



CONFIDENTIAL

HOUSE OF LORDS,
SW1A 0PW

15 October 1985

NBAT
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Dear Tony:

GREEN PAPER PROPOSALS FOR NEW PENSION ARRANGEMENTS

Your letter of 6 September sought my agreement to the inclusion of provision in a Bill introducing new pension arrangements, which would confer jurisdiction on county courts to grant coercive orders and hear actions for unpaid minimum pension contributions.

One of my main concerns is to contain an ever-increasing court caseload with limited resources and I consider that county courts are quite inappropriate for your proposals regarding coercive orders. I think a large fine imposed in summary criminal proceedings is likely to be far more effective than applying for the committal to prison of an employer in proceedings for contempt, which is presumably the threat behind issuing a coercive order. Your officials could no doubt discuss with those in the Home Office and in my Department the form of a possible criminal offence and appropriate criminal penalties.

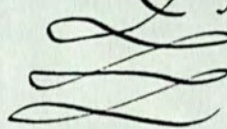
Contempt proceedings are particularly expensive in terms of the time of judges and bailiffs. As proceedings involving the liberty of the subject have to be given priority over other listed cases, implementation of your proposal will cause delay to other litigants. The proceedings will not be straightforward; the process of adjudicating whether a respondent has remedied breach of an order to make "appropriate pension arrangements" is likely to be both protracted and difficult.

.../ As regards

Anthony Newton Esq., OBE MP
Minister of State for
Social Security and the Disabled
Department of Health and
Social Security
Elephant and Castle
London SE1 6BY

As regards your proposals concerning actions for recovery of unpaid minimum pension contributions, I am not concerned with the underlying principles, but only with the potential increased workload. There may be ways of minimising any such increase and I have, accordingly, instructed my officials to get in touch with yours to explore the various possibilities.

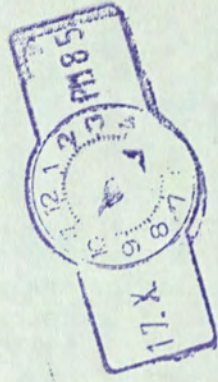
Copies of this letter go to the Lord Advocate, George Younger, colleagues who were members of MISC 111, Leon Brittan and Robert Armstrong.

yrs :
Q.H.


FROM: THE EX. HON. LORD HAMILSHAM
OF ST. JOHN'S CH. CH. BOLL.

SOCIAL SERVICES REVIEW

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DEPARTMENT OF HEALTH AND SOCIAL SECURITY
Alexander Fleming House, Elephant & Castle, London SE1 6BY
Telephone 01-407 5522
From the Minister of State for Social Security and the Disabled

~~cc: W~~
NBSPT
BRW
11/9

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
London SW1

- 6 SEP 1985

D. Doyle

GREEN PAPER PROPOSALS FOR NEW PENSION ARRANGEMENTS

Norman Fowler undertook to consult you about our proposals for penalties for failure to comply with requirements under the new pensions arrangements proposed in the Green Paper "Reform of Social Security". Under these arrangements, an employer will be required to pay at least a minimum pension contribution related to his employee's earnings to an occupational or personal pension scheme, and will be permitted to deduct up to half of this minimum from the employee's wages.

We propose that compliance action in relation to this requirement should build on the existing powers for ensuring that employers discharge their national insurance contribution (NIC) liabilities. This is possible because the two liabilities will be closely related and recorded together. To this end, we propose that the appointment of DHSS inspectors under section 144 of the Social Security Act 1975 should be for the purposes of the new pension provisions as well as of that Act; and that for these purposes their powers should be extended to give access to the premises of pension scheme providers as well as those of employers, and to require the trustees or managers of pension schemes to supply an inspector with the information he may reasonably require to ensure that the minimum pension contributions have been properly paid.

We believe it is appropriate that equivalent criminal sanctions should be available for dealing with employers' non-compliance with these requirements as for dealing with employers' non-compliance with their NIC liabilities, although - as with the NIC powers - they would be invoked very sparingly. I am writing to the Lord Chancellor and the Lord Advocate about the powers we propose for the civil courts. Only where there was serious persistent or wilful offence would criminal rather than civil action be considered, resulting perhaps in fewer than 10 cases a year.

Some existing offences and penalties would extend automatically to the new arrangements, for example the offence of wilfully obstructing an inspector. But in other cases, new parallel provision would be needed. The new offences we propose are as

E.R.

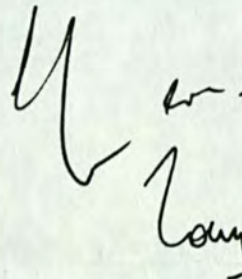
follows, with maximum penalties (in brackets) in line with those for corresponding NIC offences:

- * failure to pay MPCs within the prescribed time to a proper scheme (Level 3 - £400)
- * deduction of the employer's share of the MPC from the employee's wages (Level 3)
- * failure to comply with regulations about deduction of MPCs from wages, record-keeping, etc (Level 3)
- * knowing provision of false statements or information (Level 5 - £2,000 or three months imprisonment or both.) (As with NIC, proceedings for serious fraud could be instituted under the Theft Act.)

I would be grateful for your confirmation that, subject to consultation between our officials about the detail of the provisions I have outlined, you are content that they should be included in the Bill which introduces the new pension arrangements. I would welcome an early reply in view of our timetable. We aim to publish firm proposals in a White Paper in October, with the Bill following early in the new Session.

In relation to pension schemes, we propose that the main responsibility for ensuring their compliance with the new requirements should fall to the pensions industry itself, within the constraints imposed by the need for a scheme to obtain tax approval and to comply with the requirements of investor protection legislation. As back up to that, we will have powers of intervention to safeguard the position of the minimum pension contributions in the few cases where self-regulation proves ineffective.

I am copying this letter to other colleagues who were members of MISC 111, and to Leon Brittan, the Lord Chancellor, the Lord Advocate, George Younger and Robert Armstrong.



TONY NEWTON



DEPARTMENT OF HEALTH AND SOCIAL SECURITY
Alexander Fleming House, Elephant & Castle, London SE1 6BY
Telephone 01-407 5522

From the Minister of State for Social Security and the Disabled

The Rt Hon The Lord Hailsham of
 St Marylebone CH FRS DL
 Lord Chancellor
 House of Lords
 London SW1

- 6 SEP 1985

Jim Quirk.

GREEN PAPER PROPOSALS FOR NEW PENSION ARRANGEMENTS

We have been considering what legislative provision will be needed to ensure compliance with requirements under the new pensions arrangements proposed in the Green Paper "Reform of Social Security". Under these arrangements, an employer will be required to pay at least a minimum pension contribution related to his employee's earnings to an occupational or personal pension scheme, and will be permitted to deduct up to half of this minimum from the employee's wages.

Pension schemes and employees will act as the first and most important check on employers' compliance with these requirements. As a matter of normal business practice, schemes will ask employers to correct or explain defaults in agreed payments. Similarly, employees may press an employer who takes no action to make the minimum statutory pension provision for them. However there will be cases where action by the DHSS will be necessary to ensure compliance. There would be a request to the employer from one of our local office national insurance (NI) contributions inspectors that he put his house in order; and, if he contested the Department's view that there was an undischarged liability to pay minimum pension contributions, there would be a formal determination of the question(s) at issue by the Secretary of State, subject to referral or appeal to the High Court as provided by section 94 of the Social Security Act 1975. In the cases where these measures were ineffective, Court action would need to be considered. We want to reserve criminal proceedings for the very few cases of serious, persistent or wilful offence, and so see the need to give the civil courts powers of enforcement for use in cases of less gravity.

At present, where employers fail to pay NIC, this is pursued either by Inland Revenue along with outstanding Pay-As-You-Earn income tax or, where necessary, by this Department as a civil debt to the National Insurance Fund. Under the new pension arrangements however, because the employer will be required to pay the minimum pension contributions to a private pension scheme and may not have arranged to do so, action for simple debt would not be appropriate.

Where it has not been established to which scheme the MPCs should be paid, we propose that the County (or in Scotland the Sheriff) Court should have power to issue a coercive order requiring the employer to make an appropriate occupational pension arrangement. A question whether an employer had made the necessary arrangement would be for the Secretary of State and his determination would be binding on the Court.

Where a debt to a particular scheme has been established, we propose that the Secretary of State should be empowered (though not obliged) to sue for debt on behalf of that scheme. This method of proceeding would have the advantage of being relatively straightforward. It would also enable action in some cases to be combined with that brought by this Department against the same employer for unpaid NI contributions.

Non-compliance by employers with the new pension arrangements can be expected to occur on a scale similar to non-compliance with their liabilities to pay NI contributions. However, because of the differences in the parties involved, and in the powers and procedures proposed, it is not possible to estimate with any certainty what work load will result for the civil courts. Civil proceedings by the DHSS for non-payment of Class 1 contributions are currently running at about 1,300 a year; and Inland Revenue proceed against about 20,000 employers a year for non-payment of Class 1 contributions (in two-thirds of cases by way of distraint action by the local Collector). However, because of the involvement of schemes and employees in identifying and pursuing non-compliance by employers with their liabilities, the likelihood that Inland Revenue will not be involved in routine checks of this compliance, and the scope mentioned above for combining action with that for unpaid NI contributions, the number of additional cases generated for the civil courts should be considerably less than these figures might suggest.

We would be grateful for your confirmation that, subject to consultation between our officials about its form, you are content that provision along the lines proposed should be included in the Bill which introduces the new pension arrangements. I am copying this letter to the Lord Advocate and George Younger and would be grateful for their consent to the similar provisions proposed in relation to Scotland. I would welcome an early reply in view of our timetable. We aim to publish firm proposals in a White Paper in October, with the Bill following early in the new Session.

I should mention that we propose that the main responsibility for ensuring the compliance of pension schemes with the new requirements on them should fall to the pensions industry itself, within the constraints imposed by the need for a scheme to obtain tax approval and to comply with the requirements of investor protection legislation. As back up to that, we will have powers of intervention to safeguard the position of the minimum pension contributions in the few cases where self-regulation proves ineffective.

In addition to the Lord Advocate and George Younger, I am copying this letter to colleagues who were members of MISC 111, and to Leon Brittan and Robert Armstrong.



TONY NEWTON