

## New criminal offences

### Pensions Regulator consults on guidance

The main differences between the Regulator's existing contribution notice powers and the new criminal offences are summarised in the table below:

	Contribution notices	New criminal offences
<b>Who can be liable</b>	<p>The employer or anyone “associated” with or “connected” to the employer.</p> <p>Exclusion for an appointed insolvency practitioner acting in accordance with their functions.</p>	<p>Any person.</p> <p>Exclusion for an appointed insolvency practitioner acting in accordance with their functions.</p>
<b>Statutory clearance</b>	<p>Available as a form of protection.</p>	<p>No statutory clearance available for criminal sanctions.</p> <p>Clearance of transactions may however assist in establishing a “reasonable excuse” against prosecution.</p>
<b>Other defences and protections</b>	<p>A statutory defence is available against contribution notices issued on a material detriment basis (s.38B of the Pensions Act 2004) provided that due consideration was given at the time to the impact on the scheme and, where relevant, appropriate mitigation was put in place.</p>	<p>The prosecution must prove that the person:</p> <ul style="list-style-type: none"> <li>as part of the offence of risking accrued scheme benefits, knew or ought to have known that their actions would cause material detriment and that they did not have a reasonable excuse; or</li> <li>as part of the offence of avoidance of an employer debt, intended the act or course of conduct to prevent the recovery of the s.75 debt or compromise the s.75 debt and that they did not have a reasonable excuse.</li> </ul>
<b>Limitation period</b>	<p>Six years of the act or failure to act.</p>	<p>There is no limitation period.</p>

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