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## 2008 CHAPTER 13

### PART 1

#### PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

##### CHAPTER 2

##### COMPLIANCE

##### *Penalty notices*

#### **Fixed penalty notices**

**40.—**(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 Article 67 of the 2005 Order (provision of information) [<sup>F1</sup>, so far as relevant to the exercise of any of its functions under or by virtue of this Part ] .

(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),

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- (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 59 (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 four 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 [<sup>F2</sup>a tribunal] under section 44.

#### Textual Amendments

- F1** Words in s. 40(1)(d) inserted (24.6.2015) by [Pensions Act \(Northern Ireland\) 2015 \(c. 5\)](#), ss. [40\(1\)](#), [53\(2\)\(d\)](#)
- F2** Words in s. 40(5)(g) 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. 29](#) (with [Sch. 2](#)); [S.R. 2010/101](#), [art. 2](#)

#### Commencement Information

- I1** S. 40 partly in force; s. 40 in force for certain purposes at Royal Assent see s. 118(2)
- I2** S. 40(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. 40(1)(d) in operation at 30.6.2012 for specified purposes by [S.R. 2012/266](#), [art. 2](#), [Sch. Pt. 1](#)

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- 14** S. 40(2)-(5) in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266](#), [art. 2, Sch. Pt. 1](#)

### 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, or
- (d) a notice under Article 67 of the 2005 Order (provision of information) <sup>[F3]</sup>, so far as relevant to the exercise of any 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;
- (b) it relates to failure to comply with any notice within subsection (1), the person has exercised the right of referral to <sup>[F4]</sup>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);

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- (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 [<sup>F5</sup>a tribunal] under section 44.

#### Textual Amendments

- F3** Words in s. 41(1)(d) inserted (24.6.2015) by [Pensions Act \(Northern Ireland\) 2015 \(c. 5\)](#), **ss. 40(1), 53(2)(d)**
- 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**
- 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

- I5** S. 41 partly in force; s. 41 in force for certain purposes at Royal Assent see s. 118(2)
- I6** 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**
- I7** S. 41(1)(d) in operation at 30.6.2012 for specified purposes by [S.R. 2012/266](#), **art. 2**, **Sch. Pt. 1**
- I8** 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**

#### Penalty notices: recovery

**42.—(1)** Any penalty payable under section 40 or section 41 is recoverable by the Regulator.

**(2)** The Regulator must pay into the Consolidated Fund any penalty recovered under this section.

#### Modifications etc. (not altering text)

- C1** [S. 42](#) applied (10.8.2021 for specified purposes, 16.3.2022 for specified purposes, 6.4.2022 in so far as not already in operation) by [Pension Schemes Act \(Northern Ireland\) 2021 \(c. 6\)](#), **ss. 17(5)(a), 44(1)(a)(iii)** (with transitional provisions in [S.R. 2021/234](#), **art. 3**); [S.R. 2022/110](#), **art. 2(a)(b)**
- C2** [S. 42](#) applied (10.8.2021 for specified purposes, 16.3.2022 for specified purposes, 6.4.2022 in so far as not already in operation) by [Pension Schemes Act \(Northern Ireland\) 2021 \(c. 6\)](#), **ss. 18(7)(a), 44(1)(a)(iii)** (with transitional provisions in [S.R. 2021/234](#), **art. 3**); [S.R. 2022/110](#), **art. 2(a)(b)**

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- C3** S. 42 applied (1.9.2021 for specified purposes, 1.10.2021 in so far as not already in operation) by S.I. 2005/255 (N.I. 1), art. 72B(7)(a) (with art. 72B(8)) (as inserted by Pension Schemes Act 2021 (c. 1), s. 131(2)(b), **Sch. 8 para. 11**; S.R. 2021/240, art. 2(1)(f); S.R. 2021/271, art. 2(5)(c) (with art. 5))
- C4** S. 42 applied (1.9.2021 for specified purposes, 1.10.2021 in so far as not already in operation) by S.I. 2005/255 (N.I. 1), art. 72A(5)(a) (with art. 72A(6)) (as inserted by Pension Schemes Act 2021 (c. 1), s. 131(2)(b), **Sch. 8 para. 11**; S.R. 2021/240, art. 2(1)(f); S.R. 2021/271, art. 2(5)(c) (with art. 5))

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#### Commencement Information

- I9** S. 42 in operation at 30.6.2012 by S.R. 2012/266, art. 2, **Sch. Pt. 2**

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