

2021 No. 620 (C. 23)

PENSIONS

**The Pension Schemes Act 2021 (Commencement No. 1)
Regulations 2021**

Made - - - -

24th May 2021

The Secretary of State for Work and Pensions, in exercise of the powers conferred by section 131(1) and (4) of the Pension Schemes Act 2021^(a), makes the following Regulations.

Citation, extent and interpretation

1.—(1) These Regulations may be cited as the Pension Schemes Act 2021 (Commencement No. 1) Regulations 2021.

(2) These Regulations extend to England and Wales and Scotland.

(3) In these Regulations “the Act” means the Pension Schemes Act 2021.

Provisions coming into force on 31st May 2021

2.—(1) The day appointed for the coming into force of the following provisions of the Act for the purpose only of making regulations is 31st May 2021—

- (a) section 103(4) (section 38 contribution notice: meaning of “employer resources test”);
- (b) section 109(2) (duty to give notices and statements to the Regulator in respect of certain events);
- (c) section 110(2) (interviews);
- (d) section 112 (fixed penalty notices and escalating penalty notices); and
- (e) section 125(2) and (6) (exercise of right to cash equivalent).

(2) The day appointed for the coming into force of the following provisions of the Act is 31st May 2021—

- (a) section 116 (minor and consequential amendments) and paragraph 2 of Schedule 7 (amendments to the Pensions Act 2004), only insofar as they relate to paragraph 8(a) of Schedule 7 (amendment to section 90 of the Pensions Act 2004);
- (b) section 124 (climate change risk);
- (c) section 126 (modification of provisions relating to pensionable service); and
- (d) paragraph 8(a) of Schedule 7.

^(a) 2021 c. 1.

Signed by authority of the Secretary of State for Work and Pensions

24th May 2021

Guy Opperman
Parliamentary Under Secretary of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These are the first commencement regulations made under the Pension Schemes Act 2021 (c. 1) (“the Act”).

Regulation 2 brings into force certain provisions of the Act on 31st May 2021.

Regulation 2(1) brings into force for the purpose only of making regulations: section 103(4) (section 38 contribution notice: meaning of “employer resources test”); section 109(2) (duty to give notices and statements to the Regulator in respect of certain events); section 110(2) (interviews); section 112 (fixed penalty notices and escalating penalty notices); and section 125(2) and (6) (exercise of right to cash equivalent).

Section 103(4) of the Act inserts new sections 38E and 38F into the Pensions Act 2004 (c. 35), which introduce the employer resources test in connection with the contribution notice regime set out at sections 38 to 42 of the Pensions Act 2004. New section 38E(2) confers powers on the Secretary of State to prescribe in regulations what constitutes the resources of the employer and how the value of the resources of the employer is to be determined, calculated and verified.

Section 109(2) of the Act inserts new section 69A into the Pensions Act 2004, which introduces powers to prescribe events in respect of which there is a duty to give notices and accompanying statements to the Pensions Regulator.

Section 110(2) of the Act inserts new section 72A into the Pensions Act 2004 and introduces a power to enable the Pensions Regulator to require individuals to attend an interview. New section 72A(2) confers a power on the Secretary of State to prescribe in regulations information that must be contained in a notice issued under section 72A(1) of the Pensions Act 2004.

Section 112 of the Act inserts new sections 77A and 77B into the Pensions Act 2004, which introduce powers to enable the Pensions Regulator to impose fixed penalty notices and escalating penalty notices. New sections 77A(3)(a) and 77B(5)(a) confer powers on the Secretary of State to prescribe in regulations the level of the penalties for the fixed penalty notices and escalating penalty notices.

Section 125(2) of the Act amends section 95 of the Pension Schemes Act 1993 (c. 48) (ways of taking right to cash equivalent) to insert new subsections (6ZA) to (6ZC). New subsections (6ZA) to (6ZC) confer powers on the Secretary of State to prescribe conditions which must be met before a member will have a right to transfer of accrued pension rights and to make regulations requiring trustees or managers of occupational or personal pension schemes to notify members of conditions which have been prescribed. Section 125(6) amends section 101F of the Pension Schemes Act 1993 (power to give transfer notice) to insert new subsections (5A) to (5C), which make similar provision with regard to rights to transfer pension credit benefit.

Regulation 2(2) brings into force section 116 (minor and consequential amendments) and paragraph 2 of Schedule 7 (amendments to the Pensions Act 2004), insofar as they relate to paragraph 8(a) of Schedule 7 (amendment to section 90 of the Pensions Act 2004). It also brings into force paragraph 8(a) of Schedule 7 and sections 124 (climate change risk) and 126 (modification of provisions relating to pensionable service).

Section 116 of the Act and paragraphs 2 and 8(a) of Schedule 7 to the Act, amend section 90 of the Pensions Act 2004 (codes of practice). This requires the Pensions Regulator to issue a code of practice relating to the new “employer insolvency test” and “employer resources test” introduced by section 103 of the Act.

Section 124 of the Act amends Part 1 (occupational pensions) of the Pensions Act 1995 (c. 26) to insert new sections 41A to 41C. New sections 41A to 41C confer powers on the Secretary of State to make regulations in relation to governance and reporting of climate change risk by trustees and managers of occupational pension schemes, to issue related statutory guidance and to make regulations in relation to compliance, including regulations conferring powers on the Pensions Regulator. Section 124 also makes consequential amendments to other provisions in the Pensions Act 1995.

Section 126 of the Act remedies certain consequences of the judgment in the case of *Anthony Beaton v The Board of the Pension Protection Fund* [2017] EWHC 2623 and that relate to what is referred to as “pensionable service” (see paragraph 36 of Schedule 7 to the Pensions Act 2004). It does that by treating the amendments made to the Pension Protection Fund (Compensation) Regulations 2005 (S.I. 2005/670) and the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (S.I. 2005/441) by the Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018 (S.I. 2018/988), as if those amendments always had effect. The amendments are therefore treated as covering payments which have been made from the time the Pension Protection Fund was established.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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