

**EXPLANATORY MEMORANDUM TO**  
**THE PENSIONS REGULATOR (INFORMATION GATHERING POWERS AND**  
**MODIFICATION) REGULATIONS 2021**

**2021 No. 754**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument sets out the minimum information which The Pensions Regulator must include on a notice which requires a person to attend an interview under the extended provisions in the [Pension Schemes Act 2021](#). It also modifies the Regulator's extended inspection powers so they apply to multi-employer schemes and sets the level of the fixed and escalating civil penalties introduced by the same Act.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.
- 4.3 The Department for Communities in Northern Ireland will be producing its own legislation replicating these regulations for Northern Ireland.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 The Pension Schemes Act 2021 extends The Pensions Regulator's information gathering powers by amending the [Pensions Act 2004](#) and inserting a [new section 72A](#) which will enable The Pensions Regulator to require a person to attend an interview. It also inserts new subsections (6)(d), (e) and (f) in existing section 73 of the Pensions Act 2004 to add new types of premises that The Pensions Regulator may enter. This instrument lists the minimum information which The Pensions Regulator must include on the notice requiring a person to attend an interview and modifies

section 73(6)(d), (e) and (f) to cover schemes with more than one sponsoring employer.

- 6.2 Additionally, the Pension Schemes Act 2021 introduces fixed and escalating civil penalties for not complying, without reasonable excuse, with The Pensions Regulator's requests for information, similar to the penalties already available for not complying with information requests in connection with automatic enrolment. These penalties will be an alternative to the current criminal offence and are inserted into the Pensions Act 2004 as new [sections 77A and 77B](#). Both new sections provide that the level of the penalties will be set in regulations.

## **7. Policy background**

### *What is being done and why?*

- 7.1 These regulations cover three areas: they set out the minimum information which The Pensions Regulator must include on a notice which requires a person to attend an interview under the new section 72A of the Pensions Act 2004, as inserted by section 110 of the Pension Schemes Act 2021; they also modify The Pensions Regulator's extended inspection powers so they apply to multi-employer schemes; and they set the level of the fixed and escalating civil penalties introduced by the same Act.

### Interview provisions

- 7.2 To help The Pensions Regulator gather the information it needs to ensure compliance with pensions legislation, its power to call a person for an interview has been extended across all its functions. The primary legislation requires The Pensions Regulator to issue a notice notifying the person of the interview and regulation 3(1) lists the minimum amount of information which must be included in the notice. The information set out in the notice will include details, for example, name, address and job title, to make it clear who is being called for an interview. It will also include information which will inform the interviewee as to when and where the interview will take place, why The Pensions Regulator wishes to conduct the interview, the interviewee's rights and responsibilities, and how the information obtained can be used. It will also list the potential consequences for the interviewee by way of sanction in the event of non-compliance.
- 7.3 Virtual meetings have become more common and regulation 3(2) therefore provides that if the interview is proposed to be conducted via an on-line communication platform, the notice must provide additional information as to how the on-line communication platform should be accessed.
- 7.4 Detailing the information required in the notice through regulations will allow the process to take account of the changing business and economic environment.

### Inspection powers

- 7.5 The Pension Schemes Act 2021 extended The Pensions Regulator's powers of inspection to cover premises where records relating to the sponsoring employer of a defined benefit scheme are kept. Regulation 4 modifies these inspection powers in the case of a multi-employer scheme so that the powers of inspection extend to any of the employers which sponsor the scheme, or that section in the case of a sectionalised scheme. This will prevent any ambiguity as to the extent of The Pensions Regulator's powers in such situations.

### *Fixed and Escalating Civil Penalties*

- 7.6 Regulations 5 and 6 lay down the level of the fixed and escalating penalties which are also introduced by the Pension Schemes Act 2021. Previously, The Pensions Regulator could only impose a fixed or escalating civil penalty for non-compliance with information gathering provisions regarding the employer's duties in the context of automatic enrolment or Master Trusts. Otherwise, not complying with an information request made under sections 72-75 of the Pensions Act 2004 without reasonable excuse is a criminal offence under section 77 of that Act. The new provisions at sections 77A and 77B of the Pensions Act 2004 allow The Pensions Regulator to impose a fixed penalty for non-compliance and, if the failure to comply continues, an ongoing penalty for each further day of non-compliance (described as an escalating penalty). Obtaining information can be a necessary and urgent part of an investigation and civil financial penalties will enable The Pensions Regulator, where appropriate, to enforce the information gathering requirements more efficiently.
- 7.7 Regulation 5 sets the level of the new fixed penalty and regulation 6 the level of the escalating penalties: the fixed penalty is £400 and the daily rate of the escalating penalty is £200 for an individual and a daily rate of up to £10,000 for non-individuals. The levels of the fixed penalty and the escalating penalty for individuals are the same as the existing penalties for non-compliance with information gathering requests relating to automatic enrolment. The level of the escalating penalty for non-individuals follows the format and maximum daily rate which can be imposed for non-compliance with information gathering in connection with Master Trusts but reaches the daily maximum at a slower rate.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 This instrument does not consolidate previous instruments.

## **10. Consultation outcome**

- 10.1 A public consultation took place on the draft regulations between 18 March and 29 April 2021. There were 19 respondents in total although not every respondent commented on every part of the draft regulations. Responses on the content of the interview notice were broadly favourable but many of the points raised were around how The Pensions Regulator would conduct the interview process and were therefore outside the scope of the consultation. All respondents who answered the question on the inspection powers and multi-employer schemes were content. The majority of those who answered the questions on the fixed and escalating penalties were content with either the level of the penalty or the rationale for the level, although a couple felt one or more of the penalties should be higher. Other concerns raised by the remainder of the respondents have already been considered in the consultation documents or were clarified in the [Government response](#).

## **11. Guidance**

- 11.1 The Pensions Regulator will be operating the provisions introduced by this instrument. It will be issuing or updating its policy guidance in these areas.

## **12. Impact**

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment for these regulations was assessed as part of the [Pension Schemes Act 2021](#).
- 12.4 It assessed the one-off additional costs to business of familiarisation with the extended powers to be £8.9 million and ongoing annual costs of complying with additional requests to be £0.43 million. The cost of the penalties themselves is not assessed as a business cost.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses, as the instrument applies to all occupational pension schemes.
- 13.2 It is not possible to mitigate the impact of the requirements on small business without an adverse effect on scheme members.

## **14. Monitoring & review**

- 14.1 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Guy Opperman, Minister for Pensions and Financial Inclusion has made the following statement:
- “A statutory review is not appropriate as the impact on business is minimal and a formal statutory review would be disproportionate.”
- 14.2 The approach to monitoring of this legislation is that the Government will work with The Pensions Regulator who will work with industry in order to understand the impact of the legislation post-implementation.
- 14.3 The annualised net impact on business is less than +/- £5 million. As this is not significant, a statutory review is not necessary. In addition, these regulations provide for detail rather than the main policy objectives and a review of a minor part of the provisions would be disproportionate.

## **15. Contact**

- 15.1 Caroline Blackett at the Department for Work and Pensions for questions about the instrument ([caroline.blackett@dwp.gov.uk](mailto:caroline.blackett@dwp.gov.uk)).
- 15.2 Gareth Thomas, Deputy Director for Defined Benefit Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Guy Opperman, Minister for Pensions and Financial Inclusion, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.