XPS Pensions Group

XPS Insights
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Pension Schemes Act 2021 Series

Pension Schemes Act 2021 heralds introduction of major reforms

What you **need to know**

- The Pension Schemes Act 2021 (the Act) received Royal Assent on 11 February 2021, putting in place the legislative framework for the new defined benefit (DB) scheme funding regime, collective money purchase (CMP) schemes, pensions dashboards and measures to combat pension scams. It also introduces new moral hazard powers for The Pensions Regulator (TPR) as well as new criminal offences and civil penalties.
- Despite this, most of the Act's provisions have yet to come into force. Consultation on regulations setting out further details in certain areas is expected later this year.
- TPR consulted in 2020 on the key principles for the new DB scheme funding regime. A second consultation on the new funding code of practice is expected in the second half of 2021.
- TPR will issue guidance on the use of the new criminal sanction powers, which are expected to be in force in autumn 2021 and will not have retrospective effect.

Actions you can take

- **Understand** the likely changes to DB funding rules now to prevent having to rework plans.
- **Be aware** of TPR's forthcoming new powers and sanctions in any corporate activity.
- **Assess** whether CMP is now another option for your scheme if you are considering benefit redesign.
- **Take account** of the future need to supply data for use in pensions dashboards when undertaking any data projects.
- **Be aware** of the forthcoming new requirements for trustees around climate change and also possible legislative changes around transfer values (intended to combat scams).
- **Review** your scheme's approach and processes against upcoming requirements and identify areas to change.

Expected timeline for Pension Schemes Act 2021

Timeline	Description
First half of 2021	DWP expected to consult on draft regulations made under the Act
Second half of 2021	TPR expected to consult on new DB funding code of practice
Before autumn 2021	TPR to consult on guidance on the use of its new criminal sanctions powers
Autumn 2021	TPR's powers under the Act expected to come into force and new restrictions on statutory right to a transfer value expected
First half of 2022	New DB scheme funding code expected to come into force
2023	Schemes might start to be compelled to provide data to pensions dashboards
As yet unknown	Other provisions in the Act, including those relating to CMP schemes

The finer detail: Key items in the Pension Schemes Act 2021

New DB scheme funding rules	Trustees and employers will be required to agree a funding and investment strategy. TPR consulted in 2020 on the key principles for regulating funding. A DWP consultation on draft regulations is expected in the first half of 2021 with a second TPR consultation, on the new funding code of practice, to follow in the second half of the year. The new funding code of practice now seems likely to come into force in the first half of 2022.
New notifiable events	The new employer notifiable events will be confirmed in regulations, but they are expected to be the sale of a material part of an employer's business or assets, and the granting of security on a debt giving priority over it to the pension scheme.
Statement on corporate activity	A new statement will need to accompany certain notifiable events. This must set out the event, any detrimental impact it has on the scheme, how it will be mitigated and details of any communication with trustees.
Moral hazard powers	TPR will have two new circumstances for issuing a 'contribution notice': 1. if an act, or failure to act, materially reduces the amount of debt the scheme is likely to recover from the employer on theoretical insolvency; and 2. if an act, or failure to act, materially reduces an employer's resources.
New criminal sanctions	Criminal sanctions will be introduced for actions risking accrued benefits, avoiding a pension debt or failing to comply with a contribution notice. These may either be a fine and/or up to seven years' imprisonment (except for failure to pay a contribution notice). TPR will consult and then issue guidance on the use of these new powers, which are expected to be in force in autumn 2021, and will not have retrospective effect.
New civil penalties	TPR will have the option to impose a civil fine of up to £1m in the above circumstances, as well as where a person knowingly or recklessly gives false information to TPR or the trustees.
Transfer value rights	More details on the restrictions will be set out in regulations but may include conditions about the member's employment or place of residence, the member obtaining appropriate guidance, and/or the member providing the trustees with information/evidence about their employment, place of residence or guidance obtained.
Collective money purchase schemes	CMP schemes are intended to allow risks to be shared between members but the employer would not have to fund any shortfall that arises.
Pension dashboards	The Act allows for the creation of dashboards to present individuals' pension benefits (both state and private) on one website, and includes requirements for pension schemes to provide data to dashboards. Volunteer schemes might be able to connect to a dashboard in 2022 and schemes could start to be compelled to join in 2023.
New climate change requirements	The Act allows for new governance and disclosure requirements relating to climate change to be introduced and the DWP is currently consulting on regulations setting out the detail. The intention is that the requirements will be phased-in over the next two years for larger schemes (those with £1bn or more of assets), authorised master trusts and authorised CMP schemes over the next few years.

For further information, please get in touch with **William Fitchew** or **Caroline Ekins** or speak to your usual XPS Pensions contact.

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