

Notifiable events

REGULATORY
Code of
practice
02

Contents

Introduction	page 4
At a glance	page 5
What is the notifiable events duty?	page 6
Purpose of notifiable events	page 6
Legislative framework	page 7
Notification arrangements	page 7
Confidentiality	page 8
Public disclosure	page 8
Timing of notification	page 9
How to notify	page 10
Follow up by the Pensions Regulator	page 10
Failure to notify	page 11
<i>Trustees</i>	page 11
<i>Employers</i>	page 11
Annex (corresponding Northern Ireland legislation)	page 12
How to get in touch with us	back cover

Introduction

1. This code of practice is issued by the Pensions Regulator, the body that regulates work-based pension arrangements (occupational pension schemes, stakeholder pension schemes and certain aspects of personal pension schemes which have direct payment arrangements, whereby the employer pays contributions on behalf of the employee).
2. The Pensions Regulator's objectives are to protect the benefits of pension scheme members, to reduce the risk of calls on the Pension Protection Fund, and to promote the good administration of work-based pension schemes.
3. The Pensions Regulator has a number of regulatory tools, including issuing codes of practice, to enable it to meet its statutory objectives.
4. Codes of practice provide practical guidelines on the requirements of pensions legislation and set out the standards of conduct and practice expected of those who must meet these requirements. The intention is that the standards set out in codes are consistent with how a well-run pension scheme would choose to meet its legal requirements.

The status of codes of practice

5. Codes of practice are not statements of the law and there is no penalty for failing to comply with them. It is not necessary for all the provisions of a code of practice to be followed in every circumstance. Any alternative approach to that appearing in the code of practice will nevertheless need to meet the underlying legal requirements, and a penalty may be imposed if these requirements are not met. When determining whether the legal requirements have been met, a court or tribunal must take any relevant codes of practice into account.

Other relevant codes

Users of this code are also likely to find relevant the code of practice on reporting breaches of the law and the codes on late payments, and funding defined benefit schemes

At a glance

There are a number of notifiable events designed to give the Pensions Regulator early warning of a possible call on the Pension Protection Fund.

- The events fall into two groups:
 - (i) scheme-related – to be notified by trustees;
 - (ii) employer-related – to be notified by employers.
- Only schemes which are eligible for entry to the Pension Protection Fund, and their employers, are subject to the notifiable events duty.
- Some of the events only have to be notified by schemes that are funded below the Pension Protection Fund buy out level or where there has been a report of a materially significant failure by the employer to make a payment in accordance with the schedule of contributions. This and other exceptions to the duty to notify are contained in directions issued by the Pensions Regulator.
- If an event occurs it must be notified in writing to the Pensions Regulator as soon as reasonably practicable. Failure to notify should be reported as a breach of the law likely to be of material significance to the Pensions Regulator.

In this code of practice, references to the law that applies in Great Britain should be taken to include corresponding legislation in Northern Ireland; an annex lists the corresponding references.

The Code of Practice

Notifiable events

What is the notifiable events duty?

1. The duty to notify requires written notice to the Pensions Regulator of events:
 - i. in respect of pension schemes (scheme-related events); and
 - ii. in respect of employers, in relation to their pension schemes (employer-related events).
2. The duty to notify falls on trustees, individually as well as collectively¹, in respect of the former and employers in respect of the latter².
3. Notification is only required in respect of schemes which are eligible for entry to the Pension Protection Fund, and their related employers. In practice, the duty falls on pension schemes which are neither wholly defined contribution nor ineligible for the Pension Protection Fund by virtue of being in the public sector or other reasons³.

Purpose of notifiable events

4. The purpose of notifiable events is to reduce the risk of the circumstances which may lead to compensation being payable from the Pension Protection Fund. Calls on the Pension Protection Fund will arise when, broadly speaking, an employer becomes insolvent and its scheme is underfunded. Notifiable events will provide an early warning of possible insolvency or underfunding giving the Pensions Regulator the opportunity to assist, or to intervene, before a call is made. A consequence of intervention will also be in many cases to improve the protection of scheme members' benefits.

¹ Throughout this code any reference to trustees should be read as referring likewise to managers of non-trust based schemes which are eligible for entry to the Pension Protection Fund. In the case of corporate trustees it is the company which has the duty to notify.

² The Department for Work and Pensions has the power, which it has not exercised, to make regulations to require other groups to notify, for example advisers to schemes or employers connected or associated with the employer in relation to the scheme.

³ See section 126(1)(a) and (b) of the Pensions Act 2004 and regulations made under that section.

Legislative framework

- 5. The Pensions Act 2004 places a duty on the trustees of schemes, and employers, to notify the Pensions Regulator when certain events occur⁴.
- 6. Regulations made under section 69 of the Pensions Act 2004 set out which events have to be notified⁵.
- 7. Directions, issued by the Pensions Regulator, give exceptions to the duty to notify⁶. In summary, you need to notify fewer events if the scheme of which you are trustee or employer is funded above the Pension Protection Fund buy out level⁷, and is adhering to its schedule of contributions. The events which are not referred to in the directions have to be notified by all trustees or employers irrespective of the funding level of the scheme.

Notification arrangements

- 8. The Pensions Regulator appreciates that trustees in particular might prefer to agree a collective approach to notification. If, however, a consensus cannot be reached, or not all the trustees are aware of the event, the Pensions Regulator will expect an individual trustee or group of trustees to notify.
- 9. With respect to employer-related events, when the employer is a company the individuals who give effect to the legal personality of the company will be responsible for notification in the same way as they are for other legal obligations which fall on companies⁸. Employers may wish to channel notifications through one individual such as the company secretary.

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⁴ See section 69 of the Pensions Act 2004.
⁵ See The Pensions Regulator (Notifiable Events) Regulations 2005 (Statutory Instrument 2005/900). There may be additional regulations in future made under section 69. A description of the events is in separate guidance issued by the Pensions Regulator.
⁶ The directions are in separate guidance issued by the Pensions Regulator.
⁷ When the directions use the term 'Pension Protection Fund buy out level' this refers to the level of scheme funding (at the last formal actuarial valuation) which would be required to provide scheme members with the amount of compensation to be offered by the Pension Protection Fund. For these purposes this level should be calculated for each scheme on the same basis as will be used for assessing the size of the Pension Protection Fund's risk-based levy. This basis will be set out in regulations to be issued by DWP and guidance to be issued by the Board of the Pension Protection Fund.
⁸ Likewise, if the employer is not a company but is, for example, a partnership it is the individuals who give effect to the employer's legal personality who will be responsible for notification.

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- Confidentiality**
10. The Pensions Regulator acknowledges that some information which is notified may be confidential. Nevertheless the duty on employers and trustees to notify overrides any other duty of confidentiality⁹, and any such duty is not breached by notifying. There are also restrictions on the extent to which the Pensions Regulator can in turn pass on confidential information¹⁰.
- Public disclosure**
11. The Pensions Regulator does not require public disclosure of events notified to it. In the event that notification is made public by others, because for example an employer considers it necessary in order to comply with other legal requirements, the Pensions Regulator would draw attention to the following.
12. First, that notifiable events are only one of a number of requirements to provide information to the Pensions Regulator; others include to complete a scheme return. The provision of information to the Pensions Regulator should be regarded as a normal part of an employer's interaction with the Regulator.
13. Second, that the duty to notify is triggered automatically when an event occurs; not all the events, for example a change in credit rating, are under the direct control of an employer.
14. Third, and in contrast to certain other duties to report to the Pensions Regulator such as breaches of the law or failure to adhere to a schedule of contributions, the requirement to notify is not triggered by any wrongdoing by an employer (with the exception of a conviction of a director or partner of the employer for an offence involving dishonesty).
15. Fourth, that taken in isolation a notifiable event gives no indication of the financial position of an employer or of its pension scheme.

⁹ The requirement to notify does not however arise in certain circumstances. Communications (oral and written) between a professional legal adviser and his or her client, or a person representing that client, whilst obtaining legal advice, do not have to be disclosed (see section 311 of the Pensions Act 2004). Where appropriate a legal adviser will be able to provide further information on this.

¹⁰ See sections 82-87 of the Pensions Act 2004.

Timing of notification

16. An event must be notified in writing to the Pensions Regulator *as soon as reasonably practicable*. It is important that events are notified quickly in order to act as an effective early warning of calls on the Pension Protection Fund. What is reasonably practicable depends on the circumstances. In all cases however it implies urgency. For example, where a trustee is made aware of a notifiable event on a Sunday, the Regulator should be notified on Monday.
17. The requirement to notify as soon as reasonably practicable is likely to mean that procedures for notification will be necessary outside the usual framework for considering pensions issues such as trustees' quarterly meetings. Procedures should also be put in place to require those such as administrators working on behalf of trustees and employers to alert trustees and employers quickly to notifiable events.
18. The events are intended to be relatively straightforward to identify; it should not be necessary to seek professional or expert advice on whether an event has occurred. There is no expectation that the decision to notify should require a special meeting of the trustees.
19. The events are worded to make clear *when* they should be notified. In some cases the duty to notify arises before the actual event has taken place. For example, when an employer decides not to pay in full a debt it owes to the scheme, the notifiable event is when the decision is taken by the employer's decision-making body, such as its board of directors, rather than implementation of the payment itself.
20. In other cases events may not be able to be notified until after they have taken place, for example a change in credit rating.

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How to notify

21. All notifications must be in writing. Notifiers should where practicable use the standard form available on the Pensions Regulator's website at **www.thepensionsregulator.gov.uk**. Reports can be sent by post or electronically, including by email or by fax. Contact details and other information about the Pensions Regulator is on the Pension Regulator's website.
22. The minimum information that should be included in a notification is the:
- description of the notifiable event;
 - date of the event;
 - name of the pension scheme;
 - name of the employer; and
 - name, position and contact details of the notifier.
23. The information that would in addition be useful is the:
- address of the pension scheme;
 - name and address of the main trustee contact;
 - pension scheme registration number;
 - name and address of the main employer contact;
 - employer's current trading status; and
 - name of any controlling company or group to which the employer belongs.
24. The Pensions Regulator's preference is to be notified quickly than for there to be delay incurred in confirming exactly whether an event has occurred; whether the exceptions apply; or in obtaining all the information which would be useful.
- ### **Follow up by the Pensions Regulator**
25. Where contact details are provided, the Pensions Regulator will aim to acknowledge notifications within five working days of receipt.
26. Notifiable events will be one source of information for the Pensions Regulator. Follow-up will depend on the event and on other information known about the scheme, the trustees and the employer.

Failure to notify

Trustees

27. Trustees must take *all reasonable steps* to comply with the notifiable events duty. This is interpreted as whether, in the event of failure to notify when a scheme-related notifiable event has occurred, an objective person would consider that a trustee nevertheless took all the steps it would be reasonable to expect them to take in order to comply.

Employers

28. Employers must comply with the duty to notify unless they have a *reasonable excuse* for not doing so. This is interpreted as whether, when an employer-related notifiable event has occurred, an objective person would consider that there was nonetheless a reasonable basis for the failure by the employer to notify.

29. In practice this means that trustees *and* employers should:

- i. be aware of the notifiable events including those which all trustees and employers must notify;
- ii. know whether the scheme of which they are trustee or employer is required to notify all the events, ie is not within the exceptions; and
- iii. have a procedure which enables identification and notification to occur.

30. In the event of failure to notify, the Pensions Regulator will seek an explanation. Following this, it will have a range of actions it can take including requiring training or other assistance. Where appropriate, however, civil penalties can be imposed.

31. Failure to notify of itself will not lead to any transaction being unwound by the Pensions Regulator. However a court or tribunal may consider failure to notify if it considers it relevant; the Pensions Regulator will have regard to failure to notify any relevant event when deciding whether it is reasonable to issue a contribution notice¹¹.

32. If another party (such as a scheme actuary or an independent financial adviser), who is subject to the duty to report breaches of the law to the Pensions Regulator, becomes aware of a failure by trustees or an employer to notify, that party should report the failure as a breach of pensions legislation likely to be of material significance to the Pensions Regulator¹².

¹¹ See section 38 of the Pensions Act 2004.

¹² See section 70 of the Pensions Act 2004 and the code of practice on reporting breaches of the law.

Annex

GB legislative reference	NI legislative reference
Section 38 of the Pensions Act 2004 (Contribution notices where avoidance of employer debt)	Article 34 of The Pensions (Northern Ireland) Order 2005 (Statutory Instrument 2005/255 (N.I. 1)) (Contribution notices where avoidance of employer debt)
Section 69 of the Pensions Act 2004 (Duty to notify the Regulator of certain events)	Article 64 of The Pensions (Northern Ireland) Order 2005 (Statutory Instrument 2005/255 (N.I. 1)) (Duty to notify the Regulator of certain events)
Section 70 of the Pensions Act 2004 (Duty to report breaches of the law)	Article 65 of The Pensions (Northern Ireland) Order 2005 (Statutory Instrument 2005/255 (N.I. 1)) (Duty to report breaches of the law)
Sections 82-87 of the Pensions Act 2004 (Disclosure of information)	Articles 77-82 of The Pensions (Northern Ireland) Order 2005 (Statutory Instrument 2005/255 (N.I. 1)) (Disclosure of information)
Section 126 of the Pensions Act 2004 (Eligible schemes)	Article 110 of The Pensions (Northern Ireland) Order 2005 (Statutory Instrument 2005/255 (N.I. 1)) (Eligible schemes)
Section 311 of the Pensions Act 2004 (Protected items)	Article 283 of The Pensions (Northern Ireland) Order 2005 (Statutory Instrument 2005/255 (N.I. 1)) (Protected items)
The Pensions Regulator (Notifiable Events) Regulations 2005 (Statutory Instrument 2005/900)	The Pensions Regulator (Notifiable Events) Regulations (Northern Ireland) 2005 (Statutory Rule 2005 No. 172)

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