Pensions Bill – Further amendments proposed

Further Government amendments are being proposed to the 2007/08 Pensions Bill at the House of Lords committee stage (see also Pensions Bulletin 2008/27). These include the following:

- The complete abolition of “protected rights” in schemes which have contracted out of the State scheme on a money purchase basis.

  This represents a significant development from the previous announcement in relation to protected rights (see Pensions Bulletin 2007/11). In its response to the consultation on SIPPs and protected rights (see article below) the Government states that this step has been possible because as a result of a review of the open market option for annuities it has been able to conclude that the survivor requirement can be removed.

  The aim remains to implement the abolition of money purchase contracting out in 2012. From this date “schemes will no longer have to track protected rights separately and individuals will be able to choose the pension or annuity that best suits their circumstances.” Separately the Government has stated that as all the protected rights rules will be repealed, it does not intend to introduce any further changes in advance of abolition.

- Power to enable the Government to give effect to its proposals to strengthen the Pensions Regulator’s “moral hazard” powers (see LCP’s News Alert of May 2008) by regulation.

- Provision to make permanent the temporary ban on purchasing annuities by trustees of occupational pension schemes that intend to seek assistance from the Financial Assistance Scheme (see Pensions Bulletin 2008/26).

- Some detailed provisions building on those already in the Bill that will enable Pension Protection Fund compensation to be subject to the pension sharing on divorce legislation.

- Clarification that certain authorised employer payments under the Finance Act 2004 tax regime, for example scheme administration employer payments, will not be subject to the surplus requirements of the Pensions Act 1995.

In addition, the House of Lords has recently debated the earnings definition in the Bill. From 2012 employers will need to ensure that contributions to Personal Accounts or qualifying defined contribution schemes are at least 8% of their employees’ full range of earnings including bonus, commission and overtime, between the upper and lower limit of the qualifying earnings band (£5,035 - £33,540) in each pay period. As existing defined contribution pension provision typically uses a very different basis for calculating pensionable earnings there are a number of concerns being expressed. The Government has stated that it is listening to the concerns and is willing to consider alternative proposals, but wants to ensure that the contributions actually paid are at least equal to the amounts indicated above.

Comment Although not heralded as such the abolition of the protected rights requirements is a genuine and welcome piece of deregulation which will greatly simplify the administration of schemes holding such benefits. However there may be some important detail to consider.
What, for example, will happen to those defined benefit schemes that have contracted out with a protected rights underpin? Does the underpin just vanish in April 2012?

Winding-up – Speeding up the process

Following consultation (see Pensions Bulletin 2008/10) the Pensions Regulator has finalised two documents aimed at helping trustees of occupational schemes fulfil Government expectations that key wind-up activities should be completed within two years. They comprise:

- a joint statement by the Pensions Regulator, the Pension Protection Fund (PPF) and the Financial Assistance Scheme (FAS) that sets out Government expectations; and
- guidance produced by the Pensions Regulator that suggests good practice on, for example administration, planning scheme wind-up and buying out annuities.

A joint consultation report explains that the majority of respondents to the drafts of the above documents supported the Regulator’s overall approach, particularly the commitment to joint working.

Comment The final documents do not appear to differ materially from the drafts published in March. Unsurprisingly, calls for a definitive view as to whether and how GMPs should be equalised have gone unheeded – in particular, the Department for Work and Pensions has confirmed to the Pensions Regulator that it has no plans to set out a definitive view in legislation.

Equality Bill – Details announced

Harriet Harman, Minister for Women and Equality, has published details of her plans for an Equality Bill in Framework for a Fairer Future - the Equality Bill as promised in the draft legislative programme for the 2008/09 parliamentary year (see Pensions Bulletin 2008/22).

In addition to ameliorating the existing anti-discrimination legislation the Bill will include measures to:

- extend the three existing public sector equality duties (to promote equality for race, disability and gender) to incorporate gender reassignment, age, sexual orientation and religion or beliefs;
- end unjustifiable age discrimination;
- require transparency and certain levels of reporting to ensure discrimination cannot be hidden;
- extend positive action so employers can take into account currently under-represented groups when employing new staff; and
- strengthen the enforcement of anti-discriminatory measures.

The Bill itself is expected to be introduced in the next Parliamentary session, which starts in December.

**SIPPs to be permitted to hold Protected Rights**

The Department for Work and Pensions (DWP) has confirmed that it will go ahead with its liberalisation measures for self-invested personal pension (SIPP) plans. The current restriction prohibiting SIPPs from holding protected rights will be removed as the DWP recognises that SIPPs are now subject to FSA regulation.

In its formal response to the consultation launched back in December (see Pensions Bulletin 2007/51), the DWP has also confirmed that the current ability for a pension to be paid to survivors other than spouses, civil partners or dependant children on death during a guarantee period is to be removed. This is because by going beyond payment to a dependant it conflicts with the pensions tax simplification legislation.

These changes will be included in regulations later this month with a view to them being implemented with effect from 1st October 2008.

**Office for National Statistics – 2007 Occupational pension scheme survey**

Initial results from the 2007 survey of occupational pension schemes have been released by the Office for National Statistics, showing continued decline in the coverage of private sector schemes. For example, the number of active members of private sector schemes has dropped by 0.4 million in the last year alone (although not strictly comparable, since 2004 the fall has been from around 4.8 million to 3.6 million).

The coverage of public sector schemes over the last few years has broadly increased on a number of measures.

**The Pensions Advisory Service – Annual report**

The Pensions Advisory Service helped a record number of people with their pension issues in the year ending March 2008, its annual report published this week revealed. The service, which provides free advice to the general public, had over half a million visits to its website, received over 60,000 calls to its help lines and had over 9,000 written queries.

**Defined benefit schemes – Sponsor covenant and risk analysis**

The Association of British Insurers (ABI) has published a research paper titled “Coping with uncertainty and the importance of the sponsor’s covenant” examining some of the issues underlying the regulatory framework and operation of defined benefit (DB) schemes after a decade of significant change and challenge.

In particular, using an example scheme, the paper explores the impact of alternative asset allocation strategies, underestimating life expectancy, a weakening in the scheme’s corporate sponsor and different aspects of the institutional framework including the frequency of top-up payments, the length of time needed for the recovery plan and a move to discount liabilities using the risk-free rate.
CFA Institute – Trustee code of conduct

The CFA Institute, a not-for-profit global association of investment professionals, has launched a voluntary code of conduct to which it is encouraging pension scheme trustees to sign up.

Produced with the help of the National Association of Pension Funds, it is intended to be a global voluntary code of conduct for pension scheme trustees which complements the OECD/IOPS guidelines on pension fund governance (see Pensions Bulletin 2008/20). The code, which comprises ten principles, is intended to help trustees ensure that they address their ethical responsibilities and best serve scheme beneficiaries.

FRC publishes new combined code on corporate governance

The Financial Reporting Council (FRC) has published a new edition of its Combined Code on Corporate Governance, intended to promote confidence in corporate reporting and governance, following a recent review (see Pensions Bulletin 2007/50).

This new edition of the code applies to accounting periods beginning on or after 29th June 2008, the same time as new Financial Services Authority (FSA) Corporate Governance rules implementing European requirements relating to audit committees and corporate governance statements take effect. The next review of the code is expected to take place in 2010.

Pensions Education Fund – DWP Research

The Department for Work and Pensions (DWP) has published a research report on its evaluation of the Pensions Education Fund (PEF). The main aims of the evaluation were to provide evidence of the added value that a trusted third party can bring to the process of delivering pensions information and to explore providers’ and employers’ experiences of setting up and running PEF initiatives.

The DWP recently announced extended funding for such initiatives (see Pensions Bulletin 2008/23).