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# PENSIONS ACT 2004 – IN FORCE FROM 6 APRIL

## 1 INTRODUCTION

Parts of the Pensions Act 2004 come into force on 6 April 2005. In the lead up, we thought it would be helpful to provide you with a quick recap of the areas coming into force. These are:

- The Pensions Regulator (including the "moral hazard" powers);
- The Pension Protection Fund (PPF);
- Pension protection on transfer of employment; and
- Changes to pension increases (LPI).

We deal with each of these areas in more detail below.

## 2 THE PENSIONS REGULATOR

From 6 April 2005, the current pensions regulator, the Occupational Pensions Regulatory Authority (Opra) will be superseded by the Government's new kind of Regulator.

Useful information about the Pensions Regulator (the Regulator) (and copies of the Codes of Practice it has produced so far) can be found on its new website: http://www.thepensionsregulator.gov.uk

### 2.1 Objectives

One of the criticisms of Opra has been that it did not have clear objectives, which led to "box ticking" compliance. By contrast, the Regulator has three stated objectives which will inform its regulatory approach. They are:

- protecting members' benefits;
- reducing the risk of "situations arising" which may result in calls upon the PPF; and

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- promoting and improving "understanding of…the good administration of work-based pension schemes" (which includes occupational, stakeholder and some personal pension schemes).

## 2.2 Codes of Practice

As well as being reactive, the Regulator will be proactive. The Regulator will publish 11 Codes of Practice (at the last count). We have already had consultation on four of these:

- Whistleblowing;
- Notifiable Events;
- Trustee Knowledge and Understanding; and
- (most recently) Scheme Funding[1].

## 2.3 Whistleblowing and Notifiable Events

From 6 April 2005, the responsibility for reporting significant breaches of pensions law will apply to a considerably expanded group, including trustees, scheme managers, administrators, professional advisers and employers of all occupational pension schemes. The Regulator published a draft Whistleblowing Code of Practice back in December 2004[2], the final version of which was recently laid before Parliament. The Code of Practice categorises breaches as "red", "green" or "amber" depending on their severity.

All trustees (and employers) need to have a reporting procedure in place so that they can notify the Regulator of significant breaches as and when they occur (the Code also expects records to be kept even if the breach is "green" and does not require reporting). All

[1] See Sackers Extra Alert "Scheme Funding – Consultation Published" dated 22 March 2005

[2] For further details see Sackers Extra Alert "Whistleblowing - draft code of practice published" dated 9 December 2004

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trustees should therefore have their own copy of the Code and be familiar with its requirements (or risk falling foul of the new Regulator.)

Also, from April or May 2005 (this date is yet to be fixed), trustees and employers of schemes potentially eligible for the PPF will have to notify the Regulator of certain events. Examples include proposals to merge schemes and compromise scheme debts, but the requirement also extends to general events affecting the employer's business. [3]

It is vital for both trustees and employers to have a procedure in place so that they can meet their reporting requirements (the time-frame for reporting is tight, generally within 5 working days). Therefore, this draft Code is essential reading.

For copies of the Whistleblowing Code and the draft Notifiable Events Code, please see the Regulator's website (see above for link).

## 2.4 Moral Hazard

The Regulator will be responsible for operating the sections of the Pensions Act 2004 which cover "moral hazard" (otherwise known as anti-avoidance).

Designed to protect members' benefits and the PPF from claims, the anti-avoidance provisions build on and extend the scope of the existing debt on the employer provisions in section 75 of the Pensions Act 1995. The Regulator has three key powers – Contribution Notices, Financial Support Directions and Restoration Orders.[4] Any party who is concerned that one of these powers may be used can apply to the Regulator for clearance (i.e. confirmation that it will not use its powers under these sections).

We are expecting the Regulator to publish details of its Clearance Procedure shortly.

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[3] See Sackers Extra Alert "Protecting the PPF – draft code on notifiable events" dated 14 December 2004

[4] See Sackers Extra News "Anti-avoidance – a Moral Hazard?" (November 2004)

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### 2.5 Pension Liberation

Finally, from 6 April, the Regulator will have new powers to combat pension liberation or "trust-busting", including power to restrain a liberator's bank account or to apply to the court for a restoration order.[5]

## 3 THE PENSION PROTECTION FUND

The PPF will be operational from 6 April 2005. The PPF will provide protection to members of underfunded defined benefit (DB) schemes whose employers become insolvent.

If a scheme member has reached "normal pension age", or is in receipt of an ill-health pension, he will generally be entitled to 100% of his benefits (although with capped increases) if the scheme enters the PPF. However, if he is an active or deferred member under normal pension age (or is an early retiree) he will only be entitled to 90% of his benefits subject to an overall compensation cap (which currently equates to a maximum possible pension of £25,000 a year).

### 3.1 Eligibility

- Some key information regarding eligibility for entry to the PPF has emerged in recent days. As expected, only schemes which start winding-up on or after 6 April 2005 will be eligible.

- A list of the types of schemes which are excluded (i.e. not "eligible schemes") has been included in Regulations.[6] Public sector schemes and unapproved schemes will be excluded as well as schemes which have entered into a compromise agreement (for a section 75 debt) with the employer for a sum which provides for less than the PPF level of benefits.

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[5] See Sackers Extra News "New moves to curb pensions liberation" (August 2004)
[6] The Pension Protection Fund (Entry Rules) Regulations 2005

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### 3.2 Scheme priority order

To tie in with the PPF, a new statutory priority order will be introduced for schemes winding-up on or after 6 April 2005, and is broadly:

1. Liabilities secured externally with an insurer before 6 April 1997;
2. Benefits not exceeding the corresponding PPF benefits;
3. AVCs providing defined benefits (that are not counted under 2);
4. Any other liability in respect of pensions or other benefits.

## 4 PENSION PROTECTION ON TRANSFER OF EMPLOYMENT

The Transfer of Employment (Pension Protection) Regulations 2005 come into force on 6 April 2005 and implement the new requirements under the Pensions Act 2004 that, on a TUPE transfer, certain employees who were either members or were eligible for membership of the transferor's occupational pension scheme will qualify for pension protection.[7]

A copy of the final Regulations can be found at: http://www.hmso.gov.uk/si/si2005/20050649.htm

## 5 LPI CHANGES

The Pensions Act 2004 will relax the requirements relating to indexation by obliging DB schemes to increase pensions in payment only by inflation, capped at 2.5% each year (the Pensions Act 1995 had put the cap at 5%). This will not be retrospective but will apply to benefits accrued on or after 6 April 2005. For defined contribution schemes, the need for index-linked benefits is removed altogether. Dependent on the scheme rules, an amendment may be needed for schemes to take advantage of these relaxations.[8]

[7] See Sackers Extra News "TUPE Transfers – New Pension Protection" (March 2005)
[8] See Sackers Extra News "Increasing pensions in payment – simplification or complication?"(March 2005)

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