

2010 No. 5

PENSIONS

The Employers' Duties (Registration and Compliance) Regulations 2010

<i>Made</i> - - - -	<i>5th January 2010</i>
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The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 11, 38(2), (3) and (4), 40(4), 41(5), 43(3), 52(3), 54(3), 60, 99 and 144(2) and (4) of the Pensions Act 2008(a):

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employers' Duties (Registration and Compliance) Regulations 2010 and shall come into force on ►¹1st July 2012, immediately after the time when the amendments to these Regulations made by the Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 come into force◄.

¹Words in reg. 1(1) & 2(a) substituted by regs. 9(a) & 9(b)(i) of S.I. 2012/215 as from 1.7.12.

(2) In these Regulations—

“the Act” means the Pensions Act 2008;

“automatic re-enrolment date” has the same meaning as in section 5(8) of the Act;

“contributions made by an employer” means contributions payable by the employer—

(a) on the employer's own account (but in respect of the worker), or

(b) on behalf of the worker out of deductions from the worker's earnings;

“the employers' duties” means sections 2 to 9 of the Act;

“employer duty provisions” has the same meaning as in section 34(3) of the Act;

“employer pension scheme reference” means—

►¹(a) in relation to an occupational pension scheme (except a scheme established under section 67 of the Act)—

(i) a reference given by the Regulator (R) to the trustees or managers of the scheme (T) following the provision of registrable information to R by T, and

(ii) any reference provided to the employer by T evidencing the relationship between the employer and the scheme;◄

(b) in relation to a scheme established under section 67 of the Act, a reference given by that scheme prior to registration to an employer using the same scheme to comply with the employer duty provisions; or

(a) 2008 c. 30. Section 99 is cited because of the meaning it gives to “prescribed” and “regulations”.

(c) in relation to a personal pension scheme, a reference given by that scheme prior to registration to an employer using the same scheme to comply with the employer duty provisions;

“HMRC” means Her Majesty’s Revenue and Customs;

“joining notice” means a notice given under section 9(2) of the Act (workers without qualifying earnings);

“late payment report” means a notice given by a trustee or manager of a trust or occupational or personal pension scheme to the Regulator under—

- (a) section 49(9)(b) of the Pensions Act 1995(a);
- (b) section 88(1) of that Act(b); or
- (c) section 111A(7A) of the Pension Schemes Act 1993(c);

“opt in notice” means a notice given under section 7(3) of the Act (jobholder’s right to opt in);

“opt out notice” means a notice given under section 8 of the Act (jobholder’s right to opt out);

“PAYE income” has the same meaning as in section 683 of the Income Tax (Earnings and Pensions) Act 2003(d);

“PAYE scheme” means the HMRC record ►¹applicable◀ to an employer who—

- (a) employs; or
- (b) intends to employ,

a worker or workers to whom PAYE income is payable;

“registrable information” has the same meaning as in section 60 of the Pensions Act 2004(e);

“registration” means the process by which employers are required to provide the Regulator with information about action they have taken or intend to take for the purposes of—

- (a) any provision of sections 2 to 9 of the Act; and
- (b) any regulations made under those sections,

as set out in regulations 2 to 4 of these Regulations;

“retail price index” means—

- (a) the general index of retail prices (for all items) published by the Office for National Statistics; or
- (b) where that index is not published for a month, any substituted index or figures published by that Office;

“staging date” has the same meaning as in regulation 1 of the Employers’ Duties (Implementation) Regulations 2010(f); and

“the staging period” means the period which—

- (a) begins when the employers’ duties first apply to an employer of any description, under the Employers’ Duties (Implementation) Regulations 2010; and
- (b) ends when the employers’ duties apply to all employers described in those Regulations.

¹Words in reg. 1 defn. of “PAYE scheme” substituted by reg. 9(b)(ii) of S.I. 2012/215 as from 1.7.12.

(a) 1995 c. 26. Paragraph (b) of section 49(9) was substituted by the Pensions Act 2004 (c. 35), section 269(1).

(b) Subsection (1) of section 88 was substituted by the Pensions Act 2004, section 269(2).

(c) 1993 c. 48. Subsection (7A) was inserted by the Pensions Act 2004, section 268(2).

(d) 2003 c. 1. Section 683 has been amended but not in a way material to these Regulations.

(e) 2004 c. 35.

(f) S.I. 2010/4.

PART 2 REGISTRATION

Registration: General

2.—(1) An employer must provide information to the Regulator in the following cases—

- (a) after the staging date for that employer;
- (b) where the staging period has ended, within a period starting from the day on which PAYE income is payable in respect of any worker; or
- (c) (i) where an employer makes arrangements under section 5(2) of the Act (automatic re-enrolment) by which a jobholder becomes an active member of an automatic enrolment scheme with effect from an automatic re-enrolment date, or
(ii) where 3 years have passed since an employer last provided information to the Regulator.

(2) Where an employer must provide the Regulator with information under ►¹regulation 3 or 4 but the final day of the period in regulation 3(1)◄ or 4(1) which applies to that employer is not a working day, an employer may provide the Regulator with information on or before the next working day (and for the purposes of this paragraph “working day” means a day which is not a Saturday, Sunday, bank holiday or other public holiday).

¹Words in regs. 2(2), 3(1)(a), 3(1)(b), (2)(a)(i) & 3(2)(a)(ii) amended & substituted by regs. 10 & 11(2)(a) to 11(3)(a)(ii) of S.I. 2012/215 from 1.7.12.

(3) In this regulation—

- (a) “bank holiday” means a day specified in paragraphs 1 and 2 of Schedule 1 to the Banking and Financial Dealings Act 1971(a); and
- (b) “information” means the information specified in regulations 3 and 4 required to be provided to the Regulator about action employers have taken or intend to take for the purposes of—
 - (i) sections 2 to 9 of the Act, or
 - (ii) any regulations made under those sections.

Registration: After staging date and new PAYE schemes

3.—(1) Where—

- (a) paragraph (1)(a) of regulation 2 applies, an employer must provide the information specified in paragraphs (2) and (3) of this regulation within the period of ►²5 months◄ starting from the staging date; or
- (b) paragraph (1)(b) of regulation 2 applies, an employer must provide the information specified in paragraphs (2) and (3) of this regulation within the period of ►²5 months◄ starting from the day on which PAYE income is payable in respect of any worker,

²Words substituted in reg. 3(1)(a) & (b) by reg. 4(2) of S.I. 2013/2556 as from 1.4.14.

in relation to each of its PAYE schemes.

(2) The specified information is—

- (a) the employer’s—
 - (i) ►¹name,◄ address and postcode, and
►¹(ii) registered companies house number where one exists, or where such a number does not exist—
 - (aa) the employer’s industrial and provident society number;
 - (bb) but if the number mentioned in sub-paragraph (aa) does not exist, the employer’s registered charity number;

(a) 1971 c. 80. Paragraph 2 was amended by the St. Andrew’s Day Bank Holiday (Scotland) Act 2007 (2007 asp. 2), section 1.

- (cc) but if the number mentioned in sub-paragraph (bb) does not exist, the employer's VAT registration number, if one exists; ◀
- (b) (i) the name, telephone number, ordinary working address, and
(ii) email address, where one exists,
of any person providing that specified information on behalf of the employer;
- (c) the capacity in which the person providing the information in sub-paragraph (a) works for (or has a relationship to) that employer;
- (d) where the employer must arrange active membership of an automatic enrolment scheme under section 3(2) of the Act—
- ▶¹(i) subject to paragraph (iii) the number of jobholders automatically enrolled with effect from—
- (aa) the employer's staging date;
- (bb) where sub-paragraph (aa) does not apply and the employer has not used a deferral date (a) the date the employer's duties first apply to the employer; ◀ ▶¹ ◀
- (ii) if the employer uses more than one pension scheme under those arrangements, the number of jobholders who became active members of each pension scheme; ▶¹ and
- (iii) on the deferral date—
- (aa) the deferral date or the last such date where the employer uses more than one; and
- (bb) the number of jobholders automatically enrolled with effect from that date; ◀
- ▶¹(e) where an employer is subject to transitional arrangements under section 30 of the Act (transitional period for defined benefits and hybrid schemes) the number of jobholders to whom that section applies; ◀
- ▶¹(f) the number of workers in an employer's PAYE scheme who, immediately before whichever is applicable of—
- (i) the staging date, or
- (ii) the day on which the employers' duties first apply to the employer, were active members of a qualifying scheme or, if the employer uses more than one qualifying scheme to comply with the employers' duties, each of those schemes; ◀ and
- (g) the number of workers in an employer's PAYE scheme in respect of whom sub-paragraphs (d), (e) or (f) of this paragraph do not apply.

¹Words substituted & amended in regs. 3(2)(d)(i), 3(2)(d)(ii), 3(2)(e) & 3(2)(f), by regs. 11(b) to 11(d) of S.I. 2012/215 as from 1.7.12.

(3) Where an employer must arrange for a jobholder to become an active member of an automatic enrolment scheme under section 3(2) of the Act, that employer must also provide the following information to the Regulator about any pension scheme used to comply with those duties—

- (a) where that scheme—
- (i) is an occupational pension scheme, its name and, unless registrable information has already been provided to the Regulator by the trustees or managers of that scheme, its address, or
- (ii) is a personal pension scheme, the name and address of the provider of that scheme; and
- (b) the employer pension scheme reference.

(4) All information provided to the Regulator by (or on behalf of) an employer under this regulation must be accompanied by a declaration that the information is, to the best of the employer's knowledge and belief, correct and complete.

(a) See section 4 of the Pensions Act 2008 for the meaning of "deferral date". Section 4 was substituted by the Pensions Act 2011, section 6.

Registration: Re-registration**4.—(1) Where—**

- (a) paragraph (1)(c)(i) of regulation 2 applies, an employer must provide the information specified in paragraph (3) of this regulation within the period of ►¹2 months◄ starting from an automatic re-enrolment date, in relation to each of its PAYE schemes; or
- (b) paragraph (1)(c)(ii) of that regulation applies, an employer must provide the information specified in paragraph (3) of this regulation at the end of 3 years starting from the last provision of information to the Regulator, in relation to each of its PAYE schemes,

¹Words substituted in reg. 4(1)(a) by reg. 4(3) of S.I. 2013/2556 as from 1.4.14.

and the time at which an employer provides that information is referred to in this regulation as the point of re-registration.

(2) Paragraph (1)(a) applies in the case of an automatic re-enrolment date occurring by virtue of section 6(1)(b) of the Act but not in relation to any of the cases described in subsections (3) to (5) of that section.

(3) The specified information is—

- (a) that specified in paragraph (2)(a) to (c) of regulation 3;
- (b) that specified in paragraph (3)(a) and (b) of that regulation;
- (c) where the employer must arrange active membership of an automatic enrolment scheme for any worker who is a jobholder under section 5(2) of the Act—
 - (i) the number of jobholders automatically ►²re-enrolled◄, as at the point of re-registration, ►²◄
 - (ii) if the employer uses more than one pension scheme under those arrangements, the number of jobholders automatically ►²re-enrolled◄ into each pension scheme, as at the point of re-registration►², and
 - (iii) the automatic re-enrolment date;◄
- (d) where an employer is subject to ►²section 30◄ of the Act, the number of jobholders to whom those sections apply;
- ²(e) the number of workers in an employer's PAYE scheme who, immediately before whichever is applicable of—
 - (i) the automatic re-enrolment date, or
 - (ii) the point of re-registration,
 were active members of a qualifying scheme or, if the employer uses more than one qualifying scheme to comply with the employers' duties, each of those schemes;◄ and
- (f) the number of workers in an employer's PAYE scheme in respect of whom sub-paragraphs (c), (d) or (e) of this paragraph do not apply.

²Words in reg. 4(3)(c)(i) & (ii), 4(3)(d) & (e) amended, deleted & substituted by reg. 12(b)-(e) of S.I. 2012/215 as from 1.7.12.

(4) All information provided to the Regulator by (or on behalf of) an employer under this regulation must be accompanied by a declaration that the information is, to the best of the employer's knowledge and belief, correct and complete.

PART 3**COMPLIANCE**

Records and information

Requirement to keep records**5.—(1) The persons in paragraph (2) must—**

- (a) keep the records listed within the regulation applicable to them;

- (b) preserve the records for a period in accordance with regulation 8; and
 - (c) provide those records, on request, to the Regulator.
- (2) The persons are, subject to paragraphs (5) and (6), any person who is—
- (a) an employer;
 - (b) a trustee or manager of an occupational pension scheme; or
 - (c) a provider of a personal pension scheme.
- (3) Regulation 6 applies in respect of a person falling within paragraph (2)(a).
- (4) Regulation 7 applies in respect of a person falling within paragraph (2)(b) or (c).
- (5) Where a person does not fall within paragraph (2), that person may keep, preserve or provide the records listed in regulations 6 and 7 on behalf of a person falling within paragraph (2) but only where a person falling within paragraph (2) authorises the other person to do so.
- (6) A person who has ceased to act as a person falling within paragraph (2) shall not be required to keep records, where that person has transferred all the records to another person who has succeeded them in that capacity.
- (7) All records must be kept in such form and manner so that they are—
- (a) capable of being arranged according to the corresponding employer pension scheme reference; and
 - (b) legible or can be provided to the Regulator in a legible form.

Records: Employers

6.—(1) A person falling within paragraph (2)(a) of regulation 5 must keep the following records in relation to an occupational or personal pension scheme used by them to comply with the employers' duties—

- (a) where that scheme—
 - (i) is an occupational pension scheme, its name and address,
 - (ii) is a personal pension scheme, the name and address of the provider of that scheme, or
 - (iii) does not have its main administration in the United Kingdom, the address of that scheme and the name of any authority which exercises functions corresponding to the functions of the Regulator in the country or territory outside the United Kingdom where that scheme is situated;
- (b) the employer pension scheme reference;
- (c) where section 21 of the Act (quality requirement: UK defined benefits schemes) applies, a copy of the certificate issued in respect of a jobholder under section 7(1) of the Pension Schemes Act 1993(a);
- (d) where section 22 of the Act (test scheme standard) applies, any evidence which shows that a scheme satisfies the test scheme standard within the meaning of that section, given in accordance with any regulations made under subsection (4) of that section;
- (e) the name, national insurance number (where one exists) and date of birth of—
 - (i) every jobholder of an employer who became an active member of an automatic enrolment scheme pursuant to arrangements made under section 3 of the Act,
 - (ii) every jobholder of an employer who was not an active member of a qualifying scheme but who by notice required the employer to arrange for the jobholder to become an active member of an automatic enrolment scheme pursuant to arrangements made under section 7 of the Act, and

(a) Section 7(1) was substituted by paragraph 2 of Part 1 of Schedule 4 to the Pensions Act 2007 (c. 22).

- (iii) every worker who by notice required an employer to arrange for the worker to become an active member of a pension scheme pursuant to arrangements made under section 9 of the Act;
- (f) every jobholder's automatic enrolment date, and the date with effect from which every worker became an active member of a pension scheme that satisfies the requirements of section 9 of the Act, pursuant to arrangements made under that section;
- (g) an opt in notice in respect of every jobholder who gave notice under section 7(3) of the Act;
- (h) a joining notice in respect of every worker who gave notice under section 9(2) of the Act; and
- (i) an opt out notice in respect of every jobholder that gives notice under section 8 of the Act.

(2) A person falling within paragraph (2)(a) of regulation 5 must also keep the following records in respect of every jobholder or worker falling within paragraph (1)(e) where contributions fall to be deducted by an employer under section 33 of the Act and regulations made under that section—

- (a) their gross earnings in any relevant pay reference period;
- (b) evidence of the contributions that the jobholder's employer must pay in respect of the jobholder, in order to satisfy the quality requirement for the pension scheme used by the employer to comply with the employers' duties;
- (c) the contributions payable by an employer during each relevant pay reference period and, if different, the contributions made; and
- (d) the date on which the contributions made by an employer were paid to the pension scheme used by the employer to comply with the employers' duties.

¹Reg. 6(2A) & words in 7(1)(b)(i) added by reg. 13 & 14 of S.I. 2012/215 as from 1.7.12.

►¹(2A) Where an employer (E) gives to a person (P) employed by E a notice under section 4 of the Act (postponement or disapplication of automatic enrolment) that meets the requirements prescribed in Part 6 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(a) E must keep a record of—

- (a) P's full name;
- (b) P's national insurance number (where available); and
- (c) the date E gave the notice to P.◄

(3) In this regulation—

- (a) "earnings" has the meaning given by section 13(3) of the Act; and
- (b) "relevant pay reference period" means—
 - (i) a period of one week, or
 - (ii) in the case of a person who is paid their regular wage or salary by reference to a period longer than a week, that period.

Records: Trustees, managers and providers

7.—(1) A person falling within paragraph (2)(b) or (c) of regulation 5 must keep the following records—

- (a) the employer pension scheme reference;
- (b) (i) the date on which every jobholder became an active member of a pension scheme, by virtue of arrangements made under section 3 ►¹ or 7 ◄ of the Act, and
- (ii) the date with effect from which every worker became an active member of a pension scheme that satisfies the requirements of section 9 of the Act, by virtue of arrangements made under that section;
- (c) where—

(a) S.I. 2010/772.

- (i) a jobholder gives an opt out notice to an employer, and
 - (ii) any regulations under section 8(5)(e) of the Act require that employer to inform a pension scheme that such a notice has been received by it, the name of the jobholder mentioned in the opt out notice and the date on which that scheme was informed by virtue of that requirement; and
 - (d) where a jobholder had been an active member of a qualifying scheme, the date on which the jobholder ceased active membership of that scheme.
- (2) A person falling within paragraph (2)(b) or (c) of regulation 5 must also keep the following records in relation to all persons who are members of a qualifying scheme—
- (a) their full name, date of birth, gender and national insurance number (as received by the trustee or manager of an occupational pension scheme or provider of a personal pension scheme);
 - (b) (i) their postal residential address, and
(ii) where that address is in the United Kingdom, the postcode, last known by or notified to that scheme or employer; and
 - (c) whether—
 - (i) a member is an active member of a scheme, or
 - (ii) a member is no longer an active member of a scheme.

Period of preservation of records

8.—(1) Except where paragraph (2) applies, a record listed in regulations 6 and 7 must be preserved for a period of 6 years, starting on the day on which the record must first be kept.

(2) Paragraph (1) does not apply to any record which is kept under paragraph (1)(i) of regulation 6 or under paragraph (1)(c) of regulation 7, in which case the record must be preserved for 4 years, starting on the day on which the record must first be kept.

Payment Failures

Unpaid relevant contributions

9. For the purposes of section 38(2) of the Act, the prescribed period after the appropriate date is 3 months.

Contributions: Requirement to pay interest

10.—(1) For the purposes of section 38(2)(e) of the Act, the rate at which interest must be paid on an amount required by a notice to be paid (“the rate”) is determined by the Regulator in accordance with paragraph (2).

- (2) The rate comprises a fixed component and a flexible component where—
- (a) the fixed component is 4.2%; and
 - (b) the flexible component is—
 - (i) the percentage change in the retail price index applicable for the month during which the Regulator issues a notice, or
 - (ii) where the retail price index applicable for the month during which the Regulator issues a notice is not published, the percentage change in that index for the preceding month.

(3) For the purposes of section 38(2)(e) of the Act, the period in respect of which interest must be paid on an amount required by a notice—

- (a) begins with the appropriate date; and
- (b) ends when an employer complies with a notice by—

- (i) taking, or refraining from taking, the steps specified in a compliance notice, or
- (ii) paying into a pension scheme an amount in respect of relevant contributions that had not been paid, as specified in an unpaid contributions notice.

(4) In this regulation, "interest" means simple interest calculated from day to day.

Contributions: Estimating contributions

11.—(1) The Regulator may estimate the amount of contributions that an employer has failed to pay on behalf or in respect of a worker by applying the formula—

$$\frac{E}{12} \times 8\% \times N \times M$$

where—

E is the maximum qualifying earnings in a pay reference period of 12 months, as defined by section 13(1)(b) of the Act;

N is either—

- (a) the number of jobholders in respect of whom the Regulator is of the opinion that the employer has—
 - (i) contravened one or more of the employer duty provisions, or
 - (ii) not paid relevant contributions on or before the due date (within the meaning of section 37(3) of the Act); or
 - (b) where in the Regulator's opinion the number in (a) is not known, the number of persons in the employer's PAYE scheme,
- at the time that the Regulator makes the estimate; and

M is the number of months from—

- (a) the contravention of one or more of the employer duty provisions; or
- (b) the failure to pay contributions on behalf or in respect of the worker, until the Regulator makes the estimate.

(2) Other than information provided by the employer, when estimating the amount of contributions under this regulation, the Regulator may use the sources of information set out in paragraph (3).

(3) The sources of information are—

- (a) a late payment report;
- (b) anything reported or sent to the Regulator by any person, including—
 - (i) a trustee or manager of an occupational pension scheme,
 - (ii) a provider of a personal pension scheme, and
 - (iii) a member of either an occupational or personal pension scheme; or
- (c) any information disclosed to the Regulator under section 88 of the Pensions Act 2004(a) (tax information).

Penalties

Fixed penalty notices

12. Where the Regulator issues a fixed penalty notice to a person under subsection (1) or (2) of section 40 of the Act, the penalty is £400.

(a) Section 88 was substituted by section 62(1) of the Pensions Act 2008.

Escalating penalty notices

- 13.—**(1) Where an escalating penalty notice is issued to a person—
- (a) in respect of a failure to comply with a third party compliance notice under section 36 of the Act; or
 - (b) (i) in respect of a failure to comply with a notice specified in paragraph (2)(a) or (b), and
 - (ii) that failure was by a person other than an employer,

the prescribed daily rate is £200.

(2) Paragraph (3) applies where an escalating penalty notice is issued to an employer in respect of a failure to comply with—

- (a) a compliance notice under section 35 of the Act;
- (b) a notice under section 72 of the Pensions Act 2004(a) (provision of information); or
- (c) an unpaid contributions notice under section 37 of the Act.

(3) Except where paragraph (1) applies, the prescribed daily rate is to be determined in accordance with Table 1 and the following paragraphs.

Table 1

<i>Number of persons</i>	<i>Prescribed daily rate (£)</i>
1-4	50
5-49	500
50-249	2500
250-499	5000
500 or more	10000

(4) In the first column of Table 1, the expression “Number of persons” is to be construed in accordance with paragraphs (5) ▶¹, (5A) ◀ and (6).

(5) Where—

- ▶¹(a) paragraph (2)(a) or (b) applies, it is the relevant number except that—
 - (i) in the circumstances set out in paragraph (5A) the number of persons is the number of persons in the employer’s PAYE scheme or schemes that are employed by the employer; or
 - (ii) where the circumstances set out in paragraph (5A) do not apply and, in the Regulator’s opinion the relevant number is not known, paragraph (7) applies; ◀
- (b) paragraph (2)(c) applies, it is—
 - (i) the number of workers in respect of whom the Regulator is of the opinion that the employer has not paid relevant contributions on or before the due date (within the meaning of section 37(3) of the Act); or
 - ▶¹(ii) where in the Regulator’s opinion the number in paragraph (i) is not known, the relevant number except that—
 - (aa) where paragraph (5A) applies the number of persons is the number of persons in the employer’s PAYE scheme or schemes that are employed by the employer; or
 - (bb) where paragraph (5A) does not apply and, in the Regulator’s opinion, the relevant number is not known, paragraph (7) applies. ◀

¹Words in reg. 13(4) added and para. (5)(a) & (b)(ii) substituted by reg. 15 of S.I. 2012/215 as from 1.7.12.

(a) Subsections (1A) and (1B) were inserted by section 61(2) of the Pensions Act 2008.

¹Reg. 13(5A), 13(8) & words in paras. (6), (6)(a) & (6)(b) added by reg. 15 of S.I. 2012/215 as from 1.7.12.

►¹(5A) This paragraph applies where—

- (a) the Regulator is of the opinion that an employer's PAYE scheme (or where the Regulator is of the opinion that the employer has more than one PAYE scheme, the schemes) includes persons who are not employed by the employer; and
- (b) the number of persons in the employer's PAYE scheme (or where the Regulator is of the opinion that the employer has more than one PAYE scheme, the schemes) who are employed by the employer is known to the Regulator.◄

(6) In this regulation, the Regulator must use the latest information reasonably available to it up to and including the day on which the Regulator issues an escalating penalty notice ►¹, including◄—

- (a) where paragraph (2)(a) and (b) apply, ►¹information◄ disclosed to it under section 88 of the Pensions Act 2004; and
- (b) where paragraph (2)(c) applies ►¹, information◄—
 - (i) contained in a late payment report,
 - (ii) contained in a report given to the Regulator under section 70 of the Pensions Act 2004, or
 - (iii) disclosed to it under section 88 of the Pensions Act 2004.

(7) Where this paragraph applies, the prescribed daily rate must be treated as being £50.

►¹(8) In this regulation, “relevant number” means the number of persons within an employer's PAYE scheme or, where the Regulator is of the opinion that the employer has more than one PAYE scheme, the total number of persons within those schemes.◄

Penalty notices: Prohibited recruitment conduct

14.—(1) This regulation applies where the Regulator issues a penalty notice to an employer if the Regulator is of the opinion that the employer—

- (a) has contravened section 50 of the Act; or
- (b) has failed to comply with a compliance notice under section 51 of the Act.

(2) The penalty is to be determined in accordance with Table 2 and the following paragraphs.

Table 2

<i>Number of persons</i>	<i>Penalty (£)</i>
1-4	1000
5-49	1500
50-249	2500
250 or more	5000

(3) In the first column of Table 2, the expression “Number of persons” is to be construed in accordance with paragraphs (4) ►², (4A)◄ and (5).

►²(4) It is the relevant number except that—

- (a) where paragraph (4A) applies the number of persons is the number of persons in the employer's PAYE scheme or schemes that are employed by the employer;
- (b) where paragraph (4A) does not apply and, in the Regulator's opinion the relevant number is not known, paragraph (6) applies.

(4A) This paragraph applies where—

²Words in reg. 14(3), added & 14(4) substituted by reg. 16 of S.I. 2012/215 from 1.7.12.

- (a) the Regulator is of the opinion that an employer's PAYE scheme includes (or where the Regulator is of the opinion that the employer has more than one PAYE scheme, the schemes include) persons who are not employed by the employer; and
- (b) the number of persons in the employer's PAYE scheme (or where the Regulator is of the opinion that the employer has more than one PAYE scheme, the schemes) who are employed by the employer is known to the Regulator.◀

(5) In this regulation, the Regulator must use the latest information—

- (a) reasonably available to it up to and including the day on which it issues a penalty notice; and
- (b) ▶¹including information◀ disclosed to it under section 88 of the Pensions Act 2004.

¹Words in reg. 14(5)(b) & para. (7) added by reg. 16 of S.I. 2012/215 from 1.7.12.

(6) Where this paragraph applies, the penalty must be treated as being £1000.

▶¹(7) In this regulation, "relevant number" means the number of persons within an employer's PAYE scheme or, where the Regulator is of the opinion that the employer has more than one PAYE scheme, the total number of persons within those schemes.◀

Review and issue of notices

Review and issue of notices

15.—(1) The period within which an application to review a notice may be made under section 43(1)(a) of the Act (written application of a person) is 28 days, starting from the day a notice is issued to a person.

(2) The period within which a notice may be reviewed under section 43(1)(b) of the Act (review by the Regulator) is 18 months, starting from the day a notice is issued to a person.

(3) The presumptions in paragraph (4) apply where notices to which section 43 applies are issued (including compliance notices issued under section 51 of the Act and penalty notices issued under section 52 of the Act).

(4) For the purposes of this regulation, it is presumed that—

- (a) where a notice is given a date by the Regulator, it was posted or otherwise sent on that day;
- (b) if a notice is posted or otherwise sent to a person's last known or notified address, it was issued on the day on which that notice was posted or otherwise sent; and
- (c) a notice was received by the person to whom it was addressed.

Inducements

Inducements

16. For the purposes of subsection (3) of section 54 of the Act, the Regulator may not issue a compliance notice in respect of a contravention of that section unless the contravention occurred within—

- (a) 6 months before the time when a complaint was made to the Regulator about the contravention; or
- (b) 4 years before the time when the Regulator informed the employer of an investigation of the contravention, if no complaint was made before that time.

Signed by authority of the Secretary of State for Work and Pensions.

5th January 2010

Angela Eagle
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision as to the powers that enable the Pensions Regulator (“the Regulator”) to maximise compliance with the duties and safeguards contained in Chapter 1 of Part 1 and sections 50 and 54 of the Pensions Act 2008.

Regulations 2 to 4 deal with the information which employers are required to provide to the Regulator about action they have taken or intend to take for the purposes of sections 2 to 9 of the Pensions Act 2008 or any regulations made under those sections. In particular, regulation 3 concerns the information that has to be sent after the employers’ duties first apply to an employer. Regulation 4 concerns when an employer will have to re-register information with the Regulator.

Regulations 5 to 8 make provision as to the records which certain persons have to keep, preserve and provide on request to the Regulator. Regulation 5 sets out general provisions. Regulation 6 sets out record-keeping requirements for employers and regulation 7 sets out requirements for trustees, managers and providers of schemes. Regulation 8 prescribes the periods for which these records must be preserved.

Regulations 9 to 11 make provision about where employers fail to pay contributions. Regulation 9 prescribes the period after which an employer may be required by the Regulator to pay both their own contributions and contributions in respect of their jobholder or worker. Regulation 10 makes provision about how interest is to be determined in a notice issued by the Regulator. Regulation 11 sets out the way in which the Regulator will be able to estimate the amount of contributions due by an employer in a compliance notice or unpaid contributions notice, where that employer has failed to pay contributions on behalf or in respect of a worker.

Regulations 12 to 14 relate to the Regulator’s powers to issue penalties.

Regulation 15 prescribes periods within which the Regulator may review a notice under section 43 of the Pensions Act 2008 if it is asked to do so by the person to whom the notice is issued, or if the Regulator considers it to be appropriate. It also sets out three presumptions relating to the issue of a notice.

Regulation 16 sets out the time limits within which (i) a complaint is made to the Regulator about a contravention of section 54 of the Act or (ii) the Regulator informs the employer of an investigation of such a contravention, in order for the Regulator to issue a compliance notice in respect of that contravention.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Work and Pensions, ERSP, Level 7, Caxton House, Tothill Street, London SW1H 9NA and is annexed to the Explanatory Memorandum which is available alongside this instrument on the OPSI website.