

Pension Schemes Bill

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Pension Schemes Bill submission

Introduction

Aon is pleased to submit its response to the Public Bill Committee's call for submissions on the Pension Schemes Bill.

Aon is a leading global professional services firm providing a broad range of risk, retirement and health solutions, with more than 50,000 colleagues in 120 countries. We work with the trustees and sponsors of around 1,000 UK pension schemes. Globally, we work with more than 2,300 clients with assets totalling \$3.8 trillion.

Executive Summary

We have significant concerns over the scope of Clause 107, as outlined below. We understand that these concerns are widely shared within the pensions industry.

Other aspects of the Bill are in our view fit for purpose.

Clause 107

We have significant concerns over the scope of Clause 107 of the Pension Schemes Bill.

The Clause covers a much broader range of behaviour and individuals than previously indicated by DWP. Instead of focusing on rogue company directors damaging pension schemes and savers, the proposed new criminal offences could apply to an extremely wide range of parties. This is likely to have damaging and unintended consequences for the day-to-day running of pensions schemes and create unnecessary costs.

We would like to see greater clarity in the Bill on the scope of these new powers and the circumstances in which they are intended to be used. In order for all affected parties to have certainty it is important that this clarity is in legislation rather than in guidance.

The new offences would apply to "any person". We understand that even third parties such as banks and landlords could find themselves guilty of a criminal offence in relation to a pension scheme for which they previously had no responsibility, along with government bodies that deal with the private sector, pension trustees, trade unions, investment counterparties, or anyone who deals with the employer in any capacity whatever.

We understand that the third party need not be dealing with the pension scheme – any business dealing with the employer could also be within scope.

We appreciate the underlying policy is to create a criminal offence for the most serious conduct that harms pension schemes. However, the

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legislation has set the test at a much lower level – any conduct that causes a "material detriment" to the likelihood of scheme benefits being met could be a criminal offence. All sorts of routine business activities could cause such a "material detriment". Many of those activities would not normally be thought wrong, let alone criminal. Any business contract that an employer signs is likely to involve liability that could compete with the pension scheme. Unless the contract is immaterial, it could be a criminal offence.

The only serious protection for any party is that they will not be guilty of an offence if they had a "reasonable excuse". However, the legislation contains no guidance as to what will be seen as a reasonable excuse. We understand it will therefore be left entirely to the Courts to determine what is reasonable and what is not.

If the Bill is passed with the current drafting in place there are several potential consequences:

- Well-intended trustees and corporates will take a cautious approach and will want to confirm that intended actions do not give rise to risk of criminal action.
- This will mean additional adviser fees (particularly legal costs) attempting to get comfort that the risk is minimised (although it cannot be eliminated due to the broad wording of the Bill). We are not aware that a cost benefit analysis has been carried out. However, as there are over 5,000 defined benefit schemes, average additional costs of £10,000 p.a. per scheme would amount to an additional cost to business of £50M p.a.
- In addition, this will lead to delays in action (at best) or perfectly acceptable actions being discounted, which will be to the detriment of members and companies.
- Conversely, a more carefully targeted wording will still provide the necessary deterrent for ill-intentioned corporates.

In summary, the broad and loose wording of the Bill only penalises the innocent. If the criminal offences were more clearly defined and targeted, then Parliament could be more confident that their real targets would be deterred or punished.

We understand that industry bodies have suggested specific changes to the drafting of the Bill to address the significant issues outlined above.
