

## **Please note**

This legacy code of practice only applies in Northern Ireland.

To find the code of practice content for England, Scotland and Wales, see: **[www.tpr.gov.uk/document-library/code-of-practice](http://www.tpr.gov.uk/document-library/code-of-practice)**

## **Important**

On 6 April 2015, changes to pensions legislation came into force that are directly relevant to one aspect of this code of practice.

The Occupational Pension Schemes (Charges and Governance) Regulations 2015 apply to most occupational pension schemes that offer money purchase benefits (subject to various exceptions.) You should obtain your own advice as to the extent to which these regulations apply to your scheme. There is no change for trustees of defined benefit schemes that do not offer any money purchase benefits.

The new regulations introduce one exception to the discretionary approach to taking action over reported breaches of the law described in paragraph 71 of this code of practice. They introduce a number of new governance standards that trustees must report against in an annual statement signed by the chair of trustees. Trustees who do not produce this chair's statement will be fined between £500 and £2,000.

# Reporting breaches of the law

REGULATORY  
Code of  
practice

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Code of  
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## Introduction

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1. This code of practice is issued by the Pensions Regulator, the body that regulates work-based pension arrangements (occupational pension schemes, stakeholder pension schemes and certain aspects of personal pension schemes which have direct payment arrangements, whereby the employer pays contributions on behalf of the employee).
2. The Pensions Regulator's objectives are to protect the benefits of pension scheme members, to reduce the risk of calls on the Pension Protection Fund (PPF), and to promote the good administration of work-based pension schemes.
3. The Pensions Regulator has a number of regulatory tools, including issuing codes of practice, to enable it to meet its statutory objectives. The Pensions Regulator will target its resources on those areas where members' benefits are at greatest risk.
4. Codes of practice provide practical guidelines on the requirements of pensions legislation and set out the standards of conduct and practice expected of those who must meet these requirements. The intention is that the standards set out in the code are consistent with how a well-run pension scheme would choose to meet its legal requirements.

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- The status of codes of practice**
5. Codes of practice are not statements of the law and there is no penalty for failing to comply with them. It is not necessary for all the provisions of a code of practice to be followed in every circumstance. Any alternative approach to that appearing in the code of practice will nevertheless need to meet the underlying legal requirements, and a penalty may be imposed if these requirements are not met. When determining whether the legal requirements have been met, a court or tribunal must take any relevant codes of practice into account.
- Other regulatory requirements**
6. Pensions legislation also imposes duties to report to the regulator in some specific circumstances, for example changes in registrable information, a failure to pay contributions due<sup>1</sup> and certain failures in relation to the funding of defined benefit schemes.<sup>2</sup>
7. Additionally, there are requirements placed on trustees and employers to notify the Pensions Regulator about certain events that may affect the pension scheme and the sponsoring employer.<sup>3</sup>

**In this code of practice, references to the law that applies in Great Britain should be taken to include corresponding legislation in Northern Ireland; an annex lists the corresponding references.**

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<sup>1</sup> See s228(2) of the Pensions Act 2004.

<sup>2</sup> See Part 3 of the Pensions Act 2004.

<sup>3</sup> See for example s69 and s120 of the Pensions Act 2004. This code of practice does not cover these more specific requirements; if they arise, reference should be made to the relevant legislative provisions and any associated codes of practice.

## At a glance

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### **The requirement to report breaches**

- Breaches of the law which affect pension schemes should be considered for reporting to the Pensions Regulator.
- The decision whether to report requires two key judgements:
  - (i) is there reasonable cause to believe there has been a breach of the law;
  - (ii) if so, is the breach likely to be of material significance to the Pensions Regulator?
- Not every breach needs to be reported.

### **Who does the requirement to report apply to?**

- There is a wide range of reporters:
  - trustees and their advisers and service providers (including those carrying out tasks such as administration or fund management);
  - managers of schemes not set up under trust; and
  - employers sponsoring or participating in work-based pension schemes.

### **Which pension schemes does the requirement to report apply to?**

- The requirement applies to occupational and personal pension schemes (including stakeholder schemes).

### **Reporting arrangements**

- All reporters should have effective arrangements in place to meet their duty to report breaches of the law.
- Reliance cannot be placed on waiting for others to report.
- Breaches should be reported as soon as reasonably practicable.
- Failure to report when required to do so is a civil offence.

## The Code of Practice 'Whistleblowing' – the requirement to report breaches of the law

1. The requirement to report is a vital part of the regulatory framework. Whistleblowing reports will be a key source of information used by the Pensions Regulator in fulfilling its regulatory responsibilities for work-based pensions. (The relevant legislation is at Appendix A.)
2. To enable the Pensions Regulator to fulfil its responsibilities and achieve its objectives, the categories of those required to report breaches of the law was expanded from April 2005.<sup>4</sup>
3. The duty applies to those involved in running occupational and personal pension schemes, including stakeholder schemes, and covers breaches in certain circumstances of any legislation or rule of law concerning the administration of pension schemes. There is no requirement to report every breach.
4. In this code the term 'reporter' is used to describe any person who may have a duty to report.
5. There are other requirements placed on firms and organisations to report to other bodies; these are outside the scope of this code.<sup>5</sup> Where the duty to report to another body arises, and a reporter also concludes that there is a separate duty to report to the Pensions Regulator, it would assist if the report to the Pensions Regulator referred to the other report.
6. The Pensions Regulator's expectation is that all those who may have this duty to report will have an understanding of the requirements of the law and this code of practice and, in particular, of how 'reasonable cause to believe', 'material significance' and 'as soon as reasonably practicable' should be interpreted.
7. This code and supporting guidance material issued by the Pensions Regulator will inform these judgements. Whilst it cannot cover every circumstance, it provides principles and benchmarks against which reporters can consider breaches they come across.
8. If you are concerned about whether or not to report a breach you should refer to the legislation, this code of practice, any other code of practice that may apply and any relevant supporting guidance. If you require further assistance, you can contact the Pensions Regulator for help and advice.<sup>6</sup>

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<sup>4</sup> In particular it extends, compared with the Pensions Act 1995, the categories of those required to report.  
<sup>5</sup> For example, in relation to money laundering under chapter 29 of the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003 (SI 2003/3075), certain persons are required to make suspicious activity reports to the National Criminal Intelligence Service.  
<sup>6</sup> Contact details will be available on the Pensions Regulator's website: [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk).



## **‘Whistleblowing’ – the requirement to report breaches of the law**

### **Who has a duty to report?**

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- A legal duty falls on:**
- Trustees of trust-based schemes**
9. The duty to report applies to each individually appointed trustee. If the trustee is a corporate body, and the individuals concerned are trustee directors, the requirement to report falls on the trustee company.
- Managers of schemes not established under trust**
10. The requirement is placed on managers of personal pension schemes, including stakeholder schemes. Only breaches in relation to stakeholder schemes, or other personal pension schemes where a direct payment arrangement exists, will be of material significance to the Pensions Regulator.
- Persons otherwise involved in the administration of a scheme**
11. This category covers all those who provide services for the trustees or managers that relate to the administration and management of occupational and personal pension schemes, including stakeholder schemes. It includes:
- insurance companies and third party administrators who carry out administrative tasks relating to a scheme;
  - a participating employer who provides staff to carry out administration tasks in-house (this includes performing payroll and similar functions as well as carrying out or helping with direct administration of the pension scheme); and
  - independent financial advisers and consultants who provide services to trustees relating to administration such as record-keeping or acting as an intermediary receiving and forwarding scheme documents and other materials.
- Any employer participating in an occupational pension scheme
12. The duty to report applies to employers participating in an occupational pension scheme. In the case of a multi-employer scheme, this includes any participating employer who becomes aware of a breach regardless of whether the breach relates to, or affects, members who are its employees or those of other employers.

- Professional advisers**
13. The duty to report applies to specific groups of professionals appointed by the trustees to provide them with advice or services in relation to their occupational pension scheme. This category comprises scheme actuaries, scheme auditors, legal advisers, fund managers and custodians of scheme assets.<sup>7</sup>
14. Often a firm, rather than an individual, is appointed to provide the relevant services; in these circumstances the duty to report applies to the firm. The firm must put in place suitable systems and train its staff to ensure that the firm meets this duty.
15. Where an individual is appointed to provide the service, as is the case with the scheme actuary, the duty to report applies to the individual.
- Persons otherwise involved in advising a trustee (or manager of a scheme not established under trust) in relation to the scheme**
16. The duty to report applies to other firms (or individuals where the appointments are personal) providing advice to the trustees or managers of occupational and personal pension schemes, including stakeholder schemes. Included within this category are:
- independent financial advisers, pensions consultants and investment consultants;
  - actuaries and auditors providing advice to the managers of personal pension schemes;
  - actuaries and auditors engaged to provide advice to the trustees of occupational pension schemes other than would cause them to be classed as professional advisers;
  - reporting accountants appointed to stakeholder schemes; and
  - anyone acting as custodian of the assets of a personal pension scheme.
- Reporters with more than one role**
17. In most cases it will be clear into which category a reporter falls. However, sometimes a reporter may have more than one role in relation to the scheme. Where this is the case, the Pensions Regulator expects reporters to apply their wider knowledge of the scheme in judging whether a matter is likely to be of material significance to the regulator. Where appropriate, they are expected to report irrespective of the function they were performing when the breach was identified.

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7 Professional advisers are defined in section 47(4) of the Pensions Act 1995.

## **‘Whistleblowing’ – the requirement to report breaches of the law**

### **Who has a duty to report?**

- Systems and training**
18. The Pensions Regulator expects firms to ensure that their staff are adequately trained to a level commensurate with their roles. In particular, the staff of a firm appointed to provide advice or a service to trustees or managers, and which carries a reporting duty, should be trained to recognise potentially reportable situations. Firms should put adequate systems in place to ensure that staff are aware of their responsibilities and that they are familiar with reporting procedures.
- Whistleblowing protection and confidentiality**
19. The Pensions Act 2004 makes clear that the duty to report overrides any other duties a reporter may have such as confidentiality, and that any such duty is not breached by making a report. The Pensions Regulator understands the potential impact of a report on the relationship between a reporter and their client or, in the case of an employee, their employer.
20. The duty to report does not, however, override ‘legal privilege’.<sup>8</sup> What this means is that communications (oral and written) between a professional legal adviser and their client, or a person representing that client, whilst obtaining legal advice, do not have to be disclosed. Where appropriate a legal adviser will be able to provide further information on this.
21. The Employment Rights Act 1996 (ERA) provides protection for employees making a whistleblowing disclosure to the Pensions Regulator. Consequently, where individuals employed by firms having a duty to report disagree with a decision not to report to the Pensions Regulator, they may have protection under the ERA if they make an individual report in good faith. The Pensions Regulator expects such individual reports to be rare and confined to the most serious cases.
22. The Pensions Regulator will, if requested, seek to protect the identity of reporters. However, this cannot be guaranteed. Even if the Pensions Regulator does not explicitly reveal the name of the reporter, their identity may become apparent in the course of an investigation.
23. In all cases, the Pensions Regulator expects reporters to act conscientiously and honestly, and to take account of expert or professional advice where appropriate.

8 See s311 of the Pensions Act 2004.

## The duty to report

24. The requirement to report breaches of the law arises when a duty which is:
- imposed by or by virtue of an enactment or rule of law; and
  - relevant to the administration of a scheme
- has not been or is not being complied with.
25. Not every breach has to be reported. The judgements required in order to reach a decision to report are outlined below.
- ‘Imposed by or by virtue of an enactment or rule of law’**
26. ‘Enactment’ covers Acts of Parliament and regulations or statutory instruments. For example, the Pensions Act 2004 is an enactment as are regulations made under that Act. Breaches of criminal law, such as an offence of dishonesty under the Theft Act, would also come within the term enactment.
27. ‘Rule of law’ covers law laid down by decisions of the courts. It would, for example, include trust law and common law.
28. When considering breaches of trust law, reporters should bear in mind the basic principle that trustees are holding property on behalf of others. Trustees should act in good faith and within the terms of their trust deed and rules for the benefit of all of the beneficiaries of the scheme. If they fail to do so, they are in breach of trust law. A very basic rule of thumb in considering whether an action or failure to act is, or may be, a breach of trust is this: if the trustees have acted in a way which would appear unfair or wrong to a reasonable and objective person, then a breach of trust may have taken place.
- ‘Relevant to the administration of the scheme’**
29. In view of its statutory objectives, the Pensions Regulator interprets ‘administration’ widely in the context of the need to report breaches. It is much wider than just those tasks normally associated with the administrative function such as keeping records, dealing with membership movements, calculating benefits and preparing accounts, though all these are included within it. The Pensions Regulator interprets administration to include such matters as the consideration of funding in defined benefit schemes, investment policy and investment management, as well as the custody of invested assets; indeed anything which could potentially affect members’ benefits or the ability of members and others to access information to which they are entitled.

## The decision to report

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30. There are two key judgements required:
- First, does the reporter have reasonable cause to believe there has been a breach of the law?
  - If so, then, secondly, does the reporter believe the breach is likely to be of material significance to the Pensions Regulator?
- ‘Reasonable cause to believe’**
31. Having a reasonable cause to believe that a breach has occurred means more than merely having a suspicion that cannot be substantiated.
32. Where the reporter does not know the facts or events around the suspected breach, it will usually be appropriate to check with the trustees or manager, or with others who are in a position to confirm what has happened. However, it would not be appropriate to check with the trustees or the manager or others in cases of theft, or if the reporter is concerned that a fraud or other serious offence might have been committed and discussion with those persons might alert those implicated or impede the actions of the police or a regulatory authority.
33. If the reporter is unclear about the relevant legal provision, they should clarify their understanding of the law to the extent necessary to form a view.
34. In establishing that there is reasonable cause to believe that a breach has occurred, it is not necessary for a reporter to gather all the evidence which the Pensions Regulator would require before taking legal action.

- ‘Likely to be of material significance to the Pensions Regulator’**
35. The legal requirement is that breaches likely to be of material significance to the Pensions Regulator in carrying out any of its functions<sup>9</sup> must be reported. What makes the breach of material significance depends on:
- (i) The cause of the breach.
  - (ii) The effect of the breach.
  - (iii) The reaction to the breach.
  - (iv) The wider implications of the breach.
- When reaching a decision whether to report, the reporter should consider these points together. Each of these aspects is considered in more detail below.
- (i) The cause of the breach**
36. Where the breach was caused by:
- dishonesty;
  - poor governance, inadequate controls resulting in deficient administration, or slow or inappropriate decision-making practices;
  - incomplete or inaccurate advice; or
  - acting (or failing to act) in deliberate contravention of the law
- the breach is likely to be of material significance to the Pensions Regulator.
37. In forming a view on whether the breach is of material significance, reporters should consider other reported and unreported breaches of which they are aware. Reporters should use historical information with care, however, particularly if changes have been made to address previously identified problems.
38. On the other hand, the Pensions Regulator will not regard as materially significant a breach arising from an isolated incident, for example resulting from teething problems with a new system or procedure, or from an unusual or unpredictable combination of circumstances. But in such a situation, it is also important to consider other aspects of the breach such as the effect it has had.

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<sup>9</sup> To further assist reporters in reaching a judgement on material significance, examples of breaches are set out in separate guidance. The guidance is illustrative and does not form part of this code of practice.

## The decision to report continued

39. **(ii) The effect of the breach**  
The Pensions Regulator's objectives are to protect the benefits of pension scheme members, to reduce the risk of calls on the Pension Protection Fund, and to promote the good administration of work-based pension schemes.
40. In the light of these objectives, the Pensions Regulator considers the following to be particularly important elements which are likely to be of material significance to the regulator.
- In relation to protecting members' benefits:
- substantially the right money is paid into the scheme at the right time;
  - assets are appropriately safeguarded;
  - payments out of the scheme are legitimate and timely;
  - defined benefit schemes are complying with the legal requirements on scheme funding;
  - trustees of occupational pension schemes are properly considering their investment policy, and investing in accordance with it;
  - contributions in respect of money purchase members are correctly allocated and invested.
- In relation to reducing the risk of compensation being payable from the PPF:
- the Pensions Regulator is informed of notifiable events;<sup>10</sup>
  - trustees comply with PPF requirements during an assessment period. This is the period starting with an insolvency event and during which the scheme's eligibility for entry into the PPF is assessed and certain restrictions apply. Reports should continue to be made to the Pensions Regulator during the assessment period.
- In relation to promoting good administration:
- schemes are administered properly and appropriate records maintained;
  - members receive accurate, clear and impartial information without delay.

- (iii) The reaction to the breach**
41. The Pensions Regulator does not normally regard a breach as materially significant where the trustees or managers (or their advisers and service providers) take prompt and effective action to investigate and correct the breach and its causes, and, where appropriate, to notify any members whose benefits have been affected.
42. However, where, after a breach is identified, the trustees and their advisers or service providers involved:
- do not take prompt and effective action to remedy the breach and identify and tackle its cause in order to minimise risk of recurrence;
  - are not pursuing corrective action to a proper conclusion; or
  - fail to notify members whose benefits have been affected by the breach where it would have been appropriate to do so;
- this is of concern to the Pensions Regulator, and the breach is likely to be of material significance.
43. For example, even where only a few members are not receiving benefits due to them, the breach is likely to be materially significant unless prompt and robust action is being taken to remedy the situation.
- (iv) The wider implications of the breach**
44. The wider implications of a breach should be taken into account when assessing which breaches are likely to be materially significant to the exercise of the Pensions Regulator's functions. For example, a breach is likely to be of material significance where:
- the fact that the breach has occurred makes it appear more likely that other breaches will emerge in the future because the trustees (or the manager) lack the appropriate knowledge and understanding to fulfil their responsibilities; or
  - other schemes may be affected, for example schemes administered by the same organisation where a system failure is to blame.
45. In forming a judgement on whether a particular breach may have wider implications, the reporter should take into account such general risk factors as the level of funding (in a defined benefit scheme) or how well run the scheme appears to be. Some breaches which arise in respect of a poorly funded, poorly administered scheme will be more significant to the Pensions Regulator than the same breaches would be in a well funded, well administered scheme. Such an approach is consistent with the risk-focused approach to regulation adopted by the Pensions Regulator.



## The decision to report continued

- ‘As soon as reasonably practicable’**
46. If a judgement has been reached that there is reasonable cause to believe that a breach has occurred, and that it is of material significance to the Pensions Regulator, it must be reported as soon as reasonably practicable. It is important that procedures are in place to allow reporters to make a judgement within an appropriate timescale as to whether a breach must be reported.
47. What is reasonably practicable depends on the circumstances. In any event the time taken to reach the judgements on reasonable cause to believe and on material significance should be consistent with the speed implied by ‘as soon as reasonably practicable’. In particular, the time taken should reflect the seriousness of the suspected breach. In cases of immediate risk to scheme assets, the payment of members’ benefits, or where there is any indication of dishonesty, the Pensions Regulator does not expect reporters to seek an explanation or to assess the effectiveness of proposed remedies but only to make such immediate checks as are necessary. The more serious the potential breach and its consequences, the more urgently these necessary checks should be made. In cases of potential dishonesty, the reporter should avoid, where possible, checks which might alert those implicated. In serious cases reporters should consider contacting the Pensions Regulator by the quickest means possible to alert the regulator to the breach.
- Identification of breaches**
48. There is no requirement or expectation that reporters should search for breaches.
49. Reporters should nevertheless be alert to breaches relevant to the service or services which they are providing in relation to the scheme. For example, administrators and insurers are expected to be in a position to identify breaches relating to member disclosure, transfer value quotations and payments, payment of benefits and receipt of contributions.
50. There are some breaches that all reporters should be alert to, in particular any dishonest behaviour.

## Reporting arrangements

51. All reporters should have effective arrangements in place to identify breaches that occur in areas relating to their functions. These arrangements should enable them to evaluate and if appropriate report any breaches they become aware of in the course of their work.
52. If possible breaches are identified that do not relate to their functions, reporters should still follow the usual steps and consider reporting. If in doubt about whether a breach has in fact occurred, reporters should seek input from others having the necessary expertise.
53. All reporters should establish a procedure for evaluating matters to determine whether a breach has occurred and, if it has, whether it is likely to be of material significance to the Pensions Regulator. The nature of the arrangements is a matter for the reporter and should be conducive both to staff raising concerns and to the objective consideration of those concerns.

A satisfactory procedure is likely to include the following features:

- obtaining clarification of the law where it is not clear to the reporter;
- clarifying the facts around the suspected breach where these are not known;
- consideration of the material significance of the breach taking into account its cause, effect, the reaction to it, and its wider implications, including where appropriate dialogue with the trustees or managers;
- a clear process for referral to the appropriate level of seniority at which decisions can be made on whether to report to the Pensions Regulator;
- an established procedure for dealing with difficult cases such as a 'Regulator Committee' of experienced persons within the reporter's firm;
- a timeframe for the procedure to take place that is appropriate to the breach and allows the report to be made as soon as reasonably practicable;
- a system to record breaches even if they are not reported to the Pensions Regulator (the principal reason for this is that the record of past breaches may be relevant in deciding whether to report future breaches); and
- a process for identifying promptly any breaches that are so serious they must always be reported.

## Reporting arrangements continued

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### **Collective reporting**

54. The Pensions Regulator accepts that often trustees, together with one or more of their advisers or other groups, will wish to make a collective report.
55. If that is the approach taken, the procedure put in place must allow for the evaluation of each breach as described in this code of practice and for a report to be made as soon as reasonably practicable.
56. Where the trustee is not a corporate body, the duty to report falls on the individual trustees rather than on the board of trustees. If a consensus cannot be reached, or if there is insufficient time to agree a collective approach, the Pensions Regulator will expect the individuals to report.

### **Duplicate reporting**

57. The requirement to report applies to all those subject to the reporting duty who become aware of a breach that is likely to be of material significance to the Pensions Regulator; it is not automatically discharged by another party reporting the breach.
58. This gives rise to the possibility of duplicate reporting by those involved in a scheme. Duplicate reports carry a cost, which will ultimately be borne by the scheme members or the employer. Moreover, duplicate reports do not benefit the Pensions Regulator. Once aware of a particular breach, the Pensions Regulator does not regard that breach as being of material significance for the purpose of making further reports under the requirement to report breaches of the law. An exception is where another reporter has additional or different information about that breach or the circumstances relating to it.
59. The reporter coming across the breach should make the report to the Pensions Regulator. The regulator will send an acknowledgement to the reporter. The report (if not previously sent) and the acknowledgement should be sent by the reporter to the trustees or manager. The trustees or manager will be able to copy the original report and its acknowledgement to those other reporters who they consider may also be likely to come across the breach.
60. This arrangement is not intended to replace dialogue between trustees or managers and their advisers or service providers. When notified of a breach, trustees or managers may want to discuss matters with these groups. They will want to determine the best way to get things put right and may also want to discuss whether or not a report is needed. Indeed, trustees or managers should require their advisers to alert them when things appear to be going wrong and should ensure they are kept informed about matters affecting their scheme.

61. An exception to the arrangement above, and to the need for dialogue between trustees or managers and advisers or service providers, will apply in cases where there is a suspicion of dishonesty or other serious wrongdoing by the trustees or managers.

**Making a report**

62. Reports must be submitted in writing. Reporters should wherever practicable use the standard format available on the website at [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk).

63. The report should be dated and should include as a minimum:

- name of the scheme;
- description of the breach or breaches;
- any relevant dates;
- name of the employer (in the case of an occupational scheme) or scheme manager (in the case of a personal pension scheme, including stakeholder schemes);
- name, position and contact details of the reporter; and
- role of the reporter in relation to the scheme.

The information that we would expect to see in addition is:

- reason the breach is thought to be of material significance to the Pensions Regulator;
- address of the scheme;
- type of scheme – whether occupational (defined benefit, defined contribution or hybrid) or personal;
- name and contact details of the trustees or scheme manager (if different to the scheme address);
- pension schemes registry number; and
- address of employer.

Reports can be sent by post or electronically, including by email or by fax.<sup>11</sup>

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## Reporting arrangements continued

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64. Urgent reports should be marked as such, and attention should be drawn to matters considered particularly serious by the reporter. A written report can be preceded by a telephone call if appropriate.
65. A reporter should ensure they receive an acknowledgement in respect of any report they send to the Pensions Regulator. Only when an acknowledgement of receipt is received by the reporter can they be confident that the Pensions Regulator has received their report.
- Follow up**
66. The regulator will acknowledge all reports within five working days of receipt.
67. The Pensions Regulator will not generally keep a reporter informed of the steps it takes in response to a report of a breach. There are restrictions on the information it can disclose. Further information or reports of further breaches should, however, be provided by the reporter, if this may assist the Pensions Regulator in exercising its functions. The regulator may in any case make contact to request further information.

## Failure to report

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68. Failure to comply with the obligation imposed by the requirement to report breaches of the law without ‘reasonable excuse’ is a civil offence. To decide whether the reporter has a reasonable excuse for not reporting as required, or for reporting a breach later than the regulator would have expected, the regulator will look at:
- the legislation, case law, this code of practice and any guidance issued by the Pensions Regulator;
  - the role of the reporter in relation to the scheme;
  - the training provided to the individual or staff, and the level of knowledge it would be reasonable to expect that individual or those staff to have;
  - the procedures put in place to identify and evaluate breaches and whether these procedures had been followed;
  - the seriousness of the breach and therefore how important it was to report this to the Pensions Regulator without delay;
  - any reasons for the delay in reporting;
  - any other relevant considerations relating to the case in question.
69. If the Pensions Regulator is considering imposing a civil penalty, or exercising one of its functions, directly affected parties will receive a warning notice identifying the alleged breach and specifying the relevant function. Further details can be found in the regulator’s guidance on determination procedures.
70. The Pensions Regulator may, in addition, where it considers it appropriate to do so, make a complaint to the reporter’s professional or other governing body.

## The Pensions Regulator's response to a report of a breach in the law

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71. When the Pensions Regulator receives a report of a breach it has discretion over whether to take action and, if so, what action to take. The decision will depend on the breach and its circumstances and other information about the scheme notified to, or known by, the regulator.
72. The Pensions Regulator has a range of measures it can take, including:
- assisting or instructing trustees and others to achieve compliance;
  - providing education or guidance;
  - appointing trustees to help run the scheme;
  - removing trustees from office;
  - freezing the scheme;
  - imposing special measures where the scheme funding requirements of the Pensions Act 2004 are not complied with;
  - ordering that the scheme's funding position be restored to the level before a breach or other detrimental event occurred; and
  - imposing fines where appropriate.

## Appendix A

Section 70 of the Pensions Act 2004 is reproduced under the terms of Crown Copyright Policy Guidance issued by HMSO

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### Duty to report breaches of the law

- (1) Subsection (2) imposes a reporting requirement on the following persons –
  - (a) a trustee or manager of an occupational or personal pension scheme;
  - (b) a person who is otherwise involved in the administration of such a scheme;
  - (c) the employer in relation to an occupational pension scheme;
  - (d) a professional adviser in relation to such a scheme;
  - (e) a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme.
- (2) Where the person has reasonable cause to believe that –
  - (a) a duty which is relevant to the administration of the scheme in question, and is imposed by or by virtue of an enactment or rule of law, has not been or is not being complied with, and
  - (b) the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions, he must give a written report of the matter to the Regulator as soon as reasonably practicable.
- (3) No duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a written report under this section.

This is subject to section 311 (protected items).

- (4) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any person who, without reasonable excuse, fails to comply with an obligation imposed on him by this section.



**Article 65 of the Pensions (Northern Ireland) Order 2005 is reproduced under the terms of Crown Copyright Policy Guidance issued by HMSO**

- 65 Duty to report breaches of the law
- (1) Paragraph (2) imposes a reporting requirement on the following persons –
- (a) a trustee or manager of an occupational or personal pension scheme;
  - (b) a person who is otherwise involved in the administration of such a scheme;
  - (c) the employer in relation to an occupational pension scheme;
  - (d) a professional adviser in relation to such a scheme;
  - (e) a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme.
- (2) Where the person has reasonable cause to believe that –
- (a) a duty which is relevant to the administration of the scheme in question, and is imposed by or by virtue of a statutory provision or rule of law, has not been or is not being complied with, and
  - (b) the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions, he must give a written report of the matter to the Regulator as soon as reasonably practicable.
- (3) Subject to Article 283 (protected items), no duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a written report under this Article.
- (4) Article 10 of the 1995 Order (civil penalties) applies to any person who, without reasonable excuse, fails to comply with an obligation imposed on him by this Article.

## Annex

GB Legislation	NI Legislation
Section 70 of the Pensions Act 2004	Article 65 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))
Section 228(2) of the Pensions Act 2004	Article 207(2) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))
Part 3 of the Pensions Act 2004	Part IV of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))
Section 69 and section 120 of the Pensions Act 2004	Article 64 and Article 104 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))
Pensions Act 1995	Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))
Section 47(4) of the Pensions Act 1995	Article 47(4) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))
The Employment Rights Act 1996	The Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16))
Section 311	Article 283 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))





## How to get in touch with us

[www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)