



# Pensions Act 2008

## 2008 CHAPTER 30

### PART 1

#### PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

#### CHAPTER 8

##### APPLICATION AND INTERPRETATION

##### *Workers*

#### **88 “Employer”, “worker” and related expressions**

- (1) This section applies for the purposes of this Part.
- (2) “Contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.
- (3) “Worker” means an individual who has entered into or works under—
  - (a) a contract of employment, or
  - (b) any other contract by which the individual undertakes to do work or perform services personally for another party to the contract.
- (4) But a contract is not within subsection (3)(b) if the status of the other party is by virtue of the contract that of a client or customer of a profession or business undertaking carried on by the individual concerned.
- (5) For the purposes of subsection (3)(b), it does not matter whether the contract is express or implied or (if it is express) whether it is oral or in writing.
- (6) Any reference to a worker's contract is to be read in accordance with subsections (3) to (5).

*Status: Point in time view as at 30/06/2012.*

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- (7) “Employer”, in relation to a worker, means the person by whom the worker is employed (subject to sections 37(5) and 38(6)).
- (8) “Employment” in relation to a worker, means employment under the worker's contract, and related expressions are to be read accordingly.

## **89 Agency workers**

- (1) This section applies to an individual (“the agency worker”)—
- (a) who is supplied by a person (“the agent”) to do work for another person (“the principal”) under a contract or other arrangements made between the agent and the principal,
  - (b) who is not, as respects that work, a worker, because of the absence of a worker's contract between the individual and the agent or the principal, and
  - (c) who is not a party to a contract under which the agency worker undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of a profession or business undertaking carried on by the individual.
- (2) Where this section applies, the other provisions of this Part have effect—
- (a) as if there were a worker's contract for the doing of the work by the agency worker, made between the agency worker and the relevant person under subsection (3), and
  - (b) as if that person were the agency worker's employer.
- (3) The relevant person is—
- (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work, or
  - (b) if neither the agent nor the principal is responsible for doing so, whichever of them pays the agency worker in respect of the work.

## **90 Directors**

- (1) A person who holds office as a director of a company is not, by virtue of that office or of any employment by the company, a worker for the purposes of this Part, unless—
- (a) the person is employed by the company under a contract of employment, and
  - (b) there is at least one other person who is employed by the company under a contract of employment.
- (2) In this section, “company” includes any body corporate.

## **91 Crown employment**

- (1) This Part has effect in relation to employment by or under the Crown as it has effect in relation to other employment.
- (2) For the purposes of the application of the provisions of this Part in accordance with subsection (1)—
- (a) references to a worker are to be construed as references to a person employed by or under the Crown;

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- (b) references to a worker's contract are to be construed as references to the terms of employment of a person employed by or under the Crown.
- (3) This section does not impose criminal liability on the Crown.
- (4) But on the application of the Regulator the High Court or the Court of Session may declare unlawful a failure by the Crown to comply with any of the duties mentioned in section 45(1).

## **92 Armed forces**

- (1) A person serving as a member of the naval, military or air forces of the Crown is not, by virtue of that service, a worker for the purposes of this Part.
- (2) A member of any of the forces specified in subsection (3) who assists the activities of any of those forces is not, by virtue of anything done in assisting those activities, a worker for the purposes of this Part.
- (3) The forces are—
  - (a) the Combined Cadet Force;
  - (b) the Sea Cadet Corps;
  - (c) the Army Cadet Force;
  - (d) the Air Training Corps.

## **93 House of Lords staff**

- (1) This Part has effect in relation to employment as a relevant member of the House of Lords staff as it has effect in relation to other employment.
- (2) In this section, “relevant member of the House of Lords staff” means any person who is employed under a worker's contract with the Corporate Officer of the House of Lords.

## **94 House of Commons staff**

- (1) This Part has effect in relation to employment as a relevant member of the House of Commons staff as it has effect in relation to other employment.
- (2) In this section, “relevant member of the House of Commons staff” means any person—
  - (a) who was appointed by the House of Commons Commission, or
  - (b) who is a member of the Speaker's personal staff.
- (3) For the purposes of the application of the provisions of this Part in relation to a relevant member of the House of Commons staff—
  - (a) references to a worker are to be read as references to a relevant member of the House of Commons staff, and
  - (b) references to a worker's contract are to be read as references to the terms of employment of a relevant member of the House of Commons staff.

## **95 Police**

- (1) This Part has effect in relation to a person who—
  - (a) holds the office of constable or an appointment as a police cadet, and
  - (b) does not hold that office or appointment under a contract of employment,

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as if the person were employed by the [<sup>F1</sup>relevant local policing body or] relevant police authority under a worker's contract.

- (2) A [<sup>F2</sup>local policing body, or a] police authority that maintains a police force is the relevant [<sup>F3</sup>local policing body, or relevant] police authority—
- (a) in relation to a constable, if the constable is a member of that police force;
  - (b) in relation to a police cadet, if the cadet is undergoing training with a view to becoming a member of that police force.

#### Textual Amendments

- F1** Words in s. 95(1) inserted (16.1.2012) by [Police Reform and Social Responsibility Act 2011 \(c. 13\)](#), ss. 99, 157(1), [Sch. 16 para. 371\(2\)](#); S.I. 2011/3019, [art. 3](#), Sch. 1 para. nnn(iii)
- F2** Words in s. 95(2) inserted (16.1.2012) by [Police Reform and Social Responsibility Act 2011 \(c. 13\)](#), ss. 99, 157(1), [Sch. 16 para. 371\(3\)\(a\)](#); S.I. 2011/3019, [art. 3](#), Sch. 1 para. nnn(iii)
- F3** Words in s. 95(2) inserted (16.1.2012) by [Police Reform and Social Responsibility Act 2011 \(c. 13\)](#), ss. 99, 157(1), [Sch. 16 para. 371\(3\)\(b\)](#); S.I. 2011/3019, [art. 3](#), Sch. 1 para. nnn(iii)

## 96 Persons working on vessels

- (1) Subject to regulations under this section, a person employed or engaged in any capacity on board a ship is not, by virtue of that employment or engagement, a worker for the purposes of this Part.
- (2) The Secretary of State may by regulations provide that, to the extent and for the purposes specified in the regulations, the relevant provisions apply, with or without modification, in relation to a person employed or engaged in any capacity on board a ship (whether or not that person is working or ordinarily works in any part of the United Kingdom).
- (3) For the purposes of this section, the relevant provisions are—
  - (a) this Part (and any enactment as amended by this Part), and
  - (b) any provision in force in Northern Ireland corresponding to any provision of this Part (and any enactment as amended by such a provision).
- (4) Regulations under this section—
  - (a) may provide for a provision to apply in relation to individuals whether or not they are British subjects;
  - (b) may provide for a provision to apply in relation to bodies corporate whether or not they are incorporated under the law of a part of the United Kingdom;
  - (c) may do so even where the application may affect the individual's or body's activities outside the United Kingdom.
- (5) Regulations under this section—
  - (a) may provide for a court or tribunal on which jurisdiction is conferred by the relevant provisions to have jurisdiction, in respect of offences or other matters, for the purposes of any provision as it applies by virtue of the regulations;
  - (b) may exclude from the operation of section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents required for prosecutions) proceedings for offences under any provision as it applies by virtue of the regulations;
  - (c) may provide that such proceedings may not be brought without such consent as may be required by the regulations.

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- (6) Any jurisdiction conferred on a court or tribunal under this section is without prejudice to jurisdiction exercisable apart from this section by that or any other court or tribunal.
- (7) In this section, “ship” includes—
  - (a) a hovercraft within the meaning of the Hovercraft Act 1968 (c. 59), and
  - (b) every description of vessel used in navigation.

#### Commencement Information

- II** [S. 96](#) wholly in force at 30.6.2012; [s. 96](#) in force for certain purposes at Royal Assent see [s. 149\(2\)\(k\)](#); [s. 96](#) in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682](#), [art. 2\(1\)\(2\)\(a\)](#), [Sch. 1](#)

## 97 Persons in offshore employment

- (1) Her Majesty may by Order in Council provide that, to the extent and for the purposes specified in the Order, the relevant provisions apply, with or without modification, in relation to a person in offshore employment.
- (2) For the purposes of this section, the relevant provisions are—
  - (a) this Part (and any enactment as amended by this Part), and
  - (b) any provision in force in Northern Ireland corresponding to any provision of this Part (and any enactment as amended by such a provision).
- (3) In this section, “offshore employment” has the same meaning as in section 201(1) of the Employment Rights Act 1996 (c. 18).
- (4) An Order in Council under this section—
  - (a) may provide for a provision to apply in relation to individuals whether or not they are British subjects;
  - (b) may provide for a provision to apply in relation to bodies corporate whether or not they are incorporated under the law of a part of the United Kingdom;
  - (c) may do so even where the application may affect the individual's or body's activities outside the United Kingdom.
- (5) An Order in Council under this section—
  - (a) may make different provision for different cases;
  - (b) may provide for a court or tribunal on which jurisdiction is conferred by the relevant provisions to have jurisdiction, in respect of offences or other matters, for the purposes of any provision as it applies by virtue of the Order;
  - (c) may (without prejudice to subsection (1) and paragraph (a)) provide for a provision to apply in relation to any person in employment in a part of the areas referred to in section 201(1)(a) and (b) of the Employment Rights Act 1996 (c. 18);
  - (d) may exclude from the operation of section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents required for prosecutions) proceedings for offences under any provision as it applies by virtue of the Order;
  - (e) may provide that such proceedings may not be brought without such consent as may be required by the Order.
- (6) Any jurisdiction conferred on a court or tribunal under this section is without prejudice to jurisdiction exercisable apart from this section by that or any other court or tribunal.

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(7) No Order in Council may be made under this section unless a draft of the Order has been laid before and approved by a resolution of each House of Parliament.

**Commencement Information**

**I2** S. 97 wholly in force at 30.6.2012; s. 97 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 97 in force so far as not already in force at 30.6.2012 by S.I. 2012/1682, art. 2(1)(2)(a), Sch. 1

**98 Extension of definition of worker**

The Secretary of State may by regulations make provision for this Part to apply with or without modifications—

- (a) as if any individual of a prescribed description (who would not otherwise be a worker) were a worker,
- (b) as if there were in the case of any such individual a worker's contract of a prescribed description under which the individual works, and
- (c) as if a person of a prescribed description were the employer under that contract.

**Commencement Information**

**I3** S. 98 wholly in force at Royal Assent by virtue of s. 149(2)(k)

**Status:**

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