

# Compliance and enforcement strategy

for employers subject to automatic enrolment duties

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# 1. Introduction

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

**Table 1: An outline of the legal requirements on employers**

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

## 1. Introduction

- 1.4 Employers must keep records of what they have done to comply with the duties. A key element of the employer automatic enrolment regime is the requirement to pay contributions to the pension scheme – both the contributions made by employees that the employer deducts from their pay, and the contributions made directly by the employer. Employers and pension schemes will need to keep relevant records regarding the payment of contributions. In addition, they must maintain specified records about the members and their status in the scheme.
- 1.5 The law on the new employer duties and safeguards commenced in July 2012. Each employer is allocated a date from when the new duties apply to them, known as their 'staging date'. The staging date is based on the number of people in the employer's largest Pay As You Earn (PAYE) scheme. Staging started in October 2012 and is being rolled out based on the largest to smallest PAYE schemes (although employers may bring their automatic enrolment date forward). The Employers' Duties (Implementation) Regulations 2010 contain a table that sets out the dates for employers from when the duty commences.
- 1.6 Employers with 250 or more persons in their largest PAYE scheme staged between October 2012 and February 2014. Medium-size employers (50 to 249 persons in their largest PAYE scheme) staged between 1 April 2014 and 1 April 2015. Small employers (fewer than 50 persons in their largest PAYE scheme) have staging dates between 1 June 2015 and 1 April 2017. New employers setting up business from 1 April 2012 up to and including 30 September 2017 have staging dates between 1 May 2017 and 1 February 2018. New employers established after 30 September 2017 will start their obligations from the date of their inception.
- Please note: these duties are ongoing and do not cease once the initial declaration of compliance process has taken place.**
- 1.7 We are undertaking an ongoing range of activities such as publishing guidance and engaging with stakeholders to educate and enable employers to comply with their obligations under the Pensions Act 2008, and associated legislation.

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- 1.8 However, the responsibility for complying rests with the employer. We are a risk-based regulator and we will assess the circumstances and respond appropriately to instances of non-compliance. We will work with employers, where appropriate, to get them back on track to being compliant. We regard intentional non-compliance as unacceptable and we may take any one of a range of enforcement actions if an employer fails to comply with their legal requirements. The Pensions Act 2008 gives us a number of enforcement options to ensure employers are meeting their duties (see chapter 5). In addition, The Pensions Schemes Act 1993, the Pensions Act 1995 and the Pensions Act 2004 provide the regulator with further powers to take action where an employer has not paid their contributions by the due date.
- 1.9 The strategy sets out:
- ▶ The Pensions Regulator's statutory functions
  - ▶ our aims and objectives to tackle non-compliance with the employer duties and safeguards prescribed in pensions legislation
  - ▶ a set of principles which govern our regulatory approach
  - ▶ our regulatory approach to maximising compliance with the new duties/safeguards
  - ▶ the enforcement options available by which our objectives and priorities with respect to the new duties/safeguards are pursued and achieved over time
- 1.10 The strategy is supplemented by the 'Automatic enrolment compliance and enforcement policy' which sets out how we aim to deter and prevent non-compliance risks and identify, assess and tackle instances of non-compliance. It explains how our powers are to be considered and applied, and what employers, agents and workers can expect from us. It provides a robust framework in which we conduct their work. It also includes guidance relating to inspections, statutory requests for information and reviews.

## 1. Introduction

- 1.11 The regulator's automatic enrolment compliance and enforcement team has responsibility for strategy, policy and operational matters relating to the prevention, detection, investigation and enforcement of non-compliance with the employer duties and safeguards under the Pensions Act 2008, and those employers who subsequently delay or fail to make contribution payments as required by The Pensions Schemes Act 1993, the Pensions Act 1995 and The Pensions Act 2004. The team also contributes to creating a pro-compliance culture. We attach the highest importance to working within a clearly defined professional and ethical framework. All our staff are professionally trained and possess the skills and qualifications necessary to undertake intelligence and enforcement roles.
- 1.12 The Department for Work and Pensions (DWP) is responsible for providing information about automatic enrolment and planning and saving for retirement to workers (this term also includes potential workers). This will help them understand their rights and obligations and also signpost people to additional sources of information if needed. The DWP has engaged with a wide variety of organisations including unions, professional bodies, business representatives and others to raise awareness amongst workers about their pension entitlements and who to contact if they have any concerns.
- 1.13 This strategy document is available to interested parties on our website.
- 1.14 We will regularly review and update this strategy as required by legislation, guidance or other circumstances which may impact on the principles set out in this document. In addition, as the regime develops over time we will update it to reflect learning about compliance behaviours and our risk-based approach, and to ensure effective operations and the successful delivery of our strategic aims.
- 1.15 This document refers throughout to provisions of English law. Northern Ireland has its own body of corresponding pension legislation. Both Northern Ireland and Scotland have additional bodies of relevant law which correspond to certain English law provisions referred to in this document. References to provisions of English legislation which do not apply to Northern Ireland or Scotland should be read as references to the provisions of any corresponding Northern Ireland and Scottish legislation.

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- 1.16 Further guidance on the employer duties can be found on our website at [www.tpr.gov.uk/automatic-enrolment](http://www.tpr.gov.uk/automatic-enrolment).

Also on our website is a set of detailed guidance aimed at professional advisers, large employers with in-house pensions expertise and those with a sound knowledge of pensions at [www.tpr.gov.uk/detailed-guidance](http://www.tpr.gov.uk/detailed-guidance).

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

Automatic enrolment compliance and enforcement policy: [www.tpr.gov.uk/doc-library/strategy-and-policy](http://www.tpr.gov.uk/doc-library/strategy-and-policy).

## 2. Aims and objectives

- 2.1 The strategy reflects the regulator's statutory objectives.
- 2.2 The Pensions Acts of 2004 and 2008 give us specific objectives:
  - 2.2.1 To protect the benefits under occupational pension schemes of, or in respect of, members of such schemes.
  - 2.2.2 To protect the benefits under personal pension schemes of, or in respect of, members of such schemes.
  - 2.2.3 To reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (PPF).
  - 2.2.4 To minimise any adverse impact on the sustainable growth of employers arising from the exercise of our defined benefit scheme funding functions (this new objective came into force on 14 July 2014).
  - 2.2.5 To maximise compliance with the duties under Chapter 1 of Part 1 (and the safeguards in sections 50 and 54) of the Pensions Act 2008.
  - 2.2.6 To promote and to improve understanding of the good administration of work-based pension schemes.
- 2.3 The underlying aim of this strategy is to have in place effective systems to maximise employers' compliance with their duties under the Pensions Act 2008 and to ensure non-compliance is held at an absolute minimum; thereby safeguarding workers' ability to save in a pension scheme.
- 2.4 In achieving this aim, we strive to be a regulator which advocates an innovative and collaborative approach. We use a range of regulatory options to drive compliance, prioritise our resources on the basis of risk, be outcome focused and work with other regulators to ensure a joined-up approach to employer compliance. We are firm but fair in carrying out our regulatory activities and ensure that we are proportionate, accountable, consistent, transparent and targeted in our approach.

2.5 The objectives of the strategy are to:

2.5.1 Establish and maintain a 'pro-compliance culture' amongst employers so that they are aware of and understand their obligations, want to comply with their legal duties and advocate that non-compliance by other employers is not acceptable. This will be achieved by:

- ▶ promoting positive compliance behaviour among employers in the early stages of implementation as we believe this will influence the subsequent willingness of employers to comply
- ▶ developing a climate in which employers believe that the regulations are being applied fairly, that other employers around them are complying, and that those who do not comply will be fined
- ▶ using publicity and education tools such as guidance, products and conducting awareness sessions to help employers understand their duties
- ▶ putting in place a user-friendly declaration system to enable compliance

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

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

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

- ▶ stop incorrect declarations in the declaration of compliance system
- ▶ ensure the causes of breaches are fully examined and fed into prevention work to minimise the risk of them occurring again

## 2. Aims and objectives

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

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

2.5.5 Investigate breaches in a fair, objective and professional manner to ensure those responsible are held to account for their actions.

2.5.6 Effectively enforce against non-compliance by applying appropriate civil and criminal sanctions.

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

### 3. Regulatory principles

- 3.1 In this strategy, we aim to promote efficient and effective approaches to the enforcement of regulation in order to maximise regulatory outcomes while minimising burdens on businesses and act in accordance with the requirements set out in the Legislative and Regulatory Reform Act 2006 and the 'Regulators' code'.
- 3.2 We will apply the five principles of better regulation in our operational compliance work:
  - 3.2.1 Proportionality: Proportionality means relating enforcement action to the seriousness of the breach and the risks of harm caused by the breach. Therefore, in deciding whether to use our powers, we will put in place policies and guidance that ensure we consider the circumstances surrounding the breach of the law including the risk of harm to our objectives and the seriousness of any breach, and apply the most appropriate remedy.
  - 3.2.2 Accountability: The strategy sets out our approach to regulation and it can be used to judge our actions and hold us to account. We recognise that we are accountable for delivering the statutory objectives and will do so within the constraints of the general law and the principles of good regulation. As a public body, we are accountable for our conduct and operations to Parliament, our stakeholders and the general public. We have a complaints procedure in place (see chapter 6). We will inform employers and others how they can make representations against our decisions.
  - 3.2.3 Consistency: We will carry out our work in a fair and reasonable manner by using a similar approach in like cases to achieve similar ends where that is possible and suitable to do so. We will put in place policies and guidance to ensure that we assess our risks and use our enforcement options in a consistent way. However, we will retain our discretion when exercising our judgement in cases where it is considered to be necessary.

### 3. Regulatory principles

- 3.2.4 Transparency: We will be open about our compliance approach in our publications. Our aim is to help employers fully understand what is expected of them, what guidance is available from the regulator and the enforcement options available to us. If we take enforcement action we will provide the employer with information regarding the investigation, enforcement, complaints, review and appeal processes. We will publicise our strategy and policy, as well as our compliance activities and enforcement outcomes (subject to the Data Protection Act 1998 and any other relevant legislation, see sections 6.4 and 6.5).
- 3.2.5 Targeting: We will direct our compliance activity at the most serious risks. We will focus our action on the employer or third party who is responsible for the risk in order to quickly remedy the situation. We will put in place systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by an employer's operations. We will engage with other regulators to consolidate our action where we can do so; thereby avoiding duplication and burden on employers and third parties.

## 4. Compliance approach

4.1 Most employers will want to meet their obligations to their workers and do the right thing. Therefore, our overall compliance approach is focused on educating and enabling employers to comply with the new regime.

4.2 We provide employers (as well as service providers, advisers and pension providers) with the information needed to understand the duties and to prompt them into action to prepare for automatic enrolment. We have a multi channel and audience-specific approach to our communications:

- ▶ We will write to employers to notify them of their staging date in advance of their staging date. The purpose of these letters is to make employers aware of their duties. The letters will explain the requirements and direct employers to information that will help them to comply. They will also be told how to complete their declaration with The Pensions Regulator.
- ▶ We are seeking to influence both the supply-side to ensure that they are ready to provide products (for instance pensions products or software products) or advice (both financial and business), and the demand-side to ensure employers are aware and understand their duties. We will do this by directly engaging in the appropriate parts of the value chain both on the supply and demand side. Additionally we will engage indirectly through intermediaries and stakeholders to target the various audiences.
- ▶ We will enable employers and their suppliers by making products and guidance available to these audiences, primarily online. These products and guidance will be targeted at their respective audiences so that they are fit for purpose. For instance our detailed guides are targeted at pensions professionals and our interactive tools at employers with no former involvement with pensions.
- ▶ We will also enable employers by providing a customer contact centre which will provide information and guidance.

4.3 We are making it easy for employers to meet their duty to declare compliance by ensuring that the process is simple and minimises the administrative burden. We have engaged stakeholders including trade bodies, employers and advisors in the design and operation of our declaration system to ensure it is simple to use and that employers are clear about what information they are required to provide.

## 4. Compliance approach

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

#### 4. Compliance approach

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

## 4. Compliance approach

- 4.12 In appropriate circumstances, an intervention we may decide upon is to carry out an investigation. Where we need to conduct an investigation:
- 4.12.1 we will make the necessary enquiries in order to ensure the employer is complying with their legal obligations
  - 4.12.2 we may use our inspection powers (see 5.3.2) or serve mandatory requests for information (see 5.3.1)
  - 4.12.3 we will investigate in a professional, objective and timely manner. We will abide by the Police and Criminal Evidence Act 1984, Criminal Procedure and Investigations Act 1996, Regulation of Investigatory Powers Act 2000, and the Human Rights Act 1998, Data Protection Act 1998 and any other relevant legislative requirements and the codes of practice. We will follow the 'Regulators' code' which is available on request
  - 4.12.4 we may, depending on the circumstances, pass conduct of an investigation to another regulatory agency or work in conjunction with them
- 4.13 Where employers do not demonstrate a willingness to comply with pensions legislation, we have a variety of enforcement options that we can use at any stage (see chapter 5). We will use these options in a proportionate and targeted manner. We will consider the circumstances that apply in each case to determine the most appropriate enforcement method for achieving compliance.
- 4.14 When we have opted to issue a penalty, we will have done so because we believe it is the best course of action to take in tackling the particular incidence of non-compliance. There is no financial interest for the regulator as the monies collected from penalties are paid over to the Treasury.

## 5. Enforcement options

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

5.2 Informal action

5.2.1 Compliance risks

We aim to provide as much assistance, either by telephone or in writing, as is reasonably practicable to assist employers who tell us that they are struggling to comply. Where we have identified a risk of non-compliance, we may take preventative action by issuing targeted communications to an individual employer or adviser, or to specific groups of employers or advisers.

5.2.2 Minor breaches

In certain circumstances, for example, where an employer voluntarily brings a minor breach to our attention and is already taking (or has taken) appropriate action we, may consider it appropriate to issue an informal warning letter, rather than use our statutory powers. Such a warning letter would usually indicate to the employer that although no formal enforcement action will be taken on this occasion, we reserve the right to take enforcement action in future (including in relation to the current breach) should similar or further breaches occur in future.

5.3 Statutory powers: Gathering information

5.3.1 Formal requests for information

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

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

## 5. Enforcement options

### 5.3.2 Inspection powers

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

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

### 5.4 Statutory notices

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

- 5.4.1 If the person has contravened one or more of the employer duty provisions, under s35 of the 2008 Act we may issue a Compliance notice directing the person to take or refrain from taking the steps specified in the notice in order to remedy the breach.
- 5.4.2 Where the contravention has resulted because of a failure of another person to do anything (which is not itself a contravention of the employer duties), under s36 of the 2008 Act we may issue a Third Party Compliance notice directing that person to take or refrain from taking the steps specified in the notice in order to remedy the failure.
- 5.4.3 If we are of the view that relevant contributions have not been paid on or before the due date, under s37 of the 2008 Act we may issue an Unpaid Contributions notice to an employer requiring an employer to pay the amount into a pension scheme by a specified date.

## 5. Enforcement options

5.4.4 We have further discretionary powers under s38 of the 2008 Act that we may use as part of a Compliance notice or an Unpaid Contributions notice to achieve compliance.

We can:

- ▶ estimate the rate of unpaid contributions
- ▶ charge interest on the unpaid contributions
- ▶ direct an employer to pay both their and their employee's unpaid contributions
- ▶ direct the employer to calculate the amount of unpaid contributions themselves

5.4.5 Under s13 of the 2004 Act, we may issue an Improvement notice to individuals or companies requiring specific action to be taken within a certain time, if that person has contravened pensions legislation. This notice will be preceded by a Warning notice under s96 of the 2004 Act.

5.4.6 Under s14 of the 2004 Act, we may issue a Third Party notice to Individuals or companies requiring specific action to be taken within a certain time, if there has been a contravention of pensions legislation because of a failure of another person to do anything. This notice will be preceded by a Warning notice under s96 of the 2004 Act. Non-compliance with a Statutory notice may result in a penalty. In addition, wilful non-compliance with some employer duties may result in further action including criminal prosecution.

## 5.5 Penalties

### 5.5.1 Fixed Penalty notice (FPN)

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

### 5.5.2 Escalating Penalty notice (EPN)

EPNs may be issued under s41 of the 2008 Act when there has been a failure to comply with a Statutory notice. The regulator may issue escalating penalties at a prescribed daily rate, ranging between £50-£10,000 (dependent on the number of persons the employer has). If the employer fails to pay a financial penalty and remedy the breach, in certain circumstances the regulator may consider further action in relation to wilful non-compliance which may ultimately lead to prosecution.

**Table 2: Failure to comply by an employer**

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

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

Third party compliance notice (s36)	Prescribed daily rate £200
Compliance notice (s35)	Prescribed daily rate £200
s72 notice	Prescribed daily rate £200

### 5.5.3 Prohibited Recruitment Conduct Penalty notice (PRCPN)

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

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

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

### 5.5.4 Civil Penalty

Where an employer fails to pay contributions due the regulator may, in certain circumstances, issue a financial penalty to the employer under the relevant section of pensions legislation including s111A of the 1993 Act, s88 of the 1995 Act, or s228 of the 2004 Act.

The financial penalty issued under s10 of the 1995 Act is a variable amount between £0-£5,000 in the case of an individual and £0-£50,000 in any other case. The financial penalty may be issued by the Determinations Panel or by those persons authorised by the regulator.

## 5.6 Statutory powers and orders

### 5.6.1 Power of the regulator to recover unpaid contributions

If an employer does not make a contribution payment towards an occupational pension scheme on or before the due date, we may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover that contribution payable under s17 of the 2004 Act.

## 5. Enforcement options

### 5.6.2 Prohibition and Suspension Orders, Appointment of trustees

Under s3 and s4 respectively of the 1995 Act, we can prohibit trustees who we do not consider to be fit and proper persons for the role and, pending consideration being given to the making of the Prohibition Order, suspend the trustee in the interim. Under s7 of the 1995 Act, we can appoint trustees where a trustee of a trust scheme is removed by an order under s3 or s4, or a trustee of such a scheme ceases to be a trustee by reason of his disqualification.

## 5.7 Court action

### 5.7.1 Civil action

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

### 5.7.2 Criminal prosecution

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

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

### 5.7.3 The Proceeds of Crime Act 2002 (POCA)

POCA permits us to apply, during the course of a criminal investigation or prosecution, for an order restraining the assets of the suspected offender, and for a confiscation order if a conviction is secured against that person. We will exercise these powers in appropriate cases.

## 5. Enforcement options

### 5.8 Review and References of Statutory notices

#### 5.8.1 Review of Statutory notices

Where the employer does not agree with the issue of a Statutory notice under the 2008 Act, they can request a review. The processes for review of Statutory notices issued under the 2008 Act are set out under s43.

#### 5.8.2 References of Statutory notices

After a review, if an employer disagrees with the outcome regarding a fixed or Escalating penalty notice they can make reference to the Tribunal under s44 of the 2008 Act. The processes for references to the Tribunal for s10 civil penalties, Improvement notices and Third Party notices issued under 2004 Act are set out under s103 of that Act.

## 6. Other duties

### 6.1 Reporting non-compliance concerns/breaches of law

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

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

Statutory whistleblowers have a duty to report breaches of law under s48 of the 1995 Act and s70 of the 2004 Act, this term generally applies to auditors, actuaries, trustees, managers and other professional and other advisers.

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

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

To report a concern to us, please telephone **0845 600 7060** or access our online reporting facility at: **[www.tpr.gov.uk/whistleblowing](http://www.tpr.gov.uk/whistleblowing)**.

### 6.2 Restricted information

The information received in the course of carrying out our statutory functions is classified as Restricted Information under s82 of 2004 Act and may only be disclosed in the limited circumstances permitted under that Act.

### 6.3 The Data Protection Act 1998

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

### 6.4 The Freedom of Information Act 2000

The Freedom of Information Act 2000 provides a right of access to information held by public authorities. It gives persons the right to be told if the information is held and be given that information unless an exemption applies. A brief guide setting out a person's right to request information and how to make a request to the regulator can be accessed at [www.tpr.gov.uk/foi](http://www.tpr.gov.uk/foi).

### 6.5 Publishing our enforcement activities

The law says we may publish our enforcement activities. We are committing to publishing a specific enforcement report once a year and we will also include the use of our powers in the regulator's annual report. We will publish certain activities that we have undertaken such as compliance drives, as well as our enforcement successes and publicly name those employers who do not comply in accordance with s89 of the Pensions Act 2004, the Data Protection Act 1998 (see paragraph 6.4) and relevant legislation.

### 6.6 Complaints

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

## How to contact us

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## Compliance and enforcement strategy

for employers subject to automatic enrolment duties

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