

**The Pensions Regulator Statement on use of amended powers announced today by the Department for Work and Pensions**



**25 April 2008**

The Government and the Pensions Regulator continue to monitor market developments and the operation of the pensions regulatory regime. The need to update the Pensions Regulator's powers was highlighted by Government and regulator concerns over emerging business models posing potential major risk to members and the Pension Protection Fund. Today the Department for Work and Pensions issued a consultation document on changes to our powers.

The proposed amendments hone the powers that we have had since April 2005 to ensure they remain relevant in an evolving pensions landscape. They will help us to ensure adequate protection is in place so that members' benefits and the Pension Protection Fund are not put at risk. Since our creation in 2005, we have made very good progress in establishing a proportionate and risk based approach. Our emphasis is on educating and enabling with the aim of only using our powers as a last resort. We believe this approach is successful and has received a positive response from many stakeholders. We plan to continue to operate this approach in respect of the changes proposed by Government. We believe these changes will affect only a small number of schemes – we do not wish to hamper market activity or innovation.

We recognise the uncertainty that the retrospective effect of these changes could create, particularly until the new legislation comes into force later this year. We can confirm that, as signalled in the DWP statement today, during this period we will not apply the following amendments to our powers:

- the new alternative test that could trigger the issue of a Financial Support Direction;
- the new alternative test that could trigger the issue of a Contribution Notice; and
- the removal of the words 'otherwise than in good faith' from s38(5)(a)(ii) of the Pensions Act 2004;

unless one of the actions or situations listed below is the subject of the proposed use of the power:

- moving the employer or pension scheme to another jurisdiction;
- splitting the operating company from the pension scheme without appropriate mitigation for the pension scheme;
- splitting the assets from the operating company without appropriate mitigation for the pension scheme;
- transferring scheme assets and liabilities to another scheme which did not have adequate support from an employer;
- running a scheme for profit without adequate account being taken of member interests;
- or business models in which risk is predominantly borne by scheme members, but high investment returns would benefit investors.

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We hope this provides significant reassurance to parties involved in transactions. Given the targeted nature of the amendments referred to above, normal business activities should not be affected by the proposed changes.

We envisage no change to our fundamental approach as a result of the new powers. Significant checks and balances are already in place, ensuring that our powers are used only when appropriate and that parties have opportunities to challenge our decisions. The DWP proposals also build in additional safeguards, which will provide further comfort.

The voluntary clearance process, established in April 2005 to give certainty to those undertaking corporate activity, remains available. The regulator's approach to clearance will not change as a result of the proposed amendments and the Clearance guidance still applies (available on our website [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)). Clearance is only appropriate if there is a 'Type A' event materially detrimental to the pension scheme.

If a clearance statement has already been granted then it will continue to bind the regulator, unless the circumstances of the case have changed in a material way or were not fully or accurately described in the clearance application.

We are happy to take any enquiries please contact us at:  
[clearance@thepensionsregulator.gov.uk](mailto:clearance@thepensionsregulator.gov.uk).

We welcome the two further retrospective measures announced by Government in relation to 'course of conduct' and the loophole by which bulk transfers may frustrate the use of the moral hazard powers.

We also confirm that, as the DWP's statement also makes clear, in relation to the proposed clarification in respect of a 'series of acts' we will not withdraw clearance that has already been given. If a clearance statement has been issued in relation to an individual transaction, then that transaction could not form part of a 'course of conduct' triggering the issue of a Contribution Notice though, as now, that clearance would fall if facts prove to be materially different.

Alongside the Government's formal consultation process, the regulator and DWP would welcome the opportunity to hear in person from those who wish to give their input on the changes. To register interest in taking part in these informal briefings please email: [powers-briefing@thepensionsregulator.gov.uk](mailto:powers-briefing@thepensionsregulator.gov.uk).