The Pension Schemes Act 2021

January 2021

Strengthening the security of DB pension schemes

The Pension Schemes Act 2021 is now law. Whilst a number of the new requirements may take a year or more to come into effect, the direction of travel is already impacting on corporate, trustee and regulator behaviour, and this will accelerate over 2021.

A brief summary of the implications of the Act is set out below, with more detail on the key provisions of the Act set out in our Technical Guide.

Tougher Pensions Regulator powers and related criminal offences

For DB schemes, there are some significant additions to, and adjustments of, the current powers of the Pensions Regulator. Two new criminal offences are also created with no limitation on who could be in scope. At a glance:

- The threat of the new criminal offences may pose real challenges to decision making by company directors and wider stakeholders in businesses sponsoring DB schemes (including lenders and shareholders).
- The offences have a much wider scope than those guilty of ‘wilful or reckless behaviour in relation to a pension scheme’ (what had originally been proposed). ‘Failure to act’ is also caught by the definition of the offences.
- Criminal penalties include unlimited fines and up to seven years in jail.
- The new contribution notice tests mean there will be the need for greater governance oversight and due diligence around dividend payments, refinancing and restructuring – by both company directors and by trustees.
- There may be a need to consider mitigation to the pension scheme under a wider range of corporate activities. Trustees will need to be able to show that they have asked the right questions, considered the sponsor’s response (with appropriate advice where relevant) and documented their ‘reasonable’ decision making process.
- We understand that during the first quarter of 2021 the Pensions Regulator will consult on guidance about how it will apply its new criminal offence powers. The Pensions Minister has said that the aim is for all the new powers in this part of the Act to be available to the Pensions Regulator by autumn 2021. He has also said that none of the Regulator’s new powers will be brought in retrospectively.
- In the meantime, companies and trustees may need to take legal advice to ensure they are not expected to fall foul of the new powers with any corporate activity that may fall under the new regime as we go through 2021.

A toughening of the funding regime for DB schemes

The new law requires trustees and sponsors to agree a long-term funding and investment strategy for a scheme. We understand that detailed regulations may be published in Q2 2021, which are expected to give the Regulator enhanced powers to be able to impose more prudent funding and investment strategies on schemes. The Regulator will then consult on the finer detail later in 2021. At a glance:

- The indication so far is that the new regime will lead to tougher funding standards, more de-risking, more contributions to pension schemes, and some scheme closures.
- If this leads to safer pensions, at a fair cost to employers, then this will fulfil the policy intent, but this remains to be seen and many are concerned about unintended consequences, particularly for open schemes.
- In the meantime, trustees and sponsors will need to have one eye on the likely new regime as they complete current valuations and review investment strategies and journey planning.

Climate change

The Act provides for certain occupational pension schemes to address climate change risks and opportunities. Details will be set out in regulations. At a glance:

- Major new requirements for schemes over £1bn relating to addressing climate change risk.
- Significant action expected from trustees, including monitoring climate metrics quarterly and carrying out climate scenario analysis annually – liaison with sponsor CSR teams will often be helpful.
- Schemes in scope required to publish annual reports setting out how they are managing climate-related risks and opportunities – these public disclosures may also increase reputation risk.

Pensions Dashboards

The Money and Pensions Service (MaPS) is required to deliver a pensions dashboard under the Act. With a target launch date of 2023, schemes will need to prepare for providing data in due course.

What else is covered by the Act?

- The introduction of Collective Money Purchase schemes, favoured by the Royal Mail, with some other large employers considering whether to introduce.
- Help for trustees to prevent transfers where there seems to be a scam risk.
- Some tidy up provisions for the Pension Protection Fund.

Notably, what has not made the cut, but may appear in a further Pensions Act later in this Parliament, are regulations that better facilitate pension superfunds.

For a more detailed summary of the provisions of the Act, see our Technical Guide.

This summary and the Technical Guide should not be relied upon for detailed advice or taken as an authoritative statement of the law.

Want to find out more?

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