

Compliance and enforcement strategy

For employers subject to automatic enrolment duties

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Foreword

The introduction of the government's automatic enrolment policy in 2012 will make pension provision a fundamental workplace duty for every employer in the UK.

The Pensions Act 2008 introduces this duty for employers and also gives The Pensions Regulator a new statutory objective 'to maximise compliance' with these duties.

The regulator has put in place effective processes to educate and enable employers about their duties, as well as ways in which to identify and address any systemic risks and issues that might inhibit compliance. We are helping employers by targeting our communications through multiple routes, engaging stakeholders and providing guidance and educational products. We are also engaging with service providers, advisors and pension providers to make them aware of the employer duties. We will provide direction and guidance to the regulated community and those that support them.

In this document we explain our approach to minimising non-compliance with the duties and safeguards, and associated legislation. It is a key part of our strategy to ensure those who are entitled to pension contributions receive them.

Our strategy focuses on how we will maximise our impact by understanding the employer landscape through intelligence analysis. We understand that some employers may struggle to be compliant, and we will work with employers to get them back on track ensuring employees are not disadvantaged.

However, intentional and persistent non-compliance is not acceptable and we will use the powers we have been given to take enforcement action where it is appropriate to do so.

Automatic enrolment represents a massive cultural change in the UK, with an aim to improve the standard of living of all those in retirement. This is a long term ambition in which providing a pension for employees becomes simply a part of being an employer in the UK. Our ambition is to help make compliance with this the cultural norm.

This strategy is our foundation to achieving this aim, and we are pleased to add it to our suite of guidance, tools and communication activity to support employers in this pivotal change.

We look forward to the important work ahead of the regulator in executing against the intent outlined in this document.



Bill Galvin
Chief executive,
The Pensions Regulator



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1. Introduction

- 1.1 The Pensions Regulator ('the regulator') was established under the Pensions Act 2004 as an executive non-departmental public body, sponsored by the Secretary of State for Work and Pensions, to regulate work-based pensions.
- 1.2 We are responsible for maximising compliance with the employer duties and employment safeguards in the Pensions Act 2008 Act, as well as protecting the benefits of members of work-based pension schemes. This document sets out our '**Automatic enrolment' compliance and enforcement strategy** ('strategy') regarding the legal obligations set out below in paragraph 1.3.
- 1.3 The Pensions Act 2008 places legal requirements on employers. The table below provides an outline of these requirements.

Table 1
An outline of the legal requirements on employers

Outline of legal duties and safeguards	
Employers must	Employers must not
Provide workers with information about the duties.	Induce your workers to opt out or cease their membership of the qualifying pension scheme.
Automatically enrol all eligible jobholders ie those who are above the earnings threshold and between 22 and state pension age, into the automatic enrolment scheme.	Do or fail to do something which results in the worker ceasing to be in active membership whilst still employed by the employer.
Put into the qualifying scheme those non-eligible jobholders who have decided to opt in.	Indicate during a recruitment process that a worker's decision to opt out of automatic enrolment will affect the outcome.
If requested allow all entitled workers to join a pensions savings scheme.	
Provide written confirmation that the eligible jobholder has been automatically enrolled and how they can opt out.	
Remove from the scheme anyone who has decided to opt out within the opt out period and promptly refund their contributions.	
Register with the regulator to give details such as the number of eligible jobholders enrolled.	
Automatically re-enrol and notify those eligible jobholders who opted out of the scheme and did not join another scheme, every three years.	
Renew their registration after re-enrolment.	

- 1.4 Employers must keep records of what they have done to comply with the duties. A key element of the employer automatic enrolment regime is the requirement to pay contributions to the pension scheme – both the contributions made by employees that the employer deducts from their pay, and the contributions made directly by the employer. Employers and pension schemes will need to keep relevant records regarding the payment of contributions. In addition, they must maintain specified records about the members and their status in the scheme.
- 1.5 The law on the new employer duties and safeguards commences from July 2012. Each employer will be allocated a date from when the new duties will apply to them, known as their ‘staging date’. The staging date is based on the number of people in the employer’s largest **Pay As You Earn (PAYE)** scheme. Staging will start in October 2012 and will be rolled out based on the largest to smallest PAYE schemes (although employers may bring their automatic enrolment date forward). There will also be a sample of small and micro employers selected to commence in June 2015 in accordance with their PAYE data. The Employers’ Duties (Implementation) Regulations 2010 contain a table that sets out the dates for employers from when the duty commences.
- 1.6 Employers with 250 or more persons in their largest PAYE scheme will be staged between October 2012 and February 2014. The **Department for Work and Pensions (DWP)** have published a consultation document in 2012 that proposes: medium-size employers (50 to 249 persons in their largest PAYE scheme) will have staging dates between 1 April 2014 and 1 April 2015; small employers (fewer than 50 persons in their largest PAYE scheme) will have staging dates between 1 June 2015 and 1 April 2017 and new employers setting up business from 1 April 2012 up to and including 30 September 2017 will have staging dates between 1 May 2017 and 1 February 2018. New employers established after 2018 will start their obligations from the date of their inception.

Please note: these duties are ongoing and do not cease once the initial registration process has taken place.

- 1.7 We are undertaking a range of activities such as publishing guidance and engaging with stakeholders to educate and enable employers to comply with their obligations under the Pensions Act 2008, and associated legislation.
- 1.8 However, the responsibility for complying rests with the employer. We are a risk-based regulator and we will assess the circumstances and respond appropriately to instances of non-compliance. We will work with employers, where appropriate, to get them back on track to being compliant. We regard intentional non-compliance as unacceptable and we may take any one of a range of enforcement actions if an employer fails to comply with their legal requirements. The Pensions Act 2008 gives us a number of enforcement options to ensure employers are meeting their duties (Chapter Five). In addition, The Pensions Schemes Act 1993, the Pensions Act 1995 and the Pensions Act 2004 provide the regulator with further powers to take action where an employer has not paid their contributions by the due date.

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1.9 The strategy sets out:

- The Pensions Regulator's statutory functions
- our aims and objectives to tackle non-compliance with the employer duties and safeguards prescribed in pensions legislation
- a set of principles which govern our regulatory approach
- our regulatory approach to maximising compliance with the new duties/safeguards
- the enforcement options available by which our objectives and priorities with respect to the new duties/safeguards are pursued and achieved over time.

1.10 The strategy is supplemented by the **Automatic enrolment compliance and enforcement policy** which sets out how we aim to deter and prevent non-compliance risks and identify, assess and tackle instances of non-compliance. It explains how our powers are to be considered and applied, and what employers, agents and workers can expect from us. It provides a robust framework in which we conduct their work. It also includes guidance to inspections, Statutory request for information, reviews and associated templates.

1.11 The regulator's **Automatic enrolment compliance and enforcement function** has responsibility for strategy, policy and operational matters relating to the prevention, detection, investigation and enforcement, of non-compliance with the employer duties and safeguards under the Pensions Act 2008, and those employers who subsequently delay or fail to make contribution payments as required by The Pensions Schemes Act 1993, the Pensions Act 1995 and The Pensions Act 2004. The function also contributes to creating a pro-compliance culture. We attach the highest importance to working within a clearly defined professional and ethical framework. All our staff are professionally trained and possess the skills and qualifications necessary to undertake intelligence and enforcement roles.

1.12 The **DWP** is responsible for providing information about automatic enrolment and planning and saving for retirement to workers (this term also includes potential workers). This will help them understand their rights and obligations and also signpost people to additional sources of information if needed. The **DWP** are engaging with a wide variety of organisations including unions, professional bodies, business representatives and others to raise awareness amongst workers about their pension entitlements and who to contact if they have any concerns.

1.13 This strategy document is available to interested parties on our website.

1.14 We will regularly review and update this strategy as required by legislation, guidance or other circumstances which may impact on the principles set out in this document. In addition, as the regime develops over time we will update it to reflect learning about compliance behaviours and our risk-based approach, and to ensure effective operations and the successful delivery of our strategic aims.

1.15 This document refers throughout to provisions of English law. Northern Ireland has its own body of corresponding pension legislation. Both Northern Ireland and Scotland have additional bodies of relevant law which correspond to certain English law provisions referred to in this document. References to provisions of English legislation which do not apply to Northern Ireland or Scotland should be read as references to the provisions of any corresponding Northern Ireland and Scottish legislation.

1.16 Further guidance on the employer duties can be found by following the link to our **'7 steps to prepare for automatic enrolment'** via our website:
www.tpr.gov.uk/7-steps

You can access all of our detailed guidance via our website:
www.tpr.gov.uk/pensions-reform

For further information, we have a helpline and email service to support you.
Call **0845 600 1011** or email: customersupport@autoenrol.tpr.gov.uk

'Automatic enrolment' compliance and enforcement policy:
www.tpr.gov.uk/doc-library/strategy-and-policy

Delivering successful automatic enrolment: The Pensions Regulator's approach to the regulation of employers and schemes:
www.tpr.gov.uk/docs/delivering-successful-automatic-enrolment.pdf

2. Aims and objectives

- 2.1 The strategy reflects the regulator's statutory objectives.
- 2.2 The Pensions Acts of 2004 and 2008 gives us specific objectives:
 - 2.2.1 To protect the benefits under occupational pension schemes of, or in respect of, members of such schemes.
 - 2.2.2 To protect the benefits under personal pension schemes of, or in respect of, members of such schemes.
 - 2.2.3 To reduce the risk of situations arising which may lead to compensation being payable from the **Pension Protection Fund (PPF)**.
 - 2.2.4 To maximise compliance with the duties under Chapter 1 of Part 1 (and the safeguards in sections 50 and 54) of the Pensions Act 2008.
 - 2.2.5 To promote, and to improve understanding of, the good administration of work-based pension schemes.
- 2.3 The underlying aim of this strategy is to have in place effective systems to maximise employers compliance with their duties under the Pensions Act 2008 and to ensure non-compliance is held at an absolute minimum; thereby safeguarding workers ability to save in a pension scheme.
- 2.4 In achieving this aim, we will strive to be a leading regulator who advocates an innovative and collaborative approach. We will use a range of regulatory options to drive compliance, prioritise our resources on the basis of risk, be outcome focussed and work with other regulators to ensure a joined-up approach to employer compliance. We will be firm but fair in carrying out our regulatory activities and ensure that we are **proportionate, accountable, consistent, transparent** and **targeted** in our approach.
- 2.5 The objectives of the strategy are to:
 - 2.5.1 Establish and maintain a 'pro-compliance culture' amongst employers so that they are aware of and understand their obligations, want to comply with their legal duties and advocate that non-compliance by other employers is not acceptable. This will be achieved by:
 - promoting positive compliance behaviour among employers in the early stages of implementation as we believe this will influence the subsequent willingness of employers to comply
 - developing a climate in which employers believe that the regulations are being applied fairly, that other employers around them are complying, and that those who do not comply will be fined
 - using publicity and education tools such as guidance, products and conducting awareness sessions to help employers understand their duties
 - putting in place an user friendly registration system to enable compliance.

2.5.2 Maximise deterrence for those who are considering committing a breach by communicating:

- the risk of getting caught through our compliance activities
- our compliance message that sanctions may be applied for non-compliance
- that our enforcement action outweighs the perceived financial rewards of not complying with the legislation. For instance, receiving an escalating penalty will result in no competitive advantage gained through non-payments of contributions, as well as risking potential reputational damage from publishing the breach.

2.5.3 prevent non-compliance by ensuring effective controls are in place to:

- stop incorrect registrations in the registration system
- ensure the causes of breaches are fully examined and fed into prevention work to minimise the risk of them occurring again.

2.5.4 Swiftly detect non-compliance by putting in place effective systems to facilitate:

- whistleblowing
- registration verification
- the analysis of information
- the sharing of intelligence with other agencies
- proactive activity such as registration sampling or targeted visits to employers who are at a high risk of non-compliance

2.5.5 Investigate breaches in a fair, objective and professional manner to:

- ensure those responsible are held to account for their actions.

2.5.6 Effectively enforce against non-compliance by:

- applying appropriate civil and criminal sanctions.

2.6 We will measure how successfully we have achieved our aims and objectives to ensure employers know about, understand and comply with their employer duties against a set of **Key Performance Indicators (KPIs)**.

3. Regulatory principles

- 3.1 In this strategy, we aim to promote efficient and effective approaches to the enforcement of regulation in order to maximise regulatory outcomes while minimising burdens on businesses and act in accordance with the requirements set out in the Legislative and Regulatory Reform Act 2006 and the regulator's compliance code '**Statutory code of practice for regulators**'.
- 3.2 We will apply the five principles of **Better Regulation** in our operational compliance work:
- 3.2.1 **Proportionality** Proportionality means relating enforcement action to the seriousness of the breach and the risks of harm caused by the breach. Therefore, in deciding whether to use our powers, we will put in place policies and guidance that ensure we consider the circumstances surrounding the breach of the law including the risk of harm to our objectives and the seriousness of any breach, and apply the most appropriate remedy.
- 3.2.2 **Accountability** The strategy sets out our approach to regulation and it can be used to judge our actions and hold us to account. We recognise that we are accountable for delivering the statutory objectives and will do so within the constraints of the general law and the principles of good regulation. As a public body, we are accountable for our conduct and operations to Parliament, our stakeholders and the general public. We have a complaints procedure in place (see section 6). We will inform employers and others how they can make representations against our decisions.
- 3.2.3 **Consistency** We will carry out our work in a fair and reasonable manner by using a similar approach in like cases to achieve similar ends where that is possible and suitable to do so. We will put in place policies and guidance to ensure that we assess our risks and use our enforcement options in a consistent way. However, we will retain our discretion when exercising our judgement in cases where it is considered to be necessary.
- 3.2.4 **Transparency** We will be open about our compliance approach in our publications. Our aim is to help employers fully understand what is expected of them, what guidance is available from the regulator and the enforcement options available to us. If we take enforcement action we will provide the employer with information regarding the investigation, enforcement, complaints, review and appeal processes. We will publicise our strategy and policy, as well as our compliance activities and enforcement outcomes (subject to the Data Protection Act 1998 and any other relevant legislation see sections 6.4 and 6.5).
- 3.2.5 **Targeting** We will direct our compliance activity at the most serious risks. We will focus our action on the employer or third party who is responsible for the risk in order to quickly remedy the situation. We will put in place systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by an employer's operations. We will engage with other regulators to consolidate our action where we can do so; thereby avoiding duplication and burden on employers and third parties.

4. Compliance approach

- 4.1 Most employers will want to meet their obligations to their workers and do the right thing. Therefore, our overall compliance approach is focussed on educating and enabling employers to comply with the new regime.
- 4.2 We are taking steps to provide employers, service providers, advisors and pension providers with the information needed to understand the duties and to prompt them into action to prepare for automatic enrolment. We have a multi channel and audience approach to our communications:
- We will write to employers to notify them of their staging date at 12 months and 3 months in advance of their staging date. An additional notification will be issued to larger employers at 18 months in advance of their staging date due to the anticipated longer lead in time needed. The purpose of these letters is to make employers aware of their duties. They will explain the requirements and direct employers to information that will help them to comply. They will also be told how to register with The Pensions Regulator after their duty date.
 - We are seeking to influence both the supply-side to ensure that they are ready to provide products (for instance pensions products or software products) or advice (both financial and business), and the demand-side to ensure employers are aware and understand their duties. We will do this by directly engaging in the appropriate parts of the value chain both on the supply and demand side. Additionally we will engage indirectly through intermediaries and stakeholders to target the various audiences.
 - We will enable employers and their suppliers by making products and guidance available to these audiences, primarily online. These products and guidance will be targeted at their respective audiences so that they are fit for purpose. For instance our detailed guides are targeted at pensions professionals and our interactive tools at employers with no former involvement with pensions.
 - We will also enable employers by providing a customer contact centre which will provide information and guidance.
- 4.3 We are making it easy for employers to meet their duty to register by ensuring that the process of registration is simple and minimises the administrative burden. We have engaged stakeholders including trade bodies, employers and advisors in the design and operation of our registration system to ensure it is simple to use and that employers are clear about what information they are required to provide.

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- 4.4 We are aiming to reduce the risk of non-compliance by:
 - 4.4.1 creating a positive pro-compliance culture amongst employers to encourage them to comply with their duties and not accept non-compliance by other employers. We will proactively engage employers, agents and professional organisations through events, meetings and publications.
 - 4.4.2 publicising our general pro-active regulatory activities to promote compliance and specific enforcement outcomes to deter those employers who are considering not complying with their duties.
 - 4.4.3 having a robust registration system to prevent an employer circumventing their duties and applying the learning from our regulatory work into the causes of non-compliance to minimise the risk of them occurring again.
 - 4.4.4 actively engage with a diverse mix of stakeholders ranging from individual employer trade associations to UK law enforcement agencies. This will ensure that we share best practice with stakeholders and other compliance regimes, and in turn learn from such associations which will inform our regulatory approach to achieve maximum employer compliance.
- 4.5 There are some employers who will fail to comply whether because they have not understood or have not been able to comply. We will consider the circumstances of each case and, where it is appropriate to do so, we will work with the employer to get them compliant.
- 4.6 Inevitably, there will be a small number of employers who may have chosen to ignore their responsibilities. We will be tough but fair to non-compliant employers. We will:
 - 4.6.1 promptly detect those who seek to be non-compliant by putting in place effective detection controls in our systems and processes.
 - 4.6.2 be risk-based and proportionate by applying timely and appropriate interventions where necessary in order to get employers back on track to compliance.
 - 4.6.3 intervene where we will have the greatest impact and will deploy our resources efficiently to minimise cost.
 - 4.6.4 efficiently conduct our enquires, and ensure that sanctions are used fairly and effectively.
 - 4.6.5 consider all the relevant circumstances of each case, and ensure a robust and fair review and appeal process.

- 4.7 A key aspect of our approach is to be an intelligence-led regulator. We will utilise high-quality intelligence to detect and tackle employers who fail to comply. We will:
- 4.7.1 analyse information that we have collected from a variety of sources to proactively identify potential and actual non-compliant employers. We will pilot and test new ways of working and assess the benefits they bring.
 - 4.7.2 establish partnerships with other regulators and enforcement bodies to develop networks for the exchange of intelligence. This work will be undertaken with full regard to the legislative gateways permitting sharing of certain material and within the constraints of relevant legislative the requirements, for example the Data Protection Act 1998.
 - 4.7.3 create channels for whistleblowers or concerned citizens that provide individuals with a means to report instances of suspected non-compliance directly to the regulator. This may be workers or a third party such as their relatives or friends, or a union representing them. It may be a business who has discovered, for example that a rival is offering a payment if their employees opt out of the pension scheme.
- 4.8 We will assess risks at a strategic level in measuring thematic trends and potentially systemic risks and at an individual employer level in disrupting and combating non-compliance.
- 4.9 The information sources at paragraph 4.7 help us to develop intelligence that can be risk assessed so we can prioritise and commit resources to effectively target employers and business sectors at high risk of non-compliance.
- 4.10 We may respond with proactive interventions to assist and encourage compliance in these segments such as targeted communications, visits or engaging stakeholder bodies.
- 4.11 In cases of suspected non-compliance, we will consider the circumstances that apply. We will develop a set of risk factors in line with our strategic objectives. The risk factors will be monitored, reviewed and amended appropriately throughout the operation of the regime to ensure that we are tackling the high risk areas and addressing emerging and developing risks. We will be responsive to the risk environment.

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- 4.12 In appropriate circumstances, an intervention we may decide upon is to carry out an investigation. Where we need to conduct an investigation:
- 4.12.1 We will make the necessary enquires in order to ensure the employer is complying with their legal obligations.
 - 4.12.2 This may involve us using our inspection powers (see 5.2.2) or serving mandatory requests for information (see 5.2.1).
 - 4.12.3 We will investigate in a professional, objective and timely manner. We will abide by the Police and Criminal Evidence Act 1984, Criminal Procedure and Investigations Act 1996, Regulation of Investigatory Powers Act 2000, and the Human Rights Act 1998, Data Protection Act 1998 and any other relevant legislative requirements and the codes of practice. We will follow the regulator's code of conduct which is available on request.
 - 4.12.4 We may, depending on the circumstances, pass conduct of an investigation to another regulatory agency or work in conjunction with them.
- 4.13 Where employers do not demonstrate a willingness to comply with pensions legislation, we have a variety of enforcement options that we can use at any stage (see section 5). We will use these options in a proportionate and targeted manner. We will consider the circumstances that apply in each case to determine the most appropriate enforcement method for achieving compliance.
- 4.14 When we have opted to issue a penalty, we will have done so because we believe it is the best course of action to take in tackling the particular incidence of non-compliance. There is no financial interest for the regulator as the monies collected from penalties are paid over to the Treasury.

5. Enforcement options

5.1 We have a number of interventions available to us which are set out below. The **Automatic enrolment compliance and enforcement policy** explains how we will apply our powers. The regulator reserves the right to use all powers available to it to ensure it meets its statutory objectives.

5.2 Informal action

5.2.1 Instruction by telephone, email, letter and in person

We aim to provide as much assistance as is reasonably practicable to assist employers who are struggling to comply for whatever reasons or where an employer voluntarily brings a minor breach to our attention and is already taking (or has taken) appropriate action. When assistance and instruction is given it will normally be put in writing, unless the issue is immediately rectified on the phone.

Where we have identified a risk of non-compliance, we may take preventative action by issuing targeted communications to an individual employer or adviser, or to specific groups of employers or advisers.

5.2.2 Warning letter

In certain circumstances, it may be appropriate to issue a warning letter to the individual responsible for a minor alleged breach. This letter may be issued if there is sufficient evidence available to substantiate the alleged breach. It is intended as a means to bring the potential breach to the individual's attention and give them the opportunity to put it right within a reasonable period or to prevent it from re-occurring.

The letter will allow a set time frame for compliance with the duties, state if the breach is not rectified or occurs again in the future we will consider using our powers, and may indicate ways to avoid similar breaches in the future.

5.3 Statutory powers: Gathering information

5.3.1 Formal requests for information

If we suspect a breach, then we may write to an employer, their representative, pension scheme trustees/managers or any other relevant person to provide the requested relevant information to us in the manner, place and period as specified in the notice under s72 of the 2004 Act.

Failure to provide the information to us or providing false or misleading information may lead to penalties and/or criminal prosecution.

5.3.2 Inspection powers

We may use our inspection powers under s73-77 of the 2004 Act during the course of an investigation to enter premises and obtain information in order to ensure compliance with the legal requirements.

Failure to comply with an inspection may lead to criminal prosecution.

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5.4 Statutory notices

The regulator can issue a range of statutory notices to employers or third parties if it is of the opinion that a breach of the employer duty provisions or pensions legislation provisions has occurred and where a remedy is needed to secure compliance. There are specific rules governing the use of different statutory notices. They may be used to direct a person to take, or not to take, a specific action(s) within a specified timeframe. We will consider the circumstances in each case in deciding the most appropriate course to achieving compliance. We may consider the following interventions:

- 5.4.1 If the person has contravened one or more of the employer duty provisions, under s.35 of the 2008 Act we may issue a **Compliance Notice** directing the person to take or refrain from taking the steps specified in the notice in order to remedy the breach.
- 5.4.2 Where the contravention has resulted because of a failure of another person to do anything (which is not itself a contravention of the employer duties), under s.36 of the 2008 Act we may issue a **Third Party Compliance Notice** directing that person to take or refrain from taking the steps specified in the notice in order to remedy the failure.
- 5.4.3 If we are of the view that relevant contributions have not been paid on or before the due date, under s.37 of the 2008 Act we may issue an **Unpaid Contributions Notice** to an employer requiring an employer to pay the amount into a pension scheme by a specified date.
- 5.4.4 We have further **discretionary powers** under s.38 of the 2008 Act that we may use as part of a Compliance Notice or an Unpaid Contributions Notice to achieve compliance. We can:
- estimate the rate of unpaid contributions
 - charge interest on the unpaid contributions
 - direct an employer to pay both their and their employee's unpaid contributions
 - direct the employer to calculate the amount of unpaid contributions themselves.
- 5.4.5 Under s.13 of the 2004 Act, we may issue an **Improvement Notice** to individuals or companies requiring specific action to be taken within a certain time, if that person has contravened pensions legislation. This notice will be preceded by a **Warning Notice** under s.96.
- 5.4.6 Under s.14 of the 2004 Act, we may issue a **Third Party Notice** to Individuals or companies requiring specific action to be taken within a certain time, if there has been a contravention of pensions legislation because of a failure of another person to do anything. This notice will be preceded by a Warning Notice under s.96. Non-compliance with a statutory notice may result in a penalty. In addition, wilful non-compliance with some employer duties may result in further action including criminal prosecution.

5.5 Penalties

5.5.1 Fixed Penalty Notice (FPN)

FPNs may be issued under s40 2008 Act when there has been a failure to comply with a statutory notice or there is sufficient evidence that a breach has been committed under the section of the Act that allows the immediate issue of FPN. The FPN is for a fixed amount of money (£400) which needs to be paid within a specified period. If the employer fails to pay a financial penalty and remedy the breach, in certain circumstances the regulator may consider further action in relation to wilful non-compliance which may ultimately lead to prosecution.

5.5.2 Escalating Penalty Notice (EPN)

EPNs may be issued under s.41 2008 Act when there has been a failure to comply with a statutory notice. The regulator may issue escalating penalties at a prescribed daily rate, ranging between £50-£10,000 (dependent on the number of persons the employer has). If the employer fails to pay a financial penalty and remedy the breach, in certain circumstances the regulator may consider further action in relation to wilful non-compliance which may ultimately lead to prosecution.

Table 2
Failure to comply by an employer

Number of persons	Prescribed daily rate (£)
1-4	50
5-49	500
50-249	2,500
250-499	5,000
500 or more	10,000

Table 3
Failure to comply by a person other than an employer

Third party compliance notice (s36)	Prescribed daily rate £200
Compliance Notice (s35)	Prescribed daily rate £200
S72 notice	Prescribed daily rate £200
250-499	5,000
500 or more	10,000

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5.5.3 Prohibited Recruitment Conduct Penalty Notice (PRCPN)

PRCPNs may be issued under s50 or s51 2008 Act when there has been a failure to comply with a compliance notice or there is sufficient evidence that a breach has been committed under the section of the Act that allows the immediate issue of the PRCPNs.

Table 4
Penalty notices: Prohibited recruitment conduct (s50/s51)

1-4	1,000
5-49	1,500
50-249	2,500
250 or more	5,000

5.5.4 Civil Penalty

Where an employer fails to pay contributions due the regulator may, in certain circumstances, issue a financial penalty to the employer under the relevant section of pensions legislation including s.111A of 1993 Act, s.88 of the 1995 Act, or 228 of 2004 Act.

The financial penalty issued under s.10 of the 1995 Act is a variable amount between £0-£5,000 in the case of an individual and £0-£50,000 in any other case. The financial penalty may be issued by the **Determinations Panel** or by those persons authorised by the regulator.

5.6 Statutory powers and orders

5.6.1 Power of the regulator to recover unpaid contributions

If an employer does not make a contribution payment towards an occupational pension scheme on or before the due date, we may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover that contribution payable under s.17 of the 2004 Act.

5.6.2 Prohibition and Suspension Orders, Appointment of trustees

Under s.3 and s.4 respectively of the 1995 Act, we can prohibit trustees who we do not consider to be fit and proper persons for the role and, pending consideration being given to the making of the Prohibition Order, suspend the trustee in the interim. Under s.7 of the 1995 Act, we can appoint trustees where a trustee of a trust scheme is removed by an order under s.3 or s.4, or a trustee of such a scheme ceases to be a trustee by reason of his disqualification.

5.7 Court action

5.7.1 Civil action

The regulator is responsible for the issue and collection of penalties. We will seek to recover full payment in a prescribed timeframe. If the payment is not made, we may take civil court action if necessary.

Our **employer hardship policy** sets out the circumstances which we will take into account in extending the timeframe in the recovery of payments.

5.7.2 Criminal prosecution

We may seek to take a case to prosecution if it is deemed as appropriate, as in the case of wilful non-compliance. The decision to prosecute will take into account the criteria set down in the Code for Crown Prosecutors, issued by the **Crown Prosecution Service**. In particular, we will consider whether there is a reasonable prospect of a conviction and any other relevant factors.

Our **prosecution policy** is contained in the **Automatic enrolment compliance and enforcement policy**.

5.7.3 The Proceeds of Crime Act 2002 (POCA)

POCA permits us to consider, during the course of a criminal investigation, whether the public interest is served by restraining the assets of suspected offender and seeking confiscation, if a conviction is secured against that person. We will exercise this power in appropriate cases.

5.8 Review and References of Statutory Notices

5.8.1 Review of Statutory Notices

Where the employer does not agree with the issue of a Statutory Notice under the 2008 Act, they can request a review. S43 of the 2008 Act sets out the processes for review of Statutory Notices issued under the 2008 Act.

5.8.2 References of Statutory Notices

After a review, if an employer disagrees with the outcome regarding a fixed or escalating penalty notice they can make reference to the Tribunal under s44 of the 2008 Act. S103 of the 2004 Act sets out the processes for references to the Tribunal for s10 civil penalties, Improvement Notices and Third Party Notices issued under 2004 Act.

6. Other duties

6.1 Reporting non-compliance concerns/breaches of law

We understand that when an individual supply's information to us it may have a potential impact on the relationship between them and those to whom they are reporting, particularly in the case of an employee/worker and their employer.

Individuals can always opt to be anonymous when reporting concerns to us. However, having an individual's contact details are useful in case we need to ask you for more information so we can investigate your concerns. The Public Information Disclosure Act 1998 provides certain protection for employees and workers making a whistleblowing disclosure to the regulator. The regulator will do its best to protect the identity of those individuals (if desired) and will not disclose the information except where lawfully required to do so.

Statutory whistleblowers have a duty to report breaches of law under s.48 of the 1995 Act and s.70 of the 2004 Act, this term generally applies to auditors, actuaries, trustees, managers and other professional and other advisers.

We will make initial enquires into the information received and subject it to our risk assessment process. If appropriate, it will be referred to the Investigation and enforcement team.

We will ensure that individuals who provide information about non-compliance activity by an employer or third party have a specific point of contact, and any witnesses are supported throughout the enforcement process.

To report a concern to us, please telephone **0845 600 7060** or access our online reporting facility at: www.tpr.gov.uk

6.2 Restricted information

The information received in the course of carrying out our statutory function is classified as Restricted Information under s.82 of 2004 Act and may only be disclosed in the limited circumstances permitted under that Act.

6.3 The Data Protection Act 1998

The Pensions Regulator handles personal information in compliance with the Data Protection Act 1998 (the Act). We recognise the importance of the correct and lawful processing of personal data in maintaining confidence in our operations.

6.4 **The Freedom of Information Act 2000**

The Act provides a right of access to information held by public authorities. It gives persons the right to be told if the information is held and be given that information unless an exemption applies. A brief guide setting out a person's right to request information and how to make a request to the regulator can be accessed at: www.tpr.gov.uk/docs/foi-guide-2005.pdf

6.5 **Publishing our enforcement activities**

The law says we may publish our enforcement activities. We are committing to publishing a specific enforcement report once a year and we will also include the use of our powers in the regulator's **Annual report**. We will publish certain activities that we have undertaken such as compliance drives, as well as our enforcement successes and publicly name those employers who do not comply in accordance with s.89 of the Pensions Act 2004, the Data Protection Act 1998 (see paragraph 6.4) and relevant legislation.

6.6 **Complaints**

We have policies and standards against which we can be judged. We are committed to ensuring that all policies are applied in a non-discriminatory manner. We will deal with any complaint about the way in which we have carried out, or failed to carry out, our role. Our complaints policy is available at: www.tpr.gov.uk/about-us/how-to-make-a-complaint

How to contact us

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www.thepensionsregulator.gov.uk
www.trusteetoolkit.com

Compliance and enforcement strategy

For employers subject to automatic enrolment duties
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