Technical Briefing

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A summary of recent pensions news

Pensions White Paper

The DWP issued a white paper, called Security in retirement, in response to the recommendations made by the Pensions Commission and also to address the growing concerns that people are not saving enough for their retirement. The paper's main proposals are as follows.

A national pension savings scheme

A national pension savings vehicle will be introduced from 2012 for all employees, with contributions set at 4% for employees and 3% for employers for earnings between around £5,000 and £33,000 per year. A further 1% would be contributed in the form of normal tax relief. Employees would be enrolled automatically unless (i) their employer's scheme provides benefits that match or exceed this minimum or (ii) they elect to opt out of the scheme. In addition, the self-employed will be able to opt in to this scheme. The government is to consult further on these proposals, specifically transitional arrangements and the impact on smaller employers.

Re-linking to earnings increases

The basic state pension is to be re-linked to increases in average earnings by 2012 or the end of the next parliament, subject to affordability and the fiscal position. In addition, the state second pension ('S2P') is to reformed, becoming a flat-rate weekly top-up. Accruals will start to become flat-rate from the time the basic state pension is re-linked to earnings and it is expected that S2P will become completely flat-rate by 2030.

Increasing availability

The basic state pension will be made more widely available by (i) requiring only 30 years of contribution, (ii) crediting years spent caring for children or severely disabled people and (iii) simplifying other qualification and entitlement rules.

Increasing state pension age

State pension age is to be raised for men and women from 65 to 66 over a two-year period from 2024, from 66 to 67 over 2034/35 and 67 to 68 over 2044/45. In combination, the paper proposes taking measures to support greater flexibility in state pension deferral.

Simplifying the regulatory environment

Contracting-out on a money purchase basis will be abolished around the time the basic state pension is re-linked to earnings increases. Schemes will also be able to convert GMPs into scheme benefits (separate proposals have also made to amend regulations for how accrued benefits can be changed). A rolling deregulatory review of pensions legislation will be introduced together with piloting a Pensions Law Rewrite Project.

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Early leavers – reasonable periods
The code summarises the new legislation for early leavers with between three months' and two years' pensionable service. The Regulator expects trustees to notify such members of their options within three months and allow them up to three months to then notify the trustees of their decision. The trustees must then act on this instruction without unjustifiable delay. Please refer to cprm's Guide to the Pensions Act for full details.

Late payments – occupational money-purchase schemes
Trustees must take action to remedy any late payment of contributions (ie contributions that are not paid at all, only partially paid or paid in full but after the statutory due date). Trustees must also report to the Pensions Regulator where they have reasonable cause to believe that a late payment is likely to be of material significance. Example circumstances of material significance include:

- Contributions unpaid more than 90 days after the due date.
- Dishonesty or misuse of contributions and / or assets.
- Where criminal penalties would apply.
- Where inadequate procedures or systems are in place to ensure timely payment of contributions.
- Where there is no early prospect of unpaid contributions being paid.

The regulator expects trustees to make reports within 10 working days of discovery of material late payments.

Late payments – personal pension schemes
Managers of personal pension schemes must take action to remedy any late payment of contributions (ie contributions that are not paid at all, only partially paid or paid in full but after the statutory due date). Managers must also report to the Pensions Regulator where they have reasonable cause to believe that a late payment is likely to be of material significance. Example circumstances of material significance include:

- Contributions unpaid more than 90 days after the due date.
- Dishonesty or misuse of contributions and / or assets.
- Where criminal penalties would apply.
- Where inadequate procedures or systems are in place to ensure timely payment of contributions.
- Where there is no early prospect of unpaid contributions being paid.

The regulator expects managers to make reports within 10 working days of discovery of material late payments.

Trustee knowledge and understanding
The code sets out the scope of knowledge it expects trustees to have and also discusses the level of understanding trustees hold on those areas of knowledge.

The scope of knowledge is grouped into nine high-level areas:

- The law relating to trusts
- The law relating to pensions
- Investment: DB and DC occupational schemes (including AVCs)
- Funding: DB
- Contributions: DB
- Strategic asset allocation: DB
- Funding: DC (including AVCs)
- Investment choices: DC (including AVCs)
- Fund management: DB & DC (including AVCs)

Copies of the Regulator's detailed Scope Guidance, which expands more fully on these subject areas, can be obtained from the Regulator's website (*www.thepensionsregulator.gov.uk*).

The Regulator expects each trustee's knowledge and understanding to be appropriate to carrying out functions as a trustee. The breadth of knowledge must be sufficient to allow each trustee to understand fully any advice they receive and, if it seems sensible to do so, challenge that advice within a decision-making process.

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The Regulator recognises that there is a wide variety of schemes and that some trustees will need greater knowledge and understanding than others. Further, deeper knowledge and understanding will be needed by those trustees who chair the board of trustees or the investment committee (where this exists).

The Regulator expects all existing trustees to assess where they require further training and to ensure they acquire that knowledge and understanding by 6 October 2006. Newly appointed trustees will be granted six months from the date of their appointment to acquire the appropriate level of knowledge and understanding.

The code also emphasises the need for trustees to be fully conversant with scheme documents, especially those areas that are essential and frequently used.

Contingent Assets
Contingent assets are assets that become the property of an employer's pension scheme in specific circumstances, usually in the event of employer insolvency. Until those circumstances take place, the scheme has no claim on such assets. The Pensions Regulator has now issued guidance on the extent to which such assets may be recognised within scheme funding.

The guidance sets out the Regulator's opinion as to what trustees need to consider in deciding when and how contingent assets may be allowed for and the advice they should obtain beforehand. In particular, the code highlights possible discussions between trustees and sponsor that such assets could have such as introducing greater investment flexibility or extending deficit recovery periods. The code also addresses the written agreements that should be in place in order for trustees to make such allowance.

Age Discrimination Regulations
The Employment Equality (Age) Regulations 2006 take effect from 1 October 2006 and have the effect of including a non-discrimination rule in every occupational pension scheme. However, many of the existing age-related rules and practices are exempted from the regulations, such as: actuarial calculations and factors, age-dependent contributions and service-based pension benefits.

The regulations also require:

- Employers can only require employees to retire below age 65 where it can be objectively justified.
- Employers can require employees to retire at or above age 65 without question.
- A "duty to consider" procedure be followed for compulsory retirements to prevent these being used as a mechanism for dismissal, redundancy or other reasons of termination of contract.
- Removal of the age limit of 65 for unfair dismissal and redundancy rights, where the duty to consider procedure has not been correctly followed.

Please contact your cprm consultant if you have any queries regarding this or other developments within the pensions industry that might affect your scheme.