

REGULATION

Cutting the red tape

As the industry struggles to deal with new legislation, is it about to be deluged with even more, asks LCP'S DAVID EVERETT

ON 16th March, the Better Regulation Task Force (BRTF) called for a "red tape revolution", with the chair saying, "A culture has developed in government in which the knee-jerk response to any problem is to regulate" and suggesting that slashing red tape could increase gross domestic product by 1pc over the medium term.

It cannot come too soon for the pensions industry, and especially embattled trustees. Thankfully, they have been given until April 2006 before they are obliged to meet the new requirements for knowledge and understanding.

Arguably almost no trustee would have met this requirement during 2005 – not from any lack of dedication on their part, but because even full time pension professionals are finding it difficult to keep up.

Between the start of March and the General Election, Whitehall issued more than 107 documents – regulations, draft regulations, explanatory memoranda, department for work and pensions guides, consultation documents and codes of practice and guides from the Pensions Regulator and Pension Protection Fund – spanning more than 1600 pages.

Many of the new documents claim that implementing the requirements they contain will impose little cost to industry. Just understanding the new regulations – and keeping track of changes and correction – represents a huge direct or indirect cost to trustees.

The new notifiable events requirements were a case in point. These regulations are a milestone and for the first time require employers, not just trustees, to lift the corporate veil and proactively notify corporate events which could have an impact on the security of the pension scheme.

On 4th April, the HMSO website published significant rewrites to the regulations, followed closely by a new code of practice. How many companies spotted these, analysed their effect and modified their governance regime by the time the regulations came into force two days later?

Once March and April's mass of paperwork has been read and absorbed, there will be consequential paperwork. For example, the Code of Practice for the new "whistle blowing" duties that, since April 2005, fall on trustees and employers, says: "The Pensions Regulator's expectation is that all those who may have this duty to report will have an understanding of the requirements of the law and this code of practice and, in particular, of how 'reasonable cause to believe', 'material



significance' and 'as soon as reasonably practicable' should be interpreted".

The Regulatory Impact Assessment for the whistle blowing code predicts that reports to the new Pensions Regulator is unlikely to be changed from the 3000 reports per year made to OPRA. Will this mean little change in costs? No.

- Employers will need to ensure that staff who otherwise had no direct pension scheme duties – ranging from HR to payroll – have been trained to "have an understanding of the requirements of the law";
- They will need to establish whistle blowing procedures;
- With a range of staff having a duty to report, but limited pensions background, there are likely to be more internal reports to document and assess.

This will affect all employers with pension arrangements, including the vast majority that will never have a material breach worth reporting.

The experience in March and April was partly driven by government's wish to have much of the Pensions Act in force ahead of the election. So with a new government, is the situation likely to improve? Not likely.

Hansard reports a parliamentary answer by Malcolm Wicks, then Pensions Minister, on April 5: "We anticipate that we will make approximately 60 further statutory instruments over a period of 12 to 18 months to bring into force other provisions of the [Pensions] Act.

Improved consultation would help. The government's January 2004 Code of Practice on Consultation says that government departments should: "Consult widely throughout the process, allowing a minimum of 12 weeks for written

consultation at least once during the development of the policy".

In practice, for many of April's regulations there was not even informal consultation. Where consultation was carried out, there was little or no time to adapt the regulations to take on board substantive suggestions.

We make the plea that a lesson is learned: that the new legislative material is short; that there is adequate consultation; and that parliamentary draftsmen are given a timetable that allows as few last minute changes and retrospective corrections as possible.

Malcolm Wick's statement of course does not mention the regulations needed to correct errors and take on board consultation points in the regulations already issued.

Worse, in one of his first interviews as pensions minister, David Blunkett has said that no pension policies are "off limits", raising the clear spectre of a new Pensions Act, perhaps to introduce compulsion.

The industry is of course also facing the simplification of the tax regime. The government has moved away from the principle of short primary legislation with much left to the Inland Revenue discretion, to having all the detail in primary legislation. We have had more than 200 pages in two Finance Acts and the prospect of 18 regulations to achieve this – needing what is rumoured to be 800 internet pages of Revenue guidance to explain them.

Having survived one deluge of red tape, are we about to be drowned by the next? ●

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