolvency attached to each score. Even sponsors with a history of low probabilities of insolvency could be deemed to have become significantly riskier, with a resultant knock-on increase in their levy for 2010/11.

Trustees should be encouraging sponsoring employers urgently to take whatever actions will improve the sponsor's D&B Failure Score as at 31 March 2009, which the PPF intends to use as the base-point for its 2010/11 levy assessment.

The PPF published a [consultation paper](#) on longer-term changes to the pension protection levy on 18 November 2008. The PPF's proposals for 2011/12 and beyond include:

- assessing the probability of a scheme's sponsoring employer becoming insolvent over a five-year period (as well as separately assessing the probability of it going bust during a one-year period, as now) and
- taking account of the risk a scheme's investment strategy poses to the PPF when calculating its individual levy.

The PPF published the "[Trustee Good Practice Guide](#)" on 9 February 2009 aimed specifically at schemes that are being assessed for entry into the PPF following the sponsoring employer's insolvency.

Revaluation of deferred pensions

The Pensions Act 2008 contains provisions that will reduce the statutory rate of revaluation of deferred pensions for service after 6 April 2009. Statutory revaluations remain geared to price inflation over the period of deferment, but the cap is being reduced from 5% pa to 2.5% pa for benefits accrued after 5 April 2009 (see "Deregulatory review" under "On the horizon" below) - the change will thus only affect future early leavers.

A reduction in the cap could be expected to reduce the cost of future benefit provision, particularly if the rate of price inflation is expected often to be above 2.5% pa. However, it would create another tranche of benefit, adding to administrative and communication complexities (and costs).

The DWP's policy department reportedly said in February 2009 that any rule amendment required to lower the revaluation cap would not constitute a "listed change" under the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 and so would not trigger the need for employers to consult with their employees. The Pensions Regulator has also reportedly clarified that enforcement action will not be taken against employers who do not consult on such a change.

Employers should decide whether to take the opportunity to reduce the cost of benefit provision and their exposure to high rates of inflation and ask their lawyers to check what their scheme's rules say about revaluations and to advise what actions (if any) will be required to reach the desired position.

Scheme-specific funding regime

The core documents issued by the Pensions Regulator in relation to funding are the [Code of Practice](#) and a [statement](#) as to how trustees' funding plans will be regulated. (The Regulator has recently introduced a new longevity "funding trigger", which will apply to valuations with effective dates from September 2008. It will be a secondary trigger, with mortality assumptions only being scrutinised where a scheme is flagged up by an existing trigger.)

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Scheme-specific funding regime (continued)

The Regulator published its latest [scheme funding summary](#), based on its analysis of recovery plans and clearance applications, on 11 December 2008. Unsurprisingly, the summary shows a general improvement in funding levels between 2005 and 2007, but this is before the credit crunch started to bite.

The Regulator issued a [Statement to trustees about current financial pressures](#) on 24 October 2008.

For DB schemes, the Regulator indicates it is important trustees keep the employer's covenant under review and consider whether their review processes are adequate. Where an employer believes an existing recovery plan is at serious risk of jeopardising its future that will be a matter for discussion with the trustees. The trustee board will wish to consider carefully any proposal for change taking into account among other things plans for payments to other creditors and dividends to shareholders. Where a recovery plan is revised, the Regulator must be informed.

For trust-based DC schemes, the Regulator suggests trustees consider member communications and the position of members who are at particular risk in the current economic conditions [eg those close to retirement].

The Regulator subsequently issued a [statement to employers sponsoring DB pension schemes](#) on 18 February 2009, which:

- recognises that current economic conditions are of real concern to employers
- reassures employers that the scheme funding regime is flexible enough to cope with the economic downturn
- confirms there is potential to renegotiate previously-agreed plans to repair pension deficits where the sponsoring company is under pressure
- suggests trustees should be in a position to understand what is reasonably affordable for their sponsor, but all unsecured creditors must be treated equitably and the pension scheme not disadvantaged and
- confirms the Regulator will continue to seek outcomes that are in the best interests of the scheme and sponsor.

The Regulator adds that recovery plans should not be amended to enable the sponsor to continue to pay dividends and that, where there are short-term concerns over affordability, back-end loading a recovery plan may be more appropriate than extending its length.

As indicated by the Regulator, trustees should continue to focus on making sound decisions in the long-term interests of scheme members, which includes not jeopardising the sponsor's future viability.

We are now approaching the second round of scheme-specific funding valuations. Our impression is trustees won the first round on points, supported by legislative pressure for prudence and greater trustee knowledge and understanding. An important factor in many cases was employers did not obtain independent advice (effectively yielding the initiative to the trustees who are the primary focus of the scheme actuary's advice).

Recent financial turmoil means the second round will be tougher and pensions more critical, possibly being the knock-out blow for some employers. In such circumstances employers are taking a serious risk if they get into the ring without a good team of seconds (both actuarial and legal) in their corner.

Employers should ensure they have access to independent advice if they are to avoid having one hand tied behind their backs when sparring with the trustees.

Statement of investment principles (SIP)

Revised Investment Regulations came into force on 30 December 2005. It is now obligatory for trustees to review their scheme's SIP at least every three years. The new regulations have also changed other requirements for the way in which assets are invested and place restrictions on borrowing. See our *In Focus* for further details.

Trustees should check by when their SIP must next be reviewed.

Trustee knowledge & understanding (TKU)

The Regulator announced on 13 October 2008 it had refreshed its TKU framework to ensure it remains relevant and also published drafts of a revised [Code of Practice](#) and scope guidance (for [DB](#) and [DC](#) schemes) for consultation. The revised code of practice sets out practical guidance for trustees in relation to the TKU regime, while the scope guidance provides a checklist of the topic areas of which trustees need to have knowledge and understanding.

Trustees should familiarise themselves with the new Code of Practice and scope guidance and keep their training needs under regular review.

Upper Earnings Limit (UEL)

As announced in the 2007 Budget, the UEL (currently £770 pw) used in the calculation of National Insurance (NI) contributions is to be increased from 6 April 2009 to bring it into line with the threshold for higher-rate income tax (currently £844 pw). However, to avoid cost implications for the Second State Pension (S2P), the UEL is to be replaced when calculating earnings-related state pensions by a new parameter called the Upper Accrual Point (UAP) with effect from 6 April 2009.

The UAP is to be set at £770 pw and will not increase over time, consistent with the Government's intention of gradually converting S2P into a flat-rate pension.

The consequences for contracted-out schemes include:

- From 2009/10, NI contribution rebates will be based only on earnings up to the UAP, although NI contributions will continue to be based on earnings up to the UEL.
- The Reference Scheme Test (for contracted-out salary-related schemes) will become easier to satisfy over time as it will be based on earnings between the Lower Earnings Limit and the UAP, which will decrease in real terms.

More generally, the UEL may feature in schemes' benefit design (eg a different accrual rate may apply on earnings above and below the UEL to facilitate integration with the state scheme). The hike in the UEL and introduction of the UAP could frustrate such designs and create unwelcome consequences unless corresponding changes are made prior to 6 April 2009 (otherwise there are likely to be problems with s67 certification).

Where there is ongoing benefit accrual, employers should review their scheme's rules as a matter of urgency.

HR and communication issues



A-Day

In his Pre-Budget Report of 24 November 2008, the Chancellor of the Exchequer, Alistair Darling, announced that the Lifetime Allowance will be frozen at £1.8 million from the 2010/11 tax year until 2015/16. Likewise, the Annual Allowance will be frozen at £255,000.

Under transitional arrangements, the old "IR limits" and, in particular, the "earnings cap", continue to apply to schemes by default. To maintain the old limits so as to avoid an unintended increase in members' benefits (and scheme liabilities) **employers need to ensure their scheme's rules are amended by 5 April 2011.**

HMRC announced on 19 February 2009 that the notional earnings cap for 2009/10 will be £123,600.

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A-Day (continued)

Scheme members can apply for certain protections against the effects of the Lifetime Allowance, but must do so by 5 April 2009 and may need to gather information from their former schemes first.

Trustees and/or employers may wish to remind members and encourage immediate action.

Age discrimination

The pensions-related aspects of The Employment Equality (Age) Regulations 2006 ("the Age Regulations") came into force on 1 December 2006. With certain exceptions, it is now unlawful for employers, or trustees of occupational pension schemes, to discriminate on the grounds of age when exercising their scheme functions in respect of periods of pensionable service on or after 1 December 2006.

However, uncertainty remains as to what constitutes a discriminatory practice. In early 2008, different outcomes in a couple of employment tribunal cases that addressed whether compulsory retirement at the age of 65 could be objectively justified illustrated the importance placed on individual circumstances.

If they have not already done so, employers should check for discriminatory practices in their schemes (eg age-related accrual rates) and take action to minimise their exposure to equalisation costs.

The DWP published on 16 December 2008 its [response](#) to a [consultation](#) it had launched in October 2007 regarding the uncertainties around flexible retirement and employees working beyond their normal retirement ages.

The DWP's response includes two alternative sets of regulations on which it wishes to consult until 10 March 2009:

- The first option would add a wide statutory exemption, for all pensions rules and practices linked to flexible retirement arrangements, to those listed at Schedule 2 to the Age Regulations.
- The second, more limited option, would allow occupational pension schemes not to provide death-in-service benefits in respect of members in flexible retirement arrangements.

The European Court of Justice (ECJ) started hearing the "Heyday" case in July 2008. Heyday, part of Age Concern, is challenging the UK Government's decision to allow employers to compulsorily retire employees when they reach the age of 65. Heyday claims this runs contrary to the European Union's Directive 2000/78/EC which requires equal treatment in employment and occupation.

The Advocate General opined in September 2008 that it was appropriate for the UK Government to specify an age at which employees can be retired compulsorily, provided it is objectively and reasonably justified. The ECJ's formal ruling, given on 5 March 2009, confirmed this view. It will now be for the UK's High Court to decide whether having a default retirement age of 65 is objectively and reasonably justified.

Employers should continue to monitor the case.

Annual summary funding statements for members

Trustees of schemes that have prepared a schedule of contributions under the scheme-specific funding regime must issue summary funding statements to members within a reasonable period. The Pensions Regulator suggests this would normally be 3 months of the deadline for completion of a valuation (eg for a valuation as at 31 December 2007, the completion deadline is 31 March 2009 and so statements should be issued by 30 June 2009) or the 12-month deadline for any subsequent "actuarial report" giving a funding update.

Prior to completion of the first schedule of contributions, statements should be issued by 21 September in each year.

Trustees should check the deadline that applies to them.

Employer consultation

Since 6 April 2008, employers with at least 50 employees have been required to consult before making certain changes to future benefit accrual or DC contributions payable under an occupational pension scheme or changing the contributions payable to personal pension schemes.

Draft amending regulations, which are due to come into effect on 6 April 2009, will give the Pensions Regulator the power to impose civil penalties on employers who fail to comply without reasonable excuse.

The Regulator issued a **reminder** to employers on 19 December 2008.

Employers should factor in the consultation requirements when planning any benefit changes.

Minimum retirement age of 55

The minimum retirement age will increase from 50 to 55 on 6 April 2010 (except where contractual early retirement rights have been protected). This could lead to a rush of employees aged 50 to 54 wishing to retire in the run up to April 2010, which could disrupt the employer's HR strategy. See our *In Focus* on A-Day issues for further details.

Employers should consider whether they wish to phase in the minimum retirement age of 55.

Statutory money purchase illustrations (SMPIs)

Following a fast-track consultation, the Board for Actuarial Standards (BAS) published **version 1.3 of Technical Memorandum 1: Statutory Money Purchase Illustrations (TM1)** on 21 January 2009 to reflect recent changes in legislation. The amendments will mean that, from no later than 1 September 2009, SMPIs will reflect the forthcoming abolition of money purchase contracting out and the changed method of calculating contracting-out rebates of National Insurance Contributions.

BAS will be carrying out a wider ranging review of TM1 over 2009

On the horizon



Accounting standards

The ASB published a **discussion paper** in January 2008 that takes a fresh look at the principles that might be reflected in a future accounting standard on pensions.

The ASB's proposals include:

- using a risk-free rate to discount future cash flows (ie based on gilt yields instead of AA corporate bond yields)
- basing the liability in respect of active members on their current salaries (plus statutory revaluations) instead of projected salaries
- reporting changes in pension deficits and surpluses in the period in which they arise and
- reporting the actual return on scheme assets in the financial statements instead of the expected return.

If adopted, the ASB's proposals will increase companies' reported pension liabilities and increase the volatility of companies' financial statements from one year to the next. The paper also proposes changes to pension schemes' financial statements and trustees' disclosures to members.

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Accounting standards (continued)

The ASB subsequently announced in October 2008 that it would reconsider its proposal to move to a risk-free discount rate in recognition of a "lack of support" for the proposal and concerns about its behavioural consequences.

A report setting out the ASB's final recommendations for consideration by the International Accounting Standards Board (IASB) and the US's Financial Accounting Standards Board (FASB) is not anticipated until the second half of 2009.

The IASB and FASB launched a consultation on 16 October 2008 under a joint project on proposed enhancements to the [presentation of financial statements](#) with the objective of converging standards; the consultation runs until 14 April 2009.

The IASB's [January 2009 Update](#) indicates that the Board has tentatively decided to work towards two exposure drafts amending IAS19. The first will deal, amongst other things, with the recognition and presentation of changes in the defined benefit obligation and plan assets. The second will deal with contribution-based promises (see [News](#) for an explanation of these).

For the first of the exposure drafts, the Board has tentatively decided entities should:

- disaggregate changes in the defined benefit obligation and in plan assets into employment, financing and remeasurement components, and recognise the components in the income statement
- disclose the employment and financing components either in the income statement or in the notes, and present the remeasurement component in the income statement.

Deregulatory review

The Pensions Act 2008, which received Royal Assent on 26 November 2008, paves the way for:

- a reduction in the cap on the revaluation of early leavers' deferred pensions (see "Revaluation of deferred pensions" under "Financial and compliance issues" above)
- the abolition of "safeguarded rights" (ie contracted-out rights created under a pension sharing order on divorce)
- the abolition of all protected rights (ie DC contracted-out rights) to remove specific benefit restrictions.

A Commencement Order made on 21 January 2009 confirms that the provisions relating to the first two points come into effect from 6 April 2009. Protected rights, however, are not due to be abolished until DC contracting-out is abolished (expected to be sometime between 2012 and 2015).

The Government had also intended to try out a system of principles-based regulation by replacing the existing disclosure regulations. However, the DWP's [Simplification Plan 2008-09](#), issued on 10 December 2008, indicates that a Working Group has concluded such an approach would not be appropriate and some degree of prescription would still be required.

The DWP published its [review of disclosure information requirements applying to occupational, personal and stakeholder pension schemes](#) on 12 March 2009 for public consultation until 6 May 2009 with a view to developing draft regulations for consultation later this year and implementation from 6 April 2010. The review concludes that most existing requirements are either imposed by the EU or vital for members, leaving some albeit limited scope for simplification.

On a positive note, the DWP has consulted on [draft regulations](#) that include new statutory overrides, which are due to come into force from 6 April 2009. These will allow employers with inflexible scheme rules to take advantage of the reduction in the cap on early leaver revaluations (see above) and the similar change that was made to Limited Price Indexation with effect from 6 April 2005 where the scheme's rules would otherwise have prohibited change.

Myners principles

HM Treasury, in conjunction with the DWP and the Pensions Regulator, had issued a [consultation paper](#) in March 2008 on the Myners principles. It published its [consultation response](#) in October 2008, in which the Government's latest thinking on updating the Myners principles is summarised as including the following elements:

- A smaller number of higher-level principles will be used to provide more flexibility for schemes in terms of their size, financial position and strategy to explain their investment decision-making approach to stakeholders.
- Linkage to higher quality, more selective and accessible guidance and trustee tools.
- Greater industry ownership of the principles, guidance and trustee tools.
- Consequently decisions on the nature, scope and development of the principles, best practice guidance and trustee tools will be the responsibility of the joint government-industry Investment Governance Group.
- A more robust approach to disclosure and industry debate, within a voluntary "comply or explain" approach.

This new framework, reinforced by the establishment of the Investment Governance Group, gives greater industry ownership of the principles and places the onus on trustees to report on their own practices. The overall intention is that the new principles should be more effective by being less prescriptive. It is hoped to encourage more reporting by trustees, resulting in more flexible and better-quality disclosure.

Personal Accounts

Personal Accounts are scheduled to be introduced in 2012. (The Personal Accounts Delivery Authority (PADA) says its working assumption is the onset of employer duties and, hence, Personal Accounts will be in October 2012.)

[Draft regulations](#) detailing employers' duties as regards automatic enrolment were published on 12 March 2009 for consultation until 3 June 2009. Two further consultations on draft regulations are planned for spring and autumn 2009, which are to cover:

- spring – the constitution and rules of the Personal Accounts Scheme
- autumn – the remaining elements of employers' duties (including re-enrolment and opt ins, the phasing-in of certain duties, qualifying schemes criteria and certification) and employment safeguards and elements of the compliance regime, including information to be passed to the Pensions Regulator, sanctions and penalties.

The consultation includes [draft regulations](#) allowing the Regulator to delegate certain powers to ensure employers:

- comply with their duties (eg to enrol employees automatically into scheme membership)
- do not induce employees to opt out from scheme membership.

Employers should start thinking about the impact the introduction of Personal Accounts will have on them and the design of their pension arrangements.

PADA is already planning how to pay benefits, publishing a [consultation paper](#) "Securing a retirement income" on 2 December 2008; the consultation ran until 4 March 2009.

The Personal Accounts Scheme will not provide annuities for members. Instead, PADA is proposing the scheme will design a largely self-service process to help members decide which retirement product will suit their specific needs.

Risk sharing

The DWP issued a [consultation paper](#) in June 2008. The paper looked at two different risk-sharing approaches:

- Conditional indexation schemes – DB schemes with pension increases dependent on the funding level.
- Collective defined contribution schemes – schemes that are DC from the employer's perspective, but with a DB target and pooling across members to share out certain risks.

The DWP issued its [consultation response](#) in December 2008 and indicated it will be carrying out further work to explore the concept of Collective DC, but not Conditional Indexation. (See our [press release](#) for our views on this.)