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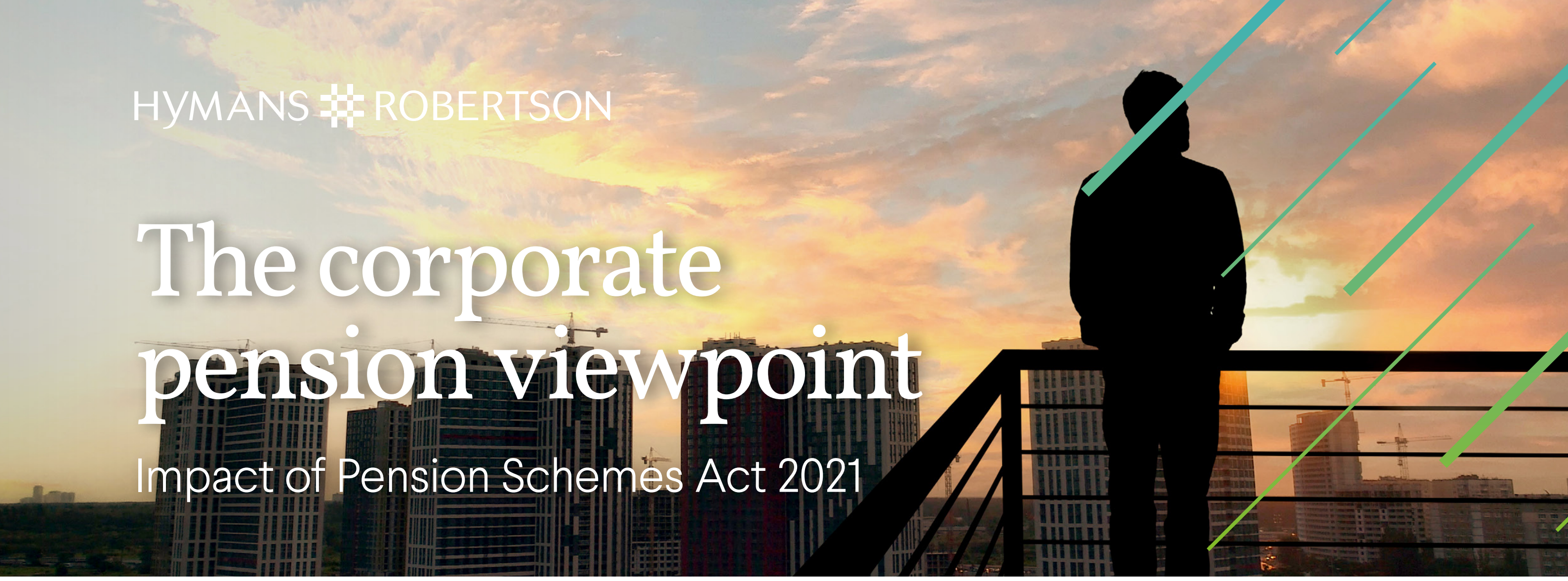

The corporate pension viewpoint

Impact of Pension Schemes Act 2021

The Pension Schemes Act 2021 (PSA21) was the most significant piece of UK pensions legislation in the 17 years since the Pensions Act 2004. It extended the Pensions Regulator's (TPR's) Contribution Notice powers, introduced criminal offences that are drafted in a very broad manner and, although this has yet to be enacted, laid the foundations for a significantly more onerous Notifiable Events regime.

So, two years on, what do companies think about this and how are they responding?

To answer this question, we conducted a wide-ranging survey of 250 finance and pension decision makers in UK companies. This survey covered a wide range of topics including:

- respondents' strategic pension priorities over the next few years
- respondents' views on defined benefit (DB) endgame strategies
- the impact of the Pension Schemes Act 2021 on company planning and financial activity
- respondents' views on future retirement provision and government policy
- corporate and trustee governance

In this second paper based on our research, we look at what impact PSA21 has had on company planning and commercial activity.

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[i]Research conducted by Censuswide July 2023

Strategic company priorities for the next three years

We asked companies to name their top two pension priorities and their top two pension challenges over the next three years.

One-third of respondents said that a top priority and significant challenge is making sure that their DB scheme is not a block to corporate activity, i.e. dividend policy, M&A activity, refinancing or restructuring plans.

While it's perhaps unsurprising that this came up so often in the responses, it does highlight the additional pressures on management time that this has created for companies.

In our experience, companies are especially struggling with knowing how to interpret compliance with PSA21 and to avoid accidently being on the wrong side of the law. One obvious example is the investigations and measures that a fundamentally sound company should take when considering some form of special dividend, a common business activity that now feels far more fraught than in the past.

TPR has provided helpful guidance and insight into what it would consider to be inappropriate behaviours by companies, but the tests to be applied are still subjective, as is the extent and nature of appropriate mitigation. While this flexibility in the system must be viewed as helpful, as regulation for corporate activity can't be a 'one size fits all' situation, that same flexibility makes it harder to build a statutory defence with confidence.

So where are companies on understanding the new requirements?

Of the 250 companies we spoke to, 60% said that they are familiar with the criminal offences and the new Contributions Notice requirements of PSA21.

That leaves a significant minority who are seemingly not aware of quite how the requirements could or should affect their company. Given the severity of the criminal offences, no company or director is going to want to be in that minority.

But are the new requirements having an impact in practice?

The answer is clearly yes!

55% of the companies we spoke to said that the PSA21 has affected their dividend policy. That's higher than we might have expected, given the improved funding position of many DB schemes.

A similar proportion of companies also said that the PSA21 has affected their recent commercial activity.

Key takeaways

1. DB pension commitments continue to be a significant financial concern for companies, and have implications on longer-term corporate strategy, especially through the lens of PSA21.
2. The PSA21 requirements introduced from October 2021 are already having an impact for the majority of companies.
3. However, for some companies more education is needed on the implications to dividend policy and corporate strategy.
4. There is a need for companies to embed clear audit trails for pension decisions and statutory defence documentation within their corporate governance.
5. The new notifiable events regime, when enforced, will make this especially true for all companies with DB plans, as it is expected to require companies to provide a 'declaration of intent' to the Regulator and the trustees by way of early notice of corporate transactions which could adversely affect a scheme.
6. Given the clear message from companies that PSA21 is impacting corporate behaviours, it will be interesting to see if that continues to be the case as scheme funding improves further and whether it serves to increase companies' appetite to proceed with scheme buy-outs as soon as is practicable.

In our next paper, we will look more closely at what companies are saying about future retirement provision strategies.

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Reminder of PSA21 terms

- Criminal offences – wide-ranging and can cover almost anyone whose actions affect a pension scheme. The offences are expected to relate to either an event whether there has been an avoidance of an employer debt, or an action that has been materially detrimental to the likelihood of accrued DB pension benefits being met.
- Contribution notices – can be exercised by TPR if the 'statutory defence' is not met. The grounds before 2021 were assessed using the material detriment test. However, there are now two new tests, namely the employer insolvency test and employer resources test. Both of these new tests are assessed against the section 75 debt position of that employer.
- New notifiable events regime (not yet introduced) – the employer-related events are expected to be extended in relation to corporate activity so that they cover when a company relinquishes control of the sponsoring employer (existing test), sells a material part of the sponsoring employer's business, or grants or extends relevant security such that the creditor ranks above the pension scheme.

  A new process is also expected whereby a notification must be given to TPR and the trustees when a decision in principle has been made for a notifiable event, but prior to commencing negotiations with other parties. A declaration of intent or accompanying statement will also need to be provided to TPR and the trustees when the main terms of the activity are proposed.