Pensions Legislative Tracker

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Background	Current Position	Future Developments
Accounting Standards – Review of the Financial Reporting of Pensions		
FRS 17 is the new UK accounting standard for retirement benefits and became mandatory in full for accounting periods beginning on or after 1 January 2005. The recent implementation of FRS 17 has given rise to a number of comments about the accounting for pensions. The legal and regulatory environment for company pension schemes has changed significantly, notably as a result of the Pensions Act 2004 and changes to the accounting rules. These changes were not anticipated when FRS 17 was developed and may have an effect on the relevant financial reporting.	In light of the legal and regulatory developments, ASB is undertaking a research project into the financial reporting of pensions. This research will help inform any proposals for future accounting standards (either UK or international). The project will reconsider fundamental principles of pensions accounting. These are:- how a relationship between an employer and a pension scheme is best reflected in the financial statements; whether the accounts of pension schemes secure adequate reporting of liabilities to pay pensions; how the employer's liability should be quantified; the impact on financial reporting of pension fund regulation arrangements; and whether the current disclosure requirements are sufficient.	A project update as of 30 June 2006 is currently available and the finalised ASB report will be published by the end of 2006 Also, the International Accounting Standards Board (IASB) and US Financial Accounting Standards Board (FASB) have indicated that they may be reviewing their standards on pensions in the near future.
Additional Paternity Leave and Pay		
The Work and Families Act 2006 makes provisions for additional paternity leave and pay to be created. The details of the new provisions will be provided in Regulations made under the Act.	When introduced, the new provisions will allow employed fathers to a right of up to 26 weeks additional paternity leave, some of which could be paid if the mother returns to work.	The Government intends to introduce these new provisions, alongside the extension of maternity pay to 12 months, around 2010.
Age Discrimination		
In order to comply with the EC Directive, the Age Discrimination Regulations have been issued, which prohibits direct and indirect discrimination on the grounds of age.	The Age Discrimination Regulations covers occupational pension schemes and employer contributions to personal pension plans. However, the Regulations will not apply to all age-related pension scheme rules and practices as these are necessary for the proper operation of schemes. Following feedback on the original Regulations, the Government issued a set of draft Regulations for consultation in October 2006 to clarify and add to the exemptions that apply to pension schemes. Following the draft consultation Regulations, the finalised version was issued in November 2006.	The DTI's Guidance on the impact of the Regulations on pension schemes is also being amended and will be reissued by the DWP. The implementation date for the Age Discrimination Regulations in relation to pension arrangements has been postponed until 1 December 2006.

Alternatively Secured Pension (ASP) Annuities

New types of annuities are allowed under the Finance Act 2004, including ASP. The concept of ASPs were devised as an alternative to compulsory purchase of an annuity to meet the needs of those with principled objections, on religious grounds, to the pooling of mortality risk.	As an alternative to buying an annuity, an ASP could be purchased which allows investors to draw an income directly from their pension from age 75 and enables pensioners to pass their assets to heirs on death. IHT would be payable although spouses, civil partners and financial dependants can receive pension money held in an ASP free of IHT. ASP can be paid at any rate up to a maximum of 70% of the Government Actuaries Department annuity tables for an individual aged 75. The income levels must be reviewed annually.	Although ASPs are currently available to all, in light of the fact they were designed to provide an annuity alternative for those with religious objections to risk pooling, the Government is looking at reviewing the rules.

Compulsory Pension Contributions for Employers and Employees

The DWP response to the White Paper published in October 2006 sets out a new scheme of personal accounts requiring compulsory employers contributions of 3% and auto-enrolment for employees.	The proposed reforms intend to serve employees earning between £5,000 to £33,000 per annum who will contribute 4%, employers contributing a minimum matching 3% contribution on the same band earnings (this requirement will be phased in), with a further 1% contributed through normal tax relief. Employees will be automatically enrolled into this new scheme or their own employer's occupational scheme, with the freedom to opt out.	The Government intends to implement these proposed changes by 2012. A more detailed description of the delivery model for personal accounts will be set out in a White Paper in December 2006.

Contracting out and Preservation

In May 2006, the Government published the White Paper, which included proposals to abolish contracting out on a defined contribution basis. The DWP released a consultation document in September 2006 on the 'Abolition of defined contribution contracting out: treatment of protected rights accrued in the past and proposed operational arrangements'.	Further to the DWP responses to the White Paper in October 2006, the abolishment of contracting out for defined contribution schemes is likely to take place at the same time as linking the basic State Pension to rises in average earnings. The Government is also looking at reviewing contracting out on a defined benefit basis and to allow occupational schemes to convert Guaranteed Minimum Pension rights into scheme benefits.	Awaiting the DWP responses to the 'Abolition of defined contribution contracting out' consultation document. Abolishment of contracting out of defined contribution schemes will take place no earlier than 2012. The Government has set out revised contracting out rebate rates that will apply from 6 April 2007.

Cross Border Schemes

The Occupational Pensions Directive (IORPS) was published in June 2003 to put into place regulatory mechanisms to support the operation of pan-European occupational pension schemes. It allows schemes that are established in one member state to receive contributions in respect of members based in other EU states.	The Pensions Act 2004 together with supplementary Regulations implements the Directive. It sets out investment guidance, disclosure requirements, exemptions from adequate controls and authorisation requirements. The Pensions Regulator will be responsible for supervising cross-border activity.	Although a cross-border scheme mitigates drawbacks mobile employees have faced when trying to build up a meaningful pension, a pan-European approach to social security and tax are still required.

Disclosure of Information

The Occupational Pension Schemes (Disclosure of Information) Regulations 2006 were planned to come into effect in October 2006.	In light of the deregulatory review proposed in the White Paper, the Government has decided not to go ahead with these new Regulations. This is to prevent employers bringing in further requirements only for these to be changed as part of DWP's deregulatory review. Accordingly, the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 will continue to apply.	The Government intends to look again at the broader framework of the Regulations.

Equitable Life - Ombudsman's Report Delayed Again

The Parliamentary Ombudsman's, Ann Abraham, announced as early as July 2004 that she was reopening her inquiry into Equitable Life in order to determine whether policyholders had suffered an injustice as a consequence of maladministration on the part of regulators. The report was also to deal with what form any redress should take.	The Ombudsman had originally planned to complete the investigation before the end of last year but later this position was revised and the report was expected to be published by the spring of 2006. In February the timetable was revised again with the report expected to be laid before Parliament by the end of 2006.	The Report has been the subject of further delay and is now unlikely to appear until May 2007 at the earliest.

Financial Assistance Scheme (FAS)

FAS protect under-funded final salary schemes where the employer is insolvent and scheme wind-up began between 1997 and 5 April 2005.	The draft FAS (Miscellaneous Amendments) Regulations 2006 has been published. This will bring into effect the extension to the FAS announced in the White Paper as well as other proposed changes.	A finalised version of the FAS (Miscellaneous Amendments) Regulations are expected by the end of 2006.

Financial Promotions At Work

The HMRC is consulting on proposals to amend the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 to provide new exemptions from financial regulation for financial promotions offered to employees and, in some circumstances, by third party pension administrators.	The proposed amends will enable employers to issue written material and make oral promotions about their pensions to their employees without themselves needing to be authorised or their communications to be approved by the FSA. The consultation paper, 'Extending employers' freedom: financial promotions in the workplace', was published in March 2006 with responses required by the 14 June 2006.	Awaiting the Governments responses to the consultation paper and awaiting a finalised version of the Regulations.

FSA Regulated Activity

Following a three month consultation that closed in December 2005, the Economic Secretary, Ivan Lewis, announced on 23 March 2006 the introduction of a new FSA regulated activity related to the operation of personal pension schemes.	The Government will be amending the Financial Services and Markets Act Regulated Activities Order (2001) to include a new activity of 'establishing, operating or winding up' a personal pension scheme. This will then become the basis on which persons are eligible under tax law to establish non-occupational registered pension schemes.	The new regulated activity will be introduced in April 2007. FSA will be carrying out their own consultation on the detailed implementation of the new regulated activity and changes to their rulebook.

Government Response to the White Paper Consultation

The Government's White Paper published in May 2006, 'Security in retirement: towards a new pensions system', set out the proposed reforms that will provide the infrastructure for the pension system for the next 40 years. This included a new system of personal accounts, a simpler a State Pension, a modern contributory principle, a streamlined regulatory environment and higher State pension age.	The Government's response to the White Paper was published in October 2006 and show there is general agreement over the Government's planned reforms. This report takes into account the key issues raised by respondents during the consultation period and sets out how the DWP intends to take forward the White Paper's proposed reforms.	Whilst continuing to work with stakeholders and members of the public to develop detailed arrangements, the Government intends to introduce a Pensions Bill in the next Parliamentary session. The Government has is also considering to further simplify the State pension system.

Internal Dispute Resolution Procedure

Allows simplification of existing procedures.	The DWP has decided not to proceed with its IDRP and consequently the Pensions Regulator abandoned its IDRP Code of Practice. The DWP now believes it will not have the desired effect of simplifying procedures or introducing greater flexibility.	Awaiting announcement from DWP on how it proposes to introduce flexibility and simplicity into the IDRP

Member Nominated Trustees (MNTs)

Further to the proposals set out in the Green Paper, the Pensions Act 2004 introduced the requirement for at least one third of the trustees to be MNTs where the trustee is a company. Employers can no longer opt out of this.	Trustees are required to ensure that arrangements are in place and implemented. Guidance for trustees on these reforms have been provided by the Pension Regulator. Provided that some basic requirements are met, trustees will have the flexibility to design arrangements which are most suitable to their scheme. The Pension Regulator's has issued a Code of Practice on MNTs and directors.	The Government has indicated that it will require schemes to raise the minimum proportion of MNTs from one third to 50% at some time in the future. The timetable for implementation is awaited.

Minimum Pension Age

The Finance Act 2004 increases the minimum age for drawing pension to 55. This is currently age 50.	These changes will take effect from 2010. There are a number of exceptions detailed in the Act. These fall into three main categories: incapacity, serious ill-health and transitional.	There are no proposed further developments.

Modification of Subsisting Rights - Section 67

Further to the Green Paper and the Governments paper 'Working and saving for retirement: Action on occupational pensions', the Pensions Act 2004 amended section 67 of the Pensions Act 1995 to allow changes to accrued rights under occupational schemes subject to certain safeguards.	This amendment allows schemes to modify member's subsisting pension rights either by obtaining the consent of each affected member or by replacing existing rights with other rights of actuarially equivalent value. Safeguards have been put in place to protect members, for example, before any changes are made members must be consulted, it must be approved by the trustees and the change must not affect the actuarial value of the member's benefit. Changes to section 67 have been phased in from 6 April 2006. The Pension Regulator's has issued a Code of Practice on the 'Modification of subsisting rights'.	There are no proposed further developments.

Part-time Workers and Time Limits

In Powerhouse Retail Limited v Burroughs & Others the issue of the time limits for bringing a pension-related equal pay claim in a TUPE transfer context was raised. Under TUPE, occupational pension rights do not generally transfer automatically to the transferee. Accordingly, rights to an equal pension for part-timers would not be transferable under TUPE. Claims under the EPA must be brought within six months of the end of employment.	In Powerhouse, the transferors argued that the employment had ended when the TUPE transfer took place and that the claims were therefore out of date. Conversely, the employees argued that employment should be regarded as continuing (as TUPE transfers employment) so that their claims were within time against the transferor. The Lords unanimously rejected the employees arguments and held that the six month time limit ran from the date of the TUPE transfer, as that is the date on which the employment with the transferor ends.	There are no proposed further developments.

Pension Protection Fund (PPF) Levy Proposals

The PPF has been set up to pay compensation to members of under-funded final salary pension schemes where the employer is insolvent and the scheme winds up. The PPF will be funded in part by compulsory levies on all schemes that are eligible for the PPF. For 2006/7 onwards there will be a pension protection and an administration levy. Schemes will receive their 2006/07 pension protection levy invoices from September 2006 onwards.	The 2007/08 PPF levy consultation document has been published, together with numerous supporting documents and revised guidance. The consultation document contains the policies for calculating the 2007/08 pension protection levy for individual schemes and proposed changes to the existing system. Under the recently published proposals, companies could face an increase in their contribution towards the running costs of the PPF.	The finalised levy consultation document will be published by the end of 2006 followed by the levy determination document in January 2007. Certificates for the pension protection levy 2007/08 will be available for completion online by the end of this year and the deadline for submitting the certificates are expected by March 2007.

Pensions Regulator – Code of Practice

The Pensions Regulator replaced OPRA and sets out to protect members benefits of work-based pension schemes, to promote good administration of work-based pension schemes and to reduce the risk of compensation claims to the Pension Protection Fund arising.	Codes of practice now in force:- (1) Reporting breaches of the law; (2) Notifiable events; (3) Funding defined benefits; (4) Early leavers - reasonable periods; (5) Reporting late payment of contributions to occupational money purchase schemes; (6) Reporting late payment of contributions to personal pensions; (7) Trustee knowledge and understanding (8) Member-nominated trustees and directors - putting arrangements in place (9) Internal controls; (10) Modification of subsisting rights.	There are no proposed further developments.

Scheme Specific Funding (SSF)

SFF replaces the minimum funding requirement and applies to occupational pension schemes providing defined benefits.	The final Regulations and Code of practice are in force. Key elements of the new arrangements are: requirement for scheme trustees to prepare a Statement of Funding Principles, regular actuarial valuations, powers for the Pensions Regulator to help resolve disputes, clarification of the scheme actuary's role.	There are no proposed further developments.

State Pension Age

The Government's White Paper published in May 2006 looked at setting a State Pension age that keeps the proportion of life spent receiving the State Pension stable for each generation and helps to secure the long-term financial sustainability of the state pension system.	Further to the DWP responses to the White Paper in October 2006, the Government looks at raising the State pension age in line with average life expectancy and taking measures to support longer working. The State Pension age for women is already due to rise from 60 to 65 between 2010 and 2020, to equalise with men's State Pension age.	The Government has proposed to raise the State pension age from 65 to 66 over a two year period from 2024, then again by one year over a two year period from 2034 and from 2044.

Tax Simplification

The Finance Act removes existing tax regimes for all pension schemes and replaces them with new unified system from April 2006.	The Finance Act introduced changes which include a lifetime allowance of pension savings of £1.5 million (rising to £1.8 million by 2010), a maximum tax free lump sum of 25% of the pension benefit and the flexibility to draw pension benefits whilst continuing to work.	Awaiting final HMRC guidance notes

Transfer Values

The DWP consultation paper, 'Approaches to the calculations of pensions transfer values', reviews the basis for calculating transfer values.	The paper looks at policy issues, objectives for transfer, possible approaches to the calculation of transfer values including prescribed assumptions, scheme specific funding basis and 'EXD54' basis. The paper was published in June 2006 with responses expected by 11 August 2006.	Awaiting the Governments responses to the consultation paper. The Government hopes to have finalised Regulations in place by April 2007.

Trustee Investment – Myners Report

The Myners Report, published in March 2001, sets out a series of principles codifying best practice for investment decision-making. The report also contained a number of trustee investment principles, which became the voluntary 'Myners Code'.	The practical effect of Myners is likely to be a more detailed Statement of Investment Principles together with an annual report to members and an explanation of why the scheme has chosen to depart from any of the Myners investment principles. The Pensions Act 2004 has introduced requirement for trustees to have knowledge and understanding of investment. There are also new IDRP compliant rules on trustee investment effective from 30 December 2005. In March 2005 the Government consulted on proposals to strengthen the Myners Proposals.	The NAPF has agreed to undertake a further review in 2007 and put the results to Government. In light of the NAPF's evidence, the Government will assess the degree to which the principles have resulted in behavioural changes and will consider whether there remains a need for further policy action by the end of 2007.

Unisex Annuity Rates

The EU has adopted a Directive that requires equal treatment for financial products, including unisex annuity rates (i.e. the same rate for males and females). Member states can opt out of this.	The Directive was adopted in January 2005 and the Government has until 21 December 2007 to take advantage of opting out on unisex annuity rates.	Awaiting the Governments position on the use of unisex annuities.