

PENSIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – the Pensions Regulator

Summary

17. The Occupational Pensions Regulatory Authority (Opra) will be replaced by a new Non-Departmental Public Body (NDPB), the Pensions Regulator (referred to hereafter in the Act and these Notes as the Regulator).
18. Opra's existing powers will be carried forward to the Regulator. In addition the new regulatory body will have statutory objectives and functions that provide a framework for its activity.
19. The Regulator will aim to operate a targeted and proportionate regulatory regime, applying greater regulatory scrutiny where it considers members benefits are most at risk. This approach will be supported by increased powers to gather, retain and share information. The information gathered will be subject to analysis to help identify those schemes where members' benefits are more likely to be at risk.
20. The Act will introduce a range of new powers including:
 - issuing improvement notices or third party notices to remedy breaches;
 - the ability to freeze a scheme to protect members' benefits or scheme assets whilst investigations by the Regulator take place;
 - power to issue a contribution notice, or financial support directions and to make orders in respect of transactions at an undervalue;
 - increased powers covering the prohibition, suspension and removal of trustees;
 - increased whistleblowing responsibilities and duties to report certain events.
21. The Regulator will also be able to issue codes of practice. This will provide those involved in pensions, with practical guidance in relation to their duties and responsibilities under pensions legislation, thus assisting schemes in improving compliance and encouraging best practice. In certain areas the Regulator will be legally obliged to provide codes of practice, for example, on disclosure of information to scheme members.
22. The Act establishes a new tribunal – the Pensions Regulator Tribunal – to hear references from the Regulator's determinations.

Establishment

Section 1: The Pensions Regulator

23. This section establishes the Pensions Regulator.

Sections 2 and 3: Membership of the Regulator; Further provision about the Regulator

24. *Section 2* deals with membership of the Regulator. The Regulator will consist of: a chairman (who will be appointed by the Secretary of State); a Chief Executive; and at least five other members appointed by the Secretary of State, after consulting the chairman (*subsection (1)(c)*). The chairman must not be appointed from the staff of the Regulator (as defined in *paragraph 7 of Schedule 1*) or be the chairman of the Board of the Pension Protection Fund. By virtue of *subsection (3)* at least two of the members of the Regulator appointed under *subsection (1)(c)* are to be appointed from the staff of the Regulator.
25. The inclusion of executive members on the Board implements a recommendation of Derek Higgs' review for the Chancellor of the Exchequer and the Secretary of State for Trade and Industry of the role and effectiveness of non-executive directors (January 2003) which states:
- ““The Board should include a balance of executive and non executive directors (including independent non-executives) such that no individual or small group of individuals can dominate the board’s decision taking. (Annex A, item 3 – Board Balance and Independence).”
26. The executive members of the Regulator are to be the Chief Executive and the two or more members appointed from the staff of the Regulator under *subsection (1)(c)*. All other members of the Regulator will be non-executive members. *Subsection (4)* provides that in appointing members under *subsection (1)(c)* the Secretary of State must ensure that the majority of members of the Regulator are non-executive members. No member of the staff of the Board of the Pension Protection Fund is eligible for appointment as a member of the Regulator.
27. *Schedule 1* (which is introduced by *section 3*) contains further provision about the constitution of the Regulator

Schedule 1: The Pensions Regulator

28. *Paragraphs 1-3* set out the terms of appointment and tenure for members of the Regulator. These paragraphs set out that a person will cease to be a member of the Regulator if:
- in the case of the chairman of the Regulator, he ceases to hold this position or if he becomes a member of staff of the Regulator;
 - in the case of any other non-executive member, he becomes a member of staff of the Regulator;
 - in the case of an executive member appointed as one of the five other members of the Regulator appointed by the Secretary of State after consulting the chairman (under *section 2(c)*), he ceases to be a member of staff of the Regulator;
 - in the case of the Chief Executive, he ceases to be employed as such.
29. *Paragraph 3* sets out that someone will not be prevented from being a member of the Regulator if they have previously been such a member.
30. *Paragraphs 4-6* set out provisions on remuneration which allow for the Secretary of State to determine the remuneration of the non-executive members of the Regulator, and allow for the Regulator to pay (as determined by the Secretary of State) allowances, gratuities or pensions to those who are or have been non-executive members of the Regulator. These paragraphs also provide for the payment of compensation (where it appears to the Secretary of State that such compensation is correct in the circumstances) to a non-executive member of the Regulator who ceases to hold such a position other than at the end of his term of office.

31. *Paragraphs 7–10* provide that the staff of the Regulator consists of the Chief Executive as appointed under paragraph 8; the other employees of the Regulator as appointed under *paragraph 9*; and any additional staff made available by the Secretary of State under *paragraph 10*.
32. *Paragraph 11* sets out that in order to appoint a chairman of the Determinations Panel, the chairman of the Regulator must establish an appointments committee (consisting of a chairman (which is to be one of the non-executive members of the Regulator) and one or more people appointed by the chairman of the Regulator). The appointments committee will nominate a suitable person for the office of chairman of the Determinations Panel.
33. *Paragraph 12* provides that the Regulator is to determine the terms and conditions of appointment of members of the Determinations Panel, subject to the approval of the Secretary of State. A person is automatically removed from the Panel if, in the case of the Chairman of the Panel, he ceases to hold that office, or for any other member, he becomes a member of the Regulator or a member of staff of the Regulator. In conjunction with *section 9(5)*, this ensures that members of the Determinations Panel cannot simultaneously be members of either the Regulator or its staff. However, former members of the Panel, the Regulator, or the staff of the Regulator are eligible to sit on the Determinations Panel.
34. *Paragraphs 14-16* allow the Regulator to remunerate members of the Determinations Panel at a level determined by the Secretary of State. They also enable the Regulator to pay (at levels determined by the Secretary of State) allowances, gratuities or pensions to those who are or have been members of the Panel. These paragraphs also provide for the payment of compensation (where it appears to the Secretary of State that such compensation is correct in the circumstances) to a member of the Panel who ceases to hold such a position other than at the end of his term of office.
35. *Paragraph 17* enables the Regulator to establish committees for any purpose. Such committees may establish sub-committees. Provision is made as to the membership of such committees. “Committees of the Regulator” is also defined for the purposes of the Schedule.
36. *Paragraphs 18 and 19* enable the Regulator to determine its own procedures. Determination Panel procedures may be determined only by the Panel. The Secretary of State has the power to make regulations prescribing the Regulator’s procedures, which would include the Determination Panel’s proceedings.
37. *Paragraph 20* allows the Regulator to authorise any executive member; any other member of staff; or, any of its committees (other than the appointments committee, the Determinations Panel and any of the Panel’s subcommittees) to exercise on behalf of the Regulator, functions which the Regulator determines. However, this does not apply with regard to:
 - the non-executive functions of the Regulator listed in *section 8(4)*(non-executive functions), which must be carried out by the committee established under *section 8*;
 - the duty of the Regulator to appoint the chairman and other members of the Determinations Panel and to determine the terms and conditions of their appointments;
 - the functions of the Regulator which are only exercisable by the Determinations Panel by virtue of *section 10(1)* (the power in certain circumstances to determine whether to exercise the functions listed in *Schedule 2* and to exercise them) or *section 99(10)* (compulsory review) or any corresponding provision in force in Northern Ireland.
38. The Regulator may authorise the Determinations Panel to exercise on the Regulator’s behalf the power to determine whether to exercise, and to exercise, one or more of the

regulatory functions listed in *sub-paragraph (5)*. There is also power to delegate further functions to the Panel under *sub-paragraph (6)*

39. *Paragraph 21* allows the Secretary of State to make regulations limiting the functions delegated by the committee established under *section 8* to any of its members or any of its sub-committees; limiting the functions delegated by the Determinations Panel to any of its members or any of its sub-committees; limiting the extent to which the functions of the Regulator may be delegated under *paragraph 20*, and permitting the Regulator in prescribed circumstances to delegate to prescribed persons any prescribed functions of the Regulator.
40. *Paragraphs 22 and 23* cover the application of the seal of the Regulator and its authentication by an approved person.
41. *Paragraphs 24 to 28* are concerned with matters relating to the funding and accounts of the Regulator, including the payment of the levy and the appointment of the Comptroller and Auditor General as auditor.
42. *Paragraphs 29 to 35* cover the status and liability etc of the Regulator as a corporate body and provide for exemption from liability in damages.

General provisions about functions

Section 4: Regulator's functions

43. The Regulator has both the functions which are transferred to it from Opra (also see *section 7* for detail on the transfer of Opra's powers) and other functions conferred on to it by the Act and any other enactments.
44. This section sets out further detail on how the Regulator will discharge its functions. The non-executive functions set out in *section 8(4)* must, by virtue of *section 8(2)* be discharged by the committee established under *section 8*. It also reserves the discharge of certain of the Regulator's regulatory functions to a special committee called the Determinations Panel established under *section 9*. The Regulator's general power to delegate certain functions is subject to the Secretary of State's power to make regulations limiting such delegation (see *paragraph 21 of Schedule 1*).
45. The Regulator will also be able to act, as Opra does now, as a prosecutor. No specific legislative provision is required to permit this.

Section 5: Regulator's objectives

46. The main objectives of the Regulator in discharging its functions are to protect the benefits of members (i.e. members of occupational pensions schemes or stakeholder pension schemes, and members of personal pension schemes who are employees in respect of whom direct payment arrangements exist and, in cases where the scheme is a stakeholder pension scheme, any other members) of work-based pensions (i.e. all occupational and certain personal pension schemes), to reduce the risk of situations arising which may lead to calls for compensation from the Pension Protection Fund, and, to promote the good administration of the schemes which it regulates.

Section 6: Supplementary powers

47. The Regulator may do anything (except borrow money) which is calculated to facilitate the exercise of its functions, or is incidental or conducive to their exercise. This power enables the Regulator to, for example, lease office space, print stationery, etc.

Section 7: Transfer of Opra's functions to the Regulator

48. The functions of Opra under the Pension Schemes Act 1993, the Pensions Act 1995, and the Welfare Reform and Pensions Act 1999 are transferred to the Regulator, with definitions amended accordingly.

Non-executive functions

Section 8: Non-executive functions

49. The Regulator must establish a committee to discharge the non-executive functions on its behalf. Only non-executive members of the Regulator may be members of that committee. The non-executive functions are: to keep under review whether the Regulator's internal financial controls secure the proper conduct of its financial affairs; and to determine the remuneration of the Chief Executive (with reference to *paragraph 8(4)(b) of Schedule 1*) which is subject to the approval of the Secretary of State.
50. The committee established under this section must prepare a report on the discharge of the non-executive functions for inclusion in the Regulator's annual report to the Secretary of State under *section 11* (annual reports to the Secretary of State). The report on the discharge of the non-executive functions must relate to the same period as that covered by the Regulator's annual report.
51. The committee established under *section 8* may establish sub-committees. The members of these sub-committees may include individuals who are not members of the committee or of the Regulator, but cannot include executive members or other staff of the Regulator.
52. The committee may authorise any of the non-executive functions to be discharged by any of its members or by any of its sub-committees on behalf of the committee. The Regulator can in accordance with *paragraph 20(1) of Schedule 1* also authorise the committee or any of its sub-committees to carry out further functions of the Regulator.

Section 9: The Determinations Panel

53. This section provides for the Regulator to establish and maintain a committee known as the Determinations Panel which is to consist of a chairman and at least six other members. The Regulator must appoint as the chairman of the Determinations Panel the person nominated in accordance with *paragraph 11 of Schedule 1* (which requires the chairman of the Regulator to set up a committee to recommend a person for appointment as chairman of the Determinations Panel.)
54. The chairman of the Determinations Panel will decide the actual size of the Determinations Panel and nominate suitable people. The Regulator will then appoint these nominees as other members of the Determinations Panel. Any member of the Regulator, any member of staff of the Regulator, any member of the Board of the Pension Protection Fund and any member of the staff of that Board will not be eligible for appointment to the Determinations Panel.
55. The Panel may establish sub-committees consisting of members of the Panel.

Section 10: Functions exercisable by the Determinations Panel

56. This section provides that in certain circumstances the power to determine whether to exercise, and to exercise, certain functions of the Regulator is reserved to the Determinations Panel. The functions in question are listed in *Schedule 2* and are known as the "reserved regulatory functions". The Regulator can also authorise the Panel to carry out more functions under *paragraph 20(4) or (6) of Schedule 1*. The Panel may also sub-delegate the exercise of functions to any of its members or sub-committees. This is all subject to any regulations made by the Secretary of State under *paragraph 21 of Schedule 1* (which concerns the power to limit or permit the delegation of functions).

Schedule 2: The reserved regulatory functions

57. This Schedule lists the reserved regulatory functions of the Regulator referred to in [section 10](#). In certain circumstances the power to determine whether to exercise these functions and the power to exercise them is reserved to the Determination Panel (see [section 10\(1\) – \(3\)](#)).

Annual Report

Section 11: Annual reports to Secretary of State

58. *Subsection (1)* provides that the Regulator must produce a report for each financial year. The “financial year” is defined for these purposes as the date of the Regulator’s establishment to the following 31 March and then every 12 months thereafter (see *subsection (6)*).
59. *Subsections (2) and (3)* set out information which must be included in the report. Each report will have to cover the activities of the Regulator for the financial year. A report by the committee set up under [section 8](#) must also be included. It must give information about the strategic direction of the Regulator and how this is being kept under review; how the Chief Executive’s performance is being monitored; and the steps taken to monitor the Regulator’s performance against objectives and targets. *Subsection (4)* provides that the Regulator must send each report to the Secretary of State as soon as practicable after the end of the financial year. The Secretary of State will then lay a copy of every report received by him under this section before both Houses of Parliament (see *subsection (5)*).

Provision of information, education and assistance

Section 12: Provision of information, education and assistance

60. This section enables the Regulator to provide information, education and assistance to those involved in the administration of work-based pension schemes, employers in relation to such schemes or people advising the trustees, managers or employees in the operation of these schemes. The Regulator may also provide information, education and assistance to those who have duties under [section 238](#) of this Act. “Work-based pension scheme” has the same meaning as in [section 5](#) and “employers in relation to work-based pension schemes” means, in the case of stakeholder pension schemes, the persons upon whom duties are imposed under section 3 of the Welfare Reform and Pensions Act 1999 (duty of employers to facilitate access to stakeholder pension schemes).

New powers in respect of occupational and personal pension schemes

Section 13: Improvement Notices

61. This section provides that if the Regulator is of the opinion that someone has not complied with the “pensions legislation” (as defined in *subsection (7)*), it may issue an improvement notice directing the person to act to remedy or prevent a recurrence of the contravention. An improvement notice must specify the nature of the contravention and the evidence on which the Regulator has based its opinion that the contravention has occurred. For each step which the notice requires to be taken, the notice must specify the period within which the step must be taken (the time period must not be less than 21 days from the date of the notice).
62. *Subsection (3)* provides that an improvement notice may be framed by reference to a code of practice issued by the Regulator under [section 90](#) and may allow the person to whom the notice is made a choice of ways to remedy or prevent the recurrence of the contravention. *Subsection (4)* states that the requirement to comply with directions in an improvement notice can be dependent on compliance by a third party with a direction or directions contained in a notice under [section 14](#) (which concerns third party notices

– see below). The improvement notice can direct the person to whom it was issued to inform the Regulator, within the period specified in the notice, of the measures taken following issue of the notice. *Subsections (8) and (9)* make provision for the imposition of civil penalties under section 10 of the Pensions Act 1995 (civil penalties) in cases where this section is contravened.

Section 14: Third party notices

63. This section deals with cases where a person (the third party) fails to do something and this causes another person to contravene the pensions legislation (within the meaning of *section 13(7)*). The third party can be given a third party notice by the Regulator requiring him to remedy his failure. For example if trustees are unable to comply with the requirements to produce audited accounts because the scheme administrators had not supplied them with the required information, the Regulator could issue a third party notice to the scheme administrators requiring them to remedy the situation within a reasonable period of time.
64. The notice must specify the nature of the contravention of the pensions legislation and the alleged failure by the third party, and include the evidence on which the Regulator has based its opinion. Each step which the notice requires the third party to take must be taken within the deadline specified the notice (and that deadline must be at least 21 days from the date of the notice). Directions in a third party notice may be framed so as to allow the third party a choice of ways to remedy or prevent the recurrence of the contravention. *Subsection (4)* provides that a notice may direct the third party to inform the Regulator of actions taken to comply with the notice.
65. *Subsection (6)* provides that section 10 of the Pensions Act 1995 (civil penalties) applies to a person who, without reasonable excuse, fails to comply with a third party notice issued to him.
66. *Subsection (7)* prevents compliance with a third party notice amounting to a breach of confidentiality.

Section 15: Injunctions and interdicts

67. This section provides that the Regulator can apply to the High Court for an injunction or, in Scotland, to the Court of Session for an interdict, which the court may grant where it is satisfied that:
 - there is a reasonable likelihood that a person will do an act which constitutes a misuse or misappropriation of assets of an occupational or personal pension scheme; or
 - a person has done any such act and that there is a reasonable likelihood that he will continue or repeat the act or do a similar act.

Section 16: Restitution

68. If the Regulator applies to the High Court or Court of Session and the court is satisfied that there has been a misuse or misappropriation of any of the assets of an occupational or personal pension scheme, then the court can direct any person knowingly concerned in the misuse or misappropriation of the assets to take specified steps to restore the parties to their original position.

Section 17: Power of the Regulator to recover unpaid contributions

69. This section enables the Regulator, on behalf of the trustees or managers of an occupational or personal pensions scheme, to use any power that the trustees or managers would have had to recover employer contributions (within the meaning of *subsection (3)*) due to a scheme. In the case of personal pension schemes, if the trustees or managers do not have powers under the scheme to recover unpaid employer

contributions, *subsection (2)* ensures the Regulator may still recover those contributions as if they were owed on a debt to the trustees or managers.

Section 18: Pension liberation: interpretation

70. *Subsection (1)* provides definitions of terms used in *sections 18 to 21* relating to pension liberation. In addition to *section 18* itself, those sections are *section 19* (court's power to order restitution where pension liberation has occurred) and *sections 20 and 21* (Regulator's powers to make restraining orders, and repatriation orders, where pension liberation has occurred).
71. *Subsection (2)* defines what is meant by 'money liberated from a pension scheme'. It is money which represents accrued rights which has been transferred from a pension scheme on the basis that it would be used in an authorised way but, despite that, it has not been used in an authorised way and is not likely to be used in an authorised way. *Subsection (4)* describes the authorised ways. These are, broadly, the ways in which schemes are allowed to give effect to a transfer value as permitted by section 94 or 101AB or 101F of the Pension Schemes Act 1993 or the scheme rules.

Section 19: Pension liberation: court's power to order restitution

72. This section is concerned with the court's power to order restitution where pension liberation has occurred. It applies where there is recoverable property. *Subsection (2)* defines 'recoverable property' as being all or some of the money liberated from the pension scheme or as being property which directly or indirectly represents all or some of the money liberated from the pension scheme.
73. *Subsection (3)* sets out an exception so that recoverable property will not include property where the beneficial interest in the property has been acquired in good faith and for value. In addition it must have been acquired without notice as to the fact that it represents money liberated from a pension scheme. Property which subsequently represents excepted property will also not fall within the definition.
74. If the Regulator makes an application, under *subsection (4)*, the court can make any order that it thinks just and convenient for securing that recoverable property or money representing its value or proceeds of sale is transferred to a pension scheme, to an annuity or insurance policy or to the liberated member.
75. *Subsection (5)* provides that the court may also order a person who holds recoverable property or has control over it to take steps to ensure that the recoverable property is transferred as directed by the court e.g. he may be directed to sell the property.
76. *Subsection (6)* provides that when an order is made under *subsection (4)* to transfer the recoverable property to a pension scheme, the court may by order direct the trustees or managers of the scheme in question to take steps for that purpose and to apply the property or money transferred in the manner that the court directs for the purpose of providing benefits under that scheme for the liberated member.
77. *Subsection (7)* allows for regulations to be made to modify the provisions of the Pension Schemes Act 1993 as they would apply to cases where the court directs trustees or managers of a pension scheme in the manner laid out in *subsection (6)*.

Section 20: Pension liberation: restraining orders

78. This section gives the Regulator powers, where pension liberation has occurred, to make restraining orders on accounts with deposit takers.
79. *Subsection (1)* provides that the Regulator may make a restraining order in certain circumstances. Those circumstances exist if consideration is being given to the making of a repatriation order under *section 21* and the Regulator is satisfied that the account

contains money that has been liberated from a pension scheme and is an account held by the liberator or someone who will act on the liberator's instructions.

80. *Subsection (2)* provides that during the period when the restraining order has effect no credit or debit may be made to the account.
81. *Subsection (3)* states that a restraining order must give the name of the deposit taker, identify the account in question and contain any other information which may be prescribed in regulations.
82. *Subsection (4)* provides that a restraining order will take effect when the deposit taker is notified of it by the Regulator and will cease after a period of six months from when it was made (but see *subsection (7)*). *Subsection (5)* states that the Regulator may extend or further extend the duration of a restraining order, (the Regulator does that by a further order – an “extension order”).
83. *Subsection (6)* states that the extension order takes effect when the deposit taker is informed of it by the Regulator provided that that happens before the expiry of the restraining order. *Subsection (7)* states that when an extension order takes effect, the restraining order continues for another six months after the initial six-month period but a further extension order cannot take effect until the end of the extension period.
84. *Subsection (8)* states that interest may be credited to an account whilst a restraining order is in effect.
85. *Subsection (9)* provides that if money is credited to an account in breach of the order then the deposit taker must return the money to the payer.
86. *Subsection (10)* allows payments to be made out of restrained accounts. An application must be made to the Regulator who will make a payment provided that the money will be used to help meet living expenses or carry on a trade, profession or occupation. In addition, the beneficial interest in the money paid out must belong to the person who applied for it (or else the person to whom the beneficial interest belongs must have consented to the application). The money paid out must not represent money liberated from a pension scheme.
87. *Subsection (11)* provides that section 10 of the Pensions Act 1995 (civil penalties) will apply to a deposit taker who without reasonable excuse fails to comply with any obligation imposed by a restraining order or this section.

Section 21: Pension liberation: repatriation orders

88. This section is concerned with the Regulator's power to make repatriation orders. A repatriation order can be made where a restraining order has effect and the Regulator is satisfied that the restrained account contains money liberated from a pension scheme where pension liberation has occurred.
89. *Subsection (2)* provides that the Regulator can order the deposit taker to pay a sum no greater than the liberated amount to a pension scheme, to an annuity or insurance policy or to the liberated member. Where the Regulator orders payment to a pension scheme it may also direct the trustees or managers of that scheme to apply the monies in the manner directed, so as to provide benefits under the scheme to or in respect of the liberated member.
90. *Subsection (3)* provides that where the Regulator makes a repatriating order under *subsection (2)* he may determine the sums to be paid out of the restrained account on the basis of what appears to be just and reasonable. This may be done where the Regulator has concluded that the restrained account contains money in relation to two or more liberated members. He will decide this by taking an overall view of transactions in the account before the restraining order was made.

91. *Subsection (4)* allows for regulations to be made to modify the provisions of the Pension Schemes Act 1993 where the Regulator directs trustees or managers of a pension scheme how to apply the repatriated amount (*subsection (2)(b)*).
92. Under *subsection (5)*, the Regulator may impose a civil penalty (under section 10 of the Pensions Act 1995) on a deposit taker who fails, without a reasonable excuse, to comply with a direction to pay the sum from the account in the manner specified in *subsection (2)*.
93. *Subsection (6)* states that the Regulator may impose a civil penalty (under section 10 of the Pensions Act 1995) on a trustee or manager who fails to take reasonable steps to comply with a direction to apply the sum from the account in the manner specified in *subsection (2)*.

Powers in relation to winding-up of occupational pension schemes

Section 22: Powers to wind up occupational pension schemes

94. This section amends section 11 of the Pensions Act 1995 (powers to wind up schemes) by allowing the Regulator to wind a scheme up during the assessment period in order to minimise the value of claims on the Pension Protection Fund (see Part 2 for claims on the Pension Protection Fund).

Section 23: Freezing orders

95. This section applies to occupational pensions schemes which are not money purchase schemes. *Subsection (2)* gives the Regulator the power to make a 'freezing order' where the Regulator is satisfied that it is necessary to protect the interests of the generality of members of the scheme and there is, or is likely to be if the order is not made, an immediate risk to the interests of members or the assets of the scheme.
96. The order will direct that, during the period it has effect, no benefits are to accrue to, or in respect of, members and that no winding up of the scheme may begin other than by an order of the Regulator (see *subsection (3)*).
97. An order may also contain other directions that have effect during the period of the order e.g. no new members, or specified class of member are to be admitted to the scheme; no further contributions or payments or specified contributions or payments are to be paid into the scheme by, or on behalf of, the employer, any members or any specified members; no transfers, or no specified transfers of any member's rights under the scheme rules are to be made from the scheme.
98. A freezing order may not contain any direction which reduces the benefits payable to, or in respect of, a member during the period of the order to below the level to which the trustees or scheme managers would have the power to reduce them if winding up of the scheme had begun at the time the order took effect.
99. *Subsection (8)* provides that an order may require the trustees or managers to obtain an actuarial valuation.

Section 24: Consequences of freezing order

100. *Subsection (1)* deals with the consequences of a freezing order. Any action taken in contravention of the freezing order is void unless it is validated by an order under *section 26*.
101. *Subsection (2)* provides that a freezing order does not prevent an increase in benefits to accrue which would accrue apart from the order unless the order specifically so provides.

102. *Subsection (3)* provides that a freezing order does not prevent the scheme from being wound up by virtue of an order of the Regulator under section 11 of the Pensions Act 1995 (powers to wind up schemes).
103. *Subsection (4)* provides that if a freezing order states that no further contributions (or specified contributions) are to be paid during the period for which the order has effect then contributions which would have been due during that period do not have to be paid and any obligation to pay those contributions is treated as if it does not arise.
104. *Subsection (5)* provides that pension sharing orders and pension earmarking orders are not prevented from being complied with even if a freezing order is in place preventing transfers.
105. Regulations may modify any provisions of Chapter 4 (transfer values) and 5 (early leavers: transfer sums and contribution refunds) of Part 4 (protection for early leavers) of the Pension Schemes Act 1993 in their application to an occupational pension scheme in relation to which a freezing order is made containing a direction under *section 23(4)(f), (g) or (h)*(no transfers etc of member's rights from the scheme).
106. If a freezing order is not complied with then section 10 of the Pensions Act 1995 (civil penalties) will apply to a trustee or manager who fails to take all reasonable steps to comply with the order. If an employer is directed to repay certain contributions, and fails to do so without a reasonable excuse, a section 10 penalty will apply to the employer.

Section 25: Period of effect etc of freezing order

107. This section specifies that a freezing order has to state its duration, which cannot be longer than three months. However, the Regulator has the power to extend the order, but the total duration of the order cannot be more than six months. Under *section 101* (powers to revoke orders, notices or directions etc) an order can be amended or revoked by another order (which must state the date the amendment or revocation will take effect. It cannot have retrospective effect).

Section 26: Validation of action in contravention of freezing order

108. This section gives the Regulator power to validate by order an action which has been taken in contravention of a freezing order. It gives the trustees, managers of a scheme, or any other person directly affected by the action a statutory right to apply to the Regulator for a validation order.

Section 27: Effect of determination to wind up scheme on freezing order

109. This section sets out the period for which a freezing order has effect in cases where the Regulator has determined to wind up a scheme whilst the freezing order is in place. It ensures that when the Regulator, on notice to the affected parties, determines to wind-up a frozen scheme, the freezing period will extend to the conclusion of any reference to the Pensions Regulator Tribunal.
110. The Regulator retains the power to revoke the freezing order at any time.

Section 28: Effect of winding up order on freezing order

111. A freezing order ceases to have an effect when an order made under section 11 of the Pensions Act 1995 (power to wind up schemes) commences. The winding up is taken to begin at the time the freezing order came into effect. The Regulator may order a specified person to take specified steps within a specified period where the Regulator considers the steps are necessary as a result of the winding up of the scheme beginning at that time. Non-compliance with an order attracts a penalty under section 10 of the Pensions Act 1995 (civil penalties).

Section 29: Effect of assessment period under Part 2 on freezing order

112. A freezing order ceases to have an effect if an assessment period begins in relation to the scheme (see [section 132](#) (assessment periods)).

Section 30: Power to give a direction where freezing order ceases to have effect

113. This section gives the Regulator power to make directions when a freezing order ends and no winding up order (under section 11 of the Pensions Act 1995 (power to wind up schemes)) has been made. The Regulator may make an order that benefits stated in the order are to accrue under the scheme to, or in respect of, specified members of the scheme for the period when the freezing order was in effect or for part of that period. The Regulator may provide that specified conditions are to be met before benefits can accrue. These conditions can include: a requirement that specified benefits do not accrue to or in respect of specified members unless a contribution is made by or on behalf of the member; or that a specified amount of contributions be paid by or on behalf of the employer; or a requirement that such contributions are to be accepted for part or all of the period during which the freezing order was effective.
114. *Subsection (4)* specifies that where a freezing order contained a direction under [section 23\(4\)\(d\)](#) or [\(e\)](#) and any amount of any benefit under the scheme rules was not paid as a result of the direction, then the direction does not affect any entitlement to that benefit. Any benefit to which a member, or a person in respect of a member, remains entitled at the end of the freezing period, is an amount which falls due to the member, or person, at the end of the period.
115. *Subsection (5)* provides that failure to comply with an order under this section will invoke a penalty under section 10 of the Pensions Act 1995 (civil penalties) on a trustee or manager of the scheme who has failed to take all reasonable steps to comply.
116. *Subsection (7)* provides that section 10 of the Pensions Act 1995 (civil penalties) will apply where an order has been made under this section which requires a contribution of a specified amount must be paid by, or on behalf of, the employer within a specified period. The civil penalty will apply if the employer has failed to comply and does not have a reasonable excuse. Where the amount remains unpaid at the end of a specified period, it will be treated as a debt due from the employer to the trustees or managers of the scheme. Notice of the failure to pay must be given to the Regulator by the trustees or managers, except in circumstances prescribed in regulations. Section 10 of the Pensions Act 1995 (civil penalties) will apply to any failure to give notice where the trustees or managers have not taken all reasonable steps.

Section 31: Notification of trustees, managers, employers and members

117. The Regulator must notify the trustees, managers and sponsoring employer of a scheme as soon as reasonably practicable after a freezing order or an order under [section 26](#), [28](#) or [30](#) has been made. The Regulator may order the trustees or managers of the scheme to inform all the scheme members, or members specified in the order, that the order has been made and of its effect. The period in which this notification must take place will be specified in the order.
118. Failure to comply with the directions contained in the order will invoke a penalty under section 10 of the Pensions Act 1995 (civil penalties).

Section 32: Sections 23 to 31: supplementary

119. This provision enables an order under [sections 23](#), [25](#), [26](#), [28](#), [30](#) and [31](#) to be made even if legislation, a legal rule or a rule of the scheme would have prevented this apart from this provision and without regard to any procedural requirements which such legislation, legal rule or scheme rule would otherwise impose.

120. *Subsection (2)* stipulates that the Regulator cannot make an order as mentioned in *subsection (1)* if, in doing so it would contravene section 6(1) of the Human Rights Act 1998 (unlawful for public authority to act in contravention of a Convention right).

Trustees of occupational pension schemes

Section 33: Prohibition orders

121. This section substitutes a new section 3 of the Pensions Act 1995 (prohibition orders). The new section enables the Regulator to prevent a person from acting as a trustee, either in relation to a particular scheme or a particular description of trust schemes or trust schemes in general, wherever it considers that the person is not a “fit and proper” person to act as such. It is expected that the Regulator will have regard to certain considerations when deciding whether a trustee is fit and proper to act as such, including (but not limited to):
- the trustees’ probity, competence and soundness of judgement;
 - the diligence with which he is fulfilling his responsibilities as trustee;
 - whether the interests of members of the scheme or schemes in question are in the opinion of the Regulator being prejudiced by his acting as trustee;
 - whether he has contravened any provision of the pensions legislation relating to the provision or management of pensions in a country or territory outside Great Britain.
122. The Regulator will issue guidance on how it will interpret the term “fit and proper”.
123. By virtue of subsection (2) of this substitute section, where a prohibition order is made under subsection (1) against a person in respect of one or more schemes of which he is a trustee, the order will have the effect of removing him as a trustee from all schemes to which the order relates.

Section 34: Suspension orders

124. This section amends section 4 of the Pensions Act 1995 (suspension orders) in relation to suspension orders. The current provision is extended so that a trustee can be suspended where consideration is being given to proceedings against a trustee, rather than just when proceedings have started.

Section 35: Appointments of trustees by the Regulator

125. *Subsection (1)* makes amendments to section 7 of the Pensions Act 1995 (appointment of trustees) omitting subsection (4) of that section which allowed regulations to prescribe additional circumstances when Opra (referred to as “the authority”) could appoint a trustee of a trust scheme. It also inserts a new subsection 5A in the Pensions Act 1995 which will allow applications to be made to the Regulator for the appointment of trustees to trust schemes, under the powers in section 7(3)(a) or (c) of that Act. Such an application can be made by the trustees, the employer, or any member of the scheme.
126. *Subsection 2* amends section 8 of the Pensions Act 1995 (consequences of appointment of trustees under section 7) so that the fees and expenses of any trustee appointed by the Regulator may be required to be paid by the employer or out of the scheme, or by both (at the discretion of the Regulator).

Section 36: Independent Trustees

127. *Subsection (2)* amends section 22 of the Pensions Act 1995 (circumstances in which provisions relating to independent trustees apply) so that section 23 of that Act (power to appoint independent trustees) will also apply where an interim receiver of the employer’s property is appointed at any time during an assessment period (within the

meaning of [section 132](#) of this Act); and at any time when the scheme is authorised to continue as a closed scheme (see [section 153](#) of this Act).

128. New subsection (2B) and (2C) are intended to ensure that the Regulator, the Board of the Pension Protection Fund and the trustees or managers of the scheme are notified of certain events which are relevant to determining whether section 22 of the Pensions Act 1995 applies.
129. *Subsection (3)* substitutes sections 23 and 24 of the Pensions Act 1995, with a new section 23 (power to appoint independent trustees). Subsection (1) of new section 23 gives the Regulator power to appoint an independent trustee where section 22 of the Pensions Act 1995 applies and where that person has been registered in accordance with subsection (4). By virtue of subsection (2) of new section 23 no more than one independent trustee may be appointed under section 23(1) at any one time. Subsection (3) of new section 23 sets out the criteria that must be met so that a person can be considered as an independent person in order to be appointed as an independent trustee under section 23. The Regulator must maintain a register of independent trustees and subsection (4) of new section 23 allows for regulations whereby the Regulator can compile and maintain the register of persons who satisfy the prescribed conditions for registration as an independent trustee. These regulations may provide for copies of the register, or extracts from it, to be provided to prescribed persons in prescribed circumstances. They may also provide for the inspection of the register by prescribed persons in prescribed circumstances. It will also be possible to charge a reasonable fee for providing copies or permitting inspection.
130. *Subsection (4)* amends section 25 of the Pensions Act 1995 (appointment and powers of independent trustees; further provisions). Where an independent trustee has been appointed and he ceases to be an independent person (see section 23(3) of the Pensions Act 1995 – as substituted by subsection (3) of this section) he must, as soon as reasonably practical, notify the Regulator in writing. Section 10 of the Pensions Act 1995 (civil penalties) will apply where there is a failure to give such notice.
131. An order appointing an independent trustee may provide for any fees or expenses of the trustees to be paid by the employer or out of the resources of the scheme, or by a combination of both. Where the fees of the appointed trustee are to be met from the resources of the scheme, the independent trustee's fee will take priority over all other claims to be met by the resources of the scheme.

Section 37: Disqualification

132. By virtue of this section, which amends section 30(1) of the Pensions Act 1995 (consequences of disqualification under section 29), disqualification will automatically remove a trustee. This aligns disqualification under section 29 of that Act with the effect of a prohibition order under section 3 of that Act.

Contribution notices where avoidance of employer debt

Section 38: Contribution notices where avoidance of employer debt

133. This section sets out the Regulator's power to issue a contribution notice where certain acts or deliberate failures to act have occurred.
134. *Subsection (1)* provides for this section to apply to an occupational pension scheme other than a money purchase scheme, a prescribed scheme or a scheme of a prescribed description.
135. *Subsection (2)* enables the Regulator to issue a contribution notice to a person stating that the person is under a liability to pay the sum specified in the notice. The sum is payable to the trustees or managers of the scheme or to the Board of the Pension Protection Fund if it has assumed responsibility for the scheme.

*These notes refer to the Pensions Act 2004 (c.35)
which received Royal Assent on 18 November 2004*

136. *Subsection (3)* sets out the conditions for the issuing of a contribution notice. The Regulator can only issue a contribution notice to a person if -
- the Regulator is of the opinion that the person was a party to an act or deliberate failure to act which falls within *subsection (5)*;
 - at any time during “the relevant period” the person was the employer in relation to the scheme or connected with or an associate of that employer;
 - the Regulator is of the opinion that, the person, in being a party to the act or failure, was not acting in accordance with his functions as an insolvency practitioner;
 - and the Regulator is of the opinion that it is reasonable to require that person to pay the sum specified in the notice.
137. *Subsection (4)* provides that the Regulator cannot issue a contribution notice in prescribed circumstances to persons of a prescribed description.
138. *Subsection (5)* sets out what constitutes an act or failure to act in relation to this section. For an act or failure to fall within this subsection the Regulator must be of the opinion that the main purpose or one of the main purposes of the act or failure was to prevent a debt due or which might become due under section 75 of the Pensions Act 1995 (deficiencies in the assets) from being recovered, or otherwise than in good faith to prevent a section 75 debt from becoming due, to compromise or otherwise settle such a debt or to reduce the amount of such a debt which would otherwise become due. *Subsection (5)* also provides that the act or failure to act must have occurred on or after 27 April 2004 and includes other requirements as to when it must have occurred.
139. *Subsection (6)* provides that those who are party to an act or failure includes persons who knowingly assist in the act or failure and sets out the meaning of the term the “relevant period”.
140. *Subsection (7)* sets out that, in considering if it is reasonable to impose liability on someone to pay a contribution notice sum, the Regulator should bear in mind matters the Regulator thinks relevant, (including where relevant):
- the financial circumstances of that person;
 - the degree of involvement of that person in the relevant act or failure to act;
 - the relationship that person has or has had with the employer, (including where the employer is a company within the meaning of section 435 of the Insolvency Act 1986, whether the person has or has had control of the employer);
 - any connection of the person with the scheme;
 - whether the act or failure to act was a notifiable event under *section 69* of this Act (duty to notify the Regulator of certain events); and
 - any prescribed matters.
141. *Subsection (8)* provides that for the purposes of *section 38*, references to a debt due under section 75 of the Pensions Act 1995 (deficiencies in the assets) include a contingent debt under that section. *Subsection (9)* provides for the reference in *subsection (5)(a)(ii)* to preventing a debt becoming due to be read, in the case of a contingent debt under section 75 of the Pensions Act 1995, as including a reference to preventing the occurrence of the events upon which the debt is contingent. *Subsection (10)* sets out relevant definitions of connected or associated persons from other legislation that are applied to this section. *Subsection (11)* contains the definition of “insolvency practitioner”.

Section 39: The sum specified in a section 38 contribution notice

142. This section defines how the amount that a person is required to pay by way of a contribution notice under [section 38](#) is to be determined.
143. *Subsection (1)* provides that the amount specified by the Regulator in a contribution notice under [section 38](#) must not exceed the whole of the shortfall sum in relation to the scheme. The amount specified may be less than the whole of the shortfall sum. *Subsection (2)* sets out how the amount of the shortfall sum is to be calculated. Where at “the relevant time” a debt was due from the employer under section 75 of the Pensions Act 1995, then the shortfall sum is the amount that the Regulator estimates the section 75 debt to be at that time. If at “the relevant time” no such debt was due, the shortfall sum is the amount that the Regulator estimates would be the section 75 debt if *subsection (2)* of that section applies and “the relevant time” were the time designated for the purposes of that section.
144. *Subsection (3)* allows the Regulator in specified circumstances to increase the amount calculated under *subsection (2)(a) or (2)(b)* by way of a debt by any amount it considers appropriate. *Subsection (4)* sets out that “the relevant time” is the time of the act or, in the case of a failure to act, either the time when the failure occurred or if the failure continued for a period of time, the time which the Regulator determines during that period. *Subsection (5)* provides that any reference to a debt due under section 75 of the Pensions Act 1995 includes a contingent debt under that section.

Section 40: Content and effect of a section 38 contribution notice

145. This section makes provision in respect of the content and effect of contribution notices under [section 38](#). It requires the contribution notice to contain a statement of the matters which it is asserted constitute the act or failure to act which falls within [section 38\(5\)](#). The Regulator can decide to impose joint and several liabilities on recipients of contribution notices in certain circumstances where more than one contribution notice has been issued as a result of the same act or failure to act. The section also provides that the contribution is a debt due to the trustees or managers of the scheme. It also deals with the situation where the Board of the Pension Protection Fund has become involved with the scheme during an assessment period, in which case it will take over enforcement of the debt under the contribution notice from the trustees or managers and the Regulator.
146. *Subsection (2)* sets out what matters the contribution notice should contain. The notice must specify the act or failure to act, the amount of the debt, and a list of persons to whom the contribution notices have been issued as a result of the same act or failure to act.
147. *Subsection (3)* provides that, where the contribution notice states that the person is under a liability to pay the sum specified to the trustees or managers of the scheme, the sum is to be a debt due from the person to the trustees or managers. *Subsection (4)* allows the Regulator in such a case to exercise the same powers as the trustees or managers of the scheme in recovering this debt.
148. *Subsection (5)* states that, during the assessment period (as defined in [section 132](#)), the Board of the Pension Protection Fund can exercise the rights and powers that the Regulator or the trustees or managers would normally have in respect of the recovery of the sum specified in the contribution notice. *Subsection (6)* provides for any debt paid in such a case to the Board during an assessment period, to be paid over to the trustees or managers of the scheme.
149. *Subsection (7)* provides that, where the contribution notice states that the person is under a liability to pay the sum specified to the Board, the sum is to be a debt due from the person to the Board.

150. *Subsection (8)* provides that a notice may state that the person issued with the contribution notice is jointly and severally liable for the debt with any other person specified in the notice as a person to whom a “corresponding contribution notice” is issued. *Subsection (9)* sets out the meaning of a “corresponding contribution notice”.
151. *Subsection (10)* states that a debt due under a contribution notice should not be taken into account when calculating the assets and liabilities of the scheme in relation to section 75(2) and (4) of the Pensions Act 1995 (deficiencies in the assets).

Section 41: Section 38 contribution notice: relationship with employer debt

152. This section deals with the situation where there is an outstanding debt due under section 75 of the Pensions Act 1995 (deficiencies in the assets) from the employer in relation to the scheme at the same time as an outstanding debt due under a contribution notice. The Regulator will have power to direct the trustees or managers of the scheme from recovering the section 75 debt pending recovery of the contribution notice debt.
153. *Subsection (1)* states that this section applies where a contribution notice is issued to a person under *section 38* and condition A or B is met as set out in *subsection (2) or (3)*. *Subsection (2)* sets out condition A. This is when there is a section 75 debt due from the employer to the trustees or managers of the scheme or the Board of the Pension Protection Fund at the time that the contribution notice is issued. *Subsection (3)* sets out condition B. This is when a section 75 debt becomes due from the employer after the contribution notice has been issued but before the debt under the contribution notice has been paid.
154. *Subsection (4)* states that the Regulator can direct the trustees or managers not to recover the debt due under section 75 of the Pensions Act 1995 (deficiencies in the assets) pending the recovery of the contribution notice debt. *Subsection (5)* provides for a civil penalty under section 10 of the Pensions Act 1995 (civil penalties) to apply where trustees or managers of a scheme fail to comply with a direction issued to them under *subsection (4)*.
155. *Subsection (6)* provides that any sums paid to the trustees or managers of the scheme or the Board of the Pension Protection Fund as a result of the contribution notice are to be treated as reducing the debt under section 75 of the Pensions Act 1995 (deficiencies in the assets). *Subsection (7)* provides that where a payment is made in respect of the section 75 debt then a recipient of a contribution notice may ask the Regulator to reduce the amount that has to be paid under the contribution notice.
156. *Subsection (8)* provides that an application under *subsection (7)* must be made as soon as reasonably practicable after a payment is made. *Subsection (9)* provides that the Regulator may reduce the amount that has to be paid under the contribution notice and issue a revised contribution notice specifying the revised sum.
157. *Subsection (10)* provides that the Regulator must consider a number of factors when considering whether to reduce the amount payable under the contribution notice.
158. *Subsection (11)* states that where the person to whom the revised contribution notice is issued was originally jointly and severally liable for the debt with other persons, the Regulator must also issue a revised contribution notice to those other persons specifying the revised sum and their joint and several liability with the person for the sum of the debt.
159. *Subsection (12)* states that for the purposes of *section 41*, references to a debt or the amount of debt due under section 75 of the Pensions Act 1995 (deficiencies in the assets) include a contingent debt under that section and the amount of any such debt.

Section 42: Section 38 contribution notices: clearance statements

160. An application may be made to the Regulator for the issue of a clearance statement. *Subsection (2)* specifies that a clearance statement is a statement made by the Regulator that in its opinion in the circumstances described in the application, the applicant would not be a party to an act or a deliberate failure to act falling within *section 38(5)(a)*; it would not be reasonable to impose any liability on the applicant under a contribution notice; or such requirements under *section 38* as may be prescribed would not be satisfied in relation to the applicant.
161. *Subsection (3)* provides that following an application for a clearance statement the Regulator may request further information from the applicant and may invite the applicant to amend the circumstances described in their application.
162. *Subsection (4)* requires the Regulator, as soon as reasonably practicable, to determine whether to issue the clearance statement, and, if it so determines, to issue the statement.
163. *Subsection (5)* specifies that a *section 40* clearance statement is binding on the Regulator in relation to exercising the *section 38* power to issue a contribution notice to the applicant unless the circumstances regarding the exercise of the *section 38* power are not the same as the circumstances described in the application for a *section 40* clearance statement and the differences in those circumstances is material to the exercise of the *section 38* power.

Financial support directions

Section 43: Financial support directions

164. This section gives the Regulator power to issue a direction requiring that the recipient put in place appropriate financial support for an occupational pension scheme. This power arises where a sponsoring employer of a scheme is a service company, or is insufficiently resourced.
165. *Subsection (1)* provides that *section 43* applies in relation to occupational pension schemes other than money purchase schemes, prescribed schemes or schemes of a prescribed description.
166. *Subsection (2)* provides that the Regulator may issue a financial support direction if it is of the opinion that the employer in relation to the pension scheme is a service company or is insufficiently resourced (as defined in *section 44*) at “the relevant time”. The relevant time is the time within a prescribed period which ends with the determination by the Regulator to exercise the power to issue the financial support direction in question (see *subsection (9)*).
167. *Subsection (3)* sets out that a financial support direction requires the person or persons to whom it is issued to secure that financial support for the scheme is put in place within the timescale specified by the Regulator in the direction, that this financial support remains in place until the scheme ceases to exist and that notice is given to the Regulator of prescribed events.
168. *Subsection (4)* provides that the Regulator may issue a financial support direction to one or more persons.
169. *Subsections (5) and (6)* set out the persons to whom a financial support direction can be issued. They also provide that the Regulator can only issue a financial support direction if it is of the opinion that it is reasonable to impose the requirements of the direction on that person
170. *Subsection (7)* sets out the matters which the Regulator should consider before deciding whether to issue a financial support direction on a particular person.

171. *Subsection (8)* provides that a financial support direction must identify all the persons to whom the direction is issued.
172. *Subsection (10)* provides that, for the purposes of *subsection (3)*, a scheme is in existence until it is wound up. *Subsection (11)* provides that no duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a notice given by virtue of *subsection (3)(c)* (notice given to the Regulator of prescribed events). This is also subject to *section 311* (protected items).

Section 44: Meaning of “service company” and “insufficiently resourced”

173. This section defines the meaning of “service company” and “insufficiently resourced” for the purposes of *section 43*. *Subsection (2)* defines “service company” as a company whose turnover, as shown in the latest available company accounts, is solely or principally derived from amounts charged for the provision of the services of employees of the company to other companies in the same group.
174. *Subsection (3)* sets out that an employer is “insufficiently resourced” if the value of the resources of the employer is less than the amount which is a set percentage (to be prescribed in regulations) of the estimated debt which would become due from the employer under section 75 of the Pensions Act 1995 (deficiencies in the assets) if the scheme were to wind up, and there is a person who is connected with or an associate of the employer the value of whose resources is not less than the amount which is the difference between the value of the resources of the employer and the amount which is the set percentage of the estimated section 75 debt.
175. *Subsection (4)* provides that, for the purposes of *subsection (3)* what constitutes a person’s resources and their value are to be determined, calculated and verified in a prescribed manner. *Subsection (5)* provides that the “estimated section 75 debt” is the amount which the Regulator estimates as the amount of debt which would become due from the employer if section 75(2) of the Pensions Act 1995 applied and “the relevant time” were the time designated for the purposes of that subsection. *Subsection (6)* sets out that in estimating the section 75 debt in relation to the scheme in *subsection (5)* the amount of any debt actually due under that section is to be disregarded. *Subsection (7)* provides that “the relevant time” has the same meaning as in *section 43*.

Section 45: Meaning of “financial support”

176. This sets out the types of arrangement which may be put in place in order to comply with a direction to secure financial support for the scheme. *Subsection (1)* provides that such arrangements must be approved by the Regulator.
177. *Subsection (2)* sets out that a financial support arrangement can be:
- the application of joint and several liability for the whole part of the employer’s pension liabilities across the whole company group, so that the debt on the employer could be claimed against any member of the group; or
 - an agreement by the holding company of the group, which meets prescribed requirements (the prescribed requirements will provide that the holding company of the group must be located in the EU) to meet the whole or part of the employer’s pension liabilities; or
 - the provision of an arrangement which meets prescribed requirements and whereby additional financial resources are provided to the scheme (for example an appropriate bank guarantee or other arrangement); or
 - such other arrangements as may be prescribed.

178. *Subsection (3)* provides that the Regulator cannot issue a notice under *subsection (1)* unless it is satisfied that the arrangement is or arrangements are reasonable in the circumstances. *Subsection (4)* defines the meaning of “employer’s pension liabilities”.

Section 46: Financial support directions: clearance statements

179. An application may be made to the Regulator for the issue of a clearance statement within *subsection (2)* in relation to circumstances described in the application and relating to an occupational pension scheme. *Subsection (2)* specifies that a clearance statement is a statement made by the Regulator, that in its opinion, in the circumstances described in the application the employer would not be a service company for the purposes of *section 43*; the employer in relation to the scheme would not be insufficiently resourced for the purposes of *section 43*; it would not be reasonable to impose the requirements of a financial support direction, in relation to the scheme, on the applicant.
180. *Subsection (3)* states the Regulator may request further information from the applicant and may invite the applicant to amend the application to modify the circumstances described.
181. *Subsection (4)* requires the Regulator, as soon as reasonably practicable, to determine whether to issue the clearance statement, and, if it so determines, to issue the statement.
182. *Subsection (5)* specifies that a clearance statement issued by the Regulator is binding in relation to the power to issue a financial support direction in relation to the scheme to the applicant unless the circumstances in relation to which the exercise of the power arises are not the same as the circumstances described in the application, and the difference in those circumstances is material to the exercise of the power.

Section 47: Contribution notices where non-compliance with financial support direction

183. *Subsection (1)* provides that this section applies where there is non-compliance with a financial support direction under *section 43*. *Subsection (2)* provides for the Regulator to issue a notice requiring that a contribution be made to the scheme. The Regulator may issue a contribution notice to any one or more of the persons to whom the original direction under *section 43* was issued. However, *subsection (3)* provides that the Regulator can only do so if it is of the opinion that it is reasonable to impose liability on that person to pay the sum specified in the notice.
184. *Subsection (4)* sets out that, in considering whether it is reasonable to impose liability, the Regulator should have regard to all relevant matters including (where relevant):
- whether the person has taken reasonable steps to secure compliance with the financial support direction;
 - the relationship which the person has or has had with the employer (including whether the person has or has had control of the employer).
 - in the case of a person to whom the financial support direction was issued a person falling within *section 43(6)(b) or (c)*, the value of any benefits received directly or indirectly by that person from the employer;
 - the relationship which the person has or has had with the parties to any arrangements put in place in accordance with the direction (this consideration would be particularly appropriate if non-compliance had arisen as a result of an arrangement lapsing);
 - any connection or involvement which the person has or has had with the pension scheme;
 - the financial circumstances of the person; and

- such other matters as may be prescribed.
185. *Subsection (5)* sets out that a contribution notice cannot be issued in respect of a scheme once the Board of the Pension Protection Fund has assumed responsibility for the scheme.

Section 48: The sum specified in a section 47 contribution notice

186. This section defines the maximum contribution that the Regulator can require by reference to the debt under section 75 of the Pensions Act 1995 (deficiencies in the assets) which was due, or would have been due, at the time of non-compliance with the financial support direction.
187. *Subsection (1)* states that the Regulator can specify in the contribution notice the whole or part of the shortfall sum in relation to a scheme. *Subsection (2)* sets out how the amount of the shortfall sum should be calculated. Where, at the “time of non-compliance”, a debt was due from the employer under section 75 of the Pensions Act 1995, the shortfall sum is the amount which the Regulator estimates the debt to be at that time, or, if no such debt was due, the shortfall sum is the amount of the debt that the Regulator estimates would become due if subsection (2) of section 75 of the Pensions Act 1995 applied and the “time of non-compliance” were the time designated for the purposes of that subsection.
188. *Subsection (3)* sets out that the “time of non-compliance” is where-
- financial support for the scheme is not put in place within the period specified in the Regulator’s direction, the time immediately after the expiry of that period;
 - a financial support arrangement lapses, the time when the financial support ceased to be in place;
 - there is a failure to notify the Regulator of a prescribed event in respect of the financial support, the time when the prescribed event occurred; and
 - more than one type of non-compliance applies, whichever of those times the Regulator determines.

Section 49: Content and effect of a section 47 contribution notice

189. *Subsection (2)* provides that the contribution notice must contain a statement of the matters which constitute the non-compliance with the direction and specify the sum which the person identified in the notice is under a liability to pay. *Subsection (3)* provides that the sum specified in the contribution notice is to be treated as a debt due to the trustees or managers of the scheme.
190. *Subsection (4)* allows for the Regulator to enforce the payment of any sum due under a contribution notice on behalf of the trustees or managers. *Subsection (5)* deals with the situation where the Board of the Pension Protection Fund has become involved with the scheme during an assessment period, in which case it will take over enforcement from the trustees or managers or the Regulator, and – as provided for in *subsection (6)* – any debt paid to the Board in respect of a debt due by virtue of a contribution notice during this time must be passed on by the Board to the trustees or managers of the scheme.
191. *Subsection (7)* provides that the contribution notice must identify any other person to whom contribution notices have been issued in respect of the same non-compliance and the sums specified in each of those notices. *Subsection (8)* provides that a contribution notice may state that the person issued with the contribution notice is jointly and severally liable for the debt with any other person specified in the notice as a person to whom a “corresponding contribution notice” is issued. *Subsection (9)* sets out the meaning of a “corresponding contribution notice” *Subsection (10)* states that a debt due under a contribution notice should not be taken into account when calculating the assets

and liabilities of the scheme in relation to section 75(2) and (4) of the Pensions Act 1995 (deficiencies in the assets).

Section 50: Section 47 contribution notice: relationship with employer debt

192. This section deals with the situation where there is an outstanding debt due under section 75 of the Pensions Act 1995 (deficiencies in the assets) from the employer in relation to the scheme at the same time as an outstanding debt due to the scheme under a *section 47* contribution notice. The Regulator will have power to direct the trustees or managers of the scheme from recovering the section 75 debt pending recovery of the debt due by virtue of the contribution notice where it would not be sensible for both to happen at once.
193. *Subsection (1)* states that this section applies where a contribution notice is issued to a person under *section 41* and condition A or B is met as set out in *subsection (2) or (3)*. *Subsection (2)* sets out condition A. This is when there is a section 75 debt due from the employer in relation to the scheme to the trustees or managers of the scheme or the Board of the Pension Protection Fund at the time the contribution notice is issued. *Subsection (3)* sets out condition B. This is when a section 75 debt becomes due from the employer in relation to the scheme after the contribution notice has been issued and before the debt under the contribution notice has been paid.
194. *Subsection (4)* states that the Regulator can direct the trustees or managers not to recover the debt due under section 75 of the Pensions Act 1995 (deficiencies in the assets) pending the recovery of the contribution notice debt. *Subsection (5)* provides for section 10 of the Pensions Act 1995 (civil penalties) to apply where trustees or managers of a scheme fail to comply with a direction issued to them under *subsection (4)*.
195. *Subsection (6)* provides that any sums paid to the trustees or managers of the scheme or the board of the Pension Protection Fund as a result of the contribution notice are to be treated as reducing the debt under section 75 of the Pensions Act 1995. *Subsection (7)* provides that where a payment is made in respect of a section 75 debt then the person to whom a contribution notice is issued may ask the Regulator to reduce the amount that has to be paid under the contribution notice.
196. *Subsection (8)* provides that an application under *subsection (7)* must be made as soon as reasonably practicable after a payment is made. *Subsection (9)* provides that the Regulator may reduce the amount that has to be paid under the contribution notice and issue a revised contribution notice specifying the revised sum.
197. *Subsection (10)* provides that the Regulator must consider a number of factors when considering whether to reduce the amount payable under the contribution notice.
198. *Subsection (11)* states that where the person to whom the revised contribution notice is issued was originally jointly and severally liable for the debt with other persons the Regulator must also issue a revised contribution notice to those other persons specifying the revised sum and their joint and several liability with the person for the sum of the debt.

Section 51: Sections 43 to 50: interpretation

199. *Subsection (1)* defines “group of companies” as a holding company and its subsidiaries. “Holding company” and “subsidiaries” have the meaning given by section 736(1) of the Companies Act 1985. *Subsection (2)* provides that any reference to a debt due under section 75 of the Pensions Act 1995 (deficiencies in assets) includes a contingent debt under that section. *Subsection (3)* provides that section 249 (connected persons) and section 435 (associated persons) of the Insolvency Act 1986 apply for the purposes of *sections 43 to 50* as they do for the purposes of that Act. It also provides that section 74 of the Bankruptcy (Scotland) Act 1985 (associated persons) applies as it applies for the purposes of that Act.

Transactions at an undervalue

Section 52: Restoration orders where transactions at an undervalue

200. The purpose of this section is to ensure that, when an employer has been subject to a “relevant event”, if the assets of the scheme have been reduced by virtue of a transaction at an undervalue involving assets of the scheme, the Regulator may make a restoration order to put the position back to what it would have been had the transaction not occurred.
201. *Subsection (1)* provides that the provision only applies in relation to an occupational pension scheme which is not a money purchase scheme or a prescribed scheme or a scheme of a prescribed description. *Subsection (2)* provides that the Regulator may only make an order in certain circumstances where a “relevant event” has occurred and where the transaction was entered into on or after 27th April 2004 and not more than 2 years before the occurrence of the “relevant event”.
202. *Subsection (3)* describes the purpose of a restoration order – to restore the position to what it would have been had the transaction not been entered into. *Subsection (4)* defines a “relevant event” as an insolvency event in relation to the employer, or an application to or notification from the Board of the Pension Protection Fund under [section 129](#), which occurs on or after the “appointed day”.
203. *Subsection (5)* defines the meaning of “appointed day” and provides that the meaning of insolvency event under [section 121](#) applies when deciding if and when such an event has occurred in relation to the employer.
204. *Subsection (6)* defines a ‘transaction at an undervalue’ as a transaction which is entered into by the trustees or managers or an appropriate person with a person where no consideration is to be provided towards the scheme or where the consideration is significantly less than the value of the consideration provided by or on behalf of the trustees or managers. An ‘appropriate person’ is defined in *subsection (7)* as a person of a prescribed description who is entitled to exercise powers in relation to the scheme. *Subsection (8)* provides that references to “assets” in this section and [section 53](#) include future assets and that references to “transaction” include a gift, agreement or arrangement. *Subsection (9)* provides that this section does not prejudice the use of any other remedy in respect of the action (e.g. a claim for breach of trust).

Section 53: Restoration orders: supplementary

205. This section provides that a restoration order may require any assets or property which were transferred or received as part of the transaction to be transferred back to the scheme (or the Board of the Pension Protection Fund where it has assumed responsibility for the scheme); or may require any person to pay a sum as specified by the Regulator to the scheme or the Board of the Pension Protection Fund (*Subsection (2)*). *Subsection (3)* ensures that a restoration order has no effect to the extent that it prejudices any interest in property which is acquired in good faith and for value. However, *subsection (5)* adds that, where certain people have acquired an interest in a property or received a benefit as a result of the transaction then, unless the contrary is shown, it is presumed that the interest was not acquired or the benefit was not received in good faith. *Subsection (5)* lists these people as:
- one of the trustees, managers or “appropriate persons” (as defined) who entered into the transaction and persons who are connected or associated with such persons at the time of the acquisition or receipt;
 - any person who has notice of the fact that the transaction was at an undervalue at the time of the acquisition or receipt; or

- any person who, at the time of the acquisition or receipt, is a trustee or manager, or the employer in relation to the scheme, or is connected or associated with such persons.
206. *Subsection (6)* provides that sections 249 (connected persons) and 435 (associated persons) of the Insolvency Act 1986 apply for the purposes of this section as they do for the purposes of that Act. Section 74 of the Bankruptcy (Scotland) Act 1985 (associated persons) also applies as it does for that Act. *Subsection (7)* provides that references in the section to “property” cover a broad definition which includes money, goods, things in action, land and every description of property wherever situated, obligations and every description of interest.
207. *Subsection (8)* provides that references in this section to where the Board has assumed responsibility for a scheme are to where the Board has assumed responsibility under Chapter 3 of Part 2 of the Act (pension protection).

Section 54: Content and effect of a restoration order

208. *Subsection (2)* provides that a restoration order issued by the Regulator under section 52 must specify the period within which any obligation imposed must be complied with. *Subsection (3)* provides that, where the order imposes an obligation on a person (A) to transfer or pay a sum of money to a person (B), the sum is to be treated as a debt due from A to B. *Subsection (4)* provides that if the debt is due to the trustees or managers of the scheme, the Regulator can enforce the debt on their behalf. *Subsection (5)* deals with the situation where the Board of the Pension Protection Fund has become involved with the scheme during an assessment period, in which case the Board will take over enforcement of the debt. *Subsection (6)* provides that, where any amount is transferred or paid to the Board in respect of a debt due under a restoration order during an assessment period, the Board must pay that amount to the trustees or managers of the scheme.

Section 55: Contribution notice where failure to comply with restoration order

209. Whereas *section 54* provides for enforcement of the restoration order where it imposes an obligation to transfer or pay a sum of money, this section gives the Regulator power to issue a contribution notice where there is a failure to comply with a restoration order which has imposed an obligation to transfer assets other than money, such as property or land for example. *Subsection (2)* sets out that a contribution notice issued under this section imposes a duty on the person to whom it is issued to pay a specified sum to the trustees or managers of the scheme, or the Board of the Pension Protection Fund where it has assumed responsibility for the scheme. *Subsection (3)* provides that the contribution due may be either the whole or a specified part of the shortfall sum in relation to the scheme. *Subsection (4)* defines the “shortfall sum” as the Regulator’s estimate of the amount of the decrease in the value of the assets of the scheme as a result of the transaction at an undervalue.

Section 56: Content and effect of a section 55 contribution notice

210. *Subsection (2)* sets out that a contribution notice must contain a statement of the matters which constitute the failure to comply with the restoration order and specify the sum which the person is under a liability to pay. *Subsection (3)* provides that where the liability set out in a contribution notice is a liability to pay the trustees or managers of the scheme, the sum is a debt due from the person specified in the notice to the trustees or managers. *Subsection (4)* provides that the Regulator can enforce the debt on behalf of the trustees or managers of the scheme. *Subsection (5)* deals with the situation where the Board of the Pension Protection Fund has become involved with the scheme during an assessment period, in which case it will take over enforcement of the debt. *Subsection (6)* provides that, where any amount is paid to the Board in respect of a debt due under a contribution notice during an assessment period, the Board must pay that

amount to the trustees or managers of the scheme. *Subsection (7)* provides that, where the contribution notice states that the liability is to pay the Board, the sum is treated as a debt due to the Board.

Sections 38 to 56: partnerships and limited liability partnerships

Section 57: Sections 38 to 56: partnerships and limited liability partnerships

211. *Subsection (1)* provides that for the purposes of *sections 38 to 56*, regulations may modify any of the definitions mentioned in *subsection (2)* in relation to a partnership or a partner in a partnership or a limited liability partnership or a member of such a partnership. *Subsection (3)* states that regulations may also provide that any provision of *sections 38 to 51* applies with such modifications as may be prescribed in relation to any case where a partnership is or was the employer in relation to an occupational pension scheme or connected with or an associate of the employer. Similarly regulations may also provide that any provision of *sections 38 to 51* applies with such modifications as may be prescribed in relation to any case where a limited liability partnership is the employer in relation to an occupational pension scheme or connected with or an associate of the employer.
212. *Subsection (4)* specifies that regulations may also provide that any provision of *sections 52 to 56* applies with such modifications as may be prescribed in relation to a partnership or a limited liability partnership. *Subsections (5) and (6)* define “partner”, “partnership”, and “limited liability partnership” and “member” of such a partnership. *Subsection (7)* stipulates that this section will not prejudice *section 307* (power to modify this Act in relation to certain categories of scheme) and *section 318(4)* (power to extend the meaning of “employer”).

Applications under the Insolvency Act 1986

Section 58: Regulator’s right to apply under section 423 of Insolvency Act 1986

213. This section allows the Regulator to apply for an order under Section 423 of the Insolvency Act 1986 (transactions defrauding creditors) if the pension scheme is owed money by the employer and either:
- the Board of the Pension Protection Fund has obtained an actuarial valuation of the fund, which outlines both the assets and the protected liabilities of the scheme (the cost of benefits for members to the same level which would be paid by the Board of the Pension Protection Fund, non member liabilities of the scheme and the estimated cost of wind-up) and the value of the assets are not sufficient to meet these liabilities at the time of the qualifying insolvency event; or
 - the trustees or managers of the scheme have obtained an actuarial valuation which indicates that the funding objective (see *section 222*(the statutory funding objective)) is not being met.
214. If the debtor is declared bankrupt, a corporate body which is being wound-up or is in administration, or a partnership which is being wound up or is in administration, then the Regulator must get the court’s permission to make an application under section 423 of the Insolvency Act 1986.
215. An application made under this section is treated as being made on behalf of the victims of the transaction (trustees, members of the scheme or the Board of the Pension Protection Fund).

Register of schemes

Section 59: Register of occupational and personal pension schemes

216. This section compels the Regulator to set up and keep a register of pension schemes. The Regulator must record in the register the most up to date “registrable information” that it has been provided with by schemes. The Regulator will record any notice received by the Regulator that a scheme has been wound up or has ceased to be registrable. The Regulator will also record on the register information relating to the involvement of the Board of the Pension Protection Fund with a scheme. If and when a transfer notice under *section 160* (transfer notice) is issued by the Board of the Pension Protection Fund and copied to the Regulator, the Regulator must record that fact.
217. The Regulator may record the information collected in whatever manner it considers appropriate. The register will be used by the Regulator for its functions and it will also be used to enable members to trace their pension. Information contained in the register or held by the Regulator may be used for any purposes connected with or incidental to the exercise of its functions.

Section 60: Registrable information

218. This section defines, for the purposes of *sections 59 to 65* what will constitute “registrable information”, in relation to occupational and personal pension schemes. Registrable information includes:
- the name of the scheme;
 - the address of the scheme;
 - the names and addresses of each of the trustees or managers of the scheme;
 - the status of the scheme (i.e. whether open or closed to new members, whether any contributions for future accrual can be made and whether there are any active members);
 - the categories of benefits provided by the scheme;
 - in the case of an occupational pension scheme, the previous name of every employer in relation to the scheme since 5th April 1975;
 - in the case of an occupational pension scheme, information about the number of members of the scheme; and
 - any other information prescribed under regulations.
219. Regulations may make further provision with respect to interpretation of the above information.

Section 61: The register: inspection, provision of information and reports etc.

220. *Subsection (1)* of this section provides the power for regulations to be made in relation to the provision of information recorded in the register, extracts from the register, or copies of the register to specified persons in specified circumstances. Regulations can also provide for the inspection of the register, extracts from the register, or copies of the register by prescribed persons in prescribed circumstances.
221. *Subsection (2)* states that the regulations may confer functions on the Secretary of State, or other authorised person. In particular, this regulation-making power will enable the Secretary of State to provide a Pensions Tracing Service following the dissolution of Opra. This service will provide persons with a free service for tracing unclaimed or “lost” occupational and personal pensions. The regulations may also provide for

disclosure of the information obtained by virtue of the regulations and may provide that the disclosure of restricted information under them may not be an offence.

222. Under the provisions in *subsections (4), (5) and (6)* the Secretary of State may direct the Regulator to produce reports, in a set format and within a set time, concerning the information held in the register, including the operation of the Regulator's functions in relation to the register. These reports may be published.

Section 62: The register: duties of trustees or managers

223. *Subsections (1), (2) and (3)* impose a duty on trustees and managers to notify the Regulator, during the "initial notification period", of all the registrable information required on registrable schemes. The initial notification period is a period of three months beginning from the date the scheme is established, or, if later, beginning from the date it becomes a registrable scheme.
224. *Subsection (3)* enables any regulations which contain any provisions made under *subsection (2)(b)* to modify the provisions of *section 82* (restricted information).
225. *Subsection (4)* provides that trustees or managers have to notify the Regulator of changes to registrable information as soon as practicable. *Subsection (5)* provides that trustees or managers must notify the Regulator as soon as practicable, where the scheme ceases to be registrable, or is wound up (otherwise than where the Board of the Pension Protection Fund assumes responsibility for it). Section 10 of the Pensions Act 1995 (civil penalties) will apply to a trustee or manager who fails to comply with *subsections (2), (4) or (5)*.

Section 63: Duty of Regulator to issue scheme return notices

226. This section requires the Regulator to issue scheme return notices (a request for information) to each registrable scheme. The first request for a scheme return must be made within three years of the Regulator becoming aware that the scheme has become a registrable scheme. Existing schemes will become registrable schemes when this section comes into force, but transitional provision will be made under *section 322(5)* in relation to such schemes when the provisions about the register come into force. The Regulator must issue subsequent scheme return notices to schemes every one to three years from the date of the schemes last return notice depending on the scheme.

Section 64: Duty of trustees or managers to provide scheme return

227. *Subsection (1)* provides that the trustees or managers of a registrable scheme must provide a completed scheme return, on or before the return date, when required to do so by the Regulator. Section 10 of the Pensions Act 1995 (civil penalties) will apply to a trustee or manager who fails to comply with *subsection (1)*.

Section 65: Scheme returns: supplementary

228. This section has effect for the purposes of *sections 63 and 64* and specifies the meaning of "return date" and "scheme return". *Subsection (3)* states that a scheme return notice, which must be in writing, must specify details of the information required, which must include details of all registrable information, as well as any other information that may be required by the Regulator to enable it to fulfil its functions. For example, information may be collected to assist in:
- the calculation of the Pension Protection Fund levy (*section 181*);
 - the exercise of functions by the Board of the Pension Protection Fund (*section 110*);
 - the exercise of functions delegated by the Board of the Pension Protection Fund to the Regulator

- the assessment of risk for each scheme (*section 179*).
229. The scheme return notice must also specify the return date (which must be at least 28 days after the date the notice was issued).

Register of prohibited trustees

Section 66: Register of prohibited trustees

230. This section provides that the Regulator must keep a register of all people who are prohibited under section 3 of the Pensions Act 1995 (prohibition orders) from acting as a trustee. By virtue of *subsection (2)*, the Regulator must ensure that, with the exception of the duties contained in *section 67*, contents of the register are not disclosed or otherwise made available to the public.

Section 67: Accessibility of register of prohibited trustees

231. *Subsection (1)* provides that the Regulator must ensure that the prohibition register is open during its normal working hours for people to inspect it without notice. *Subsection (2)* provides that where a request is made to the Regulator as to whether a particular person appears in the prohibition register as prohibited in respect of a specific scheme, a particular description of trust scheme, or in respect of all trust schemes, then the Regulator must comply with that request promptly in such manner as it considers reasonable.
232. *Subsection (3)* provides that the Regulator can publish a summary of the prohibition register if the summary contains:
- the full names and titles (where the Regulator has such record) of all the people appearing as prohibited in the register;
 - the dates of birth of those people (where the Regulator has such record);
 - for each person included in the published summary, whether they appear in the register as prohibited in respect of only one scheme, or in respect of two or more schemes, or as prohibited in respect of all trust schemes (as specified at *subsection (4)(c)*). For each of the three subcategories specified in *subsection (4)(c)*, the Regulator must publish a separate register.
233. The published summary of the prohibition register must not identify any of the schemes in respect of which people who are named in the summary are prohibited and also must not disclose any other information contained in the register (*subsections (3)(c) and (d)* refer).
234. *Subsections (6) to (8)* deal with the information to be included in a published summary where the inclusion of a person in the register, or a particular part of it, may be, or is, subject to a review, or an appeal or other legal proceedings.
235. *Subsection (9)* defines ‘a determination which might still become the subject of a review, appeal or proceedings’ as one where:
- the time for the making of an application for a review or for the bringing of an appeal or other proceedings has not expired; and
 - there is a reasonable likelihood that such an application might yet be made, or that such an appeal or such proceedings might yet be brought.

Collecting information relevant to the Board of the Pension Protection Fund

Section 68: Information relevant to the Board

236. This section allows the Regulator to collect any information which appears to it to be relevant to the exercise of the functions of the Board of the Pension Protection Fund.

Section 69: Duty to notify the Regulator of certain events

237. This section provides that the trustees or managers of an occupational pension scheme, which is an eligible scheme for the purposes of Part 2 of this Act (see [section 126](#)(eligible schemes)) must report any prescribed event in relation to the scheme to the Regulator (unless the Regulator has directed otherwise).
238. *Subsection (4)* specifies that the report must be made in writing and given as soon as is reasonably practicable after the person reporting has become aware of the notifiable event.
239. It is intended that the information so collected by the Regulator will assist it in its function of limiting calls on the Board of the Pension Protection Fund (see [section 5\(1\)\(c\)](#) (Regulator's objectives)).
240. *Subsection (6)* provides that anyone who makes a report under this section is protected in the event that making such a report would otherwise contravene any other duty imposed on that person – for example, a confidentiality section in an employment contract. [Section 311](#)(protected items) deals with the issue of legal professional privilege.
241. *Subsections (7) and (8)* apply section 10 of the Pensions Act 1995 (civil penalties) to failures to comply with obligations imposed by this section.

Reporting breaches of the law

Section 70: Duty to report breaches of the law

242. This section requires certain breaches of the law in relation to occupational and personal pension schemes to be reported to the Regulator and imposes a duty to do so on specific categories of persons:
- a trustee or manager;
 - a person who is involved in scheme administration;
 - the employer (in relation to an occupational pension scheme);
 - a professional adviser (within the meaning of Part 1 of the Pensions Act 1995); and
 - any other people otherwise involved in advising the trustees or managers of such schemes in relation to the scheme.
243. The people listed above must immediately report in writing to the Regulator any breach of law which is relevant to the administration of the scheme in question and is likely to be materially significant to the exercise of any of the Regulator's functions. The Regulator must issue a code of practice to assist persons to identify what is likely to be of material significance for these purposes.
244. *Subsection (3)* provides that anyone who makes a report under this section is protected in the event that making such a report would otherwise contravene any other duty imposed on that person – for example, a confidentiality section in an employment contract. [Section 310](#)(admissibility of statements) deals with admissibility of statements under this section and [section 311](#) (protected items) with legal professional privilege.

245. *Subsection (4)* provides for section 10 of the Pensions Act 1995 (civil penalties) to apply to any person who without reasonable excuse fails to comply with this section.

Reports by skilled persons

Section 71: Reports by skilled persons

246. This section enables the Regulator to require those listed in *subsection (1)(a) to (c)* to provide it with a report on a matter relevant to the exercise of its functions.
247. The report has to be provided to the Regulator by the date and in the form specified by the notice. The person to whom the notice is issued has to meet the costs of providing the report unless the notice states the costs should be met by someone else. Failure by a person to comply with a notice issued to him can result in him being subject to a civil penalty under section 10 of the Pensions Act 1995 (civil penalties).

Gathering information

Section 72: Provision of information

248. This section allows the Regulator to issue a notice requiring trustees, scheme managers, professional advisers, employers or any other person who appears to the Regulator to hold, or to be likely to hold, relevant information to produce a document or provide specified information to the Regulator. The information or document requested must be relevant to the exercise of the Regulator's functions.
249. The information requested in the notice must be provided in such manner and by the time stated by the Regulator in the notice. Failure to do so is an offence under [section 77](#).

Section 73: Inspection of premises

250. This section provides that an inspector (a person appointed by the Regulator) may enter premises which are liable to inspection, to investigate whether specified provisions (see *subsection (2)*) are being complied with. Premises are liable to inspection if the inspector has reasonable grounds to suspect that members of the scheme are employed there, documents relevant to the administration of the scheme are being kept there, or the administration of the scheme, or work connected with the administration of the scheme, is being carried out there.

Section 74: Inspection of premises in respect of employers' obligations

251. This section provides that an inspector may enter premises liable to inspection, at any reasonable time, for the purpose of investigating whether an employer is complying with specified requirements (see *subsection (1)*). Premises can be inspected if the inspector believes employees are employed there; documents relevant to the administration of the employer's business, the direct payment arrangements, or the scheme to which those payments relate are being kept there; or, either of the following is being carried out on the premises:

- the administration of the employer's business, the arrangements or the scheme;
- work connected with administration of the employer's business, the arrangement or the scheme.

Section 75: Inspection of premises: powers of inspectors

252. This section outlines the powers of the inspectors when inspecting premises. When an inspector enters premises which are liable to inspection he may:
- make such examination and inquiry as may be necessary;

- take possession of any document appearing to be relevant to the matter to which the inspection relates, or take any steps which appear necessary for preserving the document or preventing interference with it;
- take copies of any such document;
- require any person on the premises to produce, or secure the production of, any relevant document for inspection; and
- examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter.

Section 76: Inspection of premises: supplementary

253. This section provides additional provisions in respect of *sections 73, 74 and 75*. *Subsection (1)* provides that premises which are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business are not liable to inspection. An inspector applying for admission to any premises for the purposes of this section must produce his certificate of appointment if required to do so. An inspector may when conducting inspections be accompanied by such persons as he considers appropriate. *Subsections (6) and (7)* provide that any document taken can be retained if it is going to be used in proceedings against an individual until the end of the proceedings, or for a period of 12 months. This 12 month period can be extended by another 12 months if the Regulator feels it necessary.

Section 77: Penalties relating to sections 72 to 75

254. This section outlines the penalties where an individual fails to comply with the powers contained in these sections.

255. When an individual without a reasonable excuse:

- does not comply with a request to provide information when required under *section 72* they will be guilty of an offence which can lead to a fine of up to level 5 on the standard scale (*subsection (2)*);
- intentionally delays or obstructs an inspector; neglects or refuses to produce a document or answer a question under *sections 73 to 75* they will be guilty of an offence which can lead to a fine of up to level 5 on the standard scale. (*subsection (3)*).

256. *Subsection (4)* provides that where an individual has been convicted for refusing to provide information or a document or failing to answer a question but has still failed to provide the information or document or answer the question he can be charged again.

257. *Subsection (5)* provides that if an individual intentionally alters, suppresses, conceals or destroys a document that they have been asked to produce then they are guilty of an offence which can lead, on summary conviction to a fine not exceeding the statutory maximum, and, on conviction on indictment, to imprisonment, a fine or both (*subsection (6)*).

Section 78: Warrants

258. This section sets out the conditions in which a justice of the peace (sheriff in Scotland) can issue a warrant. A justice of the peace can issue a warrant if satisfied by information given on oath by, or on behalf of, the Regulator that there are reasonable grounds for believing:

- there are documents which have been requested under *section 72* or *section 75*, which have not been provided or if the documents were requested, they would either

not be produced, would be removed from the premises, hidden, tampered with or destroyed; or

- that a person has committed an offence or misused the assets of an occupational pension scheme or is liable to civil penalties under section 10 of the Pensions Act 1995 (civil penalties) or to be prohibited from being a trustee of an occupational scheme and that there are documents relating to that matter whose production could be required under [section 72](#) or [75](#).

259. An inspector with a warrant can take or copy these documents or require named individuals to state where these documents can be found. When executing a warrant a named inspector can be accompanied by anyone he feels necessary. A warrant has a time span of one month from when it was issued.

260. *Subsections (8) and (9)* provide that any document taken can be retained if it is going to be used in proceedings against an individual until the end of the proceedings, or for a period of 12 months. This 12 month period can be extended by another 12 months if the Regulator feels it necessary.

Section 79: Sections 72 to 78: interpretation

261. This section defines for [sections 72 to 78](#) “document” and “inspector”.

Provision of false or misleading information

Section 80: Offences of providing false or misleading information

262. This section provides that it is an offence to knowingly or recklessly give the Regulator false or misleading information when the information:

- is provided in purported compliance with a requirement under [section 62](#) (the register: duties of trustees and managers); [section 64](#) (duty of trustees or managers to provide scheme return); [section 72](#) (provision of information); or [section 75](#) (inspection of premises: powers of inspectors) or,
- is provided for other circumstances but the person providing the information intends, or could reasonably be expected to know, that it would be used by the Regulator for the purpose of discharging its functions.

263. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment, two years’ imprisonment, a fine or both.

Use of information

Section 81: Use of information

264. This section allows the Regulator to use occupational or personal pension scheme information it holds, and, information contained in the occupational and personal pension schemes register, for any purpose connected with or incidental to the exercise of its functions.

Disclosure of information

Section 82: Restricted information

265. This section prevents the Regulator, or any person to whom the Regulator gives restricted information from disclosing it unless the Regulator has the consent of the individual who provided the information and anyone whom it relates to, except in circumstances prescribed in [sections 71\(9\), 83 to 88 and 235](#).

266. Regulations which contain any provision made by virtue of [section 61\(2\)\(b\)](#) (the register: inspection, provision of information and reports etc) may, in particular, modify this section.
267. Unauthorised disclosure of information will represent an offence, except where so permitted.
268. “Restricted information “means any information the Regulator has obtained in carrying out its regulatory functions with the exception of information which is already in the public domain or information presented in a way in which the identity of an individual could not be determined.

Section 83: Information supplied to the Regulator by corresponding overseas authorities

269. For the purpose of [section 82](#) “restricted information” includes information given to the Regulator by any corresponding overseas authority. [Sections 84 to 87](#) do not apply to information given to the Regulator by any corresponding overseas authority. The Regulator can only disclose this information if it enables or assists the Regulator in the discharge of its functions, or for the purpose of criminal proceedings.

Section 84: Disclosure for facilitating exercise of functions by the Regulator

270. This section allows the Regulator to disclose information to a qualified individual where the Regulator needs to seek advice on a technical matter (for example on a matter of law or accountancy practice) if the Regulator believes that it needs that advice to properly exercise its functions. For example, the Regulator may need to disclose information to a skilled person to enable a report under [section 71](#) (report by skilled persons) to be prepared.

Section 85: Disclosure for facilitating exercise of functions by the Board

271. This section allows the Regulator and anyone receiving the information from the Regulator to disclose restricted information for the purpose of aiding the Board of the Pension Protection Fund to carry out its functions.

Section 86: Disclosure for facilitating exercise of functions by other supervisory authorities

272. This section allows the Regulator to disclose restricted information to any individual specified in the first column of [Schedule 3](#) if the Regulator considers that it would enable or assist that person in exercising their functions listed in column two of [Schedule 3](#). [Schedule 3](#) may be amended by the Secretary of State, by Order, after consultation with the Regulator.

Schedule 3: Restricted information held by the Regulator: certain permitted disclosures to facilitate exercise of functions

273. This Schedule provides a list of persons to whom the Regulator can disclose restricted information, if the Regulator considers that the disclosure would enable or assist the person to exercise the functions specified in relation to him in the second column of the Schedule.

Section 87: Other permitted disclosures

274. This section sets out other circumstances where the Regulator can disclose restricted information. These include disclosure:
- to the Secretary of State, the Inland Revenue or the Department for Social Development in Northern Ireland if the Regulator believes it is in the interest of scheme members or in the public interest ([subsection \(1\)](#));

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- for the purpose of any criminal proceedings arising from the specified provisions, in disciplinary proceedings relating to carrying out professional duties by a solicitor, an actuary, an accountant or an insolvency practitioner;
 - in relation to disciplinary proceedings against a public servant;
 - in assisting an authority in a country outside the United Kingdom to carry out functions in this Act and the Pensions Act 1995; or
 - in the pursuance of a Community obligation.
275. The Regulator is not prevented from disclosing restricted information to the Director of Public Prosecutions; the Director of Public Prosecutions for Northern Ireland; the Lord Advocate; a procurator fiscal; or a constable.
276. Subsection (4) provides that the Regulator is not prevented from disclosing restricted information where disclosure is required by law, or to a trustee which the Regulator has appointed if the disclosure is for the purpose of enabling or assisting him to carry out his work.
277. Any person mentioned in *subsection (1) or (4)* to whom the Regulator gives information is able to disclose it with the permission of the Regulator. Also any person listed in *Schedule 3* can disclose information to other supervising authorities with the consent of the Regulator for the purpose of carrying out functions listed in the second column of *Schedule 3*. Before the Regulator gives consent to a party to disclose information the Regulator must take into account representations made by that party in respect of the need for the disclosure.

Section 88: Tax Information

278. *Subsections (1) and (2)* relate to disclosure of information by the Inland Revenue. It applies to information held by any person in the exercise of tax functions about any matter which is relevant, for the purposes of those functions to tax or duty in the case of an identifiable person. *Subsection (2)* provides that the Inland Revenue will not be bound by the restrictions imposed by section 182 of the Finance Act 1989 (disclosure of information) so long as the information is disclosed for the purposes of enabling or assisting the Regulator to discharge its functions. *Subsections (3) to (5)* apply where the Inland Revenue discloses information to the Regulator and provide that the Regulator should treat it as “restricted information”. The usual provisions about disclosure do not apply and the Regulator must not disclose this information unless the Commissioners of the Inland Revenue or Customs and Excise have given permission or in connection with criminal proceedings being brought under this Act, the Pensions Act 1995 or the Pension Schemes Act 1993.

Reports

Section 89: Publishing reports etc

279. This section enables the Regulator to publish reports in any form, on its investigation and the results of those investigations into the consideration of taking action. Examples of such reports may be the publication of a decision to exercise a function (for example, a decision to appoint a trustee) or of a report of a particularly good practice discovered by the Regulator.

Codes of practice

Section 90: Codes of practice

280. This section gives the Regulator a new power to issue codes of practice for the purpose of providing practical guidance on what how to be done to comply with the pensions

legislation. In the case of the matters listed in *subsection (2)* of this section the Regulator must issue codes of practice.

281. By virtue of *subsections (3) and (4)*, the Regulator is given a power to revise from time to time the whole or any part of a code of practice issued by it, subject to the same procedure as applies for issuing a code of practice (see notes on *section 91*). The Regulator also has power to revoke a code of practice, again subject to statutory procedures (see notes on *section 92*).
282. Breach of a code of practice will not, of itself, result in legal proceedings. However, a code of practice is admissible in evidence in any legal proceedings.
283. The Regulator may frame any direction under *section 13* (improvement notices) by reference to a code of practice and breach of such a direction is subject to civil penalties.
284. A court or tribunal should take into account the provisions of a code of practice. This means that, should the Regulator allege that a person has breached the pensions legislation, that person's failure to follow the relevant code of practice may be taken as admissible evidence in proceedings regarding the legislative breach.

Section 91: Procedure for issue and publication of codes of practice

285. Before a code of practice (including a revised code of practice) can be issued by the Regulator, a draft of the code must be published by the Regulator and consulted upon. If a code of practice only consolidates existing codes or, if the Secretary of State, for reasons of urgency, considers it inappropriate for consultation to occur, then no draft of the code of practice will be issued for consultation.
286. Before a draft code of practice may be issued, the Regulator must send it to the Secretary of State who will either lay it before Parliament (if he approves of it) or will publish details of his reasons for withholding consent (if he does not approve of it). If a draft code of practice is laid before Parliament (for the time period as set out in *subsection (7)*) and no resolution is passed by either House, then the draft code of practice can be issued by the Regulator. However, if either House so resolves, no further action can be taken on the draft code of practice (although this will not prevent a new draft code on the same subject being laid before Parliament).
287. *Subsection (10)* provides for the Regulator to arrange for any code of practice issued under *section 90* to be published in the manner it considers appropriate. *Subsection (11)* provides that the Regulator may charge a reasonable fee for giving people a copy of a code of practice.

Section 92: Revocation of codes of practice

288. This section provides for the Secretary of State to revoke, by order, a code of practice (issued under *section 90*). A code can only be revoked with the agreement of the Regulator.

Exercise of regulatory functions

Section 93: The Regulator's procedure in relation to its regulatory functions

289. *Subsection (1)* requires the Regulator to determine the procedure that it will follow in discharging its "regulatory functions". The "regulatory functions" are listed in *subsection (2)*. They include the "reserved regulatory functions" listed in *Schedule 2* and there is power under *subsection (2)(q)* for further functions to be added as "regulatory functions".
290. *Subsection (3)* requires the Determinations Panel to determine its own procedure in relation to any exercise by it of the power to determine whether to, and the power to exercise, a regulatory function.

291. Procedures determined under *subsection (1) or (3)* must provide for those under *section 96* (standard procedure) and *section 98* (special procedure).

Section 94: Publication of procedure in relation to regulatory functions

292. By virtue of this section, the Regulator must issue a statement of the procedure determined under *section 93*. This will include the “standard procedure” under *section 96* and the “special procedure” under *section 98* and any other procedures that the Regulator feels are necessary to define in respect of *section 93*. This must be published in a way that appears to the Regulator to be appropriate and the Regulator can make a reasonable charge to anyone requesting a copy. These publications must be kept up to date with any material changes made in procedure.

Section 95: Application of standard and special procedure

293. Where the Regulator considers that the exercise of one or more of its regulatory functions may be appropriate or, where an application is made under any of the provisions listed in *section 10(6)* (functions exercisable by the Determinations Panel) or under any provision prescribed under *subsection (1)(b)(ii)*, the requirements of the procedures set out in *section 96* (standard procedure) and *section 98* (special procedure) will apply.
294. Neither *section 96* nor *section 98* will apply in relation to a determination whether to exercise a regulatory function when a review is conducted under *section 99* (compulsory review of regulatory action).

Section 96: Standard procedure

295. This section specifies what needs to be included in the statement of procedure in normal circumstances where notice is given, i.e. that the persons directly affected by the regulatory action under consideration are informed (a “warning notice”) and that they are given a chance to make representations. The Regulator has to take consideration of this evidence and notify the persons directly affected of its determination whether or not to take the proposed action (a “determination notice”). The determination notice must contain reference to the right of referral to the Pensions Regulator Tribunal. The procedure must also provide for the form and content of warning notices and determination notices; the manner in which they are to be given, and any time limits which apply throughout this process.
296. *Subsection (3)* states that the determination may be referred to the Tribunal either by anyone to whom the determination notice is given or anyone who appears to the Tribunal to be directly affected by the determination.
297. *Subsection (4)* specifies that *subsection (3)* does not apply where the determination which is the subject of the determination notice is a determination to issue a clearance statement under *section 42* (*section 38* contribution notices: clearance statements) or *section 46* (financial support directions: clearance statements).
298. *Subsection (5)* provides that the regulatory function in question may not be exercised in the period during which persons have the right to have the determination referred to the Tribunal or, if it is referred, while the Tribunal process (including any appeal) is ongoing. However, *subsection (5)* does not apply to the list of regulatory functions in *subsection (6)*.

Section 97: Special procedure: applicable cases

299. The special procedure outlined in *section 98* (special procedure), as opposed to the standard procedure outlined in *section 96* (standard procedure), applies in the three cases set out in *subsections (2), (3) and (4)*. They each involve cases where the Regulator determines to exercise a regulatory function immediately on the basis that it

is necessary to do so because there is or is likely to be an immediate risk to the interests of members under a scheme or the assets of a scheme.

300. *Subsection (5)* lists the regulatory functions to which the special procedure may apply.

Section 98: Special procedure

301. This section specifies what needs to be included in the statement of special procedure published by the Regulator. In the special procedure there is no provision for the issuing of a warning notice or an opportunity to make representations before the Regulator issues a determination notice. The determination notice must be given to all the persons who appear to be directly affected by the determination. It must also contain details of the Regulator's requirement to review the determination under *section 99* and of the right of referral to the Tribunal under *section 99(7)*. Those to whom the determination on notice is given have the right to make representations before the Regulator reviews the determination.
302. The representations will be considered by the Regulator before the review and the "final notice" (the notice given after the review) is given in accordance with *section 99(4)*. The procedure must provide for the final notice to contain information about the right of referral to the Tribunal. It must also provide for the form and further content of determination notices and final notices, the way they are given and any time limits that are applied at any stage of the procedure.

Section 99: Compulsory review

303. This section applies to a determination made under the special procedure. *Subsections (1) and (2)* provide that the Regulator must review its determination to take regulatory action as soon as reasonably practicable. *Subsection (3)* provides that as part of the review the Regulator may confirm, change or revoke a determination, direction, notice or order made; may substitute a different determination, direction, notice or order and can deal with matters arising on the review in the same way as if the matters had arisen on the original determination and make savings and transitional provision.
304. *Subsection (4)* provides that when the Regulator has completed the review of the determination, a "final notice" (the outcome of the review) must be sent to all the persons who appear to be directly affected by it.
305. *Subsection (5)* provides that if the final notice gives a determination to exercise a different regulatory function than that set out in the original determination, then before the final notice is given, all the persons that appear to the Regulator to be directly affected by the new proposed action must have the opportunity to make representations in relation to the proposed action. The Regulator must consider these representations before making its determination. However, *subsection (6)* provides that this right to make representations on a determination (to exercise a different regulatory function) does not apply if the function is a function listed in *section 97(5)* and the Regulator decides to take such regulatory action immediately on the grounds it is necessary, because there is an immediate risk, or the Regulator considers there is likely to be a risk if the function is not exercised, to the scheme assets or the interests of members.
306. *Subsection (7)* provides that the determination contained in the final notice may be referred to the Pensions Regulator Tribunal by any person who has been given a final notice and any other person who appears to the Tribunal to be directly affected by the determination.
307. *Subsection (8)* provides that where that determination is to exercise a different regulatory function different to the function in the determination notice, the Regulator cannot exercise the function in the period during which a reference can be made to the Tribunal and until the reference and any appeal is disposed of. *Subsection (9)* provides that *subsection (8)* will not apply if the regulatory function is a function listed

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in [section 96\(6\)](#) or [97\(5\)](#) which may be exercised immediately by the Regulator and it is determined to exercise the function immediately because there is a risk to the interests of members or the scheme's assets. [Subsection \(10\)](#) provides that the Regulator's functions are exercisable on its behalf by the Determinations Panel. [Subsection \(11\)](#) provides that the panel must decide the procedure it will follow in exercising those functions. [Subsection \(12\)](#) provides that [section 94](#) (publication of Regulator's procedure) applies in relation to the procedure determined under [subsection \(11\)](#).

Section 100: duty to have regard to the interests of members etc

308. This section requires the Regulator when determining whether to exercise a regulatory function and when exercising the function, to take into account the interests of the generality of the members of the scheme to which the exercise of the function relates and the interests of other persons who the Regulator considers will be directly affected.

Section 101: Powers to vary or revoke orders, notices or directions etc

309. Subject to specified exceptions the Regulator has the power to vary or revoke any determination, notice, direction or order issued in exercising its regulatory functions. [Subsection \(3\)](#) provides that any variation or revocation of an order, notice or direction must be made by a subsequent order, notice or direction as the case may be. [Subsection \(4\)](#) provides that a variation or revocation cannot take effect before the date on which the revocation or variation is made. [Subsection \(5\)](#) provides that the [section 101](#) power is not to be treated, for the purposes of [subsection \(1\)](#), as a regulatory function, and is in addition to any such legislative power conferred on the Regulator.

The Pensions Regulator Tribunal

Section 102: The Pensions Regulator Tribunal

310. This section establishes the new Pensions Regulator Tribunal – referred to in the Act as “the Tribunal”. [Schedule 4](#) sets out detailed provisions in relation to the Tribunal. The Lord Chancellor may make procedural rules in relation to the conduct of the Tribunal's proceedings.

Schedule 4: The Pensions Regulator Tribunal

311. [Paragraph 1](#) sets out that the Lord Chancellor must appoint a panel of individuals who will chair the Tribunal (the panel of Chairmen) and the qualifications individuals need for this post. The Lord Chancellor must also appoint a panel (the lay panel) of individuals who appear to be qualified by experience or otherwise to deal with matters which will come before the Tribunal.
312. [Paragraph 2](#) sets out that the Lord Chancellor must appoint from the panel of chairmen a President and a Deputy President to preside over the exercise of the Tribunal's functions and the qualification that these individuals should hold. The President can assign functions on to the Deputy President as he sees fit. If the President is absent, his functions can be exercised by the Deputy President or another member of the panel of chairmen who is appointed by the Lord Chancellor.
313. [Paragraph 3](#) states that each member of each panel (chairmen and lay panel) may hold, vacate, resign or be removed from office in accordance with the terms and conditions of their appointment. A member can be re-appointed if he ceases to hold office.
314. [Paragraphs 4, 5](#) and [6](#) set out that the Lord Chancellor can determine the pay of any member of the Tribunal and of an expert appointed under [paragraph 7\(4\)](#) and he can appoint staff for the Tribunal and set their remuneration, and which expenses of the Tribunal are to be borne by the Lord Chancellor.

315. *Paragraph 7* sets out the constitution of the Tribunal. It specifies that the President must set out how members of a Tribunal are chosen from the panels ('the standing arrangements'). These arrangements must provide for at least one member to be selected from the panel of chairmen. The paragraph also provides for the procedures if a member of a Tribunal is unable to sit on the Tribunal. The Tribunal may appoint one or more experts if it feels it needs their technical expertise on a factual matter which may arise.
316. *Paragraph 8* states that the Lord Chancellor may state the times when and the place where the Tribunal must sit.
317. *Paragraph 9* lists provisions that the Lord Chancellor may include in the rules made under *section 102*.
318. *Paragraph 10* specifies that the President may give directions as to the practice and procedure to be followed by the Tribunal in relation to references to it.
319. *Paragraph 11* states that the Tribunal may by summons require persons to attend or produce evidence which the Tribunal considers it necessary to examine. A person who without reasonable excuse fails to attend, or give evidence, is guilty of an offence and can receive a fine not exceeding level 5 on the standard scale. A person who without reasonable excuse refuses to produce a document, or alters, conceals or destroys a document which he is required to produce can, on summary conviction, be subject to a fine not exceeding the statutory maximum and on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
320. *Paragraph 12* lists rules and procedure surrounding the decisions of the Tribunal. These are:
- a decision of the Tribunal may be taken by a majority;
 - the decision must state whether it was unanimous or taken by a majority;
 - the decision must be recorded in a document which, contains a statement of the reasons for the decision, and is signed and dated by the member of the panel of chairmen dealing with the reference;
 - the Tribunal must inform each party to the reference of its decision;
 - the Tribunal must as soon as reasonably practicable send a copy of the document which the decision was recorded in, to each of the parties to the reference, and to such other persons as appear to the Tribunal to be directly affected by the decision;
 - the Tribunal must send the Secretary of State and the Department for Social Development in Northern Ireland a copy of its decision.
321. *Paragraph 13* provides that if the Tribunal considers that a party acted vexatiously, frivolously or unreasonably, it can order the party to pay some or all of the costs or expenses that were incurred by another party to the proceedings. Also, if the Tribunal considers the determination of the Regulator was unreasonable it can order the Regulator to pay some or all of the costs of the other party incurred in the proceedings.
322. *Paragraph 14 to 21* lists amendments to other enactments to ensure that correct reference is made to the provisions contained in this schedule.

Section 103: References to the Tribunal

323. *Subsection (1)* provides for the time limits for making references to the Tribunal. The Tribunal may allow a case to be referred after these periods have elapsed.
324. The Tribunal will hear any reference afresh, and accordingly will be able to consider any evidence relating to a reference whether or not it was available to the Regulator. Its purpose is to determine what action, if any, the Regulator must take in relation to the reference.

325. The Tribunal may give the Regulator such directions as it considers appropriate for giving effect to its determination. The Tribunal may also on determining a reference make a recommendation to change the Regulator's procedures. An order of the Tribunal can be enforced as if it were an order of a county court or in Scotland an order of the Court of Session.

Section 104: Appeal on a point of law

326. There is a right of appeal, with permission of the Tribunal, the Court of Appeal, or in Scotland the Court of Session, on a point of law only, from decisions of the Tribunal to the Court of Appeal or in Scotland, the Court of Session. There is then a further right of appeal to the House of Lords.
327. If on appeal the court finds the decision of the Tribunal was wrong in law then the court may either send the case back to the Tribunal for a rehearing and redetermination or make a determination itself.

Section 105: Redetermination etc by the Tribunal

328. This section applies when an application for permission to appeal a decision of the Tribunal is made. If the chairman or person who constitutes in law the Tribunal for this application considers that the decision of the Tribunal was wrong the decision may be set aside and either reheard and redetermined by the same Tribunal or one made up of different members.

Section 106: Legal assistance scheme

329. This section enables the Lord Chancellor to establish, by regulations, a scheme providing legal assistance for cases which go to the Tribunal. This provision does not extend to Scotland (see [section 323\(3\)](#)(extent)).
330. The legal assistance scheme may make provision for-
- the kinds of legal assistance that may be provided;
 - the persons by whom legal assistance may be provided;
 - the manner in which applications for legal assistance are to be made;
 - the criteria on which eligibility for legal assistance is to be determined;
 - the persons or bodies by whom applications are to be determined;
 - appeals against refusals of applications; the revocation or variation of decisions; and
 - its administration and the enforcement of its provisions.
331. The conditions placed on the legal assistance provided may require the recipient of the aid to make a contribution.