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STATUTORY INSTRUMENTS

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**2010 No. 5**

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

**PART 3**

**Compliance**

**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>(1)</sup> (tax information).

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