

---

STATUTORY INSTRUMENTS

---

**2010 No. 5**

**The Employers' Duties (Registration  
and Compliance) Regulations 2010**

**PART 3**

**Compliance**

**Records and information**

**Requirement to keep records**

- 5.—(1) The persons in paragraph (2) must—
- (a) keep the records listed within the regulation applicable to them;
  - (b) preserve the records for a period in accordance with regulation 8; and
  - (c) provide those records, on request, to the Regulator.
- (2) The persons are, subject to paragraphs (5) and (6), any person who is—
- (a) an employer;
  - (b) a trustee or manager of an occupational pension scheme; or
  - (c) a provider of a personal pension scheme.
- (3) Regulation 6 applies in respect of a person falling within paragraph (2)(a).
- (4) Regulation 7 applies in respect of a person falling within paragraph (2)(b) or (c).
- (5) Where a person does not fall within paragraph (2), that person may keep, preserve or provide the records listed in regulations 6 and 7 on behalf of a person falling within paragraph (2) but only where a person falling within paragraph (2) authorises the other person to do so.
- (6) A person who has ceased to act as a person falling within paragraph (2) shall not be required to keep records, where that person has transferred all the records to another person who has succeeded them in that capacity.
- (7) All records must be kept in such form and manner so that they are—
- (a) capable of being arranged according to the corresponding employer pension scheme reference; and
  - (b) legible or can be provided to the Regulator in a legible form.

**Records: Employers**

6.—(1) A person falling within paragraph (2)(a) of regulation 5 must keep the following records in relation to an occupational or personal pension scheme used by them to comply with the employers' duties—

- (a) where that scheme—
  - (i) is an occupational pension scheme, its name and address,

- (ii) is a personal pension scheme, the name and address of the provider of that scheme, or
  - (iii) does not have its main administration in the United Kingdom, the address of that scheme and the name of any authority which exercises functions corresponding to the functions of the Regulator in the country or territory outside the United Kingdom where that scheme is situated;
  - (b) the employer pension scheme reference;
  - (c) where section 21 of the Act (quality requirement: UK defined benefits schemes) applies, a copy of the certificate issued in respect of a jobholder under section 7(1) of the Pension Schemes Act 1993<sup>(1)</sup>;
  - (d) where section 22 of the Act (test scheme standard) applies, any evidence which shows that a scheme satisfies the test scheme standard within the meaning of that section, given in accordance with any regulations made under subsection (4) of that section;
  - (e) the name, national insurance number (where one exists) and date of birth of—
    - (i) every jobholder of an employer who became an active member of an automatic enrolment scheme pursuant to arrangements made under section 3 of the Act,
    - (ii) every jobholder of an employer who was not an active member of a qualifying scheme but who by notice required the employer to arrange for the jobholder to become an active member of an automatic enrolment scheme pursuant to arrangements made under section 7 of the Act, and
    - (iii) every worker who by notice required an employer to arrange for the worker to become an active member of a pension scheme pursuant to arrangements made under section 9 of the Act;
  - (f) every jobholder’s automatic enrolment date, and the date with effect from which every worker became an active member of a pension scheme that satisfies the requirements of section 9 of the Act, pursuant to arrangements made under that section;
  - (g) an opt in notice in respect of every jobholder who gave notice under section 7(3) of the Act;
  - (h) a joining notice in respect of every worker who gave notice under section 9(2) of the Act; and
  - (i) an opt out notice in respect of every jobholder that gives notice under section 8 of the Act.
- (2) A person falling within paragraph (2)(a) of regulation 5 must also keep the following records in respect of every jobholder or worker falling within paragraph (1)(e) where contributions fall to be deducted by an employer under section 33 of the Act and regulations made under that section—
- (a) their gross earnings in any relevant pay reference period;
  - (b) evidence of the contributions that the jobholder’s employer must pay in respect of the jobholder, in order to satisfy the quality requirement for the pension scheme used by the employer to comply with the employers’ duties;
  - (c) the contributions payable by an employer during each relevant pay reference period and, if different, the contributions made; and
  - (d) the date on which the contributions made by an employer were paid to the pension scheme used by the employer to comply with the employers’ duties.
- (3) In this regulation—
- (a) “earnings” has the meaning given by section 13(3) of the Act; and
  - (b) “relevant pay reference period” means—
    - (i) a period of one week, or

---

<sup>(1)</sup> Section 7(1) was substituted by paragraph 2 of Part 1 of Schedule 4 to the Pensions Act 2007 (c.22).

- (ii) in the case of a person who is paid their regular wage or salary by reference to a period longer than a week, that period.

### **Records: Trustees, managers and providers**

7.—(1) A person falling within paragraph (2)(b) or (c) of regulation 5 must keep the following records—

- (a) the employer pension scheme reference;
- (b)
  - (i) the date on which every jobholder became an active member of a pension scheme, by virtue of arrangements made under section 3 of the Act, and
  - (ii) the date with effect from which every worker became an active member of a pension scheme that satisfies the requirements of section 9 of the Act, by virtue of arrangements made under that section;
- (c) where—
  - (i) a jobholder gives an opt out notice to an employer, and
  - (ii) any regulations under section 8(5)(e) of the Act require that employer to inform a pension scheme that such a notice has been received by it, the name of the jobholder mentioned in the opt out notice and the date on which that scheme was informed by virtue of that requirement; and
- (d) where a jobholder had been an active member of a qualifying scheme, the date on which the jobholder ceased active membership of that scheme.

(2) A person falling within paragraph (2)(b) or (c) of regulation 5 must also keep the following records in relation to all persons who are members of a qualifying scheme—

- (a) their full name, date of birth, gender and national insurance number (as received by the trustee or manager of an occupational pension scheme or provider of a personal pension scheme);
- (b)
  - (i) their postal residential address, and
  - (ii) where that address is in the United Kingdom, the postcode, last known by or notified to that scheme or employer; and
- (c) whether—
  - (i) a member is an active member of a scheme, or
  - (ii) a member is no longer an active member of a scheme.

### **Period of preservation of records**

8.—(1) Except where paragraph (2) applies, a record listed in regulations 6 and 7 must be preserved for a period of 6 years, starting on the day on which the record must first be kept.

(2) Paragraph (1) does not apply to any record which is kept under paragraph (1)(i) of regulation 6 or under paragraph (1)(c) of regulation 7, in which case the record must be preserved for 4 years, starting on the day on which the record must first be kept.

### **Payment Failures**

### **Unpaid relevant contributions**

9. For the purposes of section 38(2) of the Act, the prescribed period after the appropriate date is 3 months.

**Contributions: Requirement to pay interest**

**10.**—(1) For the purposes of section 38(2)(e) of the Act, the rate at which interest must be paid on an amount required by a notice to be paid (“the rate”) is determined by the Regulator in accordance with paragraph (2).

- (2) The rate comprises a fixed component and a flexible component where—
- (a) the fixed component is 4.2%; and
  - (b) the flexible component is—
    - (i) the percentage change in the retail price index applicable for the month during which the Regulator issues a notice, or
    - (ii) where the retail price index applicable for the month during which the Regulator issues a notice is not published, the percentage change in that index for the preceding month.
- (3) For the purposes of section 38(2)(e) of the Act, the period in respect of which interest must be paid on an amount required by a notice—
- (a) begins with the appropriate date; and
  - (b) ends when an employer complies with a notice by—
    - (i) taking, or refraining from taking, the steps specified in a compliance notice, or
    - (ii) paying into a pension scheme an amount in respect of relevant contributions that had not been paid, as specified in an unpaid contributions notice.
- (4) In this regulation, “interest” means simple interest calculated from day to day.

**Contributions: Estimating contributions**

**11.**—(1) The Regulator may estimate the amount of contributions that an employer has failed to pay on behalf or in respect of a worker by applying the formula—

$$\frac{E}{12} \times 8\% \times N \times M$$

where—

E is the maximum qualifying earnings in a pay reference period of 12 months, as defined by section 13(1)(b) of the Act;

N is either—

- (a) the number of jobholders in respect of whom the Regulator is of the opinion that the employer has—
  - (i) contravened one or more of the employer duty provisions, or
  - (ii) not paid relevant contributions on or before the due date (within the meaning of section 37(3) of the Act); or
- (b) where in the Regulator’s opinion the number in (a) is not known, the number of persons in the employer’s PAYE scheme,

at the time that the Regulator makes the estimate; and

M is the number of months from—

- (a) the contravention of one or more of the employer duty provisions; or
- (b) the failure to pay contributions on behalf or in respect of the worker, until the Regulator makes the estimate.

(2) Other than information provided by the employer, when estimating the amount of contributions under this regulation, the Regulator may use the sources of information set out in paragraph (3).

(3) The sources of information are—

- (a) a late payment report;
- (b) anything reported or sent to the Regulator by any person, including—
  - (i) a trustee or manager of an occupational pension scheme,
  - (ii) a provider of a personal pension scheme, and
  - (iii) a member of either an occupational or personal pension scheme; or
- (c) any information disclosed to the Regulator under section 88 of the Pensions Act 2004<sup>(2)</sup> (tax information).

## Penalties

### Fixed penalty notices

**12.** Where the Regulator issues a fixed penalty notice to a person under subsection (1) or (2) of section 40 of the Act, the penalty is £400.

### Escalating penalty notices

**13.—**(1) Where an escalating penalty notice is issued to a person—

- (a) in respect of a failure to comply with a third party compliance notice under section 36 of the Act; or
- (b) (i) in respect of a failure to comply with a notice specified in paragraph (2)(a) or (b), and  
(ii) that failure was by a person other than an employer,

the prescribed daily rate is £200.

(2) Paragraph (3) applies where an escalating penalty notice is issued to an employer in respect of a failure to comply with—

- (a) a compliance notice under section 35 of the Act;
- (b) a notice under section 72 of the Pensions Act 2004<sup>(3)</sup> (provision of information); or
- (c) an unpaid contributions notice under section 37 of the Act.

(3) Except where paragraph (1) applies, the prescribed daily rate is to be determined in accordance with Table 1 and the following paragraphs.

**Table 1**

<i>Number of persons</i>	<i>Prescribed daily rate (£)</i>
1-4	50
5-49	500
50-249	2500
250-499	5000

(2) Section 88 was substituted by section 62(1) of the Pensions Act 2008.

(3) Subsections (1A) and (1B) were inserted by section 61(2) of the Pensions Act 2008.

<i>Number of persons</i>	<i>Prescribed daily rate (£)</i>
500 or more	10000

(4) In the first column of Table 1, the expression “Number of persons” is to be construed in accordance with paragraphs (5) and (6).

(5) Where—

(a) paragraph (2)(a) or (b) apply, it is the number of persons within an employer’s PAYE scheme (or where the Regulator is of the opinion that for any reason that employer has more than one PAYE scheme, the total number of persons within those schemes), but where in the Regulator’s opinion this number is not known, paragraph (7) applies;

(b) paragraph (2)(c) applies, it is—

(i) the number of workers in respect of whom the Regulator is of the opinion that the employer has not paid relevant contributions on or before the due date (within the meaning of section 37(3) of the Act); or

(ii) where in the Regulator’s opinion the number in (i) is not known, the number of persons within an employer’s PAYE scheme (or where the Regulator is of the opinion that for any reason that employer has more than one PAYE scheme, the total number of persons within those schemes),

but where in the Regulator’s opinion the number in (ii) is not known, paragraph (7) applies.

(6) In this regulation, the Regulator must use the latest information reasonably available to it up to and including the day on which the Regulator issues an escalating penalty notice—

(a) where paragraph (2)(a) and (b) apply, disclosed to it under section 88 of the Pensions Act 2004; and

(b) where paragraph (2)(c) applies—

(i) contained in a late payment report,

(ii) contained in a report given to the Regulator under section 70 of the Pensions Act 2004, or

(iii) disclosed to it under section 88 of the Pensions Act 2004.

(7) Where this paragraph applies, the prescribed daily rate must be treated as being £50.

#### **Penalty notices: Prohibited recruitment conduct**

14.—(1) This regulation applies where the Regulator issues a penalty notice to an employer if the Regulator is of the opinion that the employer—

(a) has contravened section 50 of the Act; or

(b) has failed to comply with a compliance notice under section 51 of the Act.

(2) The penalty is to be determined in accordance with Table 2 and the following paragraphs.

**Table 2**

<i>Number of persons</i>	<i>Penalty (£)</i>
1-4	1000

<i>Number of persons</i>	<i>Penalty (£)</i>
5-49	1500
50-249	2500
250 or more	5000

(3) In the first column of Table 2, the expression “Number of persons” is to be construed in accordance with paragraphs (4) and (5).

(4) It is the number of persons within an employer’s PAYE scheme (or where the Regulator is of the opinion that for any reason that employer has more than one PAYE scheme, the total number of persons within those schemes), but where in the Regulator’s opinion this number is not known, paragraph (6) applies.

(5) In this regulation, the Regulator must use the latest information—

- (a) reasonably available to it up to and including the day on which it issues a penalty notice; and
- (b) disclosed to it under section 88 of the Pensions Act 2004.

(6) Where this paragraph applies, the penalty must be treated as being £1000.

#### Review and issue of notices

#### **Review and issue of notices**

**15.**—(1) The period within which an application to review a notice may be made under section 43(1)(a) of the Act (written application of a person) is 28 days, starting from the day a notice is issued to a person.

(2) The period within which a notice may be reviewed under section 43(1)(b) of the Act (review by the Regulator) is 18 months, starting from the day a notice is issued to a person.

(3) The presumptions in paragraph (4) apply where notices to which section 43 applies are issued (including compliance notices issued under section 51 of the Act and penalty notices issued under section 52 of the Act).

(4) For the purposes of this regulation, it is presumed that—

- (a) where a notice is given a date by the Regulator, it was posted or otherwise sent on that day;
- (b) if a notice is posted or otherwise sent to a person’s last known or notified address, it was issued on the day on which that notice was posted or otherwise sent; and
- (c) a notice was received by the person to whom it was addressed.

#### Inducements

#### **Inducements**

**16.** For the purposes of subsection (3) of section 54 of the Act, the Regulator may not issue a compliance notice in respect of a contravention of that section unless the contravention occurred within—

- (a) 6 months before the time when a complaint was made to the Regulator about the contravention; or

- (b) 4 years before the time when the Regulator informed the employer of an investigation of the contravention, if no complaint was made before that time.