



Pensions Act 2004

2004 CHAPTER 35

PART 1

THE PENSIONS REGULATOR

Gathering information

72 Provision of information

- (1) The Regulator may, by notice in writing, require any person to whom subsection (2) applies to produce any document, or provide any other information, which is—
- (a) of a description specified in the notice, and
 - (b) relevant to the exercise of the Regulator's functions.

^{F1}(1A)

^{F2}(1B)

- (2) This subsection applies to—
- (a) a trustee or manager of an occupational or personal pension scheme,
 - [^{F3}(aa) a member of the pension board of a public service pension scheme,]
 - (b) a professional adviser in relation to an occupational pension scheme,
 - (c) the employer in relation to—
 - (i) an occupational pension scheme, or
 - (ii) a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are employees, and
 - (d) any other person appearing to the Regulator to be a person who holds, or is likely to hold, information relevant to the exercise of the Regulator's functions.

- (3) Where the production of a document, or the provision of information, is required by a notice given under subsection (1), the document must be produced, or information

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must be provided, in such a manner, at such a place and within such a period as may be specified in the notice.

Textual Amendments

- F1** S. 72(1A) omitted (1.10.2021) by virtue of Pension Schemes Act 2021 (c. 1), ss. 110(3), 131(1); S.I. 2021/950, reg. 2(5)(b) (with reg. 9)
- F2** S. 72(1B) omitted (1.10.2021) by virtue of Pension Schemes Act 2021 (c. 1), ss. 110(3), 131(1); S.I. 2021/950, reg. 2(5)(b) (with reg. 9)
- F3** S. 72(2)(aa) inserted (1.4.2015) by Public Service Pensions Act 2013 (c. 25), s. 41(2), Sch. 4 para. 9 (with Sch. 11 para. 8); S.I. 2015/4, art. 4(1)(b)

Commencement Information

- I1** S. 72 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), Sch. Pt. 7

[^{F4}72A Interviews

- (1) The Regulator may, by notice in writing, require any person to whom section 72(2) applies to attend before the Regulator, at a time and place specified in the notice, to answer questions and provide explanations on one or more matters specified in the notice that are relevant to the exercise of any of the Regulator's functions.
- (2) A notice under subsection (1) must contain such other information as may be prescribed.]

Textual Amendments

- F4** S. 72A inserted (31.5.2021 for specified purposes, 1.10.2021 in so far as not already in force) by Pension Schemes Act 2021 (c. 1), ss. 110(2), 131(1); S.I. 2021/620, reg. 2(1)(c); S.I. 2021/950, reg. 2(5)(b) (with reg. 9)

73 Inspection of premises

- (1) An inspector may, for the purposes of investigating whether, in the case of any occupational pension scheme, the occupational scheme provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection.
- (2) In subsection (1), the “occupational scheme provisions” means provisions contained in or made by virtue of—
- (a) any of the following provisions of this Act—
- this Part;
 - Part 3 (scheme funding);
 - sections 241 to 243 (member-nominated trustees and directors);
 - sections 247 to 249 (requirement for knowledge and understanding);
 - section 252 (UK-based scheme to be trust with effective rules);
 - section 253 ([^{F5}non-UK] scheme to be trust with UK-resident trustee);
 - section 255 (activities of occupational pension schemes);
 - section 256 (no indemnification for fines or civil penalties);
 - sections 259 and 261 (consultation by employers);
- ^{F6}
...

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- Part 9 (miscellaneous and supplementary);
- (b) either of the following provisions of the Welfare Reform and Pensions Act 1999 (c. 30)—
 - section 33 (time for discharge of pension credit liability);
 - section 45 (information);
 - (c) any of the provisions of Part 1 of the Pensions Act 1995 (c. 26) (occupational pension schemes), other than—
 - (i) sections 51 to 54 (indexation), and
 - (ii) sections 62 to 65 (equal treatment);
 - (d) any of the following provisions of the Pension Schemes Act 1993 (c. 48)—
 - [^{F7}Chapter 1 of Part 4ZA] (transfer values);
 - [^{F8}Chapter 2 of Part 4ZA] (early leavers: cash transfer sums and contribution refunds);
 - Chapter 2 of Part 4A (pension credit transfer values);
 - section 113 (information);
 - section 175 (levy);
 - [^{F9}(da) section 16 of the Public Service Pensions Act 2013;]
 - [^{F10}(db) the Pension Schemes Act 2017;
 - (dc) Part 1 of the Pension Schemes Act 2021;]
 - (e) any provisions in force in Northern Ireland corresponding to any provisions within paragraphs (a) to [^{F11}(dc)].
- [^{F12}(2A) An inspector may, for the purposes of investigating whether the Regulator has grounds in the case of an occupational pension scheme for issuing—
- (a) a contribution notice under section 38 (contribution notices where avoidance of employer debt),
 - (b) a financial support direction under section 43 (financial support directions),
 - (c) a contribution notice under section 47 (contribution notices where non-compliance with financial support direction),
 - (d) a restoration order under section 52 (restoration orders where transactions at an undervalue),
 - (e) a contribution notice under section 55 (contribution notice where failure to comply with restoration order), or
 - (f) a notice, direction or order under any corresponding provision in force in Northern Ireland,
- at any reasonable time enter premises liable to inspection.]
- (3) An inspector may, for the purposes of investigating whether, in the case of a stakeholder scheme—
 - (a) sections 1 and 2(4) of the Welfare Reform and Pensions Act 1999 (stakeholder pension schemes: registration etc), or
 - (b) any corresponding provisions in force in Northern Ireland,are being, or have been, complied with, at any reasonable time enter premises liable to inspection.
 - (4) An inspector may, for the purposes of investigating whether, in the case of any trust-based personal stakeholder scheme, the trust-based scheme provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection.

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- (5) In subsection (4)—
- “trust-based personal stakeholder scheme” means a personal pension scheme which—
- (a) is a stakeholder scheme, and
 - (b) is established under a trust;
- the “trust-based scheme provisions” means any provisions contained in or made by virtue of—
- (a) any provision which applies in relation to trust-based personal stakeholder schemes by virtue of paragraph 1 of Schedule 1 to the Welfare Reform and Pensions Act 1999 (c. 30), as the provision applies by virtue of that paragraph, or
 - (b) any corresponding provision in force in Northern Ireland.
- [^{F13}(5A) An inspector may, for the purposes of investigating whether the relevant provisions are being, or have been, complied with in the case of a scheme, at any reasonable time enter premises liable to inspection.
- (5B) In subsection (5A), “the relevant provisions” means provisions contained in or made by virtue of—
- (a) such provisions of the pensions legislation as may be prescribed;
 - (b) any provisions in force in Northern Ireland corresponding to the provisions so prescribed.]
- (6) Premises are liable to inspection for the purposes of this section if the inspector has reasonable grounds to believe that—
- (a) members of the scheme are employed there,
 - (b) documents relevant to the administration of the scheme are being kept there,
^{F14}...
 - (c) the administration of the scheme, or work connected with that administration, is being carried out there.
- [^{F15}(d) documents relevant to the administration of the business of the employer in relation to the scheme are being kept there,
- (e) the administration of the business of the employer in relation to the scheme, or work connected with that administration, is being carried out there, or
 - (f) in the case of an occupational pension scheme other than a money purchase scheme, a prescribed scheme or a scheme of a prescribed description, documents relevant to a change in the ownership of the employer or of a significant asset of the employer are being kept there.]

[^{F16}(6A) In the application of this section in relation to a provision mentioned in subsection (1), (2A), (3), (4) or (5A), references in this section to “employer” are to be read as having the meaning that it has for the purposes of the provision in question.

(6B) In this section a reference to an employer in relation to an occupational pension scheme includes a reference to a person who has been the employer in relation to the scheme.]

(7) [^{F17}this section-

“the pensions legislation” means any enactment contained in or made by virtue of—

 - (a) the Pension Schemes Act 1993,
 - (b) Part 1 or section 33 or 45 of the Welfare Reform and Pensions Act 1999,
 - (c) this Act,

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- (d) Schedule 18 to the Pensions Act 2014, or
- (e) section 48 or 49 of the Pension Schemes Act 2015;]

“stakeholder scheme” means an occupational pension scheme or a personal pension scheme which is or has been registered under—

- (a) section 2 of the Welfare Reform and Pensions Act 1999 (register of stakeholder schemes), or
- (b) any corresponding provision in force in Northern Ireland.

Textual Amendments

- F5** Words in s. 73(2)(a) substituted (31.12.2020) by The Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/192), regs. 1, **5(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in s. 73(2)(a) omitted (31.12.2020) by virtue of The Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/192), regs. 1, **5(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in s. 73(2)(d) substituted (6.4.2015) by Pension Schemes Act 2015 (c. 8), s. 89(3)(b), **Sch. 4 para. 38(a)** (with s. 87)
- F8** Words in s. 73(2)(d) substituted (6.4.2015) by Pension Schemes Act 2015 (c. 8), s. 89(3)(b), **Sch. 4 para. 38(b)** (with s. 87)
- F9** S. 73(2)(da) inserted (1.4.2015) by Public Service Pensions Act 2013 (c. 25), s. 41(2), **Sch. 4 para. 10(a)** (with Sch. 11 para. 8); S.I. 2015/4, art. 4(1)(b)
- F10** S. 73(2)(db)(dc) inserted (1.10.2021 except for the insertion of s. 73(2)(dc)) by Pension Schemes Act 2021 (c. 1), **ss. 111(2)(a)**, 131(1); S.I. 2021/950, reg. 2(3)(f)
- F11** Word in s. 73(2)(e) substituted (29.6.2022 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 111(2)(b)**, 131(1); S.I. 2022/721, regs. 1(2), 2(a)
- F12** S. 73(2A) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), **ss. 111(3)**, 131(1); S.I. 2021/950, reg. 2(3)(f)
- F13** S. 73(5A)(5B) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), **ss. 111(4)**, 131(1); S.I. 2021/950, reg. 2(3)(f)
- F14** Word in s. 73(6)(b) omitted (1.10.2021) by virtue of Pension Schemes Act 2021 (c. 1), **ss. 111(5)(a)**, 131(1); S.I. 2021/950, reg. 2(3)(f)
- F15** S. 73(6)(d)-(f) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), **ss. 111(5)(b)**, 131(1); S.I. 2021/950, reg. 2(3)(f)
- F16** S. 73(6A)(6B) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), **ss. 111(6)**, 131(1); S.I. 2021/950, reg. 2(3)(f)
- F17** Words in s. 73(7) substituted (1.10.2021) by Pension Schemes Act 2021 (c. 1), **ss. 111(7)**, 131(1); S.I. 2021/950, reg. 2(3)(f)

Modifications etc. (not altering text)

- C1** S. 73(6)(d)-(f) modified (1.10.2021) by The Pensions Regulator (Information Gathering Powers and Modification) Regulations 2021 (S.I. 2021/754), regs. 1, 4

Commencement Information

- I2** S. 73 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), **Sch. Pt. 7**

74 Inspection of premises in respect of employers' obligations

[^{F18}(A1) An inspector may, for the purposes of investigating whether an employer is contravening, or has contravened—

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- (a) any provision of, or of regulations under, Chapter 1 of Part 1, or section 50 or 54, of the Pensions Act 2008, or
 - (b) any corresponding provision in force in Northern Ireland,
- at any reasonable time enter premises liable to inspection.
- (B1) Premises are liable to inspection for the purposes of subsection (A1) if the inspector has reasonable grounds to believe that—
- (a) the employer employs workers there,
 - (b) documents relevant to any of the following are being kept there—
 - (i) the administration of the employer's business,
 - (ii) the duties of the employer under Chapter 1 of Part 1 of the Pensions Act 2008 or under any corresponding provision in force in Northern Ireland,
 - (iii) the administration of a pension scheme that is relevant to the discharge of those duties, or
 - (c) the administration of the employer's business, or work connected with that administration, is being carried out there.
- (C1) In subsections (A1) and (B1) “employer” and “worker” have the meaning given by section 88 of the Pensions Act 2008.
- (D1) In the application of subsections (A1) and (B1) in relation to any provision mentioned in subsection (A1)(b) (a “corresponding Northern Ireland provision”), references in those subsections to “employer” or “worker” are to be read as having the meaning that they have for the purposes of the corresponding Northern Ireland provision.]
- (1) An inspector may, for the purposes of investigating whether an employer is complying, or has complied, with the requirements under—
- (a) section 3 of the Welfare Reform and Pensions Act 1999 (duty of employers to facilitate access to stakeholder pension schemes), or
 - (b) any corresponding provision in force in Northern Ireland,
- at any reasonable time enter premises liable to inspection.
- (2) Premises are liable to inspection for the purposes of subsection (1) if the inspector has reasonable grounds to believe that—
- (a) employees of the employer are employed there,
 - (b) documents relevant to the administration of the employer's business are being kept there, or
 - (c) the administration of the employer's business, or work connected with that administration, is being carried out there.
- (3) In subsections (1) and (2), “employer” has the meaning given by section 3(9) of the Welfare Reform and Pensions Act 1999 (or, where subsection (1)(b) applies, by any corresponding provision in force in Northern Ireland).
- (4) An inspector may, for the purposes of investigating whether, in the case of any direct payment arrangements relating to a personal pension scheme, any of the following provisions—
- (a) regulations made by virtue of sections 260 and 261 (consultation by employers),
 - (b) section 111A of the Pension Schemes Act 1993 (c. 48) (monitoring of employers' payments to personal pension schemes), or

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- (c) any corresponding provisions in force in Northern Ireland, is being, or has been, complied with, at any reasonable time enter premises liable to inspection.
- (5) Premises are liable to inspection for the purposes of subsection (4) if the inspector has reasonable grounds to believe that—
- (a) employees of the employer are employed there,
 - (b) documents relevant to the administration of—
 - (i) the employer’s business,
 - (ii) the direct payment arrangements, or
 - (iii) the scheme to which those arrangements relate,are being kept there, or
 - (c) either of the following is being carried out there—
 - (i) the administration of the employer’s business, the arrangements or the scheme;
 - (ii) work connected with that administration.
- (6) In the application of subsections (4) and (5) in relation to any provision mentioned in subsection (4)(c) (a “corresponding Northern Ireland provision”), references in those subsections to—
- direct payment arrangements,
 - a personal pension scheme,
 - the employer, or
 - employees of the employer,
- are to be read as having the meanings that they have for the purposes of the corresponding Northern Ireland provision.

Textual Amendments

F18 S. 74(A1)-(D1) inserted (30.6.2012) by [Pensions Act 2008 \(c. 30\)](#), **ss. 61(3)**, 149(1); [S.I. 2012/1682](#), [art. 2](#), [Sch. 2](#)

Commencement Information

I3 S. 74 in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

75 Inspection of premises: powers of inspectors

- (1) Subsection (2) applies where, for a purpose mentioned in subsection (1), [^{F19}(2A),]^{F20}(3), (4) or (5A)] of section 73 or subsection [^{F21}(A1),] (1) or (4) of section 74, an inspector enters premises which are liable to inspection for the purposes of that provision.
- (2) While there, the inspector—
- (a) may make such examination and inquiry as may be necessary for the purpose for which he entered the premises,
 - (b) may require any person on the premises to produce, or secure the production of, any document relevant to compliance with the regulatory provisions for his inspection,
 - (c) may take copies of any such document,

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- (d) may take possession of any document appearing to be a document relevant to compliance with the regulatory provisions or take in relation to any such document any other steps which appear necessary for preserving it or preventing interference with it,
- (e) may, in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, require the information to be produced in a form—
 - (i) in which it can be taken away, and
 - (ii) in which it is legible or from which it can readily be produced in a legible form, and
- (f) may, as to any matter relevant to compliance with the regulatory provisions, examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter.

Textual Amendments

- F19** Word in s. 75(1) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), s. 131(1), **Sch. 7 para. 4(a)**; S.I. 2021/950, reg. 2(4)(c)
- F20** Words in s. 75(1) substituted (1.10.2021) by Pension Schemes Act 2021 (c. 1), s. 131(1), **Sch. 7 para. 4(b)**; S.I. 2021/950, reg. 2(4)(c)
- F21** Word in s. 75(1) inserted (30.6.2012) by Pensions Act 2008 (c. 30), **ss. 61(4)**, 149(1); S.I. 2012/1682, art. 2, Sch. 2

Commencement Information

- I4** S. 75 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), **Sch. Pt. 7**

76 Inspection of premises: supplementary

- (1) This section applies for the purposes of sections 73 to 75.
- (2) Premises which are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business are not liable to inspection.
- (3) Any question whether—
 - (a) anything is being or has been done or omitted which might by virtue of any of the regulatory provisions give rise to a liability for a civil penalty under or by virtue of [^{F22}section 77A, 77B or 88A of this Act,] section 10 of the Pensions Act 1995 (c. 26) or section 168(4) of the Pension Schemes Act 1993 (c. 48) (or under or by virtue of any provision in force in Northern Ireland corresponding to [^{F23}any of those provisions]), or
 - (b) an offence is being or has been committed under any of the regulatory provisions,
 is to be treated as a question whether the regulatory provision is being, or has been, complied with.
- (4) An inspector applying for admission to any premises for the purposes of section 73 or 74 must, if so required, produce his certificate of appointment.
- (5) When exercising a power under section 73, 74 or 75 an inspector may be accompanied by such persons as he considers appropriate.

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- (6) Any document of which possession is taken under section 75 may be retained—
- (a) if the document is relevant to proceedings against any person for any offence which are commenced before the end of the retention period, until the conclusion of those proceedings, and
 - (b) otherwise, until the end of the retention period.
- (7) In subsection (6), “the retention period” means the period comprising—
- (a) the period of 12 months beginning with the date on which possession was taken of the document, and
 - (b) any extension of that period under subsection (8).
- (8) The Regulator may, by a direction made before the end of the retention period (including any extension of it under this subsection), extend it by such period not exceeding 12 months as the Regulator considers appropriate.
- (9) “The regulatory provisions”, in relation to an inspection under subsection (1), [F24(2A)], [F25(3), (4) or (5A)] of section 73 or subsection [F26(A1),] (1) or (4) of section 74, means the provision or provisions referred to in that subsection.

Textual Amendments

- F22** Words in s. 76(3)(a) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), s. 131(1), **Sch. 7 para. 5(2)(a)**; S.I. 2021/950, reg. 2(4)(c)
- F23** Words in s. 76(3)(a) substituted (1.10.2021) by Pension Schemes Act 2021 (c. 1), s. 131(1), **Sch. 7 para. 5(2)(b)**; S.I. 2021/950, reg. 2(4)(c)
- F24** Word in s. 76(9) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), s. 131(1), **Sch. 7 para. 5(3)(a)**; S.I. 2021/950, reg. 2(4)(c)
- F25** Words in s. 76(9) substituted (1.10.2021) by Pension Schemes Act 2021 (c. 1), s. 131(1), **Sch. 7 para. 5(3)(b)**; S.I. 2021/950, reg. 2(4)(c)
- F26** Word in s. 76(9) inserted (30.6.2012) by Pensions Act 2008 (c. 30), **ss. 61(5)**, 149(1); S.I. 2012/1682, art. 2, Sch. 2

Commencement Information

- I5** S. 76 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), **Sch. Pt. 7**

77 Penalties relating to sections 72 to 75

- (1) A person who, without reasonable excuse, neglects or refuses to provide information or produce a document when required to do so under section 72 is guilty of an offence.

- [F27(1A) A person who, without reasonable excuse, neglects or refuses—
- (a) to attend before the Regulator as required under section 72A(1), or
 - (b) to answer a question or provide an explanation on a matter specified in the notice under section 72A(1), when so attending before the Regulator,
- is guilty of an offence.]
- (2) A person who without reasonable excuse—
- (a) intentionally delays or obstructs an inspector exercising any power under section 73, 74 or 75,
 - (b) neglects or refuses to produce, or secure the production of, any document when required to do so under section 75, or

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- (c) neglects or refuses to answer a question or to provide information when so required,
is guilty of an offence.
- (3) A person guilty of an offence under subsection (1) [^{F28}, (1A)] or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) An offence under subsection (1) [^{F29}, (1A)] or (2)(b) or (c) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction of the offence.
- (5) Any person who intentionally and without reasonable excuse alters, suppresses, conceals or destroys any document which he is or is liable to be required to produce under section 72 or 75 is guilty of an offence.
- (6) Any person guilty of an offence under subsection (5) is liable—
- on summary conviction, to a fine not exceeding the statutory maximum;
 - on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

Textual Amendments

- F27** S. 77(1A) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), ss. 110(4)(a), 131(1); S.I. 2021/950, reg. 2(5)(b)
- F28** Word in s. 77(3) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), ss. 110(4)(b), 131(1); S.I. 2021/950, reg. 2(5)(b)
- F29** Word in s. 77(4) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), ss. 110(4)(c), 131(1); S.I. 2021/950, reg. 2(5)(b)

Commencement Information

- I6** S. 77 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), Sch. Pt. 7

[^{F30}77A Fixed penalty notices

- (1) The Regulator may issue a fixed penalty notice to a person if it considers that the person—
- has failed to comply with a notice under section 72 or 72A,
 - has failed to comply with a requirement under section 75, or
 - has prevented or hindered an inspector exercising any power under section 73, 74 or 75.
- (2) 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.
- (3) The penalty—
- is to be determined in accordance with regulations, and
 - must not exceed £50,000.
- (4) A fixed penalty notice must—
- state the amount of the penalty;

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- (b) state the date by which the penalty must be paid, which must be at least 28 days after the date on which the notice is issued;
 - (c) state the period to which the penalty relates;
 - (d) specify the failure or conduct to which the penalty relates;
 - (e) state that the Regulator may issue an escalating penalty notice under section 77B if the person fails to comply with a notice under section 72 or 72A;
 - (f) notify the person to whom the notice is issued of the review process under section 43 of the Pensions Act 2008 and the right of referral to a tribunal under section 44 of that Act (as applied by subsection (5)).
- (5) The following sections of the Pensions Act 2008 apply to a penalty notice under this section as they apply to a penalty notice under section 40 of that Act—
- (a) section 42 (penalty notices: recovery);
 - (b) section 43 (review of penalty notices);
 - (c) section 44 (references to First-tier Tribunal or Upper Tribunal).
- (6) This section does not apply in a case where section 40 of the Pensions Act 2008 or section 17 of the Pension Schemes Act 2017 applies.

Textual Amendments

F30 Ss. 77A, 77B inserted (31.5.2021 for specified purposes, 1.10.2021 in so far as not already in force) 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)

77B Escalating penalty notices

- (1) The Regulator may issue an escalating penalty notice to a person if it considers that the person has failed to comply with a notice under section 72 or 72A.
- (2) But the Regulator may not issue an escalating penalty notice to a person if—
- (a) the person has exercised the right of referral to a tribunal under section 44 of the Pensions Act 2008 (as applied by section 77A(5)) in respect of a fixed penalty notice issued under section 77A in relation to that notice under section 72 or 72A, and
 - (b) 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 under section 72 or 72A before a specified date.
- (4) An escalating penalty is a penalty which is calculated by reference to a daily rate.
- (5) The 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 penalty relates;
 - (b) state that, if the person fails to comply with the notice under section 72 or 72A before a specified date, the person will be liable to pay an escalating penalty;

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- (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 77A(4)(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 under section 72 or 72A or such earlier date as the Regulator may determine;
 - (f) notify the person to whom the notice is issued of the review process under section 43 of the Pensions Act 2008 and the right of referral to a tribunal under section 44 of that Act (as applied by subsection (7)).
- (7) The following sections of the Pensions Act 2008 apply to an escalating penalty notice under this section as they apply to an escalating penalty notice under section 41 of that Act—
- (a) section 42 (penalty notices: recovery);
 - (b) section 43 (review of penalty notices);
 - (c) section 44 (references to First-tier Tribunal or Upper Tribunal).
- (8) This section does not apply in a case where section 41 of the Pensions Act 2008 or section 18 of the Pension Schemes Act 2017 applies.]

Textual Amendments

F30 Ss. 77A, 77B inserted (31.5.2021 for specified purposes, 1.10.2021 in so far as not already in force) 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)

78 Warrants

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Regulator that there are reasonable grounds for believing—
- (a) that there is on, or accessible from, any premises any document—
 - (i) whose production has been required under section 72 or 75, or any corresponding provision in force in Northern Ireland, and
 - (ii) which has not been produced in compliance with that requirement,
 - (b) that there is on, or accessible from, any premises any document whose production could be so required and, if its production were so required, the document—
 - (i) would not be produced, but
 - (ii) would be removed, or made inaccessible, from the premises, hidden, tampered with or destroyed, or
 - (c) that—
 - (i) an offence has been committed,
 - (ii) a person will do any act which constitutes a misuse or misappropriation of the assets of an occupational pension scheme or a personal pension scheme,
 - (iii) a person is liable to pay a penalty under or by virtue of [F31 section 77A, 77B or 88A of this Act,] section 10 of the Pensions Act 1995 (c. 26)

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(civil penalties) or section 168(4) of the Pension Schemes Act 1993 (c. 48) (civil penalties for breach of regulations), or under or by virtue of any provision in force in Northern Ireland corresponding to [^{F32}any of those provisions] , or

- (iv) a person is liable to be prohibited from being a trustee of an occupational or personal pension scheme under section 3 of the Pensions Act 1995 (prohibition orders), including that section as it applies by virtue of paragraph 1 of Schedule 1 to the Welfare Reform and Pensions Act 1999 (c. 30) (stakeholder schemes), or under or by virtue of any corresponding provisions in force in Northern Ireland,

and that there is on, or accessible from, any premises any document which relates to whether the offence has been committed, whether the act will be done or whether the person is so liable, and whose production could be required under section 72 or 75 or any corresponding provision in force in Northern Ireland.

- (2) A warrant under this section shall authorise an inspector—
- (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose,
 - (b) to search the premises and—
 - (i) take possession of any document appearing to be such a document as is mentioned in subsection (1), or
 - (ii) take in relation to such a document any other steps which appear necessary for preserving it or preventing interference with it,
 - (c) to take copies of any such document,
 - (d) to require any person named in the warrant to provide an explanation of any such document or to state where it may be found or how access to it may be obtained, and
 - (e) in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, to require the information to be produced in a form—
 - (i) in which it can be taken away, and
 - (ii) in which it is legible or from which it can readily be produced in a legible form.
- (3) In subsection (1), any reference in paragraph (a) or (b) to a document does not include any document which is relevant to whether a person has complied with—
- (a) subsection (3) of section 238 (information and advice to employees) or regulations under subsection (4) of that section, or
 - (b) any provision in force in Northern Ireland which corresponds to that subsection (3) or is made under provision corresponding to that subsection (4),
- and is not relevant to the exercise of the Regulator’s functions for any other reason.
- (4) For the purposes of subsection (1)(c)(iii), any liability to pay a penalty under—
- (a) section 10 of the Pensions Act 1995 (c. 26), or
 - (b) any corresponding provision in force in Northern Ireland,
- which might arise out of a failure to comply with any provision within subsection (3) (a) or (b) is to be disregarded.
- (5) References in subsection (2) to such a document as is mentioned in subsection (1) are to be read in accordance with subsections (3) and (4).

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- (6) When executing a warrant under this section, an inspector may be accompanied by such persons as he considers appropriate.
- (7) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (8) Any document of which possession is taken under this section may be retained—
 - (a) if the document is relevant to proceedings against any person for any offence which are commenced before the end of the retention period, until the conclusion of those proceedings, and
 - (b) otherwise, until the end of the retention period.
- (9) In subsection (8), “the retention period” means the period comprising—
 - (a) the period of 12 months beginning with the date on which possession was taken of the document, and
 - (b) any extension of that period under subsection (10).
- (10) The Regulator may, by a direction made before the end of the retention period (including any extension of it under this subsection), extend it by such period not exceeding 12 months as the Regulator considers appropriate.
- (11) In the application of this section in Scotland—
 - (a) the reference to a justice of the peace is to be read as a reference to the sheriff, and
 - (b) the references in subsections (1) and (2)(a) to information are to be read as references to evidence.

Textual Amendments

F31 Words in s. 78(1)(c)(iii) inserted (1.10.2021) by [Pension Schemes Act 2021 \(c. 1\)](#), s. 131(1), [Sch. 7 para. 6\(a\)](#); S.I. 2021/950, reg. 2(4)(c)

F32 Words in s. 78(1)(c)(iii) substituted (1.10.2021) by [Pension Schemes Act 2021 \(c. 1\)](#), s. 131(1), [Sch. 7 para. 6\(b\)](#); S.I. 2021/950, reg. 2(4)(c)

Commencement Information

I7 S. 78 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

79 Sections 72 to 78: interpretation

- (1) This section applies for the purposes of sections 72 to 78.
- (2) “Document” includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in a legible form, is to producing a copy of the information—
 - (a) in a legible form, or
 - (b) in a form from which it can readily be produced in a legible form.
- (3) “Inspector” means a person appointed by the Regulator as an inspector.

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Commencement Information

18 S. 79 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

Status:

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Changes to legislation:

Pensions Act 2004, Cross Heading: Gathering information is up to date with all changes known to be in force on or before 10 June 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.