

# PENSIONS ACT 1995

## CHAPTER 26

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An Act to amend the law about pensions and for connected purposes.

[19th July 1995]

[Provisions in this Act which, by the date of issue of the latest Supplement to this work, had not been commenced for any purpose (other than authorising the making of subordinate legislation) are printed below in italic sanserif type.]

## PART I

### OCCUPATIONAL PENSIONS

#### *Occupational Pensions Regulatory Authority*

#### 1.-2. [...<sup>1</sup>]

*Section 2 is reproduced below for transitional provision purposes which includes the insertion of subsection (1A). See Art. 5 & 6 of S.I. 2005/695 at page 5.4797.*

**2.—(1)** The Authority must prepare a report for the first twelve months of their existence, and a report for each succeeding period of twelve months, and must send each report to the Secretary of State as soon as practicable after the end of the period for which it is prepared.

Reports to Secretary of State.

(1A) The Regulatory Authority must prepare a report for the period commencing 1st April 2004 and ending 5th April 2005 and must send the report to the Secretary of State as soon as practicable after the end of that period.

(2) A report prepared under this section for any period must deal with the activities of the Authority in the period.

(3) The Secretary of State must lay before each House of Parliament a copy of every report received by him under this section.

#### *Supervision by the Authority*

[<sup>2</sup>3—(1)The Authority may by order prohibit a person from being a trustee of—

Prohibition orders.

- (a) a particular trust scheme,
- (b) a particular description of trust schemes, or
- (c) trust schemes in general,

if they are satisfied that he is not a fit and proper person to be a trustee of the scheme or schemes to which the order relates.

(2) Where a prohibition order is made under subsection (1) against a person in respect of one or more schemes of which he is a trustee, the order has the effect of removing him.

<sup>1</sup> S. 1 & 2 repealed (6.4.05) by Sch. 13 of the Pensions Act 2004 (c. 35).

<sup>2</sup> S. 3 substituted (6.4.05) by s. 33 of the Pensions Act 2004 (c. 35).

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### S. 3

(3) The Authority may, on the application of any person prohibited under this section, by order revoke the order either generally or in relation to a particular scheme or description of schemes.

(4) An application under subsection (3) may not be made—

- (a) during the period within which the determination to exercise the power to make the prohibition order may be referred to [<sup>1</sup>a Tribunal] under section 96(3) or 99(7) of the Pensions Act 2004, and
- (b) if the determination is so referred, until the reference, and any appeal against [<sup>1</sup>the determination of the Tribunal concerned], has been finally disposed of.

(5) A revocation made at any time under this section cannot affect anything done before that time.

(6) The Authority must prepare and publish a statement of the policies they intend to adopt in relation to the exercise of their powers under this section.

(7) The Authority may revise any statement published under subsection (6) and must publish any revised statement.

(8) [...<sup>1</sup>]

Prohibition orders:  
directors of corporate  
trustees etc.

[<sup>2</sup>3A—(1) A company or Scottish partnership is prohibited from being a trustee of a trust scheme at any time when an individual who is a director of the company or a partner in the partnership is prohibited from being a trustee of the scheme by an order under section 3.

(2) Where a company or partnership which is a trustee of a trust scheme becomes prohibited under subsection (1) in relation to the scheme, that subsection has the effect of removing the company or partnership as a trustee.

(3) The Authority may, on the application of a company or Scottish partnership, give notice in writing to the applicant waiving the prohibition under subsection (1)—

- (a) in relation to an individual against whom an order under section 3 has been made, and
- (b) either generally or in relation to a particular scheme or particular description of schemes.

(4) A notice may be given under subsection (3) only if the Authority is satisfied that the applicant would be a fit or proper person to be a trustee of the scheme or schemes to which the notice relates despite the individual being, or even if the individual were to become, a director of or partner in the applicant.

(5) A notice given at any time under subsection (3) cannot affect anything done before that time.

(6) An application under subsection (3) may not be made—

- (a) during the period within which the determination to exercise the power to make the order against the individual may be referred to the Tribunal under section 96(3) or 99(7) of the Pensions Act 2004 (whether by a company or partnership which became prohibited under subsection (1) on the making of the order or by another person), and
- (b) if the determination is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.

(7) The Authority must prepare and publish a statement of the policies they intend to adopt in relation to the exercise of their powers under this section.

(8) The Authority may revise any statement published under subsection (7) and must publish any revised statement.

<sup>1</sup> In s. 3(4)(a) & (b) words substituted & subsec. (8) omitted (18.1.10) by S.I. 2010/22, s. 22.

<sup>2</sup> S. 3A inserted (11.9.14) by the Pensions Act 2014 (c. 19) s. 46(2).



(9) References in this section to an order under section 3 are to an order under that section made on or after the date on which section 46(2) of the Pensions Act 2014 comes fully into force].

4.—(1) The Authority may by order suspend a trustee of a trust scheme—

Suspension orders.

- (a) pending consideration being given to the making of an order against him under section 3(1),
- [<sup>1</sup>(aa) pending consideration being given to the institution of proceedings against him for an offence involving dishonesty or deception,]
- (b) where proceedings have been instituted against him for an offence involving dishonesty or deception and have not been concluded,
- (c) where a petition has been presented to the court for an order adjudging him bankrupt, or for the sequestration of his estate, and proceedings on the petition have not been concluded [<sup>2</sup>or an application has been made by him for a debt relief order (under Part 7A of the Insolvency Act 1986) and the application has not been determined],
- (d) where the trustee is a company, if a petition for the winding up of the company has been presented to the court and proceedings on the petition have not been concluded,
- (e) where an application has been made to the court for a disqualification order against him under the Company Directors Disqualification Act 1986 and proceedings on the application have not been concluded, or
- (f) where the trustee is a company or Scottish partnership and, if any director or, as the case may be, partner were a trustee, the Authority would have power to suspend him under paragraph [<sup>3</sup>(aa)] (b), (c) or (e).

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(2) An order under subsection (1)—

- (a) if made by virtue of paragraph (a), [<sup>4</sup>or (aa)] [<sup>3</sup>or, in a case where the Authority would have power to suspend a director or partner under paragraph (aa), by virtue of paragraph (f)] has effect for an initial period not exceeding twelve months, and
- (b) in any other case, has effect until the proceedings in question are concluded [<sup>3</sup>or in the case of an application for a debt relief order, the application is determined];

but the Authority may by order extend the initial period referred to in paragraph (a) for a further period of twelve months, and any order suspending a person under subsection (1) ceases to have effect [<sup>4</sup>in relation to a trust scheme] if an order is made against that person under section 3(1) [<sup>4</sup>in relation to that scheme].

(3) An order under subsection (1) has the effect of prohibiting the person suspended, during the period of his suspension, from exercising any functions as trustee of any trust scheme to which the order applies; and the order may apply to a particular trust scheme, a particular [<sup>5</sup>description] of trust schemes or trust schemes in general.

(4) An order under subsection (1) may be made on one of the grounds in paragraphs (b) to (e) whether or not the proceedings were instituted, petition presented or application made (as the case may be) before or after the coming into force of that subsection.

(5) The Authority may, on the application of any person suspended under subsection (1), by order revoke the order, either generally or in relation to a particular scheme or a particular [<sup>5</sup>description] of schemes; but a revocation made at any time cannot affect anything done before that time.

<sup>1</sup> S. 4(1)(aa) inserted (6.4.05) by s. 34(a) of the Pensions Act 2004 (c. 35).

<sup>2</sup> Words inserted in sub-sec. 4(2)(c) & (2)(b).

<sup>3</sup> Words in s. 4(1)(f) and (2)(a) inserted (11.9.14) by the Pensions Act 2014 (c. 19) s. 46(4) & (5).

<sup>4</sup> In s. 4 & (2)(a)(b), words inserted (6.4.05) by s. 34 of the Pensions Act 2004 (c. 35).

<sup>5</sup> In s. 4(3) & (5) word substituted (6.4.05) by Sch. 12, para. 35 of the Pension Act 2004 (c. 35).

Ss. 4-3

[<sup>1</sup>(5A) An application under subsection (5) may not be made—

- (a) during the period within which the determination to exercise the power to make an order under subsection (1) may be referred to [<sup>2</sup>a Tribunal] under section 96(3) or 99(7) of the Pensions Act 2004, and
- (b) if the determination is so referred, until the reference, and any appeal against [<sup>2</sup>the determination of the Tribunal concerned], has been finally disposed of.]

(6) An order under this section may make provision as respects the period of the trustee's suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and for adjusting any rules governing the proceedings of the trustees to take account of the reduction in the number capable of acting.

(7) [...]

*Section 3 & 4 are reproduced below as they were **before** their repeal or amendment by the Pensions Act 2004 (c. 35). This is for the purpose of the savings provisions in Art. 6 of S.I. 2005/695 at page 5.4797. The footnotes relating to sections 3 & 4 appear at the end of this text.*

*Supervision by the Authority*

Prohibition orders.

**3.**—(1) The Authority may by order prohibit a person from being a trustee of a particular trust scheme in any of the following circumstances.

(2) The circumstances are—

- (a) that the Authority are satisfied that while being a trustee of the scheme the person has been in serious or persistent breach of any of his duties under—
  - (i) this Part, other than the following provisions: sections 51 to 54, 62 to 65 and 110 to 112, [...]<sup>3</sup>
  - (ii) the following provisions of the Pension Schemes Act 1993: section 6 (registration), Chapter IV or Part IV (transfer values), [<sup>1</sup>“Chapter II of Part IVA (pension credit benefit transfer values),] section 113 (information) and section 175 (levy),
  - [<sup>2</sup>(iii) the following provisions of the Welfare Reform and Pensions Act 1999: section 33 (time for discharge of pension credit liability) and section 45 (information),]
- (b) that the Authority are satisfied that, while being a trustee of the scheme, this section has applied to the person by virtue of any other provision of [<sup>2</sup>this or any other Act],
- (c) that the person is a company and any director of the company is prohibited under this section from being a trustee of the scheme,
- (d) that the person is a Scottish partnership and any of the partners is prohibited under this section from being a trustee of the scheme, or
- (e) that the person is a director of a company which, by reason of circumstances falling within paragraph (a) or (b), is prohibited under this section from being a trustee of the scheme and the Authority are satisfied that the acts or defaults giving rise to those circumstances were committed within the consent or connivance of, or attributable to any neglect on the part of, the director;

or any other prescribed circumstances.

(3) The making of an order under subsection (1) against a person who is a trustee of the scheme in question has the effect of removing him.

<sup>1</sup> S. 4(5A) inserted (6.4.05) by the Pensions Act 2004 (c. 35) s. 34(c).

<sup>2</sup> In subsec. (5A) words substituted & subsec. (7) omitted (18.1.10) by S.I. 2010/22, s. 23.

(4) The Authority may, on the application of any person against whom an order under subsection (1) is in force, by order revoke the order, but a revocation made at any time cannot affect anything done before that time.

**4.—(1)** The Authority may by order suspend a trustee of a trust scheme—

Suspension orders.

- (a) pending consideration being given to the making of an order against him under section 3(1),
- (b) where proceedings have been instituted against him for an offence involving dishonesty or deception and have not been concluded,
- (c) where a petition has been presented to the court for an order adjudging him bankrupt, or for the sequestration of his estate, and proceedings on the petition have not been concluded,
- (d) where the trustee is a company, if a petition for the winding up of the company has been presented to the court and proceedings on the petition have not been concluded,
- (e) where an application has been made to the court for a disqualification order against him under the Company Directors Disqualification Act 1986 and proceedings on the application have not been concluded, or
- (f) where the trustee is a company or Scottish partnership and, if any director or, as the case may be, partner were a trustee, the Authority would have power to suspend him under paragraph (b), (c) or (e).

1986 c. 46.

(2) An order under subsection (1)—

- (a) if made by virtue of paragraph (a), has effect for an initial period not exceeding twelve months, and
- (b) in any other case, has effect until the proceedings in question are concluded;

but the Authority may by order extend the initial period referred to in paragraph(a) for a further period of twelve months, and any order suspending a person under subsection (1) ceases to have effect if an order is made against that person under section 3(1).

(3) An order under subsection (1) has the effect of prohibiting the person suspended, during the period of his suspension, from exercising any functions as trustee of any trust scheme to which the order applies; and the order may apply to a particular trust scheme, a particular class of trust schemes or trust schemes in general.

(4) An order under subsection (1) may be made on one of the grounds in paragraphs (b) to (e) whether or not the proceedings were instituted, petition presented or application made (as the case may be) before or after the coming into force of that subsection.

(5) The Authority may, on the application of any person suspended under subsection (1), by order revoke the order, either generally or in relation to a particular scheme or a particular class of schemes; but a revocation made at any time cannot affect anything done before that time.

(6) An order under this section may make provision as respects the period of the trustee's suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and for adjusting any rules governing the proceedings of the trustees to take account of the reduction in the number capable of acting.

<sup>1</sup> Word "or" repealed (1.12.00) in s. 3(2)(a)(i) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 13, Part III.

<sup>2</sup> Words inserted in s. 3(2)(a)(ii) & head (iii) inserted (1.12.00) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 12, para. 44.

<sup>3</sup> Words substituted (25.4.00) in s. 3(2)(b) by s. 18 of the Welfare Reform and Pension Act 1999 (c. 30).

Removal or suspension of trustees: consequences.

5. [...<sup>1</sup>]

6.—(1) A person who purports to act as trustee of a trust scheme while prohibited from being a trustee of the scheme under section 3 [<sup>2</sup>or 3A] or suspended in relation to the scheme under section 4 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.

(2) An offence under subsection (1) 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.

(3) Things done by a person purporting to act as trustee of a trust scheme while prohibited from being a trustee of the scheme under section 3 [<sup>2</sup>or 3A] or suspended in relation to the scheme under section 4 are not invalid merely because of that prohibition or suspension.

(4) Nothing in section 3 [<sup>2</sup>, 3A] or 4 or this section affects the liability of any person for things done, or omitted to be done, by him while purporting to act as trustee of a trust scheme.

Appointment of trustees.

7.—(1) Where a trustee of a trust scheme is removed by an order under section 3, [<sup>2</sup>by section 3A] or [...<sup>3</sup>] by reason of his disqualification, the Authority may by order appoint another trustee in his place.

(2) Where a trustee appointed under subsection (1) is appointed to replace a trustee appointed under [<sup>3</sup>section 23(1)] sections 22 to 26 shall apply to the replacement trustee as they apply to a trustee appointed under [<sup>3</sup>section 23(1)].

(3) The Authority may also by order appoint a trustee of a trust scheme where they are satisfied that it is [<sup>4</sup>reasonable] to do so in order—

- (a) to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the scheme,
- (b) to secure that the number of trustees is sufficient for the proper administration of the scheme, [...<sup>4</sup>]
- (c) to secure the proper use or application of the assets of the scheme [<sup>4</sup>, or
- (d) otherwise to protect the interests of the generality of the members of the scheme.]

(4) [...<sup>5</sup>].

(5) The power to appoint a trustee by an order under this section includes power by such an order—

- (a) to determine the appropriate number of trustees for the proper administration of the scheme,
- (b) to require a trustee appointed by the order to be paid fees and expenses out of the scheme's resources,
- (c) to provide for the removal or replacement of such a trustee.

<sup>1</sup> S. 5 repealed (6.4.05) by Sch. 13 of the Pensions Act 2004 (c. 35).

<sup>2</sup> Words in Ss. 6(1), (3) & (4) & 7(1) inserted (11.9.14) by Schedule 19, paras. 2 & 3 of the Pensions Act 2014 (c. 19).

<sup>3</sup> In S. 7(1) & (2), words omitted and substituted (6.4.05) by Sch. 12, para. 36 of the Pensions Act 2004 (c. 35).

<sup>4</sup> In s. 7(3), words substituted, omitted & inserted (26.11.08) by the Pensions Act 2008, s. 131(1).

<sup>5</sup> S. 7(4) omitted (6.4.05) by the Pensions Act 2004 (c. 35) s. 35(1)(a).

[<sup>1</sup>(5A) An application may be made to the Authority in relation to a trust scheme by–

- (a) the trustees of the scheme,
- (b) the employer, or
- (c) any member of the scheme,

for the appointment of a trustee of the scheme under subsection (3)(a) or (c).]

(6) Regulations may make provision about the descriptions of persons who may or may not be appointed trustees under this section.

**8.**—[<sup>1</sup>(1) An order under section 7 appointing a trustee may provide for any fees and expenses of trustees appointed under the order to be paid–

Appointment of trustees:  
consequences.

- (a) by the employer,
- (b) out of the resources of the scheme, or
- (c) partly by the employer and partly out of those resources.

(2) Such an order may also provide that an amount equal to the amount (if any) paid out of the resources of the scheme by virtue of subsection (1)(b) or (c) is to be treated for all purposes as a debt due from the employer to the trustees of the scheme.]

(3) Subject to subsection (4), a trustee appointed under that section shall, unless he is the independent trustee and section 22 applies in relation to the scheme, have the same powers and duties as the other trustees.

(4) Such an order may make provision–

- (a) for restricting the powers or duties of a trustee so appointed, [...<sup>2</sup>]
- (b) for powers or duties to be exercisable by a trustee so appointed to the exclusion of other trustees.

*Section 8 is reproduced below as it was **before** the amendments made by the Pensions Act 2004 (c. 35). This is for the purpose of the savings provisions in Art. 6 of S.I. 2005/695 at page 5.4797. The footnote relating to section 8 appears at the end of this text.*

**8.**—(1) An order under section 7 appointing a trustee may provide that an amount equal to the amount (if any) to which subsection (2) applies is to be treated for all purposes as a debt due from the employer to the trustees.

(2) This subsection applies to any amount which has been paid to the trustee so appointed out of the resources of the scheme and has not been reimbursed by the employer.

(3) Subject to subsection (4), a trustee appointed under that section shall, unless he is the independent trustee and section 22 applies in relation to the scheme, have the same powers and duties as the other trustees.

(4) Such an order may make provision–

- (a) for restricting the powers or duties of a trustee so appointed, [...<sup>2</sup>]
- (b) for powers or duties to be exercisable by a trustee so appointed to the exclusion of other trustees.

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<sup>1</sup> Word omitted in s. 8(4)(a) (25.4.00) by s. 18 of the Welfare Reform and Pensions Act 1999 (c. 30).

**9.** Where the Authority have power under this Part to appoint or remove a trustee, [<sup>3</sup>or a trustee is removed under section 3A] they may exercise [<sup>4</sup>by order] the same jurisdiction and powers as are exercisable by the High Court or, in relation to a trust scheme subject to the law of Scotland, the Court of Session for vesting any property in, or transferring any property to, trustees in consequence of the appointment or of the removal.

Removal and  
appointment  
of trustees: property.

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<sup>1</sup> Subsec. (5A) inserted in s. 7 & subsecs. (1) & (2) of s. 8 substituted (6.4.05) by s. 35 of the Pensions Act 2004 (c. 35).

<sup>2</sup> Word omitted in s. 8(4)(a) (25.4.00) by the Welfare Reform and Pensions Act 1999 (c. 30) s. 18.

<sup>3</sup> Words in s. 9 inserted (11.9.14) by the Pensions Act 2014 (c. 19) Sch. 19, para. 4.

<sup>4</sup> Words in s. 9 inserted (6.4.05) by the Pensions Act 2004 (c. 35) Sch. 12, para. 37.

## PENSIONS ACT 1995 (c. 26)

### S. 10

Civil penalties.

**10.**—(1) Where the Authority are satisfied that by reason of any act or omission this section applies to any person, they may by notice in writing require him to pay, within a prescribed period, a penalty in respect of that act or omission not exceeding the maximum amount.

(2) In this section “the maximum amount” means—

- (a) £5,000 in the case of an individual and £50,000 in any other case, or
- (b) such lower amount as may be prescribed\* in the case of an individual or in any other case,

and the Secretary of State may by order amend paragraph (a) by substituting higher amounts for the amounts for the time being specified in that paragraph.

*\*See reg. 10 of S.I. 1966/1270 for maximum penalties prescribed for purposes of s. 50(6) below.*

(3) Regulations made by virtue of this Part may provide for any person who has contravened any provision of such regulations to pay, within a prescribed period, a penalty under this section not exceeding an amount specified in the regulations; and the regulations must specify different amounts in the case of individuals from those specified in other cases and any amount so specified may not exceed the amount for the time being specified in the case of individuals or, as the case may be, others in subsection (2)(a).

(4) An order made under subsection (2) or regulations made by virtue of subsection (3) do not affect the amount of any penalty recoverable under this section by reason of an act or omission occurring before the order or, as the case may be, regulations are made.

(5) Where—

- (a) apart from this subsection, a penalty under this section is recoverable from a body corporate or Scottish partnership by reason of any act or omission of the body or partnership [...<sup>1</sup>] and
- (b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of, any persons mentioned in subsection (6),

this section applies to each of those persons who consented to or connived in the act or omission or to whose neglect the act or omission was attributable.

(6) The persons referred to in subsection (5)(b)—

- (a) in relation to a body corporate, are—
  - (i) any director, manager, secretary, or other similar officer of the body, or a person purporting to act in any such capacity, and
  - (ii) where the affairs of a body corporate are managed by its members, any member in connection with his functions of management, and
- (b) in relation to a Scottish partnership, are the partners.

(7) Where the Authority requires any person to pay a penalty by virtue of subsection (5), they may not also require the body corporate, or Scottish partnership, in question to pay a penalty in respect of the same act or omission.

(8) A penalty under this section is recoverable by the Authority.

[<sup>2</sup>(8A) Any penalty recoverable under this section—

- (a) shall, if a county court so orders, be recoverable by execution issued from the county court or otherwise as if it were payable under an order of that court, and

<sup>1</sup> Words in s. 10(5)(a) omitted (6.4.05) by the Pensions Act 2004 (c. 35) Sch. 12, para. 38.

<sup>2</sup> S. 8(8A) inserted (25.4.00) by the Welfare Reform and Pensions Act 1999 (c. 30) s. 18.



- (b) may be enforced as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.]

(9) The Authority must pay to the Secretary of State any penalty recovered under this section.

**11.—**(1) Subject to the following provisions of this section, the Authority may by order direct or authorise an occupational pension scheme to be wound up if they are satisfied that— Powers to wind up schemes.

- (a) the scheme, or any part of it, ought to be replaced by a different scheme,
- (b) the scheme is no longer required, or
- (c) it is necessary in order to protect the interests of the generality of the members of the scheme that it be wound up.

(2) The Authority may not make an order under this section on either of the grounds referred to in subsection (1)(a) or (b) unless they are satisfied that the winding up of the scheme—

- (a) cannot be achieved otherwise than by means of such an order, or
- (b) can only be achieved in accordance with a procedure which—
  - (i) is liable to be unduly complex or protracted, or
  - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

and that it is reasonable in all the circumstances to make the order.

(3) [...<sup>1</sup>]

*Subsection (3) is reproduced below **before** being repealed by the Pensions Act 2004 (c. 35). This is for the purpose of the savings provisions in Art. 6 of S.I. 2005/695 at page 5.4797.*

(3) An order made under this section on either of the grounds referred to in subsection (1)(a) or (b) may be made only on the application of—

- (a) the trustees or managers of the scheme,
- (b) any person other than the trustees or managers who has power to alter any of the rules of the scheme, or
- (c) the employer.

(4) An order under this section authorising a scheme to be wound up must include such directions with respect to the manner and timing of the winding up as the Authority think appropriate having regard to the purposes of the order.

(5) The winding up of a scheme in pursuance of an order of the Authority under this section is as effective in law as if it had been made under powers conferred by or under the scheme.

(6) An order under this section may be made and complied with in relation to a scheme—

- (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the winding up, or
- (b) except for the purpose of the Authority determining whether or not they are satisfied as mentioned in subsection (2), without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the winding up.

<sup>1</sup> Subsec. (3) of s. 11 repealed (6.4.05) by Sch. 13 of the Pensions Act 2004 (c. 35).





(7) In the case of a public service pension scheme—

- (a) an order under subsection (1) directing or authorising the scheme to be wound up may only be made on the grounds referred to in paragraph (c), and
- (b) such an order may, as the Authority think appropriate, adapt, amend or repeal any enactment in which the scheme is contained or under which it is made.

**12.—**(1) The appropriate authority may by order direct a public service pension scheme to be wound up if they are satisfied that—

Powers to wind up public service schemes.

- (a) the scheme, or any part of it, ought to be replaced by a different scheme, or
- (b) the scheme is no longer required.

(2) Subsection (2) of section 11 applies for the purposes of this section as it applies for the purposes of that, but as if references to the Authority were to the appropriate authority.

(3) In this section “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury as having responsibility for the particular scheme.

(4) An order under this section must include such directions with respect to the manner and timing of the winding up as that authority think appropriate.

(5) Such an order may, as the authority think appropriate, adapt, amend or repeal any enactment in which the scheme is contained or under which it is made.

**13. [...<sup>1</sup>]**

**14.—**(1) If, on the application of the Authority, the court is satisfied—

Restitution.

- (a) that a power to make a payment, or distribute any assets, to the employer, has been exercised in contravention of section 37, 76 or 77, or
- (b) that any act or omission of the trustees or managers of an occupational pension scheme was in contravention of section 40,

the court may order the employer and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct for restoring the parties to the position in which they were before the payment or distribution was made, or the act or omission occurred.

(2) The jurisdiction conferred by this section is exercisable by the High Court or the Court of Session.

**15.—**(1) The Authority may, where in the case of any trust scheme the employer fails to comply with any requirement included in regulations by virtue of section 49(5), direct the trustees to make arrangements for the payment to the members of the benefit to which the requirement relates.

Directions.

(2) The Authority may—

- (a) where in the case of any trust scheme an annual report is published, direct the trustees to include a statement prepared by the Authority in the report, and
- (b) in the case of any trust scheme, direct the trustees to send to the members a copy of a statement prepared by the Authority.

(3) A direction under this section must be given in writing.

<sup>1</sup> S. 13 repealed (6.4.05) by Sch. 13 of the Pensions Act 2004 (c. 35).

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(4) Where a direction under this section is not complied with, [<sup>1</sup>sections 10 applies] to any trustee who has failed to take all such steps as are reasonable to secure the compliance.

*Member-nominated trustees and directors*

**16.—21.** [...<sup>2</sup>]

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<sup>1</sup> Words in s. 15(4) substituted (6.4.05) by Sch. 12, para. 39 of the Pensions Act 2004 (c. 35).

<sup>2</sup> Ss. 16-21 repealed (6.4.06) by the Pensions Act 2004 (c. 35), Sch. 13.

*Independent trustees*

22.—(1) This section applies in relation to a trust scheme—

- (a) if a person (referred to in this section and sections 23 [<sup>1</sup> to 26] as “the practitioner”) begins to act as an insolvency practitioner in relation to a company which, or an individual who, is the employer in relation to the scheme, or
- (b) if the official receiver becomes—
  - (i) the liquidator or provisional liquidator of a company which is the employer in relation to the scheme,
  - [<sup>2</sup>(ia) the interim receiver of the property of a person who is the employer in relation to the scheme, or]
  - (ii) the receiver and the manager, or the trustee, of the estate of a bankrupt who is the employer in relation to the scheme.

Circumstances in which following provisions apply.

(2) Where this section applies in relation to a scheme [<sup>2</sup>by virtue of subsection (1)], it ceases to do so—

- (a) if some person other than the employer mentioned in subsection (1) becomes the employer, or
- (b) if at any time neither the practitioner nor the official receiver is acting in relation to the employer;

but this subsection does not affect the application of this section in relation to the scheme on any subsequent occasion when the conditions specified in subsection (1)(a) or (b) are satisfied in relation to it.

[<sup>2</sup>(2A) To the extent that it does not already apply by virtue of subsection (1), this section also applies in relation to a trust scheme—

- (a) at any time during an assessment period (within the meaning of section 132 of the Pensions Act 2004) in relation to the scheme, and
- (b) at any time, not within paragraph (a), when the scheme is authorised under section 153 of that Act (closed schemes) to continue as a closed scheme.

(2B) The responsible person must, as soon as reasonably practicable, give notice of an event within subsection (2C) to—

- (a) the Authority,
- (b) the Board of the Pension Protection Fund, and
- (c) the trustees of the scheme.

(2C) The events are—

- (a) the practitioner beginning to act as mentioned in subsection (1)(a), if immediately before he does so this section does not apply in relation to the scheme;
- (b) the practitioner ceasing to so act, if immediately after he does so this section does not apply in relation to the scheme;
- (c) the official receiver beginning to act in a capacity mentioned in subsection (1)(b)(i), (ia) or (ii), if immediately before he does so this section does not apply in relation to the scheme;

<sup>1</sup> Words in s. 22 (1)(a) substituted (6.4.05) by Sch. 12, para. 40 of the Pensions Act 2004 (c. 35).

<sup>2</sup> In s. 22, sub-para. (ia) inserted in subsec. (1)(b), words inserted in subsec. (2) & subsecs. (2A)-(2F) inserted (10.2.05 for reg. making purposes, 6.4.05 for all other purposes) by s. 36(2) of the Pensions Act 2004 (c. 35).

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**Ss. 22-23**

(d) the official receiver ceasing to act in such a capacity, if immediately after he does so this section does not apply in relation to the scheme.

(2D) For the purposes of subsection (2B) “the responsible person” means–

- (a) in the case of an event within subsection (2C)(a) or (b) the practitioner, and
- (b) in the case of an event within subsection (2C)(c) or (d), the official receiver.

(2E) Regulations may require prescribed persons in prescribed circumstances where this section begins or ceases to apply in relation to a trust scheme by virtue of subsection (2A) to give a notice to that effect to–

- (a) the Authority,
- (b) the Board of the Pension Protection Fund, and
- (c) the trustees of the scheme.

(2F) A notice under subsection (2B), or regulations under subsection (2E), must be in writing and contain such information as may be prescribed.]

(3) In this section and sections 23 [<sup>1</sup> to 26]–

“acting as an insolvency practitioner” and “official receiver” shall be construed in accordance with sections 388 and 399 of the Insolvency Act 1986,

1986 c. 45.

“bankrupt” has the meaning given by section 381 of the Insolvency Act 1986,

1985 c. 6.

“company” means a company within the meaning given by section 735(1) of the Companies Act 1985 or a company which may be wound up under Part V of the Insolvency Act 1986 (unregistered companies), and “interim trustee” and “permanent trustee” have the same meanings as they have in the Bankruptcy (Scotland) Act 1985.

1985 c. 66.

**[<sup>2</sup>23. Power to appoint independent trustees**

(1) While section 22 applies in relation to a trust scheme, the Authority may by order appoint as a trustee of the scheme a person who–

- (a) is an independent person in relation to the scheme, and
- (b) is registered in the register maintained by the Authority in accordance with regulations under subsection (4).

(2) In relation to a particular trust scheme, no more than one trustee may at any time be an independent trustee appointed under subsection (1).

(3) For the purposes of this section a person is independent in relation to a trust scheme only if–

- (a) he has no interest in the assets of the employer or of the scheme otherwise than as trustee of the scheme,
- (b) he is neither connected with, nor an associate of–
  - (i) the employer,
  - (ii) any person for the time being acting as an insolvency practitioner in relation to the employer, or
  - (iii) the official receiver acting in any of the capacities mentioned in section 22(1)(b) in relation to the employer, and
- (c) he satisfies any prescribed requirements;

and any reference in this Part to an independent trustee is to be construed accordingly.

(4) Regulations must provide for the Authority to compile and maintain a register of persons who satisfy the prescribed conditions for registration.

<sup>1</sup> Words in s. 22(3) substituted (6.4.05) by Sch. 12, para. 40 of the Pensions Act 2004 (c. 35).

<sup>2</sup> Ss. 23 & 24 (10.2.05 for reg. making purposes, 6.4.05 for all other purposes) by s. 36(3) of the Pensions Act 2004 (c. 35).

(5) Regulations under subsection (4) may provide—

- (a) for copies of the register or of extracts from it to be provided to prescribed persons in prescribed circumstances;
- (b) for the inspection of the register by prescribed persons in prescribed circumstances.

(6) The circumstances which may be prescribed under subsection (5)(a) or (b) include the payment by the person to whom the copy is to be provided, or by whom the register is to be inspected, of such reasonable fee as may be determined by the Authority.

(7) This section is without prejudice to the powers conferred by section 7.

(8) Where, by virtue of subsection (6)(b) or (c), an order makes provision for any fees or expenses of the trustee appointed under the order to be paid out of the resources of the scheme, the trustee is entitled to be so paid in priority to all other claims falling to be met out of the scheme's resources.]

**25.—**(1) If, immediately before the appointment of an independent trustee under [<sup>1</sup>section 23(1)], there is no trustee of the scheme other than the employer, the employer shall cease to be a trustee upon the appointment of the independent trustee.

Appointment and powers of independent trustees: further provisions.

(2) While section 22 applies in relation to a scheme [<sup>1</sup> and there is an independent trustee of the scheme appointed under section 23(1)]

- (a) any power vested in the trustees of the scheme and exercisable at their discretion may be exercised only by the independent trustee, and
- (b) any power—
  - (i) which the scheme confers on the employer (otherwise than as trustee of the scheme), and
  - (ii) which is exercisable by him at his discretion but only as trustee of the power,
 may be exercised only by the independent trustee,

[...<sup>2</sup>]

(3) While section 22 applies in relation to a scheme [<sup>2</sup> and there is an independent trustee of the scheme appointed under section 23(1), the independent trustee may not] be removed from being a trustee by virtue only of any provision of the scheme.

(4) if a trustee appointed under [<sup>2</sup> section 23(1)] ceases to be an independent person [<sup>2</sup>(within the meaning of section 23(3))] then—

- [<sup>3</sup>(a) he must as soon as reasonably practicable give written notice of that fact to the Authority, and]
- (b) subject to subsection (5), he shall cease to be a trustee of the scheme.

(5) If, in a case where subsection (4) applies, there is no other trustee of the scheme than the former independent trustee, he shall not cease by virtue of that subsection to be a trustee until such time as another trustee is appointed.

[<sup>3</sup>(5A) Section 10 applies to any person who, without reasonable excuse, fails to comply with subsection (4)(a).]

[<sup>3</sup>(6) An order under section 23(1) may provide for any fees and expenses of the trustee appointed under the order to be paid—

- (a) by the employer,
- (b) out of the resources of the scheme, or
- (c) partly by the employer and partly out of those resources.

(7) Such an order may also provide that an amount equal to the amount (if any) paid

<sup>1</sup> Words in s. 25(1) & (2) substituted & inserted (6.4.05) by Sch. 12, para. 41 of the Pensions Act 2004 (c. 35).

<sup>2</sup> In s. 25, words in subsec. (2) omitted & substituted & inserted in subsecs. (3) & (4) (6.4.05) by Sch. 12, para. 41 of the Pensions Act 2004 (c. 35).

<sup>3</sup> In s. 25, subsec. (4)(a) substituted, (5A) inserted & (6) substituted for (6)-(8) (6.4.05) by s. 36(4) of the Pensions Act 2004 (c. 35).

**PENSIONSACT 1995 (c. 26)**

**Ss. 25-28**

out of the resources of the scheme by virtue of subsection (6)(b) or (c) is to be treated for all purposes as a debt due from the employer to the trustees of the scheme.

(8) Where, by virtue of subsection (6)(b) or (c), an order makes provision for any fees or expenses of the trustee appointed under the order to be paid out of the resources of the scheme, the trustee is entitled to be so paid in priority to all other claims falling to be met out of the scheme's resources.]

Insolvency practitioner or official receiver to give information to trustees.  
1986 c. 45.

**26.**—(1) Notwithstanding anything in section 155 of the Insolvency Act 1986 (court orders for inspection etc.), while section 22 applies in relation to a scheme [<sup>1</sup> by virtue of subsection (1) of that section], the practitioner or official receiver must provide the trustees of the scheme, as soon as practicable after the receipt of a request, with any information which the trustees may reasonably require for the purposes of the scheme.

(2) Any expenses incurred by the practitioner or official receiver in complying with a request under subsection (1) are recoverable by him as part of the expense incurred by him in discharge of his duties.

(3) The practitioner or official receiver is not required under subsection (1) to take any action which involves expenses that cannot be so recovered, unless the trustees of the scheme undertake to meet them.

**26A-26C.** [...<sup>1</sup>]

*Trustees: general*

Trustees not to be auditor or actuary of the scheme.

**27.**—(1) A trustee of a trust scheme, and any person who is connected with, or any associate of, such a trustee, is ineligible to act as an auditor or actuary of the scheme.

(2) Subsection (1) does not make a person who is a director, partner or employee of a firm of actuaries ineligible to act as an actuary of a trust scheme merely because another director, partner or employee of the firm is a trustee of the scheme.

(3) Subsection (1) does not make a person who falls within a prescribed class or description ineligible to act as an auditor or actuary of a trust scheme.

(4) A person must not act as an auditor or actuary of a trust scheme if he is ineligible under this section to do so.

(5) In this section and section 28 references to a trustee of a trust scheme do not include—

- (a) a trustee, or
- (b) a trustee of a scheme,

falling within a prescribed class or description.

Section 27: consequences.

**28.**—(1) Any person who acts as an auditor or actuary of a trust scheme in contravention of section 27(4) 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 imprisonment or a fine, or both.

(2) An offence under subsection (1) 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.

(3) Acts done as an auditor or actuary of a trust scheme by a person who is ineligible under section 27 to do so are not invalid merely because of that fact.

(4) [...<sup>2</sup>]

<sup>1</sup> Words in s. 26(1) inserted & ss. 26A-26C repealed (6.4.05) by Sch. 12, paras. 42 & 43 of the Pensions Act 2004 (c. 35).

<sup>2</sup> Subsec. (4) of s. 28 omitted (6.4.05) by Sch. 12, para. 44 of the Pensions Act 2004 (c. 35).

**29.**—(1) Subject to subsection (5), a person is disqualified for being a trustee of any trust scheme if—

Persons disqualified for being trustees.

- (a) he has been convicted of any offence involving dishonesty or deception,
- (b) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged [<sup>1</sup>or he is the subject of a bankruptcy restrictions order or an interim [<sup>2</sup>bankruptcy restrictions] order],
- [<sup>2</sup>(aa) a moratorium period under a debt relief order applies in relation to him (under Part 7A of this Act)]
- (c) where the person is a company, if any director of the company is disqualified under this section,
- (d) where the person is a Scottish partnership, if any partner is disqualified under this section,
- (e) he has made a composition contract or an arrangement with, or granted a trust deed for the behalf of, his creditors and has not been discharged in respect of it, or
- (f) he is subject to a disqualification order under the Company Directors Disqualification Act 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order).

1986 c. 46.  
1986 c. 45.

(2) In subsection (1)—

- (a) paragraph (a) applies whether the conviction occurred before or after the coming into force of that subsection, but does not apply in relation to any conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974,
- (b) paragraph (b) applies whether the adjudication of bankruptcy or the sequestration [<sup>1</sup>or the making of the bankruptcy restrictions order or an interim order] occurred before or after the coming into force of that subsection,
- (c) paragraph (e) applies whether the composition contract or arrangement was made, or the trust deed was granted, before or after the coming into force of that subsection, and
- (d) paragraph (f) applies in relation to orders made before or after the coming into force of that subsection.

1974 c. 53.

(3)-(4) [...<sup>3</sup>]

(5) The Authority may, on the application of any person disqualified under this section—

- (a) give notice in writing to him waiving his disqualification,
- (b) [...<sup>3</sup>]

either generally or in relation to a particular scheme or particular [<sup>4</sup>description] of schemes.

(6) A notice given [...<sup>3</sup>] at any time by virtue of subsection (5) cannot affect anything done before that time.

**30.**—[<sup>5</sup>(1) Where a person who is a trustee of a trust scheme becomes disqualified under section 29 in relation to the scheme, his becoming so disqualified has the effect of removing him as a trustee.]

Persons disqualified: consequences.

(2) Where—

- (a) a trustee of a trust scheme becomes disqualified under section 29,
- (b) [...<sup>6</sup>]

<sup>1</sup> Words inserted in subsecs 29(1)(b) & (2)(b) (29.6.06) by para. 5 of Sch. 2 to S.I. 2006/1722.

<sup>2</sup> Words in subsec. 29(1)(b) & subsec. 29(1)(aa) inserted (1.10.12) by para. 34 of Sch. 2 to S.I. 2012/2404.

<sup>3</sup> Subsecs. (3) & (4), (5)(b) & words in (6) of s. 29 repealed (6.4.05) by Sch. 13 of the Pensions Act 2004 (c. 35).

<sup>4</sup> Words in s. 29(5) substituted & inserted in s. 30(2) (9.12.05) by the Pensions Act 2004 (c. 35), Sch. 12, paras. 45 & 46(a).

<sup>5</sup> Subsec. (1) of s. 30 substituted (6.4.05) by s. 27 of the Pensions Act 2004 (c. 35).

<sup>6</sup> Subsec. 30(2)(b) repealed (6.4.05) by Sch. 13 of the Pensions Act 2004 (c. 35).

**PENSIONSACT 1995 (c. 26)**

**Ss. 30-31**

the Authority may exercise [<sup>1</sup>by order], the same jurisdiction and powers as are exercisable by the High Court or, in relation to a trust scheme subject to the law of Scotland, the Court of Session for vesting any property in, or transferring any property to, the trustees.

(3) A person who purports to act as a trustee of a trust scheme while he is disqualified under section 29 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.

(4) An offence under subsection (3) 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.

(5) Things done by a person disqualified under section 29 while purporting to act as trustee of a trust scheme are not invalid merely because of that disqualification.

(6) Nothing in section 29 or this section affects the liability of any person for things done, or omitted to be done, by him while purporting to act as trustee of a trust scheme.

(7)-(8)[...<sup>2</sup>]

**30A.**—[...<sup>3</sup>]

**31.**—[...<sup>4</sup>]

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<sup>1</sup> Words in s. 29(5) substituted & inserted in s. 30(2) (9.12.05) by the Pensions Act 2004 (c. 35), Sch. 12, paras. 45 & 46(a).

<sup>2</sup> Subsecs. (7) & (8) of s. 30 omitted (6.4.05) by Sch. 12, para. 46(b) of the Pensions Act 2004 (c. 35).

<sup>3</sup> S. 30A omitted (6.4.05) by Sch. 12, para. 47 of the Pensions Act 2004 (c. 35).

<sup>4</sup> S. 31 repealed (6.4.05) by Sch. 13 of the Pensions Act 2004 (c. 35).



*Functions of trustees*

**32.—**(1) Decisions of the trustees of a trust scheme may, unless the scheme provides otherwise, be taken by agreement of a majority of the trustees. Decisions by majority.

(2) Where decisions of the trustees of a trust scheme may be taken by agreement of a majority of the trustees—

- (a) the trustees may, unless the scheme provides otherwise, by a determination under this subsection require not less than the number of trustees specified in the determination to be present when any decision is so taken, and
- (b) notice of any occasions at which decisions may be so taken must, unless the occasion falls within a prescribed class or description, be given to each trustee to whom it is reasonably practicable to give such notice.

(3) Notice under subsection (2)(b) must be given in a prescribed manner and not later than the beginning of a prescribed period.

(4) This section is subject to sections 8(4)(b) [<sup>1</sup>and 25(2) of this Act and section 241(6) of the Pensions Act 2004].

(5) If subsection (2)(b) is not complied with, [<sup>1</sup>section 10 applies] to any trustee who has failed to take all such steps as are reasonable to secure compliance.

**33.—**(1) Liability for breach of an obligation under any rule of law to take care or exercise skill in the performance of any investment functions where the function is exercisable— Investment powers: duty of care.

- (a) by a trustee of a trust scheme, or
- (b) by a person to whom the function has been delegated under section 34,

cannot be excluded or restricted by any instrument or agreement.

(2) In this section, references to excluding or restricting liability include—

- (a) making the liability or its enforcement subject to restrictive or onerous conditions,
- (b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy, or
- (c) excluding or restricting rules of evidence or procedure.

(3) This section does not apply—

- (a) to a scheme falling within any prescribed class or description, or
- (b) to any prescribed description of exclusion or restriction.

**34.—**(1) The trustees of a trust scheme have, subject to [<sup>2</sup>section 36(1) and to] any restriction imposed by the scheme, the same power to make an investment of any kind as if they were absolutely entitled to the assets of the scheme. Power of investment and delegation.

(2) Any discretion of the trustees of a trust scheme to make any decision about investments—

- (a) may be delegated by or on behalf of the trustees to a fund manager to whom subsection (3) applies to be exercised in accordance with section 36, but

<sup>1</sup> Words substituted in s. 32(4) & (5) (6.4.06) by the Pensions Act 2004 (c. 35), Sch. 12, para. 48.

<sup>2</sup> Words in s. 34(1) inserted (4.12.05 for reg. making purposes, 30.12.05 for all other purposes) by the Pensions Act 2004 (c. 35), Sch. 12, para. 49.

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- (b) may not otherwise be delegated except under section 25 of the Trustee Act 1925 (delegation of trusts during absence abroad) or subsection (5) below.

[<sup>1</sup>(3) This subsection applies to a fund manager who, in relation to the investment, may take the decisions in question without contravening the prohibition imposed by section 19 of the Financial Services and Markets Act 2000 (prohibition on carrying on regulated activities unless authorised or exempt).]

(4) The trustees are not responsible for the act or default of any fund manager in the exercise of any discretion delegated to him under subsection (2)(a) if they have taken all such steps as are reasonable to satisfy themselves or the person who made the delegation on their behalf has taken all such steps as are reasonable to satisfy himself—

- (a) that the fund manager has the appropriate knowledge and experience for managing the investments of the scheme, and
- (b) that he is carrying out his work competently and complying with section 36.

(5) Subject to any restriction imposed by a trust scheme—

- (a) the trustees may authorise two or more of their number to exercise on their behalf any discretion to make any decision about investments, and
- (b) any such discretion may, where giving effect to the decision would not constitute [<sup>1</sup> the carrying on, in the United Kingdom, of a regulated activity (within the meaning of the Financial Services and Markets Act 2000)], be delegated by or on behalf of the trustees to a fund manager to whom subsection(3) does not apply to be exercised in accordance with section 36;

but in either case the trustees are liable for any acts or defaults in the exercise of the discretion if they would be so liable if they were the acts or defaults of the trustees as a whole.

(6) Section 33 does not prevent the exclusion or restriction of any liability of the trustees of a trust scheme for the acts or defaults of a fund manager in the exercise of a discretion delegated to him under subsection (5)(b) where the trustees have taken all such steps as are reasonable to satisfy themselves, or the person who made the delegation on their behalf has taken all such steps as are reasonable to satisfy himself—

- (a) that the fund manager has the appropriate knowledge and experience for managing the investments of the scheme, and
- (b) that he is carrying out his work competently and complying with section 36;

and subsection (2) of section 33 applies for the purposes of this subsection as it applies for the purposes of that section.

(7) The provisions of this section override any restriction inconsistent with the provisions imposed by any rule of law or by or under any enactment, other than an enactment contained in, or made under, this Part or the Pension Schemes Act 1993.

1993 c. 48.

Investment principles.

[<sup>2</sup>35.—(1)The trustees of a trust scheme must secure—

- (a) that a statement of investment principles is prepared and maintained for the scheme, and
- (b) that the statement is reviewed at such intervals, and on such occasions, as may be prescribed and if necessary, revised.

<sup>1</sup> In s. 34, subsec. (3) substituted & words in (5)(b) substituted (1.12.01) by Art. 139 of S.I. 2001/3649.

<sup>2</sup> S. 35 substituted (4.12.05 for reg. making purposes, 30.12.05 for all other purposes) by the Pensions Act 2004 (c. 35), s. 244.

(2) In this section “statement of investment principles”, in relation to a trust scheme, means a written statement of the investment principles governing decisions about investments for the purposes of the scheme.

(3) Before preparing or revising a statement of investment principles, the trustees of a trust scheme must comply with any prescribed requirements.

(4) A statement of investment principles must be in the prescribed form and cover, amongst other things, the prescribed matters.

(5) Neither a trust scheme nor a statement of investment principles may impose restrictions (however expressed) on any power to make investments by reference to the consent of the employer.

(6) If in the case of a trust scheme—

- (a) a statement of investment principles has not been prepared, is not being maintained or has not been reviewed or revised, as required by this section, or
- (b) the trustees have not complied with the obligation imposed on them by subsection (3),

section 10 applies to any trustee who has failed to take all reasonable steps to secure compliance.

(7) Regulations may provide that this section is not to apply to any scheme which is of a prescribed description.]

**36.**—<sup>[1]</sup>(1) The trustees of a trust scheme must exercise their powers of investment in accordance with regulations and in accordance with subsections (3) and (4), and any fund manager to whom any discretion has been delegated under section 34 must exercise the discretion in accordance with regulations.

Choosing investments.

(1A) Regulations under subsection (1) may, in particular—

- (a) specify criteria to be applied in choosing investments, and
- (b) require diversification of investments.]

(2) [...<sup>1</sup>]

(3) Before investing in any manner (other than in a manner mentioned in Part 1 of Schedule 1 to the Trustee Investments Act 1961) the trustees must obtain and consider proper advice on the question whether the investment is satisfactory having regard to [<sup>1</sup> the requirements of regulations under subsection (1), so far as relating to the suitability of investments, and to] the principles contained in the statement under section 35.

1961 c. 62.

(4) Trustees retaining any investment must—

- (a) determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain such advice as is mentioned in subsection (3), and
- (b) obtain and consider such advice accordingly.

(5) The trustees, or the fund manager to whom any discretion has been delegated under section 34, must exercise their powers of investment with a view to giving effect to the principles contained in the statement under section 35, so far as reasonably practicable.

<sup>1</sup> In s. 36, subsec. (1) substituted, subsec. (2) omitted & words in subsec. (3) substituted (4.12.05 for reg. making purposes, 30.12.05 for all other purposes) by the Pensions Act 2004 (c. 35), s. 245(2)-(4).

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(6) For the purposes of this section “proper advice” means—

- [<sup>1</sup>(a) if the giving of the advice constitutes the carrying on, in the United Kingdom, of a regulated activity (within the meaning of the Financial Services and Markets Act 2000), advice given by a person who may give it without contravening the prohibition imposed by section 19 of that Act (prohibition on carrying on regulated activities unless authorised or exempt);]
- (b) in any other case, the advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of trust schemes.

(7) Trustees shall not be treated as having complied with subsection (3) or (4) unless the advice was given or has subsequently been confirmed in writing.

[<sup>2</sup>(8) If the trustees of a trust scheme—

- (a) fail to comply with regulations under subsection (1), or
- (b) do not obtain and consider advice in accordance with this section,

section 10 applies to any trustee who has failed to take all reasonable steps to secure compliance.

(9) Regulations may exclude the application of any of the preceding provisions of this section to any scheme which is of a prescribed description.]

Restriction on borrowing by trustees

[<sup>3</sup>**36A.** Regulation may prohibit the trustees of a trust scheme, or the fund manager to whom any discretion has been delegated under section 34, from borrowing money or acting as a guarantor, except in prescribed cases.]

Payment of surplus to employer.

**37.—**(1) This section applies to a trust scheme if—

- (a) apart from this section, power is conferred on any person (including the employer) to make payments to the employer out of funds which are held for the purposes of the Scheme,
- (b) the scheme is one to which Schedule 22 to the Taxes Act 1988 (reduction of pension fund surpluses in certain exempt approved schemes) applies, and
- (c) the scheme is not being wound up.

[<sup>4</sup>(1A) But this section does not apply in the case of any of the payments listed in paragraphs (c) to (f) of section 175 of the Finance Act 2004 (authorised employer payments other than public service scheme payments or authorised surplus payments).]

(2) Where the power referred to in subsection (1)(a) is conferred by the scheme on a person other than the trustees, it cannot be exercised by that person but may be exercised instead by the trustees; and any restriction imposed by the scheme on the exercise of the power shall, so far as capable of doing so, apply to its exercise by the trustees.

(3) The power referred to in subsection (1)(a) cannot be exercised unless the requirements of subsection (4) and (in prescribed circumstances) (5), and any prescribed requirements, are satisfied.

<sup>1</sup> In s. 36, subsec. (6)(a) substituted (1.12.01) by Art. 140 of S.I. 2001/3649.

<sup>2</sup> In s. 36, subsec. (8) substituted & (9) inserted (4.12.05 for reg. making purposes, 30.12.05 for all other purposes) by the Pensions Act 2004 (c. 35), s. 245(5) & (6).

<sup>3</sup> S. 36A inserted (4.12.05 for reg. making purposes, 30.12.05 for all other purposes) by the Pensions Act 2004 (c. 35), s. 246.

<sup>4</sup> S. 37(1A) inserted (6.4.09) by s. 130 of the Pensions Act 2008 (c. 30).

(4) The requirements of this subsection are that—

- (a) the power is exercised in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Taxes Act 1988,
- (b) the trustees are satisfied that it is in the interests of the members that the power be exercised in the manner so proposed,
- (c) where the power is conferred by the scheme on the employer, the employer has asked for the power to be exercised, or consented to it being exercised, in the manner so proposed,
- [<sup>1</sup>(d) the annual rates of the pensions under the scheme are increased, at intervals of not more than twelve months, by at least the relevant percentage,]
- (e) notice has been given in accordance with prescribed requirements to the members of the scheme of the proposal to exercise the power.

(5) The requirements of this subsection are that the Authority are of the opinion that—

- (a) any requirements prescribed by virtue of subsection (3) are satisfied, and
- (b) the requirements of subsection (4) are satisfied.

[<sup>1</sup>(5A) For the purposes of subsection (4)(d), the relevant percentage is the percentage which, for the purposes of the increases of the annual rates of the pensions under the scheme—

- (a) falls to be computed by reference to a period which, except in the case of the first increase—
  - (i) begins with the end of the period by reference to which the last preceding increase was made; and
  - (ii) ends with a date which falls after the date of the last preceding increase;
 and
- (b) is equal to whichever is the lesser of—
  - (i) the percentage increase in the retail prices index over the period by reference to which the increase is made; and
  - (ii) the equivalent over that period of 5 per cent. per annum]

[<sup>1</sup>(6) In this section—

- (a) “annual rate” has the same meaning as in section 54, and]
- (b) “pension” does not include—
  - (i) any guaranteed minimum pension (as defined in section 8(2) of the Pension Schemes Act 1993) or any increase in such a pension under section 109 of that Act, or
  - (ii) any money purchase benefit (as defined in section 181(1) of that Act).

(7) This section does not apply to any payment to which, by virtue of section 601(3) of the Taxes Act 1988, section 601(2) of that Act does not apply.

(8) If, where this section applies to any trust scheme, the trustees purport to exercise the power referred to in subsection (1)(a) by making a payment to which this section applies without complying with the requirements of this section, sections 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(9) If, where this section applies to any trust scheme, any person, other than the trustees, purports to exercise the power referred to in subsection (1)(a) by making a payment to which this section applies, section 10 applies to him.

<sup>1</sup> S. 37(4)(d) substituted, s. 37(5A) inserted & words in s. 37(6) substituted (2.4.01) by s. 56 of the Child Support, Pensions & Social Security Act 2000 (c. 19).

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(10) Regulations may provide that, in prescribed circumstances, this section does not apply to schemes falling within a prescribed class or description, or applies to them with prescribed modifications.

Power to defer winding up.

**38.—**(1) If, apart from this section, the rules of a trust scheme would require the scheme to be wound up, the trustees may determine—

- [<sup>1</sup>(a) that the scheme is not for the time being to be wound up but that no new members are to be admitted to it, or
- (b) that the scheme is not for the time being to be wound up but that no new members, except pension credit members are to be admitted to it.]

(2) Where the trustees make a determination under subsection (1), they may also determine—

- (a) that no further contributions are to be paid towards the scheme [<sup>2</sup>(other than those due to be paid before the determination is made)], or
- (b) that no [...<sup>2</sup>] benefits are to accrue to, or in respect of, members of the scheme;

[...<sup>3</sup>]

[<sup>4</sup>(2A) Subsection (2) does not authorise the trustees to determine—

- (a) where there are accrued rights or pension credit rights to any benefit, that the benefit is not to be increased, or
- (b) where the power conferred by that subsection is exercisable by virtue of a determination under subsection (1)(b), that members of the scheme may not acquire pension credit rights under it.]

(3) This section does not apply to—

- (a) a money purchase scheme, or
- (b) a scheme falling within a prescribed class or description.

[<sup>2</sup>(4) This section also does not apply in relation to a trust scheme where the trustees are required to wind up, or continue the winding up, of the scheme under section 154(1) of the Pensions Act 2004 (requirement to wind up certain schemes with sufficient assets to meet protected liabilities).]

Exercise of powers by member trustees.

**39.** No rule of law that a trustee may not exercise the powers vested in him so as to give rise to a conflict between his personal interest and his duties to the beneficiaries shall apply to a trustee of a trust scheme, who is also a member of the scheme, exercising the powers vested in him in any manner, merely because their exercise in that manner benefits, or may benefit, him as a member of the scheme.

*Functions of trustees or managers*

Restriction on employer-related investments.

**40.—**(1) The trustees or managers of an occupational pension scheme must secure that the scheme complies with any prescribed restrictions with respect to the proportion of its resources that may at any time be invested in, or in any description of, employer-related investments.

(2) In this section—

“employer-related investments” means—

- (a) shares or other securities issued by the employer or by any person who is connected with, or an associate of, the employer,

<sup>1</sup> Paras. (a) & (b) inserted in s. 38(1) (1.12.00) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 12, para. 50(2).

<sup>2</sup> In s. 38, words inserted & omitted in subsection (2)(a) & (b) & subsection (4) inserted (9.12.05) by the Pensions Act 2004 (c. 35), Sch. 12, para. 50.

<sup>3</sup> Words repealed in s. 38(2) (1.12.00) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 13, Part III.

<sup>4</sup> Subsec. (2A) inserted in s. 38 (1.12.00) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 12, para. 50(4).

- (b) land which is occupied or used by, or subject to a lease in favour of, the employer or any such person,
- (c) property (other than land) which is used for the purposes of any business carried on by the employer or any such person,
- (d) loans to the employer or any such person, and
- (e) other prescribed investment,

[...<sup>1</sup>]

[<sup>2</sup>(2A) In the definition of “employer-related investments” in subsection (2) “securities” means—

- (a) shares,
- (b) instruments creating or acknowledging indebtedness,
- (c) instruments giving entitlements to investments,
- (d) certificated representing securities.

(2B) Subsection (2A) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000,
- (b) any relevant order made under that section, and
- (c) Schedule 2 to that Act.]

(3) To the extent (if any) that sums due and payable by a person to the trustees or managers of an occupational pension scheme remain unpaid—

- (a) they shall be regarded for the purposes of this section as loans made to that person by the trustees or managers, and
- (b) resources of the scheme shall be regarded as invested accordingly.

(4) If in the case of a trust scheme subsection (1) is not complied with, [<sup>3</sup>sections 10 applies] to any trustee who fails to take all such steps as are reasonable to secure compliance.

(5) If any resources of an occupational pension scheme are invested in contravention of subsection (1), any trustee or manager who agreed in the determination to make the investment 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.

**41.—(1)** Regulations may require the trustees or manager of an occupational pension scheme—

Provision of documents for members.

- (a) to obtain at prescribed times the documents mentioned in subsection (2), and
- (b) to make copies of them, and of the documents mentioned in subsection (3), available to the persons mentioned in subsection (4).

(2) The documents referred to in subsection (1)(a) are—

- (a) the accounts audited by the auditor of the scheme,
- (b) the auditor’s statement about contributions under the scheme,
- (c) [...<sup>4</sup>]

[<sup>3</sup>(3) The documents referred to in subsection (1)(b) are—

- (a) any statement of funding principles prepared or revised under section 223 of the Pensions Act 2004,

<sup>1</sup> Defn. of “securities” repealed (1.12.01) by Art. 141(2) of S.I. 2001/3649.

<sup>2</sup> In s. 40, subssecs. (2A) & (2B) inserted (4.3.04) by Art. 5(2) of S.I. 2004/355.

<sup>3</sup> Words in s. 40(4) substituted & s. 41(3) substituted (4.12.05 for reg. making purposes, 30.12.05 for all other purposes) by the Pensions Act 2004 (c. 35), Sch. 12, para. 51 & 52(a).

<sup>4</sup> S. 41(2)(c) repealed (4.12.05 for reg. making purposes, 30.12.05 for all other purposes) by the Pensions Act 2004 (c. 35), Sch. 13.



- (b) any valuation, or report prepared by the actuary under section 224 of that Act,
- (c) any certificate, given by the actuary under section 225 or 227 of that Act.]

(4) The persons referred to in subsection (1)(b) are—

- (a) members and prospective members of the scheme,
- (b) spouses [<sup>1</sup>or civil partners] of members and of prospective members,
- (c) persons within the application of the scheme and qualifying or prospectively qualifying for its benefits,
- (d) independent trade unions recognised to any extent for the purposes of collective bargaining in relation to members and prospective members of the scheme.

[<sup>2</sup>(5) Regulations may in the case of occupational pension schemes provide for—

- (a) prescribed persons,
- (b) persons with prescribed qualifications or experience, or
- (c) persons approved by the Secretary of State,

to act for the purposes of subsection (2) instead of scheme auditors or actuaries.

(5A) Regulations may impose duties on the trustees or managers of an occupational pension scheme to disclose information to, and make documents available to, a person acting under subsection (5).

(5B) If any duty imposed under subsection (5A) is not complied with, [<sup>3</sup>sections 10 applies to any trustee, and] to any manager, who has failed to take all such steps as are reasonable to secure compliance.]

(6) Regulations shall make provision for referring to an industrial tribunal any question whether an organisation is such a trade union as is mentioned in subsection (4)(d) and may make provision as to the form and content of any such document as is referred to in subsection (2).

*Employee trustees*

**42-46.** . . . . . repealed by 1996 (c. 18), see Annex 1, page 5.2301

*Advisers*

Professional advisers.

**47.—**(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 [...<sup>4</sup>] there shall be an individual or a firm appointed by or on behalf of the trustees or managers as fund manager.

[<sup>4</sup>(2A) References in this section to investments must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

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<sup>1</sup> Words inserted in s. 41(4)(b) by para. 20 of the Sch. to S.I. 2005/2053 as from 5.12.05.  
<sup>2</sup> Para. (5) of s. 41 substituted (1.1.01) by the Child Support, Pensions & Social Security Act 2000 (c. 19), Sch. 5, para. 12(1).  
<sup>3</sup> Words in s. 41(5B) substituted (4.12.05 for reg. making purposes, 30.12.05 for all other purposes) by the Pensions Act 2004 (c. 35), Sch. 12, para. 52(b).  
<sup>4</sup> In s. 47, words in subsec. (2) are repealed & (2A) inserted (1.12.01) by art. 142 of S.I. 2001/3649.



- (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,

[<sup>1</sup>section 10 applies to any trustee, and] 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),

are referred to as “professional advisers”.

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<sup>1</sup> Words in s. 47(3) substituted (6.4.06) by the Pensions Act 2004 (c. 35), Sch. 12, para. 53.



(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, [1section 10 applies to any trustee, and] 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, [1section10 applies to any trustee, and] to any manager, who has failed to take all such steps as are reasonable to secure compliance.

48. [...<sup>2</sup>]

#### *Receipts, payments and records*

49.—(1) The trustees of any trust scheme must, except in any prescribed circumstances, keep any money received by them in a separate account kept by them [3with a deposit-taker].

Other responsibilities of trustees, employers, etc. 1987 c. 22.

(1A) [...<sup>3</sup>]

(2) Regulations may require the trustees of any trust scheme to keep—

- (a) records of their meetings (including meetings of any of their number), and
- (b) books and records relating to any prescribed transaction.

(3) Regulations may, in the case of any trust scheme, require the employer, and any prescribed person acting in connection with the scheme, to keep books and records relating to any prescribed transaction.

(4) Regulations may require books or records kept under subsection (2) or (3) to be kept in a prescribed form and manner and for a prescribed period.

(5) Regulations must, in cases where payments of benefit to members of

<sup>1</sup> In subsec. (8) & (11) of s. 47 words substituted (6.4.06) by the Pensions Act 2004 (c. 35), Sch. 12, para. 53.

<sup>2</sup> S.48 repealed (6.4.05) by Sch. 13 of the Pensions Act 2004 (c. 35).

<sup>3</sup> In s. 49, words in subsec. (1) substituted & (1A) repealed (1.12.01) by Art. 143(2) & (3) of S.I. 2001/3649.

trust schemes are made by the employer, require the employer to make into a separate account kept by him at [<sup>1</sup> with a deposit-taker] any payments of benefit which have not been made to the members within any prescribed period.

(6) If in the case of any trust scheme any requirements imposed by or under subsection (1) or (2) are not complied with, [<sup>2</sup>section 10 applies] to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(7) If in the case of any trust scheme any person fails to comply with any requirement imposed under subsection (3) or (5), section 10 applies to him.

[<sup>3</sup>(8) Where on making a payment of any earnings in respect of any employment there is deducted any amount corresponding to any contribution payable on behalf of an active member of an occupational pension scheme, the amount deducted is to be paid, within a prescribed period, to the trustees or managers of the scheme.]

[<sup>4</sup>(8A) “Deposit taker” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits;
- (c) the Bank of England or the central bank of [<sup>5</sup>an EEA state] other than the United Kingdom;
- (d) the National Savings Bank; or
- (e) a municipal bank, that is to say a company which was, immediately before the repeal of the Banking Act 1987 exempted from the prohibition in section 3 of that Act by virtue of section 4(1) of, and paragraph 4 of Schedule 2 to, that Act.

(8B) Paragraphs (a) and (b) of subsection (8A) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

(9) If in any case there is a failure to comply with subsection (8)—

- (a) section 10 applies to the employer; and

[<sup>6</sup>(b) if the trustees or managers have reasonable cause to believe that the failure is likely to be of material significance in the exercise by the Authority of any of their functions, they must, except in prescribed circumstances, give notice of the failure to the Authority and the member within a reasonable period after the end of the prescribed period under subsection (8).]

(10) If in any case subsection (9)(b) is not complied with—

- (a) [...<sup>2</sup>]
- (b) section 10 applies to any trustee or manager who has failed to take all [<sup>2</sup>reasonable steps to secure compliance]

(11) If any person is knowingly concerned in the fraudulent evasion of the obligation imposed by subsection (8) in any case, he is guilty of an offence.

(12) A person guilty of an offence under subsection (11) is liable—

<sup>1</sup> In s. 49, words in subsec. (5) substituted (1.12.01) by Art. 143(4) of S.I. 2001/3649.

<sup>2</sup> In s. 49, words substituted in subsections (6) & (10)(b) & subsection(10)(a), omitted (9.12.05) by Pensions Act 2004 (c. 35), Sch. 12, para. 54.

<sup>3</sup> S. 49(8) substituted (3.4.00) for 49(8)-(13) by s. 10(1) of the Welfare Reform & Pensions Act 1999 (c. 30).

<sup>4</sup> In s. 49, (8A) & (8B) inserted (1.12.01) by Art. 143(5) of S.I. 2001/3649.

<sup>5</sup> Words substituted in s. 49(8A)(c) (26.11.07) by reg. 3 of S.I. 2007/3014.

<sup>6</sup> Para. 9(b) of s. 49 substituted (1.7.05 for reg. making purposes, 6.4.06 for all other purposes) by s. 269(1) of the Pensions Act 2004 (c. 35).

- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine or both.

(13) A person shall not be required by virtue of subsection (9)(a) above to pay a penalty under section 10 in respect of a failure if in respect of that failure he has been—

- (a) required to pay a penalty under that section by virtue of section 3(7) of the Welfare Reform and Pensions Act 1999 (failures in respect of stakeholder pensions), or
- (b) convicted of an offence under subsection (11) above.]

[<sup>1</sup>49A.—(1) Except so far as regulations otherwise provide the trustees or managers of an occupational pension scheme shall keep written records of—

Record of winding-up decisions.

- (a) any determination for the winding-up of the scheme in accordance with its rules;
- (b) decisions as to the time from which steps for the purposes of the winding-up of the scheme are to be taken;
- (c) determinations under section 38;
- (d) determinations in accordance with the rules of the scheme to postpone the commencement of a winding-up of the scheme.

(2) For the purpose of this section—

- (a) the determinations and decisions of which written records must be kept under this section include determinations and decisions by persons who—
  - (i) are not trustees or managers of a scheme, but
  - (ii) are entitled, in accordance with the rules of a scheme, to make a determination for its winding-up;

and

- (b) regulations may, in relation to such determinations or decisions as are mentioned in paragraph (a), impose obligations to keep written records on the persons making the determinations or decisions (as well as, or instead of, on the trustees or managers).

(3) Regulations may provide for the form and content of any records that are required to be kept under this section.

(4) [...<sup>2</sup>]

(5) Section 10 applies to any trustee or manager of a scheme who fails to take all such steps as are reasonable to secure compliance by the trustees or managers of that scheme with those obligations.]

#### *Resolution of disputes*

[<sup>3</sup>50.—(1) The trustees or managers of an occupational pension scheme must secure that dispute resolution arrangements [<sup>4</sup>complying with the requirements of this section] are made and implemented.

Requirement for dispute resolution arrangements.

(2) Dispute resolution arrangements are [<sup>4</sup>arrangements] for the resolution of pension disputes.

(3) For this purpose a pension dispute is a dispute which—

- (a) is between—
  - (i) the trustees or managers of a scheme, and

<sup>1</sup> S. 49A inserted (1.3.02 for the purposes & making rules & regulations 1.4.02 for all other purposes) by the Child Support, Pensions & Social Security Act 2000 (c. 19), s. 49(3).

<sup>2</sup> S. 49A(4) omitted (9.12.05) by the Pensions Act 2004 (c. 35), Sch. 12, para. 55.

<sup>3</sup> S. 50-50B substituted for 50 (5.3.08 for reg. making purposes & 6.4.08 for all other purposes) by the Pensions Act 2004 (c. 35) s. 273.

<sup>4</sup> Words inserted in s. 50(1) & (2) (27.9.07) by the Pensions Act 2007 (c. 22), s. 16(2).

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- (ii) one or more persons with an interest in the scheme (see section 50A),
- (b) is about matters relating to the scheme, and
- (c) is not an exempted dispute (see subsection (9)).

(4) The dispute resolution arrangements must provide a procedure—

- (a) for any of the parties to the dispute mentioned in subsection (3)(a)(ii) to make an application for a decision to be taken on the matters in dispute (“an application for the resolution of a pension dispute”), and
- (b) for the trustees or managers to take that decision.

[<sup>1</sup>(4A) The dispute resolution arrangements may make provision for securing that an application for the resolution of a pension dispute may not be made to the trustees or managers unless—

- (a) the matters in dispute have been previously referred to a person of a description specified in the arrangements (“the specified person”) in order for him to consider those matters, and
- (b) the specified person has given his decision on those matters, and for enabling the specified person’s decision to be confirmed or replaced by the decision taken by the trustees or managers on the application, after reconsidering those matters.]

(5) Where an application for the resolution of a pension dispute is made in accordance with the dispute resolution arrangements, the trustees or managers must—

- (a) take the decision required on the matters in dispute within a reasonable period of the receipt of the application by them, and
- (b) notify the applicant of the decision within a reasonable period of it having been taken.

[<sup>1</sup>(5A) In a case where a reference is made to the specified person in accordance with provision made under subsection (4A), subsection (5) applies in relation to the specified person as it applies in relation to the trustees or managers in a case where an application for the resolution of a pension dispute is made to them.]

(6) The procedure provided for by the dispute resolution arrangements [<sup>2</sup>in pursuance of subsection (4)] must include the provision required by section 50B.

(7) Dispute resolution arrangements under subsection (1) must, in the case of existing schemes, have effect on and after the date of commencement of this section in relation to applications made on or after that date.

(8) This section does not apply in relation to an occupational pension scheme if—

- (a) every member of the scheme is a trustee of the scheme,
- (b) the scheme has no more than one member, or
- (c) the scheme is of a prescribed description.

(9) For the purposes of this section a dispute is an exempted dispute if—

- (a) proceedings in respect of it have been commenced in any court or tribunal,
- (b) the Pensions Ombudsman has commenced an investigation in respect of it as a result of a complaint made or a dispute referred to him, or
- (c) it is of a prescribed description.

(10) If, in the case of an occupational pension scheme, the dispute resolution arrangements required by this section to be made—

- (a) have not been made, or
- (b) are not being implemented,

section 10 applies to any of the trustees or managers who have failed to take all reasonable steps to secure that such arrangements are made or implemented.

<sup>1</sup> Ss. 50(4A) & (5A) inserted (27.9.07) by the Pensions Act 2007 (c. 22), s. 16(3).

<sup>2</sup> Words inserted in subsection (6) (27.9.07) by the Pensions Act 2007 (c. 22) s. 16(6).

**50A.**—(1) For the purposes of section 50 a person is a person with an interest in an occupational pension scheme if—

Meaning of “person with an interest in the scheme”

- (a) he is a member of the scheme,
- (b) he is a widow, widower or surviving dependant of a deceased member of the scheme,
- (c) he is a surviving non-dependant beneficiary of a deceased member of the scheme,
- (d) he is a prospective member of the scheme,
- (e) he has ceased to be within any of the categories of persons referred to in paragraphs (a) to (d), or
- (f) he claims to be such a person as is mentioned in paragraphs (a) to (e) and the dispute relates to whether he is such a person.

(2) In subsection (1)(c) a “non-dependant beneficiary”, in relation to a deceased member of an occupational pension scheme, means a person who, on the death of the member, is entitled to the payment of benefits under the scheme.

(3) In subsection (1)(d) a “prospective member” means any person who, under the terms of his contract of service or the rules of the scheme—

- (a) is able, at his own option, to become a member of the scheme,
- (b) will become so able if he continues in the same employment for a sufficiently long period,
- (c) will be admitted to the scheme automatically unless he makes an election not to become a member, or
- (d) may be admitted to it subject to the consent of his employer.

**50B.**—(1) The procedure provided for by the dispute resolution arrangements [<sup>1</sup>in pursuance of section 50(4) must (in accordance with section 50(6))] include the following provision.

The dispute resolution procedure

(2) The procedure must provide that an application for the resolution of a pension dispute under section 50(4) may be made or continued on behalf of a person who is a party to the dispute mentioned in section 50(3)(a)(ii)—

- (a) where the person dies, by his personal representative,
- (b) where the person is a minor or is otherwise incapable of acting for himself, by a member of his family or some other person suitable to represent him, and
- (c) in any other case, by a representative nominated by him.

[<sup>1</sup>(3) The procedure—

- (a) include provision requiring an application to which subsection (3A) applies to be made by the end of such reasonable period as is specified;
- (b) may include provision about the time limits for making such other applications for the resolution of pension disputes as are specified.

(3A) This subsection applies to—

- (a) any application by a person with an interest in a scheme as mentioned in section 50A(1)(e), and
- (b) any application by a person with an interest in a scheme as mentioned in section 50A(1)(f) who is claiming to be such a person as is mentioned in section 50A(1)(e).]

(4) The procedure must include provision about—

- (a) the manner in which an application for the resolution of a pension dispute is to be made,
- (b) the particulars which must be included in such an application, and

<sup>1</sup> In s. 50B words substituted in (1); (3) & (3A) substituted for (3); (27.9.07) by the Pensions Act 2007 (c. 22), s. 16(7)-(9).

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- (c) the manner in which any decisions required [<sup>1</sup>in relation to such an application] are to be reached and given.

[<sup>2</sup>(4A) The provision made under subsection (4)(c) may include provision for decisions of the trustees or managers to be taken on their behalf by one or more of their number.]

(5) The procedure must provide that if, after an application for the resolution of a pension dispute has been made, the dispute becomes an exempted dispute within the meaning of section 50(9)(a) or (b), the resolution of the dispute under the procedure ceases.]

*Indexation*

Annual increase in rate of pension.

**51.—(1)** Subject to [<sup>3</sup>subsections (6) and (7)] this section applies to a pension under an occupational pension scheme if—

- (a) the scheme—

[<sup>4</sup>(i) is a registered pension scheme under section 153 of the Finance Act 2004, and]

(ii) is not a public service pension scheme, and

[<sup>5</sup>(iii) in the case where the pension becomes a pension in payment on or after the commencement day, is not a money purchase scheme, and]

- [<sup>5</sup>(b) the whole, or any part of, the pension is attributable—

(i) to pensionable service on or after the appointed day, or

(ii) in the case of money purchase benefits where the pension is in payment before the commencement day, to payments in respect of employment carried on on or after the appointed day, and

- (c) apart from this section—

(i) the annual rate of the pension, or

(ii) if only part of the pension is attributable as described in paragraph (b), so much of the annual rate as is attributable to that part,

would not be increased each year by at least the appropriate percentage of that rate.]

(2) [<sup>6</sup>Subject to sections 51A and 52], where a pension to which this section applies, or any part of it, is attributable to pensionable service on or after the appointed day or, in the case of money purchase benefits [<sup>7</sup>where the pension is in payment before the commencement day], to payments in respect of employment carried on on or after the appointed day—

- (a) the annual rate of the pension, or

(b) if only part of the pension is attributable to pensionable service or, as the case may be, to payments in respect of employment carried on on or after the appointed day, so much of the annual rate as is attributable to that part,

must be increased annually by at least the appropriate percentage.

[<sup>8</sup>(3) Subsection (2) does not apply to the annual rate of a pension under an occupational pension scheme, or to a part of that rate, if under the rules of the scheme the rate or part is for the time being increased at intervals of not more than twelve months by at least the relevant percentage.

<sup>1</sup> Words in s. 50B(4) inserted (27.9.07) by the Pensions Act 2007 (c. 22) s. 16(9).

<sup>2</sup> In s. 50B (4A) inserted (27.9.07) by the Pensions Act 2007 (c. 22), s. 16(10).

<sup>3</sup> Words in s. 51(1) substituted (1.1.12) by the Pensions Act 2011 (c. 19), s. 21(2).

<sup>4</sup> S. 51(1)(a)(i) substituted (6.4.06) by S.I. 2006/745, art. 10.

<sup>5</sup> In s. 51, subsec. (1)(a)(iii) inserted & (1)(b) & (c) substituted (6.4.05) by s. 278(1)-(2) of the Pensions Act 2004 (c. 35).

<sup>6</sup> Words in s. 51(2) substituted (1.12.00) by the Child Support, Pensions & Social Security Act 2000 (c. 19), Sch. 5, s. 51(1).

<sup>7</sup> Words in s. 51(2) inserted (6.4.05) by s. 278(3) of the Pensions Act 2004 (c. 35).

<sup>8</sup> S. 51(3) & (4) substituted (3.1.12) by the Pensions Act 2011 (c. 19), s. 19(8).



(4) For the purposes of subsection (3) the relevant percentage is–

- (a) the percentage increase in the consumer prices index for the reference period, being a period determined, in relation to each periodic increase, under the rules, or
- (b) if lower, the default percentage for that period.

(4ZA) Subsection (2) does not apply to the annual rate of a pension under an occupational pension scheme, or to a part of that rate, if subsection (4ZB) applies to the rate or part.

(4ZB) Subject to subsection (4ZD), this subsection applies to the rate or part if, under the rules of the scheme, the rate or part is for the time being increased, and since the relevant time has always been increased, at intervals of not more than twelve months by at least–

- (a) the percentage increase in the retail prices index for the reference period, being a period determined, in relation to each periodic increase, under the rules, or
- (b) if lower, the default percentage for that period.

(4ZC) In subsection (4ZB) “the relevant time” means–

- (a) the beginning of 2011 or, if later, the time when the pension became a pension in payment, or
- (b) if the pension was transferred to the scheme from another occupational pension scheme as a pension in payment after the beginning of 2011, the time of the transfer.

(4ZD) If the pension was transferred to the scheme as mentioned in subsection (4ZC)(b), subsection (4ZB) does not apply to the rate or part unless, immediately before the transfer, subsection (4ZB) (read with this subsection if relevant) applied to the rate or part by reference to the scheme from which the pension was transferred (or would have applied had subsection (4ZB) been in force immediately before the transfer).

(4ZE) If only part of the pension is attributable to pensionable service or, as the case may be, to payments in respect of employment carried on on or after the appointed day, in subsections (3) to (4ZD) references to the annual rate of the pension are references to so much of that rate as is attributable to that part.

(4ZF) For the purposes of subsections (4) and (4ZB) the default percentage for a period is the percentage for that period which corresponds to–

- (a) in the case of a category X pension, 5% per annum, and
- (b) in the case of a category Y pension, 2.5% per annum.

(4ZG) In subsections (4) and (4ZB)–

“consumer prices index” means–

- (a) the general index of consumer prices (for all items) published by the Statistics Board, or
- (b) where that index is not published for a month, any substituted index or figures published by the Board;

“retail prices index” means–

- (a) the general index of retail prices (for all items) published by the Statistics Board, or
- (b) where that index is not published for a month, any substituted index or figures published by the Board.]

[<sup>1</sup>(4A) For the purposes of this section, a pension is a category X pension if it is–

- (a) a pension which became a pension in payment before the commencement day, or
- (b) a pension–

<sup>1</sup> In S. 51 subsecs. (4A)-(4C) inserted (6.4.05) by s. 278(6) of the Pensions Act 2004 (c. 35).

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- (i) which becomes a pension in payment on or after the commencement day, and
- (ii) the whole of which is attributable to pensionable service before that day.

(4B) For the purposes of this section, a pension is a category Y pension if it is a pension—

- (a) which becomes a pension in payment on or after the commencement day, and
- (b) the whole of which is attributable to pensionable service on or after the commencement day.

(4C) For the purposes of applying this section in the case of a pension—

- (a) which becomes a pension in payment on or after the commencement day,
- (b) part of which is attributable to pensionable service before the commencement day, and
- (c) part of which is attributable to pensionable service on or after that day, each of those parts of the pension is to be treated as if it were a separate pension.]

(5) Regulations may provide that [<sup>1</sup> any of the provisions of this section] apply in relation to a pension as if so much of it as would not otherwise be attributable to pensionable service or to payments in respect of employment were attributable to pensionable service or, as the case may be, payments in respect of employment—

- (a) before the appointed day [<sup>1</sup> or the commencement day],
- (b) on or after that day, or
- (c) partly before and partly on or after that day.

(6) This section does not apply to any pension or part of a pension [<sup>2</sup>which is attributable (directly or indirectly) to a pension credit or] which, in the opinion of the trustees or managers, is derived from the payment by any member of the scheme of voluntary contributions.

[<sup>3</sup>(7) This section does not apply to any pension (or part of a pension) under a relevant occupational pension scheme which—

- (a) is a cash balance benefit (see section 51ZB), and
- (b) first comes into payment on or after the day on which section 21 of the Pensions Act 2011 comes into force.

(8) An occupational pension scheme is a “relevant occupational pension scheme” if—

- (a) it has not, on or after the appointed day, been contracted-out by virtue of satisfying section 9(2) of the Pension Schemes Act 1993, or
- (b) it has, on or after the appointed day, been so contracted-out, but no person is entitled to receive, or has accrued rights to, benefits under the scheme attributable to the period on or after that day when it was so contracted-out.]

Meaning of “the appropriate percentage”

[<sup>4</sup>**51ZA.**—(1) For the purposes of section 51(1)(c) and (2), “the appropriate percentage” in relation to an increase in the whole or part of the annual rate of a pension—

- (a) in the case of a category X pension, means the [<sup>5</sup>higher revaluation percentage] for the latest revaluation period specified in the order under paragraph 2 of Schedule 3 to the Pension Schemes Act 1993 (revaluation of accrued pension benefits) which is in force at the time of the increase, and
- [<sup>5</sup>(b) in the case of a category Y pension, means the lower revaluation percentage for that period.]

<sup>1</sup> In S. 51 words in subsec (5) inserted (6.4.05) by s. 278(6) of the Pensions Act 2004 (c. 35).

<sup>2</sup> Words inserted (1.12.00) in s. 51(6) by the Welfare Reform & Pensions Act (c. 30), Sch. 12, para. 51.

<sup>3</sup> S. 51(7) & (8) added (1.1.12) by the Pensions Act 2011 (c. 19), s. 21(3).

<sup>4</sup> S. 51ZA inserted (6.4.05) by s. 278(7) of the Pensions Act 2004 (c. 35).

<sup>5</sup> Words substituted in s. 51ZA(1)(a) & s. 51ZA(1)(b) substituted (6.4.09) by para. 8(1)-(3) of part 3 to Sch. 2 of the Pensions Act 2008 (c. 30).

(2) In this section [<sup>1</sup>“the higher revaluation percentage”, “the lower revaluation percentage”] and “the revaluation period” have the same meaning as in paragraph 2 of Schedule 3 to the Pension Schemes Act 1993.]

[<sup>2</sup>**51ZB.**—(1) For the purposes of section 51(7)(a), a pension provided to or in respect of a member of an occupational pension scheme is a “cash balance benefit” if conditions 1 and 2 are met.

Meaning of “cash balance benefit”.

(2) Condition 1 is that the rate of the pension is calculated by reference to a sum of money (“the available sum”) which is available under the scheme for the provision of benefits to or in respect of the member.

(3) Condition 2 is that under the scheme—

- (a) there is a promise about the amount of the available sum, but
- (b) there is no promise about the rate or amount of the benefits to be provided.

(4) The promise mentioned in subsection (3)(a) includes in particular a promise about the change in the value of, or the return from, payments made under the scheme by the member or by any other person in respect of the member.

(5) The promise mentioned in subsection (3)(b) includes a promise that—

- (a) the amount of the available sum will be sufficient to provide benefits of a particular rate or amount;
- (b) the rate or amount of a benefit will represent a particular proportion of the available sum.

(6) But a pension is not prevented from being a cash balance benefit merely because under the scheme there is a promise that—

- (a) the rate or amount of a benefit payable in respect of a deceased member will be a particular proportion of the rate or amount of a benefit which was (or would have been) payable to the member;
- (b) the amount of a lump sum payable to a member, or in respect of a deceased member, will represent a particular proportion of the available sum.]

[<sup>3</sup>**51A.**—(1) No increase under section 51 is required to be made, at any time on or after the relevant date, of so much of any pension under a money purchase scheme as—

Restriction on increase where annuity tied to investments.

- (a) is payable by way of an annuity the amount of which for any year after the first year of payment is determined (whether under the terms of the scheme or under the terms of the annuity contract in pursuance of which it is payable) by reference to fluctuations in the value of, or the return from, particular investments; [<sup>4</sup>and]
- (b) [...<sup>4</sup>]
- (c) satisfies such other conditions (if any) as may be prescribed.

(2) For the purposes of this section it shall be immaterial whether the annuity in question is payable out of the funds of the scheme in question or under an annuity contract entered into for the purposes of the scheme.

(3) In this section “the relevant date” means the date appointed for the coming into force of section 51 of the Child Support, Pensions and Social Security Act 2000.]

**52.**—(1) Subject to subsection (2), no increase under section 51 is required to be paid to or for a member of a scheme whose pension is in payment but who has not attained the age of 55 at the time when the increase takes effect.

Restriction on increase where member is under 55.

(2) Subsection (1) does not apply if the member—

<sup>1</sup> Words substituted in s. 51ZA(2) & s. 51ZA(1)(b) substituted (6.4.09) by para. 8(1)-(3) of part 3 to Sch. 2 of the Pensions Act 2008 (c. 30).

<sup>2</sup> S. 51ZB inserted (1.1.12) by the Pensions Act 2011 (c. 19), s. 21(4).

<sup>3</sup> S. 51A inserted (1.12.00) by the Child Support, Pensions & Social Security Act 2000 (c. 19), s. 51(2).

<sup>4</sup> Words added to s. 51A(1)(a) & para. (b) omitted (6.4.12) by S.I. 2011/1730, art. 6(2)(a) & (b).

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- (a) is permanently incapacitated by mental or physical infirmity from engaging in regular full-time employment, or
- (b) has retired on account of mental or physical infirmity from the employment in respect of which, or on retirement from which, the pension is payable.

(3) The rules of a scheme may provide that if, in a case where a pension has been paid to or for a member under the age of 55 at an increased rate in consequence of subsection (2), the member—

- (a) ceases to suffer from the infirmity in question before he attains the age of 55, but
- (b) continues to be entitled to the pension,

any increases subsequently taking effect under section 51 in the annual rate of the pension shall not be paid or shall not be paid in full.

(4) In any case where—

- (a) by virtue only of subsection (1) or (3), increases are not paid to or for a member or are not paid in full, but
- (b) the members attains the age of 55 or, in a case falling within subsection (3), again satisfies the condition set out in subsection (2)(a) or (b),

his pension shall then become payable at the annual rate at which it would have been payable apart from subsection (1) or (3).

Effect of increase above the statutory requirement. 1993 c. 48.

**53.—**(1) Where in any tax year the trustees or managers of an occupational pension scheme make an increase in a person's pension, not being an increase required by section 109 of the Pension Schemes Act 1993 or section 51 of this Act, they may deduct the amount of the increase from any increase which, but for this subsection, they would be required to make under either of those sections in the next tax year.

(2) Where in any tax year the trustees or managers of such a scheme make an increase in a person's pension and part of the increase is not required by section 109 of the Pension Schemes Act 1993 or section 51 of this Act, they may deduct that part of the increase from any increase which, but for this subsection, they would be required to make under either of those sections in the next tax year.

(3) Where by virtue of subsection (1) or (2) any pensions are not required to be increased in pursuance of section 109 of the Pension Schemes Act 1993 or section 51 of this Act, or not by the full amount that they otherwise would be, their amount shall be calculated for any purposes as if they had been increased in pursuance of the section in question or, as the case may be, by that full amount.

[<sup>1</sup>(3A) In subsections (1) and (2), the references to a person's pension do not include any pension which is attributable (directly or indirectly) to a pension credit.]

1993 c. 48.

(4) In section 110 of the Pension Schemes Act 1993 (resources for annual increase of guaranteed minimum pension)—

- (a) subsections (2) to (4) are omitted, and
- (b) in subsection (1), for "subsection (2) or (3)" there is substituted section 53 of the Pensions Act 1995".

Sections 51 to 53: supplementary.

**54.—**(1) The first increase required by section 51 in the rate of a pension must take effect not later than the first anniversary of the date on which the pension is first paid; and subsequent increases must take effect at intervals of not more than twelve months.

(2) Where the first such increase is to take effect on a date when the pension has been in payment for a period of less than twelve months, the increase must be of an amount at least equal to one twelfth of the amount of the increase so required (apart from this subsection) for each complete month in that period.

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<sup>1</sup> Subsec. (3A) inserted (1.12.00) in s. 53 by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 12, para. 52.

(3) In sections 51 to 53 and this section—

“annual rate”, in relation to a pension, means the annual rate of the pension, as previously increased under the rules of the scheme or under section 51,

“the appointed day”, means the day appointed under section 180 for the commencement of section 51,

[...<sup>1</sup>]

[<sup>2</sup>“the commencement day” means the day appointed for the coming into force of section 278 of the Pensions Act 2004 (amendments to section 51),]

“pension”, in relation to a scheme, means any pension in payment under the scheme and includes an annuity.

**55.** In section 109 of the Pension Schemes Act 1993 (annual increase of guaranteed minimum pensions)—

Section 51: end of annual increase of GMP.

(a) in subsection (2) (increase in rate of that part of guaranteed minimum pension attributable to earnings factors for tax year 1988-1989 and subsequent tax years) for “the tax year 1988-89 and subsequent tax years” there is substituted “the tax years in the relevant period”, and

(b) after subsection (3) there is inserted—

“(3A) The relevant period is the period—

(a) beginning with the tax year 1988-89, and

(b) ending with the last tax year that begins before the principal appointed day for the purposes of Part III of the Pensions Act 1995”.

*Minimum funding requirement*

**56.—61.** [...<sup>3</sup>]

**62.—65.** [...<sup>4</sup>]

**66.**—(1) ..... amends 1970 (c. 41), see Annex 1, page 5.2301

(2)–(3) ..... amends legislation not reproduced in these volumes

(4) Regulations may make provision—

(a) for the Equal Pay Act 1970 to have effect, in relation to terms of employment relating to membership of, or rights under, an occupational pension scheme with prescribed modifications, and

(b) for imposing requirements on employers as to the payment of contributions and otherwise in case of their failing or having failed to comply with any such terms.

(5) References in subsection (4) to terms of employment include (where the context permits)—

(a) any collective agreement or pay structure, and

(b) an agricultural wages order within section 5 of the Equal Pay Act 1970.

[<sup>5</sup>Treatment of overseas residents etc.

**66A.**—(1) This section applies where an occupational pension scheme contains provisions contravening subsection (2) or (3).

<sup>1</sup> Defn. of “appropriate percentage” repealed (6.4.05) by Sch. 13 of the Pensions Act 2004 (c. 35).

<sup>2</sup> Defn. of “the commencement day” inserted into s. 54(3) (6.4.05) by s. 278(8) of the Pensions Act 2004 (c. 35).

<sup>3</sup> Ss. 56-61 repealed (4.12.05 for reg. making purposes, 30.12.05 for all purposes) by the Pensions Act 2004 (c. 35), Sch. 13.

<sup>4</sup> Ss. 62 to 65 repealed (6.7.10) by the Equality Act 2010 (c. 15), Sch. 27, Part 1.

<sup>5</sup> S. 66A inserted (23.7.01) by the Child Support, Pensions & Social Security Act 2000 (c. 19), s. 55.

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(2) Except so far as regulations otherwise provide, provisions of an occupational pension scheme contravene this subsection to the extent that they would (apart from this section) have an effect with respect to—

- (a) the entitlement of any person to benefits under the scheme, or
- (b) the payment to any person of benefits under the scheme,

which would be different according to whether or not a place outside the United Kingdom is specified by that person as the place to which he requires payments of benefits under the scheme to be made to him.

(3) Except so far as regulations otherwise provide, provisions of an occupational pension scheme contravene this subsection to the extent that they would (apart from this section) have an effect with respect to—

- (a) the entitlement of any person to remain a member of the scheme,
- (b) the eligibility of any person to remain a person by or in respect of whom contributions are made towards or under the scheme, or
- (c) the making by or in respect of any person who is a member of the scheme of any contributions towards or under the scheme,

which would be different according to whether that person works wholly in the United Kingdom or wholly or partly outside the United Kingdom.

(4) Provisions contravening subsection (2) shall have effect, in relation to all times after the coming into force of section 55 of the Child Support, Pensions and Social Security Act 2000, as if they made the same provision in relation to a person who requires payments of benefits to be made to a place outside the United Kingdom as they make in relation to a person in whose case all payments of benefits fall to be made to a place in the United Kingdom.

(5) Provisions contravening subsection (3) shall have effect, in relation to all times after the coming into force of section 55 of the Child Support, Pensions and Social Security Act 2000, as if they made the same provision in relation to persons working wholly or partly outside the United Kingdom as they make in relation to persons working wholly in the United Kingdom.

(6) This section—

- (a) shall be without prejudice to any enactment under which any amount is to be or may be deducted, or treated as deducted, from amounts payable by way of benefits under the scheme or treated as so payable; and
- (b) shall not apply in relation to so much of any provision of a scheme as is required for securing compliance with the conditions of any [‘registration’, exemption or relief given or available under the Tax Acts.]

*Modification of schemes*

The subsisting rights provisions

[<sup>2</sup>67.—(1) The subsisting rights provisions apply to any power conferred on any person by an occupational pension scheme to modify the scheme, other than a power conferred by—

- (a) a public service pension scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

(2) Any exercise of such a power to make a regulated modification is voidable in accordance with section 67G unless the following are satisfied in respect of the modification—

- (a) in the case of each affected member—
  - (i) if the modification is a protected modification, the consent requirements (see section 67B),

<sup>1</sup> Word substituted in s. 66A(6)(b) (6.4.06) by S.I. 2006/745, art. 10.

<sup>2</sup> S. 67 substituted by s. 67-67I (1.11.05 for reg. making purposes 6.4.06 for all other purposes) by s. 262 of the Pensions Act 2004 (c. 35).

- (ii) if it is not, either the consent requirements or the actuarial equivalence requirements (see section 67C),
  - (b) the trustee approval requirement (see section 67E), and
  - (c) the reporting requirement (see section 67F).
- (3) The subsisting rights provisions do not apply in relation to the exercise of a power—
- (a) for a purpose connected with debits under section 29(1) of the Welfare Reform and Pensions Act 1999, or
  - (b) in a prescribed manner.
- (4) References in this section and sections 67A to 67I to “the subsisting rights provisions” are to this section and those sections.
- (5) Subsection (6) applies in relation to the exercise of a power to which the subsisting rights provisions apply to make a regulated modification where a member of the scheme dies before the requirements mentioned in subsection (2), so far as they apply in his case, have been complied with in respect of the modification if—
- (a) before he died he had given his consent to the modification in accordance with section 67B(4)(b), or
  - (b) before he died, or before the trustees of the scheme had become aware that he had died, the trustees had complied with section 67C(4)(a), (b) and (d) in respect of the modification in his case.
- (6) Any of the requirements mentioned in subsection (2), as it applies in respect of the modification—
- (a) which is satisfied in the case of the member, or
  - (b) which would have been satisfied in his case had he not died before it was satisfied,

is to be taken to be satisfied in the case of any survivor of the member in respect of the modification.





*S. 67A is modified where "money purchase underpin benefits" or "money purchase benefits" are relevant. See the Pensions Act 2011 (Trans...) Regs. S.I. 2014/1711 reg. 9, for details of when to apply, at page. 5.4851.*

**67A.—(1)** In the subsisting rights provisions, each of the following expressions has the meaning given to it by the following provisions of this section—

The subsisting rights provisions:  
interpretation

- “regulated modification”
- “protected modification”
- “detrimental modification”
- “affected member”
- “subsisting right”
- “scheme rules”.

(2) “Regulated modification” means a modification which is—

- (a) a protected modification, or
- (b) a detrimental modification,

or is both.

(3) “Protected modification” means a modification of an occupational pension scheme which—

- (a) on taking effect would or might result in any subsisting right of—
  - (i) a member of the scheme, or
  - (ii) a survivor of a member of the scheme,
 which is not a right or entitlement to money purchase benefits becoming, or being replaced with, a right or entitlement to money purchase benefits under the scheme rules,
- (b) would or might result in a reduction in the prevailing rate of any pension in payment under the scheme rules, or
- (c) is of a prescribed description.

For the purposes of paragraph (a), the reference in the definition of “money purchase benefits” in section 181(1) of the Pension Schemes Act 1993 to the widow or widower of a member of an occupational pension scheme is to be read as including any other survivor of the member.

(4) “Detrimental modification” means a modification of an occupational pension scheme which on taking effect would or might adversely affect any subsisting right of—

- (a) any member of the scheme, or
- (b) any survivor of a member of the scheme.

(5) A person is an “affected member”—

- (a) in relation to a protected modification within paragraph (a) or (b) of subsection (3), if, at the time the modification takes effect, he is—
  - (i) a member of the scheme, or
  - (ii) a survivor of a member of the scheme,
 and, on taking effect, the modification would or might affect any of his subsisting rights as mentioned in that paragraph,
- (b) in relation to a protected modification within paragraph (c) of that subsection, if he is of a prescribed description, and
- (c) in relation to a detrimental modification which is not a protected modification if, at the time the modification takes effect, he is—
  - (i) a member of the scheme, or
  - (ii) a survivor of a member of the scheme,
 and, on taking effect, the modification would or might adversely affect any of his subsisting rights.

(6) “Subsisting right” means—

- (a) in relation to a member of an occupational pension scheme, at any time—
  - (i) any right which at that time has accrued to or in respect of him to future benefits under the scheme rules, or

S. 67A

- (ii) any entitlement to the present payment of a pension or other benefit which he has at that time, under the scheme rules, and
- (b) in relation to the survivor of a member of an occupational pension scheme, at any time, any entitlement to benefits, or right to future benefits, which he has at that time under the scheme rules in respect of the member.

For this purpose, “right” includes a pension credit right.

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

(8) “Scheme rules”, in relation to a scheme, means—

- (a) the rules of the scheme, except so far as overridden by a relevant legislative provision,
- (b) the relevant legislative provisions, to the extent that they have effect in relation to the scheme and are not reflected in the rules of the scheme, and
- (c) any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with the requirements of Chapter 1 of Part 4 of the Pension Schemes Act 1993 (preservation of benefit under occupational pension schemes).

(9) For the purposes of subsection (8)—

(a) “relevant legislative provision” means any provision contained in any of the following provisions—

- (i) Schedule 5 to the Social Security Act 1989 (equal treatment for men and women);
- [<sup>1</sup>(ii) Chapter 2 or 3 of Part 4 of the Pension Schemes Act 1993 (certain protection for early leavers) or regulations made under either of those Chapters;
- (iia) Chapter 1 or 2 of Part 4ZA of that Act (transfers and contribution refunds) or regulations made under either of those Chapters;]
- (iii) Part 4A of that Act (requirements relating to pension credit benefit) or regulations made under that Part;
- (iv) section 110(1) of that Act (requirement as to resources for annual increase of guaranteed minimum pensions);
- (v) this Part of this Act (occupational pensions) or subordinate legislation made or having effect as if made under this Part;
- (vi) section 31 of the Welfare Reform and Pensions Act 1999 (pension debits: reduction of benefit);
- (vii) any provision mentioned in section 306(2) of the Pensions Act 2004;

[<sup>2</sup>(xiii) sections 21, 23, 26, 28, 29 and 33 of and Schedule 1 to the Pension Schemes Act 2017;]

(b) a relevant legislative provision is to be taken to override any of the provisions of the scheme if, and only if, it does so by virtue of any of the following provisions—

- (i) paragraph 3 of Schedule 5 to the Social Security Act 1989;
- (ii) section 129(1) of the Pension Schemes Act 1993;
- (iii) section 117(1) of this Act;
- (iv) section 31(4) of the Welfare Reform and Pensions Act 1999;
- (v) section 306(1) of the Pensions Act 2004.

[<sup>2</sup>(xi) sections 21(7), 23(7), 26(9), 28(6), 29(2) and 33(5) of and paragraph 1(7) of Schedule 1 to the Pension Schemes Act 2017;]

<sup>1</sup> S. 67A(9)(a)(ii) substituted & sub-para. (iia) inserted (6.4.15) by the Pension Schemes Act 2015 (c. 8), Sch. 4, para. 29.

<sup>2</sup> S. 67A(9)(a)(xiii) & (b)(xi) inserted (27.4.17) by the Pension Schemes Act 2017 (c. 17), Sch. 3, s. 38(4)(a) & (b).

- (10) For the purposes of this section—
- (a) “survivor”, in relation to a member of an occupational pension scheme, means a person who—
    - (i) is the widow or widower of the member, or
    - (ii) has survived the member and has any entitlement to benefit, or right to future benefits, under the scheme rules in respect of the member, and
  - (b) a modification would or might adversely affect a person’s subsisting right if it would alter the nature or extent of the entitlement or right so that the benefits, or future benefits, to which the entitlement or right relates would or might be less generous.
- (11) In the subsisting rights provisions, in relation to—
- (a) the exercise of a power to modify an occupational pension scheme to which the subsisting rights provisions apply, or
  - (b) a modification made, or to be made, in exercise of such a power, references to “the scheme” are to be read as references to the scheme mentioned in paragraph (a).

**67B.**—(1) References in the subsisting rights provisions to the consent requirements, in respect of a regulated modification, are to be read in accordance with this section. The consent requirements

- (2) The consent requirements apply in the case of an affected member—
  - (a) if the modification is a protected modification;
  - (b) if it is not a protected modification, unless the actuarial equivalence requirements apply in his case.
- (3) The consent requirements consist of—
  - (a) the informed consent requirement (see subsection (4)), and
  - (b) the timing requirement (see subsection (6)).
- (4) The informed consent requirement is satisfied in the case of an affected member if before the modification is made—
  - (a) the trustees have—
    - (i) given him information in writing adequate to explain the nature of the modification and its effect on him,
    - (ii) notified him in writing that he may make representations to the trustees about the modification,
    - (iii) afforded him a reasonable opportunity to make such representations, and
    - (iv) notified him in writing that the consent requirements apply in his case in respect of the modification, and
  - (b) after the trustees have complied with paragraph (a)(i), (ii) and (iv), the affected member has given his consent in writing to the modification.
- (5) If—
  - (a) the modification is not a protected modification, and
  - (b) before the modification is made the trustees notify an affected member in writing that—
    - (i) if he gives his consent to the modification for the purposes of the consent requirements, those requirements apply in his case in respect of the modification, but
    - (ii) otherwise, the actuarial equivalence requirements apply in his case in respect of the modification,

the trustees are to be taken to have complied with subsection (4)(a)(iv) in respect of him.
- (6) The timing requirement is satisfied in the case of an affected member if the modification takes effect within a reasonable period after the member has given his consent to the modification in accordance with subsection (4)(b).

**Ss. 67C-67D**

The actuarial equivalence requirements

**67C.**—(1) References in the subsisting rights provisions to the actuarial equivalence requirements, in respect of a detrimental modification which is not a protected modification, are to be read in accordance with this section and section 67D.

(2) The actuarial equivalence requirements apply in the case of an affected member only if—

- (a) the modification is not a protected modification, and
- (b) the trustees of the scheme determine that they are to apply in his case.

(3) The actuarial equivalence requirements consist of—

- (a) the information requirement (see subsection (4)),
- (b) the actuarial value requirement (see subsection (5)), and
- (c) the actuarial equivalence statement requirement (see subsection (6)).

(4) The information requirement is satisfied in the case of an affected member if before the modification is made the trustees have taken all reasonable steps to—

- (a) give him information in writing adequate to explain the nature of the modification and its effect on him,
- (b) notify him in writing that he may make representations to the trustees about the modification,
- (c) afford him a reasonable opportunity to make such representations, and
- (d) notify him in writing that the actuarial equivalence requirements apply in his case in respect of the modification.

(5) The actuarial value requirement is satisfied in the case of an affected member if before the modification is made the trustees have made such arrangements, or taken such steps, as are adequate to secure that actuarial value will be maintained.

(6) The actuarial equivalence statement requirement is satisfied in the case of an affected member if the trustees have, within a reasonable period beginning with the date on which the modification takes effect, obtained an actuarial equivalence statement relating to the affected member in respect of the modification.

(7) For the purposes of subsection (6) “actuarial equivalence statement” means a statement in writing which—

- (a) is given by—
  - (i) the actuary appointed in relation to the scheme under section 47(1)(b), or
  - (ii) a person with prescribed qualifications or experience or who is approved by the Secretary of State, and
- (b) certifies that actuarial value has been maintained.

(8) For the purposes of subsections (5) and (7) as they apply in relation to an affected member, actuarial value is maintained if the actuarial value, immediately after the time at which the modification takes effect, of the affected member’s subsisting rights is equal to or greater than the actuarial value of his subsisting rights immediately before that time.

**67D.**—(1) This section applies for the purposes of section 67C.

(2) Where—

- (a) the information requirement has been satisfied in the case of an affected member in respect of a proposed modification (“the original modification”),
  - (b) before the trustees have made a determination, or given their consent, for the purposes of section 67E(1) in relation to the original modification, the original modification has been revised, and
  - (c) the modification as so revised (“the revised modification”) does not differ from the original modification in any material respect,
- the information requirement is to be taken to have been satisfied in relation to the revised modification.

The actuarial equivalence requirements: further provisions

(3) The trustees are to be regarded as having taken all reasonable steps to notify an affected member as mentioned in section 67C(4)(d) in respect of a modification if they have taken all reasonable steps to notify him in writing that—

- (a) if he gives his consent to the modification for the purposes of the consent requirements, those requirements apply in his case in respect of the modification, but
- (b) otherwise, the actuarial equivalence requirements apply in his case in respect of the modification.

(4) Any calculation for the purposes of section 67C of the actuarial value of an affected member's subsisting rights at any time must conform with such requirements as may be prescribed.

(5) Requirements prescribed by regulations under subsection (4) may include requirements for any such calculation to be made in accordance with guidance that [is prepared and from time to time revised by a prescribed body],

(6) Nothing in subsections (6) and (7) of section 67C precludes actuarial equivalence statements relating to—

- (a) two or more affected members, or
- (b) affected members of any particular description,

in respect of a modification being given in a single document.

**67E.**—(1) For the purposes of section 67(2)(b), the trustee approval requirement is satisfied in relation to the exercise of a power to make a regulated modification if—

The trustee approval requirement

- (a) the trustees of the scheme have determined to exercise the power to make the modification, or
- (b) if the power is exercised by another person, the trustees have consented to the exercise of the power to make the modification,

and the making of the determination, or giving of consent, complies with subsections (2) and (3).

(2) The trustees must not make a determination, or give their consent, for the purposes of subsection (1) unless, in the case of each affected member—

- (a) if the modification is a protected modification, the informed consent requirement is satisfied (within the meaning of section 67B), or
- (b) if it is not a protected modification—
  - (i) the informed consent requirement is satisfied, or
  - (ii) the information and actuarial value requirements are satisfied (within the meaning of section 67C),

in respect of the modification.

(3) The trustees must not make a determination, or give their consent, for the purposes of subsection (1) more than a reasonable period after the first consent given by an affected member under section 67B(4)(b) in respect of the modification was given.

**67F.**—(1) For the purposes of section 67(2)(c), the reporting requirement is satisfied in relation to the exercise of a power to which the subsisting rights provisions apply to make a regulated modification if the trustees have, in accordance with subsection (2)—

The reporting requirement

- (a) notified each affected member in whose case the consent requirements apply in respect of the modification, and
- (b) taken all reasonable steps to notify each affected member in whose case the actuarial equivalence requirements apply in respect of the modification,

<sup>1</sup> Words substituted in s. 67D(5) (1.11.07) by the Pensions Act 2007 (c. 22), Sch. 5, para. 7.

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**Ss. 67F-67G**

that they have made a determination, or given their consent, for the purposes of section 67E(1) in relation to the exercise of the power to make the modification.

(2) The trustees must give (or, where the actuarial equivalence requirements apply, take all reasonable steps to give) the notification—

- (a) within a reasonable period beginning with the date of the determination or giving of consent mentioned in subsection (1), and
- (b) before the date on which the modification takes effect.

Powers of the Authority:  
voidable modifications

**67G.**—(1) Subsection (2) applies in relation to a regulated modification made in exercise of a power to which the subsisting rights provisions apply which is voidable by virtue of—

- (a) section 67(2), or
- (b) section 67H(3).

(2) The Authority may make an order declaring that subsection (6) applies in relation to the regulated modification.

(3) An order under subsection (2) relating to a regulated modification may also declare that subsection (6) applies in relation to—

- (a) any other modification of the scheme made by the exercise of the power mentioned in subsection (1), or
- (b) the grant of any rights under the scheme (whether by virtue of the attribution of notional periods as pensionable service or otherwise) in connection with the regulated modification.

(4) An order under subsection (2) relating to a regulated modification must specify the affected member or affected members or description of affected members in respect of whom subsection (6) applies (“the specified persons”).

(5) An order under subsection (2) relating to a regulated modification may also—

- (a) require the trustees to take, within the time specified in the order, such steps as are so specified for the purpose of giving effect to the order;
- (b) declare that subsection (7) applies in relation to anything done by the trustees after the time at which the modification would, disregarding the order, have taken effect which—
  - (i) would not have contravened any provision of the scheme rules if the modification had taken effect at that time, but
  - (ii) as a result of the modification being void to any extent by virtue of the order, would (but for that subsection) contravene such a provision.

This is without prejudice to section 174(3).

(6) Where the Authority make an order declaring that this subsection applies in relation to a modification of a scheme, or the grant of any rights under the scheme, the modification or grant is void to the extent specified in the order, and in respect of the specified persons, as from the time when it would, disregarding the order, have taken effect.

(7) Where, by virtue of subsection (5)(b), the Authority make an order under subsection (2) declaring that this subsection applies in relation to anything done by the trustees, that thing is to be taken, for such purposes as are specified in the order, not to have contravened any provision of the trust deed or scheme rules.

(8) An order under subsection (2) relating to a regulated modification, or other modification, of a scheme or the grant of any rights under the scheme may be made before or after the time at which the modification or grant would, disregarding the order, have taken effect.



## Ss. 67H-67I

**67H.**—(1) Subsection (2) applies where the Authority have reasonable grounds to believe that a power to which the subsisting rights provisions apply—

Powers of the Authority to intervene

- (a) will be exercised, or
- (b) has been exercised,

to make a regulated modification in circumstances where the modification will be voidable by virtue of section 67(2).

(2) The Authority may by order—

- (a) in a case within subsection (1)(a), direct the person on whom the power is conferred not to exercise the power to make the regulated modification;
- (b) require the trustees to take, within the time specified in the order, such steps as are so specified for the purpose of securing that any of the requirements mentioned in section 67(2) is satisfied.

(3) A regulated modification made in exercise of a power to which the subsisting rights provisions apply is voidable in accordance with section 67G if—

- (a) the exercise of the power contravened an order under paragraph (a) of subsection (2), or
- (b) the trustees fail to comply with a requirement imposed by an order under paragraph (b) of that subsection relating to any exercise of the power to make the modification.

**67I.**—(1) Subsections (2) and (3) apply where a regulated modification is voidable by virtue of section 67(2).

Subsisting rights provisions: civil penalties

(2) Where the modification was made by the exercise of a power—

- (a) by the trustees of the scheme, or
- (b) by any other person in circumstances which do not fall within subsection (3),

section 10 applies to any trustee who has failed to take all reasonable steps to secure that the modification is not so voidable.

(3) Section 10 applies to any person other than the trustees of the scheme who, without reasonable excuse, exercises a power to make the modification if—

- (a) the trustees have not given their consent, for the purposes of section 67E(1), to the exercise of the power to make the modification, or
- (b) in the case of any affected member, the timing requirement is not satisfied (within the meaning of section 67B) in respect of the modification.

(4) Where the trustees fail to comply with any requirement imposed, by virtue of subsection (5)(a) of section 67G, by an order under subsection (2) of that section, section 10 applies to any trustee who has failed to take all reasonable steps to secure such compliance.

(5) Where a regulated modification is made by the exercise of a power in contravention of an order under section 67H(2)(a)—

- (a) if the power is exercised by the trustees, section 10 applies to any trustee who has failed to take all reasonable steps to secure that the order was not contravened;
- (b) section 10 applies to any other person who without reasonable excuse exercises the power in contravention of the order.

(6) Where the trustees fail to comply with any requirement specified in an order under section 67H(2)(b), section 10 applies to any trustee who has failed to take all reasonable steps to secure such compliance.]

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### Ss. 68-69

Power of trustees to modify schemes by resolution

**68.**—(1) The trustees of a trust scheme may by resolution modify the scheme with a view to achieving any of the purposes specified in subsection (2).

(2) The purposes referred to in subsection (1) are—

- (a) to extend the class of persons who may receive benefits under the scheme in respect of the death of a member of the scheme,
- (b) to enable the scheme to conform with such arrangements as are required by [<sup>1</sup>section 241 of the Pensions Act 2004],
- [<sup>2</sup>(c) to enable the scheme to comply with such terms and conditions as may be imposed by the Board of the Pension Protection Fund in relation to any payment made by it under section 185 or 186 of the Pensions Act 2004,]
- (d) to enable the scheme to conform with section 37(2), 76(2), 91 or 92,
- [<sup>3</sup>(da) to enable the scheme to accommodate persons with pension credits or pension credit rights, and]
- (e) prescribed purposes.

(3) No modification may be made by virtue of subsection (2)(a) without the consent of the employer.

(4) Modifications made by virtue of subsection (2)(b) may include in particular—

- (a) modification of any limit on the number of, or of any category of, trustees, or
- (b) provision for the transfer or vesting of property.

(5) Nothing done by virtue of subsection (2)(d), or any corresponding provisions in force in Northern Ireland, shall be treated as effecting an alteration to the scheme in question for the purposes of section 591B (cessation of approval) of the Taxes Act 1988.

(6) Regulations may provide that this section does not apply to trust schemes falling within a prescribed class or description.

Grounds for applying for modifications.

**69.**—(1) The Authority may, on an application made to them by persons competent to do so, make an order in respect of an occupational pension scheme (other than a public service pension scheme)—

- (a) authorising the modification of the scheme with a view to achieving any of the purposes mentioned in subsection (3), or
- (b) modifying the scheme with a view to achieving any such purpose.

(2) Regulations may make provision [<sup>4</sup>requiring applications under this section to meet prescribed requirements].

(3) The purposes referred to in subsection (1) are—

- (a) [...<sup>4</sup>]
- (b) in the case of [<sup>5</sup>a registered pension scheme under section 153 of the Finance Act 2004] which is being wound up, to enable assets remaining after the liabilities of the scheme have been fully discharged to be distributed to the employer, where prescribed requirements in relation to the distribution are satisfied, or
- (c) to enable the scheme to be so treated during a prescribed period that an employment to which the scheme applies may be contracted-out employment by reference to it.

<sup>1</sup> In s. 68(2)(b) words substituted (6.4.06) by the Pensions Act 2004 (c. 35), Sch. 12, para. 56(a).

<sup>2</sup> Para. (c) of s. 68(2) substituted (1.9.05) by para. 56(b) of Sch. 12 to the Pensions Act 2004 (c. 35).

<sup>3</sup> Para. (da) inserted in s. 68(2) (1.12.00) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 12, paras. 53(4) & 54.

<sup>4</sup> Words substituted in s. 69(2) & (3)(a) repealed (6.4.06) by the Pensions Act 2004 (c. 35), Sch. 12, para. 57 & Sch. 13.

<sup>5</sup> Words substituted in s. 69(3)(b) (6.4.06) by S.I. 2006/745, art. 10.



- (4) The persons competent to make an application under this section are—
- (a) in the case of the purposes referred to in paragraph [...]<sup>1</sup> (b) of subsection (3), the trustees of the scheme, and
  - (b) in the case of the purposes referred to in paragraph (c) of that subsection—
    - (i) the trustees or managers of the scheme,
    - (ii) the employer, or
    - (iii) any person other than the trustees or managers who has power to alter the rules of the scheme.

- (5) An order under subsection (1)(a) must be framed—
- (a) if made with a view to achieving [...]<sup>1</sup> the purposes referred to in [subsection (3)(b)], so as to confer the power of modification on the trustees, and
  - (b) if made with a view to achieving the purposes referred to in subsection (3)(c), so as to confer the power of modification on such persons (who may include persons who were not parties to the application made to the Authority) as the Authority think appropriate.

(6) Regulations may provide that in prescribed circumstances this section does not apply to occupational pension schemes falling within a prescribed class or description or applies to them with prescribed modifications.

**70.—**(1) The Authority may not make an order under section 69 unless they are satisfied that the purposes for which the application for the order was made—

Section 69:  
supplementary.

- (a) cannot be achieved otherwise than by means of such an order, or
- (b) can only be achieved in accordance with a procedure which—
  - (i) is liable to be unduly complex or protracted, or
  - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty.

(2) The extent of the Authority's powers to make such an order is not limited, in relation to any purposes for which they are exercisable, to the minimum necessary to achieve those purposes.

(3) The Authority may not make an order under section 69 with a view to achieving the purpose referred to in subsection (3)(c) of that section unless they are satisfied that it is reasonable in all the circumstances to make it.

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<sup>1</sup> Words omitted & substituted in s. 69(4) & (5) (6.4.06) by the Pensions Act 2004 (c. 35), Sch. 12. para. 57.

**PENSIONSACT 1995 (c. 26)**

**Ss. 71-71A**

Effect of orders under section 69.

**71.—(1)** An order under paragraph (a) of subsection (1) of section 69 may enable those exercising any power conferred by the order to exercise it retrospectively (whether or not the power could otherwise be so exercised) and an order under paragraph (b) of that subsection may modify a scheme retrospectively.

(2) Any modification of a scheme made in pursuance of an order of the Authority under section 69 is as effective in law as if it had been made under powers conferred by or under the scheme.

(3) An order under section 69 may be made and complied with in relation to a scheme—

- (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the modification being made, or
- (b) without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the making of the modification.

(4) In this section, “retrospectively” means with effect from a date before that on which the power is exercised or, as the case may be, the order is made.

**[<sup>1</sup>71A.—(1)** The Authority may at any time while—

- (a) an occupational pension scheme is being wound up, and
- (b) the employer in relation to the scheme is subject to an insolvency procedure,

Modification by Authority to secure winding-up.

make an order modifying that scheme with a view to ensuring that it is properly wound up.

(2) The Authority shall not make such an order except on an application made to them, at a time such as is mentioned in subsection (1), by the trustees or managers of the scheme.

(3) Except in so far as regulations otherwise provide, an application for the purposes of this section must be made in writing.

(4) Regulations may make provision—

- (a) for the form and manner in which an application for the purposes of this section is to be made to the Authority;
- (b) for the matters which are to be contained in such an application;
- (c) for the documents which must be attached to an application for the purposes of this section or which must otherwise be delivered to the Authority with or in connection with any such application;
- (d) for persons to be required, [<sup>2</sup>before an application is made for the purposes of this section], to give such notifications of the making of [<sup>2</sup>the application] as may be prescribed;
- (e) for the matters which are to be contained in a notification of such an application;

(f) & (g) [...<sup>3</sup>]

<sup>1</sup> Sections in ss. 71A inserted (1.3.02 for rules & regulation making purposes & 1.4.02 for all other purposes) by the Child Support, Pensions and Social Security Act 2000 (c. 19), s. 48.

<sup>2</sup> Words substituted in s. 71A(4)(d) (6.4.06) by the Pensions Act 2004, Sch. 12. para. 58.

<sup>3</sup> S. 71A(4)(f) & (g) repealed (6.4.06) by the Pensions Act 2004, Sch. 13.

**PENSIONSACT 1995 (c. 26)**

**Ss. 71A-72**

- (5) The power of the Authority to make an order under this section—
- (a) shall be limited to what they consider to be the minimum modification necessary to enable the scheme to be properly wound up; and
  - (b) shall not include power to make any modification that would have a significant adverse effect on—
    - (i) the accrued rights of any member of the scheme; or
    - (ii) any person’s entitlement under the scheme to receive any benefit.
- (6) A modification of an occupational pension scheme by an order this section shall be as effective in law as if—
- (a) it had been made under powers conferred by or under the scheme;
  - (b) the modification made by the order were capable of being made in exercise of such powers notwithstanding any enactment, rule of law or rule of the scheme that would have prevented their exercise for the making of that modification; and
  - (c) the exercise of such powers for the making of that modification would not have been subject to any enactment, rule of law or rule of the scheme requiring the implementation of any procedure or the obtaining of any consent in connection with the making of a modification.
- (7) Regulations may provide that, in prescribed circumstances, this section—
- (a) does not apply in the case of occupational pension schemes of a prescribed class or description; or
  - (b) in the case of occupational pension schemes of a prescribed class or description applies with prescribed modifications.
- (8) The times when an employer in relation to an occupational pension scheme shall be taken for the purposes of this section to be subject to an insolvency procedure are—
- (a) in the case of a trust scheme, while section 22 applies in relation to the scheme; and
  - (b) in the case of a scheme that is not a trust scheme, while section 22 would apply in relation to the scheme if it were a trust scheme;

and for the purposes of this subsection no account shall be taken of modifications or exclusions contained in any regulations under section 118.

(9) The Authority shall not be entitled to make an order under this section in relation to a public service pension scheme.]

Modification of public service pension schemes.

**72.—**(1) The appropriate authority may make such provision for the modification of a public service pension scheme as could be made in respect of a scheme other than a public service pension scheme by an order of the Authority under section 69(1)(b).

(2) In this section “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury as having responsibility for the particular scheme.

(3) The powers of the appropriate authority under this section are exercisable by means of an order—

- (a) directly modifying the scheme (without regard, in the case of a scheme contained in or made under powers conferred by an enactment, to the terms of the enactment or any of its restrictions), or
- (b) modifying an enactment under which the scheme was made or by virtue of which it has effect.

(4) Any such order may adapt, amend or repeal any such enactment as is referred to in paragraph (a) or (b) of subsection (3) as that authority thinks appropriate.

[<sup>1</sup>*Supervision of winding-up*

**72A.**—(1) Where—

- (a) an occupational pension scheme is being wound up, and
- (b) the winding-up is one beginning at a time (whether before or after the passing of this Act) by reference to which regulations provide that it is to be a winding-up to which this section applies,

Reports to Authority  
about winding-up.

it shall be the duty of the trustees or managers, in accordance with this section, to make periodic reports in writing to the Authority about the progress of the winding-up.

(2) In the case of each winding-up, the first report to be made under this section shall be made—

- (a) except in a case to which paragraph (b) applies—
  - (i) after the end of the prescribed period beginning with the day on which the winding-up began; and
  - (ii) before the end of the prescribed period that begins with the end of the period that applies for the purposes of sub-paragraph (i);

and

- (b) in a case where the winding-up began before the coming into force of the regulations which (for the purposes of subsection (1)(b)) prescribe the time by reference to which the winding-up is one to which this section applies, before such date as may be prescribed by those regulations.]

(3) Each subsequent report made under this section in the case of a winding-up shall be made no more than twelve months after the date which was the latest date for the making of the previous report required to be made in the case of that winding-up.

*(4)-(6) not yet in force*

(7) A report under this section—

- (a) must contain such information and statements as may be prescribed; and
- (b) must be made in accordance with the prescribed requirements.

(8) Regulations may—

- (a) provide that, in prescribed circumstances, there shall be no obligation to make a report that would otherwise fall to be made under this section.

*(b)-(c) not yet in force*

(9) If there is any failure by the trustees or managers of any scheme to comply with their duty to make a report in accordance with the requirements imposed by or under this section—

- (a) [...<sup>2</sup>]
- (b) section 10 applies (irrespective of the description of scheme involved) to any trustee or manager who has failed to take all such steps.]

[<sup>3</sup>**72B.**—(1) Subject to the following provisions of this section, the Authority shall have power, at any time after the winding-up of an occupational pension scheme has begun, to give directions under this section if they consider that the giving of the direction is appropriate on any of the grounds set out in subsection (2).

Directions by Authority  
for facilitating winding-  
up.

<sup>1</sup> S. 72A(1), (2) & (3) (partially), (7), (8)(a) & (9) inserted (1.3.02 for the purposes of making rules & regs. 1.4.02 for all other purposes) by the Child Support, Pensions & Social Security Act 2000 (c. 19), s. 49(1).

<sup>2</sup> In s. 72A, subsec. (9)(a) omitted (6.4.05) by Sch. 12, para. 59 of the Pensions Act 2004 (c. 35).

<sup>3</sup> S. 72B & C inserted (1.3.02 for the purposes of making rules & regs., 1.4.02 for all other purposes) by the Child Support, Pensions & Social Security Act 2000 (c. 19), s. 50.

S. 72B

- (2) Those grounds are—
- (a) that the trustees or managers of the scheme are not taking all the steps in connection with the winding-up that the Authority consider would be being taken if the trustees or managers were acting reasonably;
  - (b) that steps being taken by the trustees or managers for the purposes of the winding-up involve things being done with what the Authority consider to be unreasonable delay;
  - (c) that the winding-up is being obstructed or unreasonably delayed by the failure of any person—
    - (i) to provide information to the trustees or managers;
    - (ii) to provide information to a person involved in the administration of the scheme;
    - (iii) to provide information to a person of a prescribed description; or
    - (iv) to take any step (other than the provision of information) that he has been asked to take by the trustees or managers;
  - (d) that the winding-up would be likely to be facilitated or accelerated by the taking by any person other than the trustees or managers of any other steps;
  - (e) that in any prescribed circumstances not falling within paragraphs (a) to (d)—
    - (i) the provision by any person of any information to the trustees or managers or to any other person, or
    - (ii) the taking of any other step by any person,would be likely to facilitate or accelerate the progress of the winding-up.
- (3) Except in prescribed circumstances, the power of the Authority to give a direction under this section in the case of a winding-up shall be exercisable only where—
- (a) periodic reports about the progress of the winding-up are required to be made under section 72A; and
  - (b) the first report that has to be made for the purposes of that section in the case of that winding-up either has been made or should have been made.
- (4) Regulations may provide that, in prescribed circumstances, the Authority shall not give a direction on the ground set out in subsection (2)(e) except in response to an application made by the trustees or managers of the scheme for the giving of a direction on that ground.
- (5) A direction under this section is a direction in writing given to and imposing requirements on—
- (a) any or all of the trustees or managers of the scheme;
  - (b) a person who is involved in its administration; or
  - (c) a person of a prescribed description.
- (6) The requirements that may be imposed by a direction under this section are any requirement for the person to whom it is given, within such period specified in the direction as the Authority may consider reasonable—
- (a) to provide the trustees or managers with all such information as may be specified or described in the direction;
  - (b) to provide a person involved in the administration of the scheme with all such information as may be so specified or described;
  - (c) to provide a person who is of a prescribed description with all such information as may be so specified or described;
  - (d) to take such steps (other than the provision of information) as may be so specified or described.

(7) [...<sup>1</sup>]

(8) Regulations may—

- (a) impose limitations on the steps that a person may be required to take by a direction under this section;
- (b) [...<sup>1</sup>]

(9) In this section references, in relation to a scheme, to a person involved in the administration of the scheme are (subject to subsection (10)) references to any person who is so involved otherwise than as—

- (a) the employer in relation to that scheme;
- (b) a trustee or manager of the scheme;
- (c) the auditor of the scheme or its actuary;
- (d) a legal adviser of the trustees or managers of the scheme;
- (e) a fund manager for the scheme;
- (f) a person acting on behalf of a person who is involved in the administration of the scheme;
- (g) a person providing services to a person so involved;
- (h) a person acting in his capacity as an employee of a person so involved;
- (i) a person who would fall within any of paragraphs (f) to (h) if persons acting in relation to the scheme in any capacity mentioned in the preceding paragraphs were treated as involved in the administration of a scheme.

(10) In this section references, in relation to a scheme, to a person involved in the administration of the scheme do not include references to persons of a particular description if regulations provide for persons of that description to be excluded from those references.

**72C.—(1)** It shall be the duty of any person to whom a direction is given under section 72B to comply with it.

Duty to comply with directions under s. 72B.

(2) [...<sup>2</sup>]

(3) Section 10 applies to any trustee or manager of a scheme who fails, without reasonable excuse, to take all such steps as are reasonable to secure compliance by the trustees or managers of that scheme with any direction given to them under section 72B.

(4) Section 10 applies to any person who—

- (a) is a person to whom a direction under section 72B is given otherwise than in the capacity of a trustee or manager; and
- (b) without reasonable excuse, fails to comply with that direction.

(5) For the purposes of this section it shall not be a reasonable excuse in relation to any failure to provide information in pursuance of a direction under section 72B that the provision of that information would (but for the duty imposed by subsection (1) of this section) involve a breach by any person of a duty owed to another not to disclose that information.]

<sup>1</sup> S. 72B(7) & (8)(b) repealed (6.4.06) by the Pensions Act 2004, Sch. 13.

<sup>2</sup> Subsec. (2) of s. 72C omitted (6.4.05) by Sch. 12, para. 60 of the Pensions Act 2004 (c. 35).

*S. 73 is modified, see the Pensions Act 2011 (Trans...) Regs. S.I. 2014/1711 reg. 11 & 13 for details at page. 5.4851.*

**[<sup>1</sup>73. Preferential liabilities on winding up**

(1) This section applies where an occupational pension scheme to which this section applies is being wound up to determine the order in which the assets of the scheme are to be applied towards satisfying the liabilities of the scheme in respect of pensions and other benefits.

(2) This section applies to an occupational pension scheme other than a scheme which is—

- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

(3) The assets of the scheme must be applied first towards satisfying the amounts of the liabilities mentioned in subsection (4) and, if the assets are insufficient to satisfy those amounts in full, then—

- (a) the assets must be applied first towards satisfying the amounts of the liabilities mentioned in earlier paragraphs of subsection (4) before the amounts of the liabilities mentioned in later paragraphs, and
- (b) where the amounts of the liabilities mentioned in one of those paragraphs cannot be satisfied in full, those amounts must be satisfied in the same proportions.

(4) The liabilities referred to in subsection (3) are—

- (a) where—
  - (i) the trustees or managers of the scheme are entitled to benefits under a relevant pre-1997 contract of insurance entered into in relation to the scheme, and
  - (ii) either that contract may not be surrendered or the amount payable on surrender does not exceed the liability secured by the contract,the liability so secured;
- (b) any liability for pensions or other benefits to the extent that the amount of the liability does not exceed the corresponding PPF liability, other than a liability within paragraph (a);
- (c) any liability for pensions or other benefits which, in the opinion of the trustees or managers, are derived from the payment by any member of voluntary contributions, other than a liability within paragraph (a) or (b);
- (d) any other liability in respect of pensions or other benefits.

(5) For the purposes of subsection (4)—

“corresponding PPF liability” in relation to any liability for pensions or other benefits means—

- (a) where the liability is to a member of the scheme, the cost of securing benefits for or in respect of the member corresponding to the compensation which would be payable to or in respect of the member in accordance with the pension compensation provisions if the Board of the Pension Protection Fund assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection), and
- (b) where the liability is to another person in respect of a member of the scheme, the cost of securing benefits for that person corresponding to the compensation which would be payable to that person in respect of the member in accordance with the pension compensation provisions if the Board assumed responsibility for the scheme in accordance with that Chapter;

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<sup>1</sup> S. 73 substituted for ss. 73-73B (10.2.05 for reg. making purposes, 6.4.05 all other purposes) by s. 270 of the Pensions Act 2004 (c. 35).



“relevant pre-1997 contract of insurance” means a contract of insurance which was entered into before 6th April 1997 with a view to securing the whole or part of the scheme’s liability for—

- (a) any pension or other benefit payable to or in respect of one particular person whose entitlement to payment of a pension or other benefit has arisen, and
- (b) any benefit which will be payable in respect of that person on his death.

(6) For the purposes of this section, when determining the corresponding PPF liability in relation to any liability of a scheme to, or in respect of, a member for pensions or other benefits, the pension compensation provisions apply with such modifications as may be prescribed.

(7) Regulations may modify subsection (4).

(8) For the purposes of that subsection—

- (a) regulations may prescribe how it is to be determined whether a liability for pensions or other benefits which, in the opinion of the trustees or managers of the scheme, are derived from the payment by any member of voluntary contributions falls within paragraph (a) or (b) of that subsection;
- (b) no pension or other benefit which is attributable (directly or indirectly) to a pension credit is to be regarded for the purposes of paragraph (c) of that subsection as derived from the payment of voluntary contributions.

(9) Where, on the commencement of the winding up period, a member becomes a person to whom [Chapter 1 of Part 4ZA] of the Pension Schemes Act 1993 (early leavers: cash transfer sums and contribution refunds) applies, that Chapter applies in relation to him with such modifications as may be prescribed.

(10) For the purposes of this section—

“assets” of a scheme to which this section applies do not include any assets representing the value of any rights in respect of money purchase benefits under the scheme rules;

“liabilities” of such a scheme do not include any liabilities in respect of money purchase benefits under the scheme rules;

“the pension compensation provisions” has the same meaning as in Part 2 of the Pensions Act 2004 (see section 162 of that Act);

“scheme rules” has the same meaning as in the Pensions Act 2004 (see section 318 of that Act);

“winding up period”, in relation to an occupational pension scheme to which this section applies, means the period which—

- (a) begins with the day on which the time immediately after the beginning of the winding up of the scheme falls, and
- (b) ends when the winding up of the scheme is completed.

**73A.**—(1) This section applies where an occupational pension scheme to which section 73 applies is being wound up.

Operation of scheme during winding up period

(2) During the winding up period, the trustees or managers of the scheme—

- (a) must secure that any pensions or other benefits (other than money purchase benefits) paid to or in respect of a member are reduced, so far as necessary, to reflect the liabilities of the scheme to or in respect of the member which will be satisfied in accordance with section 73, and
- (b) may, for the purposes of paragraph (a), take such steps as they consider appropriate (including steps adjusting future payments) to recover any overpayment or pay any shortfall.

(3) During the winding up period—

- (a) no benefits may accrue under the scheme rules to, or in respect of, members of the scheme, and
- (b) no new members of any class may be admitted to the scheme.

<sup>1</sup> Words in s. 73(9) substituted (6.4.15) by the Pension Scheme Act 2015 (c. 8), Sch. 4, para. 30.

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(4) Subsection (3) does not prevent any increase, in a benefit, which would otherwise accrue in accordance with the scheme or any enactment.

(5) Subsection (3) does not prevent the accrual of money purchase benefits to the extent that they are derived from income or capital gains arising from the investment of payments which are made by, or in respect of, a member of the scheme.

(6) Where a person is entitled to a pension credit derived from another person's shareable rights under the scheme, subsection (3) does not prevent the trustees or managers of the scheme discharging their liability in respect of the credit under Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999 (sharing of rights under pension arrangements) by conferring appropriate rights under the scheme on that person.

(7) Regulations may require the trustees or managers of the scheme, in prescribed circumstances—

- (a) to adjust the entitlement of a person to a pension or other benefit under the scheme rules where the entitlement arises as a result of a discretionary award which takes effect during the winding up period;
- (b) to adjust the entitlement of a person ("the survivor") to a pension or other benefit under the scheme rules where—
  - (i) a member of the scheme, or a person who was (or might have become) entitled to a pension or other benefit in respect of a member, dies during the winding up period, and
  - (ii) the survivor's entitlement is to a pension or other benefit in respect of the member (whether arising on the date of that death or subsequently).

(8) Regulations under subsection (7) may, in particular—

- (a) prescribe how the required adjustments to entitlement are to be determined and the manner in which they are to be made;
- (b) in a case where the commencement of the winding up of the scheme is backdated (whether in accordance with section 154 of the Pensions Act 2004 (requirement to wind up schemes with sufficient assets to meet protected liabilities) or otherwise), require any adjustment to a person's entitlement to be made with effect from the time the award takes effect;
- (c) without prejudice to sections 10(3) to (9), 73B(2) and 116, make provision about the consequences of breaching the requirements of the regulations.

(9) If the scheme confers power on any person other than the trustees or managers of the scheme to apply the assets of the scheme in respect of pensions or other benefits (including increases in pensions or benefits), it cannot be exercised by that person but may, subject to the provisions made by or by virtue of this section and sections 73 and 73B, be exercised instead by the trustees or managers.

(10) For the purposes of this section—

- "appropriate rights" has the same meaning as in paragraph 5 of Schedule 5 to the Welfare Reform and Pensions Act 1999 (pension credits: mode of discharge);
- "discretionary award" means an award of a prescribed description;
- "shareable rights" has the same meaning as in Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999 (sharing of rights under pension arrangements);

and subsection (10) of section 73 applies as it applies for the purposes of that section.

### **73B. Sections 73 and 73A: supplementary**

(1) Any action taken in contravention of section 73A(3) is void.

(2) If any provision made by or by virtue of the winding up provisions is not complied with in relation to a scheme to which section 73 applies, section 10 applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.

(3) For the purposes of subsection (2), when determining whether section 73A(3) has been complied with subsection (1) of this section is to be disregarded.

(4) Regulations may—

- (a) prescribe how, for the purposes of the winding up provisions—
  - (i) the assets and liabilities of a scheme to which section 73 applies, and
  - (ii) their value or amount,
 are to be determined, calculated and verified;
- (b) modify any of the winding up provisions as it applies—
  - (i) to prescribed schemes or prescribed descriptions of schemes;
  - (ii) in relation to a scheme where only part of the scheme is being wound up;
  - (iii) in relation to a case where any liability of the scheme in respect of a member has been discharged by virtue of regulations under section 135(4) of the Pensions Act 2004 (power to make regulations permitting discharge of scheme's liabilities during an assessment period).

(5) Without prejudice to the generality of subsection (4), regulations under paragraph (b)(i) of that subsection may, in particular, modify any of the winding up provisions as it applies in relation to a scheme in relation to which there is more than one employer.

(6) The winding up provisions do not apply—

- (a) in relation to any liability for an amount by way of pensions or other benefits which a person became entitled to payment of, under the scheme rules, before commencement of the winding up period,
- (b) in prescribed circumstances, in relation to any liability in respect of rights of a prescribed description to which a member of the scheme became entitled under the scheme rules by reason of his pensionable service under the scheme terminating before the commencement of the winding up period,
- (c) in relation to any liability in respect of rights of prescribed descriptions to which a member of the scheme had become entitled under the scheme rules before the commencement of the winding up period, or
- (d) in relation to any liability the discharge of which is validated under section 136 of the Pensions Act 2004 (power to validate actions taken during an assessment period to discharge liabilities of a scheme).

(7) But nothing in subsection (6) prevents the winding up provisions applying in relation to a liability under [Chapter 1 of Part 4ZA] of the Pension Schemes Act 1993 (transfer values) which—

- (a) arose before the commencement of the winding up of the scheme, and
- (b) was not discharged before the commencement of the winding up period.

(8) Regulations may provide that, in prescribed circumstances, where—

- (a) an occupational pension scheme to which section 73 applies is being wound up,
- (b) a member of the scheme died before the winding up began, and
- (c) during the winding up period a person becomes entitled under the scheme rules to a benefit of a prescribed description in respect of the member,

his entitlement to payment of all or part of the benefit is, for the purposes of subsection (6), to be treated as having arisen immediately before the commencement of the winding up period.

(9) If, immediately before the winding up period in relation to an occupational pension scheme to which section 73 applies, a person is entitled to an amount but has postponed payment of it, he is not, for the purposes of subsection (6), to be regarded as having become entitled to payment of the amount before that period.

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<sup>1</sup> Words in s. 73B(7) substituted (6.4.15) by the Pension Schemes Act 2015 (c. 8), Sch. 4, para. 31.

**PENSIONSACT 1995 (c. 26)**

**Ss. 73B-74**

Discharge of liabilities  
by insurance, etc.

- (10) For the purposes of this section—
- (a) “winding up provisions” means this section and sections 73, 73A and 74, and
  - (b) subsection (10) of section 73 applies as it applies for the purposes of that section].

**74.**—<sup>[1]</sup>(1) This section applies where an occupational pension scheme to which section 73 applies is being wound up.]

(2) A liability to or in respect of a member of the scheme in respect of pensions or other benefits [...<sup>1</sup>] is to be treated as discharged (to the extent that it would not be so treated apart from this section) if the trustees or managers of the scheme have, in accordance with prescribed arrangements, provided for the discharge of the liability in one or more of the ways mentioned in subsection (3).

(3) The ways referred to in subsection (2) are—

- (a) by acquiring transfer credits allowed under the rules of another occupational pension scheme which satisfies prescribed requirements and the trustees or managers of which are able and willing to accept payment in respect of the member,
- (b) by acquiring rights allowed under the rules of a personal pension scheme which satisfies prescribed requirements and the trustees or managers of which are able and willing to accept payment in respect of member’s accrued rights [<sup>2</sup>or pension credit rights],
- (c) by purchasing one or more annuities which satisfy prescribed requirements from one or more [<sup>3</sup>insurers], being companies willing to accept payment in respect of the member from the trustees or managers,
- (d) by subscribing to other pension arrangements which satisfy prescribed requirements.

<sup>[4]</sup>(e) by the payment of a cash sum in circumstances where prescribed requirements are met.]

(4) If the assets of the scheme are insufficient to satisfy in full the liabilities, as calculated in accordance with the [<sup>4</sup>scheme rules], in respect of pensions and other benefits [...<sup>4</sup>], the reference in subsection (2) to providing for the discharge of any liability in one or more of the ways mentioned in subsection (3) is to applying any amount available, in accordance with section 73, in one or more of those ways.

(5) Regulations may provide for this section—

- (a) to have effect in relation to so much of any liability as may be determined in accordance with the regulations,
- (b) [...<sup>5</sup>]

<sup>[5]</sup>(6) For the purposes of this section—

- (a) references to assets of the scheme do not include any assets representing the value of any rights in respect of money purchase benefits under the scheme rules, and
- (b) references to liabilities of the scheme do not include any liabilities in respect of money purchase benefits under the scheme rules;

<sup>1</sup> In s. 74, subsec. (1) substituted & words in subsec. (2) omitted, (10.2.05 for reg. making purposes, 6.4.05 all other purposes) by s. 270(2)(a)-(b) of the Pensions Act 2004 (c. 35).

<sup>2</sup> Words inserted (1.12.00) in s. 74(3)(b) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 12, para. 56.

<sup>3</sup> In s. 74, words in subsec. (3)(c) substituted (1.12.01) by Art. 144 of S.I. 2001/3649.

<sup>4</sup> In s. 74 words inserted in subsec.(3)(e) (4) substituted & words in subsec. (4) omitted (10.2.05) for reg. making purposes, 6.4.05 all other purposes by s. 270(2)(c)-(d) of the Pensions Act 2004 (c. 35).

<sup>5</sup> In s. 74, subsec. (5)(b) omitted & (6) inserted (10.2.05 for reg. making purposes, 6.4.05 all other purposes) by s. 270(2) and (f) of the Pensions Act 2004 (c. 35).

and “scheme rules” has the same meaning as in the Pensions Act 2004 (see section 318 of that Act).]

**75.**—<sup>[1</sup>(1) This section applies in relation to an occupational pension scheme other than a scheme which is—

Deficiencies in the assets.

- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

(2) If—

- (a) at any time which falls—
  - (i) when a scheme is being wound up, but
  - (ii) before any relevant event in relation to the employer which occurs while the scheme is being wound up,

the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme, and

- (b) the trustees or managers of the scheme designate that time for the purposes of this subsection (before the occurrence of an event within paragraph (a)(ii)), an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

This is subject to subsection (3).

(3) Subsection (2) applies only if—

- (a) either—
  - (i) no relevant event within subsection (6A)(a) or (b) occurred in relation to the employer during the period beginning with the appointed day and ending with the commencement of the winding up of the scheme, or
  - (ii) during the period—
    - (a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in sub-paragraph (i), and
    - (b) ending with the commencement of the winding up of the scheme,
- (b) a cessation notice was issued in relation to the scheme and became binding, and
- (b) no relevant event within subsection (6A)(c) has occurred in relation to the employer during the period mentioned in paragraph (a)(i).

(4) Where—

- (a) immediately before a relevant event (“the current event”) occurs in relation to the employer the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme,
- (b) the current event—
  - (i) occurred on or after the appointed day, and
  - (ii) did not occur in prescribed circumstances,
- (c) if the scheme was being wound up immediately before that event, subsection (2) has not applied in relation to the scheme to treat an amount as a debt due from the employer to the trustees or managers of the scheme,
- (d) if the current event is within subsection (6A)(a) or (b), either—
  - (i) no relevant event within subsection (6A)(a) or (b) occurred in relation to the employer during the period beginning with the appointed day and ending immediately before the current event, or
  - (ii) a cessation event has occurred in relation to the scheme in respect of a cessation notice issued during the period—
    - (a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in sub-paragraph (i), and
    - (b) ending immediately before the current event, and

<sup>1</sup> In s. 75, subsec. (1)-(4) substituted by (1)-(4C), (10.2.05 for reg. making purposes, 6.4.05 all other purposes), by s. 271 of the Pensions Act 2004 (c. 35).

- (e) no relevant event within subsection (6A)(c) has occurred in relation to the employer during the period mentioned in paragraph (d)(i),

an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

(4A) Where the current event is within subsection (6A)(a) or (b), the debt under subsection (4) is to be taken, for the purposes of the law relating to insolvency as it applies to the employer, to arise immediately before the occurrence of the current event.

(4B) Subsection (4C) applies if, in a case within subsection (4)–

- (a) the current event is within subsection (6A)(a) or (b), and
- (b) the scheme was not being wound up immediately before that event.

(4C) Where this subsection applies, the debt due from the employer under subsection (4) is contingent upon–

- (a) a scheme failure notice being issued in relation to the scheme after the current event and the following conditions being satisfied–
  - (i) the scheme failure notice is binding,
  - (ii) no relevant event within subsection (6A)(c) has occurred in relation to the employer before the scheme failure notice became binding, and
  - (iii) a cessation event has not occurred in relation to the scheme in respect of a cessation notice issued during the period–
    - (a) beginning with the occurrence of the current event, and
    - (b) ending immediately before the issuing of the scheme failure notice, and the occurrence of such a cessation event in respect of a cessation notice issued during that period is not a possibility, or
- (b) the commencement of the winding up of the scheme before–
  - (i) any scheme failure notice or cessation notice issued in relation to the scheme becomes binding, or
  - (ii) any relevant event within subsection (6A)(c) occurs in relation to the employer.]

(5) For the purposes of [<sup>1</sup> subsections (2) and (4)], the liabilities and assets to be taken into account, and their amount or value, must be determined, calculated and verified by a prescribed person and in the prescribed manner.

(6) In calculating the value of any liabilities for those purposes, a provision of the scheme [<sup>1</sup> rules] which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded. [<sup>1</sup>In this subsection “scheme rules” has the same meaning as in the Pensions Act 2004 (“the 2004 Act”) (see section 318 of that Act).]

[<sup>1</sup>(6A) For the purposes of this section, a relevant event occurs in relation to the employer in relation to an occupational pension scheme if and when–

- (a) an insolvency event occurs in relation to the employer,
- (b) the trustees or managers of the scheme make an application under subsection (1) of section 129 of the 2004 Act or receive a notice from the Board of the Pension Protection Fund under subsection (5)(a) of that section, or
- (c) a resolution is passed for a voluntary winding up of the employer in a case where a declaration of solvency has been made under section 89 of the Insolvency Act 1986 (members’ voluntary winding up).

(6B) For the purposes of this section–

- (a) a “cessation notice”, in the case of a relevant event within subsection (6A)(a), means–

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<sup>1</sup> In s. 75, words in subssecs. (5) & (6) substituted & inserted and subssecs. (6A)-(6D) inserted (10.2.05 for reg. making purposes, 6.4.05 all other purposes), by s. 271 of the Pensions Act 2004 (c. 35).



- (i) a withdrawal notice issued under section 122(2)(b) of the 2004 Act (scheme rescue has occurred),
  - (ii) a withdrawal notice issued under section 148 of that Act (no insolvency event has occurred or is likely to occur),
  - (iii) a notice issued under section 122(4) of that Act (inability to confirm status of scheme) in a case where the notice has become binding and section 148 of that Act does not apply,
- (b) a “cessation notice” in the case of a relevant event within subsection (6A)(b), means a withdrawal notice issued under section 130(3) of the 2004 Act (scheme rescue has occurred),
- (c) a cessation event occurs in relation to a scheme when a cessation notice in relation to the scheme becomes binding,
- (d) the occurrence of a cessation event in relation to a scheme in respect of a cessation notice issued during a particular period (“the specified period”) is a possibility until each of the following are no longer reviewable—
- (i) any cessation notice which has been issued in relation to the scheme during the specified period,
  - (ii) any failure to issue such a cessation notice during the specified period,
  - (iii) any notice which has been issued by the Board under Chapter 2 or 3 of Part 2 of the 2004 Act which is relevant to the issue of a cessation notice in relation to the scheme during the specified period or to such a cessation notice which has been issued during that period becoming binding,
  - (iv) any failure to issue such a notice as is mentioned in sub-paragraph (iii),
- (e) the issue or failure to issue a notice is to be regarded as reviewable—
- (i) during the period within which it may be reviewed by virtue of Chapter 6 of Part 2 of the 2004 Act, and
  - (ii) if the matter is so reviewed, until—
    - (a) the review and any reconsideration,
    - (b) any reference to the Ombudsman for the Board of the Pension Protection Fund in respect of the matter, and
    - (c) any appeal against his determination or directions, has been finally disposed of, and
- (f) a “scheme failure notice” means a scheme failure notice issued under section 122(2)(a) or 130(2) of the 2004 Act (scheme rescue not possible).
- (6C) For the purposes of this section—
- (a) section 121 of the 2004 Act applies for the purposes of determining if and when an insolvency event has occurred in relation to the employer,
  - (b) “appointed day” means the day appointed under section 126(2) of the 2004 Act (no pension protection under Chapter 3 of Part 2 of that Act if the scheme begins winding up before the day appointed by the Secretary of State),
  - (c) references to a relevant event in relation to an employer do not include a relevant event which occurred in relation to him before he became the employer in relation to the scheme,
  - (d) references to a cessation notice becoming binding are to the notice in question mentioned in subsection (6B)(a) or (b) and issued under Part 2 of the 2004 Act becoming binding within the meaning given by that Part of that Act, and
  - (e) references to a scheme failure notice becoming binding are to the notice in question mentioned in subsection (6B)(f) and issued under Part 2 of the 2004 Act becoming binding within the meaning given by that Part of that Act.
- (6D) Where—
- (a) a resolution is passed for a voluntary winding up of the employer in a case where a declaration of solvency has been made under section 89 of the Insolvency Act 1986 (members’ voluntary winding up), and
  - (b) either—

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- (i) the voluntary winding up of the employer is stayed other than in prescribed circumstances, or
- (ii) a meeting of creditors is held in relation to the employer under section 95 of that Act (creditors' meeting which has the effect of converting a members' voluntary winding up into a creditors' voluntary winding up),

this section has effect as if that resolution had never been passed and any debt which arose under this section by virtue of the passing of that resolution shall be treated as if it had never arisen.]

(7) This section does not prejudice any other right or remedy which the trustees or managers may have in respect of a deficiency in the scheme's assets.

1986 c. 45.

(8) A debt due by virtue only of this section shall not be regarded—

- (a) as a preferential debt for the purposes of the Insolvency Act 1986, or
- (b) as a preferred debt for the purposes of the Bankruptcy (Scotland) Act 1985.

(9) [...<sup>1</sup>]

(10) Regulations may modify this section as it applies in prescribed circumstances.

**[<sup>2</sup>75A Deficiencies in the assets: multi-employer schemes**

(1) Regulations may modify section 75 (deficiencies in the assets) as it applies in relation to multi-employer schemes.

(2) The regulations may in particular provide for the circumstances in which a debt is to be treated as due under section 75 from an employer in relation to a multi-employer scheme (a "multi-employer debt").

(3) Those circumstances may include circumstances other than those in which the scheme is being wound up or a relevant event occurs (within the meaning of section 75).

(4) For the purposes of regulations under this section, regulations under section 75(5) may prescribe alternative manners for determining, calculating and verifying—

- (a) the liabilities and assets of the scheme to be taken into account, and
- (b) their amount or value.

(5) The regulations under this section may in particular—

- (a) provide for the application of each of the prescribed alternative manners under section 75(5) to depend upon whether prescribed requirements are met;
- (b) provide that, where in a particular case a prescribed alternative manner under section 75(5) is applied, the Authority may in prescribed circumstances issue a direction—
  - (i) that any resulting multi-employer debt is to be unenforceable for such a period as the Authority may specify, and
  - (ii) that the amount of the debt is to be re-calculated applying a different prescribed manner under section 75(5) if prescribed requirements are met within that period.

(6) The prescribed requirements mentioned in subsection (5) may include a requirement that a prescribed arrangement, the details of which are approved in a notice issued by the Authority, is in place.

<sup>1</sup> S. 75(9) omitted (10.2.05 for reg. making purposes, 6.4.05 all other purposes) by s. 271(6) of the Pensions Act 2004 (c. 35).

<sup>2</sup> S. 75A inserted (10.2.05 for reg. making purposes, 6.4.05 all other purposes) by s. 272 of the Pensions Act 2004 (c. 35).



(7) The regulations may provide that the Authority may not approve the details of such an arrangement unless prescribed conditions are met.

(8) Those prescribed conditions may include a requirement that—

- (a) the arrangement identifies one or more persons to whom the Authority may issue a contribution notice under the regulations, and
- (b) the Authority are satisfied of prescribed matters in respect of each of those persons.

(9) For the purposes of subsection (8) a “contribution notice” is a notice stating that the person to whom it is issued is under a liability to pay the sum specified in the notice—

- (a) to the trustees of the multi-employer scheme in question, or
- (b) where the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection), to the Board.

(10) The regulations may provide for the Authority to have power to issue a contribution notice to a person identified in an arrangement as mentioned in subsection (8) if—

- (a) the arrangement ceases to be in place or the Authority consider that the arrangement is no longer appropriate, and
- (b) the Authority are of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice.

(11) Where a contribution notice is issued to a person under the regulations as mentioned in subsection (8), the sum specified in the notice is to be treated as a debt due from that person to the person to whom it is to be paid as specified in the notice.

(12) Where the regulations provide for the issuing of a contribution notice by the Authority as mentioned in subsection (8)—

- (a) the regulations must—
  - (i) provide for how the sum specified by the Authority in a contribution notice is to be determined,
  - (ii) provide for the circumstances (if any) in which a person to whom a contribution notice is issued is jointly and severally liable for the debt,
  - (iii) provide for the matters which the notice must contain, and
  - (iv) provide for who may exercise the powers to recover the debt due by virtue of the contribution notice, and
- (b) the regulations may apply with or without modifications some or all of the provisions of sections 47 to 51 of the Pensions Act 2004 (contribution notices where non-compliance with financial support direction) in relation to contribution notices issued under the regulations.

(13) In this section “multi-employer scheme” means a trust scheme which applies to earners in employments under different employers.

(14) This section is without prejudice to the powers conferred by—

- section 75(5) (power to prescribe the manner of determining, calculating and verifying assets and liabilities etc),
- section 75(10) (power to modify section 75 as it applies in prescribed circumstances),
- section 118(1)(a) (power to modify any provisions of this Part in their application to multi-employer trust schemes), and
- section 125(3) (power to extend for the purposes of this Part the meaning of “employer”).]

**PENSIONS ACT 1995 (c. 26)**

**S. 76-86**

Excess assets on winding up.

- 76.—**(1) This section applies to a trust scheme in any circumstances if—
- [<sup>1</sup>(a) it is a registered pension scheme under section 153 of the Finance Act 2004,]
  - (b) the scheme is being wound up, and
  - (c) in those circumstances power is conferred on the employer or the trustees to distribute assets to the employer on a winding up.
- (2) The power referred to in subsection (1)(c) cannot be exercised unless the requirements of subsections (3) and (in prescribed circumstances) (4), and any prescribed requirements, are satisfied.
- (3) The requirements of this subsection are that—
- (a) the liabilities of the scheme have been fully discharged,
  - (b) where there is any power under the scheme, after the discharge of those liabilities, to distribute assets to any person other than the employer, the power has been exercised or a decision has been made not to exercise it,
  - (c) [...<sup>2</sup>]
  - (d) notice has, been given in accordance with prescribed requirements to the members of the scheme of the proposal to exercise the power.
- (4) The requirements of this subsection are that the authority are of the opinion that—
- (a) any requirements prescribed by virtue of subsection (2) are satisfied, and
  - (b) the requirements of subsection (3) are satisfied.
- (5) [...<sup>2</sup>]
- (6) If, where this section applies to any trust scheme, the trustees purport to exercise the power referred to in subsection (1)(c) without complying with the requirements of this section, [<sup>3</sup>sections 10 applies] to any of them who have failed to take all such steps as are reasonable to secure compliance.
- (7) If, where this section applies to any trust scheme, any person other than the trustees purports to exercise the power referred to in subsection (1)(c) without complying with the requirements of this section, section 10 applies to him.
- (8) Regulations may provide that, in prescribed circumstances, this section does not apply to schemes falling within a prescribed class or description, or applies to them with prescribed modifications.

**77.—**[...<sup>4</sup>]

**78.-86.**[...<sup>5</sup>]

*Ss. 78(4) & 79-84 are reproduced below for the purposes of the savings provisions in art. 5 of S.I. 2005/1720. The footnotes relating to sections 78-84 appear at the end of this text.*

*The Pensions Compensation board*

**78.—**(4) Payments made by the Compensation Board may be made of such terms (including terms requiring repayment in whole or in part) and on such conditions as the Board think appropriate.

**79.—**(1) The Compensation Board must prepare a report for the first twelve months of their existence, and a report for each

<sup>1</sup> S. 76(1)(a) substituted (6.4.06) by S.I. 2006/745, art. 10.

<sup>2</sup> Subsections (3)(c) & (5) omitted (6.4.06) by the Pensions Act 2004, Sch. 12, para. 76.

<sup>3</sup> In s. 76(6) words substituted (6.4.06) by the Pensions Act 2004 (c. 35), Sch. 12, para. 62(c).

<sup>4</sup> S. 77 repealed (6.4.06) by S.I. 2006/745, art. 10.

<sup>5</sup> Ss. 78-86 repealed (1.9.05), subject to savings provisions in art. 5 of S.I. 2005/1720, by Sch. 13 of the Pensions Act 2004 (c. 35).

succeeding period of twelve months, and must send each report to the Secretary of State as soon as practicable after the end of the period for which it is prepared.

(2) A report prepared under this section for any period must deal with the activities of the Compensation Board in the period.

(3) The Secretary of State must lay before each House of Parliament a copy of every report received by him under this section.

**80.**—(1) Subject to the following provisions of this section, any determination by the Compensation Board of a question which it is within their functions to determine shall be final.

(2) The Compensation Board may on the application of a person appearing to them to be interested—

- (a) at any time review any such determination of theirs as is mentioned in subsection (1) (including a determination given by them on a previous review), if they are satisfied that there has been a relevant change of circumstances since the determination was made, or that the determination was made in ignorance of a material fact or based on a mistake as to a material fact or was erroneous in point of law, and
- (b) at any time within a period of three months from the date of the determination, or within such longer period as they may allow in any particular case, review such a determination on any ground.

[<sup>1</sup>(2A) The Compensation Board may also review such a determination without an application being made.]

(3) The Compensation Board's powers on a review under this section include power—

- (a) to vary or revoke any determination previously made,
- (b) to substitute a different determination, and
- (c) generally to deal with the matters arising on the review as if they had arisen on the original determination;

and also include power to make savings and transitional provisions.

[<sup>1</sup>(4) Regulations may make provision—

- (a) with respect to reviews under this section (or any corresponding provision in force in Northern Ireland);
- (b) with respect to applications under subsection (2) (or any corresponding provision in force in Northern Ireland) and the procedure to be adopted on any such application.]

#### *The compensation provisions*

**81.**—(1) Subject to subsection (2), this section applies to an application for compensation under section 82 in respect of an occupational pension scheme if all the following conditions are met—

- (a) the scheme is a trust scheme,
- (b) the employer is insolvent,
- (c) the value of the assets of the scheme has been reduced, and there are reasonable grounds for believing that the reduction was attributable to an act or omission constituting a prescribed offence,
- (d) [...<sup>2</sup>]
- (e) it is reasonable in all the circumstances that the members of the scheme should be assisted by the Compensation Board paying to the trustees of the scheme, out of funds for the time being held by them, an amount determined in accordance with the compensation provisions.

(2) Subsection (1) does not apply in respect of a trust scheme falling within a prescribed class or description; and paragraph (c) applies only to reductions in value since the appointed day.

(2A) [...<sup>2</sup>]

(3) In this Part the “compensation provisions” means the provisions of this section and sections 82 to 85; and below in the compensation provisions as they relate to a trust scheme—

- (a) "the application date" means the date of the application for compensation under section 82,
- (b) "the appointed day" means the day appointed under section 180 for the commencement of this section,
- (c) "the insolvency date" means the date on which the employer became insolvent,
- (d) "the settlement date" means the date determined by the Compensation Board, after consulting the trustees, to be the date after which further recoveries of value are unlikely to be obtained without disproportionate cost or within a reasonable time,
- (e) "the shortfall at the application date" means the amount of the reduction falling within subsection (1)(c) or (if there was more than one such reduction) the aggregate of the reductions, being the amount or aggregate immediately before the application date,
- (f) "recovery of value" means any increase in the value of the assets of the scheme, being an increase attributable to any payment received (otherwise than from the Compensation Board) by the trustees of the scheme in respect of any act or omission—
  - (i) which there are reasonable grounds for believing constituted a prescribed offence, and
  - (ii) to which any reduction in value falling within subsection (1)(c) was attributable.

(4) It is for the Compensation Board to determine whether anything received by the trustees of the scheme is to be treated as a payment received for any such act or omission as is referred to in subsection (3)(f); and in this section "payment" includes any money or money's worth.

(5) Where this section applies to an application for compensation under section 82, the trustees must obtain any recoveries of value, to the extent that they may do so without disproportionate cost and within a reasonable time.

(6) If subsection (5) is not complied with, section 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(7) [...]

(8) Section 123 of the Pension Schemes Act 1993 (meaning of insolvency) applies for the purposes of the compensation provisions as it applies for the purposes of Chapter II of Part VII of that Act (unpaid scheme contributions).

**82.**—(1) Compensation may be paid under section 83 only on an application to which section 81 applies made within the qualifying period by a prescribed person.

(2) An application under this section must be made in the manner, and give the information, required by the Compensation Board.

(3) For the purposes of this section the "qualifying period", subject to subsection (5), is the period expiring with the period of twelve months mentioned in subsection (4).

(4) The period of twelve months referred to in subsection (3) is that beginning with the later of the following times—

- (a) the insolvency date,
- (b) when the auditor or actuary of the scheme, or the trustees, knew or ought reasonably to have known that a reduction of value falling within section 81(1)(c) had occurred,

being, in each case, a time after the appointed day.

(5) The Compensation Board may extend, or further extend, the qualifying period.

**83.**—(1) Where in the opinion of the Compensation Board section 81 applies to an application for compensation under section 82 in respect of a trust scheme, and the Board have determined the settlement date, the Board may make a payment or payments to the trustees of the scheme in accordance with this section.

(2) The amount of any payment must be determined in accordance with regulations and must take account of any payment already made under section 84, and the Compensation

Board must give written notice of their determination to the person who made the application under section 82 and (if different) to the trustees.

[<sup>1</sup>(3) The amount of the payment, or (if there is more than one) the aggregate, must not exceed the aggregate of—

- (a) the amount (if any) by which the shortfall at the application date exceeds the recoveries of value made between the application date and the settlement date, and
- (b) interest at the prescribed rate for the prescribed period on the amount of that excess (if any).]

**84.**—(1) The Compensation Board may, on an application for compensation under section 82, make a payment or payments to the trustees of a trust scheme where in their opinion—

- (a) section 81 applies, or may apply, to the application, and
- (b) the trustees would not otherwise be able to meet liabilities falling within a prescribed class,

but the Board have not determined the settlement date.

(2) Amounts payable under this section must be determined in accordance with regulations.

(3) Where any payment is made under this section, the Compensation Board may, except in prescribed circumstances—

- (a) if they subsequently form the opinion that section 81 does not apply to the application for compensation in respect of the scheme, or
- (b) if they subsequently form the opinion that the amount of the payment was excessive,

recover so much of the payment as they consider appropriate.

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<sup>1</sup> In s. 80, subsec. (2A) inserted & (4) substituted (17.12.04) by s. 277 of the Pensions Act 2004 (c. 35).

<sup>2</sup> In s. 81, subsec. (1)(d) & (2A) omitted (17.12.04) by s. 277 of the Pensions Act 2004 (c. 35).

<sup>3</sup>Subsec. (7) of s. 81 omitted & subsecs. (3) & (4) of s. 83 substituted (17.12.04) by s. 277 of the Pensions Act 2004 (c. 35).

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#### *Money purchase schemes*

**87.**—(1) This section applies to an occupational pension scheme which is a money purchase scheme, other than one falling within a prescribed class or description.

Schedules of payments to money purchase schemes.

(2) The trustees or managers of every occupational pension scheme to which this section applies must secure that there is prepared, maintained and from time to time revised a schedule (referred to in this section and section 88 as a “payment schedule”) showing—

- (a) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme,
- (b) such other amounts payable towards the scheme as may be prescribed, and
- (c) the dates on or before which payments of such contributions or other amounts are to be made (referred to in those section as “due dates”).

(3) The payment schedule for a scheme must satisfy prescribed requirements.

(4) The matters shown in the payment schedule for a scheme—

- (a) to the extent that the scheme makes provision for their determination, must be so determined, and

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- (b) otherwise,
  - (i) must be matters previously agreed between the employer and the trustees or managers of the scheme, or
  - (ii) if no such agreement has been made as to all matters shown in the schedule (other than those for whose determination the scheme makes provision), must be matters determined by the trustees or managers of the scheme.

- (5) Where in the case of a scheme this section is not complied with—
  - (a) [...<sup>1</sup>]
  - (b) section 10 applies to any trustee or manager who has failed to take all such steps.

Schedules of payments to money purchase schemes: supplementary.

**88.**—<sup>[2]</sup>(1) Where, in the case of an occupational pension scheme to which section 87 applies—

- (a) there is a failure to pay on or before the due date any amounts payable in accordance with the payment schedule, and
- (b) the trustees or managers have reasonable cause to believe that the failure is likely to be of material significance in the exercise by the authority of any of their functions,

they must, except in prescribed circumstances, give notice of the failure to the Authority and to the members of the scheme within a reasonable period after the due date.]

(2) Any such amounts which for the time being remain unpaid after that date (whether payable by the employer or not) shall, if not a debt due from the employer to the trustees or managers apart from this subsection, be treated as such a debt.

(3) Where any amounts payable in accordance with the payment schedule by or on behalf of the employer [<sup>3</sup>on the employer's own account] have not been paid on or before the due date, section 10 applies to the employer.

(4) If, in the case of an occupational pension scheme to which section 87 applies, subsection (1) is not complied with—

- (a) [...<sup>4</sup>]
- (b) section 10 applies to any trustee or manager who has failed to take all such steps.

Application of further provisions to money purchase schemes.

**89.**—(1) In the case of money purchase schemes falling within a prescribed class or description, regulations may—

- (a) provide for any of the provisions of [<sup>5</sup>Part 3 of the Pensions Act 2004] to apply, or apply with prescribed modifications (in spite of anything in [<sup>5</sup>that Part]), and
- (b) provide for any of the provisions of sections 87 and 88 to apply with prescribed modifications or not to apply,

to such an extent as may be prescribed.

(2) Regulations may provide for any of the provisions of section 75 to apply, or apply with prescribed modifications, to money purchase schemes to such extent as may be prescribed (in spite of anything in that section), and the power conferred by this subsection includes power to apply section 75 in circumstances other than those in which the scheme is being wound up or a relevant [...<sup>5</sup>] event occurs (within the meaning of that section).

<sup>1</sup> S. 87(5)(a) omitted (6.4.06) by the Pensions Act 2004, Sch. 12, para. 64.

<sup>2</sup> Para. (1) of s. 88 substituted (1.7.05 for reg. making purposes, 6.4.06 for all other purposes) by s. 269(2) of the Pension Act 2004 (c. 35).

<sup>3</sup> Words in s. 88(3) inserted (3.4.00) by s. 10(2) of the Welfare Reform & Pensions Act 1999 (c. 30).

<sup>4</sup> S. 88(4)(a) omitted (6.4.06) by the Pensions Act 2004, Sch. 12, para. 65.

<sup>5</sup> In s. 89, words in subsec. (1)(a) substituted & in (2) omitted (6.4.05) by Sch. 12, para. 66 of the Pensions Act 2004 (c. 35).





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**Ss. 90-91**

Unpaid contributions in cases of insolvency.

**90.** . . . . . *amends 1993 (c. 48), see Annex I, page 5.2301*

*Assignment, forfeiture, bankruptcy etc.*

Inalienability of occupational pension.

**91.—**(1) Subject to subsection (5), where a person is entitled, [<sup>1</sup>to a pension under an occupational pension scheme or has a right to a future pension under such a scheme]—

- (a) the entitlement or right cannot be assigned, commuted or surrendered,
- (b) the entitlement or right cannot be charged or a lien exercised in respect of it, and
- (c) no set-off can be exercised in respect of it,

and an agreement to effect any of those things is unenforceable.

(2) Where by virtue of this section a person's entitlement, [<sup>1</sup>to a pension under an occupational pension scheme, or right to a future pension under such a scheme,] cannot, apart from subsection (5), be assigned, no order can be made by any court the effect of which would be that he would be restrained from receiving that pension.

(3) [..<sup>2</sup>]

(4) Subsection (2) does not prevent the making of—

- (a) an attachment of earnings order under the Attachment of Earnings Act 1971, or
- (b) an income payments order under the Insolvency Act 1986.

1971 c. 32.

1986 c. 45.

(5) In the case of a person (“the person in question”) who is entitled, [<sup>3</sup>to a pension under an occupational pension scheme or has a right to a future pension under such a scheme], subsection (1) does not apply to any of the following, or any agreement to effect any of the following—

- (a) an assignment in favour of the person in question's widow, widower [<sup>4</sup>, surviving civil partner] or dependant,
- (b) a surrender, at the option of the person in question, for the purpose of—
  - (i) providing benefits for that person's widow, widower [<sup>4</sup>, surviving civil partner] or dependant, or
  - (ii) acquiring for the person in question entitlement to further benefits under the scheme,
- (c) a commutation—
  - (i) of the person in question's benefit on or after retirement or in exceptional circumstances of serious ill health,
  - (ii) in prescribed circumstances, of any benefit for that person's widow, widower [<sup>4</sup>, surviving civil partner] or dependant, or
  - (iii) in other prescribed circumstances,
- (d) subject to subsection (6), a charge or lien on, or set-off against, the person in question's entitlement, or [<sup>3</sup>right] (except to the extent that it includes transfer credits other than prescribed transfer credits) for the purpose of enabling the employer to obtain the discharge by him of some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by him,

<sup>1</sup> Words substituted (1.12.00) in s. 91(1) & (2) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 12, para. 57(2)-(4)(b).

<sup>2</sup> S. 91(3) repealed (6.4.02) by Sch. 13, Part I of the Welfare Reform & Pension Act 1999 (c. 30).

<sup>3</sup> Words substituted (1.12.00) in s. 91(5) & (5)(d) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 12, para. 57(4)(a) & (4)(b).

<sup>4</sup> Words inserted in s. 91(5) by para. 23 of the Sch. to S.I. 2005/2053 as from 5.12.05.

- (e) subject to subsection (6), except in prescribed circumstances a charge or lien on, or set-off against, the person in question's entitlement, or [<sup>1</sup>right], for the purposes of discharging some monetary obligation due from the person in question to the scheme and—
- (i) arising out of a criminal, negligent or fraudulent act or omission by him, or
  - (ii) in the case of a trust scheme of which the person in question is a trustee, arising out of a breach of trust by him.
- [<sup>2</sup>(f) subject to subsection (6), a charge of lien on, or set-off against, the person in question's entitlement, or right, for the purpose of discharging some monetary obligation due from the person in question to the scheme arising out of a payment made in error in respect of the pension.]

(6) Where a charge, lien or set-off is exercisable by virtue of subsection (5)(d) [<sup>3</sup>, (e) or (f)]—

- (a) its amount must not exceed the amount of the monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the person in question's entitlement or accrued right, and
- (b) the person in question must be given a certificate showing the amount of the charge, lien or set-off and its effect on his benefits under the scheme,

and where there is a dispute as to its amount, the charge, lien or set-off must not be exercised unless the obligation in question has become enforceable under an order of a competent court or in consequence of an award of an arbitrator or, in Scotland, an arbiter to be appointed (failing agreement between the parties) by the sheriff.

(7) This section is subject to section 159 of the Pension Schemes Act 1993 (inalienability of guaranteed minimum pension and protected rights payments).

1993 c. 48.

**92.—(1)** Subject to the provisions of this section and section 93, an entitlement, [<sup>3</sup>to a pension under an occupational pension scheme or a right to a future pension under such a scheme] cannot be forfeited.

Forfeiture, etc.

(2) Subsection (1) does not prevent forfeiture by reference to—

- (a) a transaction or purported transaction which under section 91 is of no effect, [...<sup>4</sup>]

[...<sup>4</sup>]

whether or not that event occurred before or after the pension became payable.

(3) Where such forfeiture as is mentioned in subsection (2) occurs, any pension which was, or would but for the forfeiture have become, payable may, if the trustees or managers of the scheme so determine, be paid to all or any of the following—

- (a) the member of the scheme to or in respect of whom the pension was, or would have become, payable,
- [<sup>5</sup>(b) the spouse, civil partner, widow, widower or surviving civil partner of the member,]
- (c) any dependant of the member, and
- (d) any other person falling within a prescribed class.

<sup>1</sup> Words in s. 91(5)(e) substituted (1.12.00) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 12, para. 57(4)(c).

<sup>2</sup> In s. 91, subsec. (5)(f) inserted & words in subsec. (6) substituted (6.4.05) by s. 266 of the Pensions Act 2004 (c. 35).

<sup>3</sup> Words in s. 92(1) substituted (1.12.00) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 12, para. 58(2).

<sup>4</sup> Words "or" in s. 92(2)(a) & s. 92(2)(b) repealed (6.4.02) by Sch. 13, Part I of the Welfare Reform & Pensions Act 1999 (c. 30).

<sup>5</sup> Para. (b) of s. 92(3) substituted by para. 24 of the Sch. to S.I. 2005/2053 as from 5.12.05.

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(4) Subsection (1) does not prevent forfeiture by reference to the [‘pensioner, or prospective pensioner’], having been convicted of one or more offences—

- (a) which are committed before the pension becomes payable, and
- (b) which are—
  - (i) offences of treason,
  - (ii) offences under the Official Secrets Act 1911 to 1989 for which the person has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years, or
  - (iii) prescribed offences.

(5) Subsection (1) does not prevent forfeiture by reference to a failure by any person to make a claim for pension—

- (a) where the forfeiture is in reliance on any enactment relating to the limitation of actions, or
- (b) where the claim is not made within six years of the date on which the pension becomes due.

(6) Subsection (1) does not prevent forfeiture in prescribed circumstances.

(7) In this section and section 93, references to forfeiture include any manner of deprivation or suspension.

Forfeiture by reference to obligation to employer.

**93.—**(1) Subject to subsection (2), section 92(1) does not prevent forfeiture of a person’s entitlement, [‘to a pension under an occupational pension scheme or right to a future pension under such a scheme’] by reference to the person having incurred some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by the person.

(2) A person’s entitlement or [‘right’] may be forfeited by reason of subsection (1) to the extent only that it does not exceed the amount of the monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the person’s entitlement or [‘right’].

(3) Such forfeiture as is mentioned in subsection (1) must not take effect where there is a dispute as to the amount of the monetary obligation in question, unless the obligation has become enforceable under an order of a competent court or in consequence of an award of an arbitrator or, in Scotland, an arbiter to be appointed (failing agreement between the parties) by the sheriff.

(4) Where a person’s entitlement or [‘right’] is forfeited by reason of subsection (1), the person must be given a certificate showing the amount forfeited and the effect of the forfeiture on his benefits under the scheme.

(5) Where such forfeiture as is mentioned in subsection (1) occurs, an amount not exceeding the amount forfeited may, if the trustees or managers of the scheme so determine, be paid to the employer.

Sections 91 to 93: supplementary.

**94.—**(1) Regulations may—

- (a) modify sections 91 to 93 in their application to public service pension schemes or to other schemes falling within a prescribed class or description, or
- (b) provide that those sections do not apply in relation to schemes falling within a prescribed class or description.

(2) In those sections, “pension” in relation to an occupational pension scheme, includes any benefit under the scheme and any part of a pension and any payment by way of pension.

(3) In the application of sections 91 and 92 to Scotland—

- (a) references to a charge are to be read as references to a right in security or a diligence and “charged” is to be interpreted accordingly,
- (b) references to assignment are to be read as references to assignation and “assign” is to be interpreted accordingly,

[...<sup>2</sup>]

<sup>1</sup> Words s. 92(4), 93(1), (2) & (4), substituted (1.12.00) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 12, paras. 58(3) & 59.

<sup>2</sup> Word “and” in s. 94(3)(c) repealed (6.4.02) by Sch. 13, Part 1 of the Welfare Reform & Pensions Act 1999 (c. 30).

(d) the reference to an income payments order under the Insolvency Act 1986 is to be read as a reference to an order under section 32(2) of the Bankruptcy (Scotland) Act 1985, [...]<sup>1</sup>

1986 c. 45.

[...]<sup>1</sup>

1985 c. 66.

[<sup>2</sup>(f) after subsection 91(4) there is inserted

“(4A) Subject to section 73(3)(d) of the Debtors (Scotland) Act 1987, nothing in this section prevents any diligence mentioned in section 46 of that Act being done against a pension under an occupational pension scheme”.]

95. [...]<sup>3</sup>

96.–114. [...]<sup>4</sup>

### *Questioning the decisions of the Authority*

*Section 96 is reproduced below for transitional & savings provision purposes which includes the substitution of words in subsection (2) & (3)(a). See art. 5 & 6 of S.I. 2005/695 at page 5.4797.*

**96.**—(1) Subject to the following provisions of this section and to section 97, any determination by the Authority of a question which it is within their functions to determine shall be final.

Review of decisions.

(2) The Authority must, on the application of any person (“the applicant”) at any time within the prescribed period, review any determination of the Occupational Pensions Regulatory Authority—

- (a) to make an order against the applicant under section 3,
- (b) to require the applicant to pay a penalty under section 10 of this Act or section 168(4) of the Pension Schemes Act 1993, or
- (c) to disqualify the applicant from being a trustee of any trust scheme under section 29(3) or (4).

1993 c. 48.

(3) The Authority may on the application of a person appearing to them to be interested—

- (a) at any time review any other such determination of the Occupational Pensions Regulatory Authority as is mentioned in subsection (1) (including a determination given by them on a previous review), if they are satisfied that there has been a relevant change of circumstances since the determination was made, or that the determination was made in ignorance of a material fact or based on a mistake as to a material fact or was erroneous in point of law,
- (b) at any time within a period of six months from the date of the determination, or within such longer period as they may allow in any particular case, review such a determination on any ground.

(4) The Authority’s powers on a review under subsection (2) or (3) include power—

- (a) to vary or revoke any determination or order previously made,
- (b) to substitute a different determination or order, and
- (c) generally to deal with the matters arising on the review as if they had arisen on the original determination;

and also include power to make savings and transitional provisions.

(5) Subject to subsection (6), regulations may make provision with respect to the procedure to be adopted on any application for a review under subsection (2) or (3) or under any

<sup>1</sup> Word “and” in s. 94(3)(d), & s. 94(3)(e) repealed (6.4.02) by Sch. 13, Part I of the Welfare Reform & Pensions Act 1999 (c. 30).

<sup>2</sup> Words in s. 94(3)(f) inserted (25.4.00) by s. 18 of the Welfare Reform & Pensions Act 1999 (c. 30).

<sup>3</sup> S. 95 repealed (6.4.02) by Sch. 13, Part I of the Welfare Reform & Pensions Act 1999 (c. 30).

<sup>4</sup> Ss. 96-114 repealed (6.4.05) by Sch. 13 to the Pensions Act 2004 (c. 35).

corresponding provision in force in Northern Ireland and generally with respect to such applications and reviews.

(6) Nothing in subsection (5) shall be taken to prevent such a review being entered upon by the Authority without an application being made.

*Section 97 is reproduced below for transitional & savings provision purposes which substitutes words in subsections (1) to (4) and (7). See art. 5 & 6 of S.I. 2005/695 at page 5.4797.*

References and appeals from the Authority.

**97.**— (1) Any question of law arising in connection with—

- (a) any matter arising under this Part for determination, or
- (b) any matter arising on an application to the Determinations Panel of the Pensions Regulator for a review of a determination, or on a review by them entered upon without an application,

may, if the Determinations Panel of the Pensions Regulator think fit, be referred for decision to the court.

(2) If the Determinations Panel of the Pensions Regulator determine in accordance with subsection (1) to refer any question of law to the court, they must give notice in writing of their intention to do so—

- (a) in a case where the question arises on an application made to the Determinations Panel of the Pensions Regulator, to the applicant, and
- (b) in any case to such persons as appear to them to be concerned with the question.

(3) Any person who is aggrieved—

- (a) by a determination of the Determinations Panel of the Pensions Regulator given on a review under section 96, or
- (b) by the refusal of the Determinations Panel of the Pensions Regulator to review a determination,

where the determination involves a question of law and that question is not referred by the Determinations Panel of the Pensions Regulator to the court under subsection (1), may on that question appeal from the determination to the court.

(4) The Determinations Panel of the Pensions Regulator is entitled to appear and be heard on any reference or appeal under this section.

(5) The rules of court must include provision for regulating references and appeals to the court under this section and for limiting the time within which such appeals may be brought.

(6) The decision of the court on a reference or appeal under this section is final, and this subsection overrides any other enactment.

(7) On any such reference or appeal the court may order the Determinations Panel of the Pensions Regulator to pay the costs or, in Scotland, the expenses of any other person, whether or not the decision is in that other person's favour and whether or not the Determinations Panel of the Pensions Regulator appear on the reference or appeal.

(8) In this section "the court" means the High Court or the Court of Session.

*Gathering information: the Authority*

*Reproduced below are sections 98-102 as they were before being repealed by the Pensions Act 2004 (c. 35). This is for the purpose of the savings provision in art. 6 of S.I. 2005/695 at page 5.4797. The footnotes relating to sections 99 & 100 appear at the end of this text.*

Provision of information.

**98.**— (1) In the case of any occupational pension scheme—

- (a) a trustee, manager, professional adviser or employer, and
- (b) any other person appearing to the Authority to be a person who holds, or is likely to hold, information relevant to the

discharge of the Authority's functions,

must, if required to do so by them by notice in writing, produce any document relevant to the discharge of those functions.

(2) To comply with subsection (1) the document must be produced in such a manner, at such a place and within such a period as may be specified in the notice.

(3) In this section and sections 99 to 101, "document" includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in legible form, is to producing a copy of the information in legible form.

**99.**—(1) An inspector may, for the purposes of investigating whether, in the case of any occupational pension scheme, the regulatory provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection and, while there—

Inspection of premises.

- (a) may make such examination and inquiry as may be necessary for such purposes,
- (b) may require any person on the premises to produce, or secure the production of, any document relevant to compliance with those provisions for his inspection, and
- (c) may, as to any matter relevant to compliance with those provisions, examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter.

(2) In subsection (1), "the regulatory provisions" means provisions made by or under—

- (a) the provisions of this Part, other than the following provisions: sections 51 to 54, 62 to 65 and 110 to 112,
- (b) the following provisions of the Pension Schemes Act 1993: section 6 (registration), Chapter IV or Part IV (transfer values), [1Chapter II of Part IVA (pension credit benefit transfer values),] section 113 (information) or section 175 (levy), or
- [1(ba) section 33 (time for discharge of pension credit liability) or 45 (information) of the Welfare Reform & Pensions Act 1999,]
- (c) any corresponding provisions in force in Northern Ireland.

1993 c. 48.

(3) Premises are liable to inspection for the purposes of this section if the inspector has reasonable grounds to believe that—

- (a) members of the scheme are employed there,
- (b) documents relevant to the administration of the scheme are being kept there, or
- (c) the administration of the scheme, or work connected with the administration of the scheme, is being carried out there,

unless the premises are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business.

(4) An inspector applying for admission to any premises for the purposes of this section must, if so required, produce his certificate of appointment.

(5) In this Part "inspector" means a person appointed by the Authority as an inspector.

**100.**—(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Authority that there are reasonable grounds for believing—

Warrants.

- (a) that there are on any premises documents whose production has been required under section 98(1) or 99(1)(b), or any corresponding provisions in force in Northern Ireland, and which have not been produced in compliance with the requirement,
- (b) that there are on any premises documents whose production could be so required and that if their



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production were so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed, or

(c) that—

1993 c. 48.

- (i) an offence has been committed under this Act or the Pension Schemes Act 1993, or any enactment in force in Northern Ireland corresponding to either of them,
- (ii) a person will do any act which constitutes a misuse or misappropriation of the assets of an occupational pension scheme,
- (iii) a person is liable to pay a penalty under section 10 of this Act or section 168(4) of the Pension Schemes Act 1993, or any enactment in force in Northern Ireland corresponding to either of them, or
- (iv) a person is liable to be prohibited from being a trustee of a trust scheme under section 3,

and that there are on any premises documents which relate to whether the offence has been committed, whether the act will be done, or whether the person is so liable, and whose production could be required under section 98(1) or 99(1)(b) or any corresponding provisions in force in Northern Ireland.

(2) A warrant under this section shall authorise an inspector—

- (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose,
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1) or to take in relation to such documents any other steps which appear necessary for preserving them or preventing interference with them,
- (c) to take copies of any such documents, or
- (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.

(3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(4) Any documents of which possession is taken by virtue of a warrant under this section may be retained—

1993 c. 48.

- (a) for a period of six months, or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person for any offence under this Act or the Pension Schemes Act 1993, or any enactment in force in Northern Ireland corresponding to either of them, until the conclusion of those proceedings.

(5) In the application of this section in Scotland—

1995 c. 46.

- (a) the reference to a justice of the peace is to be read as a reference to a justice within the meaning of the [Criminal Procedure (Scotland) Act 1995], and
- (b) the references to information are to be read as references to evidence.

Information and inspection: penalties.

**101.**—(1) A person who, without reasonable excuse, neglects or refuses to produce a document when required to do so under section 98 is guilty of an offence.

(2) A person who without reasonable excuse—

- (a) intentionally delays or obstructs an inspector exercising any power under section 99,
- (b) neglects or refuses to produce, or secure the production of, any document when required to do so under that section, or
- (c) neglects or refuses to answer a question or to provide information when so required,

is guilty of an offence.

(3) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on



the standard scale.

(4) An offence under subsection (1) or (2)(b) or (c) 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 by reference to any period of time following the preceding conviction of the offence.

(5) Any person who knowingly or recklessly provides the Authority with information which is false or misleading in a material particular is guilty of an offence if the information—

- (a) is provided in purported compliance with a requirement under section 99, or
- (b) is provided otherwise than as mentioned in paragraph (a) above but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Authority for the purpose of discharging their functions under this Act.

(6) Any person who intentionally and without reasonable excuse alters, suppresses, conceals or destroys any document which he is or is liable to be required under section 98 or 99 to produce to the Authority is guilty of an offence.

(7) Any person guilty of an offence under subsection (5) or (6) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to imprisonment or a fine, or both.

**102.—(1)** Nothing in sections 98 to 101 requires a person to answer any question or give any information if to do so would incriminate that person or that person's spouse.

Savings for certain privileges etc.

(2) Nothing in those sections requires any person to produce any document to the Authority, or to any person acting on their behalf, if he would be entitled to refuse to produce the document 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.

(3) Where a person claims a lien on a document, its production under section 98 or 99 shall be without prejudice to the lien.

<sup>1</sup> Words in s. 99(2)(b) & para. (ba) inserted (1.12.00) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 12, para. 60.

<sup>2</sup> Words in s. 100(5) substituted (1.4.96, but subject to commencement of s. 100(5)) by Criminal Procedure (Consequential Provisions (Scotland) Act 1995 (c. 40), Sch. 4, para. 98.

*Section 103 is reproduced below for transitional & savings provision purposes & includes substituted words. See art. 5 & 6 of S.I. 2005/695 at page 5.4797.*

**103.—(1)** The Authority may, if they consider it appropriate to do so in any particular case, publish in such form and manner as they think fit a report of any investigation by the Occupational Pensions Regulatory Authority under this Part and of the result of that investigation.

Publishing reports.

(2) For the purposes of the law of defamation, the publication of any matter by the Authority shall be absolutely privileged.

#### *General*

**115.—(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.

Offences by bodies corporate and partnerships.

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(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.

Breach of regulations.

**116.**—(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 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.

Overriding requirements.

**117.**—(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, [...]<sup>1</sup>
- (c) [...]<sup>1</sup>

Powers to modify this Part.

**118.**—(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 [<sup>1</sup>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.

(3) [...]<sup>2</sup>

<sup>1</sup> Words in s. 117(2)(b) omitted & (c) omitted (6.4.06) by the Pensions Act 2004 (c. 35), Sch. 13.

<sup>2</sup> In s. 118, words in subsec. (2) substituted & (3) omitted (6.4.05) by Sch. 12, para. 67 of the Pensions Act 2004 (c. 35).

## Ss. 119-123

**119.** Regulations made by virtue of section [...<sup>1</sup>, [273B(4)(a)] or 75 may provide for the values of the assets and the amounts of the liabilities mentioned to be calculated and verified in accordance with guidance [prepared and from time to time revised by a prescribed body].

Calculations etc. under regulations: sub-delegation.

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

Calculations about regulations.

(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.—**(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.

Crown application.

(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).

1947 c. 44.

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

Consequential amendments.  
“Connected” and “associated” persons.  
1986 c. 45.

**123.—**(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.

1985 c. 66.

(3) The provisions referred to in subsections (1) and (2) are—

- (a) section 23(3)(b),
- (b) sections 27 and 28,
- (c) section 40,

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

<sup>1</sup> Word repealed in s. 119 (6.4.06) by the Pensions Act 2004, Sch. 13.

<sup>2</sup> Words in s. 119 substituted (6.4.05) by Sch. 12, para. 67 of the Pensions Act 2004 (c. 35).

<sup>3</sup> Words substituted in s. 119 (1.11.07) by the Pensions Act 2007 (c. 22), Sch. 5, para. 8.

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**S. 124**

Interpretation of  
Part I.

**124.—(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,  
[<sup>1</sup>“the Authority” means the Pensions Regulator],  
[<sup>2</sup>“civil partnership status”, in relation to a person, means whether that person has previously formed a civil partnership and, if so, whether that civil partnership has ended,]  
“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 [<sup>3</sup>, pensioner or pension credit] member (but see section 125(4)),  
[...<sup>4</sup>]  
[...<sup>5</sup>]  
“the 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),  
[<sup>3</sup>“pension credit” means a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999, or under corresponding Northern Ireland legislation,  
“pension credit member”, in relation to an occupational pension scheme, means a person who has rights under the scheme which are attributable (directly or indirectly) to a pension credit,  
“pension credit rights”, in relation to an occupational pension scheme, means rights to future benefits under the scheme which are attributable (directly or indirectly) to a pension credit,]  
“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 [...<sup>6</sup>],  
“prescribed” means prescribed by regulations,  
“professional adviser”, in relation to a scheme, has the meaning given by section 47,

1993 c. 48.

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- <sup>1</sup> Defn. of “the Authority” in s. 124(1) substituted (6.4.05) by s. 7(2)(b) of the Pensions Act 2004 (c. 35).  
<sup>2</sup> Defn. of “civil partnership status” inserted by para. 25 of the Sch. to S.I. 2005/2053 as from 5.12.05.  
<sup>3</sup> Words and definitions substituted in para. 1 of s. 124 by the Welfare Reform and Pensions Act 1999 (c. 30) Sch. 12, para. 69.  
<sup>4</sup> Defns. of “member-nominated director” & “member-nominated trustee” repealed (6.4.06) by the Pensions Act 2004, Sch. 13.  
<sup>5</sup> Defn. of “the minimum funding requirement” repealed (6.4.07) by Sch. 13 of the Pensions Act 2004 (c. 35).  
<sup>6</sup> Words omitted in defn. of “pensioner member” (6.4.06) by S.I. 2006/745, art. 10.

“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,

1988 c. 1.

“transfer credits” means rights allowed to a member under the rules of an occupational pension scheme by reference to [<sup>1</sup>–

(a) a transfer to that scheme of, or transfer payment to the trustees or managers of the scheme in respect of, any of his rights (including transfer credits allowed) under another occupational pension scheme or a personal pension scheme, other than pension credit rights, or

(b) a cash transfer sum paid under [<sup>2</sup>Chapter 2 of Part 4ZA of the Pension Schemes Act 1993 (transfers and contribution refunds)] in respect of him, to the trustees or managers of the 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.

[<sup>3</sup>(2A) In subsection (2)(a), the reference to rights which have accrued to or in respect of the members does not include any rights which are pension credit rights.]

(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 [<sup>4</sup>but, in its application for the purposes of section 51, paragraph (b) does not affect the operation of any rules of the scheme by virtue of which a period of service is to be rounded up or down by a period of less than a month.].

[<sup>5</sup>(3A) In a case of the winding-up of an occupational pension scheme in pursuance of an order of the Authority under section 11 or of an order of a court, the winding-up

<sup>1</sup> In defn. of “transfer credits” words substituted (6.4.06) by the Pensions Act 2004 (c. 35), Sch. 12, para. 69(2).

<sup>2</sup> Words in s. 124, defn. of “transfer credits” substituted (6.4.15) by the Pension Schemes Act 2015 (c. 8) Sch. 4, para. 32.

<sup>3</sup> Para. (2A) inserted (1.12.00) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 12, para. 61.

<sup>4</sup> Words inserted (25.4.00) by s. 18 of the Welfare Reform and Pensions Act 1999 (c. 30).

<sup>5</sup> S. 124 (3A)-(3E) inserted (1.3.02 for rules & regulations making purposes, 1.4.02 for all other purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 49(2).

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shall (subject to subsection (3E) [<sup>1</sup>and to sections 28, 154 and 219 of the Pensions Act 2004]) be taken for the purposes of this Part to begin—

- (a) if the order provides for a time to be the time when the winding-up begins, at that time; and
- (b) in any other case, at the time when the order comes into force.

(3B) In a case of the winding-up of an occupational pension scheme in accordance with a requirement or power contained in the rules of the scheme, the winding-up shall (subject to subsections (3C) to (3E) [<sup>1</sup>and to sections 154 and 219 of the Pensions Act 2004]) be taken for the purposes of this Part to begin—

- (a) at the time (if any) which under those rules is the time when the winding-up begins; and
- (b) if paragraph (a) does not apply, at the earliest time which is a time fixed by the trustees or managers as the time from which steps for the purposes of the winding-up are to be taken.

(3C) Subsection (3B) shall not require a winding-up of a scheme to be treated as having begun at any time before the end of any period during which effect is being given—

- (a) to a determination under section 38 that the scheme is not for the time being to be wound up; or
- (b) to a determination in accordance with the rules of the scheme to postpone the commencement of a winding-up.

(3D) In subsection (3B)(b) the reference to the trustees or managers of the scheme shall have effect in relation to any scheme the rules of which provide for a determination that the scheme is to be wound up to be made by persons other than the trustees or managers as including a reference to those other persons.

(3E) Subsections (3A) to (3D) above do not apply for such purposes as may be prescribed.]

(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 Pensions Schemes Act 1993 have the same meaning in this Act as in that.

1993 c. 48.

Section 124:  
supplementary.

**125.—(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.

(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”,

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<sup>1</sup> In subsections (3A) & (3B) of s. 124, words inserted (6.4.06) by the Pensions Act 2004 (c. 35), Sch. 12, para. 69.



- (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.

**PART II**  
**STATE PENSIONS**

**126.** Schedule 4 to this Act, of which—

- (a) Part I has effect to equalise pensionable age for men and women [<sup>1</sup>and then to increase it].
- (b) Part II makes provision for bringing equality for men and women to certain pension and other benefits, and
- (c) Part III makes consequential amendments of enactments,

Equalisation of pensionable age and of entitlement to certain benefits [<sup>2</sup>and increase in pensionable age].

shall have effect.

**127.** [...<sup>3</sup>]

**128.**—(1) and (2) ..... amends 1992 c. 4, see Annex 1, page 5.2301

Additional pension: calculation of surpluses. 1992 c. 5.

(3) Section 148 of the Social Security Administration Act 1992 (revaluation of earnings factors) shall have effect in relation to surpluses in a person’s earnings factors under section 44(5A) of the Social Security Contributions and Benefits Act 1992 [<sup>4</sup>for the purposes of section 45(1) and (2)(a) and (b) of that Act] as it has effect in relation to earnings factors.

1992 c. 4.

(4) Subject to subsections (5) [<sup>5</sup>, (5A)] and (6) below, this section has effect in relation to a person (“the pensioner”) who attains pensionable age after 5th April 2000.

(5) Where a pensioner is a woman, this section has effect in the case of additional pension falling to be calculated under sections 44 and 45 of the Social Security Contributions and Benefits Act 1992 by virtue of section 39 of that Act (widowed mother’s allowance and widow’s pension), including Category B retirement pension payable under section 48B(4), if her husband—

1992 c. 4.

- (a) dies after 5th April 2000, and
- (b) has not attained pensionable age on or before that date.

[<sup>6</sup>(5A) This section has effect in the case of additional pension falling to be calculated under sections 44 and 45 of the Social Security Contributions and Benefits Act 1992 by virtue of section 39C(1) of that Act (widowed parent’s allowance), including Category B retirement pension payable under section 48BB(2), if the pensioner’s spouse—

- (a) dies after 5th April 2000, and
- (b) has not attained pensionable age on or before that date.]

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<sup>1</sup> Words substituted in s. 126(a) (3.1.12) by the Pensions Act 2011 (c. 19), Sch. 1, para. 6.  
<sup>2</sup> Words inserted in sidenote to s. 126 (27.9.07) by the Pensions Act 2007 (c. 22), Sch. 3, para. 1.  
<sup>3</sup> S. 127 repealed (6.4.03) by the Tax Credits Act 2002 (c. 21), Sch. 6.  
<sup>4</sup> Words in s. 128(3) inserted (8.1.01 for regulation and order making purposes, 25.1.01 for all remaining purposes) by the Child Support, Pensions and Social Security Act 2000 (c. 19), s. 33(4).  
<sup>5</sup> Words added to s. 128(4) (24.4.00 for reg. making purposes, 9.4.01 for all other purposes), by s. 70 of the Welfare Reform and Pensions Act 1999 (c. 30).  
<sup>6</sup> S. 128(5A) added (24.4.00 for reg. making purposes, 9.4.01 for all other purposes), by s. 70 of the Welfare Reform and Pensions Act 1999 (c. 30).



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(6) This section has effect where additional pension falls to be calculated under sections 44 and 45 of the Social Security Contributions and Benefits Act 1992 as applied by section 48A [<sup>1</sup>, 48B(2) or 48BB(5)] of that Act (other Category B retirement pension) if—

- (a) the pensioner attains pensionable age after 5th April 2000, and
- (b) the pensioner's spouse has not attained pensionable age on or before that date.

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<sup>1</sup> Words added to s. 128(6) (24.4.00 for reg. making purposes, 9.4.01 for all other purposes), by s. 70 of the Welfare Reform and Pensions Act 1999 (c. 30).

**129–134.** ..... *makes textual amendments, see Annex 1, page 5.2301*

**PART III**

**CERTIFICATION OF PENSION SCHEMES AND EFFECTS ON MEMBER’S STATE  
SCHEME RIGHTS AND DUTIES**

*Introductory*

**135.** An order under section 180 of this Act appointing a day for the coming into force on any day provisions of this Part, being 6th April in any year, may designate that day as the principal appointed day\* for the purposes of this Part.

The “principal appointed day” for Part III.

*\*6.4.97 has been designated as the principal appointed day for the purposes of Part III of this Act by art. 2(7) of S.I. 1996/778 (c. 13).*

*New certification requirements applying as from the principal appointed day*

**136, 140.–141.** ..... *amends 1993 (c. 48), see Annex 1, page 5.2301*

**137.** (1), (5), (6), (7) [...<sup>1</sup>]

**138.** (1)–(4) [...<sup>1</sup>]

**139.** [...<sup>1</sup>]

*Protected rights*

[<sup>2</sup>**142.** ..... *amends 1993 (c. 48), see Annex 1, page 5.2301*

Interim arrangements for giving effect to protected rights.  
1993 c. 48.

**143.** ..... *amends 1993 (c. 48), see Annex 1, page 5.2301*

Requirements for interim arrangements.

**144.** ..... *amends 1993 (c. 48), see Annex 1 page 5.2301*

Interim arrangements: supplementary.

**145.** *Regulations made by the Secretary of State may provide that sections 142 to 144 shall have effect, subject to prescribed modifications, in relation to protected rights under an occupational pension scheme as they have effect in relation to protected rights under a personal pension scheme.*

*Extension of interim arrangements to occupational pension schemes.*

**146.** ..... *amends 1993 (c. 48), see Annex 1, page 5.2301]*

Discharge of protected rights on winding up: insurance policies.

*Miscellaneous*

**147.** ..... *amends 1993 (c. 48), see Annex 1, page 5.2301*

**148.** ..... *amends 1992 (c. 4), see Annex 1, page 5.2301*

**149.** [...<sup>3</sup>]

<sup>1</sup> S. 137(1), (5), (6), (7) & 138(1)-(4) and 139 repealed (6.4.12) by the Pensions Act 2007 (c. 22), Sch. 7, pt. 7.

<sup>2</sup> Ss. 142-146 to be repealed (prosp.) by the Pensions Act 2007 (c. 22), Sch. 7, para. 6.

<sup>3</sup> S. 149 omitted (6.4.12) by S.I. 2011/1730, art. 6(3).

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**Ss. 150-174**

Dissolution of Occupational Pensions Board.

**150.**—(1) The Occupational Pension Board (referred to in this section as “the Board”) is hereby dissolved.

(2) An order under section 180 appointing the day on which subsection (1) is to come into force may provide—

- (a) for all property, rights and liabilities to which the Board is entitled or subject immediately before that day to become property, rights and liabilities of the Authority or the Secretary of State, and
- (b) for any function of the Board falling to be exercised on or after that day, or which fell to be exercised before that day but has not been exercised, to be exercised by the Authority, the Secretary of State or the Department of Health and Social Services for Northern Ireland.

*Minor and consequential amendments*

Minor and consequential amendments related to sections 136 to 150.

**151.** Schedule 5 (which makes amendments related to sections 136 to 150) shall have effect.

**PART IV**

**MISCELLANEOUS AND GENERAL**

*Transfer values*

**152–160.** ..... amends 1993 (c. 48), see Annex 1, page 5.2301

*Modification and winding up of schemes*

Repeal of sections 136 to 143 of the Pension Schemes Act 1993.

**161.** Sections 136 to 141 (modification) and 142 and 143 (winding up) of the Pension Schemes Act 1993 are repealed.

*Personal pensions*

**162.** [...]<sup>1</sup>

**163.** [...]<sup>1</sup>

**164–165.** ..... amends 1993 (c. 48), see Annex 1, page 5.2301

**166–172.** ..... outside scope of this work, see Annex 1, page 5.2301

*General minor and consequential amendments*

General minor and consequential amendments.

**173.** Schedule 6, which makes general minor and consequential amendments, shall have effect.

*Subordinate legislation etc.*

Orders and regulations (general) provisions.

**174.**—(1) Any power under this Act to make regulations or orders (except a power of the court or the Authority to make orders) shall be exercisable by statutory instrument.

(2) Except in so far as this Act provides otherwise, any power conferred by it to make regulations or an order may be exercised—

- (a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case,

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<sup>1</sup> Ss. 162 & 163 omitted (6.4.12) by S.I. 2011/1730, art. 6(3).

- (b) so as to make, as respects the cases in relation to which it is exercised—
- (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),
  - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case or different provision as respects the same case or class of case for different purposes of this Act, or
  - (iii) any such provision either unconditionally or subject to any specified condition,

and where such a power is expressed to be exercisable for alternative purposes it may be exercised in relation to the same case for any or all of those purposes; and any power to make regulations or an order for the purposes of any one provision of this Act shall be without prejudice to any power to make regulations or an order for the purposes of any other provision.

(3) Any power conferred by this Act to make regulations or an order includes power to make such incidental, supplementary, consequential or transitional provision as appears to the authority making the regulations or order to be expedient for the purposes of the regulations or order.

(4) Regulations made by the Secretary of State may, for the purposes of or in connection with the coming into force of any provisions of this Act, make any such provision as could be made, by virtue of subsection (4)(a) of section 180, by an order bringing those provisions into force.

**175.**—(1) Subject to subsections (2) and (3), a statutory instrument which contains any regulations or order made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Parliamentary control of orders and regulations.

- (2) A statutory instrument which contains any regulations made by virtue of—
- (a) section 64(4),
  - (b) section 78(6),
  - (c) section 116(1) [...]<sup>1</sup>

or order under section 10(2) must not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

- (3) Subsection (1) does not apply to an order under section 180.

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<sup>1</sup> S. 175(2)(d) omitted (6.4.12) by S.I. 2011/1730, art. 6(4).

**PENSIONSACT 1995 (c. 26)**

*General*

## Interpretation

- 176.** In this Act—  
“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978),  
“occupational pension scheme” and “personal pension scheme” have the meaning given by section 1 of the Pension Schemes Act 1993,  
and the definition of “enactment” shall apply for the purposes of section 114 as if “Act” in section 21(1) of the Interpretation Act 1978 included any enactment.
- 177.** The enactments shown in Schedule 7 are repealed to the extent specified in the third column.
- 178.**—(1) Subject to the following provisions, this Act does not extend to Northern Ireland.
- (2) Sections [...<sup>1</sup>], 68(5), [...<sup>1</sup>], 150, 168, 170(4) to (7), 172 and 179 extend to Northern Ireland.
- (3) The amendment by this Act of an enactment which extends to Northern Ireland extends also to Northern Ireland.
- 179.** An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of this Act—
- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament), but
- (b) shall be subject to annulment in pursuance of a resolution of either House.
- 180.**—(1) Subject to the following provisions, this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be appointed for different purposes.
- (2) The following provisions shall come into force on the day this Act is passed—
- (a) subject to the provisions of Schedule 4, part II,
- (b) section 168,
- (c) sections 170 and 171,
- (d) section 179),
- and any repeal in Schedule 7 for which there is a note shall come into force in accordance with that note.
- (3) Section 166 shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint and different days may be appointed for different purposes.
- (4) Without prejudice to section 174(3), the power to make an order under this section includes power—
- (a) to make transitional adaptations or modifications—
- (i) of the provisions brought into force by the order, or
- (ii) in connection with those provisions, of any provisions of this Act, or the Pension Schemes Act 1993, then in force, or
- (b) to save the effect of any of the repealed provisions of that Act, or those provisions as adapted or modified by the order,
- as it appears to the Secretary of State expedient, including different adaptations or modifications for different periods.
- 181.** This Act may be cited as the Pensions Act 1975.

Short title.

<sup>1</sup> Words repealed in s. 178(2) (6.4.06) by the Pensions Act 2004, Sch. 13.





## SCHEDULES

Sch. 1 [...<sup>1</sup>]*Accounts*

*Para. 16 of Sch. 1 is reproduced below for transitional & savings provision purposes & includes substituted words in sub-para. (1) & inserts sub-para. (1A). See art. 5 & 6 of S.I. 2005/695 at page 5.4797.*

16.—(1) Subject to paragraph (1A), it shall be the duty of the Authority—

- (a) to keep proper accounts and proper records in relation to the accounts,
- (b) to prepare in respect of each financial year of the Authority a statement of accounts, and
- (c) to send copies of the statement to the Secretary of State and to the Comptroller and Auditor General before the end of the month of August next following the financial year to which the statement relates.

(1A) The statement of accounts which the Authority is required to prepare in respect of the financial year commencing 1st April 2004 shall also include its accounts for the period commencing on 1st April 2005 and ending on 5th April 2005.

(2) The statement of accounts shall comply with any directions given by the Secretary of State with the approval of the Treasury as to—

- (a) the information to be contained in it,
- (b) the manner in which the information contained in it is to be presented, or
- (c) the methods and principles according to which the statement is to be prepared,

and shall contain such additional information as the Secretary of State may with the approval of the Treasury require to be provided for the information of Parliament.

(3) The Comptroller and Auditor General shall examine, certify and report on each statement received by him in pursuance of this paragraph and shall lay copies of each statement and of his report before each House of Parliament.

(4) In this paragraph, “financial year” means the period beginning with the date on which the Authority is established and ending with the next following 31st March, and each successive period of twelve months.

Sch. 2 [...<sup>2</sup>]

<sup>1</sup> Sch. 1 repealed (6.4.05) by Sch. 13 of the Pensions Act 2004 (c. 35).

<sup>2</sup> Sch. 2 repealed (6.4.06) by the Pensions Act 2004, Sch. 13.

**SCHEDULE 3**

AMENDMENTS CONSEQUENTIAL ON PART I

**1–20.** ..... *outside scope of this work, see Annex 1, page 5.2301*

*The Tribunals and Inquiries Act 1992 (c. 53)*

**21.** ..... *amends 1992 c. 53, see Annex 1, page 5.2301*

*The Pension Schemes Act 1993 (c. 48)*

**22–47.** ..... *amends 1993 (c. 48), see Annex 1, page 5.2301*

## SCHEDULE 4

Section 126.

[<sup>1</sup>EQUALISATION OF AND INCREASE IN PENSIONABLE AGE FORMEN AND WOMEN]

## PART I

## PENSIONABLE AGES FOR MEN AND WOMEN

*Rules for determining pensionable age*

1. The following rules apply for the purposes of the enactments relating to social security, that is, the following Acts and the instruments made, or having effect as if made, under them: the Social Security Contributions and Benefits Act 1992, the Social Security Administration Act 1992 [<sup>2</sup>, the Pension Scheme Act 1993 (c. 48) [<sup>3</sup>, the State Pension Credit Act 2002 and Part I of the Welfare Reform Act 2007]]

1992 c. 4.  
1992 c. 5.  
1993 c. 48.

*Rules*

(1) A man [<sup>1</sup>born before [<sup>4</sup>6th December 1953]] attains pensionable age when he attains the age of 65 years.

(2) A woman born before 6th April 1950 attains pensionable age when she attains the age of 60.

(3) A woman born on any day in a period mentioned in column 1 of [<sup>1</sup>table 1] attains pensionable age at the commencement of the day shown against that period in column 2.

(4) [...<sup>4</sup>]

[<sup>1</sup>TABLE 1]

(1) <i>Period within which woman's birthday falls</i>	(2) <i>Day pensionable age attained</i>
6th April 1950 to 5th May 1950	6th May 2010
6th May 1950 to 5th June 1950	6th July 2010
6th June 1950 to 5th July 1950	6th September 2010
6th July 1950 to 5th August 1950	6th November 2010
6th August 1950 to 5th September 1950	6th January 2011
6th September 1950 to 5th October 1950	6th March 2011
6th October 1950 to 5th November 1950	6th May 2011
6th November 1950 to 5th December 1950	6th July 2011
6th December 1950 to 5th January 1951	6th September 2011
6th January 1951 to 5th February 1951	6th November 2011
6th February 1951 to 5th March 1951	6th January 2012
6th March 1951 to 5th April 1951	6th March 2012
6th April 1951 to 5th May 1951	6th May 2012
6th May 1951 to 5th June 1951	6th July 2012
6th June 1951 to 5th July 1951	6th September 2012
6th July 1951 to 5th August 1951	6th November 2012
6th August 1951 to 5th September 1951	6th January 2013

<sup>1</sup> In Sch. 4 heading substituted in para. 1 words inserted in (1), substituted in (3) and (4) substituted, heading to table substituted (27.9.07) by the Pensions Act 2007 (c. 22), Sch. 3, paras. 3 & 4.

<sup>2</sup> Words substituted in Sch. 4, para. 1 (2.7.02) for the purposes of regulations or orders by the State Pension Credit Act 2002 (c. 16), Sch. 2, para. 39.

<sup>3</sup> Words substituted in Sch. 4, para. 1 (27.10.08) by the Welfare Reform Act 2007 (c. 5), Sch. 3, para. 13.

<sup>4</sup> Words substituted in Sch. 4, para. 1(1) & para. 1(4) omitted (3.1.12) by the Pensions Act 2011 (c. 19), s. 1(1) & (2).

(1) <i>Period within which woman's birthday falls</i>	(2) <i>Day pensionable age attained</i>
6th September 1951 to 5th October 1951	6th March 2013
6th October 1951 to 5th November 1951	6th May 2013
6th November 1951 to 5th December 1951	6th July 2013
6th December 1951 to 5th January 1952	6th September 2013
6th January 1952 to 5th February 1952	6th November 2013
6th February 1952 to 5th March 1952	6th January 2014
6th March 1952 to 5th April 1952	6th March 2014
6th April 1952 to 5th May 1952	6th May 2014
6th May 1952 to 5th June 1952	6th July 2014
6th June 1952 to 5th July 1952	6th September 2014
6th July 1952 to 5th August 1952	6th November 2014
6th August 1952 to 5th September 1952	6th January 2015
6th September 1952 to 5th October 1952	6th March 2015
6th October 1952 to 5th November 1952	6th May 2015
6th November 1952 to 5th December 1952	6th July 2015
6th December 1952 to 5th January 1953	6th September 2015
6th January 1953 to 5th February 1953	6th November 2015
6th February 1953 to 5th March 1953	6th January 2016
6th March 1953 to 5th April 1953	6th March 2016
[ <sup>1</sup> 6th April 1953 to 5th May 1953	6th July 2016
6th May 1953 to 5th June 1953	6th November 2016
6th June 1953 to 5th July 1953	6th March 2017
6th July 1953 to 5th August 1953	6th July 2017
6th August 1953 to 5th September 1953	6th November 2017
6th September 1953 to 5th October 1953	6th March 2018
6th October 1953 to 5th November 1953	6th July 2018
6th November 1953 to 5th December 1953	6th November 2018]

[<sup>2</sup>(5) A person born on any day in a period mentioned in column 1 of table 2 attains pensionable age at the commencement of the day shown against that period in column 2.

<sup>2</sup>TABLE 2

(1) <i>Period within which birthday falls</i>	(2) <i>Day pensionable age attained</i>
[ <sup>3</sup> 6th December 1953 to 5th January 1954	6th March 2019
6th January 1954 to 5th February 1954	6th May 2019
6th February 1954 to 5th March 1954	6th July 2019
6th March 1954 to 5th April 1954	6th September 2019
6th April 1954 to 5th May 1954	6th November 2019
6th May 1954 to 5th June 1954	6th January 2020
6th June 1954 to 5th July 1954	6th March 2020
6th July 1954 to 5th August 1954	6th May 2020
6th August 1954 to 5th September 1954	6th July 2020
6th September 1954 to 5th October 1954	6th September 2020]

(6) A person born after [<sup>3</sup>5th October 1954] but before [<sup>4</sup>6th April 1960] attains pensionable age when the person attains the age of 66.

<sup>1</sup> Entries in table 1 substituted (3.1.12) by the Pensions Act 2011 (c. 19), s. 1(4).

<sup>2</sup> Paras. 1(5)-(10) inserted (27.9.07) by the Pensions Act 2007 (c. 22), Sch. 3, para. 4.

<sup>3</sup> Table 2 in Sch. 4 & words in para. (6) substituted (3.1.12) by the Pensions Act 2011 (c. 19), s. 1(5) & (6).

<sup>4</sup> Words substituted in para. 1(6) (14.7.14) by the Pensions Act 2014, s. 26(2).

[<sup>1</sup>(7) A person born on any day in a period mentioned in column 1 of table 3 attains pensionable age when the person attains the age shown against that period in column 2.

TABLE 3

(1) <i>Period within which birthday falls</i>	(2) <i>Age pensionable age attained</i>
6th April 1960 to 5th May 1960	66 years and 1 month
6th May 1960 to 5th June 1960	66 years and 2 months
6th June 1960 to 5th July 1960	66 years and 3 months
6th July 1960 to 5th August 1960	66 years and 4 months
6th August 1960 to 5th September 1960	66 years and 5 months
6th September 1960 to 5th October 1960	66 years and 6 months
6th October 1960 to 5th November 1960	66 years and 7 months
6th November 1960 to 5th December 1960	66 years and 8 months
6th December 1960 to 5th January 1961	66 years and 9 months
6th January 1961 to 5th February 1961	66 years and 10 months
6th February 1961 to 5th March 1961	66 years and 11 months

(7A) For the purposes of table 3—

- (a) a person born on 31st July 1960 is to be taken to attain the age of 66 years and 4 months at the commencement of 30th November 2026;
- (b) a person born on 31st December 1960 is to be taken to attain the age of 66 years and 9 months at the commencement of 30th September 2027;
- (c) a person born on 31st January 1961 is to be taken to attain the age of 66 years and 10 months at the commencement of 30th November 2027.]

(8) A person born after [<sup>1</sup>5 March 1961] but before 6th April 1977 attains pensionable age when the person attains the age of 67.

(9) A person born on any day in a period mentioned in column 1 of table 4 attains pensionable age at the commencement of the day shown against that period in column 2.

TABLE 4

(1) <i>Period within which birthday falls</i>	(2) <i>Day pensionable age attained</i>
6th April 1977 to 5th May 1977	6th May 2044
6th May 1977 to 5th June 1977	6th July 2044
6th June 1977 to 5th July 1977	6th September 2044
6th July 1977 to 5th August 1977	6th November 2044
6th August 1977 to 5th September 1977	6th January 2045
6th September 1977 to 5th October 1977	6th March 2045
6th October 1977 to 5th November 1977	6th May 2045
6th November 1977 to 5th December 1977	6th July 2045
6th December 1977 to 5th January 1978	6th September 2045
6th January 1978 to 5th February 1978	6th November 2045
6th February 1978 to 5th March 1978	6th January 2046
6th March 1978 to 5th April 1978	6th March 2046

(10) A person born after 5th April 1978 attains pensionable age when the person attains the age of 68.]

<sup>1</sup> Para. 1(7), table 3 & words in para. 1(8) substituted (14.7.14) by the Pensions Act 2014, s. 26(3).

PART II

ENTITLEMENT TO CERTAIN PENSION AND OTHER BENEFITS

*Pension increases for dependent spouses*

2. [...]<sup>1</sup>

*Category B retirement pensions*

3.—(1) ..... amends 1992 (c. 4), see Annex 1, page 5.2301

(2) Section 48A of that Act (as inserted by this paragraph) does not confer a right to a Category B retirement pension on a man by reason of his marriage to a woman who was born before 6th April 1950.

(3) Section 48B of that Act (as inserted by this paragraph) does not confer a right to a Category B retirement pension on a man who attains pensionable age before 6th April 2010; and section 51 of that Act does not confer a right to a Category B retirement pension on a man who attains pensionable age on or after that date.

*Home responsibilities protection*

4.—(1) In paragraph 5 of Schedule 3 to the Social Security Contributions and Benefits Act 1992 (contribution conditions for entitlement to retirement pension), in sub-paragraph (7)(a) (condition that contributor must have paid or been credited with contributions of the relevant class for not less than the requisite number or years modified in the case of those precluded from regular employment by responsibilities at home), “(or at least 20 of them, if that is less than half)” is omitted.

(2) This paragraph shall have effect in relation to any person attaining pensionable age on or after 6th April 2010.

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<sup>1</sup> Sch. 4, Part II, para. 2 repealed (6.4.10) by the Pensions Act 2007 (c. 22), s. 27(4)(b) & Sch. 7, Part 2.

*Additional pension*

5. . . . . amends 1992 (c. 4), see Annex 1, page 5.2301

*Increments*

6.—(1) In section 54(1) of the Social Security Contributions and Benefits Act 1992 (election to defer right to pension), in paragraph (a), the words from “but” to “70” are omitted.

(2) In Schedule 5 to that Act—

- (a) in paragraph 2(2), the definition of “period of enhancement” (and the preceding “and”) are omitted, and
- (b) for “period of enhancement” (in every other place in paragraphs 2 and 3 where it appears) there is substituted “period of deferment”.

(3) In paragraph 2(3) of that Schedule, for “1/7th per cent. “there is substituted “1/5th per cent.”

(4) In paragraph 8 of that Schedule, sub-paragraphs (1) and (2) are omitted.

[<sup>1</sup>(5) The preceding sub-paragraphs shall come into force as follows—

- (a) sub-paragraphs (1) and (4) shall come into force on 6th April 2005;
- (b) sub-paragraphs (2) and (3) shall have effect in relation to incremental periods (within the meaning of Schedule 5 to the Social Security Contributions and Benefits Act 1992 (c. 4)) beginning on or after that date.]

*Graduated retirement benefit*

7. . . . . amends 1992 (c. 4), see Annex 1, page 5.2301

*Christmas bonus for pensioners*

8. . . . . amends 1992 (c. 4), see Annex 1, page 5.2301

PART III

CONSEQUENTIAL AMENDMENTS

*Pensionable age*

9–12. . . . . outside scope of this work, see Annex 1, page 5.2301

13 and 14. . . . . makes textual amendments, see Annex 1, page 5.2301

15. . . . . outside scope of this work, see Annex 1, 5.2301

16 and 17. . . . . amends 1993 (c. 48), Annex 1, page 5.2301

*Pension increases for dependent spouses*

18.–20. [...<sup>2</sup>]

<sup>1</sup> Para. 6(5) substituted (18.11.04) by s. 297(3) of the Pensions Act 2004 (c. 35).

<sup>2</sup> Sch. 4, paras. 18-20 repealed (6.4.10) by the Pensions Act 2007 (c. 22), s. 27(4)(b) & Sch. 7, part 2.



*Category B retirement pensions*

**21.—(1)–(9)** ..... amends 1992 (c. 4), see Annex 1, page 5.2301

(10) [...<sup>1</sup>]

(11)–(13) ..... amends 1992 (c. 4), see Annex 1, page 5.2301

(14) Paragraph 4(1) of that Schedule\* (as inserted by sub-paragraph (13) above) shall have effect where W is a man who attains pensionable age before 6th April 2010 as if paragraph (a) also required him to have been over pensionable age when S died.

\*Viz. Sch. 5 to the S.S. Conts. and Bens. Act 1992 (c. 4).

(15) ..... amends 1992 (c. 4), see Annex 1, page 5.2301

(16) Paragraph 5(1) of that Schedule\* (inserted by sub-paragraph (15) above) shall have effect, where W is a man who attained pensionable age before 6th April 2010, as if paragraph (a) also required him to have been over pensionable age when S died.

\*Viz. Sch. 5 to the S.S. Conts. and Bens. Act 1992 (c. 4).

(17) and (18). ..... amends 1992 (c. 4), see Annex 1, page 5.2301

**22.** ..... amends 1993 (c. 48), see Annex 1, page 5.2301

## SCHEDULE 5

### AMENDMENTS RELATING TO PART III

**1–5.** ..... outside scope of this work, see Annex 1, page 5.2301

*The Social Security Pensions Act 1975 (c. 60)*

**6.** ..... amends 1975 (c. 60) see Annex 1, page 5.2301

**7–12.** ..... outside scope of this work, see Annex 1, page 5.2301

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<sup>1</sup> Sch. 4, para. 21(10) repealed (6.4.10) by the Pensions Act 2007 (c. 22), s. 27(4)(b) & Sch. 7, part 2.

*The Social Security Act 1989 (c. 24)*

13. .... amends 1989 (c. 24), see Annex 1, page 5.2301

*The Social Security Contributions and Benefits Act 1992 (c. 4)*

14. .... amends 1992 (c. 4), See Annex 1, page 5.2301

*The Social Security Administration Act 1992 (c. 5)*

15. .... amends 1992 (c. 5), see Annex 1, page 5.2301

Para. 15(2) repealed (2.4.01) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 85.

*The Tribunals and Inquiries Act 1992 (c. 53)*

16. .... amends 1992 (c. 53), see Annex, page 5.2301

17. .... outside scope of this work, see Annex 1, page 5.2301

*The Pension Schemes Act 1993 (c. 48)*

18–86. .... amends 1993 (c. 48), see Annex, page 5.2301

36., 42., 43. [...<sup>1</sup>]

## SCHEDULE 7

### REPEALS

..... effects repeals, see Annex 1, page 5.2301

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<sup>1</sup> Paras. 36, 42 & 43 of Sch. 5 repealed (6.4.12) by the Pensions Act 2007 (c. 12), Sch. 7, part 7.

**PENSIONSACT 1995 (c. 26)**

## PENSIONS ACT 1995 LIST OF OMISSIONS

*The following provisions have been omitted from the text for the reasons stated:-*

Ss. 42-46	... ..	repealed (22.8.96) by Employment Rights Act 1996 (c. 18), Ss.
Ss. 62-65	... ..	repealed (6.7.10) by Equality Act 2010 (. 15)
s. 66(1)	... ..	amends Equal Pay Act 1970(c. 14)
s. 66(2)-(3)	.. . .	amends legislation not reproduced in these volumes
s. 90	... ..	textually amends (2.10.95) s. 124 of Pension Schemes Act 1993 (c. 48)
s. 127(1)	... ..	inserts (19.7.95) s. 45A into the S.S. Conts. and Bens. Act 1992 (c. 4)
s. 127(2)	... ..	textually amends (19.7.95) s. 39(1), (2) and (3), and s. 51(2) and (3), of S.S. Conts. and Bens. Act 1992 (c. 4). [The purported amendment of s. 50(3)–(5) <i>ibid.</i> by this subsection is ineffective in view of the replacement of s. 50 under para. 3(1) of Sch. 4 to the Pensions Act 1995 (c. 26).]
s. 128(1)	... ..	substitutes (19.7.95) s. 44(5A) for former s. 44(5) of S.S. Conts. and Bens. Act 1992 (c. 4)
s. 128(2)	... ..	textually amends (19.7.95) s. 44(6) of S.S. Conts. and Bens. Act 1992 (c. 4)
s. 129	... ..	textually amends (19.7.95) para. 5(3)(a) of Sch. 3 to S.S. Conts. and Bens. Act 1992 (c. 4)
s. 130(1)	... ..	substitutes (19.7.95) s. 156 of the S.S. Admin. Act 1992 (c. 5)
s. 130(2)	... ..	textually amends (19.7.95) s. 151(1) of the S.S. Admin. Act 1992 (c. 5)
s. 131(1)	... ..	inserts (19.7.95) s. 62(1)(aa) into S.S. Conts. and Bens. Act 1992 (c. 4)
s. 131(2)	... ..	textually amends (19.7.95) s. 150(11) of the S.S. Admin. Act 1992 (c. 5)
s. 131(3)	... ..	textually amends (19.7.95) s. 155(7) of the S.S. Admin. Act 1992 (c. 5)
s. 132	... ..	inserts (19.7.95) sub-sec. (1)(1) into, and amends subsection (2) (definitions) of, S. 150 of the S.S. Conts. and Bens. Act 1992 (c. 4)
s. 133	... ..	inserts (19.7.95) s. 61A into the S.S. Conts. and Bens. Act 1992 (c. 4)
s. 134(1)	... ..	textually amends s. 23(1) of the S.S. Conts. and Bens. Act 1992 (c. 4)
s. 134(2)	... ..	repealed (19.7.95) s. 54(4) of the S.S. Conts. and Bens. Act 1992 (c. 4)
s. 134(3)	... ..	substitutes (19.7.95) s. 55 of the S.S. Conts. and Bens. Act 1992 (c. 4)
s. 134(4)	... ..	inserts (19.7.95) defn. of “working life” into s. 122(1) of the S.S. Conts. and Bens. Act 1992 (c. 4)
s. 134(5)	... ..	textually amends (19.7.95) para. 5(8) of Sch. 3 to the S.S. Conts. and Bens. Act 1992 (c. 4)
Ss. 136-141	... ..	amends the Pensions Schemes Act 1993 (c. 48)
s. 142	... ..	textually amends (13.3.96 for regulation-making purposes, 6.4.96 for all other purposes) s. 28 (ways of giving effect to protected rights) of Pension Schemes Act 1993 (c. 48)

**PENSIONS ACT 1995 (c. 26)**

**Annex 1**

- s. 143 ... .. inserts (13.3.96 for regulation-making purposes, 6.4.96 for all other purposes) ss. 28A (requirements for interim arrangements) and 18B (information about interim arrangements) into Pension Schemes Act 1993 (c. 48)
- s. 144 ... .. textually amends (13.3.96 for regulation-making purposes, 6.4.96 for all other purposes) s. 29 (the pension and annuity requirements) of Pension Schemes Act 1993 (c. 48)
- s. 146(1)... .. inserts (13.3.96 for regulation-making purposes, 6.4.96 for all other purposes) s. 32A into Pension Schemes Act 1993 (c. 48)
- s. 146(2)... .. inserts (13.3.96 for regulation-making purposes, 6.4.96 for all other purposes) s. 28(9) into Pension Schemes Act 1993 (c. 48)
- s. 147 ... .. amends the Pensions Schemes Act 1999 (c. 48)
- s. 148 ... .. amends the Social Security Contributions and Benefits Act 1992 (c. 4)
- Ss. 152–160 ... .. amends the Pensions Schemes Act 1993 (c. 48)
- Ss. 164–165 ... .. amends the Pensions Schemes Act 1993 (c. 48)
- Ss. 166–172 ... .. amends legislation not reproduced in these volumes
- Sch. 1,
- para. 9 ... .. inserts ref. to the Occupational Pensions Regulatory Authority into Part II of Sch. 1 to House of Commons Disqualification Act 1975 (c. 24) and the corresponding N. Ireland provision
- para. 10 ... .. inserts ref. to the Occupational Pensions Regulatory Authority into Sch. 2 (authorities subject. to investigation) to Parliamentary Commissioner Act 1967 (c. 13)
- para. 12(1) ... .. inserts ref. to the Occupational Pensions Regulatory Authority into Sch. 1 to the Superannuation Act 1972 (c. 11)
- Sch. 2,
- para. 8 ... .. inserts ref. to the Pensions Compensation Board into Part II of Sch. 1 to House of Commons Disqualification Act 1975 (c. 24) and the corresponding N. Ireland provision
- para. 9 ... .. inserts ref. to the Pensions Compensation Board into Sch. 2 (authorities subject. to investigation) to Parliamentary Commissioner Act 1967 (c. 13)
- para. 11(1) ... .. inserts ref. to the Pensions Compensation Board into Sch. 1 to the Superannuation Act 1972 (c. 11)
- Sch. 3.
- paras. 1–20 ... .. make amendments, consequential on Part I of the Pensions Act 1995, to the following enactments:–
- Insurance Companies Act 1982 (c. 50)
- Companies Act (c. 6)
- Bankruptcy (Scotland) Act 1985 (c. 66)
- Insolvency Act 1986 (c. 45)
- Building Societies Act 1986 (c. 53)
- Financial Services Act 1996 (c. 60)
- Banking Act 1987 (c. 22)
- Companies Act 1989 (c. 40)
- Friendly Societies Act 1992 (c. 40)

para. 21 ... ..	inserts s. 7(2)(g) and (h), s. 10(b)(ba), s. 14(1A) and para. 35(g) and (h) of Sch. 1, into Tribunals and Inquiries Act 1992 (c. 53)
para. 22- 44 ...	amends the Pensions Schemes Act 1993 (c. 48)
para. 45 ... ..	repealed (1.12.00) by the Welfare Reform Pensions Act 1999 (c. 30)
para. 46- 47 ...	amends the Pensions Schemes Act 1993 (c. 48)
Sch. 4,	
para. 3(1) ... ..	substitutes (19.7.95) ss. 48A–48C for ss. 49 and 50 of S.S. Conts. and Bens. Act 1992 (c. 4)
para. 5 ... ..	textually amends (19.7.95) s. 46(2) of S.S. Conts. and Bens. Act 1992 (c. 4)
para. 7 ... ..	amends (19.7.95) s. 62(1)(a) and (b) of S.S. Conts. and Bens. Act 1992 (c. 4)
para. 8 ... ..	textually amends (19.7.95) s. 149(4) of S.S. Conts. and Bens. Act 1992 (c. 4)
para. 9- 12 ...	make amendments (19.7.95), consequential on pensionable age changes, to the following enactments:– London Regional Transport Act 1984 (c. 32) Transport Act 1985 (c. 67) Housing (Scotland) Act 1987 (c. 26) Income and Corporation Taxes Act 1922 (c. 1)
para. 13 ... ..	substitutes (19.7.95) defn. of “pensionable age” in ss. 122(1) and 150(2) of S.S. Conts. and Bens. Act 1992 (c. 4)
para. 14 ... ..	substitutes (19.7.95) defn. of “pensionable age” in s. 191 of S.S. Admin Act 1992 (c. 5)
para. 15 ... ..	textually amends (19.7.95) s. 58 of Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), consequential on pensionable age changes
para. 16 ... ..	substitutes (19.7.95) s. 49 of the Pension Schemes Act 1993 (c. 48)
para. 17 ... ..	substitutes (19.7.95) defn. of “pensionable age” in s. 181(1) of the pension Schemes Act 1993 (c. 48)
para. 21(1) ...	substitutes (19.7.95) s. 20(1)(f)(ii) of S.S. Conts. and Bens. Act 1992 (c. 4)
para. 21(2)-(5)	textually amends (19.7.95) ss. 25(6), 30B(3), 41(5)(a) and 46(2) respectively of the S.S. Conts. and Bens. Act 1992 (c. 4)
para. 21(6) ...	inserts (19.7.95) s. 51A into S.S. Conts. and Bens. Act 1992. (c. 4)
para. 21(7) ...	substitutes (19.7.95) s. 52(1)(b) of S.S. Conts. and Bens. Act 1992 (c. 4)
para. 21(8) ...	substitutes (19.7.95) s. 54(3) of S.S. Conts. and Bens. Act 1992 (c. 4)
para. 21(9)-(12)	textually amends (19.7.95) respectively s. 60(2)–(3) of, s. 85(3) of, para. 5 of Pt. I of Sch. 4 to, and para. 2(5)(a) of Sch. 5 to, S.S. Conts. and Bens. Act 1992 (c. 4)
para. 21(13) ...	substitutes (19.7.95) para. 4(1) for para. 4(1) and (2) of Sch. 5 to S.S. Conts. and Bens. Act 1992 (c. 4)
para. 21(15) ...	substitutes (19.7.95) paras. 5, 5A and 6 for para. 5 and 6 of Sch. 5 to S.S. Conts. and Bens. Act 1992 (c. 4)

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### Annex 1

- para. 21(17) ... textually amends (19.7.95) para. 7(1) and (2) of Sch. 5 to S.S. Conts. and Bens. Act 1992 (c. 4)
- para. 21(18) ... substitutes (19.7.97) para. 8(3) and (4) of Sch. 5 to S.S. Conts. and Bens. Act 1992 (c. 4)
- Sch. 5,
- para. 1-5, 7-12, make amendments, consequential on Part III of the Pensions Act 1995, to the following enactments:-
- Public Records Act 1958 (c. 51)
  - Administration of Justice Act 1970 (c. 31)
  - Attachment of Earnings Act 1971 (c. 32)
  - House of Commons Disqualification Act 1975 (c. 24)
  - Northern Ireland Assembly Disqualification Act 1975 (c. 25)
  - European Parliament (Pay and Pensions) Act 1979 (c. 50)
  - Justices of the Peace Act 1979 (c. 55)
  - Judicial pensions Act 1981 (c. 20)
  - Insurance Companies Act 1982 (c. 50)
  - Companies Act 1985 (c. 6)
  - Income and Corporation Taxes Act 1988 (c. 1)
- para. 6 ... .. amends the Social Security Pensions Act 1975 (c. 60)
- para. 13 ... .. amends the Social Security Act 1989 (c. 24)
- para. 15(2) ... .. repealed (2.4.01) by the Child Support, Pensions and Social Security Act 2000 (c. 19), s. 85.
- para. 34(a) ... .. repealed (1.1.01) by the Child Support, Pensions & Social Security Act 2000 (c. 19), Sch. 9, pt III, section 5.
- para. 57(a)(ii) ... .. repealed (1.1.01) by the Child Support, Pensions & Social Security Act 2000 (c. 19), Sch. 9, pt III, section 6.
- Sch. 6,
- para. 1 ... .. inserts ref. to pensions Ombudsman in Sch. 1 to Public Records Act 1958 (c. 51)
- para. 9 ... .. inserts (6.4.96) s. 158A (other disclosures by the Secretary of State) into Pension Schemes Act 1993 (c. 48)
- Sch. 7,
- Part I ... .. effects repeals relating to occupational pensions
- Part II ... .. effects repeals (19.7.95, subject. to Sch. 4) relating to state pensions
- Part III ... .. effects repeals relating to certification of pension schemes etc.
- Part IV ... .. effects miscellaneous and general repeals



## PENSIONS ACT 1995 COMMENCEMENT DATES

## (a) List of Commencement Orders

<i>S.I. No.</i>	<i>Title of Order</i>	<i>Page no. if reproduced in these volumes</i>
1995/2548 (C. 51)	The Pensions Act 1995 (Commencement No. 1) Order 1995	5.4727
1995/3104 (C. 71)	The Pensions Act 1995 (Commencement No. 2) Order 1995	5.4729
1996/778 (C. 13)	The Pensions Act 1995 (Commencement No. 3) Order 1996	5.4731
1996/1412 (C. 26)	The Pensions Act 1995 (Commencement No. 1) Order 1996	5.4737
1996/1675 (C. 36)	The Pensions Act 1995 (Commencement No. 5) Order 1996	5.4741
1996/1843 (C. 37)	The Pensions Act 1995 (Commencement No. 6) Order 1996	5.4743
1996/1853 (C. 38)	The Pensions Act 1995 (Commencement No. 6) Order 1996	5.4745
1996/2150 (C. 38)	The Pensions Act 1995 (Commencement No. 6: SI 1996/1853) (Amendment) Order 1996	5.4747
1996/2637 (C. 73)	The Pensions Act 1995 (Commencement No. 8) Order 1996	5.4749
1997/216 (C. 11)	The Pensions Act 1995 (Commencement No. 9) Order 1997	5.4751
1997/664 (C. 23)	The Pensions Act 1995 (Commencement No. 10) Order 1997	5.4755

(b) Dates on which provisions of the Pensions Act 1995 came into force  
[Note: In the list below only those sections commenced will be included.]

<i>Section (etc.) of Pensions Act 1995</i>	<i>Date of commencement</i>	<i>Commencing authority</i>
section 1(1) to (4) and (6)	1st April 1996	1996/778
section 1 (5)	1st April 1996	1996/778
	6th April 1997	1997/664
section 2	1st April 1997	1996/778
section 3(1)	6th April 1997	1997/664
section 3(2)	16th October 1996 6th April 1997	1996/2637 1997/664
sections 3(3) to (9)	6th April 1997	1997/664
section 10(1)	1st June 1996	1996/1412
	6th April 1997	1997/664
sections 10(2) and (3)	6th April 1996	1996/778
	6th April 1997	1997/664

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**Annex 2**

sections 10(4) to 15	6th April 19	1997/664
sections 16 to 21	6th April 1996	1996/778
	6th April 1997	1997/664
section 21(3)	6th October 1996	1996/778
	6th April 1997	1997/664
section 22	6th April 1997	1997/664
section 23 (partially)	1st June 1996	1996/1412
section 24 to 26	6th April 1997	1997/664
section 27	6th April 1996	1996/778
	6th April 1997	1997/664
section 28 to 31	6th April 1997	1997/664
sections 32 and 33	6th April 1996	1996/778
	6th April 1997	1997/664
section 34	6th April 1997	1997/664
section 35	6th April 1996	1996/778
	6th April 1997	1997/664
sections 37 and 38	6th April 1996	1996/778
	6th April 1997	1997/664
section 39	1st January 1996	1996/3104
sections 40 and 41	6th April 1996	1996/778
	6th April 1997	1997/664
section 47	6th April 1996	1996/778
	6th April 1997	1997/664
sections 48(1) and (3) to (6)	6th April 1997	1997/664
sections 49 to 51	6th April 1996	1996/778
	6th April 1997	1997/664
section 52 to 54	6th April 1997	1997/664
section 55	4th February 1997	1997/216
section 56 to 61	6th April 1996	1996/778
	6th April 1997	1997/664
section 62 to 66 (partially)	4th December 1995	1995/3104
	1st January 1996	1995/3104
sections 67 to 69	6th April 1996	1996/778
	6th April 1997	1997/664
	6th April 1997	1997/664
section 68	6th October 1996	1996/778
	6th April 1997	1997/664
section 73	6th April 1996	1996/778
	6th April 1997	1997/664

sections 74(1) and (5)(a)	16th October 1996 6th April 1997	1996/2637 1997/664
section 74(2), (3) and (5)(b)	6th April 1996 6th April 1997	1996/778 1997/664
sections 75 to 77	6th April 1997 6th April 1997	1996/778 1997/664
section 78(1) to (3) and (5)	1st August 1996	1996/1412
section 78(4)	6th April 1997	1997/664
section 78(6) (partially)	1st June 1996 1st August 1996	1996/1412 1996/1412
section 78(7)	1st August 1996	1996/1412
section 78(8)	1st August 1996 4th February 1997 6th April 1996	1996/1412 1997/216 1997/216
section 80 (1) to (3) and (5)	6th April 1997	1997/664
section 80 (4)	4th February 1997 6th April 1997	1997/216 1997/216
section 81(1)(c), (2) and (3)(f)(i)	1st June 1996 6th April 1997	1996/1412 1997/664
section 82(1)	1st June 1996 6th April 1997	1996/1412 1997/664
section 83(2) and (3)(a)	1st June 1996 6th April 1997	1996/1412 1997/664
section 84(1)(b), (2) and (3)	1st June 1996 6th April 1996	1996/1412 1997/664
section 85(3)(a)	1st August 1996 6th April 1997	1996/1412 1997/664
section 86	1st June 1996 6th April 1997	1996/1412 1997/664
sections 87 to 89	6th April 1996 6th April 1997	1996/778 1997/664
section 90	2nd October 1995	1995/2548
section 91(1) and (2) and (4) to (7) and 92 to 94	6th April 1997	1997/664
sections 91 to 95 (partially)	6th April 1996	1996/778
section 96(1) and (3) to (4) and (6)	6th April 1997	1996/664
section 96(2) and (5)	1st June 1996	1996/1412

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section 97 to 115	6th April 1997	1997/664
section 116(1)	16th July 1996	1996/1853
section 116(2) and (3)	6th April 1997	1997/664
section 117	4th December 1995	1995/3104
	1st January 1996	1996/3104
	6th October 1996	1996/778
	6th April 1997	1997/664
section 118 (partially)	6th April 1996	1996/778
	16th October 1996	1996/2637
section 119	6th April 1996	1996/778
section 120	4th December 1995	1995/3104
	1st January 1996	1995/3104
	6th April 1996	1996/778
section 121	4th December 1995	1995/3104
	6th April 1996	1996/778
section 122	1st January 1996	1995/3104
	6th April 1997	1997/664
section 123(1) and (2)	6th April 1997	1997/664
section 123(3)	6th April 1996	1996/778
section 124	4th December 1995	1995/3104
	1st January 1996	1995/3104
	6th April 1996	1996/778
section 125 (partially)	6th April 1996	1996/778
(partially)	16th October 1996	1996/2637
section 125(1)	6th April 1997	1997/664
section 136	6th April 1996	1996/778
	6th April 1997	1996/778
section 137	13th March 1996	1996/778
	6th April 1996	1996/778
	6th April 1997	1997/664
section 138(1) to (4)	6th April 1997	1997/664
section 138(5)	13th March 1996	1996/778
	6th April 1997	1997/664
section 139	6th April 1996	1996/778
	6th April 1997	1997/664
section 140(1)	6th April 1996	1996/778
	6th April 1997	1997/664

section 140(2)	13th March 1996	1996/778
	6th April 1996	1996/778
section 140(3)	6th April 1997	1997/664
section 141	6th April 1996	1996/778
	6th April 1997	1997/664
sections 142 to 144	13th March 1996	1996/778
	6th April 1996	1996/778
section 146	13th March 1996	1996/778
	6th April 1996	1996/778
section 147	6th April 1997	1997/664
section 148	6th April 1996	1996/778
section 149	1st June 1996	1996/778
	6th April 1997	1997/664
section 150 and 151	6th April 1997	1997/664
sections 152 to 154	6th April 1996	1996/778
	6th April 1997	1997/664
section 155	6th April 1996	1996/778
	1st June 1996	1996/1412
	6th April 1997	1997/664
section 156	2nd October 1995	1995/2548
section 157(1) and (3) to (12)	6th April 1997	1997/664
section 157(2) (partially)	1st June 1996	1996/1412
section 158	1st June 1996	1996/1412
	16th October 1996	1996/2637
	6th April 1997	1997/664
section 160	1st June 1996	1996/1412
	6th April 1997	1997/664
section 161 to 164	6th April 1997	1997/664
section 165 (partially)	16th October 1996	1996/2637
section 166 (partially)	27th June 1996	1996/1675
	1st August 1996	1996/1675
section 167 (partially)	15th July 1996	1996/1843
	19th August 1996	1996/1843
section 169	2nd October 1995	1995/2548
section 172	2nd October 1995	1995/2548

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section 173	2nd October 1995	1995/2548
	6th April 1996	1996/778
	6th April 1997	1997/664
section 174	2nd October 1995	1995/2548
	4th December 1995	1995/3104
	1st January 1995	1995/3104
	6th April 1996	1996/778
section 175	2nd October 1995	1995/2548
	4th December 1995	1995/3104
	1st January 1996	1995/3104
	6th April 1996	1996/778
section 176	6th April 1996	1996/778
section 177	6th April 1996	1996/778
	6th April 1997	1997/664
section 178	6th April 1997	1997/664
section 181	6th April 1997	1997/664
Schedule 1	1st April 1996	1996/778
	1st June 1996	1996/1412
	6th April 1997	1997/664
Schedule 2	1st August 1996	1996/1412
	4th February 1997	1997/216
	6th April 1997	1997/216
Schedule 3	1st January 1996	1995/3104
	16th October 1996	1996/2637
	6th April 1997	1997/664
Schedule 5 (partially)	6th April 1996	1996/778
(partially)	1st June 1996	1996/1412
(partially)	16th October 1996	1996/2637
except para. 38	6th April 1997	1997/664
Schedule 6	2nd October 1995	1995/2548
	6th April 1996	1996/778
	6th April 1997	1997/664
Schedule 7 (partially)	6th April 1996	1996/778
except references to sections 35 to 36 of the 1993 Act	6th April 1997	1997/664