

THE POWERS OF THE PENSIONS REGULATOR

Amendments to the anti-avoidance
measures in the Pensions Act 2004

**Government response to the
consultation**

October 2008

DWP Department for
Work and Pensions

Contents

Executive Summary	5
1 Introduction	9
2 Response to the consultation	
2.1 Ensuring the anti-avoidance powers are appropriate to tackle material risks	19
2.2 Ensuring the Regulator can intervene where appropriate	29
Annex A: Detailed summary of consultation responses	35
Annex B: List of respondents to the consultation	39
Annex C: Impact assessment	41
Annex D: Consultation questions	51

Crown Copyright

Executive summary

1. On 25 April the Government published the consultation document 'The powers of the Pensions Regulator – Amendments to the anti-avoidance measures in the Pensions Act 2004' and began an eight-week consultation on proposals to amend the Regulator's powers to ensure that they remain adequate; and appropriate to address new risks resulting from changes in the pensions market. This consultation closed on 20 June.
2. The Government's main concern was the emergence of new business models, which among other features, may reduce the security provided by the pension scheme's sponsor employer. This may be detrimental to scheme members' benefits, and have a cost consequence for the Pension Protection Fund (PPF), and those responsible for paying the risk-based levy.
3. The Government welcomes new innovation in the management of pensions risk – responsible solutions can be of great value to sponsor employers and scheme members. The Government is equally committed to ensuring that the regulatory regime for occupational pensions, which is generally working well, remains effective and retains the confidence of those for whom it was designed to protect and those regulated by it.
4. The new models can result in heightened risks to members' benefits and to the PPF which the current powers as introduced in the 2004 Act were not designed to address. There was also a particular concern that the models had highlighted weaknesses in the current legislation.
5. The models are often complex and some of the steps when taken in isolation are indistinguishable from ordinary corporate activity: this has meant that it has proved impossible to define the models in a meaningful way. The Government therefore considered that the most appropriate way to tackle this issue was to amend the anti-avoidance provisions.
6. The Department received approaching 60 written responses to the consultation. Alongside this it held detailed discussions with relevant parties, organisations and representative bodies and held workshops attended by a cross-section of employer groups and trades unions, pensions professionals, trade associations, consultancies and trustees. This approach has provided valuable insights and assessment of the proposals, and the Government has welcomed the input received.
7. On 25 June the Government tabled an amendment to the Pensions Bill in Lords Committee to give effect to these amended powers through secondary legislation – this approach was set out in its consultation document. The intention was that this would provide further opportunity for consultation with stakeholders on the detailed secondary legislation.
8. During the course of the Committee debate on this amendment the Government made a number of commitments to refine the legislation, to ensure it addressed the new risks posed by market developments that

both sides of the House and consultees recognised, without disproportionately impacting on business. The Government also made a commitment to see what more could be done to allay business concern that transactions previously cleared by the Regulator could be at risk from these changes.

9. The Government has undertaken a period of further close work with representative bodies over the summer, and has listened carefully to the concerns that have been raised. Its approach is to set out the proposed changes in primary legislation, alongside appropriate safeguards and requirements on the Regulator to circumscribe the application of the new powers to ensure that they are appropriately targeted.
10. The Government's approach is intended to strike the right balance between protecting scheme members under pensions legislation and ensuring that legitimate interests of employers and investors are not unduly inhibited, mindful that the altered global economic climate has introduced new challenges for the relevant parties.
11. The Government has alongside the publication of this response published amendments for Report stage of the Pensions Bill. These amendments are designed to equip the Regulator with proportionate powers to protect scheme members' benefits and the PPF. The key amendments are:
 - **A modified legislative approach** – the Government's intention is to put the substantive changes to the anti-avoidance measures into primary legislation.
 - **A new alternative test for contribution notices based on material detriment** – this new test would enable regulatory intervention where appropriate to address material risks to members' benefits, with safeguards, including a Regulator Code of Practice and a statutory defence, to guide its application.
 - **Removal of the words 'otherwise than in good faith' from the second limb of the existing contribution notice test** – this would allow intervention where appropriate, but would be circumscribed through a new mandatory requirement on the Regulator to consider the reasonableness of a person's actions.
 - **A new alternative test for financial support directions** – a correction to an anomaly in the insufficiently resourced test without extending the range of this power.
 - **Bulk transfers** – a new provision to enable the Regulator to direct a contribution notice or a financial support direction to the transferee scheme, but only where the test(s) for using those powers would have been satisfied had the transfer not happened.

- **A clarification to the legislation** – to make clear that contribution notices can be issued in relation to a series of acts or failures to act, and not simply in respect of single acts.
12. In parallel the Regulator has today published draft content for the Code of Practice on the material detriment test. This provides a draft list of circumstances in which the principal amendment to the contribution notice power would be used. This is intended to form a statutory Code which would complement the legislation and provide further definition on the expected use of this new test. The Code would have legal effect in that it would have to be taken into account by the Regulator for the new test, and it would be admissible in evidence in any proceedings before a Court or Tribunal.
 13. As the consultation document stated, subject to their approval by parliament, the amendments will take effect from 14 April 2008 (the date on which Ministers announced their decision to legislate), apart from the clarification to acts or failures in respect of contribution notices. The Government's intention is for this latter amendment to have effect from Royal Assent of the Pensions Bill. The retrospective nature of the proposals is an important part of their deterrent effect in ensuring that the Government's description of risks did not prompt the kind of undesirable behaviours which it has sought to address.
 14. The Regulator, which recognised the potential uncertainty that the retrospective effect of the changes could create particularly in the period before new legislation comes into force, issued a statement on 25 April that set out how it would operate the powers in the interim and this would continue to have effect in the period prior to the coming into force of the legislative provisions.
 15. The Government's intention is that the amendments should come into force on Royal Assent of the Bill, other than the provisions in relation to the new material detriment test. This latter amendment and the proposed Regulator Code of Practice are inter-locking changes: the Government has considered, in consultation with interested parties, that legislation relating to this new test should take effect once the Code comes into force. The Regulator expects to undertake a formal consultation on the Code later this year.

1 Introduction

Summary

In April the Government began an eight-week consultation on amendments to the Pensions Regulator's powers to ensure that they remain adequate and appropriate to address new risks resulting from changes in the pensions market. The Government's main concern was the emergence of new business models, which among other features, may reduce the security provided by the pension scheme's sponsor employer. This may be detrimental to scheme members' benefits, and have a cost consequence for the Pension Protection Fund (PPF), and those responsible for paying its risk-based levy.

The new models can involve various steps and methods which the current powers as introduced in the 2004 Act were not designed to address. The models are often complex and some of the steps when taken in isolation are indistinguishable from ordinary corporate activity: this has meant that it has proved impossible to define the models in a meaningful way.

The Government considers that the most appropriate way to tackle this issue is to amend the anti-avoidance powers. It has however listened carefully to concerns from stakeholders that the changes should be effected in primary legislation and give greater clarity to employers, pension scheme trustees and other parties. Its approach is to set out the proposed changes in the legislation, with appropriate safeguards and requirements on the Regulator to circumscribe the application of the powers to ensure they are appropriately targeted.

Background

1.1 The Government is committed to building and maintaining confidence in work-based pension provision. It established a protection regime, through the Pensions Act 2004, which was designed to protect scheme members' benefits and the Pension Protection Fund (PPF) without placing onerous costs on responsible employers or continuing schemes that are responsible for paying the PPF levy.

1.2 The Pensions Regulator was set up under the Pensions Act 2004. The Act states that the Regulator's main statutory objectives are to:

- protect the benefits of, or in respect of, members of occupational and work-based personal pension schemes;
- reduce the risk of situations arising that may lead to claims for compensation from the PPF; and
- promote, and improve understanding of, the good administration of work-based pension schemes.

- it would not be possible to cater for all possible factors that may be relevant to a particular case, and the Government intends that employers should have recourse to put other factors to the Regulator for consideration where relevant as part of their representations;
 - some factors of material detriment may need to be modified in light of their operation to ensure they deliver the Government policy. The amendment includes three regulation-making powers to add new factors, and to vary this list by amending existing factors.
- **second, a new requirement on the Regulator to set out in a statutory Code of Practice the circumstances** in which it expects to use this power – this is intended to narrow its application and the Regulator has published a draft list of circumstances alongside this document to provide greater clarity on the approach.

The Government has examined the suggestion from some stakeholders that the circumstances should be in primary legislation. This could have unintended consequences however, in particular:

- It would make the grounds on which clearance should be sought less clear, and result in potential uncertainty for stakeholders and possible delays to a process that currently operates well.
 - It would also result in a far less practical process for updating the code in light of the Regulator's operation of it, given this is an area that Government and the Regulator expect to keep under review along with the implementation of the other proposed changes.
- **third, a statutory defence** which is designed to ensure that where the party had undertaken due diligence before the act and considered and where appropriate mitigated the material detriment and can reasonably conclude that the act will not be materially detrimental, then the power would not apply.
 - The consultation document proposed a statutory defence should be available so that the Regulator would not be able to serve a contribution notice on a person who had conducted effective due diligence and demonstrated that they had considered the impact of the act on the scheme members', and that risks had been mitigated appropriately.
 - This defence was based on the concept of whether the detrimental effect was reasonably foreseeable to the relevant parties at the time of the event (2.45 –2.47). On further analysis and following feedback from stakeholders, in particular the Association of Pensions Lawyers, during the consultation process the Government considers that this is too wide to provide sufficient comfort to be workable.

Annex A

SUMMARY OF CONSULTATION RESPONSES

The Government received approaching 60 formal written responses to the April consultation from a range of stakeholders including pension providers, employers, representative organizations, pension lawyers, actuaries, trustees and trades unions.

The Government has undertaken a series of detailed discussions with individual stakeholders, and held a joint meeting with around 20 former Pensions Regulator secondees from a cross-section of specialisms and professions in the pensions industry.

The Government convened a workshop towards the end of the consultation period with around 20 key stakeholders representing employer groups and trades unions, corporate interest bodies, pensions professionals, consultancies and trustees to share and compare their assessments and it is grateful for the valuable insights received.

More recently, it has also undertaken a further period of close working and discussions with a wide range of relevant representative parties over the summer in order to further develop and refine the detailed proposals.

A number of key issues were raised by the respondents which were clearly of significant importance and required careful consideration. A general concern was the breadth of the regulation-making power, its potential use in future and the perceived lack of Parliamentary scrutiny.

A number of comments from respondents focussed on the impact of the proposals on business and suggested that they would lead to an increase in the number of clearance applications to the Regulator and so add to the burdens on business.

A digest of some of the key concerns raised in the consultation responses, and the Government's response is shown in the table below:

Consultation – Key Concerns	Government Response
General Concerns	
Not wholly convinced that the proposed amendments to the Pensions Regulator's powers are necessary or the case for change has not been made out, or the extent of the powers would be disproportionate.	The rationale for the proposed changes is set out in the consultation document. The Government is concerned at the recent growth in new ways of employers mitigating or avoiding entirely the risk associated with its 'pensions promise' with the advent of new market solutions and an increasing awareness of unforeseen limitations with the current in the legislation. While the

	<p>Government welcomes new models in the pensions market, and other ways for employers to try to address pension scheme liabilities, it was concerned that risks that emerging business models are highlighting are appropriately managed. A particular risk is that some models seek to remove or reduce the security of an employer without putting adequate capital in place to replace that security. This kind of model is inherently unfair to members and to those responsible schemes which pay the PPF levy. The Regulator's powers as introduced in 2004 were not designed to address these new methods.</p>
<p>The detail of the proposed amendments should be in primary legislation</p>	<p>Government Ministers made a commitment to return to the House at Report stage of the Pensions Bill, considering what more could be placed on the face of the Bill to deal with the risks to pension scheme members' benefits without having disproportionate effects on business, and to allay the suspicion that deals previously cleared by the Regulator could be at risk from these changes. The Government has now brought forward a package of substantive amendments to the primary legislation on the Regulator's powers.</p>
<p>The package will cause uncertainty for business</p>	<p>The Government intends that the changes should have no effect on ordinary corporate transactions or the clearance process. The Government intends to provide certainty for business by clarifying, in primary legislation, the date from which these changes would take effect; and ensuring that the enabling powers will be circumscribed and require appropriate consultation. The Regulator intends to issue a code of Practice on the new detriment effect ground for CNs.</p>
<p>The proposals will result in an increase in the number of clearance applications to the Regulator, and therefore additional costs for businesses.</p>	<p>The current clearance process does not unduly inhibit legitimate business and the proposed changes are designed so that they do not unduly</p>

<p>defendant when the burden should be on the Regulator.</p>	<ul style="list-style-type: none"> ▪ concept of material detriment; ▪ a setting out of the circumstances in which this power would apply; and ▪ a statutory defence <p>The Government intend to allow those undertaking business transactions to self-regulate to a certain extent, even if an act is within scope of the material detriment factors and the circumstances for use of the new power, by setting out a statutory defence in primary legislation that will allow the relevant party to demonstrate with evidence that on a balance of probability test it was not likely that the effect of the act/failure to act would be materially detrimental. The intention is to take a power to vary this defence as appropriate in light of experience of the defence in operation</p>
<p>The “good faith” provision should not be removed or the case has not been made out; the statutory defence would not offer sufficient protection</p>	<p>The Government considers that the reasons for removing good faith remain sound, and that this is an inappropriate evidential test.</p> <p>The Government has listened carefully to respondents’ concerns, and concluded that the Regulator’s use of this amended power should be expressly circumscribed through a new mandatory requirement to consider the reasonableness of a person’s actions in all the circumstances along with other existing and new safeguards.</p> <p>The Government’s amendment includes three new reasonableness factors that should be applied to govern use of the contribution notice power. (These new factors are set out at paragraphs 2.7 – 2.8).</p>

Annex C - Summary: Intervention & Options		
Department /Agency: DWP/The Pensions Regulator	Title: Impact Assessment of amendments to the Pensions Regulator's anti-avoidance powers in the Pensions Act 2004	
Stage: Government response to consultation	Version: 16/10/08	Date: 16/10/08
Related Publications: Government consultation on amendments to the Pensions Regulator's anti-avoidance powers in the Pensions Act 2004 (April 2008) http://www.dwp.gov.uk/consultations/2008/planned-consultations/powers-pensions-regulator.pdf		

Available to view or download at: <http://www.dwp.gov.uk/consultations/2008/>

Contact for enquiries: Rob O'Carroll

Telephone: 0207 962 8735

What is the problem under consideration? Why is government intervention necessary? The main focus of these regulatory changes is to adapt the Regulator's anti-avoidance powers to enable the Regulator to respond to an evolving market for pensions liabilities. A particular risk is that some new alternatives to pensions scheme buyouts have the effect of separating the pension scheme from the sponsoring employer that previously stood behind it, but without providing the security of a regulated insurer. It is crucial that the Regulator's powers are effective to enable it to intervene where appropriate and to deter actions that reduce the security of scheme benefits, or that would have the consequence of increasing the risk of calls on the Pension Protection Fund (PPF) and raising the levy on all eligible schemes.

What are the policy objectives and the intended effects? To enable the Pensions Regulator to adapt to an evolving market by improving the effectiveness of the Regulator's existing powers to mitigate risks to members' benefits and to the PPF; and to enhance the Regulator's powers to require contributions to pension schemes when employer actions reduce the security of member benefits. The changes will allow the Regulator to address those business models that remove a scheme from a sponsoring employer and leave members exposed to a disproportionate high level of risk; and would rectify some provisions of existing legislation that could otherwise be used in unintended ways to renege on pensions promises. The overwhelming majority of pension schemes will not be affected by these changes and the proposed amendments would not therefore represent a significant new burden on employers and businesses, or the Regulator.

What policy options have been considered? Please justify any preferred option.

The Government has carefully considered the alternative of defining the new business models it is seeking to address. It sought input on this option through a consultation whose assessment concluded that defining these new models in a meaningful way was not possible and to do so would simply establish a definition that could be circumvented by those seeking to avoid the pensions promise. This is a serious consideration with any avoidance legislation and it could also mean that legitimate business could be unduly hampered contrary to the Government's intention. The approach has been to define the nature of the corporate activity on which the principal amendment should engage (the new alternative ground for issuing contribution notices). This is designed to provide greater certainty for business, and ensure that the Regulator can intervene where it is appropriate to do so. The other amendments rectify some provisions of existing legislation which included weaknesses highlighted by the new business models. The policy option is therefore focussed on amending the Regulator's powers to ensure that members' benefits are not at undue risk, and to protect the PPF and its levy-payers from the burden of potentially higher levies if too many schemes end up in the PPF. It is the Government's intention that the powers should operate effectively and act as a deterrent to renegeing on the pension promises.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Ongoing - the policy is intended to provide greater security for pension scheme members and enhanced protection for the Pension Protection Fund, while ensuring that the regulatory regime remains proportionate.

Ministerial Sign-off Final proposals Impact Assessment:

I have read the Impact Assessment and I am satisfied that, given (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:

..... Date:

Summary: Analysis & Evidence

Policy Option: Changes to the Pensions Regulator's existing anti-avoidance		Description: Amendment of the Regulator's powers relating to the issue of contribution notices and financial support directions in response to an evolving market.	
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Since these powers came into effect in April 2008 the Regulator has received seven clearance enquiries and three applications, suggesting that any future impact will be small and transitional costs very limited. The direct costs to the Regulator are therefore estimated as zero. The cost to business associated with applying to the Regulator for clearance for transactions is estimated at less than £500,000, based on the likely number of clearance applications.
	One-off	Yr	
	£ <£500K		
	Average Annual Cost (excluding one-off)		
	£ 0	Total Cost (PV)	£ <£500K
<p>Other key non-monetised costs by 'main affected groups' Indirect costs to business could arise from changes in business model imposed on buyout providers by the new rules. However, since the business models are thought to act against the public interest, these costs are not to be taken into account in an impact assessment.</p>			
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The annual benefits will result from the mitigation of risks to the security of members' pension benefits and depend on the circumstances of the individual scheme. It is not possible to quantify the benefits of the likely scale of avoided losses in a meaningful way. The Regulator has confirmed however that there were 7,751 schemes eligible for the PPF, showing an overall net PPF surplus, but 64% of schemes are in deficit to a total of £34.4bn and potentially at risk.
	One-off	Yr	
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 0	Total Benefit (PV)	£ 0
<p>Other key non-monetised benefits by 'main affected groups' The proposed changes would also protect the PPF and its levy-payers from the burden of potentially higher levies if too many schemes end up in the PPF. The scale of these benefits cannot be quantified at present however.</p>			
<p>Key Assumptions/Sensitivities/Risks A small initial increase in clearance applications is expected but will quickly tail off. The marginal additional administrative costs to the Pensions Regulator would be absorbed by the Regulator without the need to increase the General Levy.</p>			
Price Base Year 2008	Time Period Years 2	Net Benefit Range (NPV) £ -	NET BENEFIT (NPV Best estimate) £ 0

What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	April 2009
Which organisation(s) will enforce the policy?	The Pensions
What is the total annual cost of enforcement for these	£ 0 additional
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per	£0
What is the value of changes in greenhouse gas emissions?	£0
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No No No

Impact on Admin Burdens Baseline (2005 Prices)				(Increase -
Increase	£ 0	Decreas	£ 0	Net
				£ 0

Key: **Annual costs and benefits: Constant Prices**

Evidence Base (for summary sheets)

Background

The Government proposes to make amendments to the Pensions Regulator's powers to ensure they are adequate to address risks resulting from changes in the pensions market. Recent new business models offering alternatives to buy out with a regulated insurer have raised concerns about whether the current powers are adequate to address risks to scheme members' and to the Pension Protection Fund (PPF), particularly where employer actions reduce the security of scheme benefits.

The Government aims to strike a balance between maintaining an environment in which market solutions can flourish, while ensuring that there are appropriate safeguards in the regulatory regime to provide scheme members with adequate protection. Pension scheme trustees provide the first layer of protection for scheme members, with the Regulator standing behind the trustees where appropriate. These changes are designed to ensure that the Regulator's powers remain effective and appropriate and enable it to intervene where appropriate.

The proposals are informed by the experience of the Pensions Regulator since it commenced operations in April 2005, and reflect the need to continue to build trust and confidence in pensions as a means of saving for retirement, without placing undue burdens on the employers who provide occupational pension schemes or the wider pensions industry.

The current clearance process does not unduly inhibit legitimate business and the proposed changes are designed so that they do not unduly alter this situation. Specific filters on the usage of the proposed powers have been designed into the legislation to provide greater certainty for business and to ensure that the powers do not engage on legitimate activity. Although there have been significant market changes, and it is difficult to disaggregate the impact of the Regulator's powers from market changes and specific sector costs, it is of particular note that since the proposed changes were announced with retrospective effect from 14 April 2008 (and the market has been behaving as if the regulator had the new powers), three formal clearance applications have expressly referred to the changes and only seven clearance enquiries relating to the new powers have been received by the Regulator. The Regulator intends to maintain the existing clearance process. The Regulator's data suggests that to March 2008, only 14 per cent of transactions involved defined benefit scheme. The latest Regulator's clearance survey has shown a high level of satisfaction on outcome and quality of service, which reflects general high levels of "customer" satisfaction with the clearance process.

**148 is a combined figure for clearances and withdrawal approvals issued. Changes were made to the way the Regulator recorded key casework measures following implementation during the year of a new IT system to improve the recording and management of pensions regulatory action.*

The proposed amendments would not represent a general new burden on employers and businesses but would close loopholes that could otherwise allow unscrupulous employers to renege on pensions promises. The changes would also address those business models that remove a scheme from a sponsoring employer and leave members exposed to unacceptably high levels of risk.

As stated above, the new material detriment effect test proposed for the Regulator's power to issue a Contribution notices are expected to result in a modest initial increase in the number of enquiries about clearance applications with few translating into actual applications for clearance. But the number is expected to decline fairly quickly to the current levels of clearance activity as businesses and employers become familiar with the new powers. The Government's proposals set out a clearly targeted power which is focussed on behaviours that present unacceptable risks to pension scheme members' and to the PPF. This approach taken together with guidance from the Regulator on the sort of transactions that are likely to have material detrimental effect on pension schemes should result in only a very marginal increase in the number of clearance applications.

The Government does not collect authoritative data on the cost to business of a clearance application and the consultation exercise did not bring forth any substantive figures for these costs, though respondents were asked to provide any information that they were prepared to divulge. Informal consultation with members of the industry indicates that while costs will vary significantly from case to case, one estimate of the cost per case was that average sized deals, can be between £50,000 and £75,000, including legal costs for employer and trustees, an employer covenant review by the trustees and relevant actuarial advice. Most of these costs, while they are important in gathering the information to support a clearance application, are inherent to pensions due diligence activity, would be expected in any case where a transaction may impact pension scheme security, and are not an integral part of the clearance process. Cost particular to a clearance application would include adapting this information into the format required by the Regulator, and the contact with the Regulator through the application process. This is a small subset of the above costs.

The costs mentioned above are anecdotal and while it may be applicable in some cases, the likelihood is that in most cases the cost of an application will be below £50,000 and part of the overall costs of a corporate transaction. In those cases where an employer covenant review has already been undertaken this estimate would be lower.

The vast majority of employers/businesses do not engage in the behaviour/activity addressed by the proposals and it is likely that very few pension schemes sponsors will be affected by these proposed changes.

Equality and Fairness

It is not believed that there will be an impact on the equality strands as a result of the proposed amendments.

Human Rights

There should not be any effects on human rights as a result of the proposed amendments

Small Firms Impact Test

The appropriate filter test has been conducted and the proposals will not have a negative effect on small firms. In general the effect on businesses should be neutral.

Competition Assessment

The provision of a defined benefit occupational pension scheme is currently voluntary. The impact of these changes on businesses will be very slight and there should therefore be no impact on competitiveness.

Legal Aid

There will no impact on Legal Aid.

Sustainable Development, Carbon Assessment, Other Environment

There will be any impacts on these areas. The initial tests have been looked at and do not apply.

Health Impact Assessment

No health impact issues were identified by the initial assessment.

Enforcement and Sanctions

The proposals would not involve any changes to enforcement and sanctions.

Rural Proofing

No impact on rural communities was identified by the initial rural proofing assessment.

Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	Yes	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	Yes	No

Annex D

CONSULTATION QUESTIONS

The Government's 25 April 2008 consultation document *'The Powers of the Pensions Regulator: Amendments to the anti-avoidance powers measures in the Pensions Act 2004'* set out the following consultation questions.

The Government welcomed views on:

Chapter Two

- its proposal that the resources of the whole group of associated or connected persons should be considered when assessing whether a Financial Support Direction can be issued.
- the issues that should be considered in drafting legislation to introduce this test, and in particular the proposal set out above.
- whether a non-exhaustive statutory checklist of factors to consider in any detriment test would be useful for parties who could be subject to the issue of a Contribution notice under the new test
- the additional 'reasonableness factors' it proposes to prescribe should be taken into account when considering the issue of a Contribution notice
- the value of setting out such a non-exhaustive list, where to set out this list and on the proposed characteristics.
- other provisions that could be included in legislation or elsewhere to ensure that the new test to issue Contribution notices is effectively targeted on risks to scheme members' benefits.
- the proposed removal of the words 'otherwise than in good faith' from s. 38(5)(a)(ii) of the Pensions Act 2004
- its proposed statutory defence for parties who could be subject to the issue of a Contribution notice.

Chapter Three

- its proposed clarification of s. 38 of the Pensions Act 2004
- its proposal that the use of Contribution notices should not be prevented by effecting bulk transfers.
- its proposal that the Regulator should be able to issue a Contribution notice against a party that effects a bulk transfer that is not in the interests of members.