The volume of pensions legislation in force has increased exponentially year-on-year over the past forty years, with annual Finance Acts and many Pensions Acts, especially in the past decade, plus hundreds of sets of regulations. The twin drivers have been a Treasury obsession with tax relief and the potential for its abuse, and a Department for Work and Pensions (DWP) passion to protect pension scheme members seemingly almost regardless of cost. Another revolution is imminent this year.

In the beginning: 1100 - 1900
Although from medieval times, charitable employers and some of the guilds had provided income for retired workers, the earliest attempts by the State to make provision for old age were probably the Elizabethan Poor Laws enacted at the turn of the 17th century. The first recorded case of an individual state pension came in 1684, when the successor to a civil servant was required to contribute half his salary to a pension for his predecessor. Contributory pension schemes were gradually extended to other civil servants during the 18th century.

The first non-contributory pensions came in 1810, with pensions for all civil servants provided from 1834 (which remained non-contributory until 1972). For the masses, however, the only relief from destitution when one could no longer earn a living were still the Poor Laws - or the workhouse. The Victorians believed in self-reliance: if you were destitute it was your own fault. A few large employers began to provide contributory occupational pension schemes, but they were the exception rather than the rule.

Modern times: 1900 - 1960
Despite the odd Royal Commission on poverty in old age, it wasn’t until 1908 that the first State Pensions were paid, to the over-70s whose income was less than 12s per week. The most you got was 5s a week (25p in today’s money).

In 1925 this was raised to 10s and pensionable age lowered to 65, but to get this you had to have been contributing to the National Health Fund (set up in 1911). Spouses also got a State Pension. In 1940, State Pension Age for women was reduced to 60.

National Insurance contributions became compulsory for all workers in 1948, and for the first time the State Pension was now expected to cover the basic essentials; finally poor-law relief was a thing of the past. The State Pension was still a flat-rate amount, though. Successive governments had maintained the view that anyone who wanted to live above the level of mere subsistence should make their own additional provision for retirement.

Contributory private sector schemes gradually spread, helped by the introduction of tax relief on employees’ contributions in the 1921 Finance Act. Further reorganisation of income tax legislation affecting pensions followed in 1952. During this period most private sector schemes were insured with life offices, although self-administered schemes were favoured by larger companies. The final salary type became more and more common. By 1956, 4.3 million workers were members of an occupational pension scheme, although only 300,000 were drawing a pension. That was the year when retirement annuity contracts were introduced to enable other workers to save.
In those days ‘pensions legislation’ hardly existed as such. There was a bit about the taxation of pension schemes, but nothing we would recognise as legislation protecting pensions. Whether you actually got a pension when you retired, and if so how much, depended on the scheme rules, and whether the employer was still providing the scheme.

**First pensions legislation: 1960 - 1988**

This didn’t change until the 1973 Social Security Act for the first time gave some protection to pension rights, known as preservation. Shortly afterwards the first major pensions consolidating Act arrived on the statute book, the Social Security Pensions Act 1975. This was the start of a remorseless influx of social security legislation which has continually ramped up the cost of private pension provision.

A further significant source of complexity is the interaction between private and State Pensions known as contracting-out. This began in 1961 with the Graduated Pension Scheme, scrapped in 1975 and eventually replaced three years later by the much more complicated State Earnings Related Pension Scheme (SERPS). These two themes were developed in the 1985 and 1986 Social Security Acts, which introduced the protected rights route for contracting-out.

It was in the 1990s that things began to get seriously out of hand

Meanwhile, the Inland Revenue had not been leaving things alone either. It imposed funding limits on pension schemes, which led to contribution holidays and the refund of surpluses to employers (result: no funding cushion when the stock markets crashed). The 1970 Finance Act set up a ‘New Code’ for tax approval, a regime which lasted only until a third major reorganisation resulted in the Income and Corporation Taxes Act 1988. In this year of the “Big Bang” employers lost the power to make pension scheme membership a condition of employment and as the Financial Services Act 1986 came into force, personal pensions kicked off with Government inducements.

Towards the end of this period pensions legislation had developed to the point where around a dozen specialists decided to form the Association of Pension Lawyers (APL) in 1984.

Pensions legislation altogether amounted to around a couple of hundred pages.

**Developing momentum: 1989 - 1999**

It was in the 1990s that things began to get seriously out of hand. First of all the 1989 Finance Act created a third Revenue Limits regime for pension contributions and benefits (so we now had pre-87, 87-89 and post-89 members). Then Europe started to get involved, with the 1990 Barber case declaring that pensions were deferred pay and banning sex discrimination in pensions. Politicians started to wonder aloud if state pension ages ought to be equalised too.

These themes contributed to the most influential primary legislation of the decade, the massive 1995 Pensions Act. The major trigger for this was the Maxwell scandal. After Robert Maxwell fell off a boat in November 1991 it was found that he had plundered hundreds of millions of pounds from his companies’ pension schemes. Two years later the Goode Committee recommended sweeping new controls including a regulator, Opra, and a massive increase in trustees’ responsibilities (including disclosure requirements). Such was the new-found zeal for protecting pensions against what politicians thought was an ever-present risk of another Maxwell. A burgeoning fashion for legislative sledgehammers to crack threatening little nuts has yet to run its course.

An old cliché has it that the devil is in the detail. Social Security Ministers have gorged themselves on their powers to make regulations to cover their backs against accusations of failure to protect pensions. Dozens of sets of regulations followed the 1995 Act, altogether swamping what benefit had been delivered by the earlier 1993 Pension Schemes Act in consolidating the social security pensions legislation which had preceded it. This has been much amended by later Pensions Acts, including the 1995 Act itself which inserted a new contracting-out regime to replace Guaranteed Minimum Pensions (GMPs).

The decade ended with the Welfare Reform and Pensions Act 1999 foreshadowing two major developments: stakeholder pensions and pension sharing on divorce. The former led to another raft of regulations and a failed pension saving initiative; the latter to arguably the most spectacularly tangled web of legislation ever woven on a single subject.

Pensions legislation by now ran to perhaps two thousand pages.

**More reorganisation: bigger, better, faster in the 21st Century**

New primary legislation governing pensions was now coming thick and fast, on top of the annual Finance Acts which almost always had something to say affecting pensions. In 2000 the Child Support, Pensions and Social Security Act replaced the overly-complicated SERPS with the State Second Pension. The very large 2004 Pensions Act set up a new Pensions Regulator with wide-ranging powers, a new funding regime for defined benefit (DB) schemes and the Pension Protection Fund (PPF). As ever, masses of regulations followed each Act. The game of legislative whack-a-mole became ever more frenetic.
While social security law has been the chief villain in making the foundations and supporting framework ever-more substantial (and thereby life more difficult for UK pension providers), it is the Treasury which is responsible for the new noun to describe all this, ‘complication’. Actually when they launched the 2004 Finance Act the buzzword was ‘simplification’ but it soon became anything but. The idea was to scrap the former discretionary pensions tax regime and codify a whole new framework - including a complex set of protection mechanisms to cover pension rights accrued ‘pre-A Day’.

Some important planks of the new framework, such as ‘Enhanced Protection’, had not been part of the original vision published in December 2002, alongside a DWP Green Paper which led to the 2004 Pensions Act. Furthermore of course the details had to be filled out by regulations, and 2006 - the year FA 2004 provisions commenced - proved a bumper year for regs.

By 2010 we were well past four thousand pages of legislation and seemingly heading for the ten thousand mark

The past ten years: exponential growth

Every year since 2004, successive Finance Acts have modified the pensions tax regime and when taken together with all the new secondary legislation and several thousand pages of official guidance in the RPSM to explain it all, the result is an administrator’s nightmare. In total, and bearing in mind all the older legislation which is still in force, by 2010 we were well past four thousand pages of legislation and seemingly heading for the ten thousand mark. Let's take a closer look at what happened.

Initially the new pensions tax regime was slated to start in April 2005, but it soon became apparent that would be quite impossible and so it was put back a year. That gave time for some corrections to be made in Schedule 10 of the Finance Act 2005, occupying 64 paragraphs. Much more was added the following year with three Schedules devoted to pensions in the 2006 Finance Act. Seemingly the Government had decided simplification was going too far, introducing extensive restrictions on investment options for ‘member-directed pension schemes’ and ‘recycling’ of tax-free lump sums. New inheritance tax rules were required to cover deaths after age 75.

The pattern continued in 2007: again, three Schedules to the Finance Act concerned pensions, one addressing perceived abuse of ‘alternatively secured pensions’ (a species to be scrapped altogether four years later). Another abolished tax relief for life assurance premiums paid to non-group life policies. The third made a host of refinements to swell the size of what remained the Finance Act 2004.

Inheritance made a comeback in Schedule 28 of the 2008 Finance Act, with Schedule 29 making further changes across the board to the pensions tax regime. In 2009, the Government’s ‘special subject’ was tax relief on pension contributions, declaring that a 20% ‘Special Annual Allowance’ charge would be payable in tax years 2009/10 and 2010/11 by individuals with a total annual income over £150,000, on any excess of the total adjusted pension input amount over £20,000. The term ‘anti-forestalling’ arrived on the statute book, referring to convoluted legislation in Schedule 35 of the 2009 Finance Act, to stop pension savers artificially reducing their income below the £150,000 threshold.

On 9 December 2009 the Treasury decided that this should be reduced to £130,000 in the next year’s Finance Act, with retrospective effect to that date. Apart from that, the 2010 Finance Act was comparatively light on pensions; but of course 2010 was an election year, and a change of Government brought an immediate change of direction. More on that later.

Meanwhile, the Treasury had not been in sole control of compification. The DWP was busy developing the new pensions protection landscape created by the massive 2004 Pensions Act. In 2002, Alan Pickering had proposed in his report A simpler way to better pensions “a new Pensions Act which should repeal or consolidate all existing Department for Work and Pensions (DWP) private pensions legislation” . Any hope that the new Pensions Bill in 2004 might realise his goal (dream?) was derailed by a gathering storm around lack of protection for DB scheme members upon insolvency of the sponsoring employer, which necessitated creation of the PPF and later the Financial Assistance Scheme (FAS).

As the Bill wound its tortuous path through Parliament, more and more amendments were added, covering matters such as the rules on pensions on divorce as they affected the operation of the PPF - which the Minister, Baroness Hollis, admitted was “extremely complex, wet towel stuff”. Nevertheless, amid all the alligators the Government had apparently not completely forgotten the idea of draining the swamp. In the House of Lords Grand Committee on 15 July 2004, Baroness Hollis expressed a hope that we would get a consolidation Act some time within the next decade. It hasn’t happened.

The FAS is governed by regulations which began life on 1 September 2005 and to date have been amended at least fifteen times
The following year the DWP was fully occupied, in particular getting the FAS established to provide support for members of schemes which had begun winding-up between 1 January 1997 and 5 April 2005, i.e. too soon to benefit from the PPF. The FAS is governed by regulations which began life on 1 September 2005 and to date have been amended at least fifteen times.

The old cliché about the devil being in the detail certainly applies to pensions legislation. Pensions Acts are typically enabling by nature, allowing the Secretary of State to make regulations. In 2005 the DWP splurged, responsible for the great majority of 115 separate Statutory Instruments (SIs) concerning pensions - many of them about the PPF. Likewise in 2006, although there was no Pensions Act, pensions professionals had to contend with at least 92 new SIs; again the DWP was largely responsible, although HMRC had become a serious competitor for attention.

Meanwhile the Government's appetite for transformation of the pensions landscape was undimmed. In late November 2006 the DWP published a new Pensions Bill emerging from consultation on their May 2006 White Paper Security in retirement: towards a new pensions system. Becoming an Act on 26 July 2007, it made significant changes to State pensions; set the scene for the abolition of money purchase contracting-out; and set up the Personal Accounts Delivery Authority, the first step towards what became the National Employment Savings Trust (NEST).

Perhaps re-energised by getting the 2007 Pensions Act through Parliament in a mere eight months, the DWP returned in December 2007 with another Pensions Bill, whose key purpose was to lay the foundations for automatic enrolment. By proposing for the first time that all employers should be required to contribute to employees' pensions, the Government was finally recognising the achilles heel of stakeholder pensions which had been introduced back in 2000. The Pensions Act 2008 replaced the requirement for employers to designate a stakeholder pension scheme, which was never enforced, by the requirement to automatically enrol employees into personal accounts or a qualifying pension scheme.

The incoming coalition government in 2010 decided to throw all the pension cards in the air and has been consulting ever since, taking care to legislate as they go. Almost the first decision by the new Pensions Minister Steve Webb was to switch the preferred measure on inflation from Retail Price Index (RPI) to the generally lower Consumer Price Index (CPI). Ominously, the consequences of this had apparently not been anticipated; indeed the whole period since has been characterised by a predilection for radical Government announcements, followed by desperate scrambling to make them work.

Pensions tax relief, it was decided, had been far too generous under the FA 2004 regime. So although a widely-welcomed early decision was to scrap the previous Government's high income excess relief charge and anti-forestalling legislation (as well as the rules requiring compulsory annuitisation at age 75), we got major changes in the 2011 Finance Act. These led directly the following April to the first cuts to the Lifetime Allowance (LTA) and the Annual Allowance (AA) since 2006, with the LTA down from £1.8m to £1.5m and the AA slashed from £255,000 to just £50,000. Accompanying the cuts came the first post-A Day protection regime, Fixed Protection.

Pensions liberation made a big comeback in 2013, although legislation to tackle it has been noticeably absent

Another Pensions Act emerged in November 2011, after almost 11 months gestation, including a change to the fundamental definition of money purchase benefits - the reverberations of this are still being felt in subsequent legislation. Other themes were reform of state pension age, alterations to the indexation and revaluation rules following the momentous decision to switch from RPI to CPI, and amendments to the plans for automatic enrolment laid out in the 2008 Act.

Automatic enrolment - possibly the biggest new initiative in the history of UK pensions - finally began in October 2012. The phased introduction will not be complete until 2018. Needless to say, this is accompanied by complex conditions and a burdensome new compliance regime - although some of the more egregious absurdities are about to be removed via amending regulations in 2015.

The LTA and AA were further reduced by the 2013 Finance Act: since April 2014 the LTA has been £1.25m, down from £1.5m, and the AA just £40,000. Pension rights are property rights which it is politically very difficult to take away from people, meaning that each new tightening of the rules generally cannot be applied retrospectively. Hence Fixed Protection 2014, and as if that was not enough yet another regime, Individual Protection, arrived on the statute book.

Another preoccupation of the Government in 2013 led to a significant overhaul of public sector pensions in the Public Service Pensions Act 2013. The amount of money associated with pensions also became increasingly noticeable to fraudsters; pensions liberation made a big comeback in 2013, although legislation to tackle it has been noticeably absent. HMRC was slow to react to the absurd ease with which new pension schemes could be registered.

The politicians’ desire for another Pensions Act was realised the next year when the Pensions Bill 2013-14 limped across the line in mid-May 2014, gaining Royal Assent after a full year in Parliament. Further radical reform to the State Pension system was a major...
theme, as well as tweaks to automatic enrolment and legislation enabling automatic transfer (‘pot follows member’ is the Minister’s mantra).

Before that happened, the Government had dropped a bombshell. In his Budget speech on 19 March 2014, the Chancellor foreshadowed yet another pensions revolution: no longer, he said, would anyone need to buy an annuity with their (money purchase) pension pot. The distinction between capital and income, lump sum and pension, was to be blurred in future. ‘Pension flexibility’ and ‘flexi-access’ became new watchwords.

The resulting 2014 Finance Act confirmed new higher limits for trivial commutation (up from £18,000 to £30,000), small pot commutation (quintupled to £10,000) and drawdown (up from 120% of GAD to 150%). New provisions to enable HMRC to make it harder for scammers to register pension schemes were another feature. But there was much more to come, once the Government had consulted on how the new regime was going to work.

Two further initiatives on pensions featured in the 2014 Queen’s Speech. The Coalition’s last year in office was to feature a Taxation of Pensions Bill and a Pension Schemes Bill. The former was duly enacted as the Taxation of Pensions Act (TOPA) 2014 on 17 December 2014. From April 2015, subject to trustees’ or managers’ consent a member with money purchase rights will have complete freedom of choice on attaining age 55: permissible alternatives to annuity purchase will include flexi-access drawdown or an ‘Uncrystallised Funds Pension Lump Sum’, which in either case could enable up to 100% of the fund to be taken at once in cash.

Another major Part of the Pension Schemes Bill creates the legislative framework for pension schemes which provide ‘collective benefits’. Such schemes do not yet exist in the UK and might never appear. Elsewhere, complementing provisions in the TOPA 2014, the Bill promises to improve member choice about getting ‘flexible benefits’ (another newly-defined and potentially confusing term). It introduces a ‘guidance guarantee’ where everyone with a defined contribution (DC) pension arrangement is to be offered free, impartial guidance so they are clear on the range of options available to them at retirement. The Bill also creates additional safeguards to protect individuals and pension schemes when people consider transferring out of a DB scheme.

To their credit, the present Government realised the pendulum of protection had swung too far and has begun an attempt to remove some of the excessive regulations in 2015. So far, however, a trumpeted ‘red tape’ bonfire initiative seems to have left pensions legislation largely unscathed. The Pensions Minister thinks pensions legislation is generally fit for purpose; and the Treasury is unlikely to admit that it is impossible to define every possible combination of circumstances which might crop up in pensions.

**Conclusion**

And so the trajectory continues exponentially, onward and upward: more and more new legislation to contend with every year. How long can this go on?

Ian Neale  
Director, Aries Pension & Insurance Systems Ltd