



2008 CHAPTER 13

PART 1

PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

CHAPTER 2

COMPLIANCE

Penalty notices

Escalating penalty notices

41.—(1) The Regulator may issue an escalating penalty notice to a person if it is of the opinion that the person has failed to comply with—

- (a) a compliance notice under section 35,
- (b) a third party compliance notice under section 36,
- (c) an unpaid contributions notice under section 37, ^{F1}...
- (d) a notice under Article 67 of the 2005 Order (provision of information) [^{F2}, so far as relevant to the exercise of any of its functions under or by virtue of this Part]^{F3}, or
- (e) a notice issued under Article 67A of that Order (interviews), so far as relevant to the exercise of its functions under or by virtue of this Part.]

(2) But the Regulator may not issue an escalating penalty notice if—

- (a) it relates to failure to comply with a notice within subsection (1)(a), (b) or (c), the person to whom that notice was issued has applied for a review of it under section 43, and any review has not been completed;

Changes to legislation: Pensions (No. 2) Act (Northern Ireland) 2008, Section 41 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(b) it relates to failure to comply with any notice within subsection (1), the person has exercised the right of referral to [^{F4}a tribunal] under section 44 in respect of a fixed penalty notice issued in relation to that notice, and the reference has not been determined.

(3) An escalating penalty notice is a notice requiring a person to pay an escalating penalty if the person fails to comply with a notice referred to in subsection (1) before a specified date.

(4) An escalating penalty is a penalty which is calculated by reference to a prescribed daily rate.

(5) The prescribed daily rate—

- (a) is to be determined in accordance with regulations, and
- (b) must not exceed £10,000.

(6) An escalating penalty notice must—

- (a) specify the failure to which the notice relates;
- (b) state that, if the person fails to comply with the notice referred to in subsection (1) before a specified date, the person will be liable to pay an escalating penalty;
- (c) state the daily rate of the escalating penalty and the way in which the penalty is calculated;
- (d) state the date from which the escalating penalty will be payable, which must not be earlier than the date specified in the fixed penalty notice under section 40(5)(b);
- (e) state that the escalating penalty will continue to be payable at the daily rate until the date on which the person complies with the notice referred to in subsection (1) or such earlier date as the Regulator may determine;
- (f) notify the person of the review process under section 43 and the right of referral to [^{F5}a tribunal] under section 44.

Textual Amendments

- F1** Word in s. 41(1) omitted (28.7.2022) by virtue of Pension Schemes Act 2021 (c. 1), s. 131(2)(b), **Sch. 8 para. 31(a)**; S.R. 2022/197, art. 2(b)
- F2** Words in s. 41(1)(d) inserted (24.6.2015) by Pensions Act (Northern Ireland) 2015 (c. 5), **ss. 40(1), 53(2)(d)**
- F3** S. 41(1)(e) and word inserted (28.7.2022) by Pension Schemes Act 2021 (c. 1), s. 131(2)(b), **Sch. 8 para. 31(b)**; S.R. 2022/197, art. 2(b)
- F4** Words in s. 41(2)(b) substituted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 30** (with Sch. 2); S.R. 2010/101, **art. 2**

Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, Section 41 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- F5** Words in s. 41(6)(f) substituted (6.4.2010) by [Pensions Regulator Tribunal \(Transfer of Functions\) Act \(Northern Ireland\) 2010 \(c. 4\), ss. 3\(1\), 5\(2\), Sch. 1 para. 30 \(with Sch. 2\); S.R. 2010/101, art. 2](#)

Commencement Information

- I1** S. 41 partly in force; s. 41 in force for certain purposes at Royal Assent see [s. 118\(2\)](#)
- I2** S. 41(1)(a)-(c) in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)
- I3** S. 41(1)(d) in operation at 30.6.2012 for specified purposes by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)
- I4** S. 41(2)-(6) in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 24(1)(c) inserted by [2016 c. 1 \(N.I.\) Sch. 2 para. 39\(2\)\(d\)](#)