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Protecting the PPF – draft code on notifiable events

1 BACKGROUND

On 10 December 2004, the second code of practice under the Pensions Act 2004 was published in draft for consultation. The consultation period ends on 4 March 2005, with the code expected to take effect by May 2005.

The consultation paper sets out a framework for notifying the Pensions Regulator (TPR) of certain events in schemes which are potentially eligible for compensation from the Pension Protection Fund (PPF)[1]. The parties on the hook to notify such events "as soon as reasonably practicable" are trustees and employers of such schemes.

2 THE FRAMEWORK IN BRIEF

Essentially, written notice will need to be given to TPR of events:

- relating specifically to the pension scheme (scheme-related events);
- relating to scheme sponsoring employers (employer-related events).

Trustees (or scheme managers) need to notify scheme-related events, and employers are obliged to notify employer-related events. Trustees and employers who fail to notify may face civil penalties or other measures imposed by TPR.

3 WHAT TO REPORT

The events which will need to be reported to TPR are to be set out in regulations, but examples from the consultation draft are noted below.

Generally speaking, if a scheme does not pose a significant risk to the PPF, TPR will not expect to be notified of all the events listed in the consultation draft. However, some events (those noted in italics below) are to be classified as "serious" and must be notified to TPR when they occur. This is because they represent events which are

[1] For example, defined benefit schemes

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generally irreversible and may increase the risk posed by the scheme to the PPF.

- **Scheme-related events (trustees)**
  - *trustees deciding to compromise a scheme debt;*
  - *significant reduction in scheme membership (e.g. a fall of more than 20% in the number of actives since the last return to the register of pension schemes);*
  - two or more changes of professional adviser in the previous 12 months;
  - deciding to merge schemes (or knowledge of a merger);
  - *on a redundancy, the provision of augmented early retirement benefits without such additional funding as the scheme actuary advises being made available.*
- **Employer-related events (employers)**
  - *an employer deciding to seek to compromise a scheme debt;*
  - *any decision by the employer to cease having a place of business in the UK;*
  - 20 or more redundancies at one establishment within a 90-day period;
  - a "significant" change in the employer's credit rating;
  - *the employer receiving advice that it is trading wrongfully;*
  - two or more changes in the chief executive or "the director responsible in whole or in part for the financial affairs of the employer" within the previous 12 months;
  - *the conviction of a senior officer or partner for a dishonesty offence.*

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4 WHEN NOT TO REPORT

TPR will issue directions setting out exceptions to the duty to notify. Not surprisingly, the exceptions will only apply to "non-serious events" where:

- the scheme is funded at or above the PPF buy-out level; and
- no report has been made by the trustees of a "materially significant failure by the employer" to make payments in accordance with the schedule of contributions.

Because the PPF is only being introduced in April 2005 and the PPF buy-out level may not be known until some time later, transitional provisions will apply between the commencement of the code and 6 April 2009. Under the transitional provisions, a scheme may still be able to meet the first limb of the exception if it was 100% funded on the minimum funding requirement basis at its most recent valuation.

5 A WORKABLE SOLUTION?

In devising the draft code, four overseas regulators were contacted to see if they had a similar notification system in place (but only the US Pension Benefit Guaranty Corporation proved analogous). The Government is obviously keen to make the draft code work. The reporting framework under the draft code will therefore be reviewed after a year.

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