

*Status: Point in time view as at 30/06/2012.*

*Changes to legislation: Pensions (No. 2) Act (Northern Ireland) 2008, Cross Heading: Prohibited recruitment conduct is up to date with all changes known to be in force on or before 19 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*



## 2008 CHAPTER 13

### PART 1

#### PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

##### CHAPTER 3

##### SAFEGUARDS: EMPLOYMENT AND PRE-EMPLOYMENT

###### *Prohibited recruitment conduct*

###### **Prohibited recruitment conduct**

**50.—(1)** An employer contravenes this section if any statement made or question asked by or on behalf of the employer for the purposes of recruitment indicates (expressly or impliedly) that an application for employment with the employer may be determined by reference to whether or not an applicant might opt out of automatic enrolment.

(2) The reference in subsection (1) to a statement made or a question asked for the purposes of recruitment is a reference to one made or asked in the course of any of the following—

- (a) inviting applications for employment;
- (b) requesting information from an applicant, referee or other person in connection with an application for employment;
- (c) providing information about employment;
- (d) proposing terms or conditions of employment.

(3) The reference in subsection (1) to an applicant opting out of automatic enrolment is a reference to the applicant, if becoming at any time in the course of the employment a jobholder to whom section 3 or 5 applies, giving notice

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in accordance with section 8 in relation to arrangements made by the employer under the relevant section.

(4) In this section and sections 51 and 52, “employer” means the prospective employer in relation to any employment.

#### Commencement Information

**II** S. 50 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

#### Compliance notices

**51.**—(1) The Regulator may issue a compliance notice to an employer if it is of the opinion that the employer has contravened section 50.

(2) A compliance notice is a notice directing the employer to take, or refrain from taking, the steps specified in the notice in order to—

- (a) remedy the contravention, or
- (b) prevent the contravention being repeated.

(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 employer to provide within a specified period specified information relating to the contravention;
- (c) require the employer to inform the Regulator, within a specified period, how the employer has complied or is complying with the notice;
- (d) state that, if the employer fails to comply with the requirements of the notice, the Regulator may issue a penalty notice under section 52.

(4) A compliance notice must specify the contravention to which the notice relates.

#### Commencement Information

**II** S. 51 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

#### Penalty notices

**52.**—(1) The Regulator may issue a penalty notice to an employer if it is of the opinion that the employer—

- (a) has contravened section 50, or
- (b) has failed to comply with a compliance notice under section 51.

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(2) 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.

(3) The penalty—

- (a) is to be determined in accordance with regulations, and
- (b) must not exceed £50,000.

(4) A 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) specify the contravention or failure to which the notice relates;
- (d) notify the employer of the review process under section 43 and the right to make a reference under section 44 (as applied by section 53).

(5) Section 42 (penalty notices: recovery) applies to a penalty payable under this section, and to a notice under this section, as it applies to a penalty payable under section 40, and to a notice under that section.

#### Commencement Information

**I3** S. 52 partly in force; s. 52 in force for certain purposes at Royal Assent see s. 118(2)

**I4** S. 52 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266](#), [art. 2](#), [Sch. Pt. 1](#)

#### Review of notices and references to the [<sup>F1</sup>First-tier Tribunal or Upper Tribunal]

**53.**—(1) Section 43 (review of notices) also applies to a compliance notice issued under section 51 and to a penalty notice issued under section 52.

(2) Section 44 (references to the [<sup>F2</sup>First-tier Tribunal or Upper Tribunal]) applies in relation to a penalty notice issued under section 52 as it applies in relation to a notice issued under section 40 or 41.

#### Textual Amendments

**F1** S. 53: words in heading 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. 32](#) (with [Sch. 2](#)); [S.R. 2010/101](#), [art. 2](#)

**F2** Words in s. 53(2) 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. 32](#) (with [Sch. 2](#)); [S.R. 2010/101](#), [art. 2](#)

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**Commencement Information**

**I5** S. 53 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

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