
DRAFT STATUTORY INSTRUMENTS

2021 No.

The Occupational Pension Schemes (Climate Change
Governance and Reporting) Regulations 2021

PART 3

Compliance

Compliance notices

7.—(1) The Authority⁽¹⁾ may issue a compliance notice to any person if the Authority are of the opinion that the person is not complying with, or has not complied with any provision under Part 2 of, or the Schedule to, these Regulations.

(2) A compliance notice is a notice directing the person to whom it is issued to take, or refrain from taking, the steps specified in the notice.

(3) The steps mentioned in paragraph (2) may be any steps reasonably necessary to ensure that any non-compliance with any provision under Part 2 of, or the Schedule to, these Regulations is remedied and, where appropriate, not repeated.

(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 person to provide within a specified period information relating to the non-compliance;
- (c) require the person to inform the Authority, within a specified period, how the person has complied with, or is complying with, the notice;
- (d) give the person a choice between different steps that may be taken to ensure that the non-compliance is remedied and, where appropriate, not repeated.

(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 8.

(6) A compliance notice must state—

- (a) which provision of Part 2 of, or the Schedule to, these Regulations was not, or is not, being complied with in the Authority's opinion;
- (b) the evidence on which that opinion is based; and
- (c) that if the Authority are of the opinion that the person has failed to comply with the requirements of the notice, the Authority may issue a penalty notice under regulation 9(1)(a)(i) of these Regulations.

Third party compliance notices

8.—(1) Where in any of the circumstances of non-compliance in paragraph (2)—

(1) See section 124(1) of the 1995 Act for the meaning of “the Authority”.

- (a) the Authority are of the opinion that the non-compliance 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 2 of, or the Schedule to, these Regulations,

the Authority may issue to the third party a third party compliance notice.

(2) The circumstances are—

- (a) receipt of an indication that a person is unable to confirm whether they are complying with, or will be able to comply with a provision under Part 2 of, or the Schedule to, these Regulations; or
- (b) the Authority are of the opinion that a person is not complying with, or has not complied with a provision under Part 2 of, or the Schedule to, these Regulations.

(3) A third party compliance notice is a notice directing the third party to whom it is issued to take, or refrain from taking, the steps specified in the notice.

(4) The steps mentioned in paragraph (3) may be any steps reasonably necessary to ensure that any non-compliance with any provision under Part 2 of, or the Schedule to, these Regulations 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 step must be taken or must cease to be taken;
- (b) require the third party to provide within a specified period information relating to the non-compliance;
- (c) require the third party to inform the Authority, within a specified period, how the third party has complied with, or is complying with, the 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.

(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 (2) apply in the Authority’s opinion;
- (b) if the Authority are of the opinion that the circumstances in paragraph (2)(a) apply, the evidence on which that opinion is based;
- (c) if the Authority are of the opinion that the circumstances in paragraph (2)(b) apply—
 - (i) which provision of Part 2 of, or the Schedule to, these Regulations was not, or is not, being complied with in the Authority’s opinion;
 - (ii) the evidence on which that opinion is based; and
- (d) that if the Authority are of the opinion that the third party has failed to comply with the requirements of the notice, the Authority may issue a penalty notice under regulation 9(1)(b) of these Regulations.

Penalty notices

9.—(1) Subject to paragraph (2) and to regulation 11(1) and (3)(b), the Authority may issue a penalty notice to—

- (a) a person where they are of the opinion that the person has—
 - (i) failed to comply with a compliance notice under regulation 7; or
 - (ii) contravened a provision under Part 2 of, or the Schedule to, these Regulations;

- (b) a third party where they are of the opinion that the third party has failed to comply with a third party compliance notice under regulation 8.
- (2) Where the Authority are of the opinion that a person has failed to comply with the requirement in regulation 6(1)(b) to publish a report on a publicly available website, accessible free of charge, the Authority must issue a penalty notice to that person.
- (3) 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.
- (4) The amount of the penalty is to be determined by the Authority, but—
- (a) for the purpose of a penalty notice issued under paragraph (1) or (2), must not exceed—
 - (i) £5,000 if the person is an individual; or
 - (ii) £50,000 if the person is a body corporate, Scottish partnership or any other person;
 - (b) for the purpose of a penalty notice issued under paragraph (2), must be at least £2,500.
- (5) A penalty notice must—
- (a) where it is issued to trustees, be issued to all the trustees of the scheme and specify their joint and several liability for the penalty;
 - (b) state the amount of the penalty;
 - (c) state the date by which the penalty must be paid, which must be at least 4 weeks after the date on which the notice is issued;
 - (d) state the period (if any) to which the penalty relates;
 - (e) if the notice is issued under paragraph (1)(a)(i) or (b) or (2), specify the failure to which the notice relates;
 - (f) if the notice is issued under paragraph (1)(a)(ii), specify the provision or provisions which have been contravened; and
 - (g) notify the person to whom the notice is issued of the review process under regulation 12 and the right of referral to a tribunal under regulation 13.

Penalty notices: recovery

- 10.**—(1) Any penalty payable under a penalty notice is recoverable by the Authority.
- (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(2) 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 Authority must pay into the Consolidated Fund any penalty recovered under this regulation.

Penalty notices: recovery from bodies corporate and Scottish partnerships

- 11.**—(1) Where—
- (a) a penalty under regulation 9 is recoverable from a body corporate or Scottish partnership by reason of any act or omission of the body or partnership; and

(2) 1984 c. 28. Section 85 was amended by the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 62(3), section 67 and Schedule 13, paragraph 69 and by the Crime and Courts Act 2013 (c. 22), section 17(5) and Schedule 9, Part 1, paragraph 10(35). S.I. 1991/724 is a relevant amending instrument.

(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 Authority 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 a 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 Authority require any person mentioned in paragraph (2) to pay a penalty, they—

- (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

12.—(1) The Authority 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 Authority otherwise consider it appropriate.

(2) Paragraph (1) applies to—

- (a) a compliance notice issued under regulation 7;
- (b) a third party compliance notice issued under regulation 8;
- (c) a penalty notice issued under regulation 9 or 11.

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

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

(5) On review of a notice, the effect of the notice is suspended for the period beginning on the day the Authority determine to carry out the review and ending on the day the review is completed.

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

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

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

References to the First-tier Tribunal or Upper Tribunal

13.—(1) A person to whom a penalty notice is issued under regulation 9 or 11 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 Authority have completed a review of the notice under regulation 12; or
 - (b) that the person to whom the notice was issued made an application for review of the notice under regulation 12(1)(a) and the Authority have 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 Authority.
- (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; and
 - (b) “Tribunal Procedure Rules” means—
 - (i) the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009(3) in relation to the First-tier Tribunal; and
 - (ii) the Tribunal Procedure (Upper Tribunal) Rules 2008(4) in relation to the Upper Tribunal.

Service of notifications and other documents

- 14.**—(1) This regulation applies where any provision under this Part authorises or requires—
- (a) a notification to be given or sent to a person; or
 - (b) a document of any other description (including a copy of the document) to be sent to a person.
- (2) The notification or document may be given or sent to the person in question—
- (a) by delivering it to the person;
 - (b) by leaving it at the person’s proper address; or
 - (c) by sending it by post to the person at that address.
- (3) The notification or document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body.
- (4) The notification or document may be given or sent to a firm by being given or sent to—
- (a) a partner in the firm; or
 - (b) a person having the control or management of the partnership business.
- (5) The notification or document may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association.
- (6) For the purposes of this regulation, the proper address of a person is—

(3) [S.I. 2009/1976](#).

(4) [S.I. 2008/2698](#).

- (a) in the case of a body corporate, the address of the registered or principal office of the body;
- (b) in the case of a firm, or an unincorporated body or association, the address of the principal office of the firm, body or association; and
- (c) in any other case, the last known address of the person in question.

(7) In the case of—

- (a) a company registered outside the United Kingdom;
- (b) a firm carrying on business outside the United Kingdom; or
- (c) an unincorporated body or association with offices outside the United Kingdom,

the references in paragraph (6) to its principal office include references to its principal office within the United Kingdom (if any).

(8) In this regulation, “notification” includes notice and references to sending a document to a person include references to making an application to that person.

Service by electronic means

15.—(1) This regulation applies where a notification or document authorised or required to be given or sent for the purposes of this Part is transmitted to a person (“the recipient”) by means of—

- (a) an electronic communications network; or
- (b) other electronic means.

(2) The transmission has effect for the purposes of this Part as a delivery of the notification or other document to the recipient only if the requirements under this regulation are complied with.

(3) Where the recipient is the Authority—

- (a) the Authority must have indicated their willingness to receive the notification or other document by means of an electronic communications network or other electronic means;
- (b) the transmission must be made in such manner, and satisfy such conditions, as the Authority may require; and
- (c) the notification or other document must take such form as the Authority may require.

(4) Where the person making the transmission is the Authority, subject to paragraph (5) the Authority may determine—

- (a) the manner in which the transmission is made; and
- (b) the form in which the notification or other document is transmitted.

(5) Where the recipient is a person other than the Authority—

- (a) the recipient; or
- (b) the person on whose behalf the recipient receives the notification or other document,

must have indicated a willingness to receive notifications or documents transmitted in the form and manner used.

(6) An indication given to the Authority for the purposes of paragraph (5)—

- (a) must be given to the Authority in such manner as they may require;
- (b) may be a general indication or one that is limited to notifications or documents of a particular description;
- (c) must state the address to be used and must be accompanied by such other information as the Authority require for making the transmission; and
- (d) may be modified or withdrawn at any time by a notice given to the Authority in such manner as they may require.

(7) An indication, requirement or determination given, imposed or made by the Authority for the purposes of this regulation is to be given, imposed or made by being published in such a manner as the Authority consider appropriate for bringing it to the attention of the persons who, in the Authority's opinion, are likely to be affected by it.

(8) In this regulation—

- (a) “notification” includes notice;
- (b) “electronic communications network” has the same meaning as in the Communications Act 2003⁽⁵⁾.

⁽⁵⁾ 2003 c. 21.