



Pensions Act 2008

2008 CHAPTER 30

PART 1

PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

CHAPTER 2

COMPLIANCE

Penalty notices

40 Fixed penalty notices

- (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, ^{F1}...
 - (d) a notice issued under section 72 of the Pensions Act 2004 (c. 35) (provision of information)^{F2}, so far as relevant to the exercise of any of its functions under or by virtue of this Part ^{F3}, or
 - (e) a notice issued under section 72A of that Act (interviews), 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),
 - (c) section 8(2)(b) (refund of contributions if jobholder opts out of scheme membership), and any provision of regulations under that provision,

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- (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 60 (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 4 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 ^{F4}a tribunal] under section 44.

Textual Amendments

- F1** Word in s. 40(1) omitted (29.6.2022) by virtue of Pension Schemes Act 2021 (c. 1), s. 131(1), **Sch. 7 para. 16(a)**; S.I. 2022/721, regs. 1(2), 2(d)
- F2** Words in s. 40(1)(d) inserted (14.7.2014) by Pensions Act 2014 (c. 19), **ss. 41(1)**, 56(3)(c)
- F3** S. 40(1)(e) and word inserted (29.6.2022) by Pension Schemes Act 2021 (c. 1), s. 131(1), **Sch. 7 para. 16(b)**; S.I. 2022/721, regs. 1(2), 2(d)
- F4** Words in s. 40(5)(g) substituted (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2)(e), 5(1), **Sch. 2 para. 147** (with Sch. 5)

Commencement Information

- I1** S. 40 partly in force; s. 40 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 40(1)(a)-(c) (2)-(5) in force so far as not already in force and s. 40(1)(d) in force for certain purposes at 30.6.2012 by S.I. 2012/1682, art. 2(1)(2)(a), **Sch. 1**

41 Escalating penalty notices

- (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, ^{F5}...

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- (d) a notice under section 72 of the Pensions Act 2004 (c. 35) (provision of information)^[F6], so far as relevant to the exercise of any of its functions under or by virtue of this Part^[F7], or
 - (e) a notice issued under section 72A of that Act (interviews), 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 ^[F8]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);
 - (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 ^[F8]a tribunal] under section 44.

Textual Amendments

- F5** Word in s. 41(1) omitted (29.6.2022) by virtue of Pension Schemes Act 2021 (c. 1), s. 131(1), **Sch. 7 para. 17(a)**; S.I. 2022/721, regs. 1(2), 2(d)
- F6** Words in s. 41(1)(d) inserted (14.7.2014) by Pensions Act 2014 (c. 19), ss. **41(1)**, 56(3)(c)
- F7** S. 41(1)(e) and word inserted (29.6.2022) by Pension Schemes Act 2021 (c. 1), s. 131(1), **Sch. 7 para. 17(b)**; S.I. 2022/721, regs. 1(2), 2(d)
- F8** Words in s. 41(2)(b)(6)(f) substituted (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2)(e), 5(1), **Sch. 2 para. 148** (with Sch. 5)

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Commencement Information

- I2** S. 41 partly in force; s. 41 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 41(a)-(c) (2)-(6) in force so far as not already in force and s. 41(1)(d) in force for certain purposes at 30.6.2012 by S.I. 2012/1682, **art. 2(1)(2)(a)**, Sch. 1

42 Penalty notices: recovery

- (1) Any penalty payable under section 40 or section 41 is recoverable by the Regulator.
- (2) In England and Wales, any such penalty is, if [^{F9}the county court] so orders, recoverable under section 85 of the County Courts Act 1984 (c. 28) or otherwise as if it were payable under an order of that court.
- (3) In Scotland, a fixed penalty notice or escalating penalty notice is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (4) The Regulator must pay into the Consolidated Fund any penalty recovered under this section.

Textual Amendments

- F9** Words in s. 42(2) substituted (22.4.2014) by **Crime and Courts Act 2013 (c. 22)**, s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, **art. 2(c)** (with **art. 3**) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Modifications etc. (not altering text)

- C1** S. 42 applied (27.4.2017 for specified purposes, 5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by **Pension Schemes Act 2017 (c. 17)**, **ss. 18(7)(a)**, 44(1)(a); S.I. 2018/965, **reg. 2(a)(b)**
- C2** S. 42 applied (27.4.2017 for specified purposes, 5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by **Pension Schemes Act 2017 (c. 17)**, **ss. 17(5)(a)**, 44(1)(a); S.I. 2018/965, **reg. 2(a)(b)**
- C3** S. 42 applied (31.5.2021 for specified purposes, 1.10.2021 in so far as not already in force) by 2004 c. 35, s. 77A(5)(a) (with s. 77A(6)) (as inserted by **Pension Schemes Act 2021 (c. 1)**, **ss. 112**, 131(1); S.I. 2021/620, **reg. 2(1)(d)**; S.I. 2021/950, **reg. 2(5)(c)** (with **reg. 5**))
- C4** S. 42 applied (31.5.2021 for specified purposes, 1.10.2021 in so far as not already in force) by 2004 c. 35, s. 77B(7)(a) (with s. 77B(8)) (as inserted by **Pension Schemes Act 2021 (c. 1)**, **ss. 112**, 131(1); S.I. 2021/620, **reg. 2(1)(d)**; S.I. 2021/950, **reg. 2(5)(c)** (with **reg. 5**))

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 3(1A) inserted by [2023 c. 44 s. 1\(2\)](#)
- s. 5(1C) inserted by [2023 c. 44 s. 1\(3\)](#)
- s. 13(3)(ec) inserted by [2023 c. 20 Sch. para. 56](#)
- s. 13A inserted by [2023 c. 44 s. 1\(4\)](#)
- s. 24(1)(c) inserted by [2015 c. 8 Sch. 2 para. 43\(2\)\(d\)](#)
- s. 143(6)(7) inserted by [2023 c. 44 s. 1\(5\)\(b\)](#)