



# Pensions Act 1995

## 1995 CHAPTER 26

### PART I

#### OCCUPATIONAL PENSIONS

##### *Advisers*

#### **47 Professional advisers**

- (1) For every occupational pension scheme there shall be—
  - (a) an individual, or a firm, appointed by the trustees or managers as auditor (referred to in this Part, in relation to the scheme, as “the auditor”), and
  - (b) an individual appointed by the trustees or managers as actuary (referred to in this Part, in relation to the scheme, as “the actuary”).
- (2) For every occupational pension scheme the assets of which consist of or include investments (within the meaning of the Financial Services Act 1986) there shall be an individual or a firm appointed by or on behalf of the trustees or managers as fund manager.
- (3) If in the case of an occupational pension scheme any person—
  - (a) is appointed otherwise than by the trustees or managers as legal adviser or to exercise any prescribed functions in relation to the scheme, or
  - (b) is appointed otherwise than by or on behalf of the trustees or managers as a fund manager,sections 3 and 10 apply to any trustee, and section 10 applies to any manager, who in exercising any of his functions places reliance on the skill or judgement of that person.
- (4) In this Part, in relation to an occupational pension scheme—
  - (a) the auditor, actuary and legal adviser appointed by the trustees or managers,
  - (b) any fund manager appointed by or on behalf of the trustees or managers, and
  - (c) any person appointed by the trustees or managers to exercise any of the functions referred to in subsection (3)(a),

---

*Status: This is the original version (as it was originally enacted).*

---

are referred to as “professional advisers”.

- (5) This section does not apply to an occupational pension scheme falling within a prescribed class or description and regulations may—
  - (a) make exceptions to subsections (1) to (3),
  - (b) specify the qualifications and experience, or approval, required for appointment as a professional adviser.
- (6) Regulations may make provision as to—
  - (a) the manner in which professional advisers may be appointed and removed,
  - (b) the terms on which professional advisers may be appointed (including the manner in which the professional advisers may resign).
- (7) Subject to regulations made by virtue of subsection (6), professional advisers shall be appointed on such terms as the trustees or managers may determine.
- (8) If in the case of an occupational pension scheme an auditor, actuary or fund manager is required under this section to be appointed but the appointment has not been made, or not been made in accordance with any requirements imposed under this section, sections 3 and 10 apply to any trustee, and section 10 applies to any manager, who has failed to take all such steps as are reasonable to secure compliance.
- (9) Regulations may in the case of occupational pension schemes—
  - (a) impose duties on any person who is or has been the employer, and on any person who acts as auditor or actuary to such a person, to disclose information to the trustees or managers and to the scheme’s professional advisers,
  - (b) impose duties on the trustees or managers to disclose information to, and make documents available to, the scheme’s professional advisers.
- (10) If in the case of an occupational pension scheme a person fails to comply with any duty imposed under subsection (9)(a), section 10 applies to him.
- (11) If in the case of an occupational pension scheme any duty imposed under subsection (9)(b) is not complied with, sections 3 and 10 apply to any trustee, and section 10 applies to any manager, who has failed to take all such steps as are reasonable to secure compliance.

#### **48 “Blowing the whistle”**

- (1) If the auditor or actuary of any occupational pension scheme has reasonable cause to believe that—
  - (a) any duty relevant to the administration of the scheme imposed by any enactment or rule of law on the trustees or managers, the employer, any professional adviser or any prescribed person acting in connection with the scheme has not been or is not being complied with, and
  - (b) the failure to comply is likely to be of material significance in the exercise by the Authority of any of their functions,
 he must immediately give a written report of the matter to the Authority.
- (2) The auditor or actuary of any occupational pension scheme must, in any prescribed circumstances, immediately give a written report of any prescribed matter to the Authority.

- (3) No duty to which the auditor or actuary of any occupational pension scheme is subject shall be regarded as contravened merely because of any information or opinion contained in a written report under this section.
- (4) If in the case of any occupational pension scheme any professional adviser (other than the auditor or actuary), any trustee or manager or any person involved in the administration of the scheme has reasonable cause to believe as mentioned in paragraphs (a) and (b) of subsection (1), he may give a report of the matter to the Authority.
- (5) In the case of any such scheme, no duty to which any such adviser, trustee or manager or other person is subject shall be regarded as contravened merely because of any information or opinion contained in a report under this section; but this subsection does not apply to any information disclosed in such a report by the legal adviser of an occupational pension scheme if he would be entitled to refuse to produce a document containing the information in any proceedings in any court on the grounds that it was the subject of legal professional privilege or, in Scotland, that it contained a confidential communication made by or to an advocate or solicitor in that capacity.
- (6) Subsections (1) to (5) apply to any occupational pension scheme to which section 47 applies.
- (7) Section 10 applies to any auditor or actuary who fails to comply with subsection (1) or (2).
- (8) If it appears to the Authority that an auditor or actuary has failed to comply with subsection (1) or (2), the Authority may by order disqualify him for being the auditor or, as the case may be, actuary of any occupational pension scheme specified in the order.
- (9) An order under subsection (8) may specify the scheme to which the failure relates, all schemes falling within any class or description of occupational pension scheme or all occupational pension schemes.
- (10) The Authority may, on the application of any person disqualified under this section who satisfies the Authority that he will in future comply with those subsections, by order revoke the order disqualifying him; but a revocation made at any time cannot affect anything done before that time.
- (11) An auditor or actuary of an occupational pension scheme who becomes disqualified under this section shall, while he is so disqualified, cease to be auditor or, as the case may be, actuary of any scheme specified in the order disqualifying him.
- (12) A person who, while he is disqualified under this section, purports to act as auditor or actuary of an occupational pension scheme specified in the order disqualifying him is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine or imprisonment, or both.
- (13) An offence under subsection (12) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction of the offence.