

Workplace pensions reform

Employer duties: our regulatory approach

A quick guide to The Pensions Regulator's compliance and enforcement strategy for employers subject to automatic enrolment duties

Please note: This document was re-designed in January 2014 to reflect the most recent accessibility guidelines. The content of this document has not changed since its initial publication in June 2012.

From October 2012, employers will have a legal duty to provide suitable pension provision for their workforce and to complete a declaration of compliance (registration) with The Pensions Regulator (the regulator) the fact that they have done so. These duties are ongoing and do not cease once the initial declaration of compliance process has taken place.

About this guide

This guide offers a summary of the regulator's Compliance and Enforcement strategy document and outlines our regulatory approach and legal powers.

The information that it contains will be important if you are an employer or somebody that provides pensions advice or services to employers.

It is not intended to provide an overview of automatic enrolment although we have included a table of employer duties and obligations (on page 3) as a reminder.

If you require further information on meeting your employer duties under automatic enrolment, please use the tools and detailed guidance on our website: www.tpr.gov.uk/pensions-reform.

The role of the regulator

The Pensions 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.

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.

The Pensions Act 2008 places legal requirements on employers. The table on page 3 provides an outline of employers' duties and obligations.



Visit:
www.tpr.gov.uk/pensions-reform

Table 1

'At a glance' reminder for employers of their duties and obligations

Outline of employer's duties and obligations	
<p>You must:</p>	<ul style="list-style-type: none">• Provide workers with information about the duties.• 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.• 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.• Complete your declaration with the regulator to give details such as the number of eligible jobholders enrolled.• Put into the qualifying scheme those non-eligible jobholders who have decided to opt in.• Remove from the scheme anyone who has decided to opt out within the opt-out period and promptly refund their contributions.• Automatically re-enrol and notify those eligible jobholders who opted out of the scheme and did not join another scheme, every three years.• Renew your declaration after re-enrolment.• Keep records of what you have done to copy and make contributions to the scheme for jobholders.
<p>You must not:</p>	<ul style="list-style-type: none">• Induce your workers to opt out or cease their membership of the qualifying pension scheme.• Do or fail to do something which results in the worker ceasing to be in active membership whilst still employed by the employer.• Indicate during a recruitment process that a worker's decision to opt out of automatic enrolment will affect the outcome.

Our compliance approach

We recognise that most employers will want to do the right thing for their workers. The regulator's overall approach is to educate and enable you to comply with the legislation. Our approach puts you in a position to make the right choices and decisions. However the responsibility for complying will rest with you the employer.

Our website (www.tpr.gov.uk) is constantly being updated with information and resources to help you understand your duties and enable you to comply. There is also a helpline and email service to support you. Call 0845 600 1011 or email: customersupport@autoenrol.tpr.gov.uk

We work within a set of principles to ensure our compliance work is carried out in a manner which is proportionate, accountable, consistent, transparent and targeted.

We will promote good compliance behaviour among employers by ensuring that the legislation is being applied fairly and that those who do not comply will face enforcement action in line with our risk based approach. We are carrying out a range of activities to communicate with employers, advisers, providers and industry representatives about the duties such as providing guidance, sending out letters and holding meetings and events.



**We are
responsible
for
maximising
compliance**

We aim to deter and prevent employers from not complying by:

- communicating our compliance activities
- ensuring effective controls are in place
- fully examining the causes of breaches to minimise the risk of them occurring again
- establishing whistleblowing channels for early detection as well as intelligence exchange networks with other agencies.

When breaches occur, we will investigate them in a fair, objective and professional manner to ensure those responsible are held to account for their actions. We have information gathering powers such as the power to issue formal notices requesting information and inspection powers.

We will effectively enforce against non-compliance and have a range of civil and criminal enforcement measures at our disposal (outlined in Appendix 1 on pages 6 and 7) to do so.

We will be firm but fair to non-compliant employers. In cases where you have not understood your duties or been unable to comply, we will work with you to get you compliant. However, if you have chosen to ignore your obligations we will use our powers where necessary to ensure compliance.

Appendix 1

Our enforcement options

Non-statutory action	
We can issue guidance and instruction by telephone, email, letter and in person or a warning letter confirming a set time frame for compliance with the duties	
Statutory Notices	
Statutory Notices that can direct you to comply with your duties and/or pay any contributions you have missed, or are late in paying.	<ul style="list-style-type: none">• Compliance Notice• Improvement Notice• Unpaid Contributions Notice• Further discretionary powers allowing us to estimate and charge interest on unpaid contributions and directing you to calculate and/or pay unpaid contributions• Powers to recover unpaid contributions on behalf of trustees or scheme managers• Appoint, suspend and prohibit• Orders to suspend and prohibit unsuitable trustees, and appoint new trustees.
Penalty Notices	
Penalty Notices to punish persistent and deliberate non-compliance.	<ul style="list-style-type: none">• Fixed Penalty Notice if you fail to comply with statutory notices or if there is sufficient evidence of a breach. This is fixed at £400 and payable within a specific period• Escalating Penalty Notice if you fail to comply with a statutory notice. This penalty has a prescribed daily rate of £50 to £10,000 depending on the number of workers you have• Prohibited Recruitment Conduct Penalty Notice for cases where you fail to comply with a compliance notice or there is sufficient evidence of a breach. Currently set at a maximum fixed daily rate of £5,000 if you have 250 workers or more• Civil Penalty for cases where you fail to pay contributions due. Financial penalties of up to £5,000 for individuals and up to £50,000 for organisations.

Penalty Notices continued	
Penalty recovery	We aim to fully recover all the penalties that we have issued.
Court action	<ul style="list-style-type: none"> • Civil action through court to recover penalties • Prosecution for those employers who wilfully fail to comply with their duties • The Proceeds of Crime Act 2002 permits us to confiscate goods in case of convictions and restrain assets during criminal investigations.
Third party	We can issue a Third Party Compliance Notice which, if not complied with, can lead to a penalty with a prescribed daily rate of £200.
Review/references	Our enforcement decisions can be challenged by requesting a review and, if still dissatisfied, making a reference to the First Tier Tribunal.

Resources

The full compliance and enforcement strategy and policy can be found on our website: www.tpr.gov.uk

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

Reporting non-compliance concerns/ breaches of law

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

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