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A quick guide to notifiable events

Trustees and employers of Pension Protection Fund-eligible pension schemes are required to provide written notice to the Regulator of certain 'notifiable events' in relation to the scheme or a sponsoring employer. Some of these are not immediately obvious as pensions-related events, but the system is designed to give the Regulator early warning of a risk to the security of members' benefits and a possible call on the PPF.

What events need to be reported?

The duty to report notifiable events only applies where the event relates to a pension scheme which is eligible for compensation from the PPF (broadly, private sector occupational pension schemes that are not wholly money purchase; some small schemes are also excluded).

Some notifiable events are scheme-related events which are reportable by trustees, others are employer-related events in relation to which the duty to notify falls on the employer. They are also split into two categories:

- 'serious events' which must always be reported; and
- 'non-serious events' which only need to be notified if certain other circumstances apply – for example, scheme funding is below the PPF buy-out level or there has been a recent history of materially significant payment failure by the employer.

The term 'PPF buy-out level' refers to the level of scheme funding which would be required to provide members with the benefits provided under the PPF (the same basis as is used for assessing the scheme's risk-based PPF levy).

The table at the end of this note summarises the events which need to be reported.

Who should make the report?

For scheme-related events, the duty to notify falls on the trustee(s). In the case of a corporate trustee, it is the trustee which has the duty to notify (rather than individual directors personally). For a non-incorporated trustee body, the duty falls on trustees individually as well as collectively – if not all of the trustees are aware of the event, or there is no consensus about notification, the Regulator expects one or more individual trustees to notify.

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For employer-related events, the duty to notify applies to employers; the Regulator suggests that employers may wish to channel notifications through one individual, such as the company secretary.

How and when to notify

Reports to the Regulator about notifiable events must be made as soon as reasonably practicable – the exact timing will depend on the circumstances, but in all cases urgency is implied (the Code of Practice gives the example that where a trustee is made aware of a notifiable event on a Sunday, the Regulator should be notified on the Monday). Reports are normally made online via the Regulator's information system, Exchange.

What happens next?

The Regulator will aim to acknowledge notifications within five working days of receipt. Any follow-up will depend on the seriousness of the event itself and on other information known about the scheme or employer. Action by the Regulator might include providing education, issuing orders to 'freeze' a scheme or issuing contribution notices or financial support directions.

What about confidentiality?

Some information (for example, lawyer/client communications or commercial information) which falls within the scope of the notifiable events duty may be confidential. Lawyer/client communications for the purposes of obtaining advice, or in connection with/in contemplation of legal proceedings, remain protected, but most other duties of confidentiality are overridden by the requirement to notify.

The Regulator stresses in its Code of Practice that the provision of information to the Regulator should be considered part of 'business as usual'. Notifiable events do not necessarily reflect poorly on the employer's financial position or (in most cases) imply any wrongdoing – the duty is triggered automatically by the occurrence of particular specified events.

Consequences of non-compliance

Failure to notify will not of itself lead to any transaction being unwound, but the Regulator has said that it may have regard to failure to notify any relevant event when deciding whether it is reasonable to issue a contribution notice.

The Regulator also has power to impose penalties for failure to notify, unless (as relevant) the trustees can show that they took all reasonable steps to comply with the duty, or the employer can show that it had a reasonable excuse for non-compliance. Penalties could include a fine of up to GBP5,000 for an individual and up to GBP50,000 in the case of a corporate breach.

In addition, failure to report a notifiable event would be a breach of the law, triggering a separate duty to report to the Regulator – so if relevant advisers (such as the scheme actuary) become aware of a failure to report a notifiable event, they are required to 'blow the whistle'.

Action points

Trustees and employers need to have effective arrangements in place to alert them to potential notifiable events and to report them appropriately. Notifiable events should be straightforward to identify without seeking professional advice on whether an event has occurred.

Trustees should require administrators and the scheme actuary to alert them quickly to potential notifiable events (for example, a proposed transfer representing more than 5% of the scheme's assets where funding is below the PPF buy-out level). It may be useful to have a standing agenda item at the end of trustee meetings to consider whether any duty to notify arises as a result of matters discussed (for example agreements to early retirements on generous terms).

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Events reportable by trustees

<table>
<tr><th></th><th>Event</th><th>Should the trustees notify?</th></tr>
<tr><td>1.</td><td>Trustees decide to grant benefits, or a right to benefits, on more favourable terms than under the scheme rules without obtaining actuarial advice or securing extra funding if the actuary advises this.</td><td rowspan="3">Serious event. Always notify.</td></tr>
<tr><td>2.</td><td>Trustees decide to take action which will, or is intended to, result in the entering into of a scheme apportionment arrangement on or after the applicable time[1] or a flexible apportionment arrangement taking effect.</td></tr>
<tr><td>3.</td><td>Trustees decide to take action to compromise a debt owed to the scheme where the value of the relevant debt is 0.5% or more of the scheme's assets (valued on the PPF buy-out basis).</td></tr>
<tr><td>4.</td><td>Trustees decide to make or accept a transfer payment, or are required to make or accept a transfer payment without such a decision having been taken, where the value of this transfer payment is more than:
– 5% of the scheme assets; or
– £1.5m (whichever is lower).[2]</td><td rowspan="3">Non-serious event. Only need to notify where:
– the scheme is less than 100% funded on the PPF buy-out basis (i.e. the level of funding needed to provide members with PPF compensation);
and/or
– in the last 12 months, the trustees had a duty to report a 'materially significant failure' by the employer to contribute to the scheme in accordance with the schedule of contributions.</td></tr>
<tr><td>5.</td><td>Trustees decide to grant benefits, or a right to benefits, to a member, or are required to grant benefits or a right to benefits without such a decision having been taken, where the cost of the right or benefits is more than:
– 5% of the scheme assets; or
– £1.5m (whichever is lower).</td></tr>
<tr><td>6.</td><td>Trustees decide to take action to compromise a debt owed to the scheme where the value of the relevant debt is less than 0.5% of the scheme's assets (valued on the PPF buy-out basis).</td></tr>
</table>

[1] The applicable time is when a debt under section 75 of the Pensions Act 1995 falls to be calculated.
[2] For most schemes (i.e. those with assets of more than £30m), the £1.5m test will be the relevant one. For smaller schemes (i.e. those with assets of £30m or less), the 5% test will be the relevant one.

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Events reportable by employers

<table>
<tr><th></th><th>Event</th><th>Should the employer notify?</th></tr>
<tr><td>1.</td><td>Employer decides to compromise a debt owed to a scheme.</td><td rowspan="3">Serious event. Always notify.</td></tr>
<tr><td>2.</td><td>Employer decides to cease carrying on business in the UK or actually ceases business in the UK without such a decision having been taken.</td></tr>
<tr><td>3.</td><td>Employer receives advice that it is trading wrongfully within the meaning of s.214 Insolvency Act 1986, or a director/former director of the employer knows that there is no reasonable prospect that the employer will avoid going into insolvent liquidation.</td></tr>
<tr><td>4.</td><td>Employer breaches a banking covenant, except where the bank waives its right to enforce the covenant.</td><td rowspan="2">Non-serious event. Only need to notify where:
– the scheme is less than 100% funded on the PPF buy-out basis;
and/or
– in the last 12 months, the trustees had a duty to report a ‘materially significant failure’ by the employer to contribute to the scheme in accordance with the schedule of contributions.</td></tr>
<tr><td>5.</td><td>Decision by a controlling company to relinquish control of the employer (where the employer is a company), or the controlling company actually relinquishes control of the employer without a decision to do so having been taken.</td></tr>
<tr><td>6.</td><td>Conviction in any jurisdiction of any individual for an offence involving dishonesty, if the offence was committed while the individual was a director or partner of the employer.</td><td>Serious event. Always notify.</td></tr>
</table>

Where a withdrawal arrangement or an approved withdrawal arrangement is in force in relation to a scheme, then each of the guarantors is required to notify if an event of the type listed in 1-6 above, or an insolvency event, occurs in relation to that person.

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