



# In Touch technical update

## Pension Schemes Act 2021 gets Royal Assent

The Pension Schemes Act 2021 has received Royal Assent. Although the main provisions will require regulations to bring them into effect, and to add in some of the details, the Act sets out changes in a wide range of areas.

### At a glance...

- The Act provides the legal framework for pensions dashboards, effective governance of climate change risks and CDC schemes
- Scheme funding provisions will support long-term objectives
- New criminal offences and new powers for The Pensions Regulator are introduced

### Pensions dashboards

The Act provides a framework to support pensions dashboards, including new powers to compel schemes to provide information. Trustees will be required to feed in information on their own schemes and members, and regulations will specify the detail (what must be provided, when and how).

The Money and Pensions Service (MaPS) is to deliver a non-commercial dashboard. To be a 'qualifying pensions dashboard service', commercial dashboards delivered by industry will need to meet requirements to be laid down in regulations.

### Climate change governance

Regulations can impose requirements on trustees:

- To ensure there is effective governance of schemes with respect to the effects of climate change, and
- To publish information relating to the effects of climate change on the scheme.

In both cases, trustees must comply with guidance issued by the Secretary of State.

This provides the legal framework for requiring trustees to make disclosures in line with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD).

### Why bring you this note?

The Pension Scheme Act 2021 has received Royal Assent.

### Next steps

We anticipate a consultation on these dashboard regulations.

### Next steps

A consultation is taking place on draft regulations and statutory guidance.

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Consultations on what would be required by the related regulations and statutory guidance, as well as on non-statutory guidance, were carried out last year. The non-statutory guidance has now been issued and a further consultation is now in progress on the other aspects.

## Collective Defined Contribution (CDC) benefits

A significant part of the Act is devoted to the creation of a framework for collective money purchase benefits. This is aimed at facilitating the introduction of schemes such as the CDC arrangement proposed for Royal Mail employees. In particular, such schemes target an income in retirement, allow risks to be shared between members, and have fixed employer contributions.

The legislative framework covers authorisation, valuation, benefit adjustment and ongoing supervision.

## Scheme funding

The Act provides for the Chair of trustees to sign off a written 'statement of strategy' relating to the scheme's long-term objectives, detailing, in two parts:

1. The scheme's 'funding and investment strategy' for ensuring that benefits can be provided over the long term, including the funding level the scheme is intended to achieve as at relevant dates and the investments intended to be held on relevant dates; and
2. Supplementary matters including the extent to which the strategy is being successfully implemented, the main risks faced in doing so, and the trustees' reflections on any significant decisions taken relevant to the strategy.

The first part of the statement will need to be agreed between the trustees and sponsor (unless such agreement is not required to set contributions). The second part requires consultation with the sponsor.

The technical provisions will need to be calculated in a way consistent with the strategy. Trustees will also need to send a copy of the actuarial valuation report to the Regulator as soon as reasonably practicable after receipt.

The Act provides for further requirements to be added through regulations.

These requirements are closely linked to the development of the Regulator's revised Code of Practice on scheme funding, with its increased focus on long-term objectives.

### Next steps

Further details on CDC, including the implementation date, will be set out in regulations; again, we anticipate a consultation on these. Taxation aspects will be covered in the next Finance Act

### Next steps

The revised Code of Practice on scheme funding is now expected to come into force in 2022, following a further consultation in the second half of 2021. The regulations bringing the new scheme funding provisions into force may follow a similar timeline.

## New criminal offences

The Act sets out two new criminal offences:

- Avoidance of employer debt, and
- Conduct that risks the accrued scheme benefits.

An unlimited fine and/or imprisonment for up to seven years could be imposed in respect of these offences. The Regulator can impose a fine of up to £1 million on those who are party to (or knowingly assist in) such an act.

The new offences are set out in Section 107 and the industry's concerns over the drafting have been highlighted to government. In Parliamentary debate the Government assured the House of Lords that "in proposing these criminal offences, it is absolutely not the Government's intention to interfere with routine business activities" and noted that "It is expected that, following Royal Assent, the regulator will consult on the contents of the guidance for the new offences and expects to publish this guidance prior to commencement."

The Minister for Pensions and Financial Inclusion has since confirmed that these new powers will not be retrospective.

## Information gathering

The Act provides the Regulator with the power to require attendance at interview – covering trustees, employers, advisers and anyone likely to hold relevant information - in order to answer questions and provide explanations, and would strengthen its powers to inspect premises.

Again, the powers will not be retrospective.

## Contribution Notices

The Regulator already has powers to issue Contribution Notices (CNs), requiring the recipient to pay the amount specified to the pension scheme, where it has acted, or failed to act, in order to avoid its obligations to the scheme or where it has caused a 'material detriment' to the scheme's assets.

The Act expands the circumstances in which the Regulator can issue a CN, including by:

- Amending the "reasonableness test" for CNs to add consideration of the effect on the assets and liabilities of the scheme and (if the event was a notifiable event) any failure to report.
- Adding, as alternatives to the existing 'material detriment test' for CNs -
  - an 'employer insolvency test', met where an action or failure to act would result in the amount the scheme would have recovered on a hypothetical employer insolvency being materially reduced;
  - an 'employer resources test', met where an action or failure to act would result in the "resources" of the employer being materially reduced relative to the amount of the scheme's section 75 deficit.

### Next steps

There will be a consultation on related guidance before the new criminal offences powers are available to the Regulator.

### Next steps

The aim is that the information gathering powers will be available to the Regulator by autumn this year.

### Next steps

Regulations are due to be published in relation to the 'employer resources test' and we anticipate these will be consulted upon.

The aim is that the contribution notice powers will be available to the Regulator by autumn this year.

A maximum £1 million fine could be issued for failing to comply with the amended CN requirements, or for knowingly or recklessly providing false or misleading information to either the Regulator or trustees.

## Notifiable events

The notifiable events framework requires trustees and employers to notify the Regulator if certain events occur, giving an early warning of potential problems.

The Act extends this framework, including setting out the requirement for an 'accompanying statement' that describes:

- Any adverse effects on the scheme
- Any steps taken to mitigate those effects, and
- Any related communication with the trustees.

The implementation date, and the events requiring such a statement, will be set out in regulations. The notice and accompanying statement would need to be given to the Regulator and copied to the trustees 'as soon as reasonably practicable', although regulations may set a specific timescale. The regulations are also expected to expand the range of events requiring notification, following consultation on this issue in 2018.

The new provision allowing for a maximum fine of £1 million would apply to failure to comply with the notifiable events framework.

## Limiting transfer rights

The Act will allow trustees to block transfer requests where conditions, including in relation to the member's new employment or to their place of residence, are not met. The detail, including the implementation date, will be set out in regulations. The regulations may also require the member to obtain information or guidance from a prescribed person and confirm to the trustees that they have done this.

This provision is intended to help prevent pensions scams. Exercising due diligence when a transfer request is received can sometimes be difficult, with trustees currently having little scope to refuse a transfer that displays the characteristics of a scam.

### Next steps

We anticipate a consultation on the notifiable event regulations.

### Next steps

We anticipate a consultation on the transfer rights regulations. The Pensions Minister is reported as stating that these provisions may be in force by September or October of this year.

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