Insolvency Practitioners ("IPs") must consider many issues before and after their appointment. This guidance note considers the main issues surrounding pensions (and other employee benefits) as they apply to an IP appointed (over a company), and seeks to assist IPs in identifying and dealing with these issues.

However, due to the complexities of pensions’ legislation and its interaction with insolvency legislation, it should not be relied on as a definitive guide. Within the guide we have used the term ‘company’, but most of the legislation equally applies to pensions established by partnerships, sole traders and individuals.

Different guidance will apply to a bankrupt’s own pension as a bankruptcy asset.

A GUIDANCE NOTE FOR INSOLVENCY PRACTITIONERS

This guidance has been produced by R3, the Association of Business Recovery Professionals. R3 is the leading professional association representing insolvency practitioners and professionals within the insolvency, restructuring and turnaround profession in the UK.

If you would like to find out more about the work of R3 or its members, please visit the R3 website here (www.r3.org.uk/)

This guidance note is not intended to be a statement of law or a substitute for specific professional or legal advice. We have made every effort to ensure that the guide is accurate but R3 cannot accept any responsibility for the consequences of any action taken in reliance of its contents.

Content credit to R3 members – Darren Toms, Heather Thomas, Ian Line and Michelle Butler.

Guidance design by April Robinson, R3
CONTENTS

Finding schemes ......................................................................................................................... 4
  Director information requests ................................................................................................. 4
  Accounts ................................................................................................................................. 4
  Payroll .................................................................................................................................. 4
  Books and records, including Board minutes ......................................................................... 4
  Employees .............................................................................................................................. 4
  Bank accounts ....................................................................................................................... 4
  Pension Protection Fund’s s120 Notification Service .............................................................. 5
  DWP’s Pension Tracing Service ............................................................................................ 5

Identifying schemes .................................................................................................................. 6

Types of schemes ...................................................................................................................... 6
  Occupational pension schemes ............................................................................................. 6
    1. Defined Contribution - also known as Money Purchase .................................................... 6
    2. Defined Benefit - also known as Final Salary .................................................................. 7
    3. Hybrid schemes ............................................................................................................... 7
  Contract-based pensions ........................................................................................................ 7

Statutory duties ......................................................................................................................... 8
  Section 120 Insolvency Event Notice .................................................................................... 8
  Section 22 Notices ................................................................................................................. 10
  Section 122 Notice ................................................................................................................ 11

Section 75 Debt ......................................................................................................................... 12

Unpaid pension contributions pre-appointment ...................................................................... 12

Pension contributions payable post-appointment .................................................................... 13

Auto Enrolment (and Re-Enrolment) ..................................................................................... 14
  Staging dates .......................................................................................................................... 14
  Eligibility ................................................................................................................................. 14
  Minimum contributions ......................................................................................................... 15
  Re-Enrolment duties .............................................................................................................. 15
  Dealing with Auto-Enrolment providers .............................................................................. 16

Pension related misconduct and offences ............................................................................... 16

This guidance note is not intended to be a statement of law or a substitute for specific professional or legal advice. We have made every effort to ensure that the guide is accurate but R3 cannot accept any responsibility for the consequences of any action taken in reliance of its contents.
Under the Pensions Act 2008, every employer in the UK must enrol certain staff into a pension scheme and contribute towards it. Pension schemes may represent the largest unsecured creditor of the company or result in there being significant preferential claims. Balancing these issues with the rights of employees and the duties of an IP, whilst avoiding the potential for fines, is difficult due to the complex nature of pension legislation. It is important that the IP has the correct in-house knowledge or seeks expert assistance.

The pension duties which an IP has will depend broadly on the type of pension scheme (see pages 8 to 11 for details) and the nature of the appointment. In certain situations, the IP may inherit a fiduciary responsibility.

FINDING SCHEMES

There are a number of sources of information where an IP can identify what pension schemes the company operates or used to operate. The main ones are listed below.

**Director information requests**

Directors should be asked to provide the details of all pension schemes which the company operates, or has operated in the past, and complete a declaration to that effect. An example questionnaire that could be used for this is attached (see page 26).

**Accounts**

Company accounts should provide the details of the amount paid into pension schemes in the period covered by the accounts. They should also detail whether the scheme is a defined contribution or defined benefit type scheme and may provide further details including the scheme name and insurer. Where a company operated a defined benefit (final salary) type scheme there will be detailed disclosures, often several pages long, which provide a snapshot of the scheme’s funding position and key actuarial assumptions.

**Payroll**

Deductions from salary may indicate the existence of a pension.

**Books and records, including Board minutes**

Pension schemes tend to produce large volumes of paperwork and records, which should be reviewed.

**Employees**

Employees themselves may be a good source of information and initial discussions with employees may reveal the existence of a pension scheme.

**Bank accounts**

Regular payments to ‘the trustees of the ABC pension scheme’ or to well-known insurance company names may indicate payments to a ‘live’ pension scheme. It would also be useful to look out for payments to some of the well-known auto-enrolment solution providers, such as Now: Pensions, NEST, B&CE Pension - The People’s Pension etc.
Occupational pension schemes should have a Trustee bank account to ensure pension monies are kept entirely separate from any company funds.

**Pension Protection Fund’s s120 Notification Service**

The Pension Protection Fund ("PPF") offer access to an on-line database which holds the details of companies which participate in, or are the principal employer of, an occupational pension scheme:

[https://www.ppf.co.uk/s120/login](https://www.ppf.co.uk/s120/login)

This database should be searched using the company’s current name, previous names (where applicable) and company registered number ("CRN"). Different searches should also be conducted with and without spaces etc. as the search will only identify exact matches for the details searched. This database is not fool-proof and will only find occupational pensions schemes with two or more members that have been registered correctly. It will not, for example, find group personal pension (or stakeholder) schemes, or one member occupational pension schemes. Please note that this service often does not find evidence of the company’s use of occupational pension schemes such as NEST, Now: Pensions, B&CE Pension - The People’s Pension and other master-trust arrangements. A negative s120 search should not therefore be relied upon as evidence that no scheme exists without further investigations being carried out.

**DWP’s Pension Tracing Service**

The Government provides a service for individuals (and others with permission) to search for pensions by the employer name. A search using the company’s current name and any previous names should find the names of any occupational schemes which a company has operated and provide the last known contact details for that scheme:

[https://www.gov.uk/find-pension-contact-details](https://www.gov.uk/find-pension-contact-details)

IPs should undertake all of the enquiries mentioned above and keep documented records of these including any negative results obtained. The Recognised Professional Bodies ("RPBs") will expect IPs to be able to evidence the searches they have made to identify pension schemes, for example, during monitoring inspection visits.

It should be noted that, apart from a few exceptions, all companies which operate PAYE will have a requirement to have provided a scheme to comply with the relevant auto-enrolment legislation.
IDENTIFYING SCHEMES

Once an IP has found evidence of a pension scheme, it is necessary to identify the type of scheme they have found. The type of scheme (and the nature of the insolvency appointment) will determine what actions are necessary and the IP’s responsibilities in respect of the scheme(s).

Any scheme found using the PPF’s s120 Notification Service, or the DWP’s Pension Tracing Service should be an occupational pension scheme and IPs have statutory duties to submit s120 and s22 Notices in relation to each scheme found to the PPF, the Pensions Regulator (“TPR”) and the Scheme Trustees, unless the scheme has been wound-up prior to the appointment of an IP.

Schemes which are not occupational pension schemes do not require IPs to submit the statutory Notices listed below in the Statutory Duties section. However, all schemes will need to be researched to determine what other action may be required.

TYPES OF SCHEMES

There are two main types of non-state pension provision:

1. Occupational pension schemes, which are established under a trust arrangement. TPR is responsible for regulating this type of scheme.

2. Contract based pension schemes, such as group personal pensions and stakeholder schemes. These are generally operated by insurers and they are regulated by the FCA and TPR.

Often companies will have operated a number of schemes, some of which will be dormant and some of which may be ‘active’ and receiving contributions at the time of the appointment of an IP. All schemes which the company operated must be investigated and dealt with.

Occupational pension schemes

Occupational schemes are established in the form of a discretionary trust. The employer may be the trustee and scheme administrator of such schemes. Care is needed in these situations. Occupational schemes usually provide a retirement income and the option to take some of the benefits as a tax-free cash lump sum at retirement and a lump sum if a member dies.

The employer has a responsibility under this type of scheme to pay the agreed level of contributions over to the trustees along with any employee contributions by the 22nd day (or 19th day if the payment is by cheque) of the following month.

There are three main types of occupational pensions:

1. Defined Contribution - also known as Money Purchase
   A funding rate, expressed either as a percentage of earnings, or as a fixed amount, is agreed between employer and employee as their respective contributions. At retirement, the accrued fund is used to provide pension income. Investment risk is mostly borne by the member but it is worth checking with the pension provider to establish what responsibility, if any, the employer may have to the investments for the scheme.
This type of scheme can take many forms, some of which are listed below:

- Contracted-In money purchase schemes
- Contracted-Out money purchase schemes
- Executive schemes
- Small Self-Administered Schemes
- Master Trusts, such as NEST, Now: Pensions and Peoples Pension

2. **Defined Benefit - also known as Final Salary**
   These promise a defined amount of benefit, usually expressed as a fraction of earnings relative to length of employment. It is the duty of the trustees to ensure that the scheme is funded sufficiently to meet the benefits promised. Most schemes hold the employer ultimately financially responsible for any fund deficit, although the PPF protects the benefits promised under this type of scheme up to certain levels if the employer is subject to a qualifying insolvency event, such as administration, liquidation or a CVA.

3. **Hybrid schemes**
   It is possible for a scheme to be a hybrid, where the scheme contains both defined benefit and defined contribution sections; and for a scheme to have a defined benefit underpin, which provides a minimum level of benefit.

**Contract-based pensions**
Schemes which are not set up under trust are usually contract-based schemes. This type of scheme can take many forms, some of which are listed below:

- Group Personal Pension Plan (“GPPP”)
- Personal Pension Plan
- Stakeholder pension
- Self-Invested Personal Pension (“SIPP”)

Often these schemes can look like occupational pension schemes but the pension provider takes on the responsibilities that the employer and trustees do in trust-based schemes. Under this type of scheme members can make changes and request retirement directly with the provider. The employer has a responsibility under the contract to pay their agreed level of contributions over to the pension provider along with the employee contributions by the 22nd day (or 19th day if the payment is by cheque) of the following month.

Care should be taken to identify exactly what type of schemes the company operated. This is because schemes which are defined benefit or hybrid in nature may trigger large claims in the estate.
This guidance note is not intended to be a statement of law or a substitute for specific professional or legal advice. We have made every effort to ensure that the guide is accurate but R3 cannot accept any responsibility for the consequences of any action taken in reliance of its contents.
or scheme administrator of any defined contribution schemes are notified separately. The trustees’ details may be obtained from TPR.

Where an IP finds evidence of an occupational pension scheme, but no entry is found when searching the s120 Notification Service, an IP must submit a paper based s120 Insolvency Event Notice (or a letter containing the equivalent information) and send it to the PPF, TPR and the trustees of the scheme. The form can be found here:

https://www.ppf.co.uk/submit-s120-insolvency-notice

Where the company operates a defined benefit pension scheme please note that the PPF expect IPs to involve them at an early (pre-appointment) stage. The PPF are often the largest creditor and as such any re-structuring or insolvency procedures will need to take this into account. The PPF’s website contains a number of documents which outline the PPF’s expectations in areas including: IP Remuneration; Pre-Packaged Administration; Employer Restructuring; CVAs; and Legal Action. It is important that IPs are aware of the PPF’s stance on these issues.

The PPF provide guidance for IPs at https://www.ppf.co.uk/further-guidance-and-support
SECTION 22 NOTICES

In addition to the requirement to issue a s120 Notice, IPs have a separate statutory duty (under s22 Pensions Act 1995) to issue a s22 Notice to TPR, the PPF and the trustees of any occupational pension schemes which are connected with an entity to which they are appointed. This requirement extends to MVLs.

The purpose of the legislation is to ensure that the trustees of an occupational pension scheme are independent. Care must be taken where the scheme trustee is the entity an IP is appointed to. IPs are no longer required to appoint a trustee who is independent, but the rules of most schemes give the employer the power to appoint a trustee, if they choose to do so. TPR has discretionary power to appoint independent trustees, who may be paid from the scheme’s assets. IPs should request the TPR to use their powers to appoint an independent trustee if the current trustee is the corporate entity to which they are appointed and they do not wish to either act in the role of trustee, or pay the costs of an independent trustee which they appoint.

These s22 Notices must be issued upon appointment and also as soon as reasonably practicable when an IP ceases to act in relation to the company which operated the scheme. Good practice would be to issue the s22 Notice at the same time as the proposed final account under section 94, the final account under s106 or s146 or the final report under s331 of the Insolvency Act 1986, when members or creditors are provided with 8 weeks’ notice of the IP’s intention to vacate office, or as soon as possible on cases where no such account/report is required.

The s22 Notice must include the following information:

- Date of issue of the Notice
- Name and Address of the scheme
- Pension scheme registration number
- Names and addresses of all trustees
- Name of the employer
- Name and address of IP(s) giving the Notice
- Date IP appointed, or ceased to act/expected cease to act date*
- Date of insolvency event
- The name or type of Notice issued

*If an IP does not cease to act on the date provided in the notice, as best practice the IP may wish to submit an amended notice, upon ceasing to act.

This guidance note is not intended to be a statement of law or a substitute for specific professional or legal advice. We have made every effort to ensure that the guide is accurate but R3 cannot accept any responsibility for the consequences of any action taken in reliance of its contents.
SECTION 122 NOTICE

If the occupational pension scheme is defined-benefit in nature, IPs have an additional statutory duty to issue further statutory reports under Section 122 of the Pensions Act 2004. Defined benefit pension schemes which are eligible for entry to the PPF must pay an annual levy to the PPF. The levy year runs from 1 April to 31 March. If an insolvency event takes place towards the end of this period, care should be taken to issue the s122 Notice before 31 March wherever this is possible, to avoid the PPF levy coming due from 1 April.

There are three different Notices that can be issued:

1. **Scheme Rescue**
   If the IP is able to confirm that a scheme rescue has occurred, the IP must issue a Notice (a "withdrawal Notice") to that effect. This might apply if the IP is able to confirm that the company has been rescued as a going concern, the employer retains responsibility for meeting its liabilities under the scheme and it has not entered into an agreement with the PPF, or another person has assumed responsibility for meeting the employer's liabilities under the scheme.

2. **Scheme Failure**
   If the IP is able to confirm that a "scheme rescue" is not possible, they must issue a Notice (a "scheme failure Notice") to that effect. This is likely to apply where the employer is not continuing as a going concern, no other person has assumed responsibility for meeting the employer's liabilities under the scheme; and the IP considers that no other person will do so.

3. **Ceasing to Act**
   If the IP is unable to confirm either that a scheme rescue is possible, or that the scheme has failed, when the insolvency proceeding comes to an end, the IP must issue a Notice providing details of this.

This guidance note is not intended to be a statement of law or a substitute for specific professional or legal advice. We have made every effort to ensure that the guide is accurate but R3 cannot accept any responsibility for the consequences of any action taken in reliance of its contents.
These Notices must be issued as soon as is reasonably practicable to the PPF, TPR and the trustees or managers of the scheme. The forms are available at:

https://www.ppf.co.uk/submit-s122-notices

The RPBs expect IPs to be able to evidence the statutory Notices which they have submitted.

SECTION 75 DEBT

Section 75 debts occur under defined benefit pension schemes and can be triggered by a number of events, including the last member leaving the pension scheme or the insolvency appointment (including solvent liquidation). This debt can sometimes be referred to as the Cessation Debt when it applies to a funded public sector pension scheme. This can be a significant debt and it is advisable to understand if any such debt will be triggered before entering an insolvency process.

The Section 75 debt is the deficit in the scheme at the time of the appointment on the most cautious funding basis used by the scheme, which is often referred to as the solvency (buy out) basis within the scheme’s triennial actuarial valuation. Further PPF guidance is available at:

https://www.ppf.co.uk/restructuring-guidance and https://www.ppf.co.uk/further-guidance-and-support

The PPF, post the submission of a s120 insolvency notice, will confirm if they have become the creditor in relation to the Section 75 debt and must be added to the list of creditors and be notified of proposed creditors’ decision procedures. If the pension scheme found is a Multi-Employer Defined Benefit pension scheme then the scheme may not automatically trigger PPF assessment and therefore the Trustees must be added to the list of creditors and be notified of proposed creditors’ decision procedures.

If the Section 75 debt is in relation to a non-public sector scheme, the PPF will assume all creditor rights of the pension scheme trustees (whether contingent or not) in relation to the insolvency of the employer.

UNPAID PENSION CONTRIBUTIONS PRE-APPOINTMENT

Frequently companies in financial difficulty decide not to (or are unable to) make pension contributions in the period leading up to the appointment of an IP. IPs should investigate whether any contributions were missed and take appropriate steps to recover these for each scheme.

IPs, in conjunction with the scheme’s trustees or administrators, can submit a claim to the Insolvency Service (Redundancy Payments Service (“RPS”)) using forms RP15 and RP15A (under s124 Pension Schemes Act 1993) and sent to RedundancyPaymentsOnline@insolvency.gov.uk. Any claim for missed pension contributions should not be made directly by the employees.

The claim must meet the following criteria:

- Be in relation to the period of 12 months pre-appointment. Any unpaid contributions relating to a period longer than 12 months prior to appointment will not be settled by the RPS and will rank as an unsecured claim against the estate.
• The claim for employer contributions payable by the RPS will be limited to 10% of workers’ remuneration paid or payable in the 12 months preceding insolvency. Only employees who were also members of the scheme will be taken into account in making this calculation.

• Employee contributions cannot be claimed for a period during which the employee has made a claim for unpaid wages, because no deduction can have been made. However, employer contributions may be claimed in relation to an unpaid wage claim period if premiums were payable for that period.

• Claims must be for the period prior to the date of appointment, i.e. ending no later than the day before appointment.

The Insolvency Service will make payment of the claimed amount directly to the pension provider.

The Insolvency Service becomes the creditor in the estate. As a broad guide their claim will be unsecured, with the exception of contributions which have been deducted from employees’ net pay in the 4 months pre-appointment, which are preferential claims.

The forms and guidance can be found at:

**RP15:**

**RP15A spreadsheet:**

**RPO process:**

**PENSION CONTRIBUTIONS PAYABLE POST-APPOINTMENT**

Where IPs retain staff and adopt their contracts of employment they should continue to comply with auto-enrolment legislation - see below at Auto Enrolment (and Re-Enrolment) – and the terms of other pension arrangements. However, please note that if the pension scheme was a defined benefit scheme and in PPF assessment no further benefits should accrue post-appointment and no contributions should be paid.

Employer contributions must be paid by the due date set out under the direct payment arrangements for the pension scheme. Member contributions deducted from pay must be paid to the pension scheme by the 22nd day (or 19th day if the payment is by cheque) of the month following deduction.

Employer and employee contributions are usually paid at the same time so, as a general rule, contributions should be paid to the relevant pension providers or trustees by the 22nd day (or 19th day if the payment is by cheque) of the following month.

This guidance note is not intended to be a statement of law or a substitute for specific professional or legal advice. We have made every effort to ensure that the guide is accurate but R3 cannot accept any responsibility for the consequences of any action taken in reliance of its contents.
Pension providers and trustees have an obligation to report the late payment of contributions to the scheme’s members and to TPR. Late payment of contributions can lead to financial penalties from TPR which an IP should look to avoid.

**AUTO ENROLMENT (AND RE-ENROLMENT)**

The Pensions Act 2008 introduced the requirement for all employers to auto-enrol relevant employees/workers into a qualifying pension scheme and pay contributions into it, starting from October 2012 for the largest employers. The scheme which the employer uses can be either an occupational pension, or a contract based pension, as long as it meets the minimum standards.

IPs are responsible for complying with a company’s auto enrolment duties. Where employers have been legally required to operate such a scheme and enrol employees, but have not done so, IPs have a statutory duty to act as a whistle-blower to the Insolvency Service and the Pensions Regulator- Email customersupport@autoenrol.tpr.gov.uk

IPs also have a duty to operate (or establish) a suitable scheme post-appointment and to ensure all legal duties are complied with whilst in office. These can include, but are not limited to:

- Deducting and paying contributions as they fall due.
- Enrolling employees when they meet the criteria.
- Submitting declarations of compliance within the required deadline – 5 months from staging or re-enrolment date.
- Re-enrolling relevant employees on each three year anniversary of the staging date.
- Advising TPR of their appointment and when there are no employees. This can be done online at:
  - https://automation.thepensionsregulator.gov.uk/notanemployer
  - Keeping detailed records for 6 years.

There are severe monetary penalties for non-compliance.

**Staging dates**

The date from which employers must have complied with auto-enrolment (their staging date) was based on the number of employees on their largest payroll at 1 April 2012, if they were in business at that time. Since 1 April 2018, any company setting up a PAYE scheme for their employees must automatically set up a pension scheme and enrol eligible employees at the same time.

A company’s staging date can be found by contacting TPR by telephone on 0345 600 1011 or via email at customersupport@autoenrol.tpr.gov.uk, quoting the employer’s PAYE reference or letter code.

**Eligibility**

All workers earning over £10,000 per annum (or the equivalent amounts over the individual’s pay period) who are aged between 22 and state pension age will need to be automatically enrolled by
their employer into a pension plan. The employer should enrol all workers. Individual workers can subsequently opt out of the scheme. Other workers who are not eligible to be automatically enrolled can ask to join and the employer may need to contribute.

It should be noted that apart from a few exceptions, all companies which operate PAYE will have a requirement to provide a scheme to comply with the relevant legislation. There are some companies that are not required to have an auto enrolment scheme. For example, a company with a sole director and no one else working under an employment contract does not require an auto enrolment scheme, but if a company has two directors both with employment contracts the requirement is triggered.

Thresholds and ages are correct at the date of circulation of this guidance.

TPR website contains all the information which an IP may need:

http://www.thepensionsregulator.gov.uk/en/employers

Minimum contributions

These are based on Qualifying Earnings (gross pay between an upper and lower limit set each year). Other minimum percentage contributions may apply if the definition of pensionable salary is not Qualifying Earnings.

<table>
<thead>
<tr>
<th>DATE</th>
<th>Employer</th>
<th>Employee (deductions from net pay)</th>
<th>Tax relief on Employee £</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Until 5 April 2018</td>
<td>1%</td>
<td>0.8%</td>
<td>0.2%</td>
<td>2%</td>
</tr>
<tr>
<td>6 April 2018 to 5 April 2019</td>
<td>2%</td>
<td>2.4%</td>
<td>0.6%</td>
<td>5%</td>
</tr>
<tr>
<td>6 April 2019 (onwards at the time of writing)</td>
<td>3%</td>
<td>4%</td>
<td>1%</td>
<td>8%</td>
</tr>
</tbody>
</table>

Contribution rates provided above are correct at the time of writing this guidance.

Re-Enrolment duties

Every three years companies must review their auto-enrolment duties and complete re-enrolment and re-declaration of compliance. They must:

- Choose a re-enrolment date that falls anywhere within a six-month timeframe in the period of three months either side of the original staging date.
- Identify eligible staff, re-enrol them with effect from their chosen re-enrolment date and start contributing to their pension scheme from that date.
- Write to eligible staff individually, within six weeks of their chosen re-enrolment date, to tell them how re-enrolment applies to them including details of how they can opt-out.
- Complete and submit a re-declaration of compliance to TPR within five calendar months of the third anniversary of the employer’s staging date or duties start date.
Dealing with Auto-Enrolment providers

IPs should inform the provider of the scheme, which the employer used to comply with auto-enrolment, of their appointment. They will also need to request information about the scheme so that they can assess whether all due contributions have been paid, to determine if a claim for unpaid contributions needs to be made. For schemes operated by insurance companies this is usually straight-forward. However, for some of the newer master-trust arrangements (e.g. NEST, NOW: Pensions, People’s Pension, SMART Pension this will require the IP (or their advisers) to be registered as a user of the on-line system used and for the IP to download and review online data files.

PENSION RELATED MISCONDUCT AND OFFENCES

Any misconduct relating to handling pensions may have triggered the need to make further notifications:

Notifiable Events

The Pensions Act 2004 (section 69) requires employers and trustees to notify TPR of certain Notifiable Events in relation to defined benefit schemes only. The legislation is designed to provide an early warning system for entry to the PPF. There are different ‘events’ for employers and trustees.

The current events which employers should report include: the employer having been advised that it is trading wrongfully; breach of banking covenant; a controlling company deciding to relinquish control of the employer; conviction for an offence involving dishonesty of senior personnel; decision not to pay a debt to the scheme and a decision to cease business in the UK. Full details can be found in SI 2005/900 Pensions Regulator (Notifiable Events) Regulations 2005. There are proposals to amend and strengthen this legislation and to make changes to the notifiable events (Government Response to the Consultation on Protecting Defined Benefit Pension Schemes – A Stronger Pensions Regulator, February 2019).

Whilst these reporting events will probably have occurred before the formal appointment of an IP in a statutory role, IPs should be aware of these events when conducting IBRs or considering taking an appointment and during any appointment. Civil penalties can be applied for non-compliance.

Acts of material significance to TPR

There is a duty to report to TPR any breaches where “the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions”. This duty falls on employers and on office holders where any scheme members continue to be employed.

TPR’s Guidance can be found at:


A review of the Guidance suggests that this threshold is unlikely to be reached where a breach is unlikely to be repeated except if the breach involves dishonesty. Therefore, in a formal insolvency context it is only likely to arise on trading CVAs or where dishonesty is suspected.
The breach is likely to be of material significance to TPR 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.

**Criminal offences**

If a director is suspected of having committed a criminal offence, this should be notified to the Secretary of State (“SoS”). In brief, these relate to:

- Being “knowingly concerned in the fraudulent evasion of” paying over employees’ contributions; and

- Willful failure to arrange for auto-enrolment schemes including automatic re-enrolment and an employee opting in to a scheme.

Full details can be found in the Pension Schemes Act 1993 (Sections 111A and 169) and the Pensions Act 2008 (Sections 45 and 46).

Liquidators and Trustees in Bankruptcy have statutory duties to report suspected criminal offences to the SoS. The Insolvency Service encourages other office holders to report similarly.

For information on how to submit a report to the SoS, see Article 10 at:

https://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/dearip/dearipmill/chapter20.htm#1

**Director Conduct Reports**

If it appears that any of the above matters has occurred, it should be included in the Director Conduct report submitted online by the office holder (or reported later as “new information”).

In addition, other events may need to be reported. For example, the Pensions Act 2004 states that, where an employer (or person who is otherwise involved in the administration of a scheme) fails to report a non-compliance likely to be of material significance to TPR, it is a civil offence and a complicit/conniving director may also be found guilty of the offence (see S309 of the Pensions Act 2004).

The TPR Guidance also indicates a threshold for late payment of contributions to a scheme of 90 days after the due date. If pension contributions have not been paid over within 90 days of a due date, this would appear to be relevant for Director Conduct reporting purposes (subject to exceptional mitigating circumstances). However, there may be cases where more recent unpaid contributions suggest misconduct, e.g. where the retention of contributions has intentionally been used to ease cashflow difficulties or where such funds have been moved away from the employer’s possession.

If the consequence of any of the above is such that the company’s assets have been enhanced because of the action or it is suspected that any other person has benefitted from the action (i.e. Money Laundering is suspected), the practice’s MLRO should be consulted in relation to the needs to submit a Suspicious Activity Report and to seek the NCA’s consent to deal with the assets/funds.

This guidance note is not intended to be a statement of law or a substitute for specific professional or legal advice. We have made every effort to ensure that the guide is accurate but R3 cannot accept any responsibility for the consequences of any action taken in reliance of its contents.
TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006)

If the employer enters a terminal insolvency process and then the business is transferred, TUPE Regulation 8(7) will apply and the employees will not automatically transfer. However, the TUPE provisions will normally apply if the transfer occurs either outside a formal insolvency process or in a non-terminal process.

Employees have rights if their employer is insolvent and owes them money. Employees can claim for this whether they are protected under TUPE or not. In a TUPE-protected transfer, the new employer must pay any residual claim after employees have been paid from the government’s National Insurance fund.

TUPE excludes the transfer of rights relating to occupational pension schemes, but with some important exceptions:

- The Pensions Act 2004 and supporting secondary legislation require transferring employees with occupational pension scheme benefit entitlements with their former employer (the seller) to be provided with a minimum level of pension provision by the new employer (the buyer) after the TUPE transfer.

- Rights relating to early retirement and redundancy (often referred to as Beckmann and Martin rights after ECJ cases of those names) may transfer with the employees.

The pension benefits already accrued by employees remaining in employment after a sale or merger are protected by TUPE. The pension obligations of newco will depend upon the type of scheme that the employees belonged to prior to their transfer of employment and the pension scheme offered by newco. This is a complex area and advice should be sought by newco independently.

The Sale and Purchase agreement should clarify who is responsible for any arrears of contributions due for the period prior to insolvency.
GLOSSARY

**Automatic Enrolment scheme**

A pension scheme in which an employer in the UK must automatically enrol an eligible jobholder once it becomes subject to the Pensions Act 2008, unless the jobholder is already an active member of a qualifying scheme on his automatic enrolment date.

**Cessation Debt**

The amount owed to a funded public sector pension scheme, calculated by the scheme actuary. It is usually triggered when an employer ceases to employ active members of the scheme, decides to leave the scheme, or any admission agreement ends. It is similar to the s75 Debt or Buy-Out debt in funded defined benefit schemes but funded public sector schemes (such as the BBC Scheme or the various Local Government Pension Schemes (LGPS)), operate under different legislation to other schemes.

**Defined Benefit Scheme**

An occupational pension scheme or other retirement benefit scheme that promises the member a defined level of benefit on death or retirement. Employers' contributions are determined from time to time to cover the cost of the promised benefits. Most defined benefit schemes are final-salary schemes that provide a pension based on the member's earnings at retirement or leaving service, or on a career average basis.

**Defined Contribution Scheme**

Also known as a money purchase scheme. A pension fund where the benefits payable to an individual member are calculated by reference to contributions paid into the scheme or arrangement in respect of that member, increased by the investment return achieved.

**Financial Conduct Authority (FCA)**

The UK regulator responsible for regulation of the conduct of firms authorised under the Financial Services and Markets Act 2000 (FSMA).

**Group Personal Pension**

A personal pension established as a group arrangement, usually established by a company.

**Master Trust**

A multi-employer occupational scheme where each employer has its own division within the master arrangement. There is one legal trust and therefore one trustee board. Master Trusts offer employers the benefit of a governance function but with generally low operating costs and greater simplicity and expediency than a single employer scheme.
Occupational Pension Scheme

A scheme set up by an employer to provide retirement benefits for its employees. Occupational pension schemes are regulated by TPR and generally fall into three categories.

- Defined benefit (“DB”) schemes (many of these are final salary schemes).
- Defined contribution (“DC”) schemes (also called money purchase schemes).
- Hybrid schemes.

The statutory definition of an "occupational pension scheme" is contained in section 1 of the Pension Schemes Act 1993.

Pension Protection Fund (PPF)

The PPF is a statutory fund, created by the Pensions Act 2004. It pays compensation to members of eligible salary-related schemes if the following requirements are met:

- The scheme is eligible for the PPF.
- The scheme must not have commenced wind-up prior to 6 April 2005.
- The scheme’s sponsoring employer has suffered a qualifying insolvency event.
- The scheme cannot be rescued.

There must be insufficient assets in the scheme to secure benefits on wind up that are at least equal to the compensation that the PPF would pay if it assumed responsibility for the scheme.

Personal pension scheme

A scheme to which the employee contributes to provide retirement and/or death benefits.

Employers can contribute to personal pension schemes also but are not obliged to do so. A personal pension scheme usually operates as a money purchase scheme.

Qualifying Insolvency Event

A qualifying insolvency event occurs in relation to a company where:

a) the nominee under Part 1 of the Insolvency Act 1986 either:

   i) (who is not the liquidator or administrator) submits a report to the court stating his opinion that the proposal should be considered by a meeting of the company and by the company’s creditors; or

   ii) (who is an administrator or liquidator) summons a meeting of the company and convenes a creditors’ decision procedure to consider the proposal;

b) the directors of the company file (or in Scotland, lodge) with the court documents and statements which begin a moratorium where the directors propose a voluntary arrangement;

c) an administrative receiver is appointed in relation to the company;

d) the company enters administration;
e) a resolution is passed for creditors’ voluntary liquidation or an administrator issues a notice which converts the administration to creditors’ voluntary liquidation;

f) a winding up becomes a creditors’ voluntary liquidation under s96 of the Insolvency Act 1986;

g) a winding up order is made, or an administration is converted to winding up by court order.

Other definitions of a qualifying insolvency event exist for partnerships and individuals.

**Re-enrolment date**

Employers must review their auto enrolment duties every three years. The date must be within three months of the three year anniversary of the staging date. The employer must submit a re-declaration of compliance to TPR within five months of the three year anniversary.

**RP15 claim**

The form used to claim unpaid pension contributions, which occurred in the 12 months prior to the appointment of IPs, from the Insolvency Service.

**Section 22 Notice**

s22 Pensions Act 1995 requires IPs to issue a Notice to TPR, the PPF and the trustees of any occupational pension scheme which is connected with an entity to which they are appointed. This requirement is to ensure that the trustees of an occupational pension scheme are independent.

**Section 120 Notice**

s120 Pensions Act 2004 requires IPs to issue a Section 120 Insolvency Event Notice to TPR, the PPF and the trustees of any occupational pension scheme which is connected with an entity to which they are appointed.

The purpose of the s120 Insolvency Event Notice is to notify the PPF that a qualifying insolvency event has occurred in relation to an employer that is connected with a defined benefit scheme.

**Section 122 Notice**

S122 Pensions Act 2004 requires IPs to issue a s122 Notice to TPR, the PPF and the trustees of a defined benefit pension scheme.

The purpose of the s122 Notice is to inform the parties whether the scheme has failed, has been rescued, or the IP ceases to act before the scheme outcome is known.

**Section 75 debt / Buy Out debt**

The difference between the scheme’s liabilities and assets, where the liabilities are estimated by an actuary, on the basis of securing members’ benefits by purchasing an annuity from an insurance company, the most expensive method of securing benefits. See s75 Pensions Act 1995. Also see Cessation Debt.
Self-Invested Personal Pension (SIPP)

A personal pension scheme which allows the member to choose from a large range of investments. SIPPS may also borrow money to buy commercial property and make loans to unconnected parties.

Small Self-Administered Scheme (SSAS)

An occupational pension scheme, usually set up for a company’s owners and managers, who will all be trustees. They have wide investment powers and can lend money to the employer, borrow money to buy commercial property and invest in the employer’s shares.

Staging Date

The date by which an employer must comply with the requirements of auto-enrolment.

Stakeholder pension

A money-purchase scheme designed to provide retirement benefits, mainly for employees or the self-employed. The requirement to offer this type of scheme was repealed with effect from 1 October 2012 and was replaced by new duties on UK employers to automatically enrol eligible workers in an automatic enrolment scheme.

The Pensions Regulator (TPR)

Established by the Pensions Act 2004, TPR became operational on 6 April 2005 and has responsibility for all work-based pension schemes in the UK. TPR replaced OPRA and consequently has wide ranging powers. TPR may investigate schemes, issue improvement notices and take action to recover unpaid employer contributions. It aims to give better protection to members of work-based schemes.

TPR is also responsible for enforcing and policing auto-enrolment compliance.

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

TUPE, together with a number of amending statutory instruments, are designed to protect certain employee rights on the transfers of businesses or service provisions.
### OFFICE HOLDER CHECKLIST

#### 1 IDENTIFY PENSION SCHEMES AND RISK BENEFITS

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1a</td>
<td>Use a structured checklist to record pensions and benefits and the actions required and taken for each scheme identified</td>
</tr>
<tr>
<td>1b</td>
<td>Search for evidence of pensions and risk benefits;</td>
</tr>
<tr>
<td></td>
<td>i  Ask directors to complete Employer pension and employee benefits questionnaire and declaration</td>
</tr>
<tr>
<td></td>
<td>ii Review company accounts</td>
</tr>
<tr>
<td></td>
<td>iii Review payroll and books and records and employment contracts</td>
</tr>
<tr>
<td></td>
<td>iv Review company and trustee bank accounts</td>
</tr>
<tr>
<td></td>
<td>v Search using PPF’s s120 Notification Service</td>
</tr>
<tr>
<td></td>
<td>vi Search Pension Tracing Service on-line where possible</td>
</tr>
<tr>
<td>1c</td>
<td>Record results of searches under 1b and consider action required for each scheme found</td>
</tr>
</tbody>
</table>

#### 2 EITHER REQUEST INFORMATION ABOUT EACH SCHEME OR INSTRUCT PENSION ADVISOR

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2a</td>
<td>Issue a detailed request for information to each pension provider / trustee / insurer</td>
</tr>
<tr>
<td>2b</td>
<td>Review responses and determine scheme type and actions required – consider using a checklist for each scheme</td>
</tr>
</tbody>
</table>

#### 3 AUTO ENROLMENT AND RE-ENROLMENT

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>3a</td>
<td>Identify the Company’s Re-Enrolment date</td>
</tr>
<tr>
<td>3b</td>
<td>Is there a Qualifying Scheme in place? If not, what is required?</td>
</tr>
<tr>
<td>3c</td>
<td>Had the Company completed the Declaration of Compliance?</td>
</tr>
<tr>
<td>3d</td>
<td>Will retained employees be employed at a future Re-Enrolment date? If so, consider requirement for Declaration of Compliance to be submitted</td>
</tr>
<tr>
<td>3e</td>
<td>If no scheme is in place and the company paid employees under PAYE, consider requirement for a breach of law report to be submitted to the Insolvency Service and the Pensions Regulator <a href="mailto:customersupport@autoenrol.tpr.gov.uk">customersupport@autoenrol.tpr.gov.uk</a></td>
</tr>
</tbody>
</table>

There is a statutory duty under s70 PA04 to report breaches of the law to TPR, which would include breaches in relation to automatic enrolment. Among others, the employer to a scheme is subject to this duty and the IP may be obliged to make the notification where he or she steps into the employer’s shoes. The TPR ‘Code of Practice’ on reporting breaches of the law sets out how the TPR expect statutory whistle-blowers to comply with their duties.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>3f</td>
<td>Pay contributions as they fall due for any retained staff</td>
</tr>
<tr>
<td>3g</td>
<td>Advise TPR of nominated contact of IP</td>
</tr>
<tr>
<td>3h</td>
<td>Advise TPR when last employee leaves service</td>
</tr>
</tbody>
</table>

#### 4 OCCUPATIONAL PENSION SCHEMES including Master Trusts such as NEST, Now, Peoples Pensions etc.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>4a</td>
<td>Within 14 days of appointment or, if later, within 14 days of identifying a scheme, issue s120 Insolvency Event Notice for each occupational pension scheme – use PPF on-line system or issue a paper report for any scheme not found on the PPF’s s120 Notification Service (not required in MVLs)</td>
</tr>
<tr>
<td>4b</td>
<td>Issue s22 Notices on appointment to the PPF, TPR and Trustees of each scheme (for all appointments including MVLs)</td>
</tr>
<tr>
<td>4c</td>
<td>Issue s122 Notices if the scheme is defined benefit in nature (not required in MVLs)</td>
</tr>
</tbody>
</table>

This guidance note is not intended to be a statement of law or a substitute for specific professional or legal advice. We have made every effort to ensure that the guide is accurate but R3 cannot accept any responsibility for the consequences of any action taken in reliance of its contents.
Inform the scheme provider of the relevant appointment and request information from them. For example:
- Trustee and Scheme Administrator details
- Deed and rules
- HMRC approval
- Copy of last Pension Regulator Exchange return
- Contributory history
- Loans: Scheme to Company, or Company to Scheme
- Property ownership
- Security held
- VAT registration status
- Ownership of Company shares
- Ongoing death claims
- Scheme accounts
- Actuarial reports
- Membership schedule

Review responses received from PPF, TPR or Trustees

Continue to make contributions where they fall due post appointment for any retained employees (for schemes not in PPF assessment)

Inform all parties (administrators/actuaries/lawyers/auditors/advisors etc.) about the insolvency and that contributions will cease when applicable.

Determine if any contributions pre-appointment are unpaid and make an RP15 claim as required

Record PPF as a creditor of the scheme (Defined benefit only)

Record trustees as a creditor as required by circumstances

Is the Company the trustee? What action should be taken if they are? Appoint an independent trustee?

Does the insolvency act as a wind-up trigger?

Issue s22 Notices (these Notices must be issued as soon as is reasonably practicable to the PPF, TPR and the trustees or managers of the scheme) in relation to the company which operated the scheme on ceasing to act.

| 5d | Inform the provider when contributions cease if these have continued to be made after the insolvency appointment |
| 5e | Determine if any contributions pre-appointment are unpaid and make an RP15 claim as required |
| 5f | Record provider as a creditor for any unpaid contributions which cannot be claimed via RP15 |

This guidance note is not intended to be a statement of law or a substitute for specific professional or legal advice. We have made every effort to ensure that the guide is accurate but R3 cannot accept any responsibility for the consequences of any action taken in reliance of its contents.
## RISK BENEFITS

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>6a</td>
<td>Identify any employee schemes which the Company operated, such as life assurance, medical insurance and inform the providers of appointment</td>
</tr>
</tbody>
</table>
| 6b | Request detailed information about each scheme:  
Policy reference  
Copy of contract terms  
Copy of deed and rules if applicable (life assurance only)  
Details of any Trustees  
Membership listing  
Renewal date  
Renewal data  
Premiums payable  
Premiums paid  
Existence of any ongoing claims  
Premium history |
| 6c | Agree terms to continue cover where required |
| 6d | Cancel cover once it is no longer required |
| 6e | Advise leaving dates |
| 6f | Request termination accounts and refunds |
EMPLOYER PENSION AND EMPLOYEE BENEFITS QUESTIONNAIRE

Please supply as much information as possible in each of the sections below. Where necessary, please continue your answers on a continuation page.

If more than one arrangement exists for any of the types of scheme listed, please make sufficient photocopies of the blank questionnaire to enable the information for each arrangement to be recorded separately.

<table>
<thead>
<tr>
<th>Employer’s name (the Employer):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your name:</td>
</tr>
<tr>
<td>Your position:</td>
</tr>
<tr>
<td>Your contact details:</td>
</tr>
<tr>
<td>Telephone:</td>
</tr>
<tr>
<td>Email:</td>
</tr>
</tbody>
</table>

I authorise [IP Practice name] to request The Pensions Service to provide them with details of all pension schemes connected with the Employer and confirm that the facts set out below are correct.  

<table>
<thead>
<tr>
<th>Signature:</th>
</tr>
</thead>
</table>

Please provide the contact details of any financial or employee benefit advisers who assisted in setting up or running any pension or benefit schemes listed below.

<table>
<thead>
<tr>
<th>Adviser 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adviser 2</td>
</tr>
</tbody>
</table>

**What is the Employer's next re-enrolment date?**

<table>
<thead>
<tr>
<th>/ /</th>
</tr>
</thead>
</table>

**Company’s PAYE reference e.g. 123/AB1234**

<table>
<thead>
<tr>
<th>/</th>
</tr>
</thead>
</table>

**Company’s PAYE Account Office Reference e.g. 123/AB12345678**

<table>
<thead>
<tr>
<th>/</th>
</tr>
</thead>
</table>

**Letter Code from the Pensions Regulator 10 digit reference**

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
</table>

Has the employer registered a pension scheme with the Pensions Regulator to meet its obligations under Auto Enrolment? If 'Yes' please provide full details below

<table>
<thead>
<tr>
<th>Yes / No</th>
</tr>
</thead>
</table>

Has the employer ever received a Warning Notice, Compliance Notice, or an Unpaid Contribution Notice from the Pensions Regulator? If 'Yes' please provide details

<table>
<thead>
<tr>
<th>Yes / No</th>
</tr>
</thead>
</table>

---

This guidance note is not intended to be a statement of law or a substitute for specific professional or legal advice. We have made every effort to ensure that the guide is accurate but R3 cannot accept any responsibility for the consequences of any action taken in reliance of its contents.
This guidance note is not intended to be a statement of law or a substitute for specific professional or legal advice. We have made every effort to ensure that the guide is accurate but R3 cannot accept any responsibility for the consequences of any action taken in reliance of its contents.

### Details of the pension scheme used to satisfy Auto Enrolment requirements:

<table>
<thead>
<tr>
<th>Scheme name and address</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Scheme provider and reference number</td>
<td></td>
</tr>
<tr>
<td>Employer Pension Scheme Reference (EPSR) number, or Pension Scheme Registry Number (PSRN)</td>
<td></td>
</tr>
<tr>
<td>What records are kept to record the identity of 'workers' and to record any workers who opted not to join?</td>
<td></td>
</tr>
</tbody>
</table>

### Does the employer operate a pension scheme for staff, or has it done in the past? If 'Yes' please advise:

<table>
<thead>
<tr>
<th>Yes / No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full Scheme Name:</td>
</tr>
<tr>
<td>Scheme Type:</td>
</tr>
<tr>
<td>Name and contact details of Scheme Trustees:</td>
</tr>
<tr>
<td>Name and contact details of Scheme Administrator:</td>
</tr>
<tr>
<td>Contact details of Insurer and Scheme/Policy number:</td>
</tr>
</tbody>
</table>

### Is there a separate pension scheme for directors/executives, or has one existed in the past? If 'Yes' please advise:

<table>
<thead>
<tr>
<th>Yes / No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full Scheme Name:</td>
</tr>
<tr>
<td>Scheme Type:</td>
</tr>
<tr>
<td>Name and contact details of Scheme Trustees:</td>
</tr>
<tr>
<td>Name and contact details of Scheme Administrator:</td>
</tr>
<tr>
<td>Contact details of Insurer and Scheme/Policy number:</td>
</tr>
<tr>
<td>Question</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Is there a separate life assurance scheme? If 'Yes' please advise:</td>
</tr>
<tr>
<td>Full Scheme Name:</td>
</tr>
<tr>
<td>How was it established?</td>
</tr>
<tr>
<td>Name and contact details of trustees (if applicable):</td>
</tr>
<tr>
<td>Name and contact details of Scheme Administrator:</td>
</tr>
<tr>
<td>Contact details of Insurer and Scheme/Policy number:</td>
</tr>
<tr>
<td>Is there a Permanent Health (Income Protection) scheme?</td>
</tr>
<tr>
<td>Scheme Name:</td>
</tr>
<tr>
<td>Insurer and policy number:</td>
</tr>
<tr>
<td>Contact telephone number:</td>
</tr>
<tr>
<td>Is there a Private Medical Insurance scheme?</td>
</tr>
<tr>
<td>Scheme Name:</td>
</tr>
<tr>
<td>Insurer and policy number:</td>
</tr>
<tr>
<td>Contact telephone number:</td>
</tr>
<tr>
<td>Are there any other employee benefit schemes?</td>
</tr>
<tr>
<td>Scheme Name:</td>
</tr>
<tr>
<td>Type of scheme:</td>
</tr>
<tr>
<td>Insurer and policy number:</td>
</tr>
<tr>
<td>Contact telephone number:</td>
</tr>
</tbody>
</table>
Caroline Sumner, Technical Director  
Tel: 020 7566 4207  
Email: caroline.sumner@r3.org.uk

Ben Luxford, Technical Manager  
Tel: 020 7566 4218  
Email: ben.luxford@r3.org.uk