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pensions reform

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The Pensions Regulator – ignore it at your peril

What does the arrival of the new Pensions Regulator from April 2005 signify for your scheme? The Pensions Act 2004 is seen by some as a landmark that will secure and strengthen the UK's private pension tradition. The new proactive Pensions Regulator will assist by protecting members' benefits. Here we take a glimpse at just some of the new Regulator's powers and also highlight some specific action points for employers and trustees.

New Act, New Acronym

TPR's objectives

- The Act provides for the Pensions Regulator (TPR) to replace the Occupational Pensions Regulatory Authority (Opra).
- TPR's objectives are to:
  - protect members' benefits;
  - reduce the risk of compensation becoming payable from the Pension Protection Fund;
  - promote and improve good scheme administration.

TPR's powers

A new approach?

- TPR will inherit all of Opra's existing powers, but also comes equipped with some significant extras.
- It will adopt a more proactive regulatory approach by:
  - collecting detailed information about all schemes;
  - focusing attention on higher risk "situations";
  - reducing the regulatory burden for well-run schemes;
  - exercising new powers where members' benefits are adjudged "at risk";
  - issuing codes of practice.

Protecting members' benefits

Some new powers

In pursuit of member protection, TPR can:

- issue improvement and third party notices compelling schemes to take specified action to remedy identified problems;
- freeze a scheme whilst it investigates matters further;
- make orders requiring assets to be restored to pension schemes in certain circumstances[1].

1 For example, where a member has been duped into transferring benefits to a sham scheme

Gathering information

The new "whistleblowers"

- Like Opra, TPR will rely on "whistleblowers" to report breaches of the law.
- From April 2005, compulsory "whistleblowers" will include trustees, employers and professional advisers generally.
- A draft code of practice was issued in December 2004 setting out a traffic light system for reporting breaches.

Action employers / trustees to establish internal procedures to meet the new whistleblowing responsibilities (including keeping records of breaches) by April 2005.

Gathering information

Protecting the PPF

- From May 2005, employers and trustees of schemes potentially eligible for the PPF[2] will also need to notify TPR of certain events (eg deciding to compromise a scheme debt).
- TPR will generally expect to hear from employers / trustees within 5 working days.

Action employers / trustees to establish internal procedures by May 2005.

Protecting the PPF

"Moral hazard"

- TPR's anti-avoidance powers[3] are amongst its most controversial, and include the ability to:

  - issue contribution notices where a scheme debt has been avoided;
  - require financial support for an underfunded scheme;
  - impose restoration orders where there has been a transaction at an undervalue involving scheme assets.

Action employers / trustees beware taking steps (or not taking steps) which may affect scheme funding or an employer's ability to meet scheme debt.

Will TPR be effective?

- TPR's powers are clearly more far-reaching than those currently enjoyed by Opra, covering a wide range of acts and individuals.
- They may therefore come as a surprise to the unsuspecting.
- Employers and trustees should consider carrying out a pre-April 2005 audit to ensure that they are ready for the regulatory future.

2 For example, defined benefit schemes
3 See our November 2004 Sackers Extra News: "Anti-avoidance – a 'moral hazard'?"

This edition of Sackers Extra News is part of a series focusing specifically on pensions reform to keep you abreast of the key issues throughout this period of change.

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