

# **PENSIONS ACT 2008**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1: Pension scheme membership for jobholders**

#### ***Chapter 4: Supplementary provision about compliance and information sharing***

#### ***Section 60: Requirement to keep records***

143. **Section 60** permits the Secretary of State, by regulations, to make provision requiring any person to keep records in a prescribed form for a period prescribed by regulations, not exceeding 6 years. Regulations may require the provision of such records, on request, to the Regulator.
144. These regulations can make provision for the Regulator to apply penalties under section 10 of the PA 1995 where a person fails to comply with this requirement.

#### ***Section 61: Powers to require information and to enter premises***

145. This gives the Regulator, in pursuance of its new objective, powers to require information and to enter premises. It amends section 72 of the PA 2004 so as to permit the Pensions Regulator to require any person who holds or is likely to hold information relevant to the exercise of the Regulator's functions to provide an explanation of a document requested, at a specified time and place.
146. The Regulator will not be able to require anyone to answer any question or provide any information that might incriminate themselves or their partner or spouse.
147. This section also allows an inspector, appointed by the Pensions Regulator, to enter premises liable to inspection to investigate whether an employer is complying with requirements under Chapter 1, or sections 50 or 54 of Part 1.

#### ***Section 62: Disclosure of tax information etc***

148. This section substitutes a new section 88 of the PA 2004. It allows HM Revenue and Customs (HMRC) to disclose information on specified matters to the Regulator to enable the Regulator to discharge its functions. The section allows HMRC to share any information it holds in relation to:
- tax or duty (including income tax);
  - national insurance contributions;
  - the national minimum wage.
149. The section also places controls on the Regulator's ability to disclose this information. Any information the Regulator receives from HMRC under this section must be treated as restricted information, and can only be disclosed if one of the following exceptions applies:

- HMRC has authorised the disclosure (or the disclosure is back to HMRC);
  - it is needed for criminal proceedings;
  - it is needed for civil proceedings started by the Regulator;
  - it is needed for the Regulator to carry out its functions; or
  - the data has been anonymised.
150. Information received by the Regulator from HMRC under this section is specifically excluded from some of the grounds on which the Regulator can normally disclose information it holds. These are set out in sections 82, 83, 85-87, and 235 of the PA 2004. This includes, for example, disclosure with the consent of the person to whom the information relates, or where necessary to help other specified regulatory bodies exercise their functions, or to the Secretary of State for the purposes of private pensions and retirement planning policy.

### ***Section 63: Information for private pensions policy and retirement planning***

151. *Section 63* amends Schedule 10 to the PA 2004. Schedule 10 allows the Secretary of State (or the Northern Ireland Department) to make use of information collected in the course of carrying out a wide variety of functions (social security, child support, war pensions, employment or training, private pensions policy, retirement planning). This section adds private pensions policy and retirement planning to that list of functions.
152. This section also allows the Pensions Regulator to supply the Secretary of State with information in the first place, so that the latter (and the Northern Ireland Department) can use this information to help perform functions relating to private pensions policy or retirement. The section also utilises a definition of “private pensions policy” so as to incorporate the definition of pension schemes introduced in Part 1 of the Act.

### ***Section 64: Penalty for disclosure***

153. *Section 64* increases the maximum sentence on summary conviction for officials, contractors or any other people who directly or indirectly receive restricted information from the Pensions Regulator and who disclose such information without authorisation. Such unauthorised disclosure is already a criminal offence under section 82(5) of the PA 2004. This section makes anyone who is convicted of this offence in a magistrates’ court liable to a prison term of up to a year (rather than a fine not exceeding the statutory maximum, which was the previous extent of a magistrates’ court’s powers for this offence). This may be imposed together with, or instead of, a fine up to the statutory maximum.

### ***Section 65: Objectives of the Regulator***

154. *Section 65* provides a new statutory objective for the Pensions Regulator. In addition to those listed at section 5(1) of the PA 2004, the Regulator’s objectives will now include maximising compliance with the new duties being placed on employers under Chapter 1 of Part 1, and the safeguards in sections 50 (prohibited recruitment conduct) and 54 (inducements).

### ***Section 66: Functions of the Pensions Ombudsman***

155. *Section 66* gives the Pensions Ombudsman a new function, in addition to those under section 146 of the PSA 1993, to investigate complaints relating to a jobholder opting out of a pension scheme.