New Pensions Regulator powers: Are you ready?

July 2021

The Pension Schemes Act 2021 introduces new powers for The Pensions Regulator (‘TPR’), introducing new risks for company directors.

The majority of the new powers are expected to come into force from 1 October 2021. In response, many sponsors of Defined Benefit (‘DB’) schemes are expected to take steps to introduce the assessment of the impact on the pension scheme to their governance processes around key business decisions (eg dividends). The new regulatory penalties are high, with an increased threat of TPR imposing the requirement to contribute to a scheme, and the threat of severe civil or criminal penalties.

Trustees are also in scope of the new powers and may be subject to some penalties. Trustees and company directors may also be compelled to attend an interview with TPR about anything relating to TPR’s functions.

Overleaf we set out an overview of the new powers and where the new powers will need to be factored into corporate decision making to manage the additional regulatory risks.

If you would like any assistance or further information, please contact us.

What can companies do to prepare?

We highlight below actions which companies and company directors are taking to ensure that the new pensions-related regulatory risks are effectively managed.

- ✓ **Company Board training:** Ensure the Company Board is aware of the new TPR powers and requirements – and the additional corporate and personal risks of the new criminal offences, financial penalties and Contribution Notice tests.
- ✓ **Review governance processes:** Seeking external specialist pension covenant support where helpful, to ensure you are in a position to be able to assess the impact of key business decisions on the pension scheme.
- ✓ **Documentation and communication:** Consider how the process will be documented, and how the outcome of the impact assessment on the scheme will be communicated to key decision makers.
- ✓ **Information sharing:** Implement or update your information sharing agreement with trustees to ensure you are providing the right information at the right time.
- ✓ **Regulatory reporting requirements:** Consider potential interaction with the new Notifiable Event and the Statement of Intent requirements.

New TPR powers: Are you ready?

What's new?	*Details*	*Preparation required*	*What are other companies doing to prepare?*
Two new criminal offences and new financial penalties	Two new offences in respect of 'Conduct risking accrued benefits' and 'Avoidance of Employer Debt'. The first could be triggered through corporate behaviour that weakens a DB scheme's sponsoring employer. Criminal penalties include unlimited fines and up to seven years in jail. There's also a new civil financial penalty (up to £1m fine) as an alternative to the criminal penalty.	✓ Awareness of added business risk and personal risk for company directors and trustees.	• **Delivering company board training** to ensure that the new TPR powers are understood by the company directors and the boards of relevant other group companies. • **Risk registers and conflict management plans** are being reviewed in the context of the new TPR powers.
Two new Contribution Notice tests	The new tests are expected to trigger in a far wider range of circumstances. If corporate activity does trigger them, without the payment of appropriate mitigation to the scheme, this may lead TPR to require a connected company, shareholder or director to make a cash payment to the scheme. The new tests are conducted in the context of the scheme's buyout (or 'section 75') deficit. The tests can be triggered by 'business as usual' corporate activity (for example dividend payments, refinancing and internal restructuring).	✓ Identification of potential risk events in advance. ✓ Be prepared to analyse the impact on the pension scheme ✓ Plan for engagement with trustees (where required). ✓ Have in place a process for recording and reporting decision making.	• **Putting in place processes to assess the impact of business decisions** in the context of the two new Contribution Notice tests. For example companies are working through the covenant implications of dividend payments as part of dividend discussions. • **Reviewing the information sharing agreement** in place with the trustees and putting in place agreements relating to specific actions prompted by covenant events (eg a dividend sharing agreement / contingent funding arrangements). These are being reviewed in the context of the new Contribution Notice tests. • **Regular reporting** back to board of directors to demonstrate where pension risks have been identified, assessed and mitigated. Supported by results of impact assessment/external covenant advice.
New reporting requirements	Currently, the law requires certain events to be notified to TPR. Regulations are expected to add two new events: the sale of a material proportion of an employer's business or assets, and granting of security ranking ahead of a scheme. These two events, alongside the current notification requirement for 'sale of a controlling interest in an employer' will also be subject to new 'Statement of Intent' requirements. This will require the company to share information in advance with trustees and with TPR.	✓ Review information sharing processes with the trustees. ✓ Awareness of events which require formal notification to trustees and TPR.	• Pensions team/finance team are aware of the circumstances in which **formal TPR notification** is required, and where a **Statement of Intent** will need to be prepared. • Providing more **regular updates** to trustees on pensions relevant upcoming activity, with clear documentation.

Other new TPR powers to be aware of:

New inspection and interview powers
Greater TPR information gathering, inspection and interview powers are being introduced. Any person may be compelled to attend an interview with TPR about anything in relation to TPR's functions (including trustees, company directors and professional advisers).

Financial penalties
TPR has new powers to fine various parties up to £1m – including company directors, trustees and advisers – eg for providing misleading information, failing to pay a Contribution Notice by its due date or failing to notify TPR of a notifiable event.

How we can help

Areas where we can provide support include:

Board training	• Training focussing on the relevance of TPR's new powers for the decisions made by the company board.
Governance healthcheck for events impacting pension scheme	• Identify any governance gaps for the company board or trustee board to address in context of pensions-relevant events. • Any required follow on support, eg developing sponsor checklist of pensions-relevant activities.
Dividend covenant check	• Independent assessment for corporates as to whether dividends (ongoing or special) or other 'covenant leakage' could trigger intervention under the new Contribution Notice tests. • Support to the sponsor with reviewing wider dividend policy in the context of the analysis. • For more details click here
Impact assessment for the new Contribution Notice Tests	• Independent assessment for companies as to whether a corporate event (eg sale of business, refinancing, group restructure) could trigger new insolvency test or employer resources test. • Support with developing any mitigation proposals (if required).
Information sharing protocols and ongoing covenant monitoring	• Reviewing information sharing agreement and covenant monitoring agreements with the trustees – in the context of the new TPR powers.

Want to find out more?

If you would like further information, please contact one of our specialists or your regular adviser for more support.

Helen Abbott
Partner

Helen.Abbott@lcp.uk.com
+44 (0)20 3314 4997

Jonathan Camfield
Partner

Jonathan.Camfield@lcp.uk.com
+44 (0)1962 870060

Laura Amin
Principal

Laura.Amin@lcp.uk.com
+44 (0)20 3824 7331

Useful resources:

Pension Schemes Act hub - Pension Schemes Act insight hub | Lane Clark & Peacock LLP (lcp.uk.com), which provides some more details on the new powers and blogs from some of our Partners who are specialists in this evolving area.

Company directors and sponsors may find the following materials of particular interest:

How to avoid criminal penalties.pdf (lcp.uk.com)

Pensions and dividends: New risks for companies

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