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STATUTORY INSTRUMENTS

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**2022 No. 1220**

**The Pensions Dashboards Regulations 2022**

**PART 4**

**Compliance and enforcement**

**Compliance notices**

**29.**—(1) A compliance notice is a notice directing trustees or managers to take, or to refrain from taking, the steps specified in the notice.

(2) The Regulator may issue a compliance notice to the trustees or managers of a relevant occupational pension scheme where the Regulator is of the opinion that they are not complying, or have not complied, with any requirement in Part 3.

(3) The steps mentioned in paragraph (1) may be any steps that the Regulator reasonably requires with a view to remedying the non-compliance with a requirement in Part 3 and, where appropriate, avoiding repetition of it.

(4) 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 trustees or managers to provide to the Regulator, within a specified period, information relating to the non-compliance;
- (c) require the trustees or managers to inform the Regulator, within a specified period, how the trustees or managers have complied with, or are complying with, the compliance notice;
- (d) give the trustees or managers a choice between different steps that may be taken to ensure that the non-compliance is remedied and, where appropriate, is not repeated;
- (e) cover more than one contravention, with separate steps specified in respect of each contravention, to the extent that the Regulator considers this to be appropriate.

(5) A direction in a compliance notice may be expressed to be conditional on compliance by a third party, with a specified direction contained in a third party compliance notice under regulation 30.

(6) A compliance notice must state—

- (a) which provision of Part 3 was not, or is not, being complied with in the opinion of the Regulator;
- (b) the evidence on which that opinion is based;
- (c) that if the Regulator is of the opinion that trustees or managers have failed to comply with the compliance notice, then the Regulator may issue a penalty notice under regulation 31.

**Third party compliance notices**

**30.**—(1) A third party compliance notice is a notice directing the third party to whom it is issued (as referred to in paragraph (2)) to take, or to refrain from taking, the steps specified in the notice.

- (2) The Regulator may issue a third party compliance notice in any of the circumstances listed in paragraph (3), where—
- (a) the Regulator is of the opinion that the non-compliance by trustees or managers of a relevant occupational pension scheme with a requirement in Part 3 is or was, wholly or partly, a result of an act or omission by another person (“the third party”), and
  - (b) that act or omission is not in itself a contravention of Part 3.
- (3) The circumstances are—
- (a) receipt of an indication that the trustees or managers of a relevant occupational pension scheme are unable to confirm whether they are complying with, or will be able to comply with, a requirement under Part 3, or
  - (b) the Regulator is of the opinion that the trustees or managers have not complied with a requirement under Part 3.
- (4) The steps mentioned in paragraph (1) may be any steps that are reasonably necessary to ensure that any non-compliance with any requirement in Part 3 can be remedied and, where appropriate, is not repeated.
- (5) A third party compliance notice may, in particular—
- (a) state the period within which any steps must be taken or must cease to be taken;
  - (b) require the third party to provide to the Regulator, within a specified period, information relating to the non-compliance;
  - (c) require the third party to inform the Regulator, within a specified period, how the third party has complied with, or is complying with, the third party compliance notice;
  - (d) give the third party a choice between different steps that may be taken to ensure that the non-compliance can be remedied and, where appropriate, is not repeated;
  - (e) cover more than one contravention, with separate steps specified in respect of each contravention, to the extent that the Regulator considers this to be appropriate.
- (6) A third party compliance notice must state—
- (a) the particulars of the act or omission by the third party, and which of the circumstances in paragraph (3) apply in the opinion of the Regulator;
  - (b) if the Regulator is of the opinion that the circumstances in paragraph (3)(a) apply, the evidence on which that opinion is based;
  - (c) if the Regulator is of the opinion that the circumstances in paragraph (3)(b) apply—
    - (i) which provision of Part 3 was not, or is not, being complied with in the opinion of the Regulator;
    - (ii) the evidence on which that opinion is based;
  - (d) that if the Regulator is of the opinion that the third party has failed to comply with the third party compliance notice, then the Regulator may issue a penalty notice under regulation 31.

### **Penalty notices**

**31.**—(1) 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.

- (2) Subject to regulation 33(1) and (3)(b), the Regulator may issue a penalty notice to—
- (a) any trustee or manager of a pension scheme where the Regulator is of the opinion that the trustee or manager has—
    - (i) failed to comply with a compliance notice under regulation 29, or

- (ii) contravened a provision under Part 3;
  - (b) a third party where the Regulator is of the opinion that the third party failed to comply with a third party compliance notice under regulation 30.
- (3) The amount of the penalty is to be determined by the Regulator, but in respect of a failure or contravention must not exceed—
- (a) £5,000 if the person is an individual, or
  - (b) £50,000 if the person is a body corporate (including corporate trustees), a Scottish partnership, or any other person who is not an individual.
- (4) A 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 4 weeks after the date on which the penalty notice is issued;
  - (c) state the period (if any) to which the penalty relates;
  - (d) if the penalty notice is issued under paragraph 2(a)(i) or (2)(b), specify the failure to which the penalty notice relates;
  - (e) if the notice is issued under paragraph 2(a)(ii), specify the provision which has been contravened;
  - (f) notify the person to whom the notice is issued of the review process under regulation 34 and the right of referral to a tribunal under regulation 35.
- (5) Where the Regulator may issue more than one penalty notice to a person because there has been—
- (a) more than one failure to comply with the same compliance notice, or
  - (b) more than one contravention of a provision under Part 3 (whether more than one contravention of the same provision or contraventions of different provisions),
- the penalty notices may be issued in a single document.
- (6) If a single document is issued as mentioned in paragraph (5), the information required by paragraph (4) may be provided in the document by reference to more than one penalty.

### **Penalty notices: recovery**

- 32.**—(1) A penalty payable under a penalty notice is recoverable by the Regulator.
- (2) In England and Wales, any such penalty is, if the County Court so orders, recoverable under section 85 of the County Courts Act 1984<sup>(1)</sup> or otherwise as if it were payable under an order of that court.
- (3) In Scotland, any such penalty is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution signed by the sheriff court of any sheriffdom in Scotland.
- (4) The Regulator must pay into the Consolidated Fund any penalty recovered under this regulation.

### **Penalty notices: recovery from bodies corporate and Scottish partnerships**

- 33.**—(1) Where—
- (a) a penalty under regulation 31 is recoverable from a body corporate or a Scottish partnership by reason of any act or omission of the body or partnership, and

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(1) 1984 c. 28.

- (b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of, any persons mentioned in paragraph (2),

the Regulator may issue the penalty notice to each of those persons who consented to or connived in the act or omission, or to whose neglect the act or omission was attributable.

(2) The persons are—

(a) in relation to a body corporate—

- (i) any director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, and
- (ii) where the affairs of the body corporate are managed by its members, any member who has management functions;

(b) in relation to a Scottish partnership, the partners of that partnership.

(3) Where the Regulator requires any person mentioned in paragraph (2) to pay a penalty, the Regulator—

- (a) may not also require the relevant body corporate or Scottish partnership to pay a penalty in respect of the same act or omission, and
- (b) must issue a penalty notice to the person who is required to pay, but may also notify the relevant body corporate or Scottish partnership.

### **Review of notices**

**34.**—(1) The Regulator may review a notice to which this paragraph applies—

- (a) on the written application of the person to whom the notice was issued, or
- (b) if the Regulator otherwise considers it appropriate.

(2) Paragraph (1) applies to—

- (a) a compliance notice issued under regulation 29;
- (b) a third party compliance notice issued under regulation 30;
- (c) a penalty noticed issued under regulation 31 or 33.

(3) An application to review a notice under paragraph (1)(a) must be made within 28 days beginning with the date on which the notice is issued to a person.

(4) The Regulator may review a notice under paragraph (1)(b) within 18 months beginning with the date on which the notice is issued to a person.

(5) In circumstances where the Regulator receives an application to review a notice under paragraph (1)(a), the effect of the notice is suspended for the period—

- (a) beginning on the day that the Regulator determines to carry out the review, and
- (b) ending on the day that the person who applied for the review is informed of the outcome of the review.

(6) In carrying out the review, the Regulator must consider any representations made by the person to whom the notice was issued.

(7) On reviewing a notice, the Regulator may—

- (a) confirm, vary or revoke the notice;
- (b) substitute a different notice.

### References to the First-tier Tribunal or Upper Tribunal

**35.**—(1) A person to whom a penalty notice is issued under regulation 31 or 33 may, if one of the conditions in paragraph (2) is satisfied, make a reference to the Tribunal in respect of—

- (a) the issue of the notice;
- (b) the amount of the penalty under the notice.

(2) The conditions are—

- (a) that the Regulator has completed a review of the notice under regulation 34, or
- (b) that the person to whom the notice was issued made an application for review of the notice under regulation 34(1)(a) and the Regulator has determined not to carry out a review.

(3) On a reference to the Tribunal in respect of a notice, the effect of the notice is suspended for the period beginning on the day the Tribunal receives notice of the reference and ending—

- (a) on the day the reference is withdrawn,
- (b) if the reference is made out of time, on the day the Tribunal determines not to allow the reference to proceed, or
- (c) on the day the reference is completed.

(4) For the purposes of paragraph (3)(c), a reference is completed when—

- (a) the reference has been determined, and
- (b) the Tribunal has remitted the matter to the Regulator.

(5) In this regulation—

- (a) “the Tribunal” means—
  - (i) the Upper Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the Upper Tribunal is to hear the reference;
  - (ii) the First-tier Tribunal in any other case;
- (b) “Tribunal Procedure Rules” means—
  - (i) the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 in relation to the First-tier Tribunal<sup>(2)</sup>, and
  - (ii) the Tribunal Procedure (Upper Tribunal) Rules 2008<sup>(3)</sup> in relation to the Upper Tribunal.

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<sup>(2)</sup> S.I. 2009/1976.

<sup>(3)</sup> S.I. 2008/2698.