
DRAFT STATUTORY INSTRUMENTS

2015 No.

**The Occupational Pension Schemes
(Charges and Governance) Regulations 2015**

PART 4

COMPLIANCE

Amendment of the Register of Occupational and Personal Pension Schemes Regulations 2005

24.—(1) Regulation 3(1) of the Register of Occupational and Personal Pension Schemes Regulations 2005(1) is amended as follows.

(2) At the end of sub-paragraph (e) omit “and”.

(3) After sub-paragraph (g)(2) insert—

- “(h) in the case of an occupational pension scheme which is a relevant scheme within the meaning of the Occupational Pension Schemes (Scheme Administration) Regulations 1996, whether the trustees or managers of that scheme have prepared the statement that they are required to prepare in accordance with regulation 23 of those Regulations; and
- (i) in the case of an occupational pension scheme in respect of which the requirements of Part 2 of the Occupational Pension Schemes (Charges and Governance) Regulations 2015 apply to one or more of its members, whether the trustees or managers of that scheme have complied with those requirements in respect of each member to whom they apply.”.

Amendment of section 13 of the Pensions Act 2004

25. In section 13(7) of the Pensions Act 2004(3) (improvement notices)—

(a) omit the “or” at the end of paragraph (d);

(b) at the end of paragraph (e) insert—

“, or

(f) paragraph 2 of Schedule 18 to the Pensions Act 2014 (c.19).”.

Compliance notices

26.—(1) The Regulator may issue a compliance notice to the trustees or managers in any of the circumstances of non-compliance in paragraph (2).

(2) The circumstances mentioned in paragraph (1) are—

(1) [S.I. 2005/597](#).

(2) Sub-paragraph (g) was inserted by [S.I. 2006/1733](#), regulation 4(1) and (2)(a).

(3) [2004 c.35](#). Subsection (7) was amended by the Public Service Pensions Act [2013 \(c.25\)](#), section 17(1) and Schedule 4, paragraphs 1, 3(1) and (3)(a) and (b). The Pension Schemes Act 2015 (currently the Pension Schemes Bill before Parliament) will, when enacted, insert an additional paragraph into subsection 7 which, depending upon when that Bill receives Royal Assent, may either precede or follow the paragraph (f) inserted by this regulation 25(b).

- (a) receipt of an indication pursuant to regulation 3(1)(i)(4) of the Register of Occupational and Personal Pension Schemes Regulations 2005 that the trustees or managers have not complied with Part 2 of these Regulations; or
 - (b) if the Regulator is of the opinion that the trustees or managers are not complying with, or have not complied with, Part 2 of these Regulations.
- (3) A compliance notice is a notice directing the trustees or managers to whom it is issued to take, or refrain from taking, the steps specified in the notice.
- (4) The steps mentioned in paragraph (3) may be any steps that the Regulator reasonably requires with a view to ensuring that any non-compliance with Part 2 of these Regulations is remedied and, where appropriate, not repeated.
- (5) A direction in a compliance notice may be expressed to be conditional on compliance by a third party with a specified direction contained in a third party compliance notice under regulation 27.
- (6) A compliance notice may, in particular—
- (a) state the period within which any step must be taken or must cease to be taken;
 - (b) require the trustees or managers to provide within a specified period specified information relating to the non-compliance;
 - (c) require the trustees or managers to inform the Regulator, within a specified period, how the person has complied with or is complying with the notice;
 - (d) state that if the Regulator is of the opinion that the trustees or managers have failed to comply with the requirements of the notice, the Regulator may issue a penalty notice under sub-paragraph (b)(i) of paragraph (1) of regulation 28;
 - (e) give the trustees or managers a choice between different ways of remedying, or preventing the recurrence of, the non-compliance.
- (7) A compliance notice must—
- (a) state which of the circumstances of non-compliance in paragraph (2) applies; and
 - (b) if the circumstance in paragraph (2)(b) applies, state—
 - (i) which provision of Part 2 of these Regulations the Regulator believes was not, or is not being, complied with; and
 - (ii) the evidence on which that belief is based.

Third party compliance notices

- 27.—(1) Where in any of the circumstances of non-compliance in paragraph (2)—
- (a) the Regulator is of the opinion that the non-compliance is or was, wholly or partly, a result of a failure of someone other than the trustees or managers (“the third party”), and
 - (b) that failure is not in itself a contravention of a Part 2 of these Regulations, the Regulator may issue to the third party a third party compliance notice.
- (2) The circumstances mentioned in paragraph (1) are—
- (a) receipt of an indication pursuant to regulation 3(1)(i) of the Register of Occupational and Personal Pension Schemes Regulations 2005 that the trustees or managers have not complied with Part 2 of these Regulations;
 - (b) receipt of an indication that the trustees or managers are unable to confirm whether they are complying or will be able to comply with that Part; or

(4) Inserted by regulation 24(3) of these Regulations.

- (c) if the Regulator is of the opinion that the trustees or managers are not complying with, or have not complied with, that Part.
- (3) A third party compliance notice is a notice directing the third party to take, or refrain from taking, the steps specified in the notice.
- (4) The steps mentioned in paragraph (3) may be any steps that the Regulator reasonably requires with a view to remedying and, where appropriate, preventing a recurrence of the failure mentioned in paragraph (1).
- (5) A third party compliance notice may, in particular—
 - (a) state the period within which any step must be taken or must cease to be taken;
 - (b) require the third party to provide within a specified period specified information relating to the failure;
 - (c) require the third party to inform the Regulator, within a specified period, how the third party has complied with or is complying with the notice;
 - (d) state that, if the Regulator is of the opinion that the third party has failed to comply with the requirements of the notice, the Regulator may issue a penalty notice under subparagraph (a) of paragraph (1) of regulation 28;
 - (e) give the third party a choice between different ways of remedying or preventing the recurrence of the failure.
- (6) A third party compliance notice must state—
 - (a) which of the circumstances of non-compliance in paragraph (2) applies; and
 - (b) the matters which the Regulator believes constitute the failure by the third party; and
 - (c) if the circumstance in paragraph (2)(c) applies, in addition to the matters mentioned in subparagraphs (a) and (b)—
 - (i) which provision of Part 2 of these Regulations the Regulator believes was not, or is not being, complied with; and
 - (ii) the evidence on which the Regulator’s belief is based.

Penalty notices

- 28.**—(1) Subject to paragraph (2), the Regulator may issue a penalty notice to—
- (a) a third party where it is of the opinion that the third party has failed to comply with a third party compliance notice under regulation 27; or
 - (b) the trustees or managers where it is of the opinion that they have failed to comply with—
 - (i) a compliance notice under regulation 26;
 - (ii) a provision in Part 2 of these Regulations; or
 - (iii) a provision in Part V of the Administration Regulations.
- (2) Where—
- (a) the Regulator is in receipt of an indication pursuant to regulation 3(1)(h)(5) of the Register of Occupational and Personal Pension Schemes Regulations 2005 that the trustees or managers have failed to prepare the statement that they are required to prepare by regulation 23(6) of the Administration Regulations; or

(5) Inserted by regulation 24(3) of these Regulations.

(6) Inserted by regulation 17 of these Regulations.

- (b) the Regulator is of the opinion that the trustees or managers have failed to prepare the statement that they are required to prepare by regulation 23 of the Administration Regulations,
the Regulator must issue a penalty notice to the trustees or managers in relation to a first failure in connection with a scheme year.
- (3) A penalty notice is a notice requiring the person to whom it is issued to pay a penalty within the period specified in the notice.
- (4) The amount of a penalty is to be determined by the Regulator but—
- (a) in relation to a penalty notice issued under paragraph (1) must not exceed—
 - (i) £5,000 if the person is an individual, or
 - (ii) £50,000 if the person is a body corporate or a Scottish partnership or any other person;
 - (b) in relation to a penalty notice issued under paragraph (2), must be at least £500 and must not exceed £2,000.
- (5) A penalty notice must—
- (a) where it is issued to trustees or managers, be issued to all the trustees or managers of the relevant scheme and specify their joint and several liability for the penalty;
 - (b) where it is issued to a body corporate, be issued to all officers of that body corporate who are required to pay the penalty in accordance with regulation 30(1) and specify their joint and several liability for the penalty;
 - (c) where it is issued to a Scottish partnership, be issued to all the partners of that Scottish partnership and specify their joint and several liability for the penalty;
 - (d) state the amount of the penalty;
 - (e) state the date, which must be at least 4 weeks after the date on which the notice is issued, by which the penalty must be paid;
 - (f) state the period (if any) to which the penalty relates;
 - (g) if the notice is issued under paragraph (1)(a) or (b)(i), specify the failure to which the notice relates;
 - (h) if the notice is issued under paragraph (1)(b)(ii) or (iii), specify the provision or provisions that have not been complied with;
 - (i) notify the person to whom the notice is issued of the review process under regulation 31 and the right of referral to a tribunal under regulation 32.
- (6) In paragraph (5)(b), “officer” means—
- (a) any director, manager, secretary or other similar person in the body,
 - (b) a person purporting to act in any such capacity,
 - (c) where the affairs of the body are managed by its members, any member who has management functions.

Penalty notices: recovery

29.—(1) Any penalty required by a penalty notice is recoverable by the Regulator.

(2) In England and Wales, any such penalty is, if the county court so orders, recoverable under section 85 of the County Courts Act 1984(7) or otherwise as if it were payable under an order of that court.

(7) 1984 c. 28.

(3) In Scotland, any such penalty is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution signed by the sheriff court of any sheriffdom in Scotland.

(4) The Regulator must pay into the Consolidated Fund any penalty recovered under this regulation.

Penalty notices: recovery from bodies corporate and Scottish partnerships

30.—(1) Where any penalty required by a penalty notice is recoverable from a body corporate or Scottish partnership, and—

- (a) the compliance failure which is the subject of that notice occurred by reason of an act or omission of the body or partnership, and
- (b) that act or omission was done with the consent of, connivance of, or is attributable to any neglect on the part of an officer of the body corporate or the partnership,
the Regulator may require the officer to pay the penalty required by the notice.

(2) In this regulation, “officer”—

- (a) in relation to a body corporate, has the same meaning as in regulation 28(6); and
- (b) in relation to a Scottish partnership, means the partners of that partnership.

(3) Where the Regulator requires any person to pay a penalty by virtue of paragraph (1), it may not also require the body corporate, or Scottish partnership, in question to pay a penalty in respect of the same act or omission.

Review of penalty notices

31.—(1) The Regulator may review a notice to which this paragraph applies—

- (a) on the written application of the person to whom the notice was issued, or
- (b) if the Regulator otherwise considers it appropriate.

(2) Paragraph (1) applies to—

- (a) a compliance notice issued under regulation 26;
- (b) a third party compliance notice issued under regulation 27; and
- (c) a penalty notice issued under regulation 28.

(3) The period within which—

- (a) an application to review a notice may be made under paragraph (1)(a) is 28 days, starting on the day on which the notice is issued to a person; and
- (b) a notice may be reviewed under paragraph (1)(b) is 18 months, starting on the day on which the notice is issued to a person.

(4) On a review of a notice, the effect of the notice is suspended for the period beginning on the day the Regulator determines to carry out the review and ending on the day on which the review is completed.

(5) In carrying out a review, the Regulator must consider any representations made by the person to whom the notice was issued.

(6) The Regulator’s powers on a review are to—

- (a) confirm, vary or revoke the notice;
- (b) substitute a different notice.

References to First-Tier Tribunal or Upper Tribunal

32.—(1) A person to whom a penalty notice is issued under regulation 28 may, if one of the conditions in paragraph (2) is satisfied, make a reference to the Tribunal in respect of—

- (a) the issue of the notice;
- (b) the amount of the penalty under the notice.

(2) The conditions are—

- (a) that the Regulator has completed a review of the notice under regulation 31; or
- (b) that the person to whom the notice was issued has made an application for the review of the notice under paragraph (1)(a) of regulation 31 and the Regulator has determined not to carry out such a review.

(3) On a reference to the Tribunal in respect of a notice, the effect of the notice is suspended for the period beginning on the day on which the Tribunal receives notice of the reference and ending—

- (a) on the day on which the reference is withdrawn; or
- (b) if the reference is made out of time, on the day on which the Tribunal determines not to allow the reference to proceed; or
- (c) when the reference is completed.

(4) For the purposes of paragraph (3)(c), a reference is completed when—

- (a) the reference has been determined; the Tribunal has remitted the matter to the Regulator.

(5) In this regulation—

- (a) “the Tribunal” means—
 - (i) the Upper Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the Upper Tribunal is to hear the reference;
 - (ii) the First Tier Tribunal in any other case, and
- (b) “Tribunal Procedure Rules” means—
 - (i) the Tribunal Procedure (First-Tier Tribunal) (General Regulatory Chamber) Rules 2009⁽⁸⁾ in relation to the First-Tier Tribunal; and
 - (ii) the Tribunal Procedure (Upper Tribunal) Rules 2008⁽⁹⁾ in relation to the Upper Tribunal.

⁽⁸⁾ S.I. 2009/1976.

⁽⁹⁾ S.I. 2008/2698.