01/2020

XPS Express for Employers

Bringing you the latest pensions news for employers

New Regulator powers will increase risk management obligations

At a glance

The Pension Schemes Bill going through parliament sets out more detail on a number of changes that will impact corporate activity

Employers will have to notify the Pensions Regulator of a wider number of corporate situations and sooner, such as those that materially reduce employer resources

It will also be easier for the Pensions Regulator to impose obligations to fund a scheme through Contribution Notices

There will be new civil and criminal offences. The potential personal consequences for directors involved in corporate activity make it important to evidence due consideration of pensions

Both 'Acts' and 'Failures to act' (including over a period of time) are within scope for regulatory action

New obligations and powers

What will change	What it involves
New notifiable events	Must notify: • Sale of a material part of your business or assets; or • Giving debt priority over your pension scheme.
Corporate statements	Sets out employer response to notifiable events including any mitigation for pensions.
Moral hazard powers	New grounds for a Contribution Notice: • Material reduction in expected pension debt recovery; or • Material reduction in an employer's resources.
Criminal and civil sanctions	New criminal sanctions and financial penalties (see table below).

New Regulator sanctions

Act or failure to act	Condition (linked to possible defence)	New penalty
Avoiding a pension debt	Without reasonable excuse	• Up to 7 years in prison • Criminal fine • Civil fine up to £1m
Action risking benefits	Without reasonable excuse and ought to have known effect of action	
Failure to pay Contribution Notice	Without reasonable excuse	• Criminal fine • Civil fine up to £1m
Providing false or misleading information	Without reasonable excuse	• Civil fine up to £1m*

Given the potential scope of the powers could be wide ranging, companies should be aware of defences available to prevent inadvertently falling foul of the new powers.

* Criminal penalties already exist for providing false information to the Pensions Regulator.

Actions employers can take

1. **Understand your pension scheme's creditor position and what corporate activities could affect it.**
2. **Consider how to ensure that relevant corporate activity is identified so that the Regulator can be notified.**
3. **For upcoming corporate activity, plan engagement with the scheme ahead of the activity taking place and formally record the treatment of the scheme.**
4. **Pensions should feature in ongoing governance checks, to guard against 'failure to act'.**

What kind of actions could theoretically be caught by the new powers?

The new penalties will apply to actions that risk pension benefits. This could, in theory, be any event that is financially detrimental to the employer of a pension scheme. More detail and guidance on the events in scope is needed from the Government and the Regulator as the Pension Schemes Bill progresses.

More reasonable for the Regulator to seek to understand or investigate?

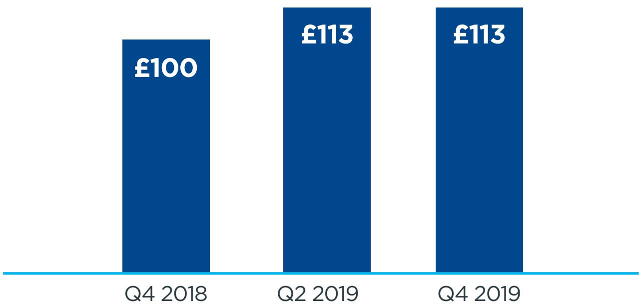
Abandonment	Corporate activity	Information security	Employees	Suppliers and customers	Crime
• Remove employer support without mitigation	• Sales • Acquisitions • Refinancing • Granting security • Operational restructuring	• Data breach • Cyber attack	• Unexpected departure of key management • High turnover/loss of experience	• Loss of key customer • Failure of supplier	• Fraud or theft by employee

All of the above can form part of the scheme's monitoring of employer covenant. But, to defend against the new sanctions, employers may now need more detailed governance processes to identify, respond to and record events that impact on pensions.

Accounting update

Overall, companies reporting at 31 December 2019 are likely to see an improvement in balance sheet positions given that the returns on assets are likely to more than offset the expected increase to liabilities. This is dependent on the investments held. Schemes with greater equity and property exposure should have fared better than others.

Changes in value per £100m of accounting liabilities



Source: XPS Pensions Group

Returns on key asset classes

	Dec 18 -Jun 19	Jun 19 -Dec 19	Year to Dec 19
Global equities	16.4%	5.0%	**22.3%**
UK equities	13.0%	5.5%	**19.2%**
Property	9.1%	19.7%	**30.6%**
Index-linked gilts	7.9%	-1.4%	**6.4%**
Corporate bonds	7.3%	3.5%	**11.0%**

Source: Thomson Reuters

RPI inflation – uncertainty over future benefits

The Chancellor announced in September 2019 that he is intending to consult on making changes to align RPI with the lower inflation measure CPIH sometime between 2025 and 2030. The uncertainty over this change has impacted RPI expectations in the market. Since CPI assumptions are typically set as a deduction to RPI, the assumption used in previous years may no longer be appropriate. Companies should carefully review both their RPI and CPI assumptions for year-end.

For further information, please get in touch with Vicky Mullins or James Saunders or speak to your usual XPS Pensions contact.

t 020 3725 7017

e vicky.mullins@xpsgroup.com

t 020 3994 4906

e james.saunders@xpsgroup.com

@xpsgroup

xpspensionsgroup

XPS Corporate