

Consultation on Good Guidance
Bay 3140
Department for Business, Enterprise and Regulatory Reform
1 Victoria Street
London SW1H 0ET

31 March 2008

Dear Sir/Madam

A Code of Practice on Good Guidance on Regulation – consultation response

PricewaterhouseCoopers and PricewaterhouseCoopers Legal LLP are pleased to have the opportunity to respond to this consultation document.

PricewaterhouseCoopers is the world's largest professional services organisation. We provide a diverse range of services to our UK and international clients. This response to your consultation is from our perspective as a pensions and benefits consultancy and legal advisers to a wide range of pension schemes, although our comments may well read across to other areas of regulation. These services include advice to trustees and sponsoring employers in relation to pensions and other benefit plans, accounting, actuarial, tax, investment etc.

We fully support and welcome the Government's commitment to improve the quality of guidance on regulatory requirements.

In this response we would like to provide comments based on guidance related to work-based pension schemes produced by the various Government bodies. This includes the Pensions Regulator (the "Regulator"), the Pension Protection Fund (PPF), HM Revenue & Customs (HMRC) and the Department for Work and Pensions (DWP).

Pensions industry – brief background

The pensions industry has over the past few years faced some of the most complex challenges it has ever encountered. The new regulatory environment¹ places greater requirements on both employers and trustees of pension schemes. Consequently, the pensions debate is now firmly on the agenda in every boardroom and is a major consideration for employers looking to make strategic business decisions and trustees in effectively managing their schemes.

Unfortunately, as the Government has recognised² there is too much regulation and bureaucracy in the pensions industry generally, which makes pensions difficult to understand whilst not necessarily providing appropriate safeguards for scheme members. Combined with the negative media coverage on pensions, this reinforces the fact that scheme members need assurance that their work-based pension schemes are being run efficiently and with their interests in mind.

The overload of legal requirements makes it imperative that any guidance produced on pensions needs to be simple, clear, concise and easy-to-understand – quality and not quantity should be the spirit of any guidance. We agree that guidance should not need translation by professional advisers, but should be clear to the end users.

¹ Following the Pensions Act 2004 and the Finance Act 2004 which introduced the new pensions tax regime

² Rolling deregulatory review of pensions

Comments on the Eight Golden Rules

We provide our comments on each of the golden rules. These can be cross-referred to the Appendix, which lists examples of pensions-related guidance complying and not complying with the rules.

Golden rule 1 - Based on a good understanding of the audience

We agree that good guidance requires a detailed understanding of the target audience. There are a number of different stakeholders within the pensions industry to whom guidance needs to be targeted - these include employers, trustees, professional advisers, scheme members etc. Most guidance produced tends to be written with the intention of addressing different audiences at the same time. We understand that guidance may, for example, be targeted at trustees but with the intention to also be helpful for professional advisers and employers. However, we feel that good guidance should address the needs of the various audiences to avoid confusion and uncertainty. If the audience has varying levels of understanding, then the guidance needs to be pitched to those with the most basic level of knowledge.

Golden rule 2 - Designed with input from the audience and their representative bodies

While this is a great idea in theory, it may not always work in practice. For example, the DWP have promised guidance on how flexible retirement and pension provision tie in with the Age Discrimination legislation. This guidance was initially promised for Spring 2007, however, it was not until September 2007 when a draft consultation was issued which turned out to be an information-gathering exercise and to date there is still no guidance in sight.

The difficulty is that the input required is often twofold, firstly, the content of the guidance, and secondly, the form of the guidance. The audience is generally asked for comments on the first and not the second, which means the form of the guidance is not always addressed.

Golden rule 3 - Organised around the user's way of working rather than legislative or departmental structures

We agree guidance needs to be structured around the user's processes to help them see how the requirements fit into their day-to-day work. The Regulator's guidance tends to be less specific and is often a general call to consider a particular matter further (what the Regulator calls "principles based" guidance). While we recognise that no two pension schemes are the same and often a scheme needs to factor in its own circumstances, we feel that more effort is required on ensuring guidance (particularly produced by the Regulator) meets this objective. Issuing principles-based guidance means that the user is still uncertain, risk remains and there is a lack of confidence as to how the guidance applies.

Golden rule 4 - Easy for users to understand

It is imperative that all guidance should be written in simple, clear, language without unnecessary jargon or acronyms. Unfortunately, there are still instances of pensions jargon being used in guidance. Furthermore, the Regulator's guidance does not meet your aims of being as concise as possible or being "stand alone" with no need to refer to other documents (see Appendix A for particular references). On a positive note, we find the Regulator does helpfully produce guidance including flowcharts and diagrams, which assist in simplifying information for the user.

Golden rule 5 - Reliable

We agree that businesses should be confident that guidance will provide them with a thorough understanding of how to comply with the law. However, some of the Regulator's guidance does not meet this aim, for example, the Regulator regularly suggests employers and trustees seek advice from their lawyers or other professional advisers. This defeats the purpose of guidance in that

users are still left with a lack of certainty and confidence in meeting legal requirements, not to mention increased costs with taking professional advice. This does not tie in with your consultation which provides:

- *“Guidance which follows the golden rules outlined in this consultation document will, I believe, make it easier for businesses to understand how to follow regulation, increasingly compliance and reducing the need to pay for external advice which currently costs them £1.4 billion a year.”* (page 5)
- *“Good guidance reduces the burden of regulation. If businesses are unsure about how to follow a regulation they may pay for external advice or over-comply. Clear, easy to follow guidance reduces these costs.”* (page 9)

Golden rule 6 - Issued in good time

This rule states that guidance should be issued at least 12 weeks before a regulation comes into effect, in order to allow organisations time to prepare for new regulations. We whole-heartedly agree with this as the pensions industry is often provided with guidance shortly before (or even sometimes after) new legislative provisions come into force.

The implications of not issuing guidance on time can result in extra cost and administrative implications for employers. Additionally, guidance not issued on time can lead to tremendous uncertainty for employers and trustees of pension schemes, which then results in a “wait and see” game to determine if case law can clarify uncertainties.

Golden rule 7 – Easy to access

Guidance produced by the Regulator, PPF, HMRC and DWP are accessible on their websites. The first two websites have the facility for users to subscribe to notifications on when new guidance is issued, which is very helpful. While guidance on pensions meets this rule, there is room for improvement. For example, some of the guidance on the Pensions Regulator website is not easy to find as it is not all stored in one place. Additionally, it would be helpful to have a clear indication of all forthcoming guidance. We have been made aware by the Regulator that it will be issuing further guidance this year, however, this was communicated via mere references in consultation documents.

We note the trend towards web-based guidance, especially from the Regulator, but do not believe this alone meets this criteria. In our view, guidance must also easily be available in a downloadable form. It is not easy for users to go through many web pages and ensure they have printed everything off and followed the various links. Paper copies of guidance are often required to be shared with others.

Golden rule 8 – Reviewed and improved

It is vital that guidance is checked to ensure it is up-to-date. We agree that guidance should clearly state when it was prepared and made clear if it has been superseded. Guidance does not currently state when it is due for review, it would be helpful to have this but we acknowledge that it may be difficult to foresee. As mentioned above, it would be useful if forthcoming guidance could be clearly stated to allow advisers to forewarn their clients on future developments.

If you would like to discuss this response further or have any queries, please contact Navneet Bassan on 020 7804 7715 or navneet.bassan@uk.pwc.com.

Yours faithfully

Appendix - Examples of pensions guidance which does/does not comply with the “8 Golden Rules of Good Guidance”

Golden Rule	Guidance which complies	Guidance not complying
1 Based on a good understanding of the audience	<p>HMRC - Registered Pension Schemes Manual (RPSM) (Guidance)</p> <ul style="list-style-type: none"> Targeted to specific audiences Easy to navigate and use Clear, concise with the benefit of case studies and examples On-line version only means it can be easily updated <p>http://www.hmrc.gov.uk/manuals/rpsmmanual/Index.htm</p>	<p>Pensions Regulator – Conflicts of interest (draft guidance)</p> <ul style="list-style-type: none"> This is drafted for the trustee audience, yet it also affects employers and professional advisers. <p>http://www.thepensionsregulator.gov.uk/pdf/ConflictsOfInterestConsultation.pdf</p> <p>Pensions Regulator – Updated Clearance Guidance</p> <ul style="list-style-type: none"> This is drafted for professional advisers rather than end users (those connected to, or becoming connected to a pension scheme) <p>http://www.thepensionsregulator.gov.uk/pdf/clearanceGuidance2008.pdf</p>
2 Designed with input from audience	<p><u>Pension Protection Fund (PPF) – Levy-related guidance</u></p> <ul style="list-style-type: none"> Consultations on PPF levy ensure input from companies can assist in developing future development of levy structure. <p>http://www.pensionprotectionfund.org.uk/index/pension_protection_levy-2/levy_publications.htm</p>	<p><u>DWP – Flexible retirement and pension provision (Consultation)</u></p> <ul style="list-style-type: none"> Guidance on this subject was promised in Spring 2007 – a recent consultation turned out to be an information-gathering exercise. No indication of when any guidance will be forthcoming <p>http://www.dwp.gov.uk/consultations/2007/flexible-retirement-and-pension-provision-consultation-October07.pdf</p>
3 Organised around user’s way of working	<p><u>Pension Protection Fund (PPF) – Levy-related guidance</u></p> <ul style="list-style-type: none"> Consultations on future development of PPF levy assist PPF in providing guidance which is structured around the user’s process to help fit into day-to-day work <p>http://www.pensionprotectionfund.org.uk/index/pension_protection_levy-2/levy_publications.htm</p>	<p><u>Pensions Regulator – Governance of work-based pension schemes (Discussion paper)</u></p> <ul style="list-style-type: none"> Example of how governance requirements are not organised around users’ processes <p>http://www.thepensionsregulator.gov.uk/pdf/discussionPaperGovernance.pdf</p>
4 Easy for users to understand	<p><u>Pensions Regulator – Code-related Guidance on Member-Nominated Trustees/Directors</u></p> <ul style="list-style-type: none"> Contains a helpful flowchart to determine commencement date for requirements. <p>http://www.thepensionsregulator.gov.uk/trustees/memberNominated/memberNominated-10.aspx</p>	<p><u>Pensions Regulator – Updated Clearance Guidance (March 2008)</u></p> <ul style="list-style-type: none"> Not concise at 47 pages long (and 6 pages longer than previous guidance) <p>http://www.thepensionsregulator.gov.uk/pdf/clearanceGuidance2008.pdf</p>

Golden Rule	Guidance which complies	Guidance not complying
	<p>HMRC – Simplification factsheets</p> <ul style="list-style-type: none"> • Example of clear and concise guidance • Produced with the user in mind <p>http://www.hmrc.gov.uk/pensionschemes/individuals.pdf</p>	<p>Pensions Regulator – Code of Practice 3 – Funding Defined Benefits</p> <ul style="list-style-type: none"> • Not concise at 59 pages long <p>http://www.thepensionsregulator.gov.uk/pdf/codeFundingFinal.pdf</p> <p>Pensions Regulator – Conflicts of interest (draft guidance)</p> <ul style="list-style-type: none"> • Includes jargon such as “fiduciary” • Refers to other guidance produced by the Regulator i.e. TKU, internal controls, reporting breaches of the law. <p>http://www.thepensionsregulator.gov.uk/pdf/ConflictsOfInterestConsultation.pdf</p>
5	<p>Reliable</p> <p>HMRC – Pensions guidance – FAQs</p> <ul style="list-style-type: none"> • FAQs divided into 5 categories and deal with practical issues <p>http://www.hmrc.gov.uk/pensionschemes/faqs/index.htm</p>	<p>Pensions Regulator – Avoiding delays in winding-up Good practice guidelines (Draft guidance)</p> <ul style="list-style-type: none"> • Does not assist on guiding schemes which are already in wind-up. <p>http://www.thepensionsregulator.gov.uk/pdf/WindingUpDocument2.pdf</p> <p>Pensions Regulator – Conflicts of interest (draft guidance)</p> <ul style="list-style-type: none"> • Refers to the need to seek legal advice 39 times. <p>http://www.thepensionsregulator.gov.uk/pdf/ConflictsOfInterestConsultation.pdf</p>
6	<p>Issued in good time</p> <p>Example of Pensions Regulator and HMRC working together</p> <ul style="list-style-type: none"> • Guidance from the Regulator on “Inducement offers” was issued the same day as HMRC clarified how cash inducements are to be taxed. • Good example of how two regulatory bodies were linked in to provide guidance/clarification on the same issue. <p>http://www.thepensionsregulator.gov.uk/pdf/inducementOffers.pdf and http://www.hmrc.gov.uk/pensionschemes/draft-announcement.htm</p>	<p>BERR –The Impact of the Age Regulations on Pension Schemes (Guidance)</p> <ul style="list-style-type: none"> • This updated guidance (December 2006) was issued the same month as the Age Discrimination Regulations came into force, which was too late to be of any great assistance. <p>http://www.berr.gov.uk/files/file35877.pdf</p> <p>DWP – Flexible retirement and pension provision (Consultation)</p> <ul style="list-style-type: none"> • Failure to provide guidance on this has resulted in a huge grey area for employers and trustees. This has led to tremendous uncertainty and confusion of how to comply with the Age Discrimination legislation, which came into force in December 2006. <p>http://www.dwp.gov.uk/consultations/2007/flexible-retirement-and-pension-provision-consultation-October07.pdf</p>

Golden Rule	Guidance which complies	Guidance not complying
7 Easy to access	<p><u>HMRC – Guidance</u></p> <ul style="list-style-type: none"> Links to the pensions related guidance is set out very clearly with a split between pre and post 6 April 2006 positions. <p>http://www.hmrc.gov.uk/pensionschemes/guidance.htm</p>	<p><u>Pensions Regulator</u></p> <ul style="list-style-type: none"> Guidance consists of (1) Codes of Practice (2) guidance-related Codes of Practice and (3) guidance. While the codes of practice are set out clearly, the other guidance is not helpfully stored in one place together – so it is difficult see a list of all the guidance. <p>http://www.thepensionsregulator.gov.uk/index.aspx</p>
8 Reviewed and improved	<p><u>Pensions Regulator – Clearance Guidance</u></p> <ul style="list-style-type: none"> Original guidance dated 2005 has a clear statement at the front that it has been superseded by guidance dated March 2008 <p>http://www.thepensionsregulator.gov.uk/pdf/clearanceGuidance2005.pdf</p>	<p><u>Pensions Regulator – Multi-employer withdrawal arrangements</u></p> <ul style="list-style-type: none"> Guidance dated November 2005 will be outdated from 6 April 2008 when the OPS (Employer Debt and Miscellaneous Amendments) Regulations 2008 (SI 2008/731) come into force. No indication that this guidance is about to be out-of-date or whether it is to be superseded. <p>http://www.thepensionsregulator.gov.uk/pdf/multiEmployerGuidance.pdf</p>