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XPS Express for Employers

Bringing you the latest pensions news for employers

New Regulator powers will impact corporate activity in 2021

At a glance

The Pension Schemes Act 2021 has now been passed into law and contains changes in a number of areas, including changes to The Pensions Regulator's powers

These will affect a wide range of corporate activity, from transactions to everyday governance

The changes include new company events that need to be notified, with some requiring an accompanying statement on the impact of the event, and new grounds for The Pensions Regulator to impose funding obligations

There will also be new civil and criminal offences, including potential personal consequences for directors

The new powers and sanctions are expected to be in force from Autumn 2021, so employers will need to reflect the rules in any corporate activity that may still be ongoing this Autumn

New obligations and powers

What will change	What it involves
New notifiable events	Expected to require notification: • Sale of a material part of your business or assets; or • Giving debt priority over your pension scheme.
Accompanying statement	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*

* 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 how corporate activities could affect it**
2. **Consider the impact of the new powers on your directors' responsibilities and any protections in place**
3. **Design a process to identify activity captured by the new notification rules and include pensions in ongoing governance checks**
4. **Ahead of any corporate activity, plan engagement with the scheme ahead of the activity taking place and record the treatment of the scheme formally**

Expected timeline

If an employer is considering corporate activity in Spring 2021, it may well still be ongoing in Autumn 2021.

Employers will want to ensure that their engagement with pension schemes in relation to corporate activity over 2021 reflects the new rules.

Pension Schemes Act 2021 passed into law
Includes new powers for the Pensions Regulator

Consultation expected from the Pensions Regulator over how it will use its powers

New powers expected to come into force
Most of the powers are not expected to be retrospective

Feb 2021 → **Spring 2021** → **Summer 2021** → **Autumn 2021** → **Winter 2021**

New moral hazard powers

There will be two new grounds for the Pensions Regulator to issue a Contribution Notice. These could capture a wider range of corporate situations – potentially not just M&A activity, refinancing or restructuring, but also more day-to-day risk management matters.

New grounds for Contribution Notice	Description	Statutory defence
"Employer solvency test"	Act (or failure to act) reduces the potential recovery of pension scheme's debt on insolvency (section 75 debt)	• Demonstrate that you considered the potential impact • If there was any detriment then it was mitigated • Your conclusions were reasonable
"Employer resources test"	Act (or failure to act) reduces the value of the employer's resources and that reduction is material relative to the buyout deficit	

Employers should document their consideration of events and their conclusions in order to protect against their action (or inaction) being later viewed as grounds for a Contribution Notice.

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

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