The long-awaited Pension Schemes Bill was announced in the Queen’s Speech and has now been published. It includes a package of measures aimed at strengthening the powers of the Pensions Regulator, as well as some fundamental changes to the scheme funding regime. These are significant changes which, if enacted, could have far-reaching consequences for sponsoring employers and trustees of defined benefit (DB) pension schemes.

Second reading – the general debate on all aspects of the Bill – is scheduled for 30 October, but whether the Bill progresses beyond this stage will depend on political events.

**Strengthening the Pensions Regulator’s powers**

The Bill includes a raft of provisions aimed at strengthening the Regulator’s powers. These include:

**New criminal offences**

The Bill introduces two new criminal offences:

- **Avoidance of employer debt**: a criminal offence will be committed if a person:
  - does an act or engages in a course of conduct that prevents the recovery of a Section 75 debt, prevents a Section 75 debt becoming due, compromises or settles a Section 75 debt, or reduces the amount of a Section 75 debt that would otherwise become due;
  - intends the act or course of conduct to have such an effect; and
  - does not have a reasonable excuse.

- **Conduct risking accrued scheme benefits**: a criminal offence will be committed if a person:
  - does an act or engages in a course of conduct that detrimentally affects in a material way the likelihood of accrued scheme benefits being received;
  - knew or ought to have known that the act or course of conduct would have that effect; and
> does not have a reasonable excuse.

The Bill provides that these offences are punishable by an unlimited fine or up to seven years' imprisonment (or both). The Bill would also allow the Regulator to impose a civil penalty of up to £1 million on individuals who are party to such acts.

**Corporate transaction notifications**

The Bill provides that employers (and those associated or connected with the employer) must give notice to the Regulator of certain events as soon as reasonably practicable after the person giving the notice becomes aware of the event. The events that are caught will be set out in regulations, but the Government has previously indicated that the following transactions will trigger the requirement:

> sale of a controlling interest in a sponsoring employer;
> sale of the business or assets of a sponsoring employer; and
> granting of security on a debt to give it priority over debt to the scheme.

The notice will have to be accompanied by a statement including:

> a description of the event;
> a description of any adverse effects of the event on the scheme;
> a description of any steps taken to mitigate those adverse effects; and
> a description of any communication with the trustees about the event.

The Bill provides that a copy of the notice and accompanying statement must be given to the trustees at the same time. Failure to comply with the new requirements will allow the Regulator to impose a civil penalty of up to £1 million. This new penalty will also apply to a failure to comply with the existing notifiable events regime.

**Contribution notices**

Since 6 April 2005, the Regulator has been able to issue contribution notices (CNs) and financial support directions (FSDs) as a means of imposing DB funding liabilities on parties who are not necessarily employers in the relevant scheme. The Bill includes several changes relating to CNs:

> **New grounds for issuing a CN:** the Bill includes two new grounds for issuing a CN. These will be met where an act (or a failure to act) satisfies the “employer insolvency test” or the “employer resources test”.

In broad terms:

> the “employer insolvency test” will be met where there is a deficit in the scheme on a buy-out basis (i.e. the amount that would be needed to enable the scheme to secure its benefits with an insurance company) and, if a Section 75 debt had become due at the relevant time, the act or failure would have materially reduced the amount of the debt likely to be recovered by the scheme; and
> the “employer resources test” will be met where the act or failure reduced the value of the resources of the employer and that
reduction was a material reduction relative to the amount of the employer’s estimated Section 75 debt.

**Changes to the reasonableness test**: the Regulator may only issue a CN if it considers it reasonable to do so. The existing legislation sets out certain “reasonableness” criteria. The Bill would amend these so that the Regulator can also take into account:

- any failure to comply with the new duty to give notices and statements to the Regulator in respect of certain events (see above); and

- the effect of the act or failure on the scheme’s assets or liabilities.

**Change to the relevant time for calculating the amount due under a CN**: the amount payable under a CN can be anything up to the full buy-out deficit in the scheme. Currently, this is calculated as at the date of the act or failure. The Bill would change this so that the buy-out deficit is calculated as at the end of the scheme year which ended most recently before the Regulator gives its determination notice.

**New sanctions for failing to comply with a CN**: the Bill provides that failure to comply with a CN will allow the Regulator to impose a civil penalty of up to £1 million. Non-compliance would also be a criminal offence punishable by an unlimited fine.

Although the Government’s earlier consultation included proposed changes to the FSD regime, no provisions in relation to FSDs are included in the Bill.

**Information-gathering powers**
The Bill would extend the Regulator’s information-gathering powers by:

- extending the Regulator’s power to require individuals to attend an interview;

- extending the Regulator’s power to inspect premises; and

- giving the Regulator the power to impose fixed and escalating civil penalties (as an alternative to criminal sanctions) for non-compliance with the Regulator’s information-gathering powers.

**Provision of false or misleading information**
The Bill provides that the provision of false or misleading information to the Regulator or the trustees will allow the Regulator to impose a civil penalty of up to £1 million.

**Changes to the scheme funding regime**
The Bill includes a package of changes to the scheme funding regime. These include:

- **Funding and investment strategy**: trustees will be required to determine (and from time to time review and revise) a strategy for ensuring that scheme benefits can be provided “over the long term”. This will need to specify the funding level the trustees intend to achieve and the investments they intend to hold as at a date to be specified in
regulations. The strategy will have to be agreed with the employer (or trustees will have to consult with the employer where trustees are currently only required to consult with the employer in relation to funding matters).

> **Statement of strategy:** trustees will need to prepare a written statement (signed by the chair and having consulted with the employer) setting out the scheme’s funding and investment strategy, together with:

> the extent to which the funding and investment strategy is being successfully implemented and, where it is not, the steps the trustees propose to take to remedy the position;

> the main risks faced by the scheme in implementing the funding and investment strategy and how the trustees intend to mitigate or manage them; and

> the trustees’ reflections on any significant decisions taken by them in the past that are relevant to the funding and investment strategy (including any lessons learned).

> **Technical provisions:** the scheme’s technical provisions must be calculated in a way which is consistent with the scheme’s funding and investment strategy.

> **Actuarial valuation:** trustees will be required to send a copy of the actuarial valuation to the Regulator as soon as reasonably practicable after receiving it.

> **Recovery plan:** regulations may set out the matters to be taken into account (or the principles to be followed) in determining whether a recovery plan is appropriate.

> **Regulator’s powers:** failure to comply with the requirements in relation to the funding and investment strategy will trigger the Regulator’s Section 231 powers (these currently include the power to modify the future accrual of benefits; give directions relating to the calculation of the scheme’s technical provisions; give directions as to the period within which, and manner in which, any failure to meet the statutory funding objective is to be remedied; and impose a schedule of contributions). The Regulator’s Section 231 powers will also be extended so that it may direct the trustees to revise the scheme’s funding and investment strategy. Civil penalties of up to £5,000 in the case of an individual and £50,000 in any other case will apply where there is non-compliance with these new requirements.

**What else is included in the Bill?**

Other key areas covered by the Bill include:

> changes to the legislation governing cash equivalent transfer values (CETVs) – the Bill provides that trustees will be prevented from paying a CETV unless certain conditions are satisfied. These will be set out in regulations, but may include conditions about the member’s employment or place of residence;
providing a framework for pensions dashboards – this includes provisions requiring schemes to provide information to pensions dashboards, together with a compliance regime, with much of the detail to be set out in regulations; and

providing a framework for collective defined contribution (CDC) schemes.

Notably, however, there is no mention of DB consolidation/superfunds.

For more information, please speak to your usual Linklaters contact.