



simply pensions

September 2005

➔ Pensions Act 2004 reporting breaches of legislation

Here we give information for trustees of money purchase schemes about a new requirement for certain breaches of legislation to be reported to the Pensions Regulator.

The Pensions Act 2004 is mainly concerned with increasing protection for members of occupational pension schemes. As part of this, certain people now have a duty to tell the Pensions Regulator if they become aware that certain aspects of pensions law are being breached. This reporting is often referred to as 'whistleblowing'.

This newsletter provides information about the new requirement. You can find more information in the Pension Regulator's Code of Practice, which is available on its website at:

🌐 www.thepensionsregulator.gov.uk

Who has to report breaches?

The Pensions Act 1995 introduced a requirement for appointed actuaries and auditors to report breaches of pensions law to the pensions regulator. The Pensions Act 2004 extended this, so that the following people now have a legal duty to report breaches:

- Trustees of occupational pension schemes: where individuals are trustees, each individual trustee is responsible for reporting; where a corporate body is trustee, the duty falls on the board of the corporate body.

- Managers of personal pension schemes and stakeholder pension schemes.
- People involved in scheme administration, including insurance companies, employers who provide staff to carry out administration tasks, and financial advisers who provide administration services to trustees or act as intermediaries receiving and forwarding documents.
- Employers with an occupational pension scheme (including participating employers in a multi-employer scheme).
- Professional advisers appointed by trustees to provide them with advice or services.
- Others who advise trustees, including financial advisers, pensions consultants and investment consultants.



Breaches that should be reported

Not every breach has to be reported. The Pensions Regulator is interested in breaches where members' interests are put at risk. It has advised that anyone who is legally obliged to report a breach must tell it about breaches that are likely to be materially significant.

Whether or not a breach is materially significant depends on:

(a) The cause of the breach

If the breach was caused by dishonesty, poor governance, incomplete or inaccurate advice, or a deliberate action (or failure to act) to break the law, it should be reported.

(b) The effect of the breach

If the breach puts the members' benefits at risk or schemes are not being properly administered, it should be reported.

(c) The reaction to the breach

If the breach is quickly and accurately investigated and corrected, it will not need to be reported.

(d) The wider implications of the breach

The breach should be reported if it makes it more likely that other breaches will emerge because you, as trustees, lack the right knowledge and understanding to fulfil your responsibilities. It should also be reported if other schemes may be affected.

Timescales for reporting breaches

A materially significant breach must be reported 'as soon as reasonably practicable'. What is 'reasonably practicable' will depend on the seriousness of the breach and its impact on the scheme members.

Procedures to be put in place

You will need to have a procedure in place so that you can identify, evaluate and, if necessary, report breaches of pensions legislation. If you discover a possible breach that does not relate to your functions in relation to the scheme, you should still consider reporting it.

The procedure should cover:

- obtaining clarification of the law
- clarifying the facts around the suspected breach
- considering whether it is of material significance
- the matter being considered by the appropriate level of seniority and further procedures for more difficult cases
- a timeframe for the procedure to take place that is appropriate to the breach and allows the breach to be reported 'as soon as reasonably practicable'
- a system to record breaches, even if they are not reported to the Pensions Regulator. This will let you see if there is a pattern of breaches which, although not materially significant on their own, may become materially significant because of the number of them
- a process to identify very serious breaches that should always be reported immediately

Collective reports

If your scheme has individual trustees, some or all of the trustees may wish to report on the same breach. It may also be that you, as trustees, wish to make a joint report with one or more of your advisers. The Pensions Regulator will accept a collective report but if there is not enough time to do this, or if a consensus cannot be reached, you should make an individual report.

Duplicate reporting

Although your duty to report a breach is not automatically discharged by someone else sending the Pensions Regulator a report, the Pensions Regulator is aware that there is a cost attached to several people submitting reports about the same issue. If someone else reports a breach to the Pensions Regulator, that person should normally send you a copy of their report. Unless you have additional or different information relating to the breach, you will not need to make a report on the same breach to the Pensions Regulator. If you do receive a copy of a report being made by someone else, you can send a copy of it to any other person who may also be obliged to report the breach.

Where a report is being made, and the person making the report believes that the breach is as a result of dishonesty on the part of the trustees, they will not need to send you a copy of their report.



How to make a report

Content of the report

If you have to make a report to the Pensions Regulator, it must be in writing. A standard format is available on the Pensions Regulator's website at:

🌐 www.thepensionsregulator.gov.uk

As a minimum, the report should:

- be dated
- give the name of the scheme
- describe the breach or breaches and the relevant dates of occurrence
- name the employer
- give the name, position and contact details for each person who is making the report
- explain each reporter's position in relation to the scheme

The Pensions Regulator advises that it also expects the following information to be included:

- why it is thought that the breach will be materially significant to the Pensions Regulator
- scheme address
- type of scheme – in your case, this would be defined contribution occupational pension scheme
- name and contact details for the trustees (if different to scheme address)
- pension schemes registry number
- address of the employer

Sending the report

You can send your report to the Pensions Regulator in a number of ways.

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Brighton BN1 4DW

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☎️ **0870 24 111 44**

Failure to make a report

If you fail to make a report when you should without having a 'reasonable excuse', you will be committing a civil offence, resulting in civil penalties.

In deciding whether you had a reasonable excuse for failing to report a breach, or reporting a breach later than expected, the Pensions Regulator will look at:

- the legislation, case law, its Code of Practice and any guidance it has issued
- your role in relation to the scheme
- the training provided to you, and the level of knowledge you would be expected to have – you should remember that the Pensions Act 2004 introduced a requirement for you to have sufficient knowledge and understanding about your scheme to allow you to perform your trustee duties properly

- the procedures that have been put in place to identify and evaluate breaches, and whether you followed these procedures
- the seriousness of the breach
- any reasons for the delay in reporting
- any other relevant considerations relating to the case in question

Action

You should make sure that you fully understand the reporting requirements, and that you put robust procedures in place to allow you to identify, evaluate and, where necessary, report any breaches.

This information is based on Scottish Equitable's understanding of current and proposed law and guidance, which may change.