



## 2008 CHAPTER 13

### PART 1

#### PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

##### CHAPTER 2

##### COMPLIANCE

##### *Offences and monitoring*

#### **Offences of failing to comply**

**45.—**(1) An offence is committed by an employer who wilfully fails to comply with—

- (a) the duty under section 3(2) (automatic enrolment),
- (b) the duty under section 5(2) (automatic re-enrolment), or
- (c) the duty under section 7(3) (jobholder's right to opt in).

(2) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or both;
- (b) on summary conviction to a fine not exceeding the statutory maximum.

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#### **Commencement Information**

**II** S. 45 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

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*Changes to legislation: Pensions (No. 2) Act (Northern Ireland) 2008, Cross Heading: Offences and monitoring is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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### **Offences by bodies corporate**

**46** For the purposes of an offence under section 45, section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

#### **Commencement Information**

**I2** S. 46 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

### **Offences by partnerships and unincorporated associations**

**47.—(1)** Proceedings for an offence under section 45 alleged to have been committed by a partnership or an unincorporated association may be brought in the name of the partnership or association.

(2) For the purposes of such proceedings—

- (a) rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate;
- (b) Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26) applies in relation to the partnership or association as it applies in relation to a body corporate.

(3) A fine imposed on a partnership or association on its conviction of an offence under section 45 is to be paid out of the funds of the partnership or association.

(4) Subsection (5) applies where an offence under section 45 committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on the part of a partner.

(5) The partner, as well as the partnership, is guilty of the offence and is liable to be proceeded against and punished accordingly.

(6) Subsection (7) applies where an offence under section 45 committed by an unincorporated association is proved—

- (a) to have been committed with the consent or connivance of an officer of the association, or
- (b) to be attributable to any neglect on the part of an officer of the association.

(7) The officer, as well as the association, is guilty of the offence and is liable to be proceeded against and punished accordingly.

(8) “Officer” in this section means—

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- (a) an officer of the association or a member of its governing body, or
  - (b) a person purporting to act in such capacity.
- (9) “Partner” in this section includes a person purporting to act as a partner.

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**Commencement Information**

**I3** S. 47 in operation at 30.6.2012 by [S.R. 2012/266, art. 2, Sch. Pt. 2](#)

**Offences of providing false or misleading information**

**48** In Article 75(1)(a) of the 2005 Order (offences of providing false or misleading information)—

- (a) at the end of head (iv) add “or
  - (v) regulations under section 11 of the Pensions (No. 2) Act (Northern Ireland) 2008 (information to be given to the Pensions Regulator);”;
- (b) omit “or” at the end of head (iii).

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**Commencement Information**

**I4** S. 48 in operation at 30.6.2012 by [S.R. 2012/266, art. 2, Sch. Pt. 2](#)

**Monitoring of employers' payments to personal pension schemes**

**49** In section 107A of the Pension Schemes Act, at the end add—

“(18) In this section, “employee” includes a jobholder within the meaning of section 1 of the Pensions (No. 2) Act (Northern Ireland) 2008 and “employer” is to be read accordingly.”.

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**Commencement Information**

**I5** S. 49 in operation at 3.1.2012 for specified purposes by [S.R. 2011/441, art. 2\(a\)](#)

**I6** S. 49 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

**Changes to legislation:**

Pensions (No. 2) Act (Northern Ireland) 2008, Cross Heading: Offences and monitoring is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 24(1)(c) inserted by [2016 c. 1 \(N.I.\) Sch. 2 para. 39\(2\)\(d\)](#)