

PENSIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9 – Miscellaneous and Supplementary

Dissolution of existing bodies

Section 300: Dissolution of OPRA

1274. This section dissolves the Occupational Pensions Regulatory Authority and provides for Opra's outstanding functions, property, rights and liabilities. This section enables the Secretary of State to make provision by order for these to be taken over by the Regulator or the Secretary of State or, in the case of functions to be exercised, the Department for Social Development in Northern Ireland.
1275. *Subsection (3) to (5)* make provision in respect of information which was held by Opra and which is passed to the Regulator by virtue of the Regulator taking over Opra's functions, property, rights or liabilities. Such information is, in the hands of the Regulator, to be subject to the same restrictions on use and disclosure as if it had been obtained directly by the Regulator, from the persons from whom Opra obtained it, in the exercise of the Regulator's own functions.

Section 301: Transfer of employees from Opra to the Regulator

1276. *Subsection (1)* of this section provides that the terms and conditions of employment of staff who transfer from Opra to the Regulator will be protected by the transfer expressly being made subject to the provisions of the [Transfer of Undertakings \(Protection of Employment\) Regulations 1981 \(SI 1981/1794\)](#). However, as those Regulations do not protect occupational pension rights, *subsection (2)* expressly allows for such rights relating to such staff to be protected.

Section 302: Dissolution of the Pensions Compensation Board

1277. This section dissolves the Pensions Compensation Board (PCB) and provides for the PCB's outstanding functions, property, rights and liabilities. This section enables the Secretary of State to make provision by order for these to be taken over by the Board of the Pension Protection Fund or the Secretary of State or, in the case of functions to be exercised, the Department for Social Development in Northern Ireland.
1278. *Subsections (3) to (5)* make provision in respect of information which was held by the PCB and which is passed to the Board of the Pension Protection Fund by virtue of the Board taking over the PCB's functions, property, rights or liabilities. Such information is, in the hands of the Board of the Pension Protection Fund, to be subject to the same restrictions on use and disclosure as if it had been obtained directly by the Board, from the persons from whom the PCB obtained it, in the exercise of the Board's own functions.

Service of notifications etc and electronic working

Sections 303, 304, 305: Service of notifications and other documents; Notification and documents in electronic form; Timing and location of things done electronically

1279. *Section 303* makes general provision for the giving of any notification or the sending of documents authorised or required by this Act and in particular in relation to the manner in which such notifications or documents may be sent. *Section 304* makes provision for the service of notifications and other documents in electronic form. Before any document or notification is transmitted electronically, the potential recipient must have indicated that he is willing to accept transmissions in the format in question.
1280. *Subsection (2)* provides that transmission by electronic and other similar means has effect for the purposes of the Act only if the conditions specified in the section are fulfilled. In particular *subsections (3) and (5)* specify that recipient must have indicated his willingness to receive the notification or document in question by such means.
1281. *Subsections (1) and (2) of section 305* enable the Secretary of State by order to make provision about the time and location at which an electronic transmission is deemed to have taken place. *Subsection (3)* also enables the Secretary of State by order to make provision about the manner of proving for the purposes of legal proceedings certain matters relating to the use of electronic communications for the purposes of the Act and enactments made under it.

General

Section 306: Overriding requirements

1282. *Subsection (1)* provides for certain provisions of the Act (set out in *subsection (3)*) and legislation made under those provisions, to override conflicting provisions of an occupational or personal pension scheme. It also provides for the scheme to be modified accordingly by operation of law (so without further intervention by trustees or employer) in such a case.
1283. *Subsection (4)* makes similar provision in respect of the memorandum and articles of a company which is a trustee of an occupational pension scheme which has no other trustees, or has only corporate trustees. Where the memorandum and articles conflict with requirements under *sections 242 and 243* (which deal with the involvement of scheme members in the nomination of directors of corporate trustees) then those requirements override the memorandum and articles which are then modified accordingly.

Section 307: Modification of this Act in relation to certain categories of schemes

1284. *Subsection (1)* states that the provisions mentioned in *subsection (2)* may be modified by regulations in relation to hybrid and multi-employer schemes and in relation to any case where a partnership is the employer, or one of the employers, in relation to an occupational pension scheme. *Subsection (2)* sets out the provisions that may be modified. *Subsection (3)* provides a power for the Secretary of State to modify by regulations Part 2 of the Act in relation to an eligible scheme that has a guarantee provided by a relevant public authority (defined in *subsection (4)*) in relation to some or all of the benefits or liabilities of the scheme.
1285. *Subsection (4)* sets out the meaning of the terms “hybrid scheme”, “multi-employer scheme”, “eligible scheme” and “relevant public authority”. “Hybrid scheme” is an occupational pension scheme which is not a money purchase scheme, but where some of the benefits that may be provided are money purchase benefits attributable to voluntary contributions of the members, or other money purchase benefits. “Multi-employer scheme” means an occupational pension scheme in relation to which there is more

than one employer. “Eligible scheme” has the meaning given in [section 126](#). “Relevant public authority” means a Minister of the Crown, a government department or the Scottish Ministers.

Section 308: Modification of pensions legislation that refers to employers

1286. The new definition of occupational pension scheme introduced by [section 239](#), which amends section 1 of the Pension Schemes Act 1993, includes schemes which are not sponsored by a person who employs the scheme members. Certain references in pensions legislation to the ‘employer’ may not be appropriate for such schemes.
1287. *Subsection (1)* is a regulation-making power to modify any provision of pensions legislation (as defined in *subsection (3)*) for the purpose of ensuring, in the light of the fact that self-employed people do not have employers (but only clients etc), that the legislation does not inappropriately refer to the employer of a self-employed person.
1288. *Subsection (2)* also provides a regulation making power to modify provisions of pensions legislation provisions that refer to an employer. The power is available to deal, for example, with cases where an employer’s employees are members of a scheme but the employer has no involvement with the scheme and cases where an employer may have arranged for employees to join a scheme but does not make contributions. The power can be used to ensure that the employer in such a case is not caught by provisions that are not appropriate for an employer who is a non-participant, or limited participant.

Section 309: Offences by bodies corporate and partnerships

1289. *Subsection (1)* provides that where an offence under the Act has been committed by a body corporate or Scottish partnership, any officer of the body or partnership which consented to or connived in the commission of the offence, or to whose neglect it was attributable, is also guilty of the offence and liable to be proceeded against and punished accordingly.
1290. *Subsection (2)* makes similar provision in relation to the members of a body corporate the affairs of which are managed by its members. *Subsection (3)* makes similar provision in relation to the partners in a Scottish partnership.

Section 310: Admissibility of statements

1291. *Subsection (1)* provides that any statement made by a person in response to a requirement (under the provisions of the Act listed in *subsection (4)*) to provide information is admissible in evidence in any proceedings, provided that it otherwise complies with any requirements governing its admissibility.
1292. But *subsections (2)* and *(3)* provide that where a person who has made such a statement is subject to criminal proceedings in which that person is charged with a “relevant offence” (defined in *subsection (4)*), or to the proceedings specified in *subsection (3)* as a result of which that person may be required to pay a civil penalty, no evidence or question relating to the statement may be adduced or asked by or on behalf of the prosecution, or as the case may be the Regulator, unless evidence or a question relating to it is first raised by or on behalf of the person who made the statement.

Section 311: Protected items

1293. This section protects from production, disclosure or inspection under the Act items comprising, or connected with, communications between a lawyer and client of a kind described in *subsection (3)*, unless they are held with the intention of furthering a criminal purpose.

Section 312: Liens

1294. This section provides that where a document is subject to a lien (a type of charge over a document) its production under any provision of the Act does not affect the lien.

Section 313: Crown Application

1295. This section deals with the application of the Act to the Crown, specifying in particular which provisions apply to the Crown.
1296. *Subsections (2), (3) and (4)* provide for certain parts of the Act to apply to pension schemes managed by or on behalf of the Crown as they apply to other pension schemes and to Crown servants as if they were in employment with a private person. *Subsection (5)* provides however for nothing in the provisions which so apply to apply to Her Majesty in her private capacity.

Regulations and orders

Section 314: Breach of regulations

1297. This section enables regulations made under this Act to provide that breach of such regulations gives rise to liability to a civil penalty, or to be an offence, by virtue of section 10(3) to (9) (power to impose civil penalties for contravention of regulations) or section 116 (power to provide for contravention of regulations to be a criminal offence) of the Pensions Act 1995 respectively.

Section 315: Subordinate legislation (general provisions)

1298. This section makes provision in relation to subordinate legislation made under the Act. (Any order made by the Regulator is not to be made by statutory instrument, but is subordinate legislation for the purposes of the Act). This section makes further provision for the manner in which, and purposes for which, powers conferred by the Act may be exercised, including provision for sub-delegation, and incidental, consequential and transitional provision. It includes (at *subsection (6)*) a power to make, in connection with the coming into force of any provision of the Act, provision by regulations of a kind which could be included in a commencement order under *section 322(5)*.

Section 316: Parliamentary control of subordinate legislation

1299. *Subsection (2)* provides that regulations made under the provisions specified in *subsection (2)* attract the affirmative resolution procedure of Parliamentary control. This means that such regulations may not come into force until they have been approved by both Houses of Parliament.
1300. The powers listed in *subsection (3)*, which are powers to appoint commencement dates, are not subject to any parliamentary procedure. The exercise of the remaining powers under the Act will attract the negative resolution procedure. This means that regulations and orders (apart from commencement orders) made under those powers may come into force subject to annulment pursuant of a resolution of either House of Parliament.

Section 317: Consultations about regulations

1301. This section requires the Secretary of State to consult such persons as he considers appropriate before making any regulations under this Act, subject to certain exemptions specified in *subsection (2)*.

Interpretation

Section 318: General interpretation

1302. This section defines terms used throughout the Act and confers power to extend the meaning of ‘employer’ in certain circumstances, and to make provision for the persons who are to be regarded as members or prospective members of pension schemes.

Miscellaneous and supplementary

Section 319: Minor and consequential amendments

1303. This section introduces *Schedule 12* which makes minor and consequential amendments in connection with the Act. It also confers power on the Secretary of State to make by order amendments consequential on the Act in primary and subordinate legislation.

Section 320: Repeals and revocations

1304. This section introduces *Schedule 13* which specifies provisions of legislation which will be revoked or repealed as a result of the Act.

Section 321: Pre-consolidation amendments

1305. This section allows the Secretary of State to modify by order the pensions legislation specified in *subsection (1)*, where the modification in his opinion facilitates or is desirable in connection with the consolidation of that legislation. Such an order may not be made unless a Bill has been introduced for the purposes of such a consolidation and may not come into force until immediately before the commencement of the consolidating Act.

Section 322: Commencement

1306. This section provides for the coming into force of the provisions of the Act. Provisions specified in *subsection (2)* come into force on Royal Assent; provisions specified in *subsection (3)* come fully into force on 6th April 2005, as do repeals specified in *subsection (4)*. The remaining provisions of the Act come into force in accordance with orders made by the Secretary of State under *subsection (1)*, which may (by virtue of *subsection (5)*) include transitional provision and savings, including transitional adaptation and modification of the legislation specified in *subsection (5)(a)(i) and (ii)*.

Section 323: Extent

1307. This section sets out which provisions of the Act apply in England, Wales, Scotland and Northern Ireland. Apart from *section 106* (legal assistance scheme) which extends only to England and Wales, the whole Act extends to England, Wales and Scotland. The legal assistance scheme is very similar to the legal aid scheme which is a devolved responsibility of the Scottish Parliament. *Subsection (2)* specifies the provisions which extend also to Northern Ireland. *Subsection (4)* provides that amendments and repeals have the same extent as the provisions amended or repealed.

Section 324: Northern Ireland

1308. This section provides that an Order in Council made for Northern Ireland under paragraph 1(1) of the Schedule of the Northern Ireland Act 2000, which states that it is made only for purposes corresponding to those contained in the Act, is not to be subject to the affirmative procedure of Parliamentary scrutiny, but is instead to be subject to the negative procedure. It is anticipated that such an Order in Council will include provision corresponding with that in *section 161* of, and *Schedule 6* to, this Act (which are concerned with the transfer of the property, rights and liabilities of certain pension schemes to the Board of the Pension Protection Fund). In that event, *subsection (2)*

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

confers power on the Secretary of State to make regulations so that provision in the Order of Council for such a transfer in Northern Ireland is recognised in Great Britain. Some pension schemes in Northern Ireland have assets in Great Britain, and provision will be required to ensure that transfers under the Northern Ireland provisions can be enforced as necessary in relation to the schemes' property in Great Britain.

Section 325: Short title

1309. This section provides for the short title of this Act to be the Pensions Act 2004.