

# Compliance and enforcement policy

for employers subject to automatic enrolment duties

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# 1. Introduction

- 1.1 This policy sets out the approach that The Pensions Regulator (the 'regulator') applies in meeting its statutory objective of maximising compliance with the employer duties and safeguards in the Pensions Act 2008 (the '2008 Act') and associated pension legislation.
- 1.2 It expands upon the compliance and enforcement strategy which provides a framework for our regulatory approach, and explains the various options available to us to maximise employer compliance.
- 1.3 We recognise that the best way to achieve compliance is to provide guidance to employers about the duties and safeguards, so they understand how to comply with the law. General guidance can be found on our website at [www.tpr.gov.uk/automatic-enrolment](http://www.tpr.gov.uk/automatic-enrolment) and detailed guidance at [www.tpr.gov.uk/detailed-guidance](http://www.tpr.gov.uk/detailed-guidance). Where we decide that further education is appropriate we will ensure that this is provided.
- 1.4 However, despite such guidance, we realise that there will be some employers who will fail to comply with the duties because they have not understood their duties, or have not been able to comply with them. In these cases, we will work with the employer to help them become compliant. There will also be employers who have complied with the spirit of the law, but due to some procedural mistakes, commit minor technical breaches. We will consider whether a breach has occurred deliberately or not and reflect this in our response.
- 1.5 Although most employers will want to comply with their regulatory obligations, there will be a proportion who may choose not to fulfil their responsibilities. We regard non-compliance as unacceptable and should an employer or third party fail to comply with their legal requirements we may select from one or more enforcement options to ensure compliance, ranging from warning letters, statutory Compliance notices and monetary penalties, to criminal prosecution.
- 1.6 Also, we will work to ensure workers are put back into the position they would have been in with regards to any contributions due to be paid into pension schemes on their behalf, had the employer or third party complied with their regulatory obligations.

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- 1.7 In Chapter 2: Risk and proportionality framework, we explain how our Information and intelligence unit will detect non compliance and apply a risk assessment process to prioritise matters that may result in an investigation case or enforcement action. Broadly, the more serious the matter the more likely it is that enforcement action will follow. Consequently, breaches of the law which are persistent, intentional, wilful or indicate dishonesty are likely to be a higher enforcement priority for us.
- 1.8 In Chapter 3: Investigation and enforcement policy, we explain what happens to cases that are referred to our Investigations and enforcement unit. Throughout the course of an investigation, or an enforcement action, we will adopt a risk-based and consistent approach to enforcing the law, giving full consideration to the particular circumstances and context of each case. We will take into account relevant considerations including, although not limited to:
- ▶ the evidence regarding the nature of the non-compliant behaviour
  - ▶ the impact or effect on individuals or groups
  - ▶ mitigating and/or aggravating factors
  - ▶ principles of public law
  - ▶ legal obligations, including under the Legislative and Regulatory Reform Act 2006
- 1.9 It is essential that the regulator adopts a strategic view across all of its operational objectives and activities. Therefore, whilst dealing with an employer compliance matter under the 2008 Act, if we identify an issue that demonstrates wider compliance issues with existing pensions legislation and which is relevant to our statutory objectives in the Pensions Act 2004 (the '2004 Act'), we will ensure that we:
- ▶ protect the benefits of members of work-based pension schemes
  - ▶ promote good administration and improve understanding of work-based pension schemes
  - ▶ reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (PPF)
- 1.10 The 2004 Act requires certain decisions of the regulator to be taken by the Determinations Panel. However, this requirement does not extend to decisions taken in relation to the employer duties under Part 1 of the 2008 Act. However, the requirement may be relevant to our enforcement approach to unpaid contributions for non-qualifying schemes.

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- 1.11 We will, where necessary, work with other regulators to ensure we co-ordinate use of our respective powers where they may overlap. This will avoid duplication and inconsistencies and ensure that the most relevant action is taken.
- 1.12 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.
- 1.13 We will regularly review this policy and update it as required by legislation, guidance or any other circumstances which may impact on the approach described in this document.

## 2. Risk and proportionality framework

### 2.1 Our approach to risk

- 2.1.1 In this chapter we explain how we will be risk-based and proportionate in meeting our statutory objective. A key aspect underpinning our approach is how we will identify and respond to risks, and prioritise our compliance work. In particular, we will use risk to help us anticipate, identify and tackle potential non-compliance with the employer duties and safeguards and ensure any regulatory action we take is measured and evidence-based.
- 2.1.2 Essentially, as a risk-based regulator, we focus our resources on priority areas in order to meet our statutory objective to maximise compliance with the duties under Chapter 1 Part 1 of 2008 Act. A defining feature of our work is establishing and maintaining a pro-compliance culture by providing support and guidance to employers and engaging with industry stakeholders. Our primary focus is on deterring and preventing non-compliance through our communications and engagement with employers and other stakeholders. However, we have systems in place to swiftly detect non-compliance and we use our enforcement powers under pensions legislation, and those available to us in legislation, such as the Regulation of Investigatory Powers Act 2000 (RIPA) and the Proceeds of Crime Act 2002 (POCA) when we need to but, in doing so, we apply a fair and consistent approach.
- 2.1.3 In applying this approach, we ensure that we act in accordance with all our legal obligations including those contained within the Data Protection Act 1998 and Human Rights Act 1998. We will abide by the Criminal Procedure and Investigations Act 1996 (CPIA) and the Police and Criminal Evidence Act 1984 (PACE).
- 2.1.4 This Risk and proportionality framework ('the Framework') is in line with the National Intelligence Model, an intelligence-led business process utilised by UK regulators and agencies to gather and manage information in order to make the most effective decisions.

## 2.2 Objectives of the Framework

- 2.2.1 Our research capability, operational data, information sharing agreements and powers to collect data gives us the information we need to identify, assess and target areas of risk relating to compliance with the duties and safeguards in the 2008 Act.
- 2.2.2 It is necessary to identify and consider risk at both a strategic and operational level in order to direct our regulatory and enforcement activities appropriately. By effectively managing risk, we can achieve our statutory objectives and, consequently, help to ensure the successful implementation of the Compliance and enforcement strategy aims.
- 2.2.3 The framework aims to ensure a proportionate and consistent approach to effectively managing risk by:
- ▶ obtaining and analysing information from a variety of sources in order to maintain an informed strategic view across the regime which will enable us to:
    - effectively define and prioritise key risks to the automatic enrolment policy
    - swiftly detect patterns and causes of potential non-compliant behaviour
  - ▶ establishing and maintaining effective strategic and operational risk assessment processes which inform the allocation and prioritisation of our resources to effectively tackle risk, for example by developing risk profiles against which we can assess individual employers or third parties
  - ▶ putting in place sound mechanisms for the exchange and use of information and intelligence that may indicate risks or instances of non-compliance
  - ▶ monitoring and reviewing our compliance activities

## 2.3 Oversight of strategic risks

- 2.3.1 It is essential for us to develop and maintain an understanding of the overarching risks that may lead to non-compliance with the duties and safeguards in the 2008 Act, thereby undermining the successful achievement of our statutory objectives.
- 2.3.2 We deepen this understanding by developing and testing hypotheses, conducting research, undertaking analysis and interpreting findings in order to gain at a strategic level a comprehensive knowledge of the nature and scale of the various risks to compliance, as well as of the drivers that enable these risks to emerge. By making inferences from the information gained about the risk environment we can then put in place effective strategies to tackle risk.
- 2.3.3 We develop our research and analysis through a variety of means including:
- ▶ the application of formal research and analytical techniques, for example commissioning surveys and conducting interviews within the regulated community
  - ▶ information-sharing agreements with relevant partner agencies in order to have access to their intelligence
  - ▶ the development of information provided through 'whistleblowing' provisions, casework and other referrals that detail potential non-compliance into intelligence
  - ▶ the use of specialist computer software to analyse and evaluate our operational data to identify and track risks, to assess effectiveness of our interventions and to enhance our business processes where necessary
  - ▶ the evaluation of proactive exercises undertaken to target employers/third parties posing a high risk of non-compliance
  - ▶ the production of timely reporting and intelligence assessments
- 2.3.4 Our strategic overview is presented in an annual strategic assessment which describes the risk landscape and considers the relative priority of each risk area. Such a document allows us to effectively plan and allocate resources to prevent, deter and tackle the prioritised risks and provides a mechanism for assuring that our enforcement response is appropriately aligned to the risks.



- 2.3.5 Our strategic risk analysis is developed and reviewed on an ongoing basis in order to take into account emerging trends and to maintain a proportionate response. In line with this, our processes and interventions are continually evaluated in order to maximise our effectiveness and ensure that risk assessment continues to direct our activity. As part of this process, the strategic assessment is kept under review throughout the year.
- 2.3.6 Our strategic risk assessment process is governed through a strategic tasking and co-ordination group (STCG) which reviews:
- ▶ the strategic assessments
  - ▶ the priority of the detailed risk areas
  - ▶ the remedial activity necessary to mitigate the risks such as proactive education exercises and the allocation of resources required
  - ▶ reports from the tactical tasking and co-ordination group (TTCG) which monitors operational activity
- 2.3.7 We will use our strategic knowledge to identify the key risks that indicate potential non-compliance. Our current research suggests, for example, that some employers display certain characteristics which suggest they pose a higher risk of non-compliance than those that do not display these characteristics. These are our 'risk indicators'.
- 2.3.8 By developing risk indicators, we are able to build risk models which in turn enable us to anticipate potential areas of non-compliance and the risk posed by certain segments of employers/third parties. Consequently, we can target this risk by putting in place appropriate deterrence and prevention strategies ensuring a targeted risk-based response such as issuing communications or visiting employers to enable or assess their compliance. Also, we can develop risk profiles and apply them to our operational data to detect and assess employers who may be at risk of non-compliance.

2.3.9 A priority for our strategic assessment and research work is to further develop and test our risk indicators and the robustness of our models. Current understanding identifies factors such as the industry sector, size and financial stability of an employer to be potentially relevant and this understanding will be further developed and tested through a continuous programme of research and analysis.

2.3.10 To date, research and analysis has identified and categorised a number of key risks that we will monitor:

- ▶ Failure to comply with the automatic enrolment duties and safeguards: A key strategic risk for us is that during staging (October 2012-February 2018) a sizeable proportion of employers fail to automatically enrol eligible jobholders (and opt in non-eligible jobholders) into a qualifying pension scheme. Also, this will be an ongoing risk as the duties continue to apply post staging to employers. In addition, there is a risk that employers may seek to induce or screen out workers during the recruitment process to circumvent their duties. There is a potential additional risk in that the root cause of an employer's non-compliance may be their reliance on a pension/payroll provider to support the administration of their duties in an accurate and timely manner.
- ▶ In managing this risk effectively, it is important to establish a pro-compliance culture to encourage timely compliance. We have strategies in place to educate and support employers through the automatic enrolment process and mechanisms for the early detection and remedy of declaration failures. Key intelligence sources in detecting this risk are the declaration system, whistleblowing reports and proactive exercises to check compliance.
- ▶ Our detailed guidance explains the duties and safeguards [www.tpr.gov.uk/detailed-guidance](http://www.tpr.gov.uk/detailed-guidance).
- ▶ Poor administration in respect of the duties in the 2008 Act: Research has indicated a risk of employers not meeting their duties because they have underestimated or not properly planned for the administrative requirements of the automatic enrolment policy. Another risk in this category is that poor record-keeping and administration may lead to issues such as workers receiving incorrect benefit accruals.

- ▶ A key source of intelligence in this respect is the system which will detect employers who fail to complete their declaration of compliance on time. We will work with employers to get them back on track to compliance. Another key intelligence source may be whistleblowers, our customer support staff are trained in identifying and handling such calls. We also have a number of strategies in place to educate employers and trustees about their administrative duties and to support them in meeting these requirements.
- ▶ Qualifying pension scheme: When workers are enrolled into a pension scheme, that scheme must meet set criteria to be deemed suitable for automatic enrolment eg a DC scheme must have minimum level of contributions. These criteria are set out in our detailed guidance.
- ▶ Our detailed guidance also clarifies that these criteria 'are the minimum features the pension scheme is required to have' and refers to other necessary characteristics to deliver a good outcome for their workers' savings. Additionally, the regulator has developed six principles with regard to good DC pension provision.
- ▶ The compliance and enforcement team's primary focus will be the employer's legal obligations under the 2008 Act to select a qualifying scheme for automatic enrolment; whilst other teams within the regulator will focus on the standards of the scheme and how those can be improved. The teams will share information which may inform the other's work.
- ▶ Incorrect automatic enrolment advice received: There is currently no regulation of individuals or firms providing pension advice to employers which may lead to incorrect advice being given to employers with regard to, eg the selection of pension schemes for their automatic enrolment duties resulting in them being non-compliant with the 2008 Act. The level of risk in this respect is currently difficult to assess, but is likely to affect small and micro employers to a greater extent than large employers who tend to have greater accessibility to good quality financial and legal advice.

- ▶ Our detailed guidance cites the importance of seeking advice from reputable sources and provides information on where to obtain details of independent advisory services and points to consider when taking advice.
- ▶ Also, there is a risk of employers not being able to access advice of any kind, because they are not a commercial prospect for Independent Financial Advisers (IFAs) or they do not have an informed accountant/business adviser.
- ▶ Fraud: Intentional acts of fraud may include the the fraudulent evasion of contributions and the provision of false or misleading information in order to avoid certain duties (eg the provision of misleading or incorrect declaration information).
- ▶ Our intelligence assets will be fully exploited to detect such cases and evidence of deliberate fraud will be given appropriate priority in our operational risk assessment process. Fraud prevention strategies will also be used, and we will provide education and guidance on preventing fraudulent behaviour.
- ▶ Unpaid contributions: Where an employer fails to pay contributions due we may, in certain circumstances, take enforcement action under the relevant section of pensions legislation including s111A of the 1993 Act, s88 of the 1995 Act, or s228 of the 2004 Act. Employers who have discharged their duties under the 2008 Act but then fail to pay the contributions due, pose a significant risk to the success of automatic enrolment.

### 2.4 Operational risk assessment

2.4.1 At an operational level, we detect and assess compliance risks associated with individual employers or third parties. This process is triggered by intelligence deriving from the following sources:

- ▶ Informants/whistleblowers reporting a concern.
- ▶ Our proactive activity such as sampling declarations of compliance or targeted drives.
- ▶ Our investigation work uncovering potential risks.
- ▶ Other regulators and partners exchanging information.

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- 2.4.2 All information regarding an actual or potential breach will be recorded on our intelligence system. We create a case and perform an initial risk assessment which will result in one of the following: no further action; further intelligence development; issuing guidance or taking enforcement action.
- 2.4.3 We take a proactive, preventative approach in responding to intelligence that indicates a compliance risk by an employer/ third party at an early stage, to ensure we mitigate the risk and therefore reduce the potential for non-compliance.
- 2.4.4 For cases taken forward, there will be further information gathering (we have access to a wide range of sources) and analysis, supported by specialist computer software, to interpret and present the findings. We will then perform a full risk assessment to decide whether the case will be forwarded to the Investigation and enforcement team to commence an investigation; recommended for enforcement action; or recommended for targeted communications.

### Operational risk assessment matrix

- 2.4.5 We use our strategic knowledge regarding the current compliance risks with employers or third parties to define and prioritise the individual risk factors contained within the risk assessment matrix. Such risk factors may include types of breach; compliance history; the proportion of an employer's workforce affected by a potential breach and any other factors appearing to us to be relevant. Individual risk factors may be increased or decreased to reflect our strategic priorities at that time.
- 2.4.6 The risk assessment matrix is completed using relevant information and intelligence gathered. Risk factors are weighted to reflect the fact that we consider some risk factors to be more serious than others.
- 2.4.7 In deciding our approach and whether to take regulatory action, we take into account mitigating factors such as whether employers and third parties have acted reasonably and with good intent in which case we will generally provide support and education to achieve compliant behaviour. Likewise, intentional circumvention or avoidance of the duties, or fraud, will be addressed decisively by the regulator.
- 2.4.8 We will always consider the quality and coverage of our intelligence, taking into account factors such as the reliability of our sources and whether or not information has been corroborated.

2.4.9 The risk assessment matrix will use a 'traffic light' system to help prioritise our responses:

- ▶ High risk 'red' cases are passed to our Investigation and enforcement team for priority intervention. Such cases may relate to the financial implications of non-compliance for example, or instances where an employer, repeat offenders or third party has ignored or circumvented previous interventions.
- ▶ 'Amber' cases indicate a medium risk, recognising a lower level of concern than 'red' cases but where the implications may still be significant. Such cases may require further intelligence development or intervention to assess the compliance risk.
- ▶ 'Green' cases indicate a low risk and may include instances where limited intelligence has to date been received or where an employer/third party is understood to be taking remedial action.

2.4.10 Should the case be referred to our Investigation and enforcement team, the levels of risk may fluctuate during the course of the case. We will therefore continually review our risk assessment throughout the investigation.

## 2.5 Success

2.5.1 We will measure the success of our risk-based approach by considering the extent to which it enables us to maximise compliance with the employer duties and safeguards in the 2008 Act and associated pension legislation.

2.5.2 We will consider the success of our framework in light of the effectiveness of our strategies and ability to remedy identified instances of non-compliance in an evidence-based and consistent way. This will involve:

- ▶ analysing compliance levels with Part 1 of the 2008 Act
- ▶ evaluating targeted prevention, deterrence and enforcement measures to ensure their effectiveness
- ▶ ensuring a sound knowledge of the compliance and risk landscapes to be able to identify and monitor risk
- ▶ evaluating the efficiency and utility of collaboration with other regulators and other external partners in identifying and assessing risk
- ▶ testing the effectiveness and efficiency of our policies and processes

2.5.3 We recognise the value in testing our approach and learning from our experiences and those of our partners. This framework will evolve through time as we engage our 'test and learn' strategies to identify the most effective methods.

## 3. Investigation and enforcement policy

### 3.1 Our approach to enforcement

3.1.1 In this chapter we provide an explanation of what employers and associated third parties can expect from us whilst carrying out our compliance and enforcement activities in relation to the 2008 Act. This also reflects our intention of operating using transparent enforcement policies and procedures. Having such a policy in place helps us to promote an efficient and effective approach to regulatory investigation and enforcement, which improves regulatory outcomes without imposing unnecessary burdens.

### 3.2 Investigations

3.2.1 Where there are grounds to believe a breach of the employer duties, safeguards or other requirements under the legislation may have occurred, in line with our risk-based approach, the matter will be referred for consideration for investigation or enforcement action.

3.2.2 In cases which require investigation, we may need to make some further enquiries to gather evidence. We assess the individual circumstances, the context of each breach and any aggravating or mitigating factors which may affect the decision to take enforcement action (and what form enforcement action should take). We may seek information, documentation or an explanation on a voluntary basis from an employer, their representative, pension scheme trustees/managers or any other relevant person. A reasonable amount of time will be allowed for a response to be provided, taking into account the amount and complexity of information requested, and the potential breach to which it relates. In some cases where we have clear evidence that a breach has occurred eg when an employer fails to complete their declaration of compliance with us, we will go straight to enforcement action to ensure compliance.

3.2.3 This process may involve the use of our statutory investigation powers. However, an investigation by the regulator does not automatically mean that we will impose sanctions.



3.2.4 In cases that have been referred for investigation, we may want to make further enquiries because:

- ▶ a worker alleges their employer is not complying with their duties
- ▶ an allegation or complaint about inducement or prohibited recruitment conduct has been made
- ▶ the employer or a third party (either voluntarily, or acting upon a statutory duty) makes a breach of law report to the regulator
- ▶ information is passed to the regulator by another authority
- ▶ potential breaches are detected as a result of the regulator carrying out proactive enquiries

3.2.5 Before making decisions, we may require the employer to provide us with information or other evidence of compliance with the duties. This may include (but is not limited to):

- ▶ copies of opt-out notices
- ▶ copies of opt-in and joining notices
- ▶ evidence of enrolment into a relevant pension scheme
- ▶ evidence of contributions paid – which may be contained in an employer's payroll records
- ▶ any other relevant records regarding their workforce (in order to ensure that all those who should, have been automatically enrolled)

3.2.6 We may also contact other persons or third parties if we believe they may be in possession of relevant information or documents. This may include:

- ▶ third parties giving advice or providing business services to an employer, such as an accountant or IFA
- ▶ trustees or managers of occupational pension schemes, or providers of personal pension schemes
- ▶ workers (or potential employees in the cases of suspected prohibited recruitment conduct)

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- 3.2.7 As part of the investigation, we may need to take statements from individuals and/or conduct interviews with them. We will give individuals reasonable notice if we intend to visit them or require them to attend an interview. If a criminal offence is being investigated the interview will be under caution and recorded in line with PACE. Where applicable, we also will abide by RIPA when gathering information.
- 3.2.8 All information and evidence gathered during an investigation which amounts to personal data will be held securely and disposed of in accordance with the Data Protection Act 1998. We will disclose information only where we can lawfully do so and in line with the CPIA governing disclosure in criminal matters and the 2004 Act governing disclosure of information received by the regulator in the exercise of its statutory functions.
- 3.2.9 All investigation activities will only be undertaken when it is necessary to do so. We will record our decision-making and the justifications for our actions. We will continually risk assess a case to ensure the right course of action is taken. We will conduct investigations in line with our obligations under the Human Rights Act 1998 and the Equality Act 2010.
- 3.2.10 All our investigators are professionally accredited.

#### **Statutory investigation powers**

- 3.2.11 We have the power to issue notices under s72 of the 2004 Act requiring any person to provide information, or produce any documents in the manner, place and period as specified in the notice. This may include giving reasonable notice to attend for an interview or to provide an explanation of any document or information specified in the notice.
- 3.2.12 We also have the power under s74 of the 2004 Act to enter an employer's business premises and conduct an inspection for the purpose of investigating whether an employer has not complied, or is not complying, with the employer duties or safeguards.
- 3.2.13 We will conduct an inspection when we consider it to be a reasonable and proportionate way of obtaining the relevant information that we need to progress a case. We will ordinarily give reasonable notice of an inspection to an employer before a visit takes place. This will enable the relevant information and records to be prepared in advance and enable the inspection to take place quickly and effectively causing minimum disruption to the employer and their business (see Appendix A).

- 3.2.14 There may be occasions where we may decide to inspect an employer's business premises without prior notice. We may consider this option where we have a reasonable belief that information or documents will be destroyed or altered if advance warning is given of the intention to conduct an inspection.
- 3.2.15 Where a person does not have access to the documents or the information requested in the s72 notices or requires a longer period in which to locate or gather together the requested information, they must tell us otherwise sanctions may be imposed for non-compliance with the notice. We will usually accede to reasonable requests for an extension of time.

#### **Non-compliance with an investigation**

- 3.2.16 If a person, issued with a notice under s72 in respect of the employer duties under the 2008 Act, fails to produce the information and/or documents specified in the notice, we may issue a Fixed penalty notice of £400. Further steps we can consider in the event of continued non-compliance with the s72 notice include issuing an Escalating penalty notice, which will accrue at a prescribed daily rate of £50-£10,000 (depending on the number of persons the employer has in their PAYE scheme).
- 3.2.17 The following list describes other ways an employer or third party may fail to comply with the investigative powers. In these situations we may consider that, in the absence of a reasonable excuse, a criminal offence has occurred. This may lead to a criminal prosecution under s77 of the 2004 Act. Criminal offences are committed where, without reasonable excuse, a person:
- ▶ neglects or refuses to comply with a request for information made under s72 of the 2004 Act
  - ▶ intentionally delays or obstructs an inspector
  - ▶ neglects or refuses to produce documents, answer questions or provide information required during an inspection
  - ▶ intentionally and without reasonable excuse alters, suppresses, conceals or destroys any document which is liable to be required to be produced under s72 or s75 of the 2004 Act

3.2.18 Under s80 of the 2004 Act it is a criminal offence to knowingly or recklessly provide information to the regulator that is false or misleading, when it is:

- ▶ given in compliance with a requirement to provide information to the regulator
- ▶ where it is given in circumstances where it is reasonable to expect or know that the regulator will rely upon it for the purpose of exercising its functions under the 2004 Act or the Pensions Act 1995

3.2.19 Where we decide that a criminal prosecution may be appropriate we will assess the case in accordance with our separate prosecution policy.

## 3.3 Making enforcement decisions

3.3.1 Once the information and evidence has been gathered, we will determine what, if any, enforcement action should be taken. The decision whether or not to take enforcement action will take into account all relevant considerations including any aggravating or mitigating factors, which in turn may affect the choice of enforcement tool or sanction.

3.3.2 There is no statutory definition for aggravating or mitigating factors and it would be impractical to provide an exhaustive list of everything that may be considered aggravating or mitigating. Some examples, however, are provided below. These examples are not comprehensive, nor are they prescriptive.

### Aggravating factors

- ▶ A large number of workers or a large proportion of the workforce is affected by the non-compliance.
- ▶ Evidence indicates a systemic problem.
- ▶ The financial impact on individual and/or groups of workers is high.
- ▶ There has been a serious or prolonged breach of the law.
- ▶ An employer has gained financial benefit, or a competitive advantage, over its competitors by avoiding their duties.

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- ▶ The employer has deliberately sought to conceal their non-compliant behaviour by giving false or misleading information to workers or the regulator.
- ▶ The breach of the law was intentional or was easily foreseeable or preventable.
- ▶ The breach compromises the regulator's ability to carry out its regulatory functions or undermines employer confidence in the automatic enrolment regime.
- ▶ Conduct of the employer once the non-compliance has been brought to their attention, eg the employer:
  - is intentionally slow or unco-operative to resolve any issues the regulator has brought to their attention
  - persistently fails to accept responsibility for non-compliance indicating entrenched behaviour
  - ignores or is deliberately obstructive towards the regulator
- ▶ A poor track record of complying with the duties or safeguards eg failing to prevent recurring non-compliance despite previous intervention by the regulator.
- ▶ Dishonesty or evidence of wilful failures to comply.
- ▶ Non-compliance involving multiple types of breaches eg breaches of the duties and failure to pay contributions on time.

#### **Mitigating factors**

- ▶ A small number of the workforce has been affected.
- ▶ There is no evidence of a systemic problem.
- ▶ The employer identifies and voluntarily brings any non-compliance to the attention of the worker and/or self reports to the regulator, and is either taking steps to resolve the non-compliance or has already put matters right.
- ▶ The non-compliance has minimal impact on workers in terms of their rights or entitlements under the scheme and can therefore be viewed as a 'minor' or 'technical' breach of the legislation.

- ▶ The employer makes good any past detriment caused to the workforce and has taken steps to prevent recurrence.
- ▶ Good and demonstrable track record of compliance with the employer duties.
- ▶ Conduct of the employer where non-compliance is brought to their attention. For example, the employer:
  - recognises and accepts responsibility at an early stage for the non-compliance
  - is co-operative and willing to put things right
  - puts in place measures to comply without hesitation or delay
- ▶ The employer has a reasonable excuse for failing to comply. For example, if the failure to comply was caused by factors outside of their control; or if they are a small or micro employer, a key person within the business has been absent due to their personal circumstances (such as serious illness).
- ▶ A third party was wholly or partly to blame for the employer failing to comply with a duty.

## 3.4 Enforcement options

- 3.4.1 There are a range of enforcement options available for us to use where a duty or requirement under the 2008 Act is being contravened, or has been contravened. These are outlined in the compliance and enforcement strategy.
- 3.4.2 Our enforcement powers can be applied to employers based in the UK, and also to those employers not based in the UK where they have duties under the 2008 Act.
- 3.4.3 Where an employer has either failed to complete their declaration of compliance with us or failed to pay contributions, we will usually issue the appropriate Statutory notice directly upon detection of the breach. Where an investigation is necessary, enforcement decisions will be made on a case-by-case basis. We make enforcement decisions in accordance with our guidance and policies, taking into account any mitigating and aggravating factors and the most appropriate enforcement action to take to ensure compliance.

3.4.4 Any enforcement decision may also take into consideration a claim by an employer that financial hardship is the cause of any non-compliance with its duties. In these circumstances we would usually expect an employer to be able to provide supporting evidence for its claim as well as reasonable proposals and a timescale for the non-compliance to be remedied.

3.4.5 There are different types of breaches under the 2008 Act (and associated pensions legislation) with a range of enforcement powers and sanctions available to address them. This chapter explains our enforcement options in more detail, however the powers that we may use are geared towards improving compliance outcomes in the following ways:

- ▶ Prevention: the employer may need to take steps to address and prevent the recurrence of conduct that breaches the 2008 Act and associated pensions legislation.
- ▶ Remedy: the employer may need to take steps to 'put matters right' and correct breaches of the 2008 Act and associated pensions legislation.
- ▶ Restoration: the employer may need to restore loss or detriment caused to the jobholder by putting them into the position they would have been in, had the breach of the 2008 Act and associated pensions legislation not occurred.
- ▶ Deterrence: the breach is not able to be 'put right' or remedied, but a sanction is appropriate to act as a deterrent to the employer and other employers.

In addition, an employer may breach the employer duties due to factors outside of their control. As a result we have powers available to address third party compliance issues which we will exercise where it is warranted and appropriate to do so.

3.4.6 The following tables set out the enforcement powers that may be used by the regulator in order to achieve the compliance outcomes of prevention, remedy, restoration and deterrence. **It should be noted that the following tables are designed to give guidance only and we will always want to consider the precise circumstances of any case before deciding on the appropriate sanction to be used.**

### Compliance outcome: Prevention

Breaches that can be prevented in the future include:

- ▶ inducing an entitled worker or jobholder to opt out of, or leave, their pension scheme ('inducements')
- ▶ prohibited recruitment conduct

#### Enforcement approach

Guide 8 of our detailed guidance gives an indication of what type of conduct we may consider to be prohibited and it clarifies the law relating to inducements, by providing examples of cases that we are likely to consider clear cut and less clear cut [www.tpr.gov.uk/docs/detailed-guidance-8.pdf](http://www.tpr.gov.uk/docs/detailed-guidance-8.pdf)

Where the use of enforcement powers is appropriate, we may issue Compliance notices under s35 of the 2008 Act in relation to breaches of the inducement safeguards and under s51 of the 2008 Act in relation to prohibited recruitment conduct. These notices can be used to set out the steps an employer must take (or refrain from taking) in order to remedy the breach, but also to prevent the breach from being repeated. We will allow the employer a reasonable amount of time to put measures in place to prevent a repeat of the non-compliance. The employer will be required to confirm or demonstrate they have put in place measures to prevent a recurrence of the non-compliance.

If the non-compliance persists after the deadline given in the Compliance notice has passed we may issue monetary penalties. The penalties and approach for breaching the inducement provisions are outlined in the following chapter which sets our enforcement powers for requiring an employer to take remedial action.

The penalty for prohibited recruitment conduct is a fixed penalty and is higher than fixed penalties for other breaches of the duties, to reflect that employers who deliberately undertake prohibited recruitment conduct are in effect trying to avoid all their duties. The amount of the prohibited recruitment conduct fixed penalty depends on the number of persons in an employer's Pay As You Earn (PAYE) scheme. The penalty sizes are:

- |                                 |        |
|---------------------------------|--------|
| ▶ Number of persons 1-4         | £1,000 |
| ▶ Number of persons 5-49        | £1,500 |
| ▶ Number of persons 50-249      | £2,500 |
| ▶ Number of persons 250 or more | £5,000 |

If the prohibited recruitment conduct is repeated on a second or subsequent occasion (despite a Compliance notice having been previously issued to the employer directing them to prevent a recurrence of the breach) we may issue a penalty notice without first issuing a Compliance notice.

continued...



In addition, if an entitled worker or jobholder is recruited by an employer and there is evidence of prohibited recruitment conduct, we may contact jobholders who have opted out to establish whether they want to be put back into an automatic enrolment scheme. We may decide to treat the recruitment of the jobholder and subsequent opt-out as an inducement and issue a Compliance notice, directing the employer to remedy the breach and to restore the jobholder to the position they would have been in, had the inducement breach not occurred.

It is important to note that the safeguards came into force from 1 July 2012. Employers must ensure compliance with this element of the legislation from this date regardless of them having a later staging date.

#### **Compliance outcome: Remedy**

Breaches that are remediable include (but not limited to):

- ▶ failure to automatically enrol eligible jobholders
- ▶ failure to enrol non-eligible jobholders who give notice to 'opt in'
- ▶ failure to arrange active membership for an entitled worker
- ▶ inducements

#### **Enforcement approach**

Where enforcement action is appropriate, the first formal step will usually be the issuing of a Compliance notice under s35 of the 2008 Act. This will set out what an employer must do so that the breach does not persist, and will allow the employer a reasonable amount of time in which to put matters right.

If the non-compliance continues we may impose monetary penalties. The first type of penalty that may be used is a 'fixed penalty' of £400. A Fixed penalty notice is likely to be issued where an employer has failed to take any steps, or is doing 'too little, too late', in response to a Compliance notice. This penalty is therefore intended to act as a 'wake-up' call to employers. The employer will be given a reasonable period of time to pay the penalty (a minimum of four weeks) from when the penalty notice is issued. In addition, the employer will be required to demonstrate they have put right the breach.

[continued...](#)

Where the employer fails to take the steps necessary to comply (despite having been issued with a fixed penalty) we may issue a further monetary penalty to deter or discourage continuing non-compliance by the employer. This further penalty is based on the number of persons the employer has in their PAYE scheme and will accrue at a daily rate until compliance is achieved. This is known as an 'escalating penalty' and the daily accrual rate is:

- |                                 |         |
|---------------------------------|---------|
| ▶ Number of persons 1-4         | £50     |
| ▶ Number of persons 5-49        | £500    |
| ▶ Number of persons 50-249      | £2,500  |
| ▶ Number of persons 250-499     | £5,000  |
| ▶ Number of persons 500 or more | £10,000 |

An Escalating penalty notice will specify the date by which the employer must comply with the Compliance notice and when the escalating penalty will start to accrue.

For those who breach the law on a second or subsequent occasion, and in the event a Compliance notice is issued but not complied with, we may decide to issue an Escalating penalty notice, rather than a Fixed penalty notice.

#### **Compliance outcome: Restoration**

Breaches requiring restoration include:

- ▶ Missing contributions – this is where an employee has built up a backlog of entitlement to contributions due to the employer's failure to achieve active membership at the right time.
- ▶ 'Unpaid' contributions – this includes the ongoing contributions made by employees that the employer deducts from their pay but fails to pay to the pension scheme, and/or the employer's own contributions to the pension scheme which they have failed to pay.

#### **Enforcement approach**

As far as possible, our main aim will be for workers to be restored to the position they would have been in with regard to contributions to their pension scheme, had no breach occurred. We would normally expect that, as a minimum:

- ▶ automatic enrolment for eligible jobholders be backdated to the date they first became eligible jobholders
- ▶ non-eligible jobholders be given a short opportunity (of no less than 14 days) to retrospectively 'opt in' as far back as the date they first became non-eligible jobholders

continued...

Enforcement action may not be appropriate in relation to backdating entitled workers who wish to join a scheme. Individuals who have left employment between the staging date and the date the duties are complied with might be difficult to find and communicate with and enforcement action may not be appropriate. The facts of the case will determine the appropriateness or otherwise of enforcement action.

If enforcement action is appropriate, we will issue the appropriate notice to the employer requiring them to pay any employer (and, where appropriate employee) contributions that are outstanding and will allow a reasonable amount of time to restore those contributions. For unpaid contributions, this will be an Unpaid contributions notice under s37 of the 2008 Act. For missing contributions, we will include any directions in a Compliance notice issued under s35 of the 2008 Act.

In addition, where enforcement action has been commenced to address contributions that are missing or unpaid, we may use our discretionary powers under s38 of the 2008 Act to require the calculation and repayment of contributions. Therefore, where an Unpaid contributions notice or Compliance notice is to be issued we may include:

- ▶ a requirement for the employer to calculate the amount of contributions if the scheme involved is a DC or workplace personal pension (WPP) scheme
- ▶ a requirement for the employer to pay the employer contributions portion of the unpaid or missing contributions with the jobholder having the option of paying their part of the contributions but not being obliged to do so. However, if they choose to do so, they may pay it in instalments
- ▶ a requirement for the employer to pay both their own contributions and the jobholder's contributions, where the scheme is a DC or WPP scheme and the employer fails to pay their portion of the unpaid or missing contributions within three months of the date of issue of the notice

Where the scheme is a DC or WPP scheme, we may also use our discretionary power to estimate the amount of contributions using information other than that provided by the employer, and direct the employer to calculate and pay interest. Interest may be charged from the appropriate start date up to the date the payment is made.

Generally, we would be receptive to an employer proposing to make a payment arrangement with the trustees or managers of the pension scheme to pay the outstanding contributions in instalments, provided we are satisfied that:

- ▶ the trustees and managers agree to the arrangement
- ▶ the length of the arrangement is considered reasonable

[continued...](#)

There may, however, be circumstances where using our discretionary powers under s38 are not appropriate. Such cases may include:

- ▶ where there are less than three months outstanding contributions and jobholder contributions have not been deducted from earnings during the period
- ▶ where the jobholder is no longer employed by the employer on the date of the notice is issued

If we have included a requirement to restore outstanding contributions, the employer must evidence either payment of the contributions (or that a payment arrangement has been put in place) into a DC or WPP scheme, or in the case of a missing contribution due to a DB scheme, accrual of pensionable service from the automatic enrolment date.

If the employer enrolls their non-eligible jobholders but fails to pay, or put in place, a payment arrangement as required regarding missing contributions included in the Compliance notice, we will usually continue to treat this as a compliance failure and continue enforcement action as appropriate. If non-compliance persists in relation to unpaid or missing contributions, we may issue monetary penalties in the same way as for remedial breaches explained in the previous section.

Note: The regulator also has powers to address unpaid contributions in relation to pension schemes that are not 'qualifying schemes' within the meaning of s16 of the 2008 Act. These powers potentially include the use of an Improvement notice under the 2004 Act, civil penalties under the 1995 Act and recovery of unpaid contributions which is also a power within the 2004 Act.

#### **Compliance outcome: Deterrence**

Non-remediable breaches include (but not limited to):

- ▶ failure to keep certain records, eg where the employer destroys the records instead of retaining them
- ▶ refunding contributions to jobholders who opt out, but do so later than the prescribed period
- ▶ criminal offences where the behaviour is dishonest, wilful or fraudulent

#### **Enforcement approach**

Certain breaches of the employer duties cannot be put right or remedied. Some of these breaches are likely to be 'minor' or may reveal that an employer has complied with the spirit of the legislation but has inadvertently made a 'technical' or procedural mistake. When viewed in isolation these might not raise any significant concerns, therefore the appropriate response in these types of cases may be advice or a written warning.

[continued...](#)

However, where these breaches indicate intentional non-compliance, we may use our powers to deter this behaviour. In these circumstances a Compliance notice will not be issued because the breach cannot be put right. Instead we may issue a fixed penalty of £400. If the employer pays the penalty this will be the end of the enforcement action taken on this occasion.

Other non-remediable breaches of law may include criminal offences such as:

- ▶ wilfully failing to comply with the employer duties to automatically enrol and re-enrol jobholders within the prescribed timescales
- ▶ fraudulently failing to pay over to the pension scheme any worker contributions deducted from pay packets within the prescribed timescales or where the contributions money is no longer recoverable
- ▶ knowingly or recklessly providing false or misleading information to the regulator

We have the power to prosecute certain offences under pensions legislation, in particular behaviour which is dishonest, wilful or fraudulent. This is deemed to be the most harmful and detrimental form of non-compliance and, as such we consider this unacceptable. We will aim to prosecute these offences in order to punish this type of behaviour and to act as a deterrent to others.

Employers are likely to have been contacted by us many times before the failure to comply is deemed to be wilful. For example, a combination of Compliance notice, fixed and escalating penalties may all have been imposed on the employer before we consider the behaviour to represent a wilful failure to comply. In relation to other breaches, such as fraudulent evasion of contributions, provision of false information or where dishonesty is suspected, we may not have had prior contact with the employer or have given previous warnings.

Deciding to commence a prosecution is a serious matter. For prosecution to be an appropriate sanction, we must be satisfied that the evidence is sufficient, that it is in the public interest to prosecute. Each potential prosecution case will be tested against the criteria set out in our separate Prosecution policy. Where a criminal offence is successfully prosecuted the court decides on the fines and/or imprisonment. Under the 2008 Act the court may impose the following sanctions where an employer has wilfully failed to comply with the duty to automatically enrol or re-enrol eligible jobholders or those jobholders who have requested to opt in:

- ▶ on conviction on indictment, a term of imprisonment not exceeding two years, or a fine, or both
- ▶ on summary conviction, a fine not exceeding the statutory maximum

continued...

### **Third party compliance issues**

An employer may be in breach of the duties under the 2008 Act due to factors outside of their control. For example, an employer may have breached an employer duty or safeguard, but this is wholly or partly the result of a failure by a third party.

#### **Enforcement approach**

If the third party does not comply with the third party Compliance notice, we may issue a fixed penalty of £400. The third party will be given a reasonable period of time to pay the penalty. This will usually be a minimum of 4 weeks from when the penalty notice is issued. In addition, the third party will be required to demonstrate the steps they have taken or are taking to comply with the notice.

If the third party continues to fail to comply with the third party Compliance notice, we may issue an Escalating penalty notice, which accrues at a prescribed daily rate of £200, until the third party notice is complied with.

In addition to considering the role of third parties in the context of 2008 Act compliance, operational activity may also identify issues relating to the regulator's wider statutory objectives, such as protecting the benefits of members of pension schemes (see paragraph 1.9). For example, we may become aware of circumstances which could cause us to have concerns as to whether a trustee was a 'fit and proper person' to be a trustee of a pension scheme. We will want to consider the matter, and decide whether or not to suspend a trustee, appoint independent trustees or issue a prohibition order.

#### Civil recovery

- 3.4.7 We are responsible for collecting fixed and escalating penalties. We will make a written demand to an employer or third party for the payment of the penalty and give a reasonable timeframe to pay. There are a variety of ways to make payment to us including online, by phone or by BACS. We would expect full payment but, depending on the circumstances, we may agree to implement a payment plan. We will issue a receipt in all cases.
- 3.4.8 However if the debt remains outstanding and no payment plan is in place or it is not being adhered to, we may initiate civil recovery proceedings through the courts to recover any unpaid penalty debt. This may include instruction of bailiffs.

#### Publicity

- 3.4.9 Publishing the outcomes and wider lessons from our compliance work is an important way of encouraging employers to ensure they comply with their legal obligations. Publication also raises awareness of the risks of non-compliance and helps employers to avoid the problems that have led others into compliance difficulties. Publication also enables third parties to understand how their actions may have an impact on the employer duties. We put great emphasis on preventative work, providing guidance on the legal requirements in the 2008 Act and associated pensions legislation; and to help spread and build good practice in collaboration and partnership with the regulated community.
- 3.4.10 We will publish regular reports on our enforcement work in order to promote learning and show lessons learned through our work.
- 3.4.11 Decisions to publish will be taken on a case-by-case basis, in line with the regulator's publication policy.
- 3.4.12 As part of the decision process we will consider whether it is in the public interest to publicise the outcome of the case, particularly where it could draw attention to the need to comply or deter anyone tempted to disregard their duties under pensions law.

## 3.5 Challenging an enforcement decision

### Statutory review process

- 3.5.1 If an employer or other recipient disagrees with the issue of a Statutory notice (such as a Compliance notice issued under s35 or a Fixed penalty notice issued under s40(1)), they can apply to us to carry out a 'review' under s43 of the 2008 Act. We will set out the right of review in all of the notices that we issue as well as how to apply for a review.
- 3.5.2 A review may be applied for:
- ▶ online via our website at [www.tpr.gov.uk/challenge-notice](http://www.tpr.gov.uk/challenge-notice)
  - ▶ by telephone to 0800 600 2475
  - ▶ by post (using the review application form at Appendix C which can also be downloaded from our website)
  - ▶ by email (including a scanned copy of the completed review application form) to [CandE@autoenrol.tpr.gov.uk](mailto:CandE@autoenrol.tpr.gov.uk)
  - ▶ in person (in limited circumstances and by prior appointment only)
- 3.5.3 Supporting documents may also be submitted in support of a review application. These might include records which demonstrate how the employer duties have been complied with or other documents in relation to the status of the employer, workers or the pension scheme.
- 3.5.4 The review application may be made by the recipient of the notice or by an authorised representative. An authorised representative must have the written permission of a senior member of the recipient organisation, for example the chief executive officer, a director, a partner or the business owner.
- 3.5.5 An application for a review must be made within 28 days from when the notice was first issued.
- 3.5.6 However, where we consider it appropriate, we can carry out a review of a notice at any time up to 18 months after a notice is issued. It may be appropriate for us to do this when new information is received which indicates a notice may need to be varied, substituted or revoked, but the employer is unable to request a review because 28 days has expired since the notice was first issued.



### 3. Investigation and enforcement policy

- 3.5.7 We will write to the person who applied for a review when it has been accepted for review. We may also ask for additional information.
- 3.5.8 The Statutory notice will be suspended for the length of time it takes to complete the review.
- 3.5.9 We will appoint a review officer to carry out the review. This will be someone who has not previously been involved with the decision to issue the notice.
- 3.5.10 We will usually complete the review within 10 working days of the written notification that the application has been accepted and a review will be carried out. If this is not possible, we will contact the applicant and advise when a decision is anticipated.
- 3.5.11 We will issue the decision reached by the review officer in writing. The decision will be one of the following:
- ▶ The notice or penalty is confirmed – this means that the original notice or penalty must be complied with in full. We will advise you of the new compliance date which takes into account the time we have taken to conduct the review.
  - ▶ The notice or penalty is varied – this means that we will issue you with an amended notice or penalty which contains some new or revised directions and/or a new timescale for compliance. You must comply with the steps and timescales specified in the varied notice or penalty by the new compliance date.
  - ▶ The notice or penalty is being substituted with another notice or penalty – this means that we will issue you with a different notice or penalty. You must comply with the steps and timescales specified in the new notice or penalty by the new compliance date.
  - ▶ The notice or penalty is revoked – this means that you no longer need to comply with the requirements of it. If a penalty notice is revoked, we will refund any penalty payments you have made.

3.5.12 We may decide not to carry out a review in which case we will advise the review applicant in writing within three days of the receipt of the review application. This is likely to happen if:

- ▶ we cannot identify which notice is the subject of the review application
- ▶ the application was submitted outside of the 28 day period and the information available to us does not indicate that the notice needs to be revoked, varied or substituted
- ▶ the grounds for review are not stated or have already been considered in a previous review

3.5.13 Where we have reviewed a penalty notice, or decided not to carry out a review of a penalty notice, we will include details of the appeal procedure to the Tribunal.

### **Appeal process for penalties**

3.5.14 If the employer or third party disagrees with our review decision regarding the issue of a fixed or escalating penalty or the amount payable under the notice, there is a right of appeal to the Tribunal.

3.5.15 Under s44 of the 2008 Act an appeal (also known as a 'reference') must be made directly to the Tribunal. A Tribunal appeal can only be made once a statutory review has been completed, or if we have informed an applicant that we have decided not to carry out a review.

3.5.16 The Tribunal is responsible for issuing forms and guidance in respect of such appeals. These are available on the Tribunal website at [www.gov.uk/appeal-against-a-pensions-regulator-fine](http://www.gov.uk/appeal-against-a-pensions-regulator-fine).

# Appendix A

## A guide to inspections

This guide is aimed at employers who are subject to the employer duties and safeguards under the Pensions Act 2008 and sets out what can be expected when an inspector from The Pensions Regulator (the 'regulator') has confirmed that an inspection will take place.

### 1. Introduction

- 1.1 We are visiting you to establish whether you have complied or are complying with the employer duties and safeguards under the Pensions Act 2008<sup>2</sup> (the '2008 Act') and any other relevant legal requirements, such as paying contributions on time.
- 1.2 Your business is being inspected because we believe there may be a specific problem complying with the law.
- 1.3 This guide tells you:
  - ▶ who we are
  - ▶ what happens during an inspection
  - ▶ your rights
  - ▶ what happens after an inspection
  - ▶ sources of further information

### 2. Who we are

- 2.1 As The Pensions Regulator for the UK it is our responsibility to maximise employer compliance with the automatic enrolment duties set out in the 2008 Act.
- 2.2 Our inspectors are appointed under the Pensions Act 2004<sup>3</sup> (the '2004 Act') and have received relevant professional training. Inspectors have the power to enter premises and, amongst other things, can require any person on the premises to produce relevant documents and information. You should be aware that the word 'document' means information recorded in any form. For example, this includes electronic information and the inspector may require such information to be produced in a form which can be taken away or in a form that can be readily produced in legible form.

- 2.3 Premises are liable to inspection if an inspector has reasonable grounds to believe that:
- ▶ workers connected with our investigation are employed there
  - ▶ kept on the premises are documents relevant to the administration of the employer's business, the employer's duties or the administration of a pension scheme relevant to the discharge of those duties, or
  - ▶ administrative work connected with the employer's business is carried out there

### 3. What happens during an inspection?

- 3.1 All our inspections will take place during normal business hours.
- 3.2 You will have been sent a written Notice of Inspection which includes a schedule setting out the information, and documents the inspector requires you to produce for them to examine (unless it is an unannounced inspection).
- 3.3 On arrival the inspector and anyone else from the regulator accompanying the inspector, will always show you their identification. You may ask to see the inspector's identification if one is not shown to you. The inspector will explain the inspection process and answer questions you may have.
- 3.4 Depending on the size of your business and the reason for the visit, an inspection may last a few hours or it may take longer. We will try to keep to a minimum any disruption to your business.
- 3.5 An inspector may talk to any persons on the premises for the purpose for which the inspection is carried out. However, we expect in many cases it will mainly be staff working in human resources, payroll or finance roles who we talk to due to their familiarity with the company's records.
- 3.6 We will only ask for information or to see documents in order to check you are complying or have complied with the relevant legislation.
- 3.7 If we need to see other documents which may not be held or be accessible from the premises, or if we require an explanation of any document, we will allow a reasonable period of time to respond.

- 3.8 An inspector may take a copy of any document. In some cases an inspector may decide to take original documents from the business premises, for example if there is reasonable cause to believe they are at risk of destruction or alteration. We can retain these original documents for up to 12 months subject to a further extension if necessary. However, we will return original documents to you as soon as possible. If you tell us the documents are necessary for operating your business we will make copies for you to work from. We will hold securely all information and documents we take away.
- 3.9 An inspector may require electronic information to be produced in a form in which it can be taken away, either in legible form or from which it can be readily produced in a legible form.
- 3.10 An inspector has the power to enter premises and make inquiries necessary for the purpose of the inspection. It is a criminal offence to intentionally obstruct an inspector. Any assaults on our staff, or attempts to intimidate them, will not be tolerated and will be reported to the police immediately. On notification of the inspection date, if you believe you have a reasonable excuse for delaying an inspection, please let us know. We will consider what you tell us and, if it is reasonable to do so, find another time to visit you.

## 4. Your rights

- 4.1 We understand you may want to consult with an adviser and be represented during our inspection. However, we do not need to wait for you to seek advice before we start conducting the inspection.
- 4.2 You are free to leave the business premises at any time during the inspection.
- 4.3 You are not required to produce any document which is a 'protected item' as defined in s311 of the 2004 Act<sup>4</sup>. Protected items are broadly materials which are subject to legal professional privilege. If we find that we have taken possession of any protected items, we will return these to you or destroy them promptly, and will not make use of privileged information in our possession at any time.

- 4.4 You have the right to complain if you believe you have been treated unfairly by an inspector. If you decide you want to make a formal complaint, please submit your complaint in writing to our Corporate Secretary at the address below. Please list your main areas of concern clearly and make sure you include all information relevant to your complaint:

The Corporate Secretary, The Pensions Regulator, Napier House, Trafalgar Place, Brighton, BN1 4DW.

Email: [complaints@thepensionsregulator.gov.uk](mailto:complaints@thepensionsregulator.gov.uk)

Fax: 01273 627630

Further information on how the regulator handles complaints can be found at [www.tpr.gov.uk/complaint](http://www.tpr.gov.uk/complaint)

## 5. What happens after an inspection

- 5.1 Inspectors will not normally be in a position to deliver a decision at the end of an inspection.
- 5.2 The inspector may need to review the information back at the office and may need to make further enquiries.
- 5.3 Enforcement powers may be used by the regulator to deal with breaches of the law that are identified, but this decision will never be made at the end of the inspection. The inspector will aim to contact you in writing within four weeks of the inspection with a decision, although in some cases it may take longer.
- 5.4 If breaches of the law are identified during the inspection or subsequently, but you take prompt and effective steps to put it right, this will be taken into account when considering the use of enforcement powers.
- 5.5 Alternatively, our decision may be that no further action is required because we have not identified any cause for concern. Another outcome is that we may deal with the matter informally and give you guidance where corrective action is needed.

## 6. Sources of further information

- 6.1 Please contact the inspector who wrote to you and who is named in the Notice of Inspection if:
- ▶ you have any questions about the inspection, or the information mentioned in this leaflet
  - ▶ you need help to deal with the inspection, for example English is not your first language or you would like us to use a certain communication format to communicate with you
- 6.2 For information and guidance about the employer duties and safeguards you can go to our website at [www.tpr.gov.uk/employers](http://www.tpr.gov.uk/employers) or contact us on 0845 600 1011. The Pensions Regulator cannot provide a definitive interpretation of the law. This publication must be read in conjunction with the relevant legislation.

# The Pensions Regulator

Napier House  
Trafalgar Place  
Brighton  
BN1 4DW

T 0845 600 1011  
F 0870 241 1144

[www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

**Title**  
**Job Title**  
**Address 1**  
**Address 2**  
**Address 3**  
**Address 4**  
**Address 5**  
**Postcode**

Dear **[Name]**

## **Notice of inspection of business premises**

I am an inspector appointed by The Pensions Regulator under the Pensions Act 2004 ('2004 Act') and this letter is notification that I intend to carry out an inspection at the following premises:

### **[Employer name and address]**

These premises are liable to an inspection under section 74 of the 2004 Act because I have reasonable grounds to believe that documents relevant to the duties of the employer and/or the safeguards under the Pensions Act 2008 ('2008 Act') are kept there.

The inspection will take place on **[date]** at **[time]**. I will be accompanied by **[name]**.

The reason for this inspection is to check whether you have and are continuing to comply with the employer duties and/or safeguards under the 2008 Act.

Attached is a schedule of the documents and/or information that I will need to examine, and a leaflet which explains the inspection process.

This letter and the schedule together constitute a formal notice to produce these documents to me on **[date]** at the above named address. If you think that you cannot comply with this notice for a particular reason, please contact me as soon as possible using my contact details shown below.

Any information obtained during the course of the inspection which relates to the business affairs of any person which is not in the public domain is 'restricted information' under section 82 of the 2004 Act, therefore The Pensions Regulator may not disclose this information to a third party unless authorised to do so under the 2004 Act.

**Please note that failure to co-operate with an inspection may constitute a criminal offence under the provisions of the 2004 Act.**

Yours sincerely

**[Name]**  
**Inspector**  
**Automatic enrolment, Investigation and enforcement unit**  
**T: 01273 xxxxxx**  
**E: [name@thepensionsregulator.gov.uk](mailto:name@thepensionsregulator.gov.uk)**



## Schedule

Please note that this is not an exhaustive list, and the production of further documents may be required during the course of the inspection.

# The Pensions Regulator

### Statutory records or information

Description of information/and or documents\* required and the period to which they relate

### Other documents or information

Description of information/and or documents\* required and the period to which they relate

\* Please note that 'document' is defined broadly to include information recorded in any form (section 79(2) of the 2004 Act), including electronic documents and other electronic information. In the case of electronic information, an inspector may require the information to be produced in a form in which it can be taken away, and in which it is legible or from which it can be readily produced in a legible form.

# The Pensions Regulator

Napier House  
Trafalgar Place  
Brighton  
BN1 4DW

T 0845 600 1011  
F 0870 241 1144

[www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

**Title**  
**Job Title**  
**Address 1**  
**Address 2**  
**Address 3**  
**Address 4**  
**Address 5**  
**Postcode**

Dear **[Name]**

## Notice of inspection of business premises

I am an inspector appointed by The Pensions Regulator under the Pensions (Northern Ireland) Order 2005 (the '2005 Order') and this letter is notification that I intend to carry out an inspection at the following premises:

### **[Employer name and address]**

These premises are liable to an inspection under article 69 of the 2005 Order because I have reasonable grounds to believe that documents relevant to the duties of the employer and/or the safeguards under the Pensions (No.2) Act (Northern Ireland) 2008 (the '2008 Act') are kept there.

The inspection will take place on **[date]** at **[time]**. I will be accompanied by **[name]**.

The reason for this inspection is to check whether you have and are continuing to comply with the employer duties and/or safeguards under the 2008 Act.

Attached is a schedule of the documents and/or information that I will need to examine, and a leaflet which explains the inspection process.

This letter and the schedule together constitute a formal notice to produce these documents to me on **[date]** at the above named address. If you think that you cannot comply with this notice for a particular reason, please contact me as soon as possible using my contact details shown below.

Any information obtained during the course of the inspection which relates to the business affairs of any person which is not in the public domain is 'restricted information' under article 77 of the 2005 Order, therefore The Pensions Regulator may not disclose this information to a third party unless authorised to do so under the 2005 Order.

**Please note that failure to co-operate with an inspection may constitute a criminal offence under the provisions of the 2005 Order.**

Yours sincerely

**[Name]**  
**Inspector**  
**Automatic enrolment, Investigation and enforcement unit**  
**T: 01273 xxxxxx**  
**E: [name@thepensionsregulator.gov.uk](mailto:name@thepensionsregulator.gov.uk)**

## Schedule

Please note that this is not an exhaustive list, and the production of further documents may be required during the course of the inspection.

# The Pensions Regulator

### Statutory records or information

Description of information/and or documents\* required and the period to which they relate

### Other documents or information

Description of information/and or documents\* required and the period to which they relate

\* Please note that 'document' is defined broadly to include information recorded in any form (section 79(2) of the 2004 Act), including electronic documents and other electronic information. In the case of electronic information, an inspector may require the information to be produced in a form in which it can be taken away, and in which it is legible or from which it can be readily produced in a legible form.

## Appendix B

### A guide to statutory requests for information and documents

This guide is aimed at employers who are subject to the employer duties and safeguards under the Pensions Act 2008<sup>5</sup> and sets out what happens when The Pensions Regulator (the regulator) asks you for information and documents.

#### 1. Introduction

- 1.1 We are asking you for certain information and documents because we want to check whether you have complied or are complying with the employer duties and safeguards under the Pensions Act 2008 (the '2008 Act') and any other relevant legal requirements, such as paying contributions on time.
- 1.2 This guide tells you:
  - ▶ who we are
  - ▶ what information and documents we can ask for
  - ▶ what happens if we send you a Statutory notice to produce documents and/or information
  - ▶ your rights
  - ▶ sources of further information

#### 2. Who we are

- 2.1 As The Pensions Regulator for the UK, it is our responsibility to maximise employer compliance with the duties and safeguards set out in the 2008 Act.
- 2.2 In order to check whether an employer has complied or is complying with the duties and safeguards we may need to gather information and documents from the employer or from associated third parties (for example advisers, or trustees, managers or providers of their pension scheme) who we believe may be in possession of such information.
- 2.3 We have a range of enforcement powers available to us, to use if necessary to help maximise compliance with the law. Gathering information does not automatically mean we will use these powers. The information gathering process will help us establish the facts and identify any problems.

- 2.4 We will use the information collected to inform our actions. We may need to obtain further information; alternatively we may be in a position to let you know the outcome of our enquiries without needing to gather any further information. If no breaches of law are identified we will not take any further action. However, where breaches are identified we will consider using our enforcement powers, where this is appropriate and proportionate to resolve the breaches.

### **3. What information and documents we can ask for**

- 3.1 We will only ask for information or documents in order to check whether you are complying or have complied with the relevant legislation.

There is no definitive or exhaustive list of the information we can ask for, however the type of records you are legally required to keep to show you are complying with the law will normally be sufficient for the purpose of checking compliance. We can also ask to check other business records if we consider them to be relevant.

To find out what your record-keeping responsibilities are, go to [www.tpr.gov.uk/docs/detailed-guidance-2.pdf](http://www.tpr.gov.uk/docs/detailed-guidance-2.pdf).

- 3.4 We can also make a request for information and documents directly with other people if they appear to us to be holding relevant information.

### **4. What happens if we send you a 'Statutory notice to produce documents and/or information'?**

- 4.1 We may ask for information and documents to be provided on a voluntary basis, but in some cases we may need to issue a Statutory notice in writing that will legally oblige you to provide us with the information and documents requested. Either way, we will list what information and/or documents we require and the timescale for providing it to us.
- 4.2 A Statutory notice legally requires you to give us what we have asked for in the notice.
- 4.3 Failure to provide us with some or all of the information and/or documents required may lead to either a civil and/or criminal sanction.

- 4.4 The sanctions for failing to comply with a statutory notice are:
  - 4.4.1 a fixed penalty of £400
  - 4.4.2 a penalty that accrues at a daily rate of £50 up to a maximum of £10,000 (depending on the size of your business) for every day that we do not receive what we have asked for
  - 4.4.3 criminal prosecution
- 4.5 All information you give us must be correct to the best of your knowledge. It is an offence to provide false or misleading information to the regulator. You may be prosecuted if you provide us with information that you know, or suspect, is incorrect or misleading.
- 4.6 If you have an adviser who is acting on your behalf, you will need to send us your written authority to deal with them. However, if an adviser is responding to us on your behalf you must take sufficient steps to ensure that information or documentation sent to us on your behalf is correct and not misleading.
- 4.7 If you have a reasonable excuse for why you cannot provide us with the information we have asked for, please let us know as soon as possible. Similarly, if you need more time to provide the information let us know and we will consider agreeing to an extension to the timescale.
- 4.8 We may also ask you to explain any documents or information you give us. This may include meeting with us at a time and place we consider appropriate. We will endeavour to meet any specific needs or reasonable requests you may have when selecting the timing and venue of any meeting.

## 5. Your rights

- 5.1 You can consult your adviser.
- 5.2 You are not required to answer any question or provide any information which might incriminate you, your spouse or civil partner.
- 5.3 You are not required to produce any document which is a 'protected item' as defined in s311 of the Pensions Act 2004. Protected items are broadly materials which are subject to legal professional privilege. If we find that we have taken possession of any protected items, we will return these to you or destroy them promptly, and will not make use of privileged information in our possession at any time.

- 5.4 We can only ask for information and documents that are relevant to our functions.
- 5.5 We will hold securely any information and documents that we obtain from you and will not disclose to a third party, except where it is permitted by law.
- 5.6 You have the right to complain if you believe you have been treated unfairly. If you wish to make a formal complaint, please submit your complaint in writing to our Corporate Secretary at The Pensions Regulator, Napier House, Trafalgar Place, Brighton, BN1 4DW, email: [complaints@tpr.gov.uk](mailto:complaints@tpr.gov.uk), fax: 01273 627630. Please list your main areas of concern clearly and make sure you include all information relevant to your complaint.

Further information on how the regulator handles complaints can be found at [www.tpr.gov.uk/complaint](http://www.tpr.gov.uk/complaint).

## 6. Sources of further information

- 6.1 Please contact the person from the regulator that contacted you if:
  - ▶ you have any questions about documents and/or information that you have been asked to provide, or if you have any questions about the information mentioned in this leaflet
  - ▶ you need help to deal with requests made by us for documents or information, for example English is not your first language or you would like us to use a certain communication format to communicate with you
- 6.2 For information and guidance about the employer duties and safeguards you can go to our website at [www.tpr.gov.uk/employers](http://www.tpr.gov.uk/employers) or contact us on 0845 600 1011.

**The Pensions Regulator cannot provide a definitive interpretation of the law. This publication must be read in conjunction with the relevant legislation.**

## Statutory notice to produce documents and/or information

[Employer name]

## The Pensions Regulator

**This letter is a formal written notice under section 72(1) of the Pensions Act 2004 (the '2004 Act')/ article 67 of The Pensions (Northern Ireland) Order 2005 (the '2005 Order') [delete as necessary] requiring you to supply information to The Pensions Regulator (the 'regulator'). If you do not comply with this notice you will be liable to pay a penalty of £400. Continued non-compliance means you will be liable to a daily penalty of between £50 and £10,000 for every day the failure continues. We may also consider the matter for criminal prosecution.**

**The documents and/or information must reach our office no later than [time and date]**

This notice relates to an investigation by the regulator in relation to your compliance with the employer duties and/or safeguards under the Pensions Act 2008/the Pensions (No. 2) Act (Northern Ireland) 2008 [delete as necessary] and associated legislation.

### [Reason for issuing this notice]

I am writing to you because I understand that you are able to provide the documents and/or information listed below, all of which are relevant to the exercise of the regulator's functions as described above.

- 
- 
-

The requested documents and/or information can be recorded and held in any form which includes all written and electronic information (the latter to include but is not limited to, scanned documents, intranet pages, database reports and emails). A document is within scope of this request if it relates in whole or in part to any of the issues set out above.

Unless we have specifically requested originals, you can send copies of any documents that we have requested. However, if you do send copies you must keep the originals until our enquiries and any proceedings arising from them are completed. Likewise, once we have returned any original documents to you, you must keep them until our enquiries and any proceedings arising from them are completed.

In addition, you can email scanned copies of all requested documents and/or information to me at (insert email address). However please note that if the file size is greater than 20MB, you will need to divide the attachments and send in separate emails.

Hard copies or originals should be sent to:

### To be opened by the addressee only

[name]

Automatic enrolment  
The Pensions Regulator  
Napier House  
Trafalgar Place  
Brighton  
BN1 4DW



Please contact me as soon as possible using my contact details shown below to inform me if you are unable to provide the requested documents and/or information, or think that you cannot comply with this notice for a particular reason by **[date/time]**.

Please be aware that it is a criminal offence and you may be prosecuted if you:

- knowingly or recklessly provide the regulator with information which is false or misleading, or
- intentionally and without reasonable excuse alter, suppress, conceal or destroy any document required in this Notice.

Information obtained by the regulator in response to this request may be 'restricted information' within the meaning of section 82 of the 2004 Act/article 77 of the 2005 Order **[delete as necessary]** and will not be disclosed to a third party save in accordance with the Act.

Information (including personal data) provided to the regulator in response to this request for information may be used (including disclosing it to third parties) in connection with any of its functions or duties.

The regulator is a data controller for the purposes of the Data Protection Act 1998 ('DPA'). When carrying out our statutory functions/duties we hold and process personal data in accordance with the principles set out in the DPA.

If you have any questions, please contact me.

Yours faithfully

**[Name]**

Inspector

Automatic enrolment, Investigation and Enforcement unit

T: **01273 xxxxxx**

Email: **name@thepensionsregulator.gov.uk**

## Statutory notice to produce documents and/or information

[Third party name]

# The Pensions Regulator

**This letter is a formal written notice under s72(1) of the Pensions Act 2004 (the '2004 Act')/article 67 of The Pensions (Northern Ireland) Order 2005 (the '2005 Order') [delete as necessary requiring you to supply information to The Pensions Regulator (the 'regulator'). If you do not comply with this notice, you will be liable to pay a penalty of £400. Continued non-compliance means you will be liable to a daily penalty of £200 for every day the failure continues. We may also consider the matter for criminal prosecution.**

**The documents and/or information must reach our office no later than [time and date]**

This notice relates to an investigation by the regulator in relation to your compliance with the employer duties and/or safeguards under the Pensions Act 2008/the Pensions (No. 2) Act (Northern Ireland) 2008 [delete as necessary] and associated legislation.

**[Reason for issuing this notice]**

I am writing to you because I understand that you are able to provide the documents and/or information listed below, all of which are relevant to the exercise of the regulator's functions as described above.

- 
- 
- 

The requested documents and/or information can be recorded and held in any form which includes all written and electronic information (the latter to include but is not limited to, scanned documents, intranet pages, database reports and emails). A document is within scope of this request if it relates in whole or in part to any of the issues set out above.

Unless we have specifically requested originals, you can send copies of any documents that we have requested. However, if you do send copies you must keep the originals until our enquiries and any proceedings arising from them are completed. Likewise, once we have returned any original documents to you, you must keep them until our enquiries and any proceedings arising from them are completed.

In addition, you can email scanned copies of all requested documents and/or information to me at (insert email address). However please note that if the file size is greater than 20MB, you will need to divide the attachments and send in separate emails.

Hard copies or originals should be sent to:

**To be opened by the addressee only**

**[name]**

Automatic enrolment  
The Pensions Regulator  
Napier House  
Trafalgar Place  
Brighton  
BN1 4DW

Please contact me as soon as possible using my contact details shown below to inform me if you are unable to provide the requested documents and/or information, or think that you cannot comply with this notice for a particular reason by **[date/time]**.

Please be aware that it is a criminal offence and you may be prosecuted if you:

- knowingly or recklessly provide the regulator with information which is false or misleading, or
- intentionally and without reasonable excuse alter, suppress, conceal or destroy any document required in this Notice.

Information obtained by the regulator in response to this request may be 'restricted information' within the meaning of section 82 of the 2004 Act/article 77 of the 2005 Order **[delete as necessary]** and will not be disclosed to a third party save in accordance with the Act.

Information (including personal data) provided to the regulator in response to this request for information may be used (including disclosing it to third parties) in connection with any of its functions or duties.

The regulator is a data controller for the purposes of the Data Protection Act 1998 ('DPA'). When carrying out our statutory functions/duties we hold and process personal data in accordance with the principles set out in the DPA.

If you have any questions, please contact me.

Yours faithfully

**[Name]**

Inspector

Automatic enrolment, Investigation and Enforcement unit

T: **01273 xxxxxx**

Email: **name@thepensionsregulator.gov.uk**

## Appendix C

### Guidance on making a review application

#### When you can apply for a review

You can apply for a review if you have received one of the following notices or penalties:

- ▶ Compliance notice
- ▶ Unpaid contributions notice
- ▶ Third Party Compliance notice
- ▶ Fixed Penalty notice
- ▶ Escalating penalty notice
- ▶ Prohibited Recruitment Compliance notice
- ▶ Prohibited Recruitment Penalty notice

#### Time limits for applying for a review

You have 28 days from the date of the notice or penalty to apply for a review. If you miss the 28 deadline, we may decide to carry out a review anyway if the information available to us indicates that the notice may need to be varied, revoked or substituted and the review application was made within 18 months of the issue of the notice.

#### Who can apply for a review

The recipient of a notice or penalty may apply for a review. Alternatively an authorised representative can do this on the recipient's behalf.

An authorised representative must have written permission from the recipient of the notice or penalty or we cannot accept the request. The person giving the written permission on behalf of the employer must be a sufficiently senior member of the organisation, for example the chief executive officer, a director, a partner or the business owner.

#### How to apply for a review

You can apply for a review of a notice or penalty in a number of ways:

- ▶ Online
- ▶ By post
- ▶ By telephone
- ▶ In person

### Online

You can apply for a review online by visiting [review.tpr.gov.uk](https://www.review.tpr.gov.uk). You will be able to authorise a representative to act on your behalf and upload documents as part of the online application. Please ensure that you read all the guidance below before completing the review application. Please note that the above online option is only available if your notice reference is 11 or 12 digits long.

### By post

You can download and print the PDF version of our review application form at [www.tpr.gov.uk/review-penalty](https://www.tpr.gov.uk/review-penalty). Please complete it clearly using black ink. You should post your form and any supporting documents to:

Automatic Enrolment Review Team  
The Pensions Regulator  
PO Box 16871  
Birmingham  
B23 3LG

### By email

You can download and print off the PDF version of our review application form. Please complete it clearly using black ink, then scan the document and email it, along with any supporting documents, to [CandE@autoenrol.tpr.gov.uk](mailto:CandE@autoenrol.tpr.gov.uk).

### By telephone

You can apply over the telephone on 0845 600 2475. You will be taken through the form and we will record the information you provide. Once the form is completed it will be read back to you and you will be asked to confirm the information is correct.

If you wish to appoint a representative to act on your behalf, you will need to confirm this to us in writing.

You should send in any supporting evidence/documents within 10 working days of your application, in order for these to be considered as part of the review.

### In person

In limited circumstances, we may be able to accept applications in person. Please contact us to make an appointment.

## Documents you may want to submit in support of your application

The more information you provide in your application the better. You may want to include records you have kept to demonstrate you have complied with your duties or other documents which demonstrate your status as an employer such as:

- ▶ information about the pension scheme being used
- ▶ information about your workforce
- ▶ communications issued to workers such as postponement notices or letters which explain how the new duties will affect them
- ▶ opt-out notices, opt-in notices or joining notices
- ▶ proof of payment of contributions to your pension scheme
- ▶ employment contracts or redundancy notices
- ▶ PAYE scheme information
- ▶ documents relating to insolvency proceedings
- ▶ other financial information

Our guidance on record-keeping tells you which records must be kept by law under the employer duties.

## What happens when you apply for a review?

We will write to you confirming that we have received your request for a review and if we are going to carry out the review. At this stage, we may also ask you to provide additional information.

If you have applied online or by email, this will be sent to the email address from which we received the application. If you've applied using the printed form, this will be sent to the address provided in part 2, or where a representative has been appointed their address in part 3.

However, we may still decide not to carry out the review. This is likely to happen where:

- ▶ we cannot identify the notice you wish to review
- ▶ the application was submitted outside of the 28 day period and the information available to does not indicate that the notice needs to be varied, revoked or substituted
- ▶ the grounds of the review are not stated or have already been considered in a previous review

If we decide not to carry out the review we will notify you in writing within three days of receipt of the review application. If our decision not to carry out a review relates to a penalty notice, you can appeal further by referring the matter to the Tribunal (see 'If you don't agree with our decision' and 'Appealing to the Tribunal' below).

## **What happens during the review and how long does it take?**

If we decide to carry out a review, the notice or penalty will be suspended for the length of time it takes to complete the review.

We will appoint a review officer to carry out the review who will be someone who has not previously been involved with the decision to issue the notice. The review officer may contact you to request more information and, if so, will advise you of the timescale in which to provide this.

We will usually complete the review within 10 working days of the date of the letter we sent to you accepting the review. If we think it is going to take longer than 10 working days we will contact you and give you an indication of when we expect to be able to complete the review. When we've completed the review, the review officer will write and tell you their decision.

## **The review decision**

The review decision will be one of the following:

- ▶ The notice or penalty is confirmed – this means that the original notice or penalty must be complied with in full. We will advise you of the new compliance date which takes into account the time we have taken to conduct the review.
- ▶ The notice or penalty is varied – this means that we will issue you with an amended notice or penalty which contains some new or revised directions and/or a new timescale for compliance. You must comply with the steps and timescales specified in the varied notice or penalty by the new compliance date.
- ▶ The notice or penalty is being substituted with another notice or penalty – this means that we will issue you with a different notice or penalty. You must comply with the steps and timescales specified in the new notice or penalty by the new compliance date.
- ▶ The notice or penalty is revoked – this means that you no longer need to comply with the requirements of it. If a penalty notice is revoked, we will refund any penalty payments you have made.

We may take further enforcement action if you do not comply with the requirements of a notice which has been confirmed, varied or substituted on review. This may include issuing you with a Fixed or Escalating penalty notice.

### **If you don't agree with our decision**

If you don't agree with our decision, you may be able to apply for another review. The application must be submitted within 28 days of the date of the notice or penalty. We are unlikely to accept another review application unless the grounds for review are different to those that we have already considered.

If the notice which has been reviewed is one of the following, or if we have refused to carry out a review of one of the following notices, you can appeal to the Tribunal:

- ▶ A Fixed penalty notice.
- ▶ An Escalating penalty notice.
- ▶ A Prohibited recruitment penalty notice.

### **Appealing to the Tribunal**

If you wish to appeal against a review decision relating to a penalty notice, you must submit an application in writing to the General Regulatory Chamber (GRC) within 28 days of the date on which the review decision was made.

You can obtain an appeal form and further information on the process from the Tribunal's website at [www.gov.uk/appeal-against-a-pensions-regulator-fine](http://www.gov.uk/appeal-against-a-pensions-regulator-fine).

Or you can request an appeal form from:

GRC Tribunal  
Arnhem Support Centre (Tribunals)  
PO Box 9300  
Leicester  
LE1 8DJ

The telephone number for GRC enquiries is 0300 123 4504.





The Pensions  
Regulator

## Application for review of a notice or penalty

Please fill out all sections of this form if you want us to carry out a review of our decision to issue one of the following types of notice or penalty:

- Compliance notice
- Unpaid contributions notice
- Third party compliance notice
- Fixed penalty notice
- Escalating penalty notice
- Prohibited recruitment compliance notice
- Prohibited recruitment penalty notice

To fill in the form, please print it and complete Parts 1 to 4 by hand, using black pen, then sign and date Part 5. Once completed, the form can be scanned and emailed to: [CandE@autoenrol.tpr.gov.uk](mailto:CandE@autoenrol.tpr.gov.uk) or posted to: Automatic enrolment review team, The Pensions Regulator, PO Box 16871, Birmingham B23 3LG.

For more information on making a review application, please visit [www.tpr.gov.uk/challenge-notice](http://www.tpr.gov.uk/challenge-notice).

**We may not be able to consider your review application if you do not complete all sections of this application form.**

---

### Part 1. Statutory notice to be reviewed

Notice number

Date of issue

Employer/organisation name to which the notice was addressed

### Part 2. Applicant details

Name of applicant

Position in organisation

Address and postcode

Contact telephone number

Contact email address

Please confirm if you are willing for us to respond to this review application, including acceptance of service of any Statutory Notice that may result, by email.

Yes/No

Please delete as applicable

### Part 3. Representative details

Only complete this section if you wish a representative to act on your behalf in relation to this review application. If completed, all correspondence and documents, including notification of the decision and any associated Statutory Notices will be sent directly to the representative.

Name of representative

Representative's organisation

Address and postcode

Contact telephone number

Contact email address

Please confirm if you, the representative, are willing for us to respond to this review application, including acceptance of service of any Statutory Notice that may result, by email.

Yes/No

Please delete as applicable

If Part 3 has been completed you must give a written statement that your representative is authorised to act on your behalf. This allows The Pensions Regulator to exchange and disclose information with your representative on matters relating to this review. The person signing this statement must have the authority to do so, and they must be a sufficiently senior member of the organisation (for example, the chief executive officer, a director, a partner or the business owner).

I, (print name)

position within organisation

of (employer/ organisation name)

authorise The Pensions Regulator to exchange and disclose information regarding this review to my representative named in Part 3 above.

Signature

Date

#### **Part 4. Reason for your application**

Please explain as fully as possible, why you are applying for the notice or penalty to be reviewed (continue overleaf and attach an extra sheet if necessary). Please also include any necessary supporting documents in support of your application.

You can find guidance at [www.tpr.gov.uk/challenge-notice](http://www.tpr.gov.uk/challenge-notice) on applying for a review and the documents you may need to provide.



**Part 5. Declaration**

I confirm that the information I have provided is true and correct to the best of my knowledge and belief. I understand that it is an offence to knowingly or recklessly provide false or misleading information to The Pensions Regulator.

Name

Signature

Date

## How to contact us

PO Box 342

Runcorn

WA7 9EF

[customersupport@autoenrol.tpr.gov.uk](mailto:customersupport@autoenrol.tpr.gov.uk)

[www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

### **Compliance and enforcement policy**

for employers subject to automatic enrolment duties

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**The Pensions  
Regulator**