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Bulletin 2: Guidance for Reporting Accountants of Stakeholder Pension Schemes in the United Kingdom

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INTRODUCTION

1. Stakeholder pension schemes can be set up by trustees (trust schemes) or can be established by managers (contract schemes). The Pensions Regulator has responsibility for maintaining the register of stakeholder pension schemes, and for the governance of schemes. Under the regulations The Pensions Regulator cannot register, and must de-register, stakeholder schemes if they fail to meet the conditions for being a stakeholder scheme set out in legislation. The Financial Services Authority (FSA) has responsibility for regulating the sales and marketing of stakeholder pensions, and is also responsible for authorising and supervising the firms acting as stakeholder managers as well as firms involved in managing the funds invested in stakeholder schemes.
2. This Bulletin has been issued by the FRC to provide guidance for reporting accountants in relation to the requirements placed upon them in connection with stakeholder pension schemes. It does not constitute guidance from The Pensions Regulator or the FSA.
3. The principal legislation regulating Stakeholder pensions is The Welfare Reform and Pensions Act 1999 ('the Act') and The Stakeholder Pension Schemes Regulations 2000¹ ('the Regulations'). The relevant parts of the Regulations came into force on 1 October 2000 but have been subject to subsequent amending regulations. This Bulletin reflects the version of the Regulations in force as at 5 April 2012.
4. Regulation 12(2)(a) requires the trustees or manager to make an annual declaration² containing various statements in accordance with Regulation 12(5). Regulation 12(5)(a) requires a statement that in the opinion of the trustees or manager there are systems and controls in place which provide reasonable assurance that:
 - (i) Regulations 13, 14 and 14B³ of the regulations have been complied with in relation to the scheme;
 - (ii) transactions for the purposes of the scheme in securities, property or other assets have occurred at a fair market value;
 - (iii) the value of members' rights has been determined in accordance with the provisions in the instruments establishing the scheme; and
 - (iv) adequate records have been maintained for the purposes of providing to members the statement required by Regulation 18A(1)⁴ of the regulations.

1 SI 2000 no.1403.

2 Regulation 12 of The Stakeholder Pension Schemes Regulations 2000, as amended, is reproduced in full in Appendix 2 of this Bulletin.

3 These regulations impose limits on the amount of charges and deductions which may be made by a stakeholder pension scheme and on the manner in which charges may be made by such a scheme.

4 This regulation requires a stakeholder pension scheme to provide an annual benefit statement to each member.

5. Regulation 12(5)(b) requires a statement describing the process that has been undertaken in order to arrive at the opinion expressed in the statement required by Regulation 12(5)(a).
6. Regulations 12(5)(c) and (d) require statements concerning compliance with the conditions in section 1(1) of the Act, and explaining the requirements of Regulations 13, 14, 14B and 18A(1).
7. Regulation 12(6) requires the trustees or manager to provide the reporting accountant with documentation to demonstrate that the process described in the statement in accordance with Regulation 12(5)(b) has taken place.
8. Regulation 12(2)(b) requires that the trustees or manager shall obtain from a reporting accountant⁵ statements made in accordance with Regulation 12(7) that
 - (i) the reporting accountant has been provided with documentation as required by Regulation 12(6); and
 - (ii) nothing has come to the attention of the reporting accountant that is inconsistent with the statement made in accordance with Regulation 12(5)(b), or

so far as the reporting accountant is unable to provide such statements, an explanation as to why he or she is unable to do so. The reporting accountant is not required to report on the statements made by the trustees or manager in accordance with Regulations 12(5)(c) or (d).

9. The trustees or managers are required by the Regulations to annex the reporting accountant's report to their declaration, and shall make the whole document available to members and beneficiaries of the scheme on request.
10. It is a condition of a scheme being a stakeholder pension scheme that the requirements of the Regulations are complied with.
11. The declarations by the trustees or managers and the reporting accountant's reports are due 6 months after the end of the scheme accounting period.

TRUSTEES' OR MANAGERS' DECLARATIONS

12. As described above, the trustees or managers are required to make statements to the effect that systems and controls provide reasonable assurance that specified aspects of the Regulations have been complied with and to describe the process that has been

5 Regulation 11 defines a reporting accountant as follows:

"A person is eligible for appointment as the reporting accountant if the person is eligible under section 1212 of the Companies Act 2006 for appointment as a company auditor

undertaken to make such statements. Guidance for trustees and managers to assist them in fulfilling these responsibilities has been issued by the Pensions Research Accountants Group (PRAG)⁶.

REPORTING ACCOUNTANT'S PROCEDURES

13. Regulation 11 sets out the processes to be followed for the appointment and resignation of the reporting accountant. The Regulation requires, in particular, that the reporting accountant acknowledge in writing within one month its receipt of the notice of appointment, and confirm that it will notify the trustees or managers of any conflict of interest to which the reporting accountant is subject in relation to the scheme immediately the reporting accountant becomes aware of its existence. The reporting accountant is also required, on resignation, to serve on the trustees or managers a written notice containing a statement specifying any circumstances connected with the resignation which in its opinion significantly affects the interests of the members or beneficiaries of the scheme, or a declaration that it knows of no such circumstances.
14. The objective of the reporting accountant's review in accordance with Regulation 12(2)(b) is to obtain evidence to support an assessment of whether the trustees' or managers' description of the process that has been undertaken in order to arrive at the opinion expressed in the statement required by Regulation 12(5)(a) is supported by the documentation provided to the reporting accountant in accordance with Regulation 12(6) and demonstrates that the process described has taken place. Before commencing its review procedures, the reporting accountant:
 - (a) plans the work to be undertaken in relation to the declaration by the trustees or managers so as to perform that work in an effective manner;
 - (b) familiarises itself with the Stakeholder Pensions Regulations, particularly those sections governing the preparation of the trustees' or managers' declaration;
 - (c) obtains an understanding of the structure and management of the scheme and its processing arrangements, including those that are outsourced;
 - (d) ensures that it complies with the independence guidance issued by its professional body and discusses, where appropriate, with the trustees or managers any relationships which may affect the reporting accountant's independence or its objectivity and any related safeguards that are in place; and
 - (e) agrees the terms of the engagement with the trustees or managers and records them in writing.

6 "Making the Annual Declaration – A Guide for Trustees and Managers of Stakeholder Pension Schemes". Copies of this guidance may be obtained from PRAG's website: www.prag.org.uk.

15. Appropriate evidence to support the reporting accountant's assessment will usually be obtained by performing the following procedures:
- (a) obtaining through enquiry of appropriate individuals an understanding both of the framework of controls relevant to the legislation referred to in Regulation 12(5)(a), and the process established by the trustees or managers for the review of the effectiveness of those controls, to enable the reporting accountant to arrive at its opinion and sign the declaration;
 - (b) enquiring of the trustees or managers whether they are familiar with, and have considered the applicability to their scheme of, relevant guidance issued to trustees and managers by PRAG⁷ and The Pensions Regulator and, if necessary, recommending that they should so consider it;
 - (c) reviewing relevant minutes of the meetings of the trustees or managers, and of other committees (for example audit and risk management committees) together with supporting papers presented at those meetings;
 - (d) enquiring of the trustees or managers whether they are aware of any instances of non-compliance with the legislation referred to in Regulation 12(5)(a);
 - (e) reviewing any relevant correspondence with regulators, particularly The Pensions Regulator and the FSA;
 - (f) reviewing the documentation provided to the reporting accountant by the trustees or managers in accordance with Regulation 12(6), including any documentation relating to functions outsourced to a third party, to ascertain that it demonstrates that the process described in the statement made in accordance with Regulation 12(5)(b) has taken place;
 - (g) enquiring of the audit engagement partner whether any relevant matters have come to his or her attention during the audit work (see paragraph 18 below); and
 - (h) attending meetings at which the declaration made in accordance with Regulation 12(5)(a), including the statement concerning the review process made in accordance with Regulation 12(5)(b), is considered and approved for signature.
16. The reporting accountant also:
- (a) records in its working papers
 - details of the engagement planning,
 - the nature, timing and extent of the procedures performed in relation to its report, and the conclusions drawn; and

⁷ In addition to the PRAG guidance referred to in paragraph 12, PRAG has also issued guidance on possible control procedures entitled "Stakeholder pension schemes – a controls checklist". This can also be downloaded from PRAG's website www.prag.org.uk.

- its reasoning and conclusions on all significant matters which require the exercise of judgment;
 - (b) considers the matters which have come to its attention while performing the procedures on the declaration and whether they should result in a modification to the reporting accountant's statement or be included in a letter of comment to the trustees or managers; and
 - (c) takes steps to ensure that any delegated work is directed, supervised and reviewed in a manner which provides reasonable assurance that such work is performed competently.
17. The reporting accountant may request the trustees or managers to provide written confirmation of oral representations made during the course of the review.
18. The reporting accountant of a stakeholder pension scheme may also be the statutory auditor of the managing entity (in the case of contract schemes), or of the schemes managed by the trustees (in the case of trust schemes). Whilst the reporting accountant's assignment is entirely separate from the audit engagement, the partner in charge of the reporting accountant's work nevertheless requests the audit engagement partner to advise him of any breaches of the requirements specified in Regulation 12(5)(a) of which the audit engagement partner has become aware as a result of the audit.
19. The reporting accountant is not required to consider whether the trustees' or managers' description of the process made in accordance with Regulation 12(5)(b) covers all relevant risks and controls, or to reach a conclusion on the adequacy of the process or on the effectiveness of the controls. However the reporting accountant does consider:
- whether it has been provided with documentation which supports the trustees' or managers' description of the process, and
 - whether it has become aware of matters which are inconsistent with the description of the process,
- and, if necessary, the reporting accountant modifies its statement.
20. The reporting accountant is not required to obtain evidence concerning the specific requirements underlying Regulation 12(5)(a) – for example that the value of members' rights has been determined in accordance with the provisions establishing the scheme. However, if during its review of the trustees' or managers' documentation the reporting accountant identifies facts or circumstances which suggest that:
- the trustees or managers may not be justified in their belief that their systems and controls provide reasonable assurance to enable them to make the statement required by Regulation 12(5)(a), or

- because of apparent breaches of the legislation or other matters, the proposed statement required by Regulation 12(5)(a) is not supportable,

the reporting accountant discusses its concerns with the trustees or managers as soon as is practicable.

21. If as a result of the discussion the reporting accountant remains of the view that significant internal control weaknesses or other matters exist which, in its opinion, call into question the credibility of the statement made by the trustees or managers in accordance with Regulation 12(5)(a), they consider modifying the statement in their report in respect of these matters.
22. Under normal circumstances the reporting accountant modifies its report in respect of apparent undisclosed breaches of the legislation, referred to in Regulation 12(5)(a), of which the reporting accountant becomes aware. In deciding whether to modify its report in respect of such breaches, the reporting accountant considers their significance. The materiality of the breach in monetary terms may not be relevant to a consideration of its significance. However, where breaches have occurred which were identified by the scheme's own control systems, which were not indicative of a systemic problem, and which were corrected subsequently such that there was no monetary impact on any member or beneficiary of the scheme, they are unlikely to be significant.

REPORTING ACCOUNTANT'S REPORTS

23. The reporting accountant's report on a declaration normally includes the following matters:
 - a title identifying the persons to whom the report is addressed (which will normally be the trustees or managers of the scheme);
 - an introductory paragraph identifying the Regulations which are covered by the report;
 - separate sections, appropriately headed, dealing with
 - respective responsibilities of the trustees or managers and the reporting accountants, and
 - the basis of the reporting accountant's statement, including (where appropriate) a reference to compliance with the guidance in this Bulletin;
 - the reporting accountant's statement on the matters required by the Regulations;
 - the signature of the reporting accountant; and
 - the date of the reporting accountant's report.

Appendix 1 of this Bulletin sets out an illustrative example of a reporting accountant's report on the declaration. This example wording may need to be tailored to reflect particular circumstances.

24. As indicated in paragraphs 19-22 above, the reporting accountant modifies the statement in its report if the reporting accountant:
- has not been provided with documentation to demonstrate that the trustees' or managers' description of the process made in accordance with Regulation 12(5)(a) has taken place, or
 - is aware of matters that are inconsistent with the trustees' or managers' description of the process, made in accordance with Regulation 12(5)(b), or
 - is aware of matters which call into question the credibility of the statement made by the trustees or managers in accordance with Regulation 12(5)(a). These matters are likely to be connected with significant internal control weaknesses, or with breaches of the legislation referred to in Regulation 12(5)(a).

REPORTING TO THE REGULATORS

25. Section 70(1) of The Pensions Act 2004 imposes on "a person who is otherwise involved in advising trustees or managers of an occupational or personal pension scheme in relation to the scheme" a requirement to report to The Pensions Regulator. The Pensions Regulator's Regulatory Code of Practice 01 "Reporting breaches of the law" clarifies that a reporting accountant appointed to a stakeholder scheme is subject to this requirement.
26. The reporting requirement referred to in paragraph 25 will exist where the reporting accountant has reasonable cause to believe that:
- 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
 - the failure to comply is likely to be of material significance to The Pensions Regulator in the exercise of any of its functions⁸.
27. A reporting accountant of a contract scheme who is also the auditor of the managing entity considers whether it has a duty to report matters of material significance, of which it becomes aware in its capacity as auditor of the managing entity, to the FSA⁹ under the

8 Further guidance on reporting to The Pensions Regulator is set out in Practice Note 15 (Revised) – The audit of occupational schemes in the United Kingdom.

9 Further guidance on reporting to the FSA is set out in Practice Note 20 (Revised) – The audit of insurers in the United Kingdom.

FSMA¹⁰ 2000 (Communications by Auditors) Regulations 2001. This is because there may be situations where it is not clear whether information coming to the attention of the reporting accountant is received in that capacity or in its role as auditor. Appendix 2 to ISA (UK and Ireland) 250 Section B provides guidance as to how information obtained in non-audit work may be relevant to the auditor in the planning and conduct of the audit and the steps that need to be taken to ensure the communication of information that is relevant to the audit.

28. In general, if a reporting accountant is in any doubt as to whether a report should be made to the regulator or not, it considers taking legal advice.

LETTERS OF COMMENT

29. As indicated in paragraph 24 above, if the reporting accountant considers that significant weaknesses in internal control or other matters exist which call into question whether the trustees' or managers' statements made in accordance with Regulations 12(5)(a) and (b) are justified, it modifies the statement in its report.
30. If, however, the reporting accountant is of the opinion that control weaknesses or other matters exist, but these do not affect the credibility of the statement made by the trustees or managers in accordance with Regulation 12(5)(a), it reports them in a letter of comment to the trustees or managers.
31. Where no significant weaknesses in the scheme's internal control systems come to the reporting accountant's attention during its review, the reporting accountant advises the trustees or managers in writing that no letter of comment is to be issued.
32. Trustees or managers will normally wish to have the opportunity of responding in writing to the comments made in letters of comment. The reporting accountant agrees with the trustees or managers the way in which their responses are to be presented. These discussions should not, however, be allowed to cause an unreasonable delay in issuing the letter of comment.

¹⁰ The Financial Services and Markets Act.

EXAMPLE REPORT OF THE REPORTING ACCOUNTANT TO THE TRUSTEES OR MANAGERS OF A STAKEHOLDER PENSION SCHEME

The Trustees/Managers of the XYZ pension scheme,

Address.

XYZ STAKEHOLDER PENSION SCHEME

We report in accordance with the requirements of Regulation 12(7) of the Stakeholder Pension Schemes Regulations 2000 (as amended) (the Regulations), concerning the annual declaration by the trustees/managers of the XYZ pension scheme. The declaration is made in respect of the period of 12 months ended on xxxx.

Respective responsibilities of the trustees/managers and the reporting accountant

In accordance with Regulation 12(2)(a) the trustees/managers are responsible for the preparation of a declaration, which contains a statement describing the process that the trustees/ managers have undertaken, in order to arrive at their opinion as to whether systems and controls are in place which provide reasonable assurance that specified regulations in relation to stakeholder pensions have been complied with.

It is our responsibility to consider whether documentation has been provided to us to demonstrate that the process described by the trustees'/managers' has taken place, and to report if this is not the case and to consider whether anything has come to our attention that is inconsistent with the description of the process and to report if this is the case.

We are not required to consider whether the trustees'/managers' description of the process made in accordance with Regulation 12(5)(b) covers all relevant risks and controls, or to reach a conclusion on the adequacy of the process or on the effectiveness of the controls or to undertake any work in this regard.

Basis of reporting accountant's statement

We conducted our work in accordance with Bulletin 2 'Guidance for reporting accountants of stakeholder pension schemes in the United Kingdom' issued by the Financial Reporting Council. The work performed involved making enquiries of management and staff and examination of the documentary evidence supporting the existence of the process.

Statement

*(Other than the Exception set out below)*¹¹ In accordance with Regulation 12(7) we report that in our opinion:

- we have been provided by the trustees/managers with documentation, which is required by Regulation 12(6) to demonstrate that the process described in the trustees'/managers' statement has taken place; and
- nothing has come to our attention that is inconsistent with the trustees'/ managers' description of the process.

(Exception

The trustees'/managers' description concerning ... does not appropriately reflect our understanding of the process undertaken by you because.....")

Reporting accountants

Address

Date

11 In cases where there are no exceptions, the wording in italics would be omitted.

REGULATION 12 OF THE STAKEHOLDER PENSION SCHEMES REGULATIONS 2000

Requirement for declaration by trustees or manager

12.—(1) For the purposes of section 1(1)(b), it shall be a condition of a scheme being a stakeholder pension scheme that the requirements of this regulation are complied with.

(2) Subject to paragraph (11), the trustees or manager of the scheme shall, no later than the end of 6 months beginning with each reporting date—

- (a) make a declaration in writing signed by the trustees or manager containing the statements set out in paragraph (5) in relation to the reporting period or, in so far as they are unable to make those statements containing a statement explaining why they are unable to do so; and
- (b) obtain from the reporting accountant appointed by virtue of regulation 11 the statement specified in paragraph (7) or, in so far as the reporting accountant is unable to make that statement, a statement from the reporting accountant explaining why he is unable to do so.

(3) Subject to paragraph (10), in this regulation reporting date means—

- (a) in the case of the first reporting date, a date chosen by the trustees or manager that is no later than the last day of the period of 12 months beginning with the date on which the scheme is registered under section 2 of the Act; and
- (b) in the case of each subsequent reporting date, a date chosen by the trustees or manager that is no later than the last day of the period of 12 months beginning with the date immediately following the previous reporting date.

(4) Subject to paragraph (10), in this regulation reporting period means—

- (a) in the case of the first reporting period, the period beginning with the date of registration of the scheme under section 2 of the Act and ending on and including the first reporting date;
- (b) in the case of subsequent reporting periods, the period beginning on the date immediately following the previous reporting date and ending on and including the reporting date.

(5) The statements specified in paragraph (2)(a) shall be—

- (a) a statement that in the opinion of the trustees or manager there are systems and controls in place which provide reasonable assurance that —
 - (i) regulations 13, 14 and 14B have been complied with in relation to the scheme;
 - (ii) transactions for the purposes of the scheme in securities, property or other assets have occurred at a fair market value;
 - (iii) the value of members' rights has been determined in accordance with the provisions in the instruments establishing the scheme; and
 - (iv) adequate records have been maintained for the purposes of providing to members the statement required by regulation 18A(1);

- (b) a statement describing the process that the trustees or manager have or has undertaken in order to arrive at the opinion expressed in the statement described in paragraph (5)(a);
 - (c) a statement that in the opinion of the trustees or manager there are systems and controls in place which provide reasonable assurance that the scheme has complied with the conditions in section 1(1) of the Act, apart from those conditions that are covered by the statement in paragraph (5)(a); and
 - (d) a statement which explains that—
 - (i) regulations 13, 14 and 14B impose limits on the amount of charges and deductions which may be made by a stakeholder pension scheme and on the manner in which charges may be made by such a scheme; and
 - (ii) regulation 18A(1) requires a stakeholder pension scheme to provide an annual benefit statement to each member.
- (6) The trustees or manager shall provide the reporting accountant with documentation to demonstrate that the process described in the statement in paragraph (5)(b) has taken place.
- (7) The statement specified in paragraph (2)(b) shall be a statement that—
- (a) the reporting accountant has been provided with documentation as required by paragraph (6); and
 - (b) nothing has come to the attention of the reporting accountant that is inconsistent with the statement made in paragraph (5)(b).
- (8) The trustees or manager shall make available to members and beneficiaries of the scheme on request the declaration made by the trustees or manager and the statement obtained from the reporting accountant in accordance with paragraph (2).
- (9) If the statement to be obtained by the trustees or manager under paragraph (2)(b) is obtained from the reporting accountant acting as such while ineligible in contravention of regulation 11(7A)(a)—
- (a) the trustees or manager shall not be regarded as having complied with paragraph (2)(b); and
 - (b) for the purposes of paragraph (8), the statement from the reporting accountant shall not be regarded as obtained in accordance with paragraph (2)(b).
- (10) Where a scheme is registered under section 2 of the Act on or before 6th April 2001—
- (a) the first reporting date shall be 5th April 2002; and
 - (b) the first reporting period shall be the period commencing on and including 6th April 2001 and ending on and including 5th April 2002.
- (11) Where the reporting date is on or before 30th September 2002 the trustees or manager of the scheme shall make the declaration specified in paragraph (2)(a) and obtain the statement specified in paragraph (2)(b) from the reporting accountant—
- (a) on or before 31st December 2002; or
 - (b) by the end of 6 months beginning with the reporting date,
- whichever is later.



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