



Pensions Act 1995

1995 CHAPTER 26

PART I

OCCUPATIONAL PENSIONS

General

115 Offences by bodies corporate and partnerships

- (1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as to a director of a body corporate.
- (3) Where an offence under this Part committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

116 Breach of regulations

- (1) Regulations made by virtue of any provision of this Part may provide for the contravention of any provision contained in any such regulations to be an offence under this Part and for the recovery on summary conviction for any such offence of a fine not exceeding level 5 on the standard scale.
- (2) An offence under any provision of the regulations may be charged by reference to any day or longer period of time; and a person may be convicted of a second or

Status: This is the original version (as it was originally enacted).

subsequent offence under such a provision by reference to any period of time following the preceding conviction of the offence.

- (3) Where by reason of the contravention of any provision contained in regulations made by virtue of this Part—
- (a) a person is convicted of an offence under this Part, or
 - (b) a person pays a penalty under section 10,
- then, in respect of that contravention, he shall not, in a case within paragraph (a), be liable to pay such a penalty or, in a case within paragraph (b), be convicted of such an offence.

117 Overriding requirements

- (1) Where any provision mentioned in subsection (2) conflicts with the provisions of an occupational pension scheme—
- (a) the provision mentioned in subsection (2), to the extent that it conflicts, overrides the provisions of the scheme, and
 - (b) the scheme has effect with such modifications as may be required in consequence of paragraph (a).
- (2) The provisions referred to in subsection (1) are those of—
- (a) this Part,
 - (b) any subordinate legislation made or having effect as if made under this Part, or
 - (c) any arrangements under section 16(1) or 17(2).

118 Powers to modify this Part

- (1) Regulations may modify any provisions of this Part, in their application—
- (a) to a trust scheme which applies to earners in employments under different employers,
 - (b) to a trust scheme of which there are no members who are in pensionable service under the scheme, or
 - (c) to any case where a partnership is the employer, or one of the employers, in relation to a trust scheme.
- (2) Regulations may provide for sections 22 to 26, and section 117 (so far as it applies to those sections), not to apply in relation to a trust scheme falling within a prescribed class or description.

119 Calculations etc. under regulations: sub-delegation

Regulations made by virtue of section 56(3), 73(3) or 75 may provide for the values of the assets and the amounts of the liabilities there mentioned to be calculated and verified in accordance with guidance—

- (a) prepared and from time to time revised by a prescribed body, and
- (b) approved by the Secretary of State.

120 Consultations about regulations

- (1) Before the Secretary of State makes any regulations by virtue of this Part, he must consult such persons as he considers appropriate.

- (2) Subsection (1) does not apply—
- (a) to regulations made for the purpose only of consolidating other regulations revoked by them,
 - (b) to regulations in the case of which the Secretary of State considers consultation inexpedient because of urgency,
 - (c) to regulations made before the end of the period of six months beginning with the coming into force of the provision of this Part by virtue of which the regulations are made, or
 - (d) to regulations which—
 - (i) state that they are consequential upon a specified enactment, and
 - (ii) are made before the end of the period of six months beginning with the coming into force of that enactment.

121 Crown application

- (1) This Part applies to an occupational pension scheme managed by or on behalf of the Crown as it applies to other occupational pension schemes; and, accordingly, references in this Part to a person in his capacity as a trustee or manager of an occupational pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.
- (2) References in this Part to a person in his capacity as employer in relation to an occupational pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.
- (3) This section does not apply to any provision made by or under this Part under which a person may be prosecuted for an offence; but such a provision applies to persons in the public service of the Crown as it applies to other persons.
- (4) This section does not apply to sections 42 to 46.
- (5) Nothing in this Part applies to Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947).

122 Consequential amendments

Schedule 3 (amendments consequential on this Part) shall have effect.

123 “Connected” and “associated” persons

- (1) Sections 249 and 435 of the Insolvency Act 1986 (connected and associated persons) shall apply for the purposes of the provisions of this Act listed in subsection (3) as they apply for the purposes of that Act.
- (2) Section 74 of the Bankruptcy (Scotland) Act 1985 (associated persons) shall apply for the purposes of the provisions so listed as it applies for the purposes of that Act.
- (3) The provisions referred to in subsections (1) and (2) are—
 - (a) section 23(3)(b),
 - (b) sections 27 and 28,
 - (c) section 40,

Status: This is the original version (as it was originally enacted).

but in the case of section 40 the provisions mentioned in subsections (1) and (2) shall apply for those purposes with any prescribed modifications.

124 Interpretation of Part I

(1) In this Part—

“active member”, in relation to an occupational pension scheme, means a person who is in pensionable service under the scheme,

“the actuary” and “the auditor”, in relation to an occupational pension scheme, have the meanings given by section 47,

“the Authority” has the meaning given by section 1(1),

“the Compensation Board” has the meaning given by section 78(1),

“the compensation provisions” has the meaning given by section 81(3),

“contravention” includes failure to comply,

“deferred member”, in relation to an occupational pension scheme, means a person (other than an active or pensioner member) who has accrued rights under the scheme,

“employer”, in relation to an occupational pension scheme, means the employer of persons in the description or category of employment to which the scheme in question relates (but see section 125(3)),

“equal treatment rule” has the meaning given by section 62,

“firm” means a body corporate or a partnership,

“fund manager”, in relation to an occupational pension scheme, means a person who manages the investments held for the purposes of the scheme,

“independent trustee” has the meaning given by section 23(3),

“managers”, in relation to an occupational pension scheme other than a trust scheme, means the persons responsible for the management of the scheme,

“member”, in relation to an occupational pension scheme, means any active, deferred or pensioner member (but see section 125(4)),

“member-nominated director” has the meaning given by section 18(2),

“member-nominated trustee” has the meaning given by section 16(2),

“the minimum funding requirement” has the meaning given by section 56,

“normal pension age” has the meaning given by section 180 of the Pension Schemes Act 1993,

“payment schedule” has the meaning given by section 87(2),

“pensionable service”, in relation to a member of an occupational pension scheme, means service in any description or category of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme,

“pensioner member”, in relation to an occupational pension scheme, means a person who in respect of his pensionable service under the scheme or by reason of transfer credits, is entitled to the present payment of pension or other benefits,

“prescribed” means prescribed by regulations,

“professional adviser”, in relation to a scheme, has the meaning given by section 47,

Status: This is the original version (as it was originally enacted).

“public service pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993,

“regulations” means regulations made by the Secretary of State,

“resources”, in relation to an occupational pension scheme, means the funds out of which the benefits provided by the scheme are payable from time to time, including the proceeds of any policy of insurance taken out, or annuity contract entered into, for the purposes of the scheme,

“Scottish partnership” means a partnership constituted under the law of Scotland,

“the Taxes Act 1988” means the Income and Corporation Taxes Act 1988,

“transfer credits” means rights allowed to a member under the rules of an occupational pension scheme by reference to a transfer to that scheme of his accrued rights from another scheme (including any transfer credits allowed by that scheme),

“trustees or managers”, in relation to an occupational pension scheme, means—

(a) in the case of a trust scheme, the trustees of the scheme, and

(b) in any other case, the managers of the scheme,

“trust scheme” means an occupational pension scheme established under a trust.

(2) For the purposes of this Part—

(a) the accrued rights of a member of an occupational pension scheme at any time are the rights which have accrued to or in respect of him at that time to future benefits under the scheme, and

(b) at any time when the pensionable service of a member of an occupational pension scheme is continuing, his accrued rights are to be determined as if he had opted, immediately before that time, to terminate that service;

and references to accrued pension or accrued benefits are to be interpreted accordingly.

(3) In determining what is “pensionable service” for the purposes of this Part—

(a) service notionally attributable for any purpose of the scheme is to be disregarded, and

(b) no account is to be taken of any rules of the scheme by which a period of service can be treated for any purpose as being longer or shorter than it actually is.

(4) In the application of this Part to Scotland, in relation to conviction on indictment, references to imprisonment are to be read as references to imprisonment for a term not exceeding two years.

(5) Subject to the provisions of this Act, expressions used in this Act and in the Pension Schemes Act 1993 have the same meaning in this Act as in that.

125 Section 124: supplementary

(1) For the purposes of this Part, an occupational pension scheme is salary related if—

(a) the scheme is not a money purchase scheme, and

(b) the scheme does not fall within a prescribed class or description,

and “salary related trust scheme” is to be read accordingly.

Status: This is the original version (as it was originally enacted).

- (2) Regulations may apply this Part with prescribed modifications to occupational pension schemes—
 - (a) which are not money purchase schemes, but
 - (b) where some of the benefits that may be provided are money purchase benefits.
- (3) Regulations may, in relation to occupational pension schemes, extend for the purposes of this Part the meaning of “employer” to include persons who have been the employer in relation to the scheme.
- (4) For any of the purposes of this Part, regulations may in relation to occupational pension schemes—
 - (a) extend or restrict the meaning of “member”,
 - (b) determine who is to be treated as a prospective member, and
 - (c) determine the times at which a person is to be treated as becoming, or as ceasing to be, a member or prospective member.