BUCK

UK

FYI® Alert

For Your Information®

Volume 2021

Issue 04

11 February 2021

Authors
Gary Crockford
John Dunkley

The Pension Schemes Act 2021

The Pension Schemes Act 2021 has now been given Royal Assent. Its provisions cover a number of areas and these are set to come into force at different future dates.

The Act itself is devoid of a lot of detail as this will be contained in regulations and guidance – the majority of which is still to be consulted on. The Pensions Regulator's guidance and how it intends to use its powers in future will be essential reading for everyone involved in pensions.

In this issue: Background | Tougher powers for The Pensions Regulator | Pensions dashboards | Climate change risk | Defined benefit scheme funding | Restricting the right to transfer | Collective money purchase schemes | Final comment

Background

After originally being introduced in the House of Lords ahead of the 2019 General Election, the Pension Schemes Bill has finally completed its passage through Parliament and received Royal Assent. It is an extensive piece of legislation, covering many different policy areas, most of which have been well trailed by the government and in development for several years.

This FYI Alert summarises the main areas and looks at what is still outstanding.

Tougher powers for The Pensions Regulator

Anti-avoidance powers

The Regulator's main "anti-avoidance" powers are:

- Contribution notices - requiring a target to make a lump sum payment to a pension scheme or the Pension Protection Fund;
- Financial support directions - requiring a target to put arrangements in place to support a scheme.

Following recent high profile corporate insolvencies, such as BHS, it was felt the Regulator needed powers to intervene sooner in such cases.

The Act strengthens the contribution notice regime by introducing two new tests:

- The "**employer insolvency test**" where a notice could be issued where, after an act (or failure to act), the value of a scheme's assets is less than its liabilities; and if an "employer debt" had fallen due, the act (or failure to act) would have materially reduced the amount that could have been recovered had the employer become insolvent;
- The "**employer resources test**" where a notice could be issued where the act (or failure to act) reduced the value of the resources of the employer; and that reduction was a material reduction relative to the amount of the estimated employer debt.

The Act also lays the foundation for the introduction of a new notifiable events regime through yet to be published regulations. It is expected these regulations will include a duty to notify the Regulator where there is a granting of priority security on a debt and when there is a sale of a material proportion of the business or assets of a scheme employer which has a funding responsibility for at least 20% of a scheme's liabilities.

New "super" notifiable events will be introduced which must be notified to the Regulator and communicated to the pension scheme trustees.

New criminal and civil penalties

The Act strengthens the criminal and civil sanctions regime by introducing three new criminal offences, the second and third of which could see a prison sentence of up to seven years.

- Failure to comply with a contribution notice;
- Avoidance of an employer debt (under section 75 of the Pensions Act 1995); and
- Conduct risking accrued benefits.

Alternatively, the Regulator has the power to impose civil penalties of up to £1m in any of the above cases or where any person knowingly or recklessly provides it (or in certain circumstances, the trustees) with information which is false or misleading in a material way.

Enhanced information gathering powers

The Regulator is given wider powers to investigate and will be able to enter a larger range of premises and require individuals to attend an interview.

Corporate transaction oversight

Those involved in corporate transactions will be required to make a statement setting out information about the event and how any detriment to a defined benefit pension scheme as a result of the event is to be mitigated.

What's next?

There had been a concern that the new offences would be backdated and thus those involved with DB pensions might have to examine historic actions. This is not the case and the new powers will come into effect at a date to be determined later this year.

Pensions dashboards

The Act creates a legislative framework for pensions dashboards – digital interfaces that enable people to see all their pension savings in one place so that members can make better decisions about their retirement plans.

It sets out the requirements that a qualifying pensions dashboard must meet, enables regulations to require pension schemes to provide pensions information to them, and requires the Money and Pensions Service to provide a pensions dashboard service (a non-commercial offering to exist alongside qualifying commercial dashboards). The Act also provides the necessary compulsion on trustees and providers to interact with dashboards.

What's next?

Regulations will provide most of the detail. In the meantime, trustees and providers must focus on ensuring their scheme data is 'dashboard ready'. The Pensions Dashboards Programme at the Money and Pensions Service has produced data standards for dashboards to comply with and confirmed a schedule for the introduction of dashboards. This year will see the development and testing phase, with the voluntary onboarding of pension schemes to dashboards next year. From 2023, trustees and providers will begin to be compelled to connect to the dashboard ecosystem by law.

Climate change risk

The Act imposes requirements:

- on trustees ensure there is effective governance of the effects of climate change on occupational pension schemes and to publish information about those effects on the scheme; and
- to set out the scheme governance activities trustees must undertake on climate change.

In addition, The Pensions Regulator is provided with powers to ensure compliance with these requirements.

The DWP has already consulted on proposals to require trustees of larger occupational schemes (with assets of at least £5bn), authorised master trusts and authorised collective money purchase schemes to ensure compliance with the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD).

This would need to be disclosed in a scheme's annual report and accounts, and in annual benefit statements to members.

What's next?

The DWP's proposals for larger schemes are currently subject to a second consultation, which runs until 10 March 2021, although the draft regulations that were consulted on last year are due to come into force on 1 October 2021.

Defined benefit scheme funding

The Pensions Act 2004 requires trustees to draw up a statement of funding principles, obtain a triannual valuation and, if a scheme was in deficit, to prepare a recovery plan. The Pensions Regulator also issued a code of practice on the funding of defined benefits.

In March 2020 the Regulator consulted on the principles for a revised code of practice. This proposed a twin track approach: a "fast track" for trustees who could demonstrate that their valuation met the guidelines; and for those who could not, a "bespoke" approach.

The Act gives effect to the Regulator's new funding approach requiring trustees to:

- determine a funding and investment strategy for ensuring pension benefits can be provided over the long term, and obtain employer agreement to it; and
- produce a written statement setting out that strategy and information, including an assessment of whether the trustees are on track to deliver the strategy, how they intend to mitigate key risks, and reflections on their past decisions. This statement, signed by the chair of trustees, will have to be submitted to the Regulator.

What's next?

The Regulator will be holding a second consultation on the revised code of practice in the second half of 2021, following which regulations will also be needed to give effect to the new approach. The Regulator appears to be working on the assumption that the new code and legislation will apply to triennial valuations carried out in and from Q2 2022.

Restricting the right to transfer

The Act provides the power to make regulations placing new conditions on a member's statutory right to transfer their pension rights to another scheme. These conditions can include the member providing the transferring scheme trustees with evidence or information about their employment link to the receiving pension scheme or their residency overseas. (This reverses an earlier High Court judgment which confirmed an employment link to the receiving scheme was not required.)

The intention behind the legislation is not to make it harder to transfer, but to protect scheme members from pension scams. In recent years, trustees and providers have often been placed in the invidious position of paying a transfer, even when suspicions exist about the receiving pension scheme, due to the importance given to a member's statutory right to transfer.

What's next?

The government is understood to be ready to consult on draft regulations setting out the precise detail of these new restrictions, and it is currently expected that these regulations will come into force this autumn.

The precise wording of the forthcoming regulations is going to be crucial, as it needs to ensure that no advantage is given to those behind the scourge of pension scams.

Collective money purchase schemes

The majority of the Act is dedicated to providing a framework to operate and regulate collective money purchase schemes (CMPS) in the UK.

The existing UK workplace pensions framework enables employers to essentially only offer either a defined benefit (DB) or defined contribution (DC) pension scheme. These two models place all the risks and associated costs – economic, financial, and longevity - with either the sponsoring employer (DB) or the individual member (DC).

With a CMPS, the risks would be entirely with the members but shared between them collectively. Both the employer and members would contribute to a collective fund from which the employee would then draw an income at retirement. A CMPS would offer members a target pensions level that it would be aiming to pay based on their contributions. The scheme must have rules under which the rate or amount of the benefit is subject to periodic adjustments designed to achieve a balance between the available assets of the scheme and the amount expected to be required to provide benefits under the scheme to members collectively.

What's next?

Regulations are now awaited. It's expected the government's focus will be on legislation specifically to facilitate the new Royal Mail CMPS. Further regulations may well be required in the future to provide for the introduction of CMPS more widely.

Final comment

Work on a number of the areas covered in the Act has been ongoing for several years, and indeed the Act's passage through Parliament has run over three different calendar years. Royal Assent is a significant milestone, but in reality, it will still be another 12-18 months before most of the Act's provisions are fully in force.

Innovations like pensions dashboards, and action to help combat pension scammers, are long overdue. Let's hope the wait has been worthwhile.

Produced by the Knowledge Resource Centre
The Knowledge Resource Centre is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your consultant or call us on 0800 066 5433.

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.

Buck is a trading name in the UK for Buck Consultants Limited (registered number 1615055), Buck Consultants (Administration & Investment) Limited (registered number 1034719), and Buck Consultants (Healthcare) Limited (registered number 172919), which are private limited liability companies registered in England and Wales. All have their registered office at 20 Wood Street, London EC2V 7AF. Buck Consultants (Administration & Investment) Limited and Buck Consultants (Healthcare) Limited are authorised and regulated by the Financial Conduct Authority.

© 2021 Buck Consultants Limited. All rights reserved.