



Pensions Alert

Update on requirements for pension scheme trustees to keep records under anti-money laundering legislation

Key points

- In June 2017, new money laundering regulations came into force which require trustees:
 - of schemes that are liable for certain taxes, to register with HMRC, and provide information to HMRC;
 - of all schemes to:
 - keep records about beneficial owners of the trust; and
 - disclose information about beneficial owners to law enforcement agencies (including the Financial Conduct Authority, National Crime Agency and HMRC) on request.
- The application of the legislation to pension scheme trustees was unclear but HMRC guidance confirms that pension scheme trustees will need to register with HMRC and provide information to HMRC if a **scheme is liable to pay certain taxes**. The deadline for registration is 31 January 2018 but HMRC has extended this deadline to 5 March 2018.
- The guidance also provides some clarification on the information that needs to be kept, and provided to HMRC, about beneficiaries.
- Pension scheme trustees should consider whether they need to take any steps to ensure member records are accurate and up to date, and whether they will need to register with HMRC.
- Trustees found to be in breach of the regulations could face criminal and civil penalties.
- Employers could face reputational issues if trustees of their pension scheme(s) are found to be in breach of the legislation so employers should consider engaging with pension scheme trustees about the steps being taken to ensure compliance.

Introduction

New money laundering regulations transposing the Fourth Money Laundering Directive (the **Directive**) into UK law came into effect on 26 June 2017. Due to the general election, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 were only finalised four days before the regulations came into force. The regulations require trustees to register (unless exempt) with HMRC, keep records about the “settlor” of the trust and any known beneficiaries, as well as requiring trustees to provide this information to HMRC on request. Certain parts of the regulations only apply to trustees “acting in the course of business”, i.e. professional trustees.

Does the legislation apply to pension scheme trustees?

The legislation applies to trustees of any express UK trust. A UK trust is a trust which has: (i) all UK resident trustees; or (ii) at least one UK resident trustee and a “settlor” who was domiciled in the UK at the time the trust was established, or when the settlor added funds to the trust.

There was some ambiguity as to the extent that the regulations apply to trustees of pension schemes and this was raised with HM Treasury and HMRC by a number of legal professionals. Updated guidance issued by HMRC after the regulations initially came into force stated that occupational pension schemes were “low risk” trusts, and therefore trustees who only deal with pension schemes would not need to register with HMRC for money laundering purposes. However, the guidance doesn’t exempt pension scheme trustees from other obligations under the regulations.

The Directive itself does not include any exemptions for pension scheme trustees and therefore further guidance from the government has been awaited to clarify how the legislation applies to pension scheme trustees. [Guidance](#) circulated by HMRC clarifies that pension scheme trustees do need to register with HMRC if the scheme is liable for certain taxes (see *What information needs to be disclosed to HMRC below*).

What information do pension scheme trustees need to hold?

The regulations require trustees to keep accurate and up-to-date records of information about all the beneficial owners of the scheme, and to provide that information on request, to other parties that are required to carry out anti-money laundering checks when trustees enter into a transaction with, or form a business relationship with, such parties. Beneficial owners of a pension scheme include the “settlor”, the trustees, the members and beneficiaries and any other natural person exercising effective control over the scheme.

The guidance from HMRC clarifies that if a scheme has a class of beneficiaries, not all of whom have been determined, then trustees can provide HMRC with a description of that class rather than the details to be provided in respect of known beneficiaries. However, HMRC has also clarified that once a beneficiary of a class receives a benefit from the scheme (for example, a description of categories of dependents who may receive a pension on a member’s death), the trustees will need to provide further details of that beneficiary, including the beneficiary’s name, date of birth and NI number, to HMRC using HMRC’s Trust Registration Service. As pension scheme trustees won’t always know details about spouses, this allows trustees to describe spouses as a class of beneficiaries, where individual spouses have not been determined. Once a spouse becomes known to the trustees (for example, when the trustees first decide to make a payment to a spouse), trustees will need to provide details of the spouse to HMRC.

For the purposes of a pension scheme, “settlor” could include participating as well as sponsoring employers. Although the legislation is unclear on how schemes that have changed their sponsoring employer should interpret “settlor”, the guidance from HMRC clarifies that trustees should provide HMRC with details of the original sponsoring employer and the current sponsoring/participating employers.

In relation to scheme members, pension scheme trustees will need to keep records of their name, their date of birth, their NI number or unique taxpayer reference, their usual residential address if there is no NI number or unique taxpayer reference and their passport details if they are overseas residents. Trustees will also need to keep records about the “settlor” such as its name, unique taxpayer reference, details about its company registration, its registered office, its legal form and its governing law.

What information needs to be disclosed to HMRC?

If a scheme is liable to pay certain taxes in relation to its assets or income (including income tax, stamp duty land tax, land and buildings transaction tax and stamp duty reserve tax, the information that trustees are required to keep under the regulations (see *What information do pension scheme trustees need to hold?* above) must be provided to HMRC, so that HMRC can hold the information on a central register. Schemes that invest directly in shares or property will therefore need to provide the relevant information to HMRC as they will be liable for stamp duty. Other schemes will need to consider whether they are liable for any of the other taxes specified above. Payment of a member’s annual allowance charge is unlikely to trigger the obligation to disclose information to HMRC.

Trustees of pension schemes that are already registered for self-assessment and incurred a liability to pay any of the taxes specified above in the tax year 2016 – 2017 must register with HMRC by **31 January 2018**. HMRC has however confirmed that it will not impose a penalty if trustees register with HMRC between 31 January 2018 and **5 March 2018**.

Note that trustees of pension schemes that are not already registered with HMRC for self-assessment purposes and incurred a liability to pay any of the taxes specified above for the first time in the tax year 2016 – 2017 must register with HMRC by **5 January 2018**.

If a scheme does not currently have any liability to pay any of the taxes specified above, but a liability to pay one or more of those taxes arises in a subsequent tax year, trustees must disclose the relevant information to HMRC by 31 January following the end of the first tax year when the liability to pay one of those taxes arises. This is a change from the draft regulations which required trustees to provide information to HMRC by 5 April 2018, or by the end of the tax year after a liability to pay one of the specified taxes first arises.

If a scheme does not have a liability to pay any of the taxes specified above, trustees must hold the relevant information and pass it on to specified government agencies (including HMRC, the Financial Conduct Authority and the National Crime Agency), if required.

What steps should employers and trustees be taking to comply with the regulations?

As part of good scheme governance, trustees should already have access to most of the information that they are required to hold in respect of members as the guidance on record keeping from the Pensions Regulator requires trustees to keep accurate member data. Trustees should consider if they need to register with HMRC and whether they need to take any additional steps to ensure their records are accurate and up to date. For example, trustees may need to think about introducing procedures to collect additional information that they don't currently hold which is required to be kept under the regulations.

HMRC has circulated draft [guidance](#) to industry on how the regulations will work in practice. This guidance clarifies the extent to which the new regulations apply to pension scheme trustees and HMRC expects trustees to refer to the guidance to decide if they need to take any additional steps to comply with the regulations.

Failure to comply with the obligations to keep records and provide it to HMRC is a criminal offence and could also result in civil penalties. However, provided that trustees take all reasonable steps and exercise due diligence to comply with the regulations, and follow any guidance issued by HMRC, trustees would not be subject to civil penalties, and would not be guilty of a criminal offence.

Although the regulations potentially impose obligations on pension scheme trustees, an employer could risk reputational issues if its pension scheme trustees are found to be in breach of the regulations. Employers should therefore consider engaging with their trustees about the steps that trustees may need to take to comply with the regulations.

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