



Pension Schemes Act 2021

2021 CHAPTER 1

PART 3

THE PENSIONS REGULATOR

Gathering information

112 Fixed penalty notices and escalating penalty notices

After section 77 of the Pensions Act 2004 (penalties relating to sections 72 to 75) insert—

“77A Fixed penalty notices

- (1) The Regulator may issue a fixed penalty notice to a person if it considers that the person—
 - (a) has failed to comply with a notice under section 72 or 72A,
 - (b) has failed to comply with a requirement under section 75, or
 - (c) has prevented or hindered an inspector exercising any power under section 73, 74 or 75.
- (2) 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.
- (3) The penalty—
 - (a) is to be determined in accordance with regulations, and
 - (b) must not exceed £50,000.
- (4) A fixed penalty notice must—
 - (a) state the amount of the penalty;
 - (b) state the date by which the penalty must be paid, which must be at least 28 days after the date on which the notice is issued;
 - (c) state the period to which the penalty relates;

Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, Section 112. (See end of Document for details)

- (d) specify the failure or conduct to which the penalty relates;
 - (e) state that the Regulator may issue an escalating penalty notice under section 77B if the person fails to comply with a notice under section 72 or 72A;
 - (f) notify the person to whom the notice is issued of the review process under section 43 of the Pensions Act 2008 and the right of referral to a tribunal under section 44 of that Act (as applied by subsection (5)).
- (5) The following sections of the Pensions Act 2008 apply to a penalty notice under this section as they apply to a penalty notice under section 40 of that Act—
- (a) section 42 (penalty notices: recovery);
 - (b) section 43 (review of penalty notices);
 - (c) section 44 (references to First-tier Tribunal or Upper Tribunal).
- (6) This section does not apply in a case where section 40 of the Pensions Act 2008 or section 17 of the Pension Schemes Act 2017 applies.

77B Escalating penalty notices

- (1) The Regulator may issue an escalating penalty notice to a person if it considers that the person has failed to comply with a notice under section 72 or 72A.
- (2) But the Regulator may not issue an escalating penalty notice to a person if—
- (a) the person has exercised the right of referral to a tribunal under section 44 of the Pensions Act 2008 (as applied by section 77A(5)) in respect of a fixed penalty notice issued under section 77A in relation to that notice under section 72 or 72A, and
 - (b) 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 under section 72 or 72A before a specified date.
- (4) An escalating penalty is a penalty which is calculated by reference to a daily rate.
- (5) The 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 penalty relates;
 - (b) state that, if the person fails to comply with the notice under section 72 or 72A 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 77A(4)(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 under section 72 or 72A or such earlier date as the Regulator may determine;
 - (f) notify the person to whom the notice is issued of the review process under section 43 of the Pensions Act 2008 and the right of referral to a tribunal under section 44 of that Act (as applied by subsection (7)).
- (7) The following sections of the Pensions Act 2008 apply to an escalating penalty notice under this section as they apply to an escalating penalty notice under section 41 of that Act—
- (a) section 42 (penalty notices: recovery);
 - (b) section 43 (review of penalty notices);
 - (c) section 44 (references to First-tier Tribunal or Upper Tribunal).
- (8) This section does not apply in a case where section 41 of the Pensions Act 2008 or section 18 of the Pension Schemes Act 2017 applies.”

Commencement Information

- I1** S. 112 in force at 31.5.2021 for specified purposes by S.I. 2021/620, reg. 2(1)(d)
- I2** S. 112 in force at 1.10.2021 in so far as not already in force by S.I. 2021/950, reg. 2(5)(c) (with reg. 5)

Changes to legislation:

There are currently no known outstanding effects for the Pension Schemes Act 2021, Section 112.