



Guiding you through the complexities

Guide to the Pension Schemes Act 2021

Practical solutions for trustees and sponsors

February 2021

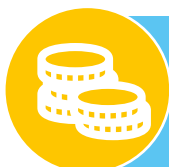
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This guide looks at the key changes that the Pension Schemes Act 2021 introduces and the new obligations that it will impose on trustees and sponsors. In each section, we look at what the new legislation requires and then set out some practical steps that trustees and sponsors can be considering now.

The Act became law on 11 February 2021 but the majority of provisions are not currently in force and regulations are needed to bring them into force and to provide detail about how they will work. Save in relation to climate change, no regulations have so far been issued, even in draft, so there are still significant areas where there is limited information about what trustees and sponsors will actually need to do.

We will update this guide when there is more detail to help trustees and sponsors see what's coming over the horizon and understand what you will need to do to comply with the new requirements.

Note: This guide is intended to provide an overview of the issues covered only. It is not intended to provide legal advice and cannot be relied upon. Trustees and employers who have any concerns about the issues raised should seek their own legal advice.



Criminal offences

There are a number of new criminal offences in the Act. It is not the first time that the Pensions Regulator (**the Regulator**) has been able to pursue criminal penalties for breaches of pensions legislation and trustees and sponsors should not be unduly alarmed, but they should make sure that they know what the new offences are.

There are currently no dates for the new provisions to come into force, but autumn 2021 seems likely.

New offences

The Act contains a number of new criminal offences.

Offence	Who can commit it	Sanctions
Intentionally reducing or compromising a section 75 employer debt or preventing such a debt becoming due or being fully recovered	Any person – including employers, trustees and professional advisers (except insolvency practitioners)	Up to 7 years in prison and/or an unlimited fine
Putting accrued benefits at risk where it was, or should have been, known the relevant actions would be materially detrimental to the likelihood of benefits being received	Any person – including employers, trustees and professional advisers (except insolvency practitioners)	Up to 7 years in prison and/or an unlimited fine
Failing to comply with a contribution notice	An employer or anyone connected or associated with an employer	Unlimited fine
Knowingly or recklessly providing the Regulator with materially false or misleading information under the notifiable events regime	Any person who provides the Regulator with incorrect information	Up to 2 years in prison and a fine calculated on statutory scales
Knowingly or recklessly providing the Regulator with materially false or misleading information in a statement of funding and investment strategy under the new scheme funding requirements	Any person who provides the Regulator with incorrect information	Up to 2 years in prison and a fine calculated on statutory scales

Application of new offences

Most attention has centred around the first two offences which are extremely wide. They can both apply to “any person”. This includes not only trustees and employers but potentially directors, investors and professional advisers. The only exception is where an individual is acting as an insolvency practitioner.

There are also concerns about the range of activities that the first two offences might apply to. For example, it has been suggested that the first offence (compromising a section 75 debt) could apply to parties who enter into an apportionment arrangement in accordance with the Employer Debt Regulations. The second offence (putting accrued benefits at risk) is breathtakingly wide in its ambit and could catch much standard corporate activity and potentially prejudice corporate restructurings, transactions and rescues.

It is worth noting in the context of the last two offences dealing with the provision of information, that they appear to be aimed at deliberately providing inaccurate information rather than a failure to provide information at all. Nevertheless, particularly in the context of the funding and investment strategy statement (see scheme funding section below), trustees will need to be particularly careful to ensure that the correct information is included.

Reasonable excuse defence

There is a defence to the first three offences where the relevant person had a “reasonable excuse” for the act concerned.

During the passage of the Act through Parliament, the concerns set out above about the potential breadth of the new offences were raised. The government’s consistent response was that they are aimed at the most serious conduct which puts pension schemes at risk – along the line of what was seen in BHS. They were not aimed at normal corporate activity. However, they declined to make any amendments to the scope of the offences because they were of the view that the existence of a “reasonable excuse” defence (even though there is no statutory definition of this) was sufficient to protect the normal conduct of business.

These offences will be prosecuted by the Regulator and it is anticipated that it will issue guidance on when it will do so and what will amount to a reasonable excuse.

Retrospection

The Pensions Minister confirmed in a written statement in late 2020 that “*none of the provisions [relating to new Regulator powers] will be retrospective and the new criminal sanctions... will apply to all schemes where the act occurs, or in the case of a series of acts commences, after the powers come into force*”.

This is a helpfully clear statement but ultimately, we only have Ministerial assurance of this. Nothing is written into the legislation and the weight of the assurance may well fade over time. Hopefully, regulations may clarify the position.

In addition, it is not clear that this statement applies to the wider contribution notice powers and so there remains some concern that the Regulator may still look back at past actions to determine whether it is reasonable to impose a penalty.

Practical implications of changes



Awareness

Ensure that trustees and sponsors are aware of the new penalties and the circumstances they are likely to apply. Be particularly alert for activities that might come within the first two offences and whether there is a “reasonable excuse” for carrying them out.



Processes

Ensure that trustees and sponsors are fully up to speed with their obligations under the notifiable events regime and understand what information needs to be provided to the Regulator and when. Make sure appropriate processes are in place to comply with these obligations.



Guidance

Watch out for guidance from the Regulator on the circumstances in which it intends to prosecute the new criminal offences and on what “reasonable excuse” means.



Training

Arrange training as necessary.



Indemnities and insurance

Note that criminal penalties are likely to be outside the scope of any existing indemnities or insurance. Check existing policies.



Pensions Regulator – other new powers

As well as new criminal sanctions, there are other significant new powers for the Regulator in the Act. There are currently no dates for the new provisions to come into force, but autumn 2021 seems likely.

The Regulator has welcomed these new powers and said in a [recent blog](#) post that: *“The Act provides a strong package of measures which will make using our powers more efficient and introduces deterrents against behaviour that risks savers’ benefits. The changes in the Act will also help us drive better standards across the schemes we regulate and better equip us to protect savers”*.

Penalties of up to £1 million

The Regulator will be able to impose fines of up to £1 million on a range of people for:

- intentionally avoiding, compromising or reducing a section 75 debt;
- conduct that puts accrued benefits at risk;
- not complying with the notifiable events regime (including the new requirements set out below);
- knowingly or recklessly providing materially false or misleading information to the Regulator in a wide range of circumstances; and
- knowingly or recklessly providing materially false or misleading information to trustees (but not trustees of a DC scheme).

There are also provisions which allow individual corporate officers (for example, trustee directors) to be subject to the fine, rather than the company. This reflects existing provisions relating to Regulator fines.

Trustees should be aware that existing provisions in pensions legislation prevent them from recovering Regulator fines from scheme assets. These provisions will be extended to cover these new fines.

Notifications of corporate transactions

Following a number of high profile corporate failures, provisions have been introduced to try and provide the Regulator and trustees with early warning of transactions that might affect DB schemes.

Where there is a DB scheme, employers, and those connected or associated with them will need to notify the Regulator of “prescribed events in respect of the employer”. The duty to notify is an ongoing one as notification will also need to be given of any material change in, or material change in the expected impact of, a relevant event or if the event does not take place.

Details of the events to be covered will be set out in regulations. However, the government’s initial proposals suggested that it would include:

- sale of a controlling interest in a sponsoring employer;
- sale of the business or assets of a sponsoring employer; and
- granting of security on a debt in priority to the scheme.

Notifications will need to be given as soon as reasonably practicable. Concerns have been raised about what this means, particularly where price sensitive information is involved. More detail may be provided in regulations or Regulator guidance.

In the meantime, it is worth noting that the Act specifically says that other duties a party is subject to (presumably including duties of confidentiality) will not be treated as contravened as a result of giving the required notification.

Any notification will need to be accompanied by a statement setting out “prescribed information”. The details of the statement will be set out in regulations but could include a description of the event, its potential detrimental impact on the relevant scheme and any steps taken to mitigate it. This statement is widely referred to as a “declaration of intent”.

Copies of the notification and the accompanying statement will need to be given to the trustees at the same time as they are given to the Regulator.

Contribution notices

Contribution notices were introduced by the Pensions Act 2004. They allow the Regulator to require those connected or associated with a sponsoring employer to make good any deficit in the scheme where the Regulator considers that they are in some way responsible for the employer not being able to make good the shortfall itself.

The Regulator will be able to issue a contribution notice against a person in two new circumstances where they have acted (or failed to act) in a way which:

- had a section 75 debt immediately fallen due from a sponsoring employer, would have materially reduced the amount of that debt likely to be recovered, for example where a sponsoring employer accepts additional debt that ranks ahead of a pension scheme (the **employer insolvency test**); or
- materially reduced the value of the resources of an employer relative to that employer’s estimated section 75 debt, for example where excessive dividend payments are made (the **employer resources test**).

Defences are available in both cases where parties can show that they considered whether the act or failure to act would have a material impact and it was reasonable for them to have concluded that it would not and, where applicable, they took reasonable steps to mitigate any impact on the scheme’s ability to recover a section 75 debt or on the employer’s resources (as appropriate).

There will also be a defence in relation to the employer insolvency test where scheme assets are more than the liabilities.

The Regulator must consider that it is reasonable to issue a contribution notice. In the future, when assessing reasonableness, it will be able to take into account the effect of the act or failure to act on the assets or liabilities of the scheme and any failure to comply with the new duties to provide a declaration of intent (see section on notification of corporate transactions above).

The amount of a contribution notice will be determined by reference to the debt at the end of the scheme year before the Regulator issues a notice setting out its intention to issue a contribution notice. Under the current law, it is calculated by reference to when the relevant act or failure to act occurred, irrespective of the fact that the funding position may have changed considerably before any regulatory action is taken.

Collecting information

The Regulator will have wider powers to require people (including professional advisers) to attend interviews. Anyone who fails to attend an interview or answer a question on the subject matter of the interview may be guilty of an offence.

There is also an extension of the Regulator’s powers to enter premises and inspect documents held there. In the future, it will be able to enter any premises where there are reasonable grounds to believe that documents are held which are relevant to the employer or transactions relating to the employer.

Finally, the Regulator will have new powers to issue fixed penalties of up to £50,000 where someone has not complied with an exercise of its powers in relation to inspection of premises, attending an interview or providing certain information. It will also be able to issue escalating daily penalties of up to £10,000 for continued non-compliance.

These new powers give the Regulator rights to obtain significantly more information than it can currently and the penalties for non-compliance are potentially severe. It will be interesting to see how the Regulator applies them in practice.

Practical implications of changes



Effective communication

Ensure that processes and established reporting lines are in place to allow trustees and employers to communicate effectively about proposed corporate activities and act quickly where necessary. These will be much harder to put in place in the heat of a transaction.



Processes

Trustees should consider current governance and operational processes to ensure that they are sufficiently robust to protect them from incurring liability under the new regime. This includes updating any existing governance process for dealing with transactions to reflect the fact that trustees may receive notifications earlier in the transaction cycle.



Corporate activity

Ensure that the impact of corporate activity on a DB scheme is considered carefully in advance by sponsors and trustees. Appropriate mitigation should be considered and fully documented. Sponsors and trustees should agree policies in advance to cover the new requirements.



Notifiable events

Identify which information requirements apply to sponsors and trustees under the notifiable events regime and ensure that appropriate administration practices are put in place to comply with it.



Insurance

Consider whether any existing officers' insurance policies will cover the new £1 million fines (which can apply to both trustees and employers and officers of each).



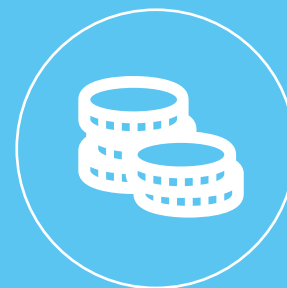
Guidance

Watch out for guidance from the Regulator on what its expectations are and the circumstances in which it will exercise its new powers.



Indemnities

Trustees should also check the scope of any employer indemnities. Regulator penalties cannot be covered by indemnities from scheme assets or insurance paid for by the scheme.



Scheme funding

The Act amends the scheme specific funding regime in the Pensions Act 2004. The changes in the Act will sit alongside a new DB funding code.

The revised regime is unlikely to be in place before early 2022, but trustees and sponsors should increasingly have regard to the principles - and the direction of travel, in the run up to the official start date.

Funding and investment strategy

Trustees will need to put in place and review from time to time a funding and investment strategy which sets out how they intend to ensure that benefits under the scheme can be met over the longer term. In particular, the strategy will need to set out the intended funding level and investments at set dates.

The scheme's technical provisions will need to be calculated in a way which is consistent with this strategy.

Trustees will usually need to obtain the employer's agreement to the strategy. Read literally, this seems to potentially give the employer a say over the way scheme assets are to be invested.

This requirement for agreement is currently modified by the Funding Regulations where the employer does not have any powers under the scheme rules in relation to setting, suspending or reducing contributions. In these cases, trustees need only consult with the employer - effectively denying the employer a veto and giving the trustees greater power. It is not known yet whether new regulations will further qualify this provision.

Statement of strategy

As soon as reasonably practicable after setting the funding and investment strategy, the trustees will need to prepare a statement which sets out:

- what the strategy is
- the extent to which it is being successfully implemented and, if it is not, how the trustees propose to remedy that
- the main risks in implementing it and how the trustees intend to mitigate or manage them
- the trustees' *"reflections ... on any significant decisions taken by them in the past that are relevant to the funding and investment strategy (including any lessons learned ...)"*
- anything else that might be required by regulations

Trustees will need to consult the employer when preparing this statement.

The statement will need to be signed off by the chair of trustees and it has been referred to as the "DB chair's statement". As a result of this new requirement, DB schemes will also need to register the full name and address of the chair with the Regulator.

Regulations are likely to require a copy to be sent to the Regulator after each valuation and the statement is intended to play a significant role in the Regulator's oversight of the revised funding regime.

Regulations may also set out the frequency for revising such statements and the principles which trustees need to take into account when drafting them.

Enforcement and penalties

The Regulator has wide powers under the Pensions Act 2004 to intervene where either the trustees have failed to comply with their funding obligations or they are unable to reach any required agreement with the employers. These powers have seldom been used in practice. In part, this is because there is a lack of clarity around "*what good looks like*" which makes it difficult for the Regulator to establish that the trustees have not acted prudently.

The Act will allow for regulations to set out clear funding principles for schemes to follow. This, alongside the Regulator's new DB funding code of practice (see below), may make enforcement easier as, where specified standards have not been followed, the burden is likely to be on trustees to demonstrate why what they did was appropriate.

Where the trustees have failed to comply with the new requirements in relation to the funding and investment strategy, the Regulator will have the power to intervene and require the trustees to revise the strategy in accordance with its directions. Breach of the new requirements can also attract civil sanctions in line with the current funding regime.

Finally, knowingly or recklessly providing materially false or misleading information to the Regulator in the statement of strategy will be a criminal offence.

Draft DB funding code

The Regulator has issued its first consultation on its **revised funding code** which will set out clearer parameters for trustees to follow in the valuation process and incorporate the need to take long-term strategic issues into account. It will also set out an "objective" funding standard. This standard will not aim to eliminate all funding risk but will set out how risks should be measured and managed.

The Regulator has proposed a twin-track approach with a fast track "objective" funding option and a bespoke, scheme specific alternative.

Fast track approach	Bespoke approach
<ul style="list-style-type: none"> – Follow guidelines on long-term objectives, assumptions, investment risk, recovery plan length and structure and contribution rates – Take into account some scheme specific factors such as covenant strength and scheme maturity – Recovery plans may need to be a standard length (possibly around 6 years) or might vary depending on covenant strength (possibly between 6 and 12 years) – Reliance on employer covenant limited to 3-5 years 	<ul style="list-style-type: none"> – Use own assumptions to reflect scheme circumstances – Basis for decisions will need to be evidenced – Much more detail needed in funding and investment strategy statement – Tested against the fast track – Need to evidence mitigation for any additional risks taken – Not intended to be seen as a less valid alternative to the fast track approach

The new statements of strategy will form part of this twin track approach. Where trustees are using the fast track, the statement should be fairly straightforward and only include basic information on the valuation and approach to risk management.

Where a scheme is using a bespoke approach, the statement will need to set out the funding arrangements in detail and explain how and why the trustees have moved away from the fast track and how they are managing any additional risk.

Further consultation is due on the code in the second half of 2021.

Practical implications of changes



Scheme rules

Review the scheme rules to determine if the funding and investment strategy is likely to need to be agreed between employer and trustees, or if the employer is only entitled to be consulted on it.



Time and resources

Ensure that sufficient time and resources are set aside to formulate the funding and investment strategy and prepare the statement, allowing for necessary engagement with employers. Effort will also need to be taken to ensure that the new documents are consistent with the existing statement of funding principles and recovery plan, or this could expose trustees to risk and challenge.



Long-term journey plan

Consider what an appropriate long-term journey plan for the scheme would look like and the extent to which reliance on employer covenant in the longer-term remains appropriate.



Valuations

Consider how these changes will impact the next valuation process and ensure that enough time is allowed to consider the best way to comply with any new statutory requirements and the provisions of the revised DB funding code.



Role of employers

Ensure that everyone is clear about what role employers will play in any upcoming valuation process.



Transfers

The Act amends the statutory transfer regime in a number of ways to address the risk of pensions liberation and scams.

These provisions will require regulations to provide the detail and as the regulations have yet to be issued for consultation, are unlikely to come in to force before autumn 2021.

Restriction on statutory right to transfer

Under the current regime, a member has a statutory right to a transfer payment if the receiving scheme is a registered scheme and the member is in receipt of earnings (from any source). If these conditions are satisfied, trustees are obliged to agree to the member's request for a transfer, even where they have concerns that the receiving scheme might be a liberation vehicle. All they can do is warn the member and report their concerns.

Under the new provisions, members will need to provide trustees with additional information (see below) aimed at proving that the receiving scheme - and their relationship with it - is genuine and the decision to make the transfer is properly informed.

Where members fail to provide this information, they will not have a statutory right to a transfer payment and trustees will not have to comply with a transfer request.

Trustees who make a transfer without ensuring that the new conditions are satisfied will not benefit from a statutory discharge and may be liable to complaints from members.

Additional due diligence

The Act will require trustees to check that additional conditions are satisfied before making a transfer payment. The details of these conditions are to be set out in regulations but could include:

- obtaining information or evidence about the member's employment or place of residence. This is aimed at ensuring that the member has a genuine employment relationship with the receiving scheme
- members providing payslips and bank statements covering a three-month period to evidence that they have earnings at least equal to the national insurance lower earnings limit from a participating employer
- members providing evidence that they have obtained information or guidance about transferring out their benefits or that they were not required to do so. There is little detail about what additional advice or guidance members may be required to obtain, but it has been suggested that, where trustees identify a risk, they may need to direct members towards additional guidance
- "other red flags". This was something discussed during the Act's passage through Parliament and the government indicated that it could include things such as who else is involved in the transfer (for example, the trustees might have concerns about an adviser or introducer)

Practical implications of changes



Administration and resources

Ensure administrative processes and resources are ready to cope with the new requirements. This may mean asking administrators to confirm what they are doing and whether they have adequate due diligence processes in place. Trustees should develop a policy as part of their approach to complying with the new requirements.



Member communications

Ensure member facing documentation and information requests reflect the new information that they will need to provide to be entitled to a transfer.



Member guidance

Ensure that trustees and administrators are aware of the circumstances in which members will need to be directed towards additional guidance.



Checklist

Ensure that all parties are aware that transfers will not be made unless the new requirements are satisfied. Again, a trustee policy or checklist covering the new requirements will assist with compliance here.



Scams pledge

Trustees should also be considering whether they want to sign up to the Regulator's [scams pledge](#) and whether their existing due diligence complies with what the Regulator expects.



Financial advice

Some trustees may wish to consider facilitating independent financial advice for their members - both to help them and also to manage the risk of future complaints against the trustees. If you are interested in this, our [discussion paper](#) explores the main issues.

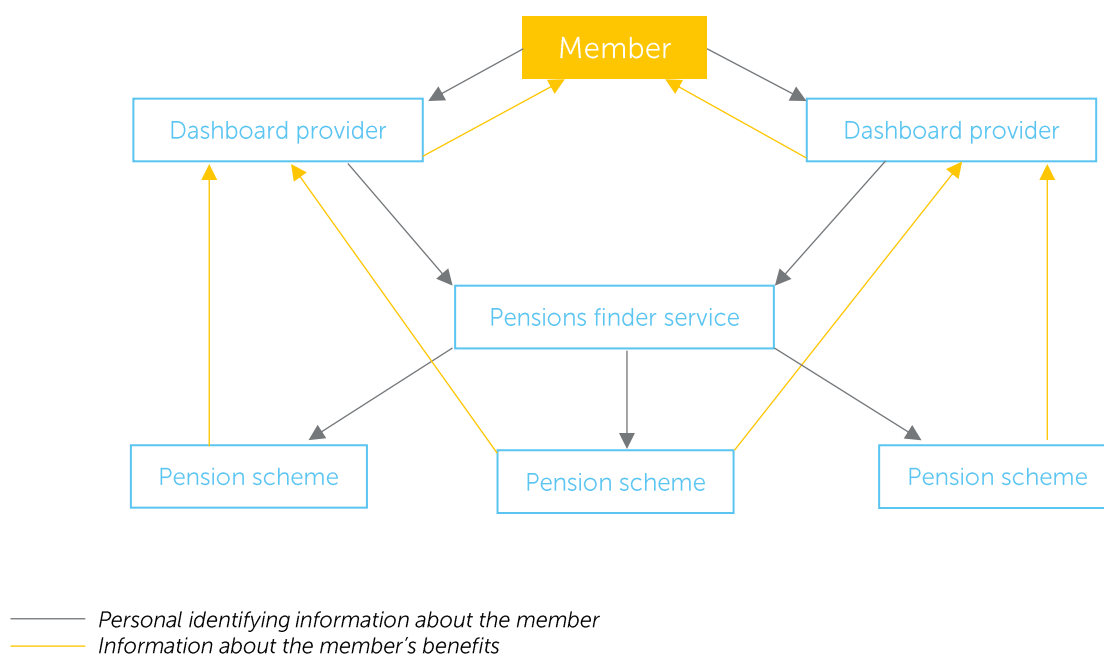
Dashboards



The Act sets out the government's intention to introduce a "*qualifying pensions dashboard service*". This is "*an electronic communications service*" made up of one or more dashboard providers that will ultimately allow pension savers to see their pension entitlements from all schemes (occupational, personal and state) in one place.

It is understood that the current intention is that voluntary onboarding of schemes to the dashboards should start in 2022 with mandatory compliance being phased in from 2023. It is anticipated that the largest DC schemes are likely to have to comply first.

The architecture of the pensions dashboards is not clearly set out in the legislation, but it is understood that it is intended to work as set out below:



This shows that a member will be able to approach one or more dashboards with their identifying information. The dashboards will then pass that information to a central finder service who will forward it on to the pension schemes. The schemes that have benefits relating to that member will then have to supply the information directly to the dashboards.

Dashboards

The Act contains limited details about the dashboards themselves, leaving all of the detail to regulations.

However, it is intended that there will be a state-owned dashboard which will operate alongside multiple commercial providers.

Regulations will provide more details around:

- what information is to be provided on the dashboards and when and how. This will cover information about both state and occupational and personal pension arrangements
- requirements about dealing with requests for information

- how to verify identity and authenticate information and how to ensure that information is kept secure
- compliance with standards, specifications or technical requirements issued by the government, the Money and Pensions Service (MaPS) or anyone else authorised to do so
- requiring providers to obtain approval and/or satisfy additional requirements

Information from schemes

Pension schemes will need to provide information to the dashboards about members' benefits. The details of the information that will be required will be set out in regulations, but can include information about:

- the constitution of the scheme
- the administration and finances of the scheme
- the rights and obligations that arise or may arise under the scheme
- the pensions and other benefits that would be likely to accrue to a member, or be capable of being secured by a member
- information about an individual's benefits under the scheme

Regulations will also set out to whom information must be provided, when, how, the time limits for providing it and any additional steps that need to be taken before providing it.

In addition, in December 2020, MaPS issued a data standards guide setting out the information that schemes will be given by the dashboards to find an individual's pension entitlement data and the basic information that they will in turn need to provide to enable individuals to view pensions information on the dashboards.

The "find data" includes a person's first name and surname, date of birth, address and national insurance number. The "view data" that the schemes will need to supply includes things such as an individual's start date and estimated retirement date, their accrued benefits and what kind of benefits they are entitled to, and their estimated income at retirement.

Enforcement

Enforcement of the dashboard provisions is split into enforcement of provider obligations and enforcement of scheme obligations.

In relation to providers, regulations are likely to give MaPS (or another entity) the power to audit and monitor compliance of the relevant statutory requirements. The providers can also be required to co-operate with this supervision.

The Regulator will be given powers to enforce compliance by schemes. It will be able to issue fines for non-compliance. The level of the fines will not be able to exceed £50,000 for a corporate trustee and £5,000 for an individual.

Practical implications of changes



Resources

Ensure adequate administrative resources are available to deal with the implementation of the new requirements.



Data

Consider the data standards guide and whether the data required is readily available.



Cyber security

Thought will need to be given to issues such as data protection, cyber security and the quality of member records.



Member engagement

Be aware that there is a likelihood that, as members find it easier to access details about their pension, there could be an increase in member engagement – in the form of queries, complaints and transfer requests.



Data protection

Consider data protection issues and whether it is necessary to update the privacy notices sent to members, to encompass processing data as required by the new dashboard requirements.



Climate change

The Act sets out requirements for pension scheme trustees to assess, manage and report on climate-related risks in line with the recommendations of the taskforce on climate-related financial disclosures (TCFD).

The requirements are currently only aimed at larger schemes and are being phased in from 1 October 2021. However, the government has said it will review the application of the requirements to smaller schemes in the second half of 2023.

The Regulator has been clear that all schemes should be addressing climate change, whether or not they are caught by the new regime. It said in a recent blog post: *"A scheme that does not consider climate change is ignoring a major risk to pension savings and missing out on potential investment opportunities"* and separately advised trustees to build capacity in this area.

Draft regulations and draft statutory guidance have already been issued. In addition, there non-statutory guidance has been issued by the Pensions Climate Risk Industry Group (set up by the DWP, the Pensions Regulator and other pension representatives).

Schemes in scope

The requirements are currently aimed only at larger occupational and commercial schemes and will be phased in over a 12 month period. It is therefore key to understand which schemes are in scope and when:

- schemes with net assets exceeding £5bn at the scheme year ending on or after 1 March 2020, authorised master trusts and authorised collective money purchase schemes will need to comply from 1 October 2021, with the first TCFD report due within 7 months of next scheme year-end
- schemes with net assets between £5bn and £1bn at the scheme year ending on or after 1 March 2021 will need to comply from 1 October 2022, with the first TCFD report due within 7 months of the next scheme year-end
- where asset values fall, there are provisions for schemes to cease to be in scope (depending on how much the drop in value is)

Basic requirements in the Act

The Act provides for in-scope schemes to be required to implement a new set of governance requirements around climate change which covers:

- reviewing the scheme's exposure to certain risks
- assessing certain types of asset held by the scheme (and determining their contribution to climate change)
- determining, reviewing and (if necessary) revising a strategy and/or targets for managing exposure to certain risks
- measuring performance against such targets and against the goals in international climate change agreements
- preparing additional documents and publishing information relating to the effects of climate change on their scheme

Details in draft regulations and statutory guidance

The draft regulations and draft statutory guidance set out more detail around these requirements. Trustees of in-scope schemes will need to address the following areas:

- **Governance:** establish and maintain oversight of climate-related risks and opportunities. They must have processes to ensure that those undertaking governance on their behalf or who advise or assist them with respect to governance, are properly dealing with climate change issues.
- **Strategy:** identify and assess the impact of climate-related risks and opportunities which have an effect over the short, medium and long term (determined by the trustees) on the investment strategy and (where relevant) the funding strategy. This will include additional scrutiny of the employer's covenant.
- **Scenario analysis:** undertake scenario analysis assessing the impact of climate change on the scheme for at least two scenarios - one of which corresponds to a global average temperature rise of between 1.5 and 2°C on pre-industrial levels. This must be done in the first year the new requirements apply and then every three years, with consideration being given to the need for a new analysis in intervening years. Underlying data must be obtained annually.
- **Risk management:** establish and maintain processes for identifying, assessing and effectively managing climate-related risks which are relevant to the scheme.
- **Metrics:** select and, as far as they are able, calculate an absolute emissions metric, an emissions intensity metric and one additional climate change metric.
- **Targets:** set a non-binding target in relation to at least one of the selected metrics. On an annual basis, they must measure performance against the target (as far as they are able) and, taking into account the scheme's performance, they must decide whether to retain or replace the target.
- **Trustee knowledge and understanding:** ensure they have the appropriate degree of knowledge and understanding of the principles relating to the identification, assessment and management of climate change risks and opportunities in respect of occupational pension schemes, to enable them to properly exercise their functions. In-scope trustees will therefore need to consider whether they need additional training.
- **TCFD report and disclosure:** publish an annual TCFD report disclosing how the scheme complies with the TCFD's recommendations and make it freely available on a website.

In-scope trustees will be required to provide details of where the report can be found online in the scheme's annual report and accounts, annual funding statement (for DB schemes) and annual benefit statements (for cash balance and/or DC benefits). The annual funding statement and annual benefit statements will also need to confirm when the report will be provided on request in hard copy.

The Regulator will be able to impose penalties and issue compliance notices if trustees have failed to comply with the new governance and disclosure rules. These can also be issued against third parties where the Regulator considers that they are responsible for a failure.

The existing disclosure penalty regime will apply where trustees fail to inform members where they can find the TCFD report. The Regulator **must** impose penalties of at least £2,500 if a trustee fails to publish a TCFD report on a publicly available website. In addition, the reputational risks associated with non-compliance are likely to increase over time. These will be just as much an issue for employers as trustees since the scheme will often carry the employer's brand, and may tarnish the employer's own efforts in this area.

Practical implications of changes



Governance

Trustees may need to put in place new governance structures to identify and continuously monitor climate change risk in order to comply with the new regulations and guidance. These could include delegating oversight to an appropriate working group with suitable terms of reference, establishing reporting lines from investment managers, and agreeing the metrics to be used.



Action plan

Trustees of larger schemes should consider formulating an action plan for how they will comply with the new disclosure requirements and to determine whether any additional training is needed.



Obtaining information

Trustees may need to obtain further information from their asset managers and investment consultants in order to comply with the new regime and may want to talk to them now to agree how that information will be provided.



Investment strategy

Trustees may need to review their investment strategy to ensure it adequately addresses climate change risks and opportunities. Even where a scheme is not in scope of the new rules, environmental, social and governance issues (including climate change) still need to be addressed in the statement of investment principles.



Covenant review

Trustees should consider incorporating climate scenario analysis into covenant review process and engage with the employer to ensure adequate access to information and appropriate processes for identifying and handling confidential information.



Timing

In-scope trustees should ideally ensure that their compliance measures are in place by the start of the scheme year in which their 1 October effective date falls – otherwise they will be reporting on only part of a year. This also ensures some leeway ahead of the hard compliance date.



Regulator

The Regulator regards climate change as important, so watch out for statements from it about its expectations around what trustees should be doing in this area.



Collective money purchase scheme

A significant proportion of the Act is devoted to legislation allowing new collective money purchase (CMP) schemes to be set up and providing for an authorisation and supervision framework.

This legislation was specifically drafted to allow Royal Mail to set up a CMP scheme and is therefore only of limited interest to most employers and trustees at the current time.

However, as there might be additional CMP schemes in the future, we have set out some of the key features of the new regime below.

What is a collective money purchase scheme

These are schemes where members' benefits are provided from scheme assets and, where investments underperform, benefits may go down as well as up. This spreads the investment risk between younger and older members and, according to research, can result in significantly higher pensions.

The Act currently only allows for CMP schemes to be set up for employers within the same group. This means that it will not immediately be possible to set up commercial CMP schemes, although the Government has said that it may reconsider this in the future.

Authorisation and supervision

In a similar way to master trusts, CMP schemes will need to be authorised. The Regulator will oversee the authorisation process and will take into account a range of criteria including whether those running the scheme are fit and proper, the design is sound, there are adequate systems and processes in place and whether the scheme is financially sustainable.

The application will need to be supported by a certificate from the scheme actuary confirming that in their opinion the design of the scheme is sound.

Because the structure of CMP schemes means that benefits in payment can go down, the Regulator will also consider whether there are adequate systems and processes in place for communicating with members.

As with master trusts, there will also need to be a continuity strategy which sets out what will happen if, for a variety of reasons, the scheme is no longer able to continue.

There is also an ongoing supervision regime and the Regulator will need to be notified about "significant events" that affect the scheme and may require it to submit supervisory returns. Ultimately, if the Regulator is not happy about how a CMP scheme is being run, it may withdraw authorisation.

Benefits and benefit adjustment

CMP scheme rules will need to contain provisions about how the value of available assets will be determined as well as the amount needed to provide benefits as well as how and when benefits can be adjusted.

CMP schemes will need to carry out actuarial valuations and the reduction of benefits in payment can only be carried out in accordance with actuarial recommendations.

There will also be additional requirements around transfers, in particular schemes may be allowed more time to process them.

Practical implications of changes



No action

These changes will have no immediate implications for either trustees or employers.



Wait and see

Employers may wish to monitor how the CMP environment develops and whether it might provide a viable alternative for benefit accrual in the future.

Thoughts from the industry

"For me, the most significant part of PSA21 is the Regulator's new information-gathering powers. If fully embraced, these powers could significantly change behaviours that have previously been unchecked and have, in some cases, resulted in poor outcomes for members. Now that would be truly worthwhile."

Chris Martin, Executive Chairman, Independent Trustee Services

"TPR's wider powers will have implications for employers, particularly those looking at M&A transactions or corporate restructuring. There is plenty of such activity at the moment and this is expected to continue in the wake of Covid, and although it has been confirmed that these powers will not be retrospective we expect employers will want to err on the side of caution."

"There is more potential for TPR to be involved in a greater number of schemes going forward. This could present resource challenges for TPR, particularly when you consider other things that are coming up (e.g. DB superfunds)."

Simon Taylor, Partner and Head of Consulting, Barnett Waddingham

"Pension funds have very long term time horizons and so the equally long term implications of climate change means that robust oversight, monitoring and measuring what matters most will be critical to effective governance by Trustees."

"A view that the management of climate change risk is all about 'compliance' and 'disclosure' is the wrong way to consider this. Legal requirements are a basic enabler upon which to build an approach to continuously improve how trustees manage one of the greatest long term risks of our generation. Making the right choices, at the right time, will be a huge influence on the effective delivery of members' benefits"

Ruston Smith - Chair of Trustees, Tesco PLC Pension Scheme and other roles



"The 2021 Pension Schemes Act is a welcome move to improve the security of DB pensions and, with the Dashboard, move pension schemes online, in line with all other financial services. For me the jury is out on CDC though. It remains to be seen whether CDC genuinely offers a third way or is an expensive solution for a handful of schemes."

"That said, the reality is that the Pension Schemes Act is a framework. The devil is largely in the detail. And until we see the Regulations and Pensions Regulator Codes of Practice and Guidance, we won't truly understand the full implications. In particular, the industry is waiting with baited breath for Pensions Regulator guidance on the criminal offences, having had its calls for changes to the Act dismissed by Government."

Fred Emden, Chief Executive, The Society of Pension Professionals

"Too much of a good thing? The volume of work needed to implement [the Act] successfully is vast – beware the risks of very overloaded administrators."

Alan Pickering CBE, President Bestrustees



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