SLAUGHTER AND MAY/

CLIENT BRIEFING

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THE WAIT IS OVER - THE PENSION SCHEMES BILL IS HERE

The Government has trailed the publication of the new Pension Schemes Bill since it was elected and even told us in the King's speech what was likely to be in it. The Bill has now been published and we consider below whether it was worth the wait, what the impact is likely to be for schemes and sponsors and some of the changes that will affect providers.

What we don't currently have are the myriad regulations that will set out the detail in relation to most of the Bill's provisions, so the precise impact is uncertain in many areas.

A Government roadmap published alongside the Bill provides information about the timetable for implementing the changes.

ONGOING SURPLUS

Our briefing earlier this week covered the Government's response to consultation on options for DB schemes so the provisions on surplus in the Bill are not surprising. They will:

- Repeal the requirement to have passed a resolution before April 2016 to retain a power to distribute ongoing surplus;
- Provide trustees with a statutory power to amend scheme rules to include a power to refund ongoing surplus or remove constraints in an existing power (trustees will need to consider carefully whether they should exercise this power);
- Remove the requirement for trustees to satisfy themselves that a refund of surplus is in the interests of members. Trustees will still have to comply with their general fiduciary duties and will need to consider carefully what this means in each case;
- Allow regulations to set out additional conditions which could include a requirement for employer consent.

What is not in the Bill is any change to the threshold at which surplus can be taken as that is in regulations – currently a scheme must be funded to buy-out but the Government has said it is minded to change this to low dependency funding.

We also know that DWP is working with TPR on guidance which may set out more detail around how it is expected trustees will exercise surplus sharing powers and balance the interests of members and employers.

It is anticipated that the new provisions will come into force in 2028. We are already aware of schemes and sponsors that are interested in them but whether they will result in the release of anywhere near the £160 billion that the Government believes schemes are holding in surplus assets is doubtful.

VALUE FOR MONEY

The FCA and TPR have for some time been committed to introducing a new DC Value for Money Framework (**VFM**) which will set out a standardised test for DC schemes to demonstrate they deliver value. If they do not, they will need to consider transferring members to a scheme that does. The FCA consulted last year on what that framework would look like in the personal pension space and details are set out in our September 2024 Pensions Essentials.

London EC1Y 8YY
United Kingdom
T: +44 (0)20 7600 1200

The Bill does not set out the framework for occupational pension schemes. Instead, it has a detailed regulation making power, providing for regulations to require schemes to carry out and publish new detailed VFM assessments together with information about a variety of metrics including service, investment performance, asset classes and costs and charges. Trustees may also need to carry out and report on member satisfaction surveys.

Trustees will need to give their scheme a VFM rating. Where a scheme does not deliver value, action will need to be taken and TPR may require members to be transferred to another scheme. It will also be able to appoint new trustees and wind-up a scheme that is not providing VFM.

Regulations will be able to impose penalties of up to £100,000 on a corporate entity for non-compliance.

The FCA consultation required schemes to assess value in comparison with other schemes, including those with assets exceeding £10 billion. As larger schemes can potentially benefit from scale in a way that smaller schemes cannot, the new framework seems almost certain to deliver significantly more consolidation.

SMALL POTS CONSOLIDATION

Successive governments have observed that the proliferation of small pots under the auto-enrolment regime has resulted in members losing track of benefits and annual industry losses of up to £225 million. The Bill contains legislation which will provide for the consolidation of small pots but the detail is again to be set out in regulations.

The Bill defines small pots as pots within the auto-enrolment regime which are dormant (meaning there have been no contributions or investment decisions for at least 12 months) and valued at £1,000 or less.

Schemes will be required to transfer small pots to a commercial consolidator and communicate with members. A new platform will be responsible for allocating members to consolidators (subject to a member right to choose which one they want). There will be an authorisation regime for consolidators which may include requirements as to scale.

Schemes will have 12 months from the regime coming into force or a pot coming into scope to transfer it to a consolidator.

There is a lot of missing detail on how all of this will work so trustees will need to wait for the draft regulations before they can properly determine what will be required. However, the legislation will almost certainly entail significant work, although it may also yield significant cost savings (if Government figures are borne out in practice).

DC "MEGAFUNDS"

The roadmap says that: "*Scale brings lower costs. Average costs per member in DC are lower in bigger schemes*". To help achieve this scale, the Bill will require multi-employer master trusts and GPPs used for auto-enrolment to move towards becoming what the Government refers to as "megafunds".

This means that they will need to have a main default fund of £25 billion by 2030 (subject to exceptions and transitional provisions allowing schemes with default funds of £10 billion to demonstrate they can reach the required scale by 2035).

There will also be restrictions on creating and operating new default arrangements and master trusts and providers will need to apply for regulatory approval. One of the approval criteria relates to asset allocation and the need to have a prescribed percentage of assets invested in "qualifying assets" – the details will be in regulations but qualifying assets can include private equity, venture capital and UK assets. The details of this proposal will be interesting to read as investment targets seem at odds with fiduciary duties to invest in the best financial interests of members. The Government has suggested that these provisions will only be used if the Mansion House Accord does not bring about the investment shift (toward private UK assets) that it hopes for.

More detail was set out in the response to consultation on unlocking the UK pensions market for growth and is summarised in our briefing.

DECUMULATION

The Bill will place new duties on trustees to provide "*default pension benefit solutions*" for DC members and the FCA will need to put in place similar rules for personal pension schemes.

A default solution must be designed to provide a regular income in retirement and take into account the needs, interests and circumstances of scheme members including expected retirement ages and pot size. Where a scheme cannot provide its own default solution because it is either not practical or better solutions are available elsewhere, it will need to identify a scheme that can provide appropriate benefits and that members can transfer to.

There will be new disclosure requirements around default retirement options and trustees will need to have a pension benefits strategy setting out how they determine the needs of their members in relation to them.

It is clear that changes are needed to ensure members have an adequate income in retirement but how far these measures will address that issue is not clear. To address concerns around the lack of availability of appropriate retirement options, the Government is "*exploring ways to add to the suite of options available to trustees… Progressing work on CDC schemes to be used only in retirement, will allow some members with DC pots to access CDC benefits in their retirement, giving them a lifelong income*", but no timescales are given as to when we might expect anything further.

DB SUPERFUNDS

The Bill also pushes the consolidation agenda in relation to DB schemes. As anticipated, it sets out a statutory framework for DB superfunds in the hope that this will drive innovation in the sector and lead to more entrants to the market which might in turn facilitate the transfer of smaller schemes into superfunds.

Superfunds for these purposes are defined as schemes that have received a transfer from another DB scheme, have no substantive employer covenant and are supported by a capital buffer which will be released to the scheme in specified circumstances. Regulations can extend the regime to new structures.

There will be an authorisation and supervision regime which will allow for models which provide for profit to be taken from the capital buffer in certain circumstances.

TPR will need to approve a transfer to a superfund and be satisfied that certain conditions have been met. These include:

- The financial position of the transferring scheme at the date of application is not strong enough to enable the trustees to arrange a buyout;
- The transfer will make it more likely that liabilities will be satisfied in full;
- A capital adequacy threshold will be met in the superfund after the transfer;
- There is a very high likelihood that the superfund will satisfy specified funding criteria after a year;
- The superfund is likely to continue to comply with the authorisation requirements post-transfer.

TPR may impose additional conditions and there are special provisions for schemes coming out of a PPF assessment period.

To date there have only been three superfund transfers. These provisions might make such transfers more appealing, particularly as schemes will no longer have to show that a buy-out is not a realistic prospect in the future.

OTHER CHANGES

The Bill will make a number of more minor changes which are worth noting, including:

- **PPF:** The PPF will be able to reduce its levy to nil in a year but still collect a levy the following year as the restriction on increasing the levy by more than 25% in any year will be removed.

- **Pensions Ombudsman:** The Pensions Ombudsman will be treated as a competent court for the purposes of any disputed recovery of overpayments, allowing it to make enforceable determinations in such cases without requiring an order from a county court judge.
- **Without consent amendments and transfers from GPPs:** GPP providers will be able to make amendments, change investments or make transfers without member consent, subject to a number of conditions. These include any change being in members' interests and not resulting in a worse outcome for other members. Providers will also need to give notice to affected members and obtain an assessment from an independent third party.

NOT IN THE BILL BUT…

Virgin Media: Alongside the Bill, the Government has issued a press release saying that it "*is aware that following last year's Court of Appeal judgment in Virgin Media… there is increased uncertainty in the pensions industry*". It recognises the need for "*clarity around scheme liabilities and member benefit levels in order to plan for the future*" and "*will therefore introduce legislation to give affected pension schemes the ability to retrospectively obtain written actuarial confirmation that historic benefit changes met the necessary standards*." This is extremely welcome and will presumably be done using the existing regulation making power in the relevant legislation.

Trustees and sponsors will need to consider whether they want to rely on this new legislation where there are missing actuarial confirmations and whether doing so will give rise to any practical issues. They will also need to assess the impact of the judgment in the Verity Trustees case that is expected to be handed down in the Autumn (although no date has been given by the court).

CDC schemes: The roadmap says that regulations will be laid this Autumn (to come into force in 2026) to allow multiple unconnected employers to establish a CDC scheme. In addition, work is progressing on using CDC schemes as a decumulation only option.

WHAT NEXT?

It is intended that the Bill will be enacted in 2026. However, that does not mean that there will be an avalanche of new compliance obligations for schemes then, many of the provisions require accompanying regulations and guidance which are unlikely to be finalised until sometime later.

The roadmap published by the Government suggests the key dates for new requirements to come online are:

- **2025:** Regulations laid allowing CDC schemes to be set up on a commercial, multi-employer basis (in force 2026).
- **2026:** Pension Schemes Bill to be enacted.
- **2027:** Master trusts to offer new guided retirement options. Changes to PPF levy.
- **2028:** New surplus and superfunds regimes in force. Other schemes to offer guided retirement options and first VFM assessments.
- **2029:** Government review on progress of consolidation.
- **2030:** Master trust and GPP main default funds to be £25 billion and start of small pots consolidation.

Much of the detail in relation to the new requirements is likely to emerge during 2026 and 2027 which will hopefully give schemes sufficient time to prepare for the upcoming changes.

We will keep you updated as more information is published.

CONTACT

- CHARLES CAMERON
- PARTNER
- T: +44 (0)20 7090 5086
- E:Charles.Cameron@SlaughterandMay.com

- DANIEL SCHAFFER
- PARTNER
- T: +44 (0)20 7090 5090
- E:Daniel.Schaffer@SlaughterandMay.com

- CHRIS SHARPE
- PARTNER
- T: +44 (0)20 7090 4261
- E:Chris.Sharpe@SlaughterandMay.com

- KAREN MUMGAARD
- KNOWLEDGE COUNSEL
- T: +44 (0)20 7090 3752
- E:Karen.Mumgaard@SlaughterandMay.com

- CATRIN YOUNG
- SENIOR KNOWLEDGE LAWYER
- T: +44 (0)20 7090 3750
- E:Catrin.Young@SlaughterandMay.com

London
T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels
T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong
T +852 2521 0551
F +852 2845 2125

Beijing
T +86 10 5965 0600
F +86 10 5965 0650

www.slaughterandmay.com

590247655