



Specified offences subject to notice of intention to prosecute

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Introduction

Section 3A of the [Pensions Act, 1990](#), as amended, (the Act) provides for an alternative to summary prosecution of specified offences under the Act through the courts as set out in page four below. The Pensions Authority (the Authority) may instead notify a person in writing that it is alleged that a specified offence has been committed and that if, within 21 days of the notice, the person has remedied the offence to the satisfaction of the Authority and paid the appropriate fine, the prosecution will not proceed. These are called 'notices of intention to prosecute'. If there is a failure to fully comply with the notice of intention to prosecute, a prosecution may occur. This prosecution is in respect of the underlying offence that is alleged to have been committed.

Notices of intention to prosecute apply to a range of offences under the Act which can be found below. The purpose of this guidance is to help trustees, employers, and other relevant entities, ensure that they do not contravene any of the specified provisions subject to the notice of intention to prosecute regime. The Authority encourages regulated entities to refer to the list below as a way of ensuring that they are fulfilling their obligations. If they have any queries or concerns, they should bring these to the attention of their scheme's administrator, financial adviser, or appropriate key function holder as the case may be, in order to ensure full compliance.

Table of specified offences subject to a notice of intention to prosecute¹

Liable person/entity	Description of responsibility	Section of Act	Pension type	Fine amount ²
Employer	Employers are required when requested, to furnish the Authority, within a specified timeframe, with information relating to the provision of access to Personal Retirement Savings Accounts (PRSAs) and information relating to the payment and remittance of contributions pursuant to section 121 of the Act.	18(2)(c)	PRSA	€2,000
Trustee	Trustees of occupational pension schemes (OPS) or trust RACs are required to pay the Authority annual fees prescribed pursuant to section 25 of the Act.	25	OPS and trust RACs	€2,000
Trustee	Trustees of OPS or trust RACs are required to prepare an annual compliance statement (ACS) not later than 31 January of each year, pursuant to section 26T of the Act. The trustees are required to submit the compliance statement to the Authority not later than one month after it is prepared. Trustees are also required to provide the Authority with further information and documentation, when requested, in respect of any matter specified in the ACS.	26T	OPS and trust RACs	€2,000
Trustee	Trustees of OPS or trust RACs are required to effect a transfer payment for members with preserved benefits within three months of a member application pursuant to section 34.	34	OPS and trust RACs	€2,000
Trustee	Trustees of relevant DB OPS are required to prepare and submit an actuarial funding certificate (AFC) and funding	43	Relevant DB OPS	€2,000

¹ Note that the notice of intention to prosecute also applies to regulations made under any of the above sections or regulations made under the Act relating to the above sections.

² Fine of €2,000 applicable in respect of each partner in a partnership, or each director in relation to a corporate entity where the entity is an employer or a trustee.

Liable person/entity	Description of responsibility	Section of Act	Pension type	Fine amount ²
	standard reserve certificate (FSRC) pursuant to section 43 of the Act.			
Trustee	Trustees of relevant DB OPS are required, when calculating scheme resources, to apply certain limitations pursuant to section 47 of the Act. The limitations concerned are provided by the Authority as guidance.	47	Relevant DB OPS	€2,000
Actuary, employer, RA, trustee	All actuaries, trustees, registered administrators, and employers are required to comply with disclosure of information to members and other persons as prescribed pursuant to section 54(1).	54(1)	OPS and trust RACs	€2,000
Actuary, auditor, employer, RA, trustee	All actuaries, auditors, employers, registered administrators and trustees of OPS or trust RACs are required, when requested, to furnish another entity with information to assist them in their roles. This also applies to any requests from the Authority for information relating to the activities of any of the entities listed in relation to an OPS or trust RAC.	54(4)	OPS and trust RACs	€2,000
Trustee	Trustees of OPS or trust RACs are required to prepare an annual report on either 1 of January each year or a date agreed upon by the trustees and the Authority pursuant to section 55(1) of the Act.	55(1)	OPS and trust RACs	€2,000
Trustee	Trustees of relevant DB OPS are required to include a statement prepared by an actuary in the annual report. The statement must indicate whether the actuary is reasonably satisfied that if they were to prepare an AFC or FRSC on the date of the last day of the period to which the annual report relates, they would certify that the scheme satisfies sections 44(1) and 44(2) of the Act.	55(3)	Relevant DB OPS	€2,000

Liabe person/entity	Description of responsibility	Section of Act	Pension type	Fine amount ²
Trustee	Trustees of relevant DB OPS are required to ensure that if the actuarial statement states that the scheme does not satisfy the funding standard and a funding proposal has been submitted, the annual report must include a statement by an actuary as to whether they are reasonably satisfied that the scheme will satisfy the funding standard at the effective date of the next AFC or FSRC (or later date if specified in section 49(3B)).	55(4)	Relevant DB OPS	€2,000
Trustee	Trustees of relevant DB OPS are required to write to the Authority within a specified time limit if the annual report does not contain a statement by the actuary, or the actuary is not reasonably satisfied that the scheme will meet the funding standard.	55(5)	Relevant DB OPS	€2,000
Trustee	Trustees of OPS or trust RACs are required to have the accounts audited by an auditor and, if a DB OPS, the resources and liabilities valued by an actuary within the prescribed timeframes, pursuant to section 56(1) of the Act.	56(1)	OPS and trust RACs	€2,000
Trustee	Trustees of a DC OPS or a trust RAC are required to have the liabilities of the OPS or trust RAC valued as prescribed.	56(2A)	OPS (DC) and trust RACs	€2,000
Employer	Employers are required to issue a monthly statement of monies remitted to trustees or other persons on their behalf, pursuant to section 58A(3) of the Act.	58A(3)	OPS and trust RACs	€2,000
Trustee	Trustees of OPS or trust RACs are required to undertake trustee training in accordance with section 59AA (within six months of relevant date and every two years thereafter).	59(1) (ca)	OPS and trust RACs	€2,000
Trustee	Trustees of OPS or trust RACs are required to prepare a SIPP and review and revise same at least every three years, or any time following significant change where warranted.	59(1B)	OPS and trust RACs	€2,000

Liabe person/entity	Description of responsibility	Section of Act	Pension type	Fine amount ²
Trustee	Trustees of OPS or trust RACs are required to ensure that the SIPP includes the prescribed matters and is prepared and maintained in the form and manner that may be prescribed.	59(1C)	OPS and trust RACs	€2,000
Trustee	Trustees of OPS or trust RACs are required to furnish members with prescribed information, within prescribed time limits, relating to determinations made by them about investments, pursuant to section 59(2)(a)(iii) of the Act.	59(2)(a)(iii)	OPS and trust RACs	€2,000
Trustee	Trustees of OPS or trust RACs are required to take reasonable steps to ensure members have the necessary information to enable them to make informed decisions on types of investment.	59(2)(a)(iv)	OPS and trust RACs	€2,000
Trustee	Section 59C prevents trustees from calculating an increase in a scheme pension which involves a State pension offset by reference to increases in the State pension.	59C	OPS and trust RACs	€2,000
Trustee	Trustees of OPS or trust RACs are required to ensure that the OPS or trust RAC is registered with the Authority within specified time limits and must provide such information to the Authority as may be prescribed. Please note that the Act allows OPS and trust RACs to be registered up to a period of one year from the date of commencement.	60	OPS and trust RACs	€2,000
Trustee	Trustees of OPS or trust RACs are required on request by persons to furnish them or the PRSA provider with a statement of comparison of benefits pursuant to section 113(2).	113(2)	OPS and trust RACs	€2,000
Employer	Employers are required to remit contributions to PRSA providers and provide employees with a monthly statement of monies remitted to PRSA providers, pursuant to section 121(5) of the Act.	121(5)	PRSA	€2,000

Legal sanctions for non-compliance

The Authority monitors compliance with all provisions of the Act, including the specified provisions above that are subject to the notice of intention to prosecute regime. Non-compliance with the Act can also be dealt with by prosecution through the courts pursuant to section 3 of the Act. Court proceedings may be taken against trustees, employers, PRSA providers, an actuary, an auditor, a registered administrator and certain other persons for non-compliance with the Act. The Authority may bring and prosecute summary proceedings in the District Court or, depending on the seriousness of the alleged offence, may refer the file to the Director of Public Prosecutions who may bring and prosecute proceedings on indictment.

Persons found guilty of an offence under the Act are normally liable:

- on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding one year, or to both, or
- on conviction on indictment to a fine not exceeding €25,000 or to imprisonment for a term not exceeding two years, or to both.