



2008 CHAPTER 13

PART 1

PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

CHAPTER 2

COMPLIANCE

*Compliance notices and unpaid contributions notices*

**Compliance notices**

**35.—**(1) The Regulator may issue a compliance notice to a person if it 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.

(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.

### **Third party compliance notices**

**36.—**(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.

### **Unpaid contributions notices**

**37.—**(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—

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*Status: This is the original version (as it was originally enacted).*

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- (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.

### **Calculation and payment of contributions**

**38.**—(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 Department 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).

(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.

#### **Meaning of “relevant contributions”**

**39.—**(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.