

Defined benefit funding code of practice consultation: Our interim response

Overview

We held the first of two consultations on our revised defined benefit (DB) funding code of practice from 3 March to 2 September 2020 (with an extension to account for COVID-19). See the documents and a link to a webinar on the consultation on our website: <https://www.thepensionsregulator.gov.uk/en/document-library/consultations/defined-benefit-funding-code-of-practice-consultation>

Here, we provide some background on the responses we received (for example the number of respondents and key issues raised) and outline the steps we'll be taking to publish our full response to the first consultation and our second consultation on a draft DB code of practice.

Background

The government's white paper 'Protecting Defined Benefit Pension Schemes'¹ announced a package of measures to improve DB scheme funding in order to better protect members' pensions, including greater clarity on the funding standard (such as prudent technical provisions and appropriate recovery plans) and greater focus on long-term planning and transparency around risks being taken. These measures will be introduced through primary and secondary legislation, and a revised TPR code of practice on scheme funding.

We were given a key role in Part 3 of the Pensions Act 2004 to regulate trustees' funding process and the outcome of that process². Accordingly, we are required³ to issue and review a code of practice on DB funding, which must cover the 'discharge of duties imposed on trustees' by Part 3 and may cover the "standards of conduct and practice expected" and how we will exercise our functions.

Our first consultation aimed to scope out what the revised DB funding code may look like under the new developing legislation. The consultation asked for views on a number of proposals including:

- our proposed regulatory approach (twin track routes to demonstrating compliance: Fast Track and Bespoke)
- the principles that should underpin all valuations in the revised framework
- ideas on how these principles could be applied in practice to provide clearer guidelines

The consultation considered the overall shape of the framework, as the legislation (Pension Schemes Bill and associated regulations) is subject to change and further development. Because of this, we were not able to consult on the detail (for instance Fast Track parameters) and undertake an impact assessment. This will be the focus of the second consultation.

1 <https://www.gov.uk/government/publications/protecting-defined-benefit-pension-schemes>

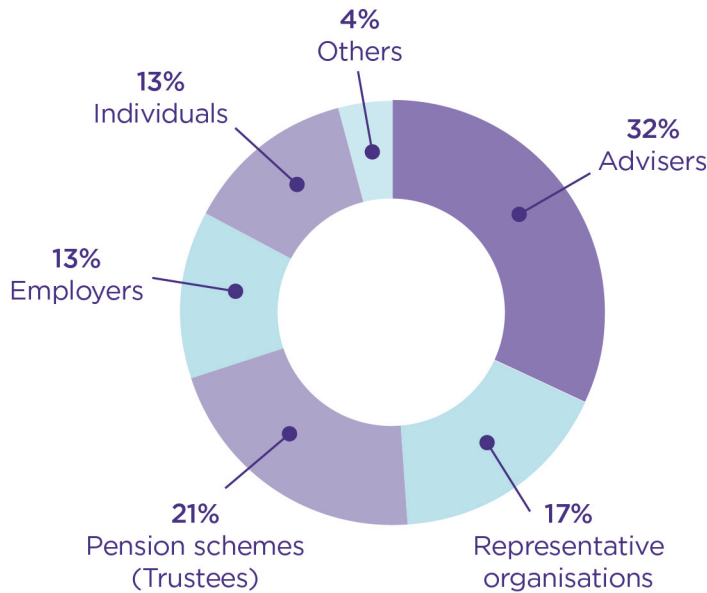
2 s231 of the Pensions Act 2004 and powers to fine under s10 of the Pensions Act 1995

3 s90 of the Pensions Act 2004.

Consultation responses

We received 127 responses from a broad range of stakeholders, including trustees and employers of DB schemes, advisers, industry bodies and adviser representative organisations. The breakdown of responses is shown below.

Breakdown of consultation responses



Thank you to everyone who responded to our consultation and to those who provided feedback throughout the process. The responses provided many good challenges and ideas, with a wide range of views from different areas of the pensions industry. It is important that we take the necessary time to consider the responses fully and use this to evolve our thinking as we move to the next phase of development.

Key issues raised

Overall, there was general support for the principles and regulatory approach proposed in the consultation. However, some concerns were raised on how the principles would be applied in practice through the proposed twin-track regime (Fast Track and Bespoke).

In particular, the following concerns were highlighted:

- Risks associated with where Fast Track guidelines would be set (such as some schemes 'levelling down' and an increase in the cost of DB pension provision for others).
- Proposed Fast Track guidelines for open schemes.
- Potential loss of flexibility (eg through benchmarking the Bespoke route against Fast Track).
- An increased evidential burden if choosing to submit a Bespoke valuation.
- The Bespoke route may be perceived as being 'second-best'.
- Reliance on covenant being watered down and what a greater trustee focus on covenant visibility would mean for schemes' ability to rely on covenant beyond the medium term.

Some of the concerns that were raised stemmed from misunderstandings around what we had proposed, and we will clarify these in our communications and during the second consultation. We have provided some clarifications on the open schemes issue in a recently published blog⁴.

In many cases, the respondents agreed with the overall direction of the proposals but suggested changes to the approach taken. Some other issues raised were more fundamental and respondents also came up with a lot of interesting views and ideas. We will consider all comments carefully and with an open mind.

We recognise the significant impact that COVID-19 has had on employers and schemes during 2020 and beyond (as well as the unknown impact of Brexit from 2021). We believe the key principles we set out in our consultation, and which focus on good Integrated Risk Management, remain relevant at these challenging times. However, we will certainly take account of the impact of COVID-19 when we carry out our impact assessment and develop Fast Track guidelines for consultation.

4 <https://blog.thepensionsregulator.gov.uk/2020/12/08/db-funding-code-busting-a-few-myths>

Next steps and timings

Our first consultation was long and complex, and we are grateful for the well-thought-out responses. We need to consider over 6,000 comments within the consultation responses, work through the issues raised, develop Fast Track guidelines (taking into account prevailing economic conditions) and carefully assess any potential impacts.

Our revised code of practice has to be consistent with new legislation, so we will have to wait for the passage of the Pension Schemes Bill through Parliament and DWP's consultation on draft regulations, currently expected to be in the first part of this year. We therefore anticipate publishing our second consultation in the second half of 2021.

Our second consultation

We anticipate the second consultation will cover:

- a full summary of the responses to our first consultation and the approach we have taken in light of these responses and the final legislative package
- the draft code of practice for consultation and our proposed regulatory approach, including developing thinking around:
 - the process to review and update Fast Track guidelines
 - our approach to assessing valuations
 - engagement with DB schemes, and
 - enforcement
- an impact assessment and supporting analysis.

As always, we are keen to continue our constructive debate with industry as our thinking develops. We will be engaging extensively with stakeholders in the run-up to the second consultation. If you have any queries or comments, please feel free to contact us at:

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