

Consultation document

# **Our approach to the new powers introduced by the Pension Schemes Act 2021 and their interaction with our existing powers**

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## Scope of the consultation exercise

The Pension Schemes Act 2021 has introduced a number of new powers, namely:

1. New criminal offences:
  - a. The offence of avoidance of employer debt
  - b. The offence of conduct risking accrued scheme benefits
  - c. The offence of failure to pay a Contribution Notice (CN) – issued under section 38 of the Pensions Act 2004
2. New penalty powers to impose high fines of up to £1m for:
  - a. Failure to comply with the new notifiable events requirements
  - b. Failure to comply with the accompanying statements in relation to some notifiable events
  - c. Providing false/misleading information to The Pensions Regulator
  - d. Providing false/misleading information to trustees
  - e. Avoidance of employer debt
  - f. Conduct risking accrued scheme benefits
  - g. Failure to pay a CN – issued under section 38 of the Pensions Act 2004
3. New information gathering powers to conduct interviews and inspections
4. New fixed and escalating penalties for failure to comply with our information gathering powers

We have previously consulted on and have published our policy on our approach to the investigation and prosecution of the new criminal offences listed at 1 (a) and (b) above.

This consultation contains three draft policies which explain our approach to the following:

- Overlapping powers – where we have the options to pursue both criminal and/or regulatory powers in respect of the same set of circumstances.
- Monetary penalty powers – high fines.
- Information gathering powers – the use of section 72 notices, interviews and inspections in the context of our enforcement cases, including our approach to the new fixed and escalating penalty powers for non-compliance.

In addition to seeking general views, we have provided questions on areas where we are particularly interested in feedback. We will consider all comments before publishing the final policies early in 2022.

## Who this consultation is for

This consultation is for anyone seeking to understand our approach to the use of these new powers and how they interact with our existing powers.

## Government consultation principles

This consultation paper follows the government's consultation principles at: <https://www.gov.uk/government/publications/consultation-principles-guidance>. The key principles state that consultations should:

- be clear and concise
- have a purpose
- be informative
- be only part of a process of engagement
- last for a proportionate amount of time
- be targeted
- take account of the groups being consulted
- be agreed before publication
- facilitate scrutiny
- be responded to in a timely fashion, and
- not be launched during local or national election periods

## Consultation context

The government policy intent is to strengthen the regulatory framework so that we will be able to gather information more efficiently and be notified of information that may affect defined benefit schemes, while also introducing a number of deterrents against conduct that may put members' pensions at risk.

In response to the recent consultation on our approach to the investigation and prosecution of two of the new criminal offences, we received a number of comments seeking further clarification on our approach to these other powers and how they interact where more than one power may be available to us.

## Overlapping powers policy

Many of the new powers introduced have given us the option to use different powers in relation to the same set of circumstances – those options may be regulatory, including both anti-avoidance powers and financial penalties, and/or criminal.

Before the Pension Schemes Act 2021 we already had some powers where there was a choice between regulatory and criminal action – for example breaches of the employer-related investment provisions. This policy seeks to consolidate our approach to the variety of different powers where there is a potential for overlap and provide guidance on our approach where this overlap occurs.

## Monetary penalty powers – high fines policies

The new penalty powers to impose high fines available cover two types of scenario:

1. Information requirements
2. Avoidance related scenarios

In the policies we have set out our proposed penalty bands and the factors we will take into account when determining which band will apply to a particular set of facts and how we will then determine the penalty amount within the chosen band.

## Information gathering policy

The expansion of our information gathering powers will enable us to use a wider variety of tools to gather evidence which may lead to enforcement action. We will be able to:

- Compel individuals to attend an interview with us, and
- Carry out inspections of relevant premises to gather information relevant to our anti-avoidance powers

The draft policy outlines the tools available to us and how we will engage with those involved. It also set out the options for enforcement action for failure to comply, including our approach to the new fixed and escalating penalty powers.

# Consultation on our approach to the new powers introduced by the Pension Schemes Act 2021 and their interaction with our existing powers

Please fill in your response to the questions below, save this whole consultation form to your computer, and return the completed attachment by **22 December 2021** to: [PSA21policies@tpr.gov.uk](mailto:PSA21policies@tpr.gov.uk)

When responding, please confirm if you are responding as an individual or on behalf of an organisation and, if on behalf of an organisation, whether only the views of the organisation are expressed in the response.

## Your details

Your name:

Organisation (if applicable):

Responding as an individual or on behalf of an organisation:

If on behalf of an organisation, are only the views of the organisation expressed in this response?:

Job title (if applicable):

Postal address:

Telephone:

Email:

Your details continued...

Please select the category that best describes you or your organisation.  
If you have multiple roles, please select all that apply.

- |  |                    |                      |
|--|--------------------|----------------------|
| Adviser (Actuarial)                      | Adviser (Covenant) | Adviser (Investment) |
| Adviser (Legal)                          | Adviser (Other)    | Administrator        |
| Investment manager                       | Professional body  | Provider             |
| Scheme sponsoring employer               |                    | Trustee              |
| Other (Please describe in the box below) |                    |                      |

### Confidentiality (Please complete as applicable)

Please confirm whether you would like us to include your name on our list of respondents to this consultation:

Yes, I wish my name to be included on the list of respondents

No, I do not wish my name to be included on the list of respondents

#### and/or:

Please confirm whether you would like us to list your organisation on our list of respondents to this consultation:

Yes, I wish my organisation to be included on the list of respondents

No, I do not wish my organisation to be included on the list of respondents

As this is a public consultation, we may need to share the feedback you send us within our own organisation or with other government bodies or in response to a request under the Freedom of Information Act 2000. In the interests of transparency and effective scrutiny, we may also publish this feedback as part of our response to the consultation. If you wish your response, in whole or in part, to remain confidential, please tick the box below and give your reasons and we will consider whether we can reasonably meet your request:

Yes, I wish my response to remain confidential

If 'Yes', please specify which part of your response you wish to remain confidential and why:

## Consultation questions

1. Is the complete package of policies clear sufficiently on regarding explanatory about our overall approach to the new powers? If not, is there any additional policy/guidance that you would find useful?

Yes

No

Please give your reasons below:



## Overlapping powers

**2. Is the policy clear on the factors we will take into account when we have a choice of which power to use?**

Yes

No

Please give your reasons below:

**3. Are the examples useful in illustrating what we will take into account when considering which power to use? Are there any other examples that you would find useful?**

Yes

No

Please give your reasons below:

**4. Do you have any other feedback about the overlapping powers policy?**

## High fines

### 5. Is the policy clear on the approach we will use when calculating the fine amount?

Yes

No

Please give your reasons below:

**6. Have we identified the relevant factors for assessing culpability and harm as well as the aggravating and mitigating factors? If not, what other factors do you think might be relevant?**

Yes

No

Please give your reasons below:

## 7. Do you have any other feedback about the high fines policy?

## Information gathering

**8. Is the policy clear on the options available to us and in which circumstances they may be used?**

Yes

No

Please give your reasons below:

**9. Is the policy clear on the consequences for non-compliance with our information gathering powers?**

Yes      No

Please give your reasons below:



**10. Do you have any other feedback about the information gathering policy?**

Yes

No

Please give your reasons below:

## How to contact us

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Brighton  
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<https://www.thepensionsregulator.gov.uk/>

<https://trusteetoolkit.thepensionsregulator.gov.uk/>

Free online learning for trustees

<https://education.thepensionsregulator.gov.uk/>

Pensions education portal



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