



# 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,<sup>F1</sup>...
  - (d) a notice issued under section 72 of the Pensions Act 2004 (c. 35) (provision of information)<sup>F2</sup>, so far as relevant to the exercise of any of its functions under or by virtue of this Part <sup>F3</sup>, 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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*Changes to legislation: Pensions Act 2008, Section 40 is up to date with all changes known to be in force on or before 27 February 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) View outstanding changes*

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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 [<sup>F4</sup>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**

**Changes to legislation:**

Pensions Act 2008, Section 40 is up to date with all changes known to be in force on or before 27 February 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.

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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\(5\)\(b\)](#)