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Internal controls – Pensions Regulator consults on revised guidance

The Pensions Regulator has launched a consultation on new guidance for internal controls, as well as publishing "bite-sized" e-learning modules intended to provide an overview of the subject. This follows the Regulator's recent announcement of its intention to campaign to improve scheme governance and administration (see Pensions Bulletin 2009/48).

The old guidance was in effect an introduction to a particular model of a risk-management process and was largely neutral in tone. The proposed new guidance covers the same ground but in far more detail and with a much more prescriptive tone. It also addresses seven risks that have been identified by the Regulator as specific areas where improvements are needed and which should be included in a trustees' assessment of risk and subsequent controls framework. These areas include lack of knowledge and understanding, conflicts of interest, poor record keeping and deterioration in the employer covenant. Much of the material here is similar in content to documents previously published by the Regulator.

Comment *The importance that the Regulator places on Internal Controls is demonstrated by the dramatic increase in the size of this revised guidance – up from 14 pages to 47 pages – as well as the publication of the new e-learning modules. Whilst one can understand why the Regulator has chosen to write so much, there is a clear danger of overload so that it will not achieve its intended result – especially amongst smaller schemes, at whom this material is particularly directed.*

Walker Report – Corporate governance in financial institutions

Sir David Walker's final recommendations for the reform of pay and governance in UK banks and other financial institutions have been published following consultation (see Pensions Bulletin 2009/30).

Last July Sir David made 39 recommendations to strengthen the role of non-executives and give them new responsibilities to monitor risk and remuneration. The final report contains a similar number.

From a pensions perspective the following are of note:

- No 31 is that for the 2010 year of account and thereafter, remuneration committee reports for applicable entities should disclose the total expected remuneration of "high end" employees, including executive board members, whose total expected remuneration for that year is above £1 million. This disclosure should be in bands starting with £1 million to £2.5 million but not give the individuals' names.

  Total remuneration in this context is the main elements of salary, cash bonus, deferred shares, performance-related long-term awards and pension contributions.

- Nos 16 – 21 concern the introduction of a Stewardship Code for institutional shareholders such as UK pension schemes. The aim is that such institutions should play a more active role as owners of businesses. In a linked development, the Financial Reporting Council (FRC), when launching its consultation on a new UK Corporate Governance Code (see below), also announced plans to carry out a consultation on this matter "to ensure it can be operated effectively".

Comment *Current disclosure requirements are limited to directors of companies but there has recently been significant press commentary noting that some employees of financial institutions earn significantly more than members of that company's board but there is no disclosure requirement. Sir David's recommendation that the disclosure regime should be extended to include high-earning non-directors of such institutions is therefore not surprising.*

FRC consults on UK Corporate Governance Code

The Financial Reporting Council (FRC) has launched a consultation on proposals for a UK Corporate Governance Code to replace the "Combined Code" on corporate governance. The main proposals being consulted on are as follows:

- To enhance accountability to shareholders, the FRC proposes the annual re-election of either the chairman or the whole board.
- To ensure the board is well balanced and challenging, new principles are put forward on the leadership of the chairman, the roles, skills and independence of the non-executive directors and their level of time commitment.
- To enhance the board's performance and awareness of its strengths and weaknesses, board evaluation reviews should be externally facilitated at least every three years and the chairman should hold regular development reviews with each director.
- To improve risk management, new principles are proposed on the board's responsibility for and handling of risk.
- Proposals are also made to emphasise that performance-related pay should be aligned to the long-term interests of the company and its policy on risk.

The FRC has at the same time published its final report on its review of the Combined Code, from which the proposals being consulted on have been drawn (see Pensions Bulletin 2009/31 for the FRC's progress report during the summer).

Consultation on the proposed new code runs until 5th March 2010, and subject to the outcome of that, and the making of the necessary changes to the Listing Rules, the FRC intends that the revised code should apply to all listed companies with a Premium Listing for financial years beginning on or after 29th June 2010.

Trivial commutation – £2,000 lump sum payments now permitted

Regulations that came into force on 1st December 2009 enable occupational and public sector pension schemes that wish to pay small lump sums to their scheme members to do so through a simpler process than has hitherto been the case.

However use of these easements is subject to conditions set out in the regulations as well as scheme rules. But where the conditions are met, schemes will be able to pay lump sum benefits valued at up to £2,000 rather than paying a very small pension to a scheme member. In such cases, the member is likely to find a

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one-off lump sum more useful than a tiny pension and the scheme will benefit from not having to administer that pension.

More details can be found via Pensions Bulletin 2009/21.

NAPF Annual Survey of Occupational Pensions 2009

The National Association of Pension Funds (NAPF) has published highlights from its latest annual survey of workplace pension provision. Amongst its findings are the following:

- Only 23% of defined benefit schemes surveyed remain open to new members, compared with 28% in 2008.
- 82% of respondents are looking to the Government for support through the introduction of more long-dated and index-linked gilts to help reduce pension fund deficits and liabilities.
- Contributions to defined contribution schemes have so far remained stable throughout the recession, now at 11.5%, with 10% of schemes suggesting they are looking to increase contribution rates in the future.
- Defined benefit scheme's allocation to equities continues to fall, now averaging just 44% of scheme assets, compared with 51% a year ago. By contrast, fixed assets allocation has risen 5% to 38%.
- In relation to auto-enrolment 41% said that they would maintain their current scheme and auto-enrol employees into it (but 8% said that they will reduce contributions), 27% have yet to decide what they will do and 10% said that employees who choose not to join pre-existing occupational pensions arrangements will be auto-enrolled into Personal Accounts at the minimum level.

Accounting for pensions – IASB amends its guidance on asset limits

The International Accounting Standards Board (IASB) has issued a minor amendment to its requirements on accounting for pension plans (see Pensions Bulletin 2009/23).

The amendment is to IFRIC Interpretation 14 (IFRIC 14), which is itself an interpretation of international accounting standard IAS 19 (Employee Benefits). The amendment applies in the limited circumstances when an entity is subject to a minimum funding requirement and makes an early payment of contributions in respect of future service. Such early payments may now be treated as an asset. It does not change the accounting treatment of payments in respect of past service deficits.

The amendment is mandatory for accounting periods beginning on or after 1st January 2011, with early adoption permitted.

Comment *It is helpful that the IASB has addressed a number of concerns raised following the consultation on the draft amendments which were issued earlier in the year. But although this corrects a particular anomaly, it does not address the wide range of possible interpretations of other aspects of IFRIC 14.*

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Pension Scheme Returns and Event Reports – 31st January 2010 deadline looms

HM Revenue and Customs (HMRC) has posted a reminder on its website for scheme administrators about the submission of scheme returns and event reports in respect of the 2008/09 tax year.

Registered Pension Scheme returns and Event Reports for this tax year must be submitted online before the 31st January 2010 deadline. Schemes that have not yet registered for Pension Schemes Online must do so by 15th January 2010 in order to be able to meet the 31st January 2010 deadline.

Equitable Life – Government response

The Treasury has published the Government's formal response to the findings of the judicial review (see Pensions Bulletin 2009/43) which upheld some of the challenges to the Government's original response to the Parliamentary Ombudsman's report on its oversight of the regulatory system within which the Equitable Life failed.

The response formally details the Government's acceptance of the judicial review's findings and revises the terms of reference given to Sir John Chadwick in his role advising on compensation for Equitable Life policyholders.

Trustee knowledge and understanding – Revised code of practice now in force

An Order has been laid before Parliament bringing into force the revision to the Pensions Regulator's Code of Practice on Trustee Knowledge & Understanding (see Pensions Bulletin 2009/30).

The Pensions Act 2004 (Code of Practice) (Trustee Knowledge and Understanding) Appointed Day Order 2009 (SI 2009/3068) brings the Code into force on 26th November 2009.

Parental leave – EU ministers agree new rules

European Union (EU) ministers have agreed to a new revised Directive on Parental Leave which will extend the right to parental leave in the UK.

The main changes that the Directive will introduce include extending the period of leave that each parent can take to four months per child (for the UK, this will be an increase from the 13 weeks per child currently permitted) and permitting employees returning from parental leave to request changes to their working hours for a limited period (employees in the UK already have the right to make similar requests). The new rights will extend to all workers, regardless of their type of contract (eg fixed-term, part-time, agency workers). However, the possibility of a (maximum) one-year qualification period still exists and it will be left to Member States to decide whether or not such leave should be paid or unpaid.

The new Directive is expected to be formally adopted over the next few months, after which Member States will have two years to transpose the new rights into their domestic law.

Comment *Although this Directive impacts directly on employment law, it is likely to have an indirect effect on pension rights and benefits.*

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This Pensions Bulletin should not be relied upon for detailed advice or taken as an authoritative statement of the law. For further help, please contact David Everett at our London office or the partner who normally advises you.

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