

Regulatory code of practice no. 6

# Reporting late payment of contributions to personal pensions

# Code of practice

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## **Introduction**

- i. Codes of practice are issued by the Pensions Regulator, the body that regulates work-based pension arrangements (occupational pension schemes and certain aspects of stakeholder and other personal pensions).
- ii. The Pensions Regulator's statutory 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.
- iii. The Pensions Regulator has a number of regulatory tools, including issuing codes of practice, to enable it to meet these objectives. The Pensions Regulator will target its resources on those areas where members' benefits are at greatest risk.
- iv. 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 the codes are consistent with how a well-run pension scheme would choose to meet its legal requirements.

### **The status of codes of practice**

- v. 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 provisions of a code of practice into account.

### **Other relevant codes of practice**

- vi. The code of practice on reporting breaches of the law sets out what is expected of managers, trustees and others in reporting matters of material significance to the Pensions Regulator. This code of practice on reporting late payments complements the reporting breaches code by giving specific guidelines for those involved with personal pension plans, including stakeholder plans, where a direct payment arrangement is in place.

## **The code at a glance**

The code sets out the Pensions Regulator's view of what constitute reasonable periods within which:

- employers must provide managers with information (to enable them to monitor the payment of contributions);
- managers must notify the Pensions Regulator where an employer's failure to provide information prevents them from monitoring payment of contributions; and
- managers must report late payments of contributions to the Pensions Regulator and to employees where they are likely to be of material significance to the Regulator in the exercise of its functions.

The code also provides examples of circumstances in which managers should normally make a report to the Pensions Regulator and employees, and circumstances where it would not normally be necessary.

## The code of practice

**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.**

### **Purpose of this code of practice**

1. The main purpose of this code of practice is to give guidelines on reporting late payment of contributions to the Pensions Regulator and to employees. These guidelines apply to managers of personal pensions (including stakeholder plans) where there is a direct payment arrangement. Managers are only required to report late payment of contributions where the late payment is likely to be of material significance to the Pensions Regulator. The code provides examples of when managers should or should not report.
2. The code also gives guidelines for managers on reporting to the Pensions Regulator the non-provision by employers of payment information needed for monitoring purposes.

### **To whom is this code directed?**

3. The code is directed at the managers of personal pension schemes, including stakeholder plans, where there is a direct payment arrangement in place. The code is also relevant to employers in relation to the provision of payment information needed by managers for monitoring purposes.

### **Terminology**

4. As the majority of personal pensions are run by managers rather than trustees, 'managers' is used throughout this document, but references to 'managers' also include trustees of trust-based personal pension schemes.
5. The term 'employee' is generally used rather than 'member' as the policyholders involved are all employees whose employer operates a direct payment arrangement.
6. The legislation requires managers to make reports of late payments which are likely to be of material significance to the Pensions Regulator in the exercise of its functions. In this document, these payments are referred to as 'material' or 'material late payments'.

7. The term 'late payment' describes circumstances where:

- i the payment is not received at all;
- ii the payment is received, but not on time; or
- iii the payment is not received in full.

Payments higher than expected but received on time are not late payments.

8. The term 'direct payment arrangement' describes an agreement by the employer to pay:

- i pension contributions deducted from the employee's pay (referred to as 'employee contributions');
- ii contributions by the employer (if any);
- iii or both of the above

to the provider of that employee's pension plan.<sup>1</sup>

9. References to 'days' mean all days. References to 'working days' do not include Saturdays, Sundays or bank holidays.

#### **Employer information within a reasonable period**

10. The Pensions Regulator expects that payment information will normally be provided promptly by employers as part of the normal business arrangements between the employer and manager. Exceptionally, where this is not the case, the managers may make a formal request to employers for information to enable them to monitor the payment of contributions. Employers must provide that information within a reasonable period.<sup>2</sup>

11. The Pensions Regulator expects that a reasonable period for employers to provide payment information will be within 30 days of the formal request by the managers.

#### **Reporting non-receipt of information within a reasonable period**

12. Managers must report to the Pensions Regulator within a reasonable period if they have not received payment information from the employer that they have requested in order to enable them to monitor payments due to the plan<sup>3</sup> and because of that failure are unable to monitor payments.

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<sup>1</sup> Section 111A(2) Pension Schemes Act 1993.

<sup>2</sup> Section 111A Pensions Schemes Act 1993 as amended by section 268(2) Pensions Act 2004.

<sup>3</sup> Section 111A(7) Pension Schemes Act 1993 as amended by section 268(2) Pensions Act 2004.

Managers may report to employees the non-provision of payment information by employers but are not required to do so.

13. The Pensions Regulator expects that a reasonable period for managers to report non-receipt will be within 60 days of the formal request. A report should not be made if the manager expects to receive the information shortly.

#### **Reporting late payments: the legal requirement**

14. Managers must<sup>4</sup> report to the Pensions Regulator and employees within a reasonable period after the due date if:
- i. employee contributions and/or employer contributions are not paid on time; and
  - ii. the managers have reasonable cause to believe that the late payment of contributions is material.
15. The employer must pay employee contributions so that the manager receives them within 19 days from the end of the calendar month in which they were deducted from pay. This is the 'due date'<sup>5</sup> and is the legal deadline by which the manager must receive employee contributions.
16. Under the terms of some employees' plans there may be a contribution pay date. This is the payment date when the manager expects to receive the contributions from the employer.
17. The employer must pay employer contributions (those the employer pays for its employees) so that the manager receives them by the due date the employer has agreed with the manager.

#### **Action on non-receipt of contributions**

18. Where managers identify a late payment, they should take action to obtain any contributions that are still outstanding. They should do this by raising the matter with the employer as soon as practicable.

#### **How sure managers need to be before reporting**

19. Managers must report to the Pensions Regulator when they have 'reasonable cause to believe' that a late payment is likely to be of material significance to the Pensions Regulator in the exercise of its functions. 'Reasonable cause to believe' means more than an unsubstantiated suspicion. Managers should therefore satisfy themselves that a late payment of contributions has occurred and that it is material.

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<sup>4</sup> Section 111A(7A) Pensions Schemes Act 1993 as amended by section 268(2) Pension Act 2004.

<sup>5</sup> Regulation 5 of the Personal Pension Schemes (Payments by Employers) Regulations 2000 (Statutory Instrument 2000/2692).

### **Deciding whether to report**

20. Managers should use their judgement to assess whether they need to report to the Pensions Regulator and employees, taking account of the points in 21 to 23 below.

The following section sets out which late payments are likely to be considered material.

### **Late payments which managers should report**

21. Managers must report material late payments to the Pensions Regulator and employees. Circumstances which are likely to be material and which the managers should report include:

- i. where contributions remain unpaid 90 days after the due date (unless it is a one-off or infrequent administration error, which is discovered after the 90 days, and which is corrected when found or is thereafter corrected as soon as practicable);
- ii. where there is a late payment involving possible dishonesty or a misuse of assets or contributions. For example, managers may have concerns that the employer is using the contributions to alleviate cashflow difficulties;
- iii. where there is a failure to pay contributions which carries a criminal penalty. For example, where the employer is knowingly concerned in the fraudulent evasion of the obligation to pay employee contributions;
- iv. where the managers become aware that the employer does not have adequate procedures or systems in place to ensure the correct and timely payment of contributions due and appears not to be taking adequate steps to remedy the situation;
- v. where there is no early prospect of outstanding contributions being paid, for example because of the financial circumstances of the employer or for any other reason.

There is no requirement or expectation that managers should actively search for circumstances such as those noted in points ii to v above. However, if managers become aware of any such circumstances they should be reported.

The above list is illustrative only and is not exhaustive.

### **Late payments which managers should not normally report**

22. Managers should not normally report to the Pensions Regulator where one of the following circumstances applies, even if contributions remain unpaid 90 days after the due date:

- i. where there are infrequent late payments and the overdue contributions have now been paid, or arrangements are being put in place for the prompt payment of the overdue amount, for example, an administrative error which is corrected as soon as practicable and where reasonable steps are being taken to avoid a recurrence;
- ii. where there are four or fewer employees with a direct payment arrangement with the same employer and same provider, unless the situations in 21 ii and/or 21 iii above apply;
- iii. where there are short periods of lateness of contributions resulting from, for example, employees leaving, new employees joining, or changes in salary not being notified to managers;
- iv. where a claim has been submitted to the Redundancy Payments Service of the Department of Trade and Industry for the outstanding contributions.

The above list is illustrative only and is not exhaustive.

23. Managers may need to report, however, where more than one of the circumstances in 22 applies, as a combination of minor factors may mean that the late payments become materially significant to the Pensions Regulator.

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| <b>Reasonable period for reporting to the Pensions Regulator</b> |
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24. This section sets out what the Pensions Regulator considers to be a reasonable period for managers to report to us. Managers must make a report within a reasonable period after the due date. The more serious the risk of contributions remaining unpaid, the shorter the reasonable period becomes.

25. The Pensions Regulator considers that a reasonable period for managers to send reports (electronic or paper-based) of late payments will normally be within 10 working days of identifying that a late payment is material. For example, in the case of non-payment of contributions 90 days after the due date, managers should report at the latest within 10 working days after the end of the 90 day period, ie 90 days after the due date plus 10 working days.

26. Exceptionally, where there is a current or imminent danger to employees' and/or the employer's payments unless immediate preventative action is taken, managers should report urgent situations immediately by telephone as soon as they become aware of the occurrence. The managers should then confirm telephone reports in writing, for example by letter or email, as soon as reasonably practicable and in any event within 10 working days.

### **Reasonable period for notifying employees**

27. If managers make a late payment report to the Pensions Regulator, they must also report to employees within a reasonable period after the due date. If the managers do not need to report to the Pensions Regulator, they are not required to report to employees. The Pensions Regulator expects managers to notify only those employees in respect of whom contributions are late. Managers may also notify other employees if they choose to.
28. Where managers make an urgent telephone report to the Pensions Regulator as in 26 above, they should report the material late payment to the employees as soon as reasonably practicable afterwards (unless they have already done so: see 30 below). The Pensions Regulator expects that a reasonable period for managers to make such a report will be within 30 days of the telephone call at the latest and, where practicable, reports should be made earlier.
29. In other circumstances requiring a report to employees, the Pensions Regulator expects managers to report as soon as reasonably practicable and in any event within 30 days. For example, as noted above, one of the circumstances in which managers should report to the Pensions Regulator is where contributions are outstanding 90 days after the due date (unless a late payment is deemed material before this point). In this situation, the Pensions Regulator considers that a reasonable period within which it expects managers to make such a report to employees (unless they have already done so) will be within 30 days following the end of the 90 day period, ie 120 days after the due date. This is the maximum period normally expected and, where practicable, reports should be made earlier.
30. Managers can of course report late payment to employees earlier than 90 days after the due date if they wish to, whether or not they consider it to be material. This is likely to be their favoured option if, for example, they consider that it may cause the employer to rectify the situation more quickly. If managers make an early report to employees there will be no need for them to make a further report to employees within 30 days of the 90 days, although they may wish to keep employees informed. They should still make a report to the Pensions Regulator after 90 days unless they have already done so.

## Annex (corresponding Northern Ireland legislation)

| GB Legislation  | NI Legislation  |
|---|---|
| Sections 111A of the Pension Schemes Act 1993 (c.48), as amended by Section 268 of the Pensions Act 2004 (c.35) | Section 107A of the Pension Schemes (Northern Ireland) Act 1993 (c.49) as amended by Article 245 of the Pensions (Northern Ireland) Order 2005 (SI 2005/255 (NI 1)) |
| Section 90(2)(a),(j) of the Pensions Act 2004   | Article 85(2)(a) and (j) of the Pensions (Northern Ireland) Order 2005  |
| Regulation 5 of the Personal Pension Schemes (Payments by Employers) regulations 2000 (SI 2000/2692)            | Regulation 5 of the Personal Pension Schemes (Payments by Employers) Regulations (Northern Ireland) 2000 (SR 2000 No. 349)  |