

Last updated: 22 December 2009

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.

Please check www.hamishwilson.com/news/agenda.asp for the latest edition of *The Agenda*.

Financial and compliance issues



A-Day and old IR limits

The new “simplified” pensions’ tax regime came into being on 6 April 2006 (“A-Day”) – nearly four ago!

Under transitional arrangements, the old “IR limits” and, in particular, the “earnings cap”, continue to apply to schemes by default until 5 April 2011, unless removed by a specific deed of amendment. This was to provide a period of grace during which employers could decide which of the old limits they wish to “hard code” into their scheme’s rules to avoid any unintended increase in members’ benefits and scheme liabilities.

The [Registered Pension Schemes \(Modification of the Rules of Existing Schemes\) Regulations 2009](#), which came into force on 11 December 2009, allow schemes to make appropriate changes to their rules without seeking HMRC’s approval even where the rules require such approval to be obtained.

Employers should check whether appropriate changes have already been made and, where not, ensure the process is started soon so that their scheme’s rules can be amended by 5 April 2011.

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 published [Code of Practice No 12](#) in June 2009, together with “[Guidance: Corporate transactions](#)” for employers and “[Illustrative examples: Material detriment test](#)”. The Code confirms the circumstances in which the Regulator would expect to issue a contribution notice under the material detriment test (whether any actions or failures to act have had a detrimental effect on the likelihood of members receiving their benefits) to be where:

- the scheme is transferred out of the UK’s jurisdictions
- the sponsoring employer is transferred out of the UK’s jurisdictions or is replaced with an entity that does not fall within those jurisdictions
- the sponsoring employer’s support for the scheme is removed, substantially reduced or becomes nominal
- liabilities of the scheme are transferred to another scheme or arrangement where this leads to a significant reduction of the sponsor support or funding to cover those liabilities

continued on next page ...



FRESH PERSPECTIVES

1

Abandonment, Anti-avoidance and Clearance (continued)

- the scheme is operated in such a way that creates, or is designed to create, a financial benefit for the employer or some other person and inadequate account has been taken of members' interests, including where risks to members are increased.

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

The Pensions Act 2008 enhanced the Regulator's anti-avoidance powers. In particular, the Regulator is now empowered to issue a contribution notice in respect of the receiving scheme, and not just the transferring scheme, where there was a bulk transfer of liabilities to a scheme to which the protection afforded by section 75 of the 1995 Pensions Act does not apply (such as a DC scheme).

The DWP issued draft regulations on 19 October 2009 setting out how the Regulator is to calculate a contribution notice where such a bulk transfer was the offending act (or one of a series of offending acts) and where it was not an offending act; these were for consultation until 11 December 2009. The amount specified in the contribution notice can be up to the value of the transferred liabilities on a buyout basis.

Employers should consider seeking professional advice whenever involved in a corporate deal.

Accounting for pensions in the credit crunch

The margin between gilt yields and bond yields ("the credit spread") has started to fall back from its credit crunch-induced peak as bond yields start to ease in response to the Bank of England's "quantitative easing". The spread had dropped to 1.6% pa as at 30 September 2009 compared with 2.1% pa as at 30 June 2009 and 2.7% pa a year ago. Bond yields were about 5.5% pa compared with 6.2% pa as at 30 June 2009 and 7.3% pa a year ago.

The reduction in bond yields of about 1.8% pa since last year could add more than 30% to companies' reported pension liabilities if they have a 30 September accounting year-end. Although there has been a strong recovery in equity markets over the past few months, the FTSE 100 index is roughly where it was at the end of September 2008 and so any increase in liabilities will translate into an increase in the accounting deficit.

By mid December the credit spread had decreased further to about 1.3% pa, although bond yields had risen slightly to 5.6% pa. Gilt yields have risen in expectation of higher price inflation in the longer term.

Finance Directors should anticipate having to report higher pension liabilities in the coming months.

Commutation of trivial pensions

The restrictions on when occupational and personal pensions can be commuted on the grounds of triviality have now been relaxed. [The Occupational and Personal Pension Schemes \(Authorised Payments\) Amendment Regulations 2009](#) were laid before Parliament on 9 November and came into force on 1 December 2009.

Corresponding HMRC [Authorised Payments regulations](#) came into force on 1 June 2009. These regulations also make genuine benefit payment errors (eg overpayments) easier to correct.

The DWP had intended to permit Guaranteed Minimum Pensions (GMPs) to be commuted as part of a trivial pension. However, it revealed in its [response to the consultation](#) on the draft amendment regulations before they were laid (issued on 7 December 2009) that the new regulations are defective. It will consider making a correction as a package of further miscellaneous amendment regulations planned to be introduced in April 2010.

Trustees may wish to ask their scheme's administrator how many pensions it will be possible to commute and what cost savings would be achieved. They should also seek legal advice as to whether rule amendments are required before they can take advantage of the relaxations. They will, however, have to wait a few more months before commuting any trivial pensions that include GMPs.

Data protection

The Information Commissioner's Office ruled in November 2009 that a trustee body was in breach of the Data Protection Act after the loss of unencrypted membership data when a laptop was stolen from its software provider.

Trustees may wish to check whether their service-providers and advisers have adequate policies and procedures in place for protecting their members' personal data.

Deeds of amendment

Recent Court cases have highlighted the importance of scheme amendments being made in strict accordance with the scheme's amendment powers. As a result, the effects of amendments made years ago (eg to equalise pension ages between men and women) have been reversed, leaving the scheme with an unexpectedly large deficit and the sponsor having to find extra contributions.

Trustees and employers may wish to check whether past amendments were made appropriately and take remedial action if necessary and ensure any future amendments comply with requisite procedures.

Employer debt regulations

The long-awaited [consultation](#) on draft amendments to the "Employer Debt Regulations" was published by the DWP on 17 September 2009; 19 November 2009 was the deadline for comments. As well as making some technical corrections to the existing regulations, the draft amending regulations introduce a "general easement" and a "de minimis easement", both of which are intended to make it easier for corporate groups to be restructured without triggering section 75 debts.

The general easement can avoid section 75 debts arising where a restructuring involves a one-to-one transfer of employees between two associated employers who participate in the same pension scheme. There are a number of conditions, including that the transfer of employees is accompanied by a transfer of corporate assets so that there is no overall weakening in the employer covenant as a result of one of the employers ceasing to participate in the scheme. More complicated restructurings involving transfers of employees between more than two employers are not catered for, although it may be possible to deal with these as a series of one-to-one transfers.

The de minimis easement has a simpler set of conditions, but is restricted to restructurings that affect less than 2% of a scheme's liabilities. One of the conditions is the scheme must be at least 100% funded on the PPF's s179 (levy valuation) basis; the PPF's figures show that 84% of all DB schemes were under-funded on this basis as at the end of September 2009, so this easement is unlikely to be of help to many employers for the time being!

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.

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. However, the judgment in the case involving Foster Wheeler suggests that pragmatic solutions can be accepted by trustees where benefits have not been equalised appropriately to date.

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.

continued on next page ...

Last updated: 22 December 2009

Equalisation issues (continued)

The Pension Protection Fund (PPF) has decided how it intends to equalise Guaranteed Minimum Pensions (GMPs) – see their [consultation response](#) issued on 29 October 2009.

The PPF's approach may not be a viable solution for other schemes. Indeed, the PPF recognises that where there is a possibility of a scheme in an assessment period not entering the PPF at the end of that period it would be appropriate for the rule change giving effect to equalisation to be conditional on their scheme entering the PPF.

Regulations enabling GMPs to be converted into normal scheme benefits using the concept of actuarial equivalence came into force on 6 April 2009. However, 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.)

Trustees should seek advice as to whether they should equalise GMPs in their scheme and, if so, what would be the most appropriate method for achieving this.

Internal controls

There is a legal requirement under section 249A of the Pensions Act 2004 that trustees of an occupational pension scheme must establish and operate adequate internal control mechanisms. This is supported by the Pensions Regulator's [Code of Practice No 9](#) and [Internal Controls Guidance](#).

The Regulator issued [revised guidance](#) on 1 December 2009 for consultation until 1 March 2010. This has been especially constructed to assist trustees of smaller schemes by making the guidance more practical and targeted, recognising that they have limited resources at their disposal. Not being exhaustive, it covers seven key risks:

- a lack of knowledge and understanding
- conflicts of interest
- ineffective relations with advisers
- poor record-keeping
- deterioration in the employer's covenant
- investment risk and
- ineffective retirement processes.

The Regulator says these have been identified as specific areas where improvements are required and should be included in trustees' assessment of risk and subsequent controls framework. He also reminds trustees that failure to establish and operate adequate internal controls is a breach of law and he may pursue cases where a failure results in a materially significant risk to beneficiaries.

Trustees should ensure they have established appropriate internal controls for their scheme and review these and the associated risks regularly.

PPF levies

The PPF published its [Decision Document](#) and [final determination for 2010/11](#) on 18 December 2009. It also finalised its [Levy Practice Guidance](#), setting out how it expects to use its discretionary powers.

The Decision Document confirms that the aggregate pension protection levy for 2010/11 is to be £720 million, which is the £700 million aggregate for 2009/10 indexed in line with national average earnings. It also confirms that the risk-based levy scaling factor will be 1.64 for 2010/11 (down from 2.22 for 2009/10) and the scheme-based levy factor will be 0.000145 (down from 0.000162); the marked reductions are due to increases in schemes' deficits and the value of schemes' "protected liabilities" at the 31 March 2009 measurement date used for 2010/11 levies.

continued on next page ...

PPF levies (continued)

No changes to the levy calculation formulae are to be made, but the PPF will adjust the maximum insolvency risks from 15% to 3% and cap risk-based levies at 0.5% of liabilities (down from 1%) in order to ease the burden on the weakest 10% of schemes (up from 5%), although this means other schemes will have to pay about 5% more than they would otherwise have done.

Compared with 2009/10, there will also be changes to:

- the way probabilities of insolvency will be derived for overseas-based sponsoring employers (by introducing an “Equivalent UK Failure Score”) and
- the requirements relating to contingent assets, which include a two-day extension of the deadline for certification to 9 April 2010 because of the timing of Easter.

Changes to how block (or “bulk”) transfers are treated had been proposed. These have not been adopted, but the PPF’s Board may now exercise discretion in certain cases.

Trustees and/or employers are now able to make informed decisions about the merit of taking action to reduce their scheme’s 2010/11 levy, eg by paying and certifying deficit-reduction contributions.

Trustees and employers should consider whether it would be worthwhile taking levy-reduction actions ahead of the March/April 2010 deadlines.

The DWP has published [draft amending regulations](#) for consultation from 12 October to 4 December 2009.

The purpose of the regulations is to remove the partial exemption from paying PPF levies that applies to certain schemes that have a partial Crown guarantee and so do not require full protection from the PPF. Examples are where the Government underwrites pension liabilities in certain organisations that have been privatised. This stems from an EU ruling that BT plc gains from “incompatible state aid” as a result of having a partial exemption.

Only commercial organisations that have partial exemptions will be affected.

Employers who sponsor schemes with partial exemptions should look at what this will mean for them.

Reliance on the PPF

A test case involving the Ilford Pension Scheme (whose sponsor, the photographic firm, is in administration) has addressed whether it is appropriate for trustees to consider the PPF when making decisions. The case was taken to the High Court by Independent Trustee Services, the Scheme’s trustee.

The Court ruled on 10 November 2009 that it is inappropriate to exploit the availability of compensation from the PPF when making decisions about a scheme’s future, although it also confirmed that trustees do not have a duty to take the interests of the PPF into account as it is not a scheme beneficiary.

The outcome of the case will be particularly relevant for the trustees of schemes that are less than 100% funded on the PPF’s valuation measures as these are liable to enter the PPF should the scheme’s sponsor become insolvent.

Trustees and employers may wish to seek advice on how the ruling affects them.

Scheme governance

The Pensions Regulator issued a statement “[Good governance – keeping pensions safe](#)” to trustees on 24 November 2009 and simultaneously launched a campaign aimed at encouraging good governance and administration and better management of scheme risks. The statement cites the Regulator’s latest [Governance survey](#), released on the same day, shows certain areas of improvement but also that gaps persist, particularly in smaller schemes.

continued on next page ...

Scheme governance (continued)

The Regulator wants the trustees of trust-based schemes to:

- ensure all trustees meet the requirements for trustee knowledge and understanding (TKU), including those parts that have been updated recently and use the *Trustee toolkit* (or participate in other appropriate training)
- ensure adequate internal controls are in place
- know the quality of their membership records and have a concrete plan in place if improvement is required
- remember they are accountable for the services provided by advisers, administrators and others, have a formal process for their appointment, and know the activities they perform for the trustees and
- if their scheme is winding up, to complete the process within the two-year framework set by the Regulator.

Trustees should review their TKU requirements and governance procedures.

Scheme-specific funding regime

The latest edition of the Regulator's *analysis of recovery plans*, which was published on 10 November 2009 and covers valuations with an effective date up to 21 September 2008, shows there has been an increase both in the length of recovery plans and in the use of back-end loading.

The chair of the Regulator, David Norgrove, added "We urge trustees to continue to take a prudent approach to assessing schemes' technical provisions, to maintain an honest and open dialogue with employers, and to remain aware of the changing economic situation as they focus on the long term interests of scheme members".

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.

Employers should ensure they have access to independent advice to help them balance trustees' funding demands with their ongoing business needs.

Tax relief for high earners

It was announced in the Budget on 22 April 2009 that tax relief on pension contributions is to be restricted for those with incomes above £150,000 pa from 6 April 2011. This will follow hard on the heels of the introduction of a new rate of income tax of 50% that will apply on income in excess of £150,000 pa from 6 April 2010.

From 6 April 2011, the value of pensions' tax relief applying to income in excess of £150,000 pa will be tapered down (from 50%) so that for those on incomes above £180,000 pa tax relief will be at the rate of 20%, the same as for basic rate income taxpayers.

The restriction on tax relief will apply not only to an individual's own pension contributions but also to any contributions made on their behalf by their employer or any other party. This means that employer contributions paid in respect of high earners will no longer be tax-exempt as far as the employee is concerned.

Employers will continue to receive full relief from corporation tax on their pension contributions.

Anti-forestalling measures were also set out, preventing high earners from maximising their pension contributions over the next couple of years in order to take advantage of full tax relief while it is still available.

The Finance Act 2009, which received Royal Assent on 21 July 2009, creates a new tax charge of 20% that will apply until 5 April 2011 to high earners who "increase their pension savings on or after 22 April 2009 over and above their normal pattern of regular pension savings", but only if their total pension savings exceed £20,000 in that year.

A minor concession was made on 3 July 2009 that would allow people (eg the self-employed) without a regular (at least quarterly) pattern of pension saving to obtain full tax relief on the first £30,000 of their pension savings (or on the average of their last three years' pension contributions, if this is smaller).

continued on next page ...

Tax relief for high earners (continued)

HMRC published some [Questions and Answers](#) on the anti-forestalling measures on 10 July 2009.

The Pre-Budget report published on 9 December 2009 appears to provide some good news in that individuals with pre-tax incomes (excluding employer pension contributions) of less than £130,000 pa will not be affected by the restrictions and so will not have to carry out a test to check whether their "relevant income" exceeds £150,000 pa. However, the anti-forestalling rules will be extended so that all those with pre-tax incomes of £130,000 pa or more become potentially subject to tax if they increase their pension savings.

Employers will be obliged to identify any employee to whom they provide gross pay and taxable benefits of £130,000 or over and to whose pension they contribute. They must also request a benefit statement from the pension scheme on the employee's behalf.

The PBR also launched a consultation by HM Treasury on "[implementing the restriction of pensions tax relief](#)". This runs for 12 weeks, ie until 3 March 2010 and, in particular, covers how employer contributions to DB schemes should be valued. See our [2009 PBR Special](#) for further details.

Employers should urgently review their pension provision in respect of high earners and take particular care when making changes to their pension arrangements.

Transfer incentive exercises

Trustees should apply greater scrutiny to transfer incentive exercises according to David Norgrove, the chair of the Pensions Regulator, while speaking at the NAPF Annual Trustee conference on 10 December 2009.

The Regulator is particularly concerned with "worrying tactics", including:

- the offer of advice paid for by the employer - on the condition that members take that advice
- excessive pressure to make a decision – with constant emails, phone calls, and even home visits
- the provision of misinformation, including a strong suggestion that the future of the scheme is at best uncertain and that it is in the interest of the member to transfer out
- putting excessive time pressure on members to make a decision - suggesting that there is not enough money to go around so members must move quickly to take advantage of the offer.

Trustees should review transfer incentive communications for balance, completeness and objectivity.

Trustee knowledge & understanding (TKU)

The Regulator announced in October 2008 it had refreshed its TKU framework to ensure it remains relevant. The new [Code of Practice](#) and scope guidance (for [DB](#) and [DC](#) schemes) came into force on 8 December 2009.

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.

HR and communication issues



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 European Court of Justice (ECJ) started hearing the “Heyday” case in July 2008. Heyday, part of Age Concern, wanted to challenge 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 then fell for the High Court to decide whether having a default retirement age of 65 is objectively and reasonably justified. The Court ruled on 25 September 2009 that the default retirement age of 65 was lawful when introduced in 2006. However, it added there was now a compelling case at least to raise the default retirement age from 65, because of changed economic circumstances and the greater recognition given to increases in longevity and the problems this causes for the social security system.

Meanwhile, the new Minister for Pensions and the Ageing Society, Angela Eagle, had already announced on 13 July 2009 that the Government would bring forward its review of the default retirement age of 65 to 2010 from 2011. Indeed, Angela Eagle and Pat McFadden, the Business Minister from the Department for Business Innovation & Skills (BIS), called jointly on 28 October 2009 for businesses and individuals to submit evidence about how the default retirement age works in practice, the reasons for having one and the impact on businesses, individuals and the economy of either raising it or not having one at all.

Employers should continue to monitor developments, with the retention of a default retirement age of 65 looking increasingly less likely.

DC communications

The Pensions Regulator issued a statement “Engaged employers and informed retirement choices – key to good outcomes for members of defined contribution (DC) pensions” on 22 July 2009.

In relation to trust-based DC schemes, the statement stressed it is important for trustees to ensure that members are able to make informed choices and so must be aware of their options, including the open-market option of buying their annuity from the provider of their choice. It added that the Regulator will be reviewing the retirement processes and literature of a sample of schemes (see below) and, where there are short-comings, will expect the trustees to make improvements, using its enforcement powers if necessary.

continued on next page ...

Last updated: 22 December 2009

DC communications (continued)

The statement also encouraged employers to engage more with their DC schemes, whether trust-based or contract-based. It added that the Regulator had previously produced guidance "[Voluntary employer engagement in workplace contract-based pension schemes](#)" for employers and will be working with the FSA to clarify the extent to which employers can provide information and support to their employees.

The Regulator also published a guide "[Making your retirement choices](#)" for members of DC schemes.

The Regulator's [report](#) on its investigation of pre-retirement literature and processes of DC trust-based schemes was published on 27 October 2009. Of the 97 schemes investigated, the Regulator concluded 57% had some room for improvement and 30% had alleged breaches of the disclosure regulations, while 6% were referred to caseworkers and required to make substantial changes.

One of the most striking observations in the report is that, while 98% of schemes offer members the open-market option when it comes to buying their annuity at retirement, only 23% of members take advantage of it.

Trustees and employers should review their communication materials.

Employer consultation

The DWP proposes to add "to change, in whole or in part, the definition of pensionable earnings in the scheme rules which applies to members or members of a particular description" as a listed change requiring consultation with effect from 6 April 2010. This proposal was set out in a [consultation on draft regulations](#) that are to make minor amendments to various set of regulations; the consultation period ran from 25 September to 18 December 2009.

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

Flexible retirement

The DWP published on 16 December 2008 its [response](#) to a [consultation](#) it had launched in October 2007 regarding the uncertainties around flexible retirement (reducing hours worked or grade held after becoming eligible to receive all or part of age-related benefits under a scheme) and employees working beyond their normal retirement ages.

The DWP's response included 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 [DWP's response](#) to that consultation was published on 10 December 2009. It concluded that the consultation had not provided sufficient robust evidence to proceed with either of the exceptions set out above.

However, the DWP will consider the prospects for further general guidance on how occupational pension schemes are affected by the age discrimination legislation, which will have to take account of ongoing work on equality in general and, in particular, the Equality Bill currently before Parliament.

Employers should watch this space!

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 means that any lump sums and pensions that are put into payment on or after that date will be treated as unauthorised payments if the recipient is under the age of 55.

continued on next page ...

Last updated: 22 December 2009

Minimum retirement age of 55 (continued)

It will therefore be important to make sure that early retirements of people who are between the ages of 50 and 54 are processed promptly in the run up to 6 April 2010. Unless HMRC makes any relaxations, there will be a particular problem for anyone who attains the age of 50 between 2 April and 5 April 2010 as these dates span Easter.

Trustees and employers may wish to check whether arrangements are being made to ensure early retirements are processed quickly for affected members and those members are informed of the urgency of supplying relevant information and choosing their retirement options.

Pension Service website

The Pension Service's website was closed on 30 September 2009. All Government information for individuals about pensions and retirement is now available at <http://www.direct.gov.uk/en/Pensionsandretirementplanning/index.htm>.

Trustees may wish to check scheme booklets and get these updated next time revisions are being made.

On the horizon



Accounting standards

The Accounting Standards Board (ASB) issued a consultation paper "Policy Proposal: the future of UK GAAP" in August 2009, setting out proposals for the reporting requirements of UK and Irish entities and is seeking to receive comments on its proposals by 1 February 2010. It is proposing a three-tiered approach to entities' reporting whilst converging UK (generally-accepted accounting principles GAAP) with the International Financial Reporting Standard (IFRS), the three tiers being:

- Tier 1 – publicly-accountable entities who would apply IFRS as adopted by the European Union
- Tier 2 – all other UK entities (other than "small entities") who could apply the IFRS for Small and Medium-sized Entities (SMEs)
- Tier 3 – small entities who could continue to apply the Financial Reporting Standard for Smaller entities (FRSSE).

The convergence with IFRS will only have a minor effect on FRS17, the UK's standard for reporting pension costs, as this is already very similar to IAS19, the international standard.

The International Accounting Standard's Board (IASB) and the US's Financial Accounting Standards Board launched a consultation in October 2008 under a joint project on proposed enhancements to the [presentation of financial statements](#) with the objective of converging standards; this ended on 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.

Employers may wish to quantify the effect of any proposed changes on their accounts.

FRESH PERSPECTIVES

10

Corporate governance

The Financial Reporting Council launched a [consultation](#) on proposed reforms to the UK's Combined Code; this runs from 1 December 2009 until 5 March 2010. The Code is to be renamed The UK Corporate Governance Code to avoid confusion among overseas investors and the main proposals for how companies are governed in future focus on:

- enhancing accountability to shareholders with the annual re-election of either the chairman or the whole board
- ensuring the board is well balanced and challenging
- enhancing the board's performance and awareness of its strengths and weaknesses through triennial externally-facilitated board evaluation reviews and regular development reviews of each director by the chairman
- improving risk management and
- emphasising performance-related pay should be aligned to the company's long-term interests and its risk policy.

As shareholders, trustees may wish to contribute to the consultation.

Personal Accounts and automatic enrolment

Personal Accounts and the requirement for workers to be automatically enrolled into a "qualifying pension scheme" are scheduled to be phased in from October 2012 (see below).

[Draft regulations](#) detailing employers' duties as regards automatic enrolment were published for consultation in March 2009. The DWP's [consultation response](#) was published on 24 September 2009. Whilst the DWP has agreed to a number of changes, mainly to relax the timescales it had originally proposed, it has confirmed that it is a core principle of the Pensions Act 2008 that an individual cannot opt out of scheme membership until they are a scheme member; the opt-out right is a right to opt out of scheme membership not a right to opt out of automatic enrolment.

Draft regulations and a consultation paper "[Workplace Pension Reform – Completing the Picture](#)" was also published by the DWP on 24 September 2009 covering the remaining elements of employers' duties (including re-enrolment and opt ins, the phasing-in of duties, qualifying schemes criteria and certification). It also covers employment safeguards and elements of the compliance regime, including the information to be passed to the Pensions Regulator, sanctions and penalties.

The requirements for automatic enrolment are to be phased in over a three-period starting in October 2012, broadly starting with the largest of employers and ending up with small and micro employers (those with fewer than 50 employees). During this period, the minimum contribution requirements for DC schemes will be at a nominal 2% level. The minimum contributions required will be increased from October 2015 and then again from October 2016, when the full requirements of the Pensions Act 2008 will be met, ie an aggregate of at least 8% of "qualifying earnings" (including tax relief on members' contributions), of which at least 3% must be paid by the employer.

A cryptic comment in the Pre-Budget Report published on 9 December 2009 has led to speculation that the phasing-in of the minimum contribution requirements will now be extended to October 2017.

The DWP and the Personal Accounts Delivery Authority (PADA) jointly published a [consultation paper](#) on 28 April 2009 regarding the operation and rules of the Personal Accounts Scheme. The consultation ran until 20 July 2009 and a [summary of the responses received](#) was published on 26 October 2009.

PADA had issued a discussion paper "[Building personal accounts: designing an investment approach](#)" on 7 May 2009 to support consultation. PADA published its [key findings](#) on 25 November 2009. These do not set out PADA's recommendations as it is continuing a programme of work to determine these and undertaking further research and analysis to address some of the issues raised, such as the overarching investment objective and behavioural attitudes to loss. PADA will consult again over the next few months

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

PPF levies

The PPF published a [consultation paper](#) on longer-term changes to the pension protection levy in November 2008. The principles received broad support, but much of the detail was criticised. The PPF's July 2009 [consultation update](#) announced the PPF would think again and delay implementing any changes until 2012/13 at the earliest.

The areas for reconsideration could include:

- The principles of a new levy formula that charges for unexpected risk (such as the higher level of claims that can arise in adverse economic conditions)
- What the balance should be between short-term (expected) and long-term (unexpected) risk
- Options for the measurement of long-term insolvency risk
- The use of the PPF's long-term risk model in the development of proposals
- Options for the measurement of investment risk, particularly in relation to sophisticated investment strategies.

A new levy formula would affect how the aggregate levy is shared between levy-paying schemes. The PPF's Board is also interested in changing its approach to collecting levies so that levies are higher in aggregate when the economy is strong and employers can afford to pay more and lower when times are tough.

A further [consultation paper](#) on the measurement of insolvency risk was published by the PPF on 9 November 2009. This reflects industry feedback and a review of methodology and insolvency probabilities carried out earlier this year by Dun & Bradstreet (D&B). The consultation ran until 14 December 2009.

Changes already made by D&B are to make increased use of interim financial statements for quoted companies and to give greater weight to changes in payment behaviour, so as to pick up sudden changes in circumstances.

Proposed changes include:

- D&B asking for appropriate evidence when employers seek changes to industry sector or geographic region
- D&B introducing a new "nationwide" attribute for businesses with branches in three or more different UK regions
- D&B collecting accounts from the Charity Commission's website rather than relying on non-commercial sponsors providing their accounts themselves
- D&B excluding PPF-compliant contingent assets when judging whether charges on a company's assets have a negative effect on insolvency risk
- when assessing the failure score of a subsidiary whose ultimate parent company is at substantial risk of failure, the score is limited to (at best) the score of the parent.

The PPF plans to confirm its proposals in early 2010, in time for employers to address any issues with their rating before the 31 March 2010 cut-off date for the failure scores on which the risk-based levy for 2011/12 will be based.

Given the potential sensitivity of PPF levies to D&B ratings, employers and trustees should continue to monitor developments and assess how they are likely to be affected when more details are known.

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 (CDC) schemes – schemes that are DC from the employer's perspective, but with a DB target and pooling across members to share out certain risks.

When the DWP issued its [consultation response](#) in December 2008 it indicated it would be carrying out further work to explore the concept of CDC, but not Conditional Indexation. The DWP published "[press release](#)" on 15 December 2009 together with "[A summary of The Government Actuary's Department modeling of collective defined contribution schemes](#)" and a research report: "[Employer attitudes to collective defined contribution pension schemes](#)".

The DWP's assessment says it has concluded that the Government should take no further action on CDC schemes.