

Consultation document on

TPR's enforcement and prosecution policies

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Who this consultation is for

This consultation is for anyone who may be subject to our enforcement action and their advisers.

Consultation context

The government policy intent behind the new powers introduced in the Pension Schemes Act 2021 was to strengthen TPR's regulatory framework to enable us to gather evidence more efficiently and be notified of events that could affect schemes. It also introduced a number of deterrents against conduct that could put members' pensions at risk.

The development of the specific policies to explain our approach to these powers highlighted a need to be more transparent about our enforcement powers.

Our approach to enforcement has evolved over years of using our regulatory powers, and from experience of civil and criminal court proceedings, as well as our work with other regulators. We have also adapted it over the last few years following the implementation of our new strategic operating model and the creation of our enforcement team.

The draft enforcement policy and the updated and revised prosecution policy aim to give clarity on what those who are subject to enforcement action can expect from us.

Consultation scope

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

1. New criminal offences:
 - a. avoidance of employer debt
 - b. conduct risking accrued scheme benefits
 - c. 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 penalty powers to impose fines for failure to comply with our information gathering powers.

We have previously consulted on a number of policies setting our approach to:

- the investigation and prosecution of the new avoidance-type criminal offences
- overlapping powers
- monetary penalty powers – high fines
- information-gathering powers

When we first launched and then responded to those consultations, we indicated that we were carrying out a wider review of other compliance and enforcement policies. The responses we received highlighted a user need for a comprehensive and clear set of policies that capture our approach to our investigations and use of our enforcement powers.

The review has focused on our enforcement activity in respect of:

- defined benefit schemes
- defined contribution schemes
- public service pension schemes

We have also revised our existing prosecution policy.

Our review has led to the replacement of these existing policies:

- **Defined benefit funding regulatory and enforcement policy**
(www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/db-funding-regulatory-enforcement-policy)
- **DC compliance and enforcement policy**
(www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/dc-compliance-enforcement-policy)
- **Public service pension schemes compliance and enforcement policy**
(www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/compliance-policy-public-service-pension)

We've combined the enforcement-related content into a single enforcement policy which provides clear links to other relevant policies and procedures, such as:

- our **case procedures**
(www.thepensionsregulator.gov.uk/en/about-us/how-we-regulate-and-enforce/case-procedures)
- our **monetary penalties policy**
(www.thepensionsregulator.gov.uk/en/document-library/strategy-and-policy/monetary-penalties-policy)

Our automatic enrolment and master trust authorisation compliance and enforcement policies have not changed, so please refer to these separately:

- **Automatic enrolment policy**
(www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/pensions-reform-compliance-and-enforcement-policy)
- **Master trust authorisation compliance and enforcement policy**
(www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/master-trust-supervision-and-enforcement-policy)

The draft enforcement policy also includes the overlapping powers and information gathering policies that we consulted on last year and which were created or updated to include reference to new powers introduced by the Pension Schemes Act 2021.

We have incorporated these policies as sections of the enforcement policy so they can be seen within the context of our wider approach to use of our enforcement powers, not just those introduced in the Pension Schemes Act 2021.

We have used the responses to the previous consultation to update the corresponding sections of the enforcement policy in which they now appear. In our consultation response document, we also explain how we have addressed those comments and signpost where those elements now appear in the combined enforcement policy.

We have already separately published our **policy on our approach to the investigation and prosecution of the new criminal offences** (www.thepensionsregulator.gov.uk/en/document-library/strategy-and-policy/criminal-offences-policy) in sections 58A and 58B of the Pensions Act 2004 and are publishing final version of the:

- High fines policy – avoidance
- High fines policy – information requirements

We are now seeking general views and comments on:

1. Our draft enforcement policy, sections 1 to 2, 4 to 6 and 8 to 12 but excluding those sections we already consulted on (ie section 3, information-gathering and section 7 overlapping powers)
2. Our revised and updated prosecution policy

We will consider all comments before publishing the final policies later this year.

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

Responding to the consultation

Please fill in your response to the questions below, save this whole consultation form to your computer, and return it by **24 June 2022** to **PSA21policies@tpr.gov.uk**

When responding, please confirm whether 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 individual or 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:	Yes	No
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If on behalf of an organisation, are only the views of the organisation expressed in this response?:	Yes	No
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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 include 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: Enforcement policy

1. Does the policy provide clarity on our overall approach to enforcement activity, our decisions and options and use of our enforcement powers?

Yes

No

Please give your reasons below.

2. Does the policy give sufficient guidance to those who are the subject of our enforcement action about what to expect from us and what procedures apply?

Yes

No

Please give your reasons below.

3. Does the policy give sufficient guidance on what procedures apply and how to challenge enforcement decisions?

Yes

No

Please give your reasons below.

4. Is the proposed layout easy to follow and can you easily find the information you are looking for?

Yes

No

Please give your reasons below.

5. Do you have any other feedback on the enforcement policy?

Consultation questions: Prosecution policy

6. Does the updated policy provide clarity on our approach to the investigation and prosecution of criminal offences?

Yes

No

Please give your reasons below.

7. Do you have any other feedback on the prosecution policy?

How to contact us

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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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