



Pensions Act 2008

2008 CHAPTER 30

PART 1

PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

CHAPTER 2

COMPLIANCE

Effect of failure to comply

34 Effect of failure to comply

- (1) Contravention of any of the employer duty provisions does not give rise to a right of action for breach of statutory duty.
- (2) But nothing in the employer duty provisions or this Chapter affects any right of action arising apart from those provisions.
- (3) In this Chapter, references to the employer duty provisions are references to any provision of sections 2 to 11 or of regulations under those sections.

Compliance notices and unpaid contributions notices

35 Compliance notices

- (1) The Regulator may issue a compliance notice to a person if the Regulator is of the opinion that the person has contravened one or more of the employer duty provisions.
- (2) A compliance notice is a notice directing the person to whom it is issued to take, or refrain from taking, the steps specified in the notice in order to remedy the contravention.

Status: This is the original version (as it was originally enacted).

- (3) 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 person to whom it is issued to provide within a specified period specified information relating to the contravention;
 - (c) require the person to inform the Regulator, within a specified period, how the person has complied or is complying with the notice;
 - (d) state that, if the person fails to comply with the requirements of the notice, the Regulator may issue a fixed penalty notice under section 40.
- (4) The steps specified in the notice may, in particular, include such steps as the Regulator thinks appropriate for placing the worker in the same position (as nearly as possible) as if the contravention had not occurred.
- (5) If the compliance notice is issued in respect of a failure to comply with an enrolment duty and the specified steps relate to membership of a defined benefits scheme or a hybrid scheme, the notice may, in particular, require the employer to ensure that the worker is entitled to the same benefits under the scheme as if the employer had complied with that duty.

36 Third party compliance notices

- (1) The Regulator may issue a third party compliance notice if it is of the opinion that—
 - (a) a person has contravened one or more of the employer duty provisions,
 - (b) the contravention is or was, wholly or partly, a result of a failure of another person (the “third party”) to do any thing, and
 - (c) that failure is not itself a contravention of any of the employer duty provisions.
- (2) A third party compliance notice is a notice directing the third party to take, or refrain from taking, the steps specified in the notice in order to remedy or prevent a recurrence of the failure.
- (3) A third party 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 inform the Regulator, within a specified period, how the third party has complied or is complying with the notice;
 - (c) state that, if the third party fails to comply with the requirements of the notice, the Regulator may issue a fixed penalty notice under section 40.
- (4) A third party notice may give the third party a choice between different ways of remedying or preventing the recurrence of the third party’s failure.

37 Unpaid contributions notices

- (1) The Regulator may issue an unpaid contributions notice to an employer if it is of the opinion that relevant contributions have not been paid on or before the due date.
- (2) An unpaid contributions notice is a notice requiring an employer to pay into a pension scheme by a specified date an amount in respect of relevant contributions that have not been paid.
- (3) “Due date” has the meaning prescribed.
- (4) An unpaid contributions notice may, in particular—

- (a) specify the scheme to which the contributions are due;
 - (b) specify the workers, or category of workers, in respect of whom the contributions are due;
 - (c) state the period in respect of which the contributions are due;
 - (d) state the due date in respect of the contributions;
 - (e) require the employer to take such other steps in relation to remedying the failure to pay the contributions as the Regulator considers appropriate;
 - (f) state that if the employer fails to comply with the notice, the Regulator may issue a fixed penalty notice under section 40.
- (5) In this section, “employer” in relation to a worker means the person by whom the worker is or, if the employment has ceased, was employed.

38 Calculation and payment of contributions

- (1) This section applies to—
- (a) a compliance notice issued to an employer in respect of a contravention of section 2(1) or a failure to comply with an enrolment duty;
 - (b) an unpaid contributions notice.
- (2) The notice may, in particular, include—
- (a) a requirement to calculate the amount of relevant contributions that are of a description specified in the notice (“unpaid relevant contributions”);
 - (b) if the contributions are being paid within the prescribed period after the appropriate date, a requirement to pay an amount equal to the amount of unpaid relevant contributions within section 39(2)(a);
 - (c) if the contributions are not being paid within the prescribed period after the appropriate date, a requirement to pay (on the employer’s own account) an amount equal to the amount of unpaid relevant contributions;
 - (d) if paragraph (b) applies, a requirement to ensure—
 - (i) that the worker is not required to pay an amount equal to the balance of the unpaid relevant contributions during the prescribed period, and
 - (ii) that, if the worker chooses to pay that amount, it may be paid in instalments;
 - (e) if the contributions are payable to a money purchase scheme, a hybrid scheme or a personal pension scheme, a requirement to pay interest on the amount required by the notice to be paid in respect of unpaid relevant contributions, at a rate and in respect of a period determined in accordance with regulations.
- (3) The Secretary of State may by regulations make provision about the way in which the Regulator may (without prejudice to subsection (2)(a)) estimate the amount of contributions that an employer has failed to pay on behalf or in respect of a worker.
- (4) Regulations under subsection (3) may include, in particular, provision about the sources of information that the Regulator may use in estimating that amount, other than information provided by the employer.
- (5) In this section, “appropriate date” means—
- (a) in the case of a compliance notice, such date as may be specified in the notice;
 - (b) in the case of an unpaid contributions notice, the due date within the meaning of section 37(3).

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- (6) In this section, “employer” in relation to a worker means the person by whom the worker is or, if the employment has ceased, was employed.

39 Meaning of “relevant contributions”

- (1) In sections 37 and 38 “relevant contributions” are—
- (a) in relation to a jobholder, employer contributions payable to a qualifying scheme in relation to the jobholder;
 - (b) in relation to a worker to whom section 9 applies, employer contributions payable to a pension scheme which satisfies the requirements of that section.
- (2) In subsection (1), employer contributions means contributions payable by the employer—
- (a) on the employer’s own account (but in respect of the worker), or
 - (b) on behalf of the worker out of deductions from the worker’s earnings.

Penalty notices

40 Fixed penalty notices

- (1) The Regulator may issue a fixed 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, or
 - (d) a notice issued under section 72 of the Pensions Act 2004 (c. 35) (provision of information).
- (2) The Regulator may issue a fixed penalty notice to a person if it is of the opinion that the person has contravened—
- (a) any provision of regulations under section 3(2) or 5(2) (prescribed arrangements for automatic enrolment or re-enrolment),
 - (b) any provision of regulations under section 7(4) (prescribed arrangements: jobholder’s right to opt in),
 - (c) section 8(2)(b) (refund of contributions if jobholder opts out of scheme membership), and any provision of regulations under that provision,
 - (d) section 10 (requirement to give information to workers), and any provision of regulations under that section, or
 - (e) any provision of regulations under section 60 (requirement to keep records).
- (3) A fixed 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 penalty—
- (a) is to be determined in accordance with regulations, and
 - (b) must not exceed £50,000.
- (5) A fixed penalty notice must—
- (a) state the amount of the penalty;

- (b) 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;
- (c) state the period to which the penalty relates;
- (d) if the notice is issued under subsection (1), specify the failure to which the notice relates;
- (e) if the notice is issued under subsection (2), specify the provision or provisions that have been contravened;
- (f) if the notice is issued under subsection (1), state that, if the failure to comply continues, the Regulator may issue an escalating penalty notice under section 41;
- (g) notify the person to whom the notice is issued of the review process under section 43 and the right of referral to the Pensions Regulator Tribunal under section 44.

41 Escalating penalty notices

- (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, or
 - (d) a notice under section 72 of the Pensions Act 2004 (c. 35) (provision of information).
- (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;
 - (b) it relates to failure to comply with any notice within subsection (1), the person has exercised the right of referral to the Pensions Regulator 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;

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- (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 the Pensions Regulator Tribunal under section 44.

42 Penalty notices: recovery

- (1) Any penalty payable under section 40 or section 41 is recoverable by the Regulator.
- (2) In England and Wales, any such penalty is, if a county court so orders, recoverable under section 85 of the County Courts Act 1984 (c. 28) or otherwise as if it were payable under an order of that court.
- (3) In Scotland, a fixed penalty notice or escalating penalty notice is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (4) The Regulator must pay into the Consolidated Fund any penalty recovered under this section.

Reviews and references

43 Review of notices

- (1) The Regulator may review a notice to which this section 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) This section applies to—
 - (a) a compliance notice issued under section 35;
 - (b) a third party compliance notice issued under section 36;
 - (c) an unpaid contributions notice issued under section 37;
 - (d) a fixed penalty notice issued under section 40;
 - (e) an escalating penalty notice issued under section 41.
- (3) Regulations may prescribe the period within which—
 - (a) an application to review a notice may be made under subsection (1)(a);
 - (b) a notice may be reviewed under subsection (1)(b).
- (4) On a review of a notice, the effect of the notice is suspended for the period beginning when the Regulator determines to carry out the review and ending when 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 include power to—
 - (a) confirm, vary or revoke the notice;

- (b) substitute a different notice.

44 References to the Pensions Regulator Tribunal

- (1) A person to whom a notice is issued under section 40 or 41 may, if one of the conditions in subsection (2) is satisfied, make a reference to the Pensions Regulator Tribunal in respect of—
 - (a) the issue of the notice;
 - (b) the amount of the penalty payable under the notice.
- (2) The conditions are—
 - (a) that the Regulator has completed a review of the notice under section 43;
 - (b) that the person to whom the notice was issued has made an application for the review of the notice under section 43(1)(a) and the Regulator has determined not to carry out such a review.
- (3) On a reference to the Pensions Regulator Tribunal in respect of a notice, the effect of the notice is suspended for the period beginning when the Tribunal receives notice of the reference and ending—
 - (a) when the reference is withdrawn or completed, or
 - (b) if the reference is made out of time, on the Tribunal determining not to allow the reference to proceed.
- (4) For the purposes of subsection (3), a reference is completed when—
 - (a) the reference has been determined,
 - (b) the Tribunal has remitted the matter to the Regulator, and
 - (c) any directions of the Tribunal for giving effect to its determination have been complied with.
- (5) In section 102(2) of the Pensions Act 2004 (c. 35) (functions of the Pensions Regulator Tribunal)—
 - (a) the words from “by this Act” to the end become paragraph (a);
 - (b) at the end insert—
 - “(b) by section 44 of the Pensions Act 2008 or any provision in force in Northern Ireland corresponding to that section.”
- (6) In section 103 of that Act (references to the Tribunal), after subsection (1) insert—
 - “(1A) A reference to the Tribunal under section 44 of the Pensions Act 2008 must be made during such period as may be specified in rules made under section 102.”
- (7) In subsection (2) of that section, at the end insert “or (1A)”.
- (8) In Schedule 4 to that Act (constitution, procedure etc. of the Tribunal), in paragraph 7(5)—
 - (a) the words from “under this Act” to the end become paragraph (a);
 - (b) at the end insert—
 - “(b) under section 44 of the Pensions Act 2008 or any provision in force in Northern Ireland corresponding to that section.”
- (9) In that Schedule, in paragraph 13—
 - (a) after “a reference” (in both places where it occurs) insert “under this Act, or any provisions in force in Northern Ireland corresponding to this Act,”;

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(b) at the end insert—

“(3) The Lord Chancellor may by regulations make provision about the award of costs and expenses by the Tribunal on a reference made under section 44 of the Pensions Act 2008 or any provision in force in Northern Ireland corresponding to that section.”

Offences and monitoring

45 Offences of failing to comply

- (1) An offence is committed by an employer who wilfully fails to comply with—
 - (a) the duty under section 3(2) (automatic enrolment),
 - (b) the duty under section 5(2) (automatic re-enrolment), or
 - (c) the duty under section 7(3) (jobholder’s right to opt in).
- (2) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or both;
 - (b) on summary conviction to a fine not exceeding the statutory maximum.

46 Offences by bodies corporate

- (1) Subsection (2) applies where an offence under section 45 committed by a body corporate is proved—
 - (a) to have been committed with the consent or connivance of an officer of the body corporate, or
 - (b) to be attributable to any neglect on the part of an officer of the body corporate.
- (2) The officer, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (3) “Officer” in this section means—
 - (a) a director, manager, secretary or other similar officer, or
 - (b) a person purporting to act in such a capacity.
- (4) Where the affairs of a body corporate are managed by its members, this section applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were an officer of the body corporate.

47 Offences by partnerships and unincorporated associations

- (1) Proceedings for an offence under section 45 alleged to have been committed by a partnership or an unincorporated association may be brought in the name of the partnership or association.
- (2) For the purposes of such proceedings—
 - (a) rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate;
 - (b) the following provisions apply in relation to the partnership or association as they apply in relation to a body corporate—

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- (i) section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43);
 - (ii) section 70 of the Criminal Procedure (Scotland) Act 1995 (c. 46).
- (3) A fine imposed on a partnership or association on its conviction of an offence under section 45 is to be paid out of the funds of the partnership or association.
- (4) Subsection (5) applies where an offence under section 45 committed by a partnership is proved—
- (a) to have been committed with the consent or connivance of a partner, or
 - (b) to be attributable to any neglect on the part of a partner.
- (5) The partner, as well as the partnership, is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (6) Subsection (7) applies where an offence under section 45 committed by an unincorporated association is proved—
- (a) to have been committed with the consent or connivance of an officer of the association, or
 - (b) to be attributable to any neglect on the part of an officer of the association.
- (7) The officer, as well as the association, is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (8) “Officer” in this section means—
- (a) an officer of the association or a member of its governing body, or
 - (b) a person purporting to act in such capacity.
- (9) “Partner” in this section includes a person purporting to act as a partner.

48 Offences of providing false or misleading information

In section 80(1)(a) of the Pensions Act 2004 (c. 35) (offences of providing false or misleading information)—

- (a) at the end of sub-paragraph (iv) insert “or
(v) regulations under section 11 of the Pensions Act 2008,”;
- (b) omit “or” at the end of sub-paragraph (iii).

49 Monitoring of employers' payments to personal pension schemes

In section 111A of the Pension Schemes Act 1993 (c. 48) (monitoring of employers' payments to personal pension schemes), at the end insert—

- “(18) In this section, “employee” includes a jobholder within the meaning of section 1 of the Pensions Act 2008 and “employer” is to be read accordingly.”