

REPORT: COMPLIANCE WITH PENSIONS REGULATIONS (Pensions Act 2008)

PURPOSE OF REPORT

To inform the Parish Council of their legal responsibilities towards their employees with regards to pensions regulations (Pensions Act 2008).

BACKGROUND

In June 2016, the Clerk received a letter from the Pensions Regulator (Appendix I) stating that their records showed Hannington Parish Council operated a Pay-As-You-Earn (PAYE) scheme but does not employ any staff. They required that *"if you are currently employing and staff, you will need to inform us as soon as possible. This is so that we can confirm when automatic enrolment will start to apply to you as you will have duties to fulfil under the Pension Act 2008"*. They asked for the Clerk to notify them of certain minimum information.

Failure to provide information or to not comply with the regulations are subject to penalty (see extract from Government website at Appendix I)

The Clerk provided the following information:

"Hannington Parish Council (HPC) employs one person; a Parish Clerk.

Payments are processed through the HMRC 'Basic PAYE Tool'. Salary payments are made on a quarterly basis with the tax deduction calculated via this application. The employer's PAYE reference is [REDACTED]. The Clerk's NI number is [REDACTED]

The End of Year 2015-16 tax certificate records total pay to the Clerk in the year £1,597 (part year only).

The annual salary 2016-17 for the Clerk (me) is £3,300. I am 67 years old; DOB [REDACTED]."

The Clerk then sought guidance as to whether or not the Clerk had to be offered a pension from Hannington Parish Council on the basis that... (based on information provided in a legal briefing circulated by Hampshire Association of Local Councils), HPC is not required to register in a qualifying pension scheme. This is because the two relevant parameters are:-

i) employee must be aged between 22 years and State Pension retirement age... the employee (Clerk) is 67 years old and therefore outside the age parameter),

and

ii) employee must be earning over £10,000 a year... current salary £3,300 is well below the minimum pay scale.

In response, the Pensions Regulator referred the Clerk to the website www.tpr.gov.uk/docs/detailed-guidance-1.pdf. The two relevant sections are reproduced below.

Eligible jobholders

47. They are called this because they are 'eligible' for automatic enrolment. These are workers who:

- are aged at least 22 but under state pension age
- are working or ordinarily work in the UK under their contract
- have qualifying earnings payable by the employer in the relevant pay reference period that are above the earnings trigger for automatic enrolment¹.

Non-eligible jobholders

48. They are called this because they are not eligible for automatic enrolment but can choose to opt in to a pension scheme. These include workers who either:

- are aged between 16 and 74
- are working or ordinarily work in the UK under their contract
- have qualifying earnings payable by the employer in the relevant pay reference period but below the earnings trigger for automatic enrolment¹.

or

- are aged between 16 and 21, or state pension age and 74
- are working or ordinarily work in the UK under their contract
- have qualifying earnings payable by the employer in the relevant pay reference period that are above the earnings trigger for automatic enrolment¹.

CONCLUSION:

The current Clerk is NOT 'eligible' for AUTOMATIC enrolment due to BOTH

- his age (exceeds state pension age)
and
- his earnings are below the earnings trigger for automatic enrolment.

However, as the Clerk is under 74 and his pay is below the earnings trigger for automatic enrolment, he COULD opt in to a pension scheme... which the employer (HPC) is obliged to offer!

RECOMMENDATION

Whilst the current Clerk has confirmed to the Chairman, his 'employer', that he does NOT wish to opt in to a Parish Council pension scheme, the Parish Council must consider its obligations under the Pensions Act 2008 **for any future Clerk.**

Chris Pottinger,

Clerk, Hannington Parish Council

9th September 2016

PENALTIES FOR NON-COMPLIANCE

There are certain employer duties you must comply with. If you fail to comply with your duties, we may take enforcement action and issue a notice and / or a penalty.

Received a penalty notice? You can now pay your notice online

You can pay your penalty using our secure online payment service. Please have your penalty notice reference handy (shown on the front of your notice).

[Pay your penalty notice](#)

Key points

- The responsibility for complying with the employer duties rests with the employer.
- If you don't comply, you'll face enforcement action in line with our risk-based approach.
- Enforcement action starts with statutory notices and is followed by penalty notices. Further non compliance may result in court action.
- If you have received a penalty notice, you can now pay your notice online.

Our overall approach

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

We will promote good compliance behaviour among employers by ensuring that the legislation is being applied fairly.

In cases where you haven't understood your duties or have been unable to comply, we'll work with you to get you compliant.

But if you have chosen to ignore your duties, we will use our powers where necessary to ensure compliance.

Those who do not comply will face enforcement action in line with our risk-based approach.

How we will enforce

We will investigate breaches of the law in a fair and objective manner. We can issue formal notices requesting information and can carry out inspections.

We will effectively enforce against non-compliance and have a range of civil and criminal enforcement measures at our disposal.

We shall carry out our work within the better regulation principles to ensure we regulate in a way that is proportionate, accountable, consistent, transparent and targeted.

Our enforcement options

Our full range of enforcement options is summarised below and also explained in the quick guide to our compliance and enforcement strategy at the end of this page.

Informal action

We can issue guidance and instruction by telephone, email, letter and in person. Or we can send a warning letter confirming a set time frame for compliance with the duties.

Statutory notices

Statutory notices can direct you to comply with your duties and / or pay any contributions you have missed or are late in paying. We have further discretionary powers which allow us to estimate and charge interest on unpaid contributions and direct you to calculate and / or pay unpaid contributions.

Penalty notices

We can issue penalty notices to punish persistent and deliberate non-compliance.

A fixed penalty notice will be issued if you don't comply with statutory notices, or if there's sufficient evidence of a breach of the law. This is fixed at £400 and payable within a specific period.

We can also issue an escalating penalty notice for failure to comply with a statutory notice. This penalty has a prescribed daily rate of £50 to £10,000 depending on the number of staff you have.

We can issue a civil penalty for cases where you fail to pay contributions due. This is a financial penalty of up to £5,000 for individuals and up to £50,000 for organisations.

Where employers fail to comply with a compliance notice or there is evidence of a breach, we can issue a prohibited recruitment conduct penalty notice. This penalty has a prescribed rate of £1,000 to £5,000 depending on the number of staff the employer has. We aim to fully recover all the penalties that we issue.

What to do if you've received a penalty notice

If you have received a penalty notice, you can pay your penalty using our secure online payment service. Please have your penalty notice reference handy (shown on the front of your notice).

Penalties are in respect of the failure to comply with a compliance notice or unpaid contributions notice.

Please ensure your payment is received by the date shown on the front of your penalty notice. Failure to pay the penalty will result in The Pensions Regulator bringing formal legal proceedings to recover the penalty. Failure to fulfil your employer duties may result in criminal prosecution.

[Pay your penalty notice](#)

Court action

We can take civil action through the court to recover penalties.

Employers who deliberately and wilfully fail to comply with their duties may be prosecuted.

We can also confiscate goods where there is a criminal conviction and restrain assets during criminal investigations.

Appealing an enforcement notice

If you have been issued a notice you can apply to us for a review. Your application along with supporting documentation must be made within 28 days of the notice being issued. Upon receipt of your application, we will inform you when a decision can be expected.

For more information go to [appealing an enforcement notice](#).