Technical Briefing

No.10

cprm
actuaries and consultants

Notifiable Events Requirement

Overview

Section 69 of the Pensions Act 2004 along with the Notifiable Events regulations (SI 2005/900) require trustees and their sponsoring companies to inform the Pensions Regulator should they become aware of a notifiable event. The purpose of these measures is to reduce the risk and severity of calls upon the Pensions Protection Fund. The duty to report was introduced with effect from 6 April 2005

The duty to notify the Pensions Regulator applies to all approved defined-benefit schemes (apart from a very small number of exempted schemes) that had not commenced winding up on 6 April 2005. This legislation overrides the duty of confidentiality and requires that the trustees and /or company notify the Pensions Regulator as soon as reasonably practicable. The Regulator has issued a Code of Practice in this regard.

Failure to notify attracts the civil penalties contained in the Pensions Act 1995 of a maximum fine of up to £5,000 for an individual and up to £50,000 in any other case.

In general, trustees are required to notify the Regulator of scheme-related events whilst companies are required to notify the Regulator of employer-related events.

Notifiable Events

The following list of events would require automatic notification to the Regulator.

- Favourable benefits are granted without actuarial advice
- The employer compromises a scheme debt
- The employer ceases UK trading
- The employer is wrongfully trading
- Knowledge that an employer insolvency is unavoidable
- A director of the employer is convicted for an offence of dishonesty

The following events should also be reported (unless the conditions shown overleaf apply).

- The trustees seek to compromise a scheme debt (A, B & C)
- Two or more scheme actuary/auditor appointments occur in the previous 12 months (A & B)
- Two or more changes take place in the previous 12 months in the post of Chief Executive Officer or Finance Director/Partner (A & B)
- A transfer value payment is made that exceeds 5% of the scheme's assets (or exceeds £1.5m, if less) (A & B)
- The trustees grant benefits to a member exceeding 5% of the scheme's assets (or exceeds £1.5m if less) (A & B)
- An unauthorised breach by the employer of a banking covenant takes place (A & B)
- A change in (or loss of) employer's credit rating takes place (A, B & D)
- The controlling company relinquishes control of the employer (A & B)

Note that the duty to notify falls at the point the trustees or employer become aware that the event will take place, which may occur before the event has actually occurred.

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Timing

The Pensions Regulator expects reports to be made as soon as reasonably practicable. This means that the Regulator recognises that circumstances can affect the time taken to report and cites as an example the situation where a trustee becomes aware of a notifiable event on a Sunday and recognises that it is reasonable for the trustee to wait until the Monday before notifying the Regulator.

Exemption Conditions

Some of the above events do not need to be notified if the conditions as marked all apply.
These conditions are as follows.

A At the last valuation, the scheme was funded at or above the PPF buy-out / MFR level, whichever applies to the scheme at that time.
B The trustees or managers have not incurred a duty to report a failure of the employer to pay contributions in the last twelve months.
C The amount of any debt is less than 0.5% of the scheme's assets on the PPF buy-out / MFR basis, whichever applies at that time.
D The change in credit rating is other than from investment grade to sub-investment grade, where the credit rating is provided by a recognised credit rating agency.

Further Information

The Pensions Regulator has issued a Code of Practice to help ensure trustees and companies recognise when a notifiable event has occurred and make clear the reporting requirements placed upon them in such a situation. The Code of Practice can be found at:

http://www.thepensionsregulator.gov.uk/pdf/codeNotifiableFinal.pd

CPRM Commentary

The Pensions Regulator is charged with minimising the call upon the PPF and the events listed above are those the Pensions Regulator believes would be the first indication that a scheme could fall into the Pensions Protection Fund (PPF) in the near future. By requiring trustees and companies to inform it at the earliest opportunity, the Pensions Regulator believes it will be able to minimise any eventual call upon the PPF.

Many trustees and company executives will be unaware that this new requirement has been placed upon them and so it is important that they familiarise themselves with the list of events and their duties they must carry out should they become aware that such an event has taken place or is due to take place.

If you would like further advice on this or other pension issues, please contact either Walker Yule or Philip Wheeler in Edinburgh (0131 220 8247) or Simon Chrystal in Newcastle (0191 233 9408).