

*Status: Point in time view as at 28/07/2022.*

**Changes to legislation:** *Pensions (No. 2) Act (Northern Ireland) 2008, Section 40 is up to date with all changes known to be in force on or before 07 August 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)*



## 2008 CHAPTER 13

### PART 1

#### PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

##### CHAPTER 2

##### COMPLIANCE

##### *Penalty notices*

#### **Fixed penalty notices**

**40.—**(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 Article 67 of the 2005 Order (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 Article 67A of that Order (interviews), so far as relevant to the exercise 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),

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- (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,
  - (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 59 (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 four 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 (28.7.2022) by virtue of Pension Schemes Act 2021 (c. 1), s. 131(2)(b), **Sch. 8 para. 30(a)**; S.R. 2022/197, art. 2(b)
- F2** Words in s. 40(1)(d) inserted (24.6.2015) by Pensions Act (Northern Ireland) 2015 (c. 5), **ss. 40(1), 53(2)(d)**
- F3** S. 40(1)(e) and word inserted (28.7.2022) by Pension Schemes Act 2021 (c. 1), s. 131(2)(b), **Sch. 8 para. 30(b)**; S.R. 2022/197, art. 2(b)
- F4** Words in s. 40(5)(g) substituted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 29** (with Sch. 2); S.R. 2010/101, **art. 2**

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#### **Commencement Information**

- I1** S. 40 partly in force; s. 40 in force for certain purposes at Royal Assent see [s. 118\(2\)](#)
- I2** S. 40(1)(a)-(c) in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)
- I3** S. 40(1)(d) in operation at 30.6.2012 for specified purposes by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)
- I4** S. 40(2)-(5) in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

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